

Central Barangaroo Development Agreement

Contract register disclosure version

Part 1 of 2

Prepared 19 January 2018

Central Barangaroo Development Agreement

Barangaroo Delivery Authority
The Authority

Grocon (CB) Developments Pty Limited
Developer

Grocon Constructors Pty Ltd
General Guarantor



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Our reference 104/1837/801/26948

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Annexure A - [REDACTED]

Annexure B - [REDACTED]

Annexure C - [REDACTED]

Annexure D - [REDACTED]

[REDACTED]

Annexure E - Key Consultants and Key Personnel

Annexure F - Risk Allocation Table

Annexure G - [REDACTED]

Annexure H - Insurance

Annexure I - Internal Infrastructure to be delivered with Block 7

Annexure J - Standard Form Stratum Lease and Retail Lease

Part 1 Annexure J - Standard Form Stratum Lease

Part 2 Annexure J - Standard Form Retail Lease

Part 3 Annexure J - Foreshore Retail Stratum Lease

Annexure K - Standard Form Common Property Strata Lease

Annexure L - Standard Form Residential Strata Lease

Annexure M - [REDACTED]

Annexure N - Construction Licence

Annexure O - Early Activation Conditions

Annexure P - [REDACTED]

Annexure Q - Financier's Side Deed

Annexure R - Independent Certifier Deed

Annexure S - Builder's Side Deed

Annexure T - Agreement with Expert

Annexure U - Quantity Surveyor Deed

Annexure V - Formal Notice

Annexure W - Checklist

Annexure X - Notice of Acceptance of Call Offer

Annexure Y - Notice of Acceptance of Put Offer

Annexure Z - Hickson Road Program

Annexure AA - [REDACTED]

Annexure BB - Roads Authority area

Annexure CC - Public Domain Plan

Annexure DD - [REDACTED]

Annexure EE - [REDACTED]

Annexure FF - Staging Plan

Annexure GG - Declaration Area Plan

Annexure HH - [REDACTED]

Annexure II - [REDACTED]

Annexure JJ - [REDACTED]

Annexure KK - Works Programme

Annexure LL - [REDACTED]

Annexure MM - [REDACTED]

Annexure NN - Right of Entry Waiver Deed

Annexure OO - [REDACTED]

Annexure PP - Barangaroo Marketing Guidelines

Annexure QQ - [REDACTED]

Annexure RR - [REDACTED]

Annexure SS - [REDACTED]

Annexure TT - Environmental Reports

Annexure UU - Draft Climate Positive Workplan

Annexure VV - Dalgety Bond Stores Agreement

Annexure WW - [REDACTED]

Annexure XX - National Carbon Offset Standard for precincts

Annexure YY - [REDACTED]

Annexure ZZ - Early Activation Plan

Annexure AAA - Final Bid

Annexure BBB - Hickson Park Drawing

Annexure CCC - [REDACTED]

Annexure DDD - Independent Sustainability Ratings

Annexure EEE - [REDACTED]

Annexure FFF - [REDACTED]

Annexure GGG - Precinct Management Office Sublease

Annexure HHH - [REDACTED]

Annexure III - [REDACTED]

Annexure JJJ - [REDACTED]

Annexure KKK - Notice of Acceptance of Early Activation Call Offer

Annexure LLL - Notice of Acceptance of Early Activation Put Offer

Annexure MMM - Early Activation Licence

Annexure NNN - Licensable Public Domain Area

Central Barangaroo Development Agreement

Date

Parties

Barangaroo Delivery Authority of 27/201 Kent Street, Sydney NSW 2000
(Authority)

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

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

Background

- A. The Authority was established by the *Barangaroo Delivery Authority Act 2009* (NSW) for the purpose of facilitating the development of Barangaroo.
- B. The Authority is the owner of Barangaroo.
- C. The Developer has submitted a Final Bid to the Authority for the development of Central Barangaroo.
- D. In addition to development works, the Developer is to carry out the Public Domain Works, the Remediation Works and the Works in respect of Internal Infrastructure on Central Barangaroo.
- E. The Authority and the Developer have agreed to the terms and conditions which will regulate the use and development of Central Barangaroo.
- F. The Authority has agreed to offer to grant leases to the Developer and the Developer has agreed to offer to take leases from the Authority in respect of Stages forming part of Central Barangaroo (and which do not form part of the Public Domain) on the terms and conditions contained in this Agreement.
- G. The General Guarantor has agreed to guarantee the obligations of the Developer under this Agreement on the terms set out in this Agreement.

H.

Operative provisions

1. Defined terms & interpretation

1.1 Defined terms

The following words have these meanings in this Agreement, unless a contrary intention appears:

Active Construction means, in respect of any Block:

- (a) [REDACTED] and

- (b) a Building Contract has been entered into in respect of the Works on the relevant Block.

Agreement means this agreement and includes any appendices, annexures or schedules.



Anticipated Date of Practical Completion means, in relation to a Works Component, the date which the Independent Certifier certifies in writing to the Authority and the Developer pursuant to clause 34.1(b), as being the date on which the Independent Certifier reasonably considers Practical Completion of that Works Component will be achieved.

Appeal Period means:

- (a) in relation to a Modification referred to in paragraph (a) in the definition of Modification, the three month period commencing on the date of public notice pursuant to section 75K(4) of the EP&A Act (as saved by clause 3 of Schedule 6A of the EP&A Act) of the granting of the Approval;
- (b) in relation to any other Significant Application, 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 relevant Significant Application; or
- (c) in relation to any planning instrument referred to in the definition of Modification, the 3 month period commencing on the date of the public notification of gazettal of that planning instrument.

Application means any application for an Approval including a Modification and a Significant Application.

Approval means any permit, licence, consent, grant, certificate, sealing, Modification or other approval obtained or required to be obtained from a Government Agency (other than a consent or approval obtained or required to be obtained from the Authority under this Agreement), utility providers or any other person in relation to the Developer's Project and includes any consent, licence or approval required by the Authority, any Planning Approval and any requisition, condition or requirement (including the 'Secretary's Environmental Assessment Requirements' issued pursuant to section 78A(8A) of the EP&A Act) from a Government Agency, utility provider or any other person.

Approved Design Documents means any Design Documentation approved by the Authority pursuant to clause 7.9, as varied by any Variation approved in accordance with clauses 15.7, 15.8 or 16.

Approved Waste Operator means:

- (a) a waste operator (or operators), approved by the Authority, acting reasonably, which has the ability to comply with the Zero Waste Emissions Obligations; or
- (b) where there is no reputable, reasonable and solvent operator that has the ability to comply with a particular Zero Waste Emissions Obligation, an operator who is most closely able to satisfy that Zero Waste Emissions Obligation.

Australian Standard means any Australian Standard issued by Standards Australia.

Authorised Officer means:

- (a) for the Authority, its Chief Executive Officer or other equivalent person authorised by the Board of the Authority; and

- (b) for the Developer, its Chief Executive Officer or other equivalent person authorised by the Board of the Developer,

or any other person nominated by or on behalf of a party as an authorised officer by notice in writing to the other party.

Authority's Solicitors means Clayton Utz, of Level 15, 1 Bligh Street, Sydney, NSW 2000, or any other party notified by the Authority to the Developer in writing.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any State to carry on banking business.

Bank Bill Rate means, for each circumstance where the Bank Bill Rate is required to be used for any purpose of this Agreement, the rate on the first day required for that purpose expressed as a yield percent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10am (Sydney time) on that day for Bank Bills that have a tenor of 90 days, such rate to be fixed for the period of 90 days and then reset on the first day of each succeeding 90 day period.

Bank Guarantee means an irrevocable, unconditional guarantee given by a bank as defined in the *Banking Act 1959* (Cth) and enforceable in Australia on presentation and otherwise in a form acceptable to the Authority (acting reasonably).

Barangaroo has the meaning given in section 4 of the *Barangaroo Delivery Authority Act 2009* (NSW).

Barangaroo Developers' Forum has the meaning given in clause 31.1.

Barangaroo Marketing Guidelines means the guidelines published attached as Annexure PP and as updated, replaced or amended by the Authority from time to time.

Barangaroo South PDA means the "Barangaroo Stage 1 – Project Development Agreement" dated 5 March 2010 between the Authority, LLMP and the LLMP Guarantor, as amended from time to time.

Barangaroo Steps means the steps to be built from Block 6 through High Street and up to Kent Street in accordance with the Approved Design Documents and as shown indicatively on the Public Domain Plan.

[REDACTED]

Block means any of:

- (a) Block 5;
- (b) Block 6;
- (c) Block 7;
- (d) Foreshore Block North;
- (e) Foreshore Block South A, or
- (f) Foreshore Block South B,

each as shown on the Staging Plan.

Block 5 means the area of Central Barangaroo marked "Block 5" on the Staging Plan.

Block 5 Office Investor means Grocon (CB) Management Pty Limited (ACN 615 035 937) in its capacity as trustee of the Central Barangaroo Sub-Trust 2.

Block 5 Office Sub-Development Agreement means the agreement dated on or about the date of this deed between the Developer, the Developer Guarantor and the Block 5 Office Investor in relation to that part of the Office Component in Block 5.

Block 6 means the area of Central Barangaroo marked "Block 6" on the Staging Plan and including those areas outside of Barangaroo being the subject of the design and construction of a bridge across Hickson Road.

Block 6 Office Investor means Grocon (CB) Management Pty Limited (ACN 615 035 937) in its capacity as trustee of the Central Barangaroo Sub-Trust 1.

Block 6 Office Sub-Development Agreement means the agreement dated on or about the date of this deed between the Developer, the Developer Guarantor and the Block 6 Office Investor in relation to that part of the Office Component in Block 6.

Block 7 means the area of Central Barangaroo marked "Block 7" on the Staging Plan.

Block Development Cost means, in respect of each Block, the amount calculated in accordance with Annexure G.

Block Practical Completion in relation to a particular Block occurs when:

- (a) in relation to Block 7:
- (i) the Works for every Stage within Block 7 [REDACTED] have reached Stage Practical Completion;
 - (ii) [REDACTED]
 - (iii) the Precinct Management Office has been constructed in accordance with the Approved Design Documents at the level of Developed Design Documentation and, where applicable, Tender Documentation and Issued for Construction Drawings;
 - (iv) the Public Domain within Block 7 has achieved Public Domain Practical Completion;
 - (v) the Public Domain within Foreshore Block North has achieved Public Domain Practical Completion and the pedestrian access bridge referred to in clause 25D.9 has been removed in accordance with clause 25D.9(i);
 - (vi) any Sustainability Obligations required by this Agreement or the CPW to be achieved for Block Practical Completion of Block 7 to occur have been achieved; and
 - (vii) [REDACTED]

(b) in relation to Block 6:

- (i) the Works for every Stage within Block 6 [REDACTED] have reached Stage Practical Completion;
- (ii) [REDACTED]
- (iii) the Public Domain within Block 6 has achieved Public Domain Practical Completion;
- (iv) any Sustainability Obligations required by this Agreement or the CPW to be achieved for Block Practical Completion of Block 6 to occur have been achieved; and
- (v) [REDACTED]

(c) in relation to Block 5:

- (i) the Works for every Stage within Block 5 [REDACTED] have reached Stage Practical Completion;
- (ii) the Retail Component in Blocks 5, 6 and 7 has achieved Retail Final Completion;
- (iii) the Public Domain within Block 5 has achieved Public Domain Practical Completion;
- (iv) the Public Domain within Foreshore Block South has achieved Public Domain Practical Completion;
- (v) any Sustainability Obligations required by this Agreement or the CPW to be achieved for Block Practical Completion of Block 5 to occur have been achieved; and

(vi) [REDACTED]

Block Release Date in relation to a Block means the relevant date set out in Annexure A as extended under clause 11.4(g).

Block Release Plan means the plan in Annexure OO.

BMS Key Principles means the principles set out in Annexure JJJ.

Bridge Works means the works to erect a bridge over Hickson Road as described in the Final Bid.

Builder means the contractor under a Building Contract being:

- (a) Grocon Constructors (NSW) Pty Limited ACN 132 035 280 in relation to the Public Domain in the Foreshore Blocks and in relation to the Office Component and all Public Domain [REDACTED];
- (b) Scentre Design and Construction Pty Limited ACN 000 267 265 in relation to the fit out of the Retail Component; and
- (c) Grocon Constructors (NSW) Pty Limited ACN 132 035 280 in relation to the Residential Component (or each part of the Residential Component as the case may be),

or in each case, such other building contractor approved by the Authority under clause 29.1.

Builder's Side Deed means a deed to be entered into in respect of a Works Component by the Developer, the Authority and the relevant Builder of that Works Component as approved by the Authority pursuant to clause 29.3(b) and substantially in the form of Annexure S or otherwise (if requested by the Developer) in a form acceptable to the Authority (acting reasonably).

Building means each and any building to be erected or which is erected on Central Barangaroo as part of the Developer's Project and in accordance with this Agreement.

Building Contract means each head contract between:

- (a) the Developer and a Builder for Works in respect of:
 - (i) the Foreshore Blocks;
 - (ii) any Internal Public Domain;
 - (iii) a Stage comprising Office Component;
 - (iv) [REDACTED];
 - (v) [REDACTED];
- (b) WSF Fund Pty Limited ACN 120 154 663 and the Builder in relation to the fit out of the Retail Component in relation to a Stage comprising the construction of the Retail Component to achieve Retail Final Completion; and
- (c) Aqualand B Development Holding Pty Ltd ACN 612 713 916, Aqualand Development 2 Pty Limited ACN 606 732 674 or Aqualand Development 5 Pty

Limited ACN 615 571 205 in relation to a Stage comprising the construction of the Residential Component and a Builder;

whether:

- (d) in connection with the design and construction (or construction only) of that Works Component (or any part of it); or
- (e) any construction management or project management of that Works Component (or any part of it).

Business Day means (subject to clause 25.5) any day other than:

- (a) a Saturday, Sunday or public holiday in Sydney; or
- (b) the days between 24 December and 2 January in each year; or
- (c) any days during the Christmas closedown period for the NSW government sector as described in Premier's Memorandum M2016-01 and each replacement memorandum.

By-Law Instrument means an instrument which creates by laws under Part 7 of the *Strata Schemes Management Act 2015* (NSW).

Call Offer means the offer (or offers) made by the Authority to lease the Premises under clause 37.1(a) and clause 37.1(e).

Call Offer Period means the period in relation to:

- (a) a Stage comprising the Retail Component in Block 7, commencing on the later of:
 - (i) [REDACTED]
 - (ii) the date the portion of the Development Rights Fees attributable to the Retail Component within Block 7 as specified Annexure D is paid to the Authority,

and ending on the date on which the Developer commences the Retail Final Works as certified by the Independent Certifier;
- (b) a Stage comprising the Retail Component in Block 6, commencing on the later of:
 - (i) [REDACTED]
 - (ii) the date the portion of the Development Rights Fees attributable to the Retail Component within Block 6 as specified Annexure D is paid to the Authority,

and ending on the date on which the Developer commences the Retail Final Works as certified by the Independent Certifier;
- (c) a Stage comprising the Retail Component in Block 5, or the entirety of the Retail Component in Block 7, Block 6 and Block 5, commencing on the last to occur of:
 - (i) the Date of Retail Final Completion of the Retail Component in Block 7;
 - (ii) the Date of Retail Final Completion of the Retail Component in Block 6;

- (iii) the Date of Retail Final Completion of the Retail Component in Block 5; and
 - (iv) the date all of the Development Rights Fees attributable to the Retail Component within each of Block 7, Block 6 and Block 5 as specified in Annexure D have been paid to the Authority,
- and ending on the date being [REDACTED].
- (d) a Stage comprising the Retail Component in Foreshore Block North, commencing on the later to occur of:
- (i) [REDACTED]
 - (ii) the date on which all of the Development Rights Fees attributable to the Retail Component within Block 7 and the Retail Component in Foreshore Block North as specified in Annexure D have been paid to the Authority; and
- (e) any other Stage in the Developer's Project, commencing on the Date of Stage Practical Completion of that Stage and ending 60 Business Days after that commencing date.

Carbon Limit Threshold means in respect of a Component, the relevant individual carbon target specified for that Component in paragraph (a) of the definition of Carbon Neutral Obligations.

Carbon Neutral Auditor means any person registered with the Australian Government Clean Energy Regulator on the Register of Greenhouse and Energy Auditors as established under section 75A of the *National Greenhouse and Energy Reporting Act 2007* (Cth).

Carbon Neutral Certification means certification by a Carbon Neutral Auditor nominated by the Developer and approved by the Authority (acting reasonably) that the Developer has satisfied its Carbon Neutral Obligations.

Carbon Neutral Instruments means, for the purposes of offsetting:

- (a) Scope 2 emissions associated with electricity consumption: RECs; and
- (b) all other non-electricity related sources of carbon emissions: Eligible Carbon Offsets.

Carbon Neutral Obligations means:

- (a) ensuring each building inclusive of the occupants achieves individual carbon targets of less than:
 - (i) [REDACTED]
 - (ii) [REDACTED]
 - (iii) [REDACTED]
- (in respect of each Component, the Carbon Limit Threshold),

- (b) delivering carbon neutrality initiatives and features in accordance with the CPW; and
- (c) establishing and implementing appropriate frameworks to ensure that the Tenants must achieve carbon neutrality annually during the term of each Lease, in accordance with:
 - (i) a Greenhouse Gas Emissions inventory compliant with the National Carbon Offset Standard; and
 - (ii) offsetting excess emissions using only Carbon Neutral Instruments.

Central Barangaroo means part of the land comprised within Folio Identifier 101/1204946 and which includes Block 5, Block 6, Block 7, Foreshore Block North and Foreshore Block South (which, for the avoidance of doubt, includes the Public Domain).

Checklist means a checklist given to the Authority in the form of Annexure W and which is given in accordance with clause 51.

Claim includes any claim for payment, Loss, damage or expense and any actions, suits, causes of action, debts, dues, costs, claims or demands under contract, at law, in equity or under statute.

Clean up and Clean up Action, in relation to Pollution or a Pollution Incident, includes:

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any Pollution resulting or which is likely to result from the Pollution Incident;
- (b) ascertaining the nature and extent of the Pollution, the Pollution Incident and of the actual or likely resulting Pollution;
- (c) eliminating or reducing any hazard arising from Pollution;
- (d) preparing and carrying out a remedial plan of action; and
- (e) action to remove or store Waste or any Hazardous Substance that has been disposed of unlawfully on any Block.

Climate Positive Certification means:

- (a) a Carbon Neutral Certification and a certification by a Carbon Neutral Auditor that the Zero Waste Emissions Obligations have been complied with;
- (b) a certification by the Lead Sustainability Consultant that the Water Positive Obligations have been complied with; and
- (c) a certification by the Social Outcomes Certifier that the Social Outcomes have been delivered.

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Collaboration Deed means [REDACTED]

Commencement Date CPI means the CPI number for the calendar quarter ending in December 2016.

Compensation means compensation for Loss suffered by a party as a result of a Default Event or other failure to perform by the other party, payable in accordance with this Agreement.

Component means each of:

- (a) the Office Component;
- (b) the Residential Component; and

- (c) the Retail Component.

Component Plan means the plans contained in Annexure AA.

Concept Design Drawings means the architectural and landscaping drawings, specifications, materials and information which clearly sets out:

- (a) the guiding design principles;
- (b) the site context;
- (c) the Developer's design concepts;
- (d) in relation to Block 5, the Retail Strategy;
- (e) in relation to the Public Domain, the Public Domain Performance Brief; and
- (f) concept design drawings and schedule of areas,

for the development of the Developer's Project and as developed under clause 7.

Concept Plan means concept plan "MPA No. 06_0162", approved by the Minister on 9 February 2007 as modified from time to time.

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

Consortium Documents means:

- (a) the Residential Implementation Agreement and Deed of Amendment to the Residential Implementation Agreement;
- (b) the Block 5 Office Sub-Development Agreement and Deed of Amendment to the Block 5 Office Sub-Development Agreement;
- (c) the Block 6 Office Sub-Development Agreement and Deed of Amendment to the Block 6 Office Sub-Development Agreement;
- (d) the Retail Sub-Development Agreement;
- (e) the Collaboration Deed and Deed of Amendment and Accession to the Collaboration Deed; and
- (f) the Consortium Side Deed and Deed of Amendment and Accession to the Collaboration Deed.

Consortium Side Deed means the "Central Barangaroo Consortium Side Deed" between the Developer and the Investors in respect of the Developer's Project dated on or about the date of this Agreement.

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

Construction Commencement Bank Guarantee means a Bank Guarantee in favour of the Authority in the sum of [REDACTED] being security for the Developer achieving the "Condition" specified for Sunset Event "2(a) Active Construction commenced on Block 7" as set out in Annexure B on or before the Sunset Date specified for that Sunset Event.

Construction Licence means the licence granted by the Authority under clause 13.2, on the terms and conditions set out in Annexure N.

Construction Licence Conditions Precedent means the conditions precedent to the grant of a Construction Licence for any Stage of the Developer's Project or to the granting of access to the Developer to any Block as set out in clause 12.1.

Contaminant or Contamination has the same meaning as set out in the CLM Act.

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.

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 external advisers and consultants.

Council means the Council of the City of Sydney or its successor in title as the case may be.

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

CPW means the 'Climate Positive Workplan' prepared by the Developer, approved by the Authority and updated from time to time in accordance with clause 23, a draft of which is Annexure UU.

CPW Scope mean the requirements for the preparation of a draft plan which is to become the 'Climate Positive Workplan' set out in clause 23.3.

Crown means Crown Sydney Property Pty Limited ACN 166 326 861.

Crown Development Agreement means the document of that name between Authority, Crown, LLMP, Lend Lease Corporation Limited ACN 000 226 228 and Crown Resorts Limited ACN 125 709 953 dated 27 May 2015.

Crown Early Works means:

- (a) any testing, sampling, investigatory works, preliminary excavation works, archaeological or services division or enabling work required to enable Crown to carry out its development works; or
- (b) in ground structures and perimeter works,

to the extent described in an application by Crown for planning approval for early works, but for the avoidance of doubt, does not include any works related to site establishment or any above ground works relating to the tower forming part of Crown's works to be carried out under the Crown Development Agreement.

Crown Site means the area of Barangaroo on which Crown is entitled to carry out works pursuant to the Crown Development Agreement.

Cultural Contribution means the annual contributions payable by Tenants under the Leases

Cure Period means the period of [REDACTED] from and including the date of service of a Default Notice and any extended period granted under clause 49.

Cure Plan means a plan prepared by the Developer to remedy a Default Event which:

- (a) is proposed during the Cure Period; and
- (b) details:
 - (i) if and why an extension of the Cure Period is required;
 - (ii) the time required to cure the relevant Default Event; and
 - (iii) a work plan setting out each task to be undertaken and the time for each task to be completed.

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

Dalgaty Bond Stores means the premises comprised within folio identifier 100/838323 being situated at 6-20 Munn Street, Millers Point.

Dalgaty Bond Stores Agreement means an agreement in the form of Annexure VII.

Dangerous Goods has the same meaning as in the latest edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail.

Date for Block Practical Completion means, in respect of each Block, the date scheduled for that event specified in Annexure C (and subject to any extension of time in respect of that date pursuant to clause 21).

Date for Project Practical Completion means the date scheduled for that event in Annexure C (and subject to any extension of time in respect of that date pursuant to clause 21).

Date for Public Domain Practical Completion means the date scheduled for that event in Annexure C (and subject to any extension pursuant to clause 21).

Date for Retail Final Completion means the date scheduled for that event in Annexure C (and subject to any extension of time in respect of that date pursuant to clause 21).

Date for Stage Practical Completion means, in respect of each Stage, the date scheduled for that event specified in Annexure C (and subject to any extension of time in respect of that date pursuant to clause 21).

Date of Block Practical Completion means, in respect of each Block, the date certified by the Independent Certifier as the date when a Block achieves Block Practical Completion determined pursuant to clause 34.5.

Date of Project Practical Completion means the date certified by the Independent Certifier as the date when all Blocks in the Developer's Project achieve Practical Completion.

Date of Public Domain Practical Completion means the date certified by the Independent Certifier as the date when a Foreshore Block achieves Public Domain Practical Completion determined pursuant to clause 34.5.

Date of Retail Final Completion means the date certified by the Independent Certifier as the date when the Retail Component achieves Retail Final Completion determined pursuant to clause 34.5.

Date of Stage Practical Completion in respect of a Stage means the date certified by the Independent Certifier as the date when a Stage achieves Stage Practical Completion determined pursuant to clause 34.5.

Deal and Dealing in relation to a Block or a Stage within a Block, means to sell, assign, transfer, lease, licence or otherwise dispose of or deal with any interest in the Block.

Default Event means any:

- (a) Material Default;
- (b) Non-Material Default; or
- (c) Financial Default.

Default Notice means a notice given by the Authority to the Developer under clause 49.1.

Defects Liability Period means, in respect of:

- (a) a Block (other than a Foreshore Block or the Retail Component) including any Internal Public Domain and Internal Infrastructure within the Block, the period:
 - (i) commencing on the Date of Block Practical Completion for that Block; and
 - (ii) ending on the date which is [REDACTED];
- (b) a Foreshore Block, including any Internal Infrastructure within a Foreshore Block, the period:
 - (i) commencing on the Date of Block Practical Completion for the Works carried out in respect of that Foreshore Block; and
 - (ii) ending on the date which is [REDACTED];
- (c) [REDACTED]
- (d) the Retail Component (including the Retail Component situated within Foreshore Block North) as at the Date of Retail Final Completion, the period:
 - (i) commencing on the Date of Retail Final Completion in relation to the last Stage within the Developer's Project comprising part of the Retail Component to achieve Retail Final Completion; and
 - (ii) ending on the date which is [REDACTED];

Design Documentation means all design documents, drawings, specifications and information required for each Block in the Developer's Project to reach Project Practical Completion in the following design stages:

- (a) Concept Design Drawings;
- (b) Schematic Design Drawings;
- (c) Developed Design Documentation;
- (d) if applicable having regard to clause 7.14, Tender Documentation; and
- (e) if applicable having regard to clause 7.15, Issued for Construction Drawings.

Design Excellence Competition means any design excellence competition required to be undertaken pursuant to the revised statement of commitments forming part of the Concept Plan, the requirement for which has not been waived by the Director-General.

Design Review Group has the meaning given in clause 7.7(b).

Design Working Group has the meaning given in clause 7.6.

Developable GFA means the amount of GFA which may be developed on Central Barangaroo, in accordance with the Concept Plan or any Modification (subject to obtaining all necessary Approvals).

Developed Design Documentation means all detailed design drawings, specifications, material and information approved pursuant to clause 7 and required in order to complete each Stage including:

- (a) external building design (including in relation to the Public Domain [REDACTED] relating to façade, elevations, materials, setbacks, heights, roof profiles, massing, ground level frontages (including without limitation retail and entertainment frontages), vehicle and pedestrian access, public and service vehicle entrances and energy efficiency;
- (b) services and structural drawings in respect of Public Domain [REDACTED];
- (c) wind/weather protection;
- (d) landscaping;
- (e) overshadowing;
- (f) commissioning management plan for any Internal Infrastructure within the Stage;
- (g) vehicle parking, access, loading and servicing - including without limitation bike parking, access for those with limited mobility;
- (h) footpaths and public access;
- (i) internal and external public spaces - access, facilities and views;
- (j) integration with the development or proposed development of any adjoining development projects;
- (k) advertising and signage; and
- (l) plans and specifications for any part of the Developer's Project which comprises part of the Public Domain including a plan of the 'Licensable Public Domain Area' for the purposes of attachment to the Retail (Stratum) Lease and the Retail (Foreshore) Lease in accordance with clause 37.2(a)(vi)B and clause 38.2(d)(ii) as relevant.

Developer includes:

- (a) in the case of a corporation, its successors and permitted assigns;
- (b) the Developer's Employees and Agents.

Developer Contribution means the amounts payable by the Developer pursuant to clause 5.1(a)(iii) and as specified in Part 3 of Annexure D, subject to any changes to those amounts calculated in accordance with clauses 1.10, 5.2, 5.5, 7.3(c), 7.10 and Part 3 of Annexure D.

Developer's Project means the planning, design, development, construction and commissioning of all Stages, the Works and all off-site facilities as described in the Final Bid and the Approved Design Documents.

Developer's Solicitors means King and Wood Mallesons of Level 61, Governor Phillip Tower, Farrer Place, Sydney, or any other party notified by the Developer to the Authority in writing.

Developer's Staging Plan means a plan to be provided at appropriate intervals of time and otherwise on the reasonable request of the Authority:

- (a) detailing the physical and geographical evolution of the Developer's Project from the commencement of the Works until Project Practical Completion; and
- (b) confirming to the Authority that the physical and geographical growth of the Works will be continuous and contiguous from not more than two single points within Central Barangaroo.

Development Costs means the design and construction costs incurred or likely to be incurred by the Developer in relation to a component of the Works:

- (a) including the components of the Works referred to in clause 7.3(e) and 17.3(g), being:
 - (i) excavation costs in the case of [REDACTED] Premises;
 - (ii) professional fees reasonably incurred as part of the design documentation and implementation process;
 - (iii) construction costs;
 - (iv) plant, equipment and services, servicing only the relevant premises;
 - (v) fixtures and fittings;
 - (vi) loose furniture in the case of [REDACTED];
 - (vii) a reasonable proportion of design and construction related insurance;
 - (viii) approval and construction related fees payable to Government Agencies;
 - (ix) [REDACTED];
 - (x) marketing costs in relation to the [REDACTED]; and
 - (xi) GST on any of the above;
- (b) excluding:
 - (i) amounts payable by the Developer to the Authority in accordance with this Agreement (including the Development Rights Fees);
 - (ii) costs incurred by the Developer in designing and constructing the retail, residential and office components of the Developer's Project;
 - (iii) marketing expenses other than in respect of the [REDACTED];

- (iv) in the case of Development Costs relating to the Public Domain Works, any costs incurred in relation to the Works in Kind Contributions;
- (v) in the case of Development Costs relating to Works In Kind Contributions, any costs incurred in relation to Public Domain Works;
- (vi) finance costs and interest;
- (vii) building insurance after Practical Completion;
- (viii) commercial stock inventory;
- (ix) excavation costs in the case of the [REDACTED];
- (x) the costs of shared plant and services servicing the whole or a part of the Building which is more than the [REDACTED]; and
- (xi) costs which are funded by the Urban Art Contribution or the Cultural Contribution.

Development Rights Fees means the amounts payable by the Developer to the Authority

[REDACTED]

Director-General means the Director-General or Secretary of the New South Wales Department of Planning and Environment.

Disclosure Materials means all the written materials, including the Environmental Reports, provided by the Authority to the Developer as part of the Request for Detailed Bids process pursuant to which this Agreement was entered into.

[REDACTED]

Early Activation Area means the areas of Block 6 or Block 7 identified in the Early Activation Plan or such other area agreed by the Authority in accordance with clause 36.1.

Early Activation Call Offer means the offer (or offers) made by the Authority to grant an Early Activation Licence of an Early Activation Area in accordance with clause 36.3.

Early Activation Call Offer Period means in respect of an Early Activation Area, the period:

- (a) (in relation to "Block 7 Licensed Area 01" (as shown on the Early Activation Plan)), commencing 20 Business Days before the anticipated date of [REDACTED]
- (b) (in relation to "Block 7 Licensed Area 02" (as shown on the Early Activation Plan)), commencing 20 Business Days before the anticipated date of Practical Completion in respect of Block 7 Stage 4;

- (c) (in relation to the "Block 6 Licensed Area" (as shown on the Early Activation Plan)), commencing 20 Business Days before the anticipated date of Practical Completion in respect of Block 6 Stage 3; and
- (d) expiring on the earliest to occur of:
 - (i) 60 Business Days after that commencing date;
 - (ii) the acceptance of a Call Offer or a Put Offer to take a Lease of Premises which include part of the relevant Early Activation Area; and
 - (iii) the date the Developer commences the Retail Final Works as certified by the Independent Certifier.

Early Activation Conditions means the conditions on which the Developer must procure the early activation of the Retail Component following the grant of an Early Activation Licence as set out in Annexure O.

Early Activation Licence means a licence in relation to an Early Activation Area in the form of Annexure MMIM.

Early Activation Plan means the plan at Annexure ZZ.

Early Activation Put Offer means the offer (or offers) made by the Developer to accept the grant of an Early Activation Licence for an Early Activation Area under clause 36.6.

Early Activation Put Offer Period means in respect of any Early Activation Area, the period commencing on the day after the expiry of the Early Activation Call Offer Period relevant to the Early Activation Area and ending on the date being the earlier of:

- (a) the acceptance of a Call Offer or a Put Offer to take a Lease of Premises which include part of the Early Activation Area; and
- (b) 60 Business Days after the expiry of the relevant Early Activation Put Offer Period.

Early Activation Standard means in relation to any part of the Retail Component which is proposed to form part of an Early Activation Area, an area which:

- (a) is situated at ground plane;
- (b) [REDACTED]
- (c) has been painted (except in respect of surfaces which a tenant of the relevant Early Activation Area (or part of the relevant Early Activation Area) does not require to be painted as part of its proposed fitout);
- (d) has had flooring and ceiling finishes installed (except in respect of tenancies where the proposed tenant of the Early Activation Area does not require installed flooring or ceiling finishes);
- (e) in all other respects is completed in accordance with the design and scope approved by the Authority pursuant to clause 36.2, any applicable Approvals and the Developer's obligations under this Agreement;
- (f) the Developer has obtained an interim Occupation Certificate in respect of; and
- (g) connects directly to a part of Public Domain which satisfies the Early Activation Standard.

Eligible Carbon Offsets means greenhouse gas emission offsets that satisfy the National Carbon Offset Standard and are 'Voluntary Emissions Reductions' issued by the 'Gold Standard' (as those terms are referred to in the National Carbon Offset Standard) or otherwise approved by the Authority.

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

- (a) in the case of the Developer: the Authority and the Other Persons of the Authority; and
- (b) in the case of the Authority: the Developer, TfNSW, LLMP, Crown or the Other Persons of the Developer, TfNSW, LLMP or Crown,

and for the avoidance of doubt, the Developer's Employees and Agents includes WSF Fund Pty Limited, Scentre Design and Construction Pty Limited, Aqualand B Development Holding Pty Limited, Aqualand Development 2 Pty Limited and Aqualand Development 5 Pty Limited, the Builders and any subcontractors of the Builders and the Other Persons of any of those companies, Builders or subcontractors.

Encumbrance has the meaning set out in clause 35.8(a).

Environment means components of the earth including:

- (a) land, air and water including groundwater;
- (b) the sea and seabed;
- (c) any layer of the atmosphere;
- (d) any organic or inorganic matter or any living organism; and
- (e) human made or modified structures or areas, and

includes interacting ecosystems that include components referred to in (a) to (d) above and **Environmental** where used has a corresponding meaning.

Environmental Law means any Law regulating or relating to the Environment including Laws concerning:

- (a) Contamination or remediation of any Contamination;
- (b) Pollution or clean-up of the Environment;
- (c) protection of the Environment;
- (d) the production, release, storage, handling, transportation or disposal, discharge or treatment of any Waste, Dangerous Goods or Hazardous Substance;
- (e) heritage, planning or use of the land; or
- (f) health and safety.

Environmental Reports mean the reports listed in Annexure TT (and any report referred to in the reports listed in Annexure TT) and any other report prepared with the concurrence of the Authority which deals with the condition of Central Barangaroo.

EPA means the NSW Environment Protection Authority.

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

EPA Declaration means Declaration Number 21122 dated 6 May 2009 issued by the EPA in respect of part of Barangaroo pursuant to the CLM Act and which includes part of Central Barangaroo, as amended or replaced from time to time.

Estate Levy means:

- (a) [REDACTED] per annum as at the quarter ending 30 September 2016; 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 [REDACTED] per annum in the relevant Premises multiplied by the Current CPI and divided by the Commencement Date CPI.

External Infrastructure means the infrastructure owned and operated by third parties which delivers Services and utilities to Central Barangaroo.

Final Bid means the Developer's final bid attached as Annexure AAA.

Final Certificate means in respect of every Stage, a certificate under which the Independent Certifier certifies that:

- (a) all defects notified within the Defects Liability Period and omissions in respect of that Works Component have been rectified;
- (b) if a final Occupation Certificate was not issued on or before Practical Completion of the Stage, a final Occupation Certificate has issued;
- (c) (if relevant) a building certificate under Part 8 of the EP&A Act has issued (or otherwise confirming that a building certificate is not relevant in respect of the Stage); and
- (d) in the case of the Stages comprising Foreshore Block South, all Sustainability Obligations have been discharged, a Climate Positive Certification has been provided to the Authority and all Social Outcomes have been achieved for all Blocks.

Financial Contribution means a Public Benefit Contribution which is being provided by way of financial contribution being the "Management, Operating and Creative Initiatives Budget", the "Creative Initiatives Contribution" and the [REDACTED] in the Public Benefit Delivery Cashflow.

Financial Default means [REDACTED]

Financiers means the Developer's financiers as notified to the Authority from time to time by the Developer.

Financier's Side Deed means a deed substantially in the form set out in Annexure Q.

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

FIRB Approval means:

- (a) written advice from or on behalf of the Treasurer that the Commonwealth Government does not object to the transactions contemplated by this Agreement; or
- (b) written approval under the FIRB Act or any business policy of the Commonwealth Government allowing the Developer, the General Guarantor and the [REDACTED] or any other relevant party to enter into this Agreement or the transactions contemplated by this Agreement.

Force Majeure Event means any one of the following events:

- (a) war (undeclared or declared), civil war, civil commotion, demonstrations, insurrections, riots, floods, hurricanes, cyclones, explosions, act of terrorism, earthquakes, fires, nuclear contamination, ionising radiation (other than to the extent caused by the Developer or the Developer's Employees and Agents in the case of floods, explosions, fires or nuclear contamination, ionising radiation), 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 Government Agency.

Foreshore Block means any of:

- (a) Foreshore Block North;
- (b) Foreshore Block South A; or
- (c) Foreshore Block South B,

as shown in the Staging Plan.

Foreshore Block North means the area of Central Barangaroo marked "*Foreshore Block North*" on the Staging Plan.

Foreshore Block South means each of Foreshore Block South A and Foreshore Block South B.

Foreshore Block South A means the area of Central Barangaroo marked "*Foreshore Block South A*" on the Staging Plan.

Foreshore Block South B means the area of Central Barangaroo marked "*Foreshore Block South B*" on the Staging Plan.

Foreshore Public Domain means that part of the Public Domain which is within the boundaries of any Foreshore Block.

Foreshore Retail Lease means the lease of that part of the Retail Component within Foreshore Block North in the form of Annexure J - Part 3, as amended pursuant to clause 39.1(a)(iii).

Formal Notice means a written notice or request from the Developer to the Authority in the form of Annexure V and which is given in accordance with clause 51.

General Guaranteed Obligations means all the Developer's obligations under each of the Project Documents referred to in paragraphs (a), (d), (e), (f), (g), (h) (i) and (j) of the definition of 'Project Documents' to which the Authority and the Developer are party. This definition applies:

- (a) irrespective of the capacity in which the Developer or the Authority enter into this Agreement;
- (b) whether the Developer is liable alone, or jointly, or jointly and severally with another person;
- (c) whether the person entitled to the benefit of a Guaranteed Obligation is the Authority or an assignee of the 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 date of this Agreement; or
 - (ii) the Developer or the General Guarantor consented to or was aware of the assignment; or
 - (iii) the assigned obligation was secured.

GFA means gross floor area and has the same meaning as it has under the Standard Instrument (Local Environmental Plans) Order 2006.

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

Good Design and Construction Practices means practices followed when work is undertaken:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill in applying nationally accepted urban design and building design, engineering, construction and management procedures;
- (c) in accordance with all applicable Law and Australian Standards (or where an Australian Standard does not exist the equivalent US Standard); and
- (d) using new materials of merchantable quality which are fit for purpose.

Government Agency means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority and includes a Minister of the Crown (in any right), the Authority and any person, body, entity or authority exercising a power pursuant to an Act of Parliament (including an accredited certifier accredited under section 109T of the EP&A Act).

Greenhouse Gas Emissions means the "scope 1 emission of greenhouse gas" and the "scope 2 emission of greenhouse gas" as those terms are defined in the National Greenhouse and *Energy Reporting Act 2007* (Cth) and the relevant "scope 3 emissions" as defined in the National Carbon Offset Standard.

GST has the meaning it has in the GST Act.

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

GST Amount has the meaning given to that term in clause 45.

Hazardous Substance means any substance which would or might reasonably be expected to cause a state of danger or unacceptable risk of harm to human beings or damage to property or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

HBA Work means residential building work within the meaning of the Home Building Law.

Hickson Park Drawing means Annexure BBB.

Hickson Road Program is particularised in Annexure Z.

High Street Landscaping Works means the landscaping works to be carried out on High Street as set out in the Final Bid.

Home Building Law means the *Home Building Act 1989 (NSW)* and *Home Building Regulation 2014 (NSW)*.

Hotel Resort DA means the application for planning approval SSD 6957.

Independent Certifier means the person appointed from time to time under the Independent Certifier Deed by the Authority and the Developer in accordance with clause 29.8.

Independent Certifier Deed means a deed substantially in the form of Annexure R.

Independent Sustainability Ratings means the sustainability ratings set out in the table in Annexure DDD.

Infrastructure means the infrastructure supporting Central Barangaroo being either:

- (a) Internal Infrastructure; or
- (b) External Infrastructure.

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 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.

Intellectual Property means all current and future intellectual property rights (including without limitation all copyright, trademark, design and patent rights) created for or on behalf of the Developer in respect of the Works and the Developer's right, title and interest in and to all:

- (a) the Design Documentation and the Approved Design Documents;
- (b) other materials or information prepared by or on behalf of the Developer as part of or in connection with the Developer's Project or the Project Documents; and
- (c) any enhancements or modifications of the items referred to in (a) and (b).

Internal Infrastructure includes all Services, means of access and other infrastructure necessary for the Developer's Project, all sustainability infrastructure (including photovoltaic cells, solar-stills and other plant and equipment as specified in the CPW for each Stage) but excluding External Infrastructure [REDACTED].

Internal Public Domain means that part of the Public Domain which is within the boundaries of Block 5, Block 6 or Block 7, including streets, footpaths, kerbing and guttering and nature strips.

Investors mean:

- (a) Aqualand B Development Holding Pty Ltd ACN 612 713 916;
- (b) Aqualand Development 2 Pty Limited ACN 606 732 674;
- (c) Aqualand Development 5 Pty Limited ACN 615 571 205;
- (d) Aqualand Management Services Pty Ltd ACN 600 931 682;
- (e) Shanghai Shenglong Investment Group Limited;
- (f) WSF Fund Pty Limited ACN 120 154 663 as trustee for the Scentre Barangaroo Trust ABN 53 341 420 512;

- (g) RE1 Limited ACN 145 743 862 as responsible entity of Scentre Group Trust 2 ARSN 146 934 536;
- (h) Block 5 Office Investor; and
- (i) Block 6 Office Investor.

Issued for Construction Drawings means a works package of drawings, specifications, material and information to the level of detail required for construction, and, when applicable are approved by the Authority under clause 7.

Key Consultant means each of the consultants engaged by the Developer for the Developer's Project as listed in Annexure E, as may be replaced by the Developer from time to time with the prior consent of the Authority (not to be unreasonably withheld or delayed).

Key Personnel means each of the members of personnel as listed in Annexure E, as may be replaced by the Developer from time to time in accordance with clause 15.17.

Law includes all statutes, regulations, by-laws, ordinance and other delegated legislation, orders, notices and any rule of common law or equity and any statutory guidelines, policies and environmental planning instruments.

Lead Sustainability Consultant means [REDACTED] or such alternative party as approved by the Authority acting reasonably.

Lease means in respect of each Premises (or any part of those Premises) each (or any) lease granted pursuant to this Agreement substantially in the form of the:

- (a) Standard Form Stratum Lease;
- (b) Retail Stratum Lease;
- (c) Retail Concurrent Lease;
- (d) the Foreshore Retail Lease;
- (e) Standard Form Residential Strata Lease; or
- (f) Standard Form Common Property Strata Lease,

being the lease or leases to be granted following acceptance of the relevant Call Offer or Put Offer.

Lease Commencement Date means:

- (a) in relation to the Lease of that part of the Retail Component in Block 7, the later to occur of:
 - (i) [REDACTED]
 - (ii) the date of acceptance, in accordance with this Agreement, of the Call Offer or the Put Offer, as the case may be, in relation to each of those Leases;
- (b) in relation to the Lease of that part of the Retail Component in Block 6, the later to occur of:

(i)

- (ii) the date of acceptance, in accordance with this Agreement of the Call Offer or the Put Offer as the case may be in relation to that Lease;
- (c) in relation to the Lease of that part of the Retail Component in Block 5 or, at the election of the Developer, the Lease of the entirety of the Retail Component excluding the Retail Component situated within Foreshore Block North (if it is subject to any subleases granted in relation those parts of the Retail Component in Block 7 or Block 6), the later to occur of:
 - (i) the Date of Retail Final Completion of the entire Retail Component in Block 5, Block 6 and Block 7; and
 - (ii) the date of acceptance in accordance with this Agreement of the Call Offer or the Put Offer, as the case may be, in relation to that Lease,
 and provided that the term of the Leases of that part of the Retail Component in Block 6, that part of the Retail Component in Block 5 or if the Developer elects to take a Lease of the entire Retail Component (excluding the Retail Component situated within Foreshore Block North), the entire Retail Component (excluding the Retail Component situated within Foreshore Block North), must expire on the date being 99 years from the commencement date of the Lease of that part of the Retail Component in Block 7;
- (d) in relation to the Lease of the Retail Component within Foreshore Block North, the last of:
 - (i) [REDACTED]
 - (ii) the Date of Public Domain Practical Completion of Foreshore Block North; and
 - (iii) the date of acceptance, in accordance with this Agreement, of the Call Offer or the Put Offer, as the case may be, in relation to that Lease;
- (e) in relation to the Lease of each Stage forming part of the Office Component, the last to occur of:
 - (i) the date of Practical Completion of the Stage in which the relevant Premises are located; and
 - (ii) the date of acceptance, in accordance with this Agreement, of the Call Offer or the Put Offer, as the case may be, in relation to that Lease; and
- (f) in relation to the Lease of each Stage forming part of the Residential Component:
 - (i) the date of Practical Completion of the Stage in which the relevant Premises are located; and
 - (ii) the date of acceptance, in accordance with this Agreement, of the Call Offer or the Put Offer, as the case may be, in relation to that Lease.

Licensable Public Domain Area means those parts of the Public Domain which are the subject of the 'Public Domain Call Offers' made by the Authority (as landlord) to the Tenant of the Retail Component pursuant to clause 26 ('Public Domain Licence') of the Retail Lease, shown indicatively in the plan attached as Annexure NNN and as updated in accordance with the design refinement process contemplated by this Agreement.

LLMP means Lendlease (Millers Point) Pty Limited ACN 127 727 502.

LLMP Guarantor means Lendlease Corporation Limited ACN 000 226 228.

Loss means any loss whether:

- (a) arising from or in connection with any Claim or not;
- (b) liquidated or not;
- (c) present, prospective or contingent; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

LPI means the Land and Property Information New South Wales.

Make Good means in relation to any area of Central Barangaroo used by the Developer in carrying out the Works:

- (a) repair and rectify any damage or disturbance caused to the relevant area or any other part of Barangaroo as a result of the Developer carrying out the Works;
- (b) make safe the relevant area; and
- (c) remove property from the relevant area as reasonably required by the Authority as specified in a notice to the Developer.

Management Order means 'Order Number 20151402; Declaration Number 21122; Area Number 3221' issued by the EPA to the Authority under section 14 of the CLM Act as amended, varied or replaced from time to time.

Material Default means:

- (a) a failure to achieve a Milestone Event by the relevant Milestone Date [REDACTED]
- (b) a failure to achieve a Sunset Event by the relevant Sunset Date [REDACTED];
- (c) following the commencement of construction, the Developer abandoning or substantially ceasing to carry out all Works which have commenced for more than [REDACTED]
- (d) a failure of the Developer to comply with the Approved Design Documents which has not been rectified within [REDACTED];
- (e) [REDACTED]
- (f) the occurrence of an Insolvency Event in relation to the Developer or the General Guarantor or the [REDACTED];

(g) the occurrence of a Financial Default which is not remedied within:

(i) [REDACTED]; or

(ii) [REDACTED]

after the date on which the Authority issued a Default Notice in respect of that Financial Default; or

(h) [REDACTED]

Material Default Notice means a notice from the Authority to the Developer that a Material Default has occurred issued under clause 49.5(b).

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Metro Planning Approval means the approval SSI 15_7400 determined 9 January 2017 granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act in respect of the Sydney Metro as modified from time to time.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Barangaroo
Delivery
Authority

extended pursuant to the provisions of the Act.

Milestone Event means each event or activity detailed in Annexure C in respect of each Stage or Block, being those events which are critical for the timely planning, design, construction and commissioning of the Works in connection with a Stage or Block (as relevantly described in Annexure C).

Minister means the Minister responsible for administering the EP&A Act.

Mod 8 Application means the Application to amend the Concept Plan as set out in the 'Mod 8 application' forming part of the Disclosure Materials.

Mod 8 Approval means the terms and conditions of the approval of the Consent Authority to the Mod 8 Application.

Modification means any of one or more of the following:

- (a) a modification of the Concept Plan within the meaning of section 75W of the EP&A Act;
- (b) a surrender (in whole or as to part only) of the Concept Plan within the meaning of section 75YA of the EP&A Act (whether by modification, operation of Law or any other means);
- (c) a modification of the environmental planning instrument governing the development of Central Barangaroo or regulations thereto, as applicable from time to time (whether by amendment, operation of Law or any other means);
- (d) the replacement of the environmental planning instrument or regulations thereto governing the development of Central Barangaroo with a new environmental planning instrument; or
- (e) site specific legislation in replacement of the Concept Plan.

National Carbon Offset Standard means the draft "National Carbon Offset Standard for Precincts" attached to the CPW until such time as the final version of that document is published by the Department of the Environment and Energy (Cth) and thereafter the standard determined pursuant to clause 23.14.

Noise Pollution means the emission of noise, being noise that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:

- (a) is harmful to (or is likely to be harmful to) a person who is outside Central Barangaroo;
- (b) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside Central Barangaroo; or
- (c) breaches any Environmental Law or Approval.

Nominee means a person nominated by the Developer under clause 37.5 as being entitled to accept the relevant Call Offer.

Non-Material Default means any of the following events:

- (a) a failure by the Developer to comply with any provision of any Project Document;

- (b) a representation or warranty by the Developer under this Agreement being or becoming incorrect or misleading in any respect;
- (c) following the commencement of construction, the Developer abandoning or substantially ceasing to carry out all Works which have commenced for more than [REDACTED]; and
- (d) a failure by the Developer to provide the replacement Security required under clause 14.3.

Non-Refundable Deposit means the sum of [REDACTED].

Non-Reportable Pollution Incident means any Pollution Incident (excluding any Reportable Pollution Incident and Noise Pollution which is reportable to the Authority by the Developer pursuant to any agreed incident reporting protocol).

Notice means an written notice given in accordance with clause 51.1.

Notice of Acceptance of Call Offer means a notice to accept the Call Offer in the form of the notice Annexure X.

Notice of Acceptance of Early Activation Call Offer means a notice to accept an Early Activation Call Offer in the form of Annexure KKK.

Notice of Acceptance of Early Activation Put Offer means a notice to accept an Early Activation Put Offer in the form of Annexure LLL.

Notice of Acceptance of Put Offer means a notice to accept the Put Offer in the form of the notice Annexure Y.

Objectives means the objectives set out in clause 2.1 and 2.2.

Occupation Certificate means an interim or final occupation certificate to be issued under Part 4A of the EP&A Act to enable the occupation or use of a Stage in accordance with the EP&A Act, but excludes any further or additional occupation certificate which may be issued in connection with any further development within a Stage after a final occupation certificate has been issued in relation to a Stage.

Office Component means those parts of the Works intended for use as commercial offices within Blocks 5 and 6 as detailed in the Final Bid and as indicatively shown in the Component Plan.

[REDACTED]

[REDACTED]

Onsite Renewable Energy Generation Obligations means providing such Infrastructure (where applicable) and establishing and implementing appropriate frameworks to ensure, throughout the term of the Leases:

- (a) the generation of renewable electricity on-site at Central Barangaroo and, where relevant, supply to the Authority (without charge) equal to the aggregate electricity demands of:

- (i) the Public Domain;
 - (ii) the Internal Public Domain;
 - (iii) Barangaroo Reserve;
 - (iv) generation of water for non-potable use; and
 - (v) recycled rainwater equipment for irrigation of the Public Domain and such other equipment related to achieving the Water Positive Obligations as referred to in the latest approved form of the CPW; and
- (b) the transfer to the Authority of all Carbon Neutral Instruments created by or attributable to the generation of renewable electricity on-site at Central Barangaroo.

Owners Corporation means an owners corporation constituted upon creation of a strata scheme.

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 the board of directors of the first mentioned person; or
 - (ii) is in a position to cast, or control the casting of, more than 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 more than 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); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Developer, its interest in this Agreement is property subject to that trust, a person who:
 - (i) controls the right to appoint the trustee; or
 - (ii) is in a position to cast, or 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; or
 - (iii) holds or has a beneficial interest in more than 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 the Developer, its interest in this Agreement is property subject to that trust, a person who:
 - (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or

- (ii) is entitled to or whose consent is required to:
 - A. appoint or change the trustee; or
 - B. give directions to the trustee; or
 - C. vary the constituent document of the trust; or
 - 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.

Performance Security means cash security, insurance bond (on terms reasonably acceptable to the Authority) or a Bank Guarantee in respect of each Stage for an amount calculated as set out in Annexure G.

Permitted Security Interest means:

- (a) a security interest of which full details have been given to the Authority in writing at least 10 Business Days before the date of this Agreement and which is consented to by the Authority;
- (b) a security interest created after the date of this Agreement where:
 - (i) the Authority has consented to that security interest and to a maximum amount which it may secure at any time; and
 - (ii) the amount secured by that security interest (other than costs, fees and uncapitalised interest or monies in the nature of interest such as discounts on bills of exchange), does not increase beyond the amount to which the Authority has consented;
- (c) a security interest (if any) created under a Project Document;
- (d) a lien which arises solely by operation of law in the ordinary course of the Developer's business, where the amount secured is not overdue for payment or where the amount secured is not being contested on reasonable grounds and in good faith; or
- (e) a security interest over the Developer in favour of Aqualand B Development Holding Pty Limited or a Security Trustee [REDACTED]

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.

Planning Approval means any planning approval required in connection with the Developer's Project.

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

POEO Act Licence means licence number 13336 granted under the POEO Act, as varied or replaced from time to time, to the extent that the licence relates to the Developer's Project.

Pollution has the same meaning as set out in the dictionary to the POEO Act.

Pollution Incident means an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape of Pollution which has occurred, is occurring or is likely to occur as a result of any act or omission of the Developer in carrying out the Developer's Project or any unlawful disposal of Waste or any Hazardous Substance on any Block occupied by the Developer at any time.

Practical Completion means each of:

- (a) Stage Practical Completion;
- (b) [REDACTED]
- (c) Block Practical Completion;
- (d) Retail Final Completion;
- (e) Public Domain Practical Completion; or
- (f) Project Practical Completion.

Precinct Management Office means that part of Block 7 Stage 5 identified as such on the Staging Plan and to be constructed and fitted out in accordance with the Precinct Management Office Performance Brief.

Precinct Management Office Performance Brief means the performance brief for the Precinct Management Office in Part 1 - Annexure GGG, as developed in accordance with clause 7.3(a)(v).

Precinct Management Office Sublease means the sublease in Part 2 - Annexure GGG.

Preferred Bidder Bank Guarantee means a Bank Guarantee in favour of the Authority in the sum of [REDACTED] being security for payment of the Development Rights Fees payable by the Developer to the Authority in accordance with this Agreement.

Premises means, in respect of each Stage, that part of Central Barangaroo comprising the relevant building (or relevant part of a building if approved by the Authority as a Stage in accordance with clause 7.3(d)) which will be leased to a Tenant pursuant to the exercise of a Call Offer or Put Offer and for the avoidance of doubt, excludes all parts of the Public Domain.

Prescribed Rate means [REDACTED] per annum above the Bank Bill Rate.

Prohibited Dealing has the meaning given in clause 44.1.

Project Co-ordination Group has the meaning given in clause 28.1.

Project Documents means:

- (a) this Agreement;
- (b) the Approved Design Documents;
- (c) the Final Bid;
- (d) any Construction Licence;
- (e) any Independent Certifier Deed;
- (f) the Risk Allocation Table;
- (g) any Financier's Side Deed (where relevant);

- (h) the CPW;
- (i) [REDACTED]
- (j) [REDACTED]
- (k) the Early Activation Licence; and
- (l) any other document which the Developer and the Authority agree in writing is a Project Document,

and if the context allows, any one or more of these.

Project Practical Completion occurs when Block Practical Completion has been achieved with respect to every Block comprising Central Barangaroo.

Public Benefit Contribution means the contributions which the Developer is required to provide in accordance with the Public Benefit Delivery Cashflow (either by way of delivering works in kind or monetary payments) in relation to:

- (a) the Public Domain;
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) the fitting out of the Precinct Management Office;
- (g) the Urban Art Contribution; and
- (h) the Developer Contribution.

Public Benefit Delivery Cashflow means the program attached as Annexure RR, setting out the Developer's program to deliver each component of the Public Benefit Contributions.

Public Domain means all areas designated as 'public domain' within the Final Bid, all areas marked as 'public domain' in the Public Domain Plan and which include (without limitation) parks, streets, pedestrian connections, laneways and any other areas dedicated for public use and access, the [REDACTED] Premises, the High Street Landscaping Works and the Bridge Works and the Barangaroo Steps.

Public Domain Plan is set out in Annexure CC.

Public Domain Performance Brief means the Public Domain Performance Brief provided as part of the Final Bid.

Public Domain Practical Completion occurs in respect of the Public Domain Works within a Block, when the Works to deliver the Public Domain within that Block are completed in accordance with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings and after:

- (a) the Public Domain Works within the relevant Block has been fully commissioned, tested and certified in accordance with:
 - (i) any requirements of Law;

- (ii) any commissioning requirements specified in Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings or if no commissioning requirements are so specified, in accordance with the manufacturer's published recommendations for commissioning; and
 - (iii) otherwise in accordance with Good Design and Construction Practices;
- (b) the Internal Infrastructure forming part of the Public Domain Works within the relevant Block:
 - (i) has been fully commissioned, tested and certified in accordance with:
 - A. any requirements of Law;
 - B. any commissioning requirements specified in the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings or if no such commissioning requirements are so specified, in accordance with the manufacturer's published recommendations for commissioning; and
 - C. otherwise in accordance with Good Design and Construction Practices;
 - (ii) has been operated at the required standard and capacity as specified in Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, or where no such standard and capacity is specified, in accordance with the published manufacturer's recommendations;
- (c) the Independent Certifier is satisfied that the Public Domain Works within the relevant Block have been completed in accordance with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, Approvals, the requirements specified in Annexure I and the Developer's obligations under this Agreement;
- (d) all compliance reports required by a Consent Authority pursuant to an Approval for the Public Domain Works have been delivered to the relevant Consent Authority and an interim or final Occupation Certificate for the Public Domain Works within the relevant Block has been provided to the Authority;
- (e) the Public Domain Works in the relevant Block are:
 - (i) fit for purpose; and
 - (ii) capable of being lawfully used and operated for their intended purpose with the consent of all relevant public authorities;
- (f) (if relevant) the Plans of Subdivision, easements or any other dealings have been registered in order to provide all necessary rights to access, use, maintain and replace the Public Domain and any parts of Central Barangaroo in which the Public Domain has been constructed;
- (g) the Independent Certifier is satisfied that the Developer has procured the carrying out and completion of any reinstatement and rectification of:

- (i) Central Barangaroo (in respect of the relevant Block); and
- (ii) any part of Barangaroo; and
- (iii) any Public Domain,

required as a result of the Developer carrying out the Works in respect of the Public Domain;

- (h) the Developer has provided the documents and training referred to in clause 16.7(f)(i)D to the Authority;

(i) [REDACTED]

(j) [REDACTED]

Public Domain Works means the works to be carried out or procured by the Developer to effect the construction of the Public Domain in accordance with this Agreement and includes temporary and remedial works and construction works.

Put Offer means the offer (or offers) to the Authority to require the Developer to lease the Premises (or any part of the Premises) pursuant to clause 38.1.

Put Offer Period means in respect of any Premises (or any part of them):

- (a) in relation to any Stage within the Residential Component and the Office Component, the period commencing on the day after the expiry of the Call Offer Period relevant to those Premises and ending on the date being [REDACTED]; and
- (b) in relation to any Stage in the Retail Component, the period commencing on the day after the Developer commences to carry out the Retail Final Works as certified by the Independent Certifier and ending on the date being [REDACTED]

Quantity Surveyor means the person appointed from time to time under the Quantity Surveyor Deed by the Authority and the Developer in accordance with clause 29.9.

Quantity Surveyor Deed means a deed substantially in the form attached as Annexure U.

Rating Deadline means in respect of each Independent Sustainability Rating, the corresponding date specified in Annexure DDD for the procurement of that Independent Sustainability Rating.

Recipient has the meaning given to it in clause 45.3.

RECs mean large generation certificates which:

- (a) if created under the *Renewable Energy (Electricity) Act 2000* (Cth):
 - (i) were generated from assets which became operational after 5 March 2010, and:
 - A. have not been created from electricity produced from the burning of wood waste; and

- B. have been originally sourced from an "Accredited Generator" (as defined in the *Renewable Energy (Electricity) Act 2000* (Cth)) operating in the National Electricity Market; and
 - (ii) where required in order to establish Carbon Neutrality under either the National Carbon Offset Standard or another standard adopted by the Authority (acting reasonably):
 - A. have been approved by the GreenPower Program Manager under the GreenPower Rules; and
 - B. are not from a source to which a multiplier has been applied under the Commonwealth Solar Credits Scheme,
- (b) if created pursuant to any equivalent scheme or method of eligibility determination operated after the repeal or replacement of the *Renewable Energy (Electricity) Act 2000* (Cth):
 - (i) is a scheme or method which has been approved by the Authority; and
 - (ii) satisfies all of the requirements of that relevant scheme or method.

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).

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.

Remediation Works means all remediation of any Contamination at Central Barangaroo required to bring Central Barangaroo into a condition suitable for the Developer's Project in compliance with all relevant Environmental Laws and Approvals including preparation of any relevant plans including any remedial action plans [REDACTED].

Reportable Pollution Incident means any Pollution Incident which causes or threatens to cause material harm to the environment as defined in section 147 of the POEO Act or any amending, supplementary or replacement Law from time to time.

Reporting Matters means the reporting matters listed in clause 32.1.

Reports means the reports for the Reporting Matters in the format required by clauses 32.2 and 32.4.

Residential Component means that part of the Works intended for use as residential dwellings in Blocks 5 and 7 as described in the Final Bid and as indicatively shown on the Component Plan.

Residential Implementation Agreement means the document entitled "Aqualand Implementation Agreement" entered into on or about the date of this Agreement between the Developer, the General Guarantor, Aqualand B Development Holding Pty Ltd, Aqualand Management Services Pty Ltd, and Shanghai Shenglong Investment Group Limited.

Resolution Institute means the Resolution Institute ABN 69 008 651 232 (being formerly known as Lawyers Engaged in Alternative Dispute Resolution and the Institute of Arbitrators and Mediators Australia) or, if no such organisation exists, then the President of the Law Society of New South Wales.

Retail Component means those parts of the Works intended for use as a retail shopping centre [REDACTED] in Blocks 5, 6, 7 and for use as retail in Foreshore Block North as described in the Final Bid and as indicatively shown on the Component Plan.

Retail Concurrent Lease means a lease granted pursuant to clause 37.1(e).

Retail Final Completion in relation to the Retail Component occurs when the Retail Final Works are completed in accordance with the Approved Design Documents and after:

- (a) the Independent Certifier is satisfied that all Retail Final Works in respect of the Retail Component have been completed in accordance with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, the Approvals and the Developer's obligations under this Agreement;
- (b) all compliance reports required by a Consent Authority pursuant to an Approval for the Retail Final Works in respect of the Retail Component been delivered to the relevant Consent Authority and an interim Occupation Certificate for the Retail Component has been provided to the Authority;
- (c) the Retail Final Works in respect of the Retail Component are fit for purpose and capable of being lawfully used and occupied for their intended purpose with the consent of all relevant public authorities:
 - (i) including all common areas, service areas and amenities forming part of the proposed shopping centre forming the Retail Component are complete and publicly accessible (in the case of public or common areas) or available for use (in the case of service areas);

- (ii) excluding any fit-out works being undertaken or to be undertaken by a tenant or a subtenant of retail premises within the Retail Component, after an interim or final Occupation Certificate has been issued in relation to each part of the Retail Component;
- (d) the Plans of Subdivision have been registered which are relevant for those parts of Central Barangaroo on which the Retail Final Works in respect of the Retail Component have been constructed;
- (e) the Independent Certifier is satisfied that the Developer has procured the carrying out and completion of any reinstatement and rectification of:
 - (i) Central Barangaroo (in respect of the relevant area in which the Retail Final Works were carved out); and
 - (ii) any part of Barangaroo; and
 - (iii) any infrastructure, required as a result of the Developer carrying out the Retail Final Works in respect of the relevant Stage;
- (f) all Internal Infrastructure servicing all parts of the Retail Component within Central Barangaroo:
 - (i) has been fully commissioned, tested and certified in accordance with:
 - A. any requirements of Law;
 - B. any commissioning requirements specified in Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings or if no such commissioning requirements are so specified, in accordance with the manufacturer's published recommendations for commissioning; and
 - C. otherwise in accordance with Good Design and Construction Practices;
 - (ii) that infrastructure has been operated at the required standard and capacity as specified in Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, or where no such standard and capacity is specified in accordance with the manufacturer's published recommendations;
 - (iii) the Independent Certifier is satisfied that all Retail Final Works in respect of the all parts of the Infrastructure in the Retail Component have been completed in accordance with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, Approvals and the Developer's obligations under this Agreement;
 - (iv) all compliance reports required by a Consent Authority pursuant to an Approval for the Infrastructure and the Retail Final Works of the relevant Retail Component have been delivered to the relevant Consent Authority;

- (v) the Retail Final Works in respect of the Infrastructure in the Retail Component are:
 - A. fit for purpose; and
 - B. capable of being lawfully used and operated for their intended purpose with the consent of all relevant public authorities;
- (vi) (if relevant) the Plans of Subdivision, easements or any other dealings have been registered in order to provide all necessary rights to access, use, maintain and replace the Infrastructure and any parts of Central Barangaroo in which the Infrastructure has been constructed;
- (vii) the Independent Certifier is satisfied that the Developer has procured the carrying out and completion of any reinstatement and rectification (required as a result of the Developer carrying out the Retail Final Works in respect of the Infrastructure in the Retail Component) in relation to:
 - A. Central Barangaroo (in respect of the Retail Component);
 - B. any part of Barangaroo (in respect of the Retail Component); and
 - C. any other infrastructure, equipment or services to which the relevant Infrastructure is connected or otherwise affects;
- (g) the Developer has obtained a Sustainability Certificate in respect of the Retail Component and a copy has been provided to the Authority;
- (h) the Sustainability Obligations which are not the subject to the Sustainability Certificate to be provided under paragraph (g) and which are required by this Agreement and the latest approved version of the CPW to be achieved for Retail Final Completion to be achieved, have been achieved; and
- (i) the Internal Public Domain on Block 5 has achieved Public Domain Practical Completion,

provided that where a Variation directed by the Authority under clause 15.8 (but for the avoidance of doubt, not in respect of a Variation directed under clause 16), has resulted in an extension of time being granted in accordance with clause 21, the Works the subject of that Variation need not be completed for the purpose of the certification of Retail Final Completion of the Retail Component.

Retail Final Works means all Works referred to in the Approved Design Documents for all Stages in the Retail Component, (including for the avoidance of doubt, the Retail Component on Foreshore Block North) [REDACTED], but excluding for the avoidance of doubt, any fitting out to be carried out by any subtenant of a part of the Retail Component.

Retail Investor means WSF Fund Pty Limited ACN 120 154 663 as trustee for the Scentre Barangaroo Trust ABN 53 341 420 512.

Retail Investor Guarantor means RE1 Limited ACN 145 743 862 as responsible entity of Scentre Group Trust 2 ABN 66 744 282 872.

Retail Lease means the Retail Stratum Lease, the Retail Concurrent Lease and the Foreshore Retail Lease as the context permits.

Retail Stratum Lease means a lease of the Retail Component situated in Block 7, Block 6 or Block 5 (excluding the retail component in Foreshore Block North) in the form of the lease in Annexure J - Part 2 and which is not a Retail Concurrent Lease.

Retail Strategy means the draft retail strategy attached as part of the Final Bid and which is to be updated by the Developer and approved by the Authority in accordance with clause 7.3(a).

Retail Sub-Development Agreement means the document of that name to be entered into on or about the date of this Agreement between the Developer, the General Guarantor, the Retail Investor and the Retail Investor Guarantor.

Risk Allocation Table means the table contained in Annexure F.

Roads Authority has the meaning given to that term in the *Roads Act 1993* (NSW).

Schematic Design Drawings means:

- (a) a co-ordinated architectural, urban design and landscape architectural design solution, drawings and outline specifications containing indicative material and information which clearly sets out the refined design for a Stage; and
- (b) which are prepared to the level required for an Application for development approval; and
- (c) which have been approved by the Authority in accordance with clause 7.

Security means the Performance Security and any other security for the performance of the Developer's obligations under the Project Documents but does not include Financier's Security.

Service Third Party has the meaning given to it in clause 27.1(b).

Services means roads, footpaths, bridges, electricity, gas or water mains, telephone cabling, signalling cables, drainage, sewerage, other communications infrastructure or equipment required for or in connection with the Developer's Project including any services or systems which require extension or variation as a consequence of the Developer's Project whether inside or outside the boundary of Central Barangaroo, but not including the Third Party Services.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Significant Application means:

- (a) any Application to modify a Planning Approval and any Application for a Modification;
- (b) any Application which would prevent compliance with the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo);

- (c) [REDACTED]
- (d) any other Application for development consent (as defined in the EP&A Act) in relation to the Works;
- (e) each Application for a Construction Certificate;
- (f) any Application in connection with the Public Domain;
- (g) any Application for the High Street Landscaping Works;
- (h) any Application for the Bridge Works;
- (i) [REDACTED]
- (j) any Application which would in any way alter the ability for the Works the subject of the Application to comply with the requirements of the CPW.

Significant Contamination means the contamination specified in the EPA Declaration.

Site Audit has the meaning given to that term in the CLM Act.

Site Audit Statement has the meaning given to a Section B Site Audit Statement in the CLM Act which states that the Significant Contamination has been remediated in accordance with any remedial action plan.

Site Conditions means any condition affecting or potentially affecting Central Barangaroo:

- (a) including, without limitation:
 - (i) ground water, ground water hydrology and the effects of any de-watering;
 - (ii) physical conditions on, above or below the surface of land;
 - (iii) demography of land surface and sub-surface conditions and geology including rock or other materials encountered on land;
 - (iv) climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, wind-blown dust and sand in seasons;
 - (v) all existing systems and Services above or below the surface of the land and the location of all facilities with which such systems and Services are connected;
 - (vi) all other physical conditions and characteristics of land on, above or below the surface (including improvements, tanks and pipes) which may affect the performance by the Developer of its obligations under this Agreement;
 - (vii) asbestos or contamination being found on Central Barangaroo, [REDACTED]; and
 - (viii) the availability and condition of roads and all utility Services servicing or required to service Central Barangaroo and the Developer's Project, whether relating to Central Barangaroo or any other part of Barangaroo; and

(b) excluding:

- (i) [REDACTED]
- (ii) any Relics existing or discovered on Central Barangaroo except to the extent the Developer was aware of those matters at the date of this Agreement; and
- (iii) any Threatened Species Claim or the existence of Threatened Species on Central Barangaroo except to the extent the Developer was aware of those matters at the date of this Agreement.

Social Outcomes means the provision of the community engagement and social sustainability outcomes specified in the Social Sustainability Plan.

Social Outcomes Certifier means an organisation (utilising the services of a particular person) nominated by the Developer and approved by the Authority (acting reasonably).

Social Outcomes Compliance Report means a report certified by the Social Outcomes Certifier as satisfactorily addressing and substantiating the achievement of the Social Outcomes as set out in the Social Sustainability Plan and performance measurement benchmarks through to the completion of the relevant defects liability period to ensure the Social Outcomes are achieved.

Social Study Date means, in relation to each Block, the date which is 12 months after the Date of Block Practical Completion relating to that Block.

Social Sustainability Plan means the independently peer reviewed 'Social Sustainability Plan' that specifies the community engagement and social sustainability strategies for the Developer's Project which is approved by the Authority under clause 23.12.

Stage means:

■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]

Barang Delivery Authority



■ [REDACTED]



[REDACTED]






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[REDACTED]



Stage Practical Completion in relation to a particular Stage occurs when the Works for that Stage are completed in accordance with the Approved Design Documents at the level of the Developed Design Documentation for those Works and where applicable, Tender Documentation and Issued for Construction Drawings and after:

- (a) for all Stages except as referred to in paragraphs (f)(i) and (f)(ii):
 - (i) the Independent Certifier is satisfied that all Works in respect of the relevant Stage have been completed in accordance with the Approved Design Documents to the level of the Developed Design Documentation, and where applicable, Tender Documentation and Issued for Construction Drawings, the Approvals and the Developer's obligations under this Agreement;
 - (ii) all compliance reports required by a Consent Authority pursuant to an Approval for the Works in respect of the relevant Stage have been delivered to the relevant Consent Authority and an interim or final Occupation Certificate for the Stage has been provided to the Authority;
 - (iii) the Works in respect of the relevant Stage are fit for purpose and capable of being lawfully used and occupied for their intended purpose with the consent of all relevant public authorities, excluding any further or additional requirement which may be imposed in connection with any further development within the relevant Stage (including in connection with any fit-out works being undertaken by a tenant or a subtenant of a building within the relevant Stage) after an interim or final Occupation Certificate has been issued in relation to each building within the relevant Stage;
 - (iv) the Plans of Subdivision have been registered which are relevant for those parts of Central Barangaroo on which the Works in respect of the relevant Stage have been constructed;
 - (v) the Independent Certifier is satisfied that the Developer has procured the carrying out and completion of any reinstatement and rectification of:
 - A. Central Barangaroo (in respect of the relevant Stage); and
 - B. any part of Barangaroo; and
 - C. any infrastructure,

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

(vi) in relation to any Internal Infrastructure servicing the relevant Stage:

- A. that infrastructure has been fully commissioned, tested and certified in accordance with:
 1. any requirements of Law;
 2. any commissioning requirements specified in Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings or if no such commissioning requirements are so specified, in accordance with the manufacturer's published recommendations for commissioning; and
 3. otherwise in accordance with Good Design and Construction Practices;
- B. that infrastructure has been operated at the required standard and capacity as specified in Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, or where no such standard and capacity are specified, in accordance with the manufacturer's published recommendations;
- C. the Independent Certifier is satisfied that all Works in respect of the all parts of the Infrastructure in the relevant Stage have been completed in accordance with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, Approvals and the Developer's obligations under this Agreement;
- D. all compliance reports required by a Consent Authority pursuant to an Approval for the Infrastructure and any other Works in respect of the relevant Stage have been delivered to the relevant Consent Authority;
- E. the Works in respect of the Infrastructure in the relevant Stage are:
 1. fit for purpose; and
 2. capable of being lawfully used and operated for their intended purpose with the consent of all relevant public authorities;
- F. (if relevant) the Plans of Subdivision, easements or any other dealings have been registered in order to provide all necessary rights to access, use, maintain and replace the Infrastructure and any parts of Central Barangaroo in which the Infrastructure has been constructed;
- G. the Independent Certifier is satisfied that the Developer has procured the carrying out and completion of any

reinstatement and rectification (required as a result of the Developer carrying out the Works in respect of the Infrastructure in the relevant Stage) in relation to:

1. Central Barangaroo (in respect of the relevant Stage);
2. any part of Barangaroo (in respect of the relevant Stage); and
3. any other infrastructure, equipment or services to which the relevant Infrastructure is connected or otherwise affects;

(vii) all Internal Public Domain within that Block has achieved Public Domain Practical Completion, provided that the Developer will not be required to complete the works required in respect of Street D if the Developer has constructed a temporary road in the area in which Street D is located in accordance with specifications approved by the Authority, acting reasonably;

(viii) the Developer has obtained a Sustainability Certificate in respect of the Stage and a copy has been provided to the Authority; and

(ix) the Sustainability Obligations required by this Agreement or the latest approved version of the CPW which are not the subject of the Sustainability Certificate to be provided under paragraph (a)(viii) and which are specified within the CPW as being required for Stage Practical Completion to be achieved, have been achieved;

(b) in relation to any Stage forming part of Block 7 (except as referred to in paragraph (f)), in addition to the requirements in paragraph (a):

- (i) Public Domain Practical Completion has occurred in relation to Foreshore Block North;
- (ii) subject to paragraph (iii) below, the "Block 7 Licensed Area 01" as shown in the Early Activation Plan has achieved Early Activation Standard,



; and

- (iii) in relation to Block 7 Stage 4, the "Block 7 Licensed Area 02" as shown in the Early Activation Plan has achieved Early Activation Standard, it being acknowledged that the achievement of Early Activation Standard in respect of "Block 7 Licensed Area 02" as shown in the Early Activation Plan is not required to achieve Practical Completion of Block 7 Stage 1, Block 7 Stage 2 or Block 7 Stage 3.

(c) in relation to Block 6 Stage 3, in addition to the requirements in paragraph (a), the Early Activation Area within the Retail Component of Block 6 as shown on the Early Activation Plan has achieved Early Activation Standard, it being acknowledged that the achievement of Early Activation Standard in respect of the Early Activation Area within the Retail Component of Block 6 as shown in the Early Activation Plan is not

required to achieve Practical Completion of Block 6 Stage 1, Block 6 Stage 2 or Block 6 Stage 4;

- (d) in relation to any Stage forming part of Block 5 and in addition to the requirements in paragraph (a), Public Domain Practical Completion has occurred in relation to Foreshore Block South;
- (e) in relation to Block 5 Stage 4, in addition to the requirements in paragraphs (a) and (d):
 - (i) Retail Final Completion has occurred in respect of all parts of the Retail Component situated in Block 7, Block 6, Block 5 and Foreshore Block North;
 - (ii) [REDACTED]
 - (iii) [REDACTED]
 - (iv) [REDACTED]
 - (v) [REDACTED]
 - (vi) Street D has been constructed and completed as a permanent road,
[REDACTED]
- (f) in relation to Block 7 Stage 1, in lieu of satisfying the requirements in paragraph (a) of this definition:
 - (i) all Works in respect of all Internal Infrastructure to be carried out as part of that Stage has been carried out and all Internal Infrastructure delivered as part of that Stage complies with the requirements of paragraph (a)(vi) of this definition; and
 - (ii) [REDACTED]
- (g) [REDACTED]
- (h) in relation to the final Stage to reach Stage Practical Completion within each Block, in addition to the requirements set out above, the Developer has paid the Urban Art Contribution applicable to the whole of the Block in respect of which the Stage is situated, calculated in accordance with Part 2 of Annexure D,

and in relation to all Stages, provided that where a Variation directed by the Authority under clause 15.8 (but for the avoidance of doubt, not in respect of a Variation directed under clause 16), has resulted in an extension of time being granted in accordance with clause 21, the Works the subject of that Variation need not be completed for the purpose of the certification of Stage Practical Completion of the relevant Stage.

Staging Plan means the plan which is annexed at Annexure FF.

Standard Form Common Property Strata Lease means the form of lease comprising Annexure K.

Standard Form Residential Strata Lease means the form of lease comprising Annexure L.

Standard Form Stratum Lease means the form of lease comprising Annexure J - Part 1.

State means the State of New South Wales.

Statutory Charges means all rates, taxes, levies, assessments, charges and fees in relation to Central Barangaroo levied by any Government Agency including without limitation, council and water rates, development levies, filing costs, subdivision levies, together with any interest, fines and penalties in connection with them.

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

- (a) Standard Form Residential Strata Lease;
- (b) Standard Form Common Property Strata Lease;
- (c) Strata Management Statement (as defined under the *Strata Schemes Management Act 1996* (NSW) or, if that Act ceases to apply, the equivalent instrument referred to under the Act replacing that Act), if any; and
- (d) By-Law Instrument.

Strata Leasehold Act means the *Strata Schemes Development Act 2015* (NSW) (or if that Act ceases to apply, any Act replacing that Act).

Stratum Documents means each and any (as the context may require) Building Management Statement (as referred to in Part 22, Division 3B of the *Conveyancing Act 1919* (NSW)).

Stratum Lease means in respect of every Premises (or any part of Premises) not comprising:

- (a) a strata scheme;
- (b) [REDACTED] or
- (c) that part of any Retail Component within a Block,

a long term lease or licence (where relevant) which is substantially similar to the Standard Form Stratum Lease (which in the case of a licence, such licence will incorporate provisions substantially the same as the Standard Form Stratum Lease).

Street D means the road to be constructed by the Developer at the north of Block 7 as set out in the Approved Design Documents.

Subcontractor means each subcontractor or sub-subcontractor of any level (including suppliers, tradespersons and consultants) involved in performance of any of the Works.

Sunset Date means each date by which a Sunset Event must have occurred under this Agreement as set out in Annexure B as extended in accordance with clauses 11.4(e) and 21.4.

Sunset Event means each of the events specified in Annexure B.

Supplier has the meaning given to it in clause 45.

Surveyor means any surveyor as approved by the Authority (acting reasonably) appointed by the Developer for the purposes of this Agreement.

Sustainability Certificate means a package of certificates issued by the Lead Sustainability Consultant, the Social Outcomes Certifier or such other experts as necessary and being acceptable to the Authority (acting reasonably) confirming that:

- (a) the relevant Stage or Block (as applicable) has been designed and constructed, and an appropriate contractual framework established and implemented (to the extent possible having regard to the time at which the certificate is being given), so as to be capable of enabling the following to be complied with:
 - (i) the Carbon Neutral Obligations;
 - (ii) the Zero Waste Emissions Obligations;
 - (iii) the Onsite Renewable Energy Generation Obligations; and
 - (iv) Water Positive Obligations;
- (b) there is no adverse impact on the ability of any other Block or Stage within Central Barangaroo to meet the Sustainability Obligations and the requirements of the CPW as a result of anything in connection with the relevant Block or Stage; and
- (c) the Social Outcomes:
 - (i) have been achieved if then due to be achieved in accordance with the Social Sustainability Plan; or
 - (ii) where paragraph (i) above does not apply, are capable of being achieved in accordance with the Social Sustainability Plan.

Sustainability Compliance Report means a report containing each of the items below, and which must be certified by the Lead Sustainability Consultant as satisfactorily addressing and substantiating the matters as set out below as at the date of the submission of the report to the Authority:

- (a) **(design)** a report detailing the proposed design response of the Block:
 - (i) to the Sustainability Obligations;
 - (ii) to the requirements of the CPW; and
 - (iii) towards achieving the aspirational targets in respect of the Independent Sustainability Ratings identified in the CPW (noting that there is no obligation to achieve those aspirational targets),

and specifying timeframes within which any applicable future approvals, licenses or third-party certifications will be obtained (and confirming the reasons why those items cannot be obtained as at the date of the report);
- (b) **(Carbon Neutral Obligations)** an energy modelling report with supporting calculations and modelling:
 - (i) confirming the operational energy and carbon performance predicted for the Block;

- (ii) demonstrating that Carbon Neutral Obligations will be achieved in respect of the Block;
 - (iii) demonstrating that the Carbon Neutral Obligations in respect of all other Blocks remain achievable in accordance with this Agreement having regard to the information disclosed in paragraphs (i) and (ii) of this paragraph (b); and
 - (iv) predicting the greenhouse emissions calculation for Central Barangaroo incorporating the results of the energy modelling that confirms that the Carbon Neutral Obligations will be achieved in respect of the Block;
- (c) **(Water Positive Obligations)** a water modelling report with supporting calculations and modelling.
 - (i) confirming the operational water and sewer demands of the Block; and
 - (ii) demonstrating that the Water Positive Obligations will be achieved in respect of the Block;
- (d) **(Internal Infrastructure)** a report in respect of any Internal Infrastructure to be delivered as part of Block:
 - (i) confirming that the Internal Infrastructure is suitable for its intended use up to the maximum load (and having regard to any future buildings, users or other demands which may utilise that Internal Infrastructure, including any other parts of the Developer's Project), including in respect of its capacity, efficiency and the sizing of any plant;
 - (ii) providing supporting design documentation, licensing and approvals programs as applicable to that Internal Infrastructure; and
 - (iii) confirming that the Internal Infrastructure is consistent with the CPW;
- (e) **(Waste Management)** a waste management report:
 - (i) confirming the design features incorporated within the Block to meet the requirements of the CPW in relation to Zero Waste Emissions Obligations; and
 - (ii) that all elements are appropriately sized having regard to their intended use and to satisfy the Zero Waste Emissions Obligations;
- (f) **(Leases)**: a report identifying any impact which the satisfaction of Sustainability Obligations may have on the form of any Lease and any proposed amendments which the Developer considers are reasonably required in order to satisfy the Sustainability Obligations; and
- (g) **(external certification progress)** a report on the progress and any applicable update to timelines for the procurement by the Developer of any approvals, licenses or third-party certifications necessary in order to satisfy the Sustainability Obligations.

Sustainability Obligations mean:

- (a) the Carbon Neutral Obligations;
- (b) the Water Positive Obligations;
- (c) the Zero Waste Emissions Obligations; and

(d) the Onsite Renewable Energy Generation Obligations.

Sydney Metro means the metro rail line from Rouse Hill to Bankstown via the Sydney CBD, as proposed by TfNSW from time to time and unless the contrary intention appears, for the purposes of this Agreement, a reference to the Sydney Metro means that part of the project known as "Stage 2: Sydney Metro City & Southwest" in respect of the delivery of a metro standard railway line from Bankstown to Chatswood.

Sydney Metro Corridor means all land leased, owned or occupied by TfNSW for the purposes of the Sydney Metro.

Technical Reports mean any reports or guidelines nominated by the Authority to the Developer specifying the appropriate practices or procedures for the conduct of the Remediation Works.

Tenant means the Developer, or if the Developer has appointed a Nominee and has notified the Authority of that appointment by Formal Notice [REDACTED], the Nominee.

Tender Documentation means all construction design drawings, specifications, materials and information to the level required for tendering by a Builder to specialist construction subcontractors, and, when applicable are approved by the Authority under clause 7.14.

TfNSW means the Department of Transport for the State of New South Wales.

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 any Mod 8 Approval or the Hotel Resort DA including any appeal of those proceedings.

Third Party Services means electricity, gas or water mains, telephone cabling, signalling cables, drainage, sewerage and other communications infrastructure or equipment installed, operated or owned by the Authority, other Government Agencies or a Service Third Party.

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).

Trade Cost means the cost anticipated to be disbursed or incurred in relation to the relevant Works assuming competitive commercial rates on an arms-length basis and does not include any design fees, administrative, management or supervisory costs of the Developer or its Employees and Agents.

Unspent Funding means in respect of a Public Benefit Contribution, the amount calculated in accordance with clause 19.2.

Urban Art Contribution means the amount payable by the Developer pursuant to clause 24.1 and Part 2 of Annexure D.

Vacation Dates has the same meaning as in the Crown Development Agreement.

Variation means any of the following:

- (a) an increase, decrease, deletion or omission, or resequencing (from the sequencing set out in the Works Programme) or other change to any part of the Works,

- (b) the carrying out of additional works;

- (c) the demolition or removal of material or work no longer required; or

- (d)

Variation Offer means a Formal Notice given by the Developer under clause 15.8(e) setting out the Developer's offer to effect the Variation.

Variation Order means a written direction given by the Authority under clause 15.8(i) to carry out a Variation which expressly states it is a variation order given under clause 15.8.

Variation Works Claim means a claim made by the Developer in respect of Variation Works Costs, to be provided to the Independent Certifier in accordance with clause 15.8(k).

Variation Works Costs means those costs and expenses reasonably incurred by the Developer in relation to the design, procurement, construction and completion of a Variation Order as set out in clause 15.8(e)(i).

Waste has the meaning given to that term in the POEO Act.

Water Positive Obligations means:

- (a) establishing and implementing appropriate contractual frameworks, mechanisms, services and Internal Infrastructure to ensure that the Tenants are capable of meeting the following requirements by the Date of Project Practical Completion and from that date throughout the term of the relevant Lease:
 - (i) no potable water is imported into Central Barangaroo, or, in the case where potable water is imported, a greater amount of recycled water is available for export measured on an annual basis, and
 - (ii) no potable water is used for any non-potable use, and
- (b) a rainwater tank (of a capacity approved by the Authority, acting reasonably) is provided to harvest rainwater from the buildings for supply to non-potable uses.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Legislation means Legislation relating to health and safety at work including:

- (a) the WHS Act; and
- (b) the *Work Health and Safety Regulation 2011* (NSW).

Work Health and Safety Management Plan means the plan referred to in clause 30.5.

Works means the works to be carried out or procured to be carried out by the Developer to effect the completion of the Developer's Project in accordance with this Agreement, the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, the Final Bid, any Construction Licence and the CPW, and includes the Retail Final Works, Remediation Works temporary and remedial works, construction works, the Public Domain, installation of Internal Infrastructure and connection to the External Infrastructure, [REDACTED]

Works Component means, as applicable, the Works carried out in respect of:

- (a) a Stage;
- (b) a Block (including a Foreshore Block); and
- (c) the Developer's Project.

Works In Kind Contribution means a Public Benefit Contribution which is specified as 'works in kind' in the Public Benefit Delivery Cashflow.

Works Programme means the program attached as Annexure KK (and as updated from time to time by the Developer in accordance with this Agreement) showing the major activities and the various Stages or parts in performing the Works in order to achieve each Milestone Event on or before the relevant Milestone Date for that Milestone Event and which details the key timeframes and actions on the critical path to the delivery of the Developer's Project.

Zero Waste Emissions Obligations means:

- (a) the diversion of not less than [REDACTED] of all construction waste (except any Contamination or Hazardous Substances) from landfill;

- (b) establishing and implementing appropriate frameworks to ensure that the Tenants are capable of meeting the following requirements throughout the term of the relevant Lease:
 - (i) the diversion of not less than 80% of operational waste (except any Contamination or Hazardous Substances) from landfill each year; and
 - (ii) the offsetting of all greenhouse gas emissions associated with operational waste processing and disposal each year by an Approved Waste Operator as part of the obligation to obtain Carbon Neutral Certification.

1.2 Interpretation

In this Agreement unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) 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 Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) references to "fit for purpose", "suitable for intended purpose" or similar phrases will be interpreted:
 - (i) subject to paragraph (ii), to mean fit for the purpose specified in or ascertained from this Agreement;
 - (ii) [REDACTED]

(l)

1.3 Footnotes no aid to interpretation

The Authority and the Developer acknowledge and agree that the footnotes in this Agreement have been included to assist the Authority [REDACTED] [REDACTED] only and cannot be relied on for the interpretation of any provision in this Agreement.

1.4 Priority of interpretation

If there is any inconsistency between the provisions of any two or more Project Documents, except in the case of manifest error, the Project Documents will be given priority in interpretation in the following order to the extent of any inconsistency:

- (a) this Agreement; and then
- (b) the other Project Documents.

1.5 Order of precedence

If there is any inconsistency between the provisions of any two or more instruments, documents or other obligations governing the carrying out of Works as part of the Developer's Project, unless otherwise specified in this Agreement and except in the case of manifest error, such inconsistency must be resolved in accordance with the following order of precedence in descending order of priority, to the extent of the inconsistency, ambiguity or discrepancy:

- (a) the relevant Approvals for development on Central Barangaroo;
- (b) the most recent relevant Approved Design Documents;
- (c) this Agreement (excluding the Final Bid);
- (d) in respect of any Public Domain Works, the Public Domain Performance Brief and, in respect of the Precinct Management Office, the Precinct Management Office Performance Brief;
- (e) the Final Bid (excluding the Public Domain Performance Brief and the Precinct Management Office Performance Brief);
- (f) the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo); and
- (g) the Objectives.

1.6 Business Day

If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing must be done no later than the next Business Day.

1.7 No contra proferentum

In the interpretation of this Agreement, no rule of construction will apply to disadvantage a party because that party proposed a provision of this Agreement or the Agreement itself.

1.8

Headings are included for convenience only and do not affect the construction or interpretation of this Agreement.

1.9

- [illegible]

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

■ [REDACTED]

■ [REDACTED]

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

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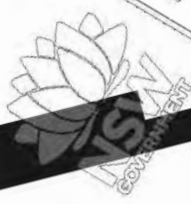
- [REDACTED]
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- [REDACTED]
- [REDACTED]

[REDACTED]



Barangaroo
Delivery
Authority

[REDACTED]



Barangaroo
Delivery
Authority

(b)

[REDACTED]

(c)

[REDACTED]

[REDACTED]



Barangaroo
Delivery
Authority

(d)

(e)

[REDACTED]



Barangaroo
Delivery
Authority



Barangaroo
Delivery
Authority

[REDACTED]



Barangaroo
Delivery
Authority

[REDACTED]



Barangaroo
Delivery
Authority

(f)

(g)

[REDACTED]



Barangaroo
Delivery
Authority

2. Objectives and Risk

2.1 Barangaroo Project Objectives

The objectives for Barangaroo are to:

- (a) be a precinct that will be studied for generations to come as a world benchmark for its bold and inspiring design, architecture and public domain, awarded for its authenticity, integration and diversity;
- (b) re-establish a dynamic place for all of Sydney's people which is integrated, connected, secure - defined by its waterfront and CBD location;

- (c) operate as an exemplar of the next generation in sustainable development by being climate positive. Barangaroo will uphold community wellbeing including health and fitness, and will value what matters to people and the planet;
- (d) be financially viable with continuing profitability, maximising public returns and value to the people and businesses of Sydney; and
- (e) add a new dimension to Australia's financial capital by integrating mixed use commercial, residential, retail, educational, civic, cultural and entertainment activities into an extended financial hub.

2.2 Central Barangaroo Project Objectives

The Authority's objectives for the design and delivery of Central Barangaroo are to:

- (a) deliver an innovative, creative and dynamic waterfront destination that is permeable and connected within the precinct and across the city;
- (b) ensure the delivery of design excellence in the planning and built form of the precinct, creating a diverse community of architectural expression within an overall coherent urban structure;
- (c) deliver diversity of products and uses integrating commercial, residential, retail, community, education, civic, cultural and entertainment activities which contribute to a vibrant and active identity;
- (d) create and deliver a public domain that is distinct, unique and innovative and allows for a range of passive and active outdoor spaces and uses that together create a new iconic visitor attraction, consistent with the Authority's activation framework;
- (e) deliver a balance of financial return and public experience and amenity across the precinct;
- (f) deliver a culturally distinctive, locally relevant and internationally appealing canvas for appropriate facilities, experiences and public art;
- (g) ensure high levels of public attraction, operational serviceability, amenity and security across the precinct and during staging; and
- (h) extend the principles and networks of the climate positive commitment in line with current world's best practice to deliver a whole of Barangaroo outcome and create projects that respond visibly to the sustainable needs of people and the planet, including by achieving the Sustainability Obligations and Social Outcomes and otherwise complying with the requirements of the CPW.

2.3 Risk Allocation Table

- (a) The Developer accepts responsibility for all risks relating to the Developer's Project as set out in the Risk Allocation Table.
- (b) Both parties acknowledge that, to the extent there is any inconsistency between a term of this Agreement (excluding Annexure F) and the Risk Allocation Table as to the allocation of a particular risk, this Agreement (excluding Annexure F) prevails.

2.4 Developer's acknowledgment in relation to Risk

The Developer acknowledges that it must not make any Claim against the Authority or the State in relation to any representation or any advice in respect of a matter relevant to the Developer's assessment or undertaking of the Developer's Project or the Developer's decision to enter into this Agreement or any Project Document.

2.5 Final Bid

The Developer acknowledges and agrees that it will undertake the Developer's Project in accordance with the Final Bid, (subject to the terms of this Agreement) and that the Authority has relied on the representations made in, and the contents of, the Final Bid in entering into this Agreement.

3. Execution of Project Documents

3.1 Requirements on execution of this Agreement

- (a) The Developer must on or before the date of this Agreement satisfy the Authority that the Developer has sufficient financial resources and/or debt and equity commitments to meet the Developer's obligations under this Agreement.
- (b) The Developer warrants to the Authority that the entry into this Agreement and the performance of the Developer's obligations under this Agreement is not a 'notifiable action' under the FIRB Act.

3.2 Warranty as to FIRB

The Developer, the [REDACTED] and the General Guarantor each:

- (a) warrant that they have the necessary capacity to enter into this Agreement or any Project Document and that none of them is required to obtain FIRB Approval or give notice of a 'notifiable action' under the FIRB Act in relation to the Developer, the [REDACTED] or the General Guarantor entering into this Agreement or any Project Document;
- (b) on and from the date of this Agreement, indemnify the Authority against any Cost, Loss, liability or damage arising from a breach of the warranty under this clause 3.2; and
- (c) agree that if due to a change in;
 - (i) the FIRB Act or other legislation regulating the acquisition of interests in Australian land or the published policy in relation to any such legislation; or
 - (ii) the ownership of the Developer, the [REDACTED] or the General Guarantor,

resulting in FIRB approval or the giving of a notice of a 'notifiable action' being required in relation to the entry into this Agreement or any Project Document, each of those parties, as applicable, will obtain such approval or give such notice or otherwise comply with the requirements of that legislation prior to entering into the relevant documents.

4. Initial Securities

4.1 Preferred Bidder Bank Guarantee

- (a) The Authority acknowledges that the Developer provided to the Authority the Preferred Bidder Bank Guarantee on or before the date on which the Developer was appointed as the 'preferred bidder' for the purposes of the Developer's Project.
- (b) The Developer acknowledges that the Authority returned the Preferred Bidder Bank Guarantee on or prior to the date of this Agreement.

4.2

- 

5.

5.1

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(c)

(d)

5.2

5.4

(a)

(b)

(c)

5.5 Interest and damages due to late payments

If the Developer fails to pay any amount under clause 5.1 on the date when the relevant amount is due for payment (**Due Date**) in addition to any indexation pursuant to clause 19.4(d), the Developer must pay to the Authority on demand:

(a) the relevant payment determined as at the Due Date; plus

- lated at the Prescribed Rate of Interest until the date of payment.
- 10. Assignment**
- 10.1 The parties agree that the terms of this Agreement shall be binding on the parties and their heirs, assigns and legal representatives.
- 10.2 In the event of the death of either party, the obligations of the deceased party shall be binding on the surviving party.
- 10.3 The parties agree that the Risk Allocation Terms set forth in this Agreement shall be binding on the parties and their heirs, assigns and legal representatives.

5.6 No right of renegotiation or Claim

The Developer must not seek a renegotiation of the terms of this Agreement and/or make a Claim on the basis of any event to the extent that the Risk Allocation Table or this Agreement allocates responsibility for liability for that event to the Developer.

6. Condition of Central Barangaroo

6.1 Acknowledgement

The Developer acknowledges that:

- (a) the EPA Declaration determined that part of Central Barangaroo within the Declaration Area contains Significant Contamination;
- (b) the EPA issued the Management Order to the Authority on 16 December 2015 [REDACTED];
- (c) [REDACTED]
- (d) [REDACTED]
- [REDACTED]
- [REDACTED]
- (e) [REDACTED] the Developer is not entitled to make a Claim, as a result of any matter arising or in connection with:
- (i) the EPA Declaration;
- (ii) the Management Order; or
- (iii) [REDACTED]

6.2

- (a)
- (b)

(c)

(d)

(e)

(f)

6.3 No caveat

The Developer must not lodge (or permit the Financiers, Investors, any Nominee or any party which is or may be a lessee or sublessee of Premises to lodge) a caveat:

- (a) against all or any part of a Stage, a Block or Central Barangaroo until the parties have entered into a Construction Licence for that area; and
- (b) unless it relates to an interest (if any) arising directly from that Construction Licence.

6.4 Use and alteration of Central Barangaroo

- (a) The Developer acknowledges and agrees that prior to the date the Authority makes a Block available to the Developer pursuant to clause 11.4 for the carrying out of the Works, the Authority may use all parts of Barangaroo including Central Barangaroo in order to perform its obligations pursuant to this Agreement and for such other purposes as reasonably determined by the Authority.
- (b) After the Authority makes a Block available to the Developer pursuant to clause 11.4 for the carrying out of the Works, the Authority retains the right to access the Block in accordance with the terms of the Construction Licence and this Agreement.

6.5 No reliance on Disclosure Materials

- (a) The Disclosure Materials are provided for the information of the Developer. The Authority does not warrant the accuracy or completeness of the Disclosure Materials. The Developer acknowledges that it has reviewed the Disclosure Materials and warrants that it has:
 - (i) made its own assessment of the Disclosure Materials and their accuracy; and
 - (ii) not relied on the Disclosure Materials in entering into this Agreement.

- (b) The Developer may not make any Claim against the Authority in connection with the Disclosure Materials including in connection with their accuracy or completeness.

7. Design refinement

7.1 Development of Design Documentation

The Developer must develop the design of the Developer's Project as set out in the Final Bid for each Stage incrementally (and incorporating any Variations) by the submission of:

- (a) Concept Design Drawings;
- (b) Schematic Design Drawings;
- (c) Developed Design Documentation; and
- (d) when the Authority so elects in accordance with clause 7.14 or clause 7.15, Tender Documentation and Issued for Construction Drawings packages for:
 - (i) [REDACTED]
 - (ii) the Public Domain Works;
 - (iii) the Precinct Management Office; or
 - (iv) the external appearance and façade of all buildings in the Developer's Project,

(each a "Design Component").

7.2 Design Excellence

- (a) The Developer must comply with:
 - (i) the Design Excellence requirements as required by the Authority and consistent with "Design Excellence Strategy" contained in the Final Bid; and
 - (ii) the design excellence requirements of:
 - A. the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo);
 - B. Schedule 3, Part 12 of Division 3 of State Environmental Planning Policy (Major Development 2005),
 all as amended from time to time, in relation to the design development in relation to Central Barangaroo.
- (b) The Developer must resolve at its own cost, any inconsistencies between the Design Excellence Strategy contained in the Final Bid and the requirements of any Approvals for the Developer's Project.
- (c) If the Developer is required or elects to undertake a Design Excellence Competition in respect of any part of the Developer's Project the Developer must obtain the approval of the Authority (which approval must not be unreasonably withheld or

delayed) to the process to be adopted for that Design Excellence Competition, before submitting details of that process to the Director-General.

7.3 Developer's design obligations

- (a) **(Design Development)** - The Developer must further develop and finalise the design of the Developer's Project to ensure the Developer's Project will be constructed, and once completed:
- (i) will deliver and satisfy the specifications, requirements and outcomes committed to in the Final Bid;
 - (ii) will address the items documented in the Authority's "Project Resolution Items" as contained in Annexure HHH;
 - (iii) will comply with the requirements of the CPW;
 - (iv) the Public Domain will be consistent with the benchmarking referred to in the Public Domain Performance Brief;
 - (v) the Precinct Management Office will be consistent with the Precinct Management Office Performance Brief; and
 - (vi) [REDACTED]

except to the extent agreed by the Authority in writing or agreed as part of the Approved Design Documents.

- (b) **(Compliance with Final Bid)** – The Design Documentation cannot be amended from the Final Bid without the prior written consent of the Authority. The Developer must not submit any Design Documentation to the Authority which, if approved, would have the effect of amending the design as shown in the Final Bid, unless the Authority otherwise agrees in writing.

(c) [REDACTED]

- [REDACTED]
- [REDACTED]
- (d) **(Approval of Stages)** - Where details of the Stages of the Works for a Block have not been included in this Agreement, the Developer may propose that a Stage or Stages in the Works proposed for a Block be created so as to achieve Practical Completion of a Block on a progressive basis, with the approval of the Authority (acting reasonably). It is a condition precedent to the approval of part of the Works for a Block to comprise a Stage that those works must:
- (i) be capable of use, operation and occupation on a standalone basis;
 - (ii) be capable at Law of separate use and occupation;
 - (iii) where relevant, have reasonable and safe access and fully completed access to a public road or a road which is accessible to the public;
 - (iv) include necessary common areas, shared facilities and services which are designed for use with that part of the Works; and
 - (v) be accompanied by details of all other proposed Stages in the Block of which the proposed Stage forms part.
- (e) **(Certified construction costs)** - Where this Agreement provides for the payment of moneys for:
- (i) any component of the Public Benefit Contributions in lieu of carrying out those Works or otherwise providing those Works in the manner contemplated by this Agreement in certain circumstances, including (but not limited to):
 - A. the High Street Landscaping Works in the circumstances referred to in clause 10.5(e);
 - B. the Bridge Works in the circumstances referred to in clause 11.3(f);
 - C. any Public Domain Works in respect of the Foreshore Public Domain in the circumstances referred to in clause 16.2(b);
 - D. [REDACTED]

E. [REDACTED]

(ii) [REDACTED]

the Developer must provide as part of and at the same time as the provision of the Design Documentation, an itemised written estimate of the Development Costs of those components of the Works together with a report by the Quantity Surveyor, certifying for the benefit of the Authority and the Developer that the estimate of the Development Costs for those components of the Works is a fair and reasonable estimate.

(f) [REDACTED]

(g) [REDACTED]

7.5

- (a) meets and will meet accepted industry standards;
- (b) has been and will be prepared by consultants with appropriate professional qualifications and membership of appropriate professional associations;
- (c) is consistent, compatible and integrated with:
 - (i) all Approvals;
 - (ii) Approved Design Documents last approved by the Authority prior to the submission of the relevant Design Documentation;
 - (iii) the Objectives;
 - (iv) the External Infrastructure;
 - (v) the Infrastructure already installed in Central Barangaroo (if any);
 - (vi) the adjacent Internal Public Domain and the Public Domain Works in relation to any Foreshore Block;
- (d) if complied with in carrying out the Works, will result in the Developer's Project being constructed in accordance with, and once completed will deliver and satisfy:
 - (i) the specifications, requirements and outcomes committed to in the Project Documents;
 - (ii) in the case of the Public Domain Works, the requirements set out in clause 7.3(a);
 - (iii) [REDACTED];
 - (iv) the requirements of the CPW.

[illegible]

7.6 Design Working Group

- (a) The Developer and the Authority acknowledge and agree that the Design Working Group is:
 - (i) a forum for the Developer to keep the Authority informed as to the development of the Design Documentation and for the parties to discuss the development of the Design Documentation and design packages prior to their submission to the Design Review Group;
 - (ii) to present to the respective boards of the Developer, the Authority and key stakeholders when requested; and
 - (iii) a process intended to streamline the subsequent review and approval of the Design Documentation under this Agreement.
- (b) The Developer will establish a Design Working Group comprising representatives of:
 - (i) the Authority;
 - (ii) the Developer;
 - (iii) the Builder;
 - (iv) an Investor (if required);
 - (v) any design consultants of each of the Developer or the Builder or an Investor whose attendance is requested by the Developer, the Authority or the Builder; and
 - (vi) where the Authority so elects or where requested by the Developer, the Authority's design advisers and consultants,

(Design Working Group).
- (c) Subject to clause 7.6(d), the Design Working Group will meet not less than once per month after not less than 5 Business Days' notice to review, discuss and consider the development of the Design Documentation.
- (d) The Developer and the Authority acknowledge and agree that the Developer may call meetings of the Design Working Group more frequently than once per month during periods of intense design development and may meet less frequently where monthly meetings are not required.
- (e) The Developer acknowledges and agrees that any comments, suggestions or requests made by the Authority in meetings of the Design Working Group do not:
 - (i) affect the Developer's obligations under this clause 7;

- (ii) constitute Authority approval of the relevant Design Documentation or other design packages and documents
- (iii) give rise to a Variation in accordance with this Agreement.
- (f) Within 5 Business Days after the occurrence of a meeting of the Design Working Group, the Developer must provide to the Authority:
 - (i) the minutes of that meeting of the Design Working Group; and
 - (ii) copies of any documents tabled at that Design Working Group meeting and which have not already been provided to the Authority.

7.7 Design Review

- (a) The purpose of the Design Review Group is to review the stages of the Design Documentation against the criteria set out in or requirements of clauses 7.2, 7.3 and 7.4 (but excluding any Tender Documentation and Issued for Construction Drawings) prior to such Design Documentation being submitted to the Authority for approval.
- (b) Subject to clauses 7.7(f) and 7.7(h), at least 20 Business Days prior to submitting the draft Design Documentation to the Authority under clause 7.9, the Developer:
 - (i) must convene and attend meetings (as required by the Authority) of a group (**Design Review Group**) comprising:
 - A. the Authority's design adviser and design advisory panel or such other suitably qualified people nominated by the Authority from time to time;
 - B. 1 suitably qualified independent adviser appointed by the Developer (not being an employee of the Developer) and nominated by the Developer as its representative for the Design Review Group from time to time; and
 - (ii) may request that one or more Investors be permitted to attend the meeting of the Design Review Group for the purposes of providing a presentation (or presentations) to the Design Review Group in connection with the relevant draft Design Documentation to be considered by the Design Review Group, and the Authority may approve or reject such a request (acting reasonably).
- (c) The Developer must, at least 5 Business Days prior to a meeting, provide the Design Review Group members with paper and electronic copies of:
 - (i) all relevant documentation necessary to review the draft Design Documentation being considered at that meeting;
 - (ii) a statement of compliance with the criteria set out in or requirements of clauses 7.2, 7.3 and 7.4; and
 - (iii) a notice of the date by which the Developer intends to submit the Design Documentation to the Authority under clause 7.8 which date must not be less than 15 Business Days from the date of the Developer's notice.
- (d) Within 5 Business Days after the occurrence of a meeting of the Design Review Group, the Authority must provide to the Developer a report (**Design Review Report**) assessing the draft Design Documentation against the criteria set out in, or

the requirements of, clauses 7.2, 7.3 and 7.4. The Design Review Report will include:

- (i) a list of items presented and reviewed at the meeting;
 - (ii) a list of all attendees at that meeting;
 - (iii) the Design Review Group's review of the relevant draft Design Documentation; and
 - (iv) a recommendation in response to the draft Design Documentation, being one of:
 - A. to proceed to submit the Design Documentation to the Authority for approval;
 - B. to proceed to submit the Design Documentation to the Authority for approval, subject to the Design Review Group's recommendation being addressed; or
 - C. to not proceed with the Design Documentation and resubmit revised draft Design Documentation which addresses the Design Review Group's recommendation.
- (e) Within 5 Business Days after receipt of the materials referred to in clause 7.7(d), the Developer must:
- (i) where clause 7.7(d)(iv)A applies, submit the Design Documentation to the Authority for approval;
 - (ii) where clause 7.7(d)(iv)B applies, submit to the Authority for approval the Design Documentation, revised where applicable, and a detailed report specifying how the recommendation of the Design Review Group has been or will be addressed by the Developer; or
 - (iii) where clause 7.7(d)(iv)C applies, resubmit to the Design Review Group the draft Design Documentation and a detailed report specifying how the recommendation of the Design Review Group has been addressed by the Developer.
- (f) If the Developer considers that the recommendation of the Design Review Group under clause 7.7(d)(iv) is inconsistent with the provisions of this clause 7, such dispute may be referred for resolution in accordance with clause 48.
- (g) If, prior to the date on which the Developer has convened a meeting pursuant to clause 7.7(b), the Developer receives notice from a Consent Authority requiring the Developer to amend the draft Design Documentation which is to be considered at the relevant meeting:
- (i) the Developer may amend the draft Design Documentation which was to be considered by the Design Review Group at the relevant meeting in order to address the requirements of the Consent Authority;
 - (ii) the Developer must provide to the Design Review Group a copy of the notice received from the Consent Authority directing the Developer to amend the draft Design Documentation; and

- (iii) for the avoidance of doubt:
 - A. for the purposes of clause 7.7(b), the Developer is not required to postpone or reconvene the meeting until a date which is 20 Business Days after the date on which the Developer provides a copy of the notice from the Consent Authority in accordance with clause 7.7(g)(ii); and
 - B. nothing in this clause 7.7(g)(iii) relieves the Developer from complying with clause 7.7(c) and in all circumstances the Developer must provide the Design Review Group with the draft Design Documents at least 5 Business Days prior to a meeting.
- (h) If the Developer considers, acting reasonably, that a matter requires the urgent consideration of the Design Review Group and that it would suffer material detriment by complying with the timeframes in clause 7.7(b), the Developer may request the Authority to agree to convene a meeting on a shorter period of notice. The Authority may agree or disagree to any request made by the Developer in the Authority's discretion acting reasonably.

7.8 Design Documentation review

- (a) Subject to the Developer first complying with clause 7.7, on each occasion when the Developer wishes to submit Design Documentation at the respective degrees of detail set out in clause 7.1 to the Authority, it must give a Formal Notice to the Authority which provides in the following order a package of the following material to the Authority for the Authority's review and approval as the owner of Central Barangaroo:
 - (i) the Concept Design Drawings for each Block including the Infrastructure in that Block in one complete and fully coordinated package for each, whose entire contents is submitted simultaneously;
 - (ii) the Schematic Design Drawings for each Block including the Infrastructure in that Block in one complete and fully coordinated package for each, whose entire contents is submitted simultaneously; and
 - (iii) the Developed Design Documentation for each Block including the Infrastructure in that Block in one package for each, whose entire contents is complete, fully coordinated and submitted simultaneously,

in a form consistent with standard industry practices, the requirements of clause 7.7(e) and by the relevant dates set out in Annexure C.
- (b) The Authority may reject (and is not required to consider) any documents submitted under clause 7.8(a) that:
 - (i) are not complete, fully coordinated and submitted simultaneously in relation to each of the packages referred to in clause 7.8(a),² or
 - (ii) [REDACTED]

[REDACTED]

- (c) All Design Documentation submitted to the Authority under this clause 7.8 (for approval by the Authority under clause 7.9) must be submitted together with the following:
- (i) the relevant Design Review Report produced under clause 7.7(d);
 - (ii) a Formal Notice from the Developer stating the Design Documentation satisfies the criteria set out in or requirements of clauses 7.2, 7.3 and 7.4;
 - (iii) in regard to the Design Documentation for the Public Domain, the Developer must also comply with clause 16;
 - (iv) a current Sustainability Compliance Report prepared in respect of the Works Component being the subject of the Design Documentation; and
 - (v) a current Social Outcomes Compliance Report,

7.9 Design Documentation approval process

- (a) Each Design Component of the Design Documentation (with the exception of Tender Documentation and Issued for Construction Drawings) must have complied with the process set out in the preceding provisions of this clause 7 prior to any application for the Authority's approval of Design Documentation, being submitted to the Authority under this clause 7.9.
- (b) The Authority must base its decision to approve (conditionally or unconditionally) or reject any Design Documentation on the criteria set out in or the requirements of clauses 7.2, 7.3 and 7.4.
- (c) The Authority must give the Developer written notice of its approval or rejection of any Design Documentation (giving reasons in the case of rejection) within 20 Business Days after the date on which the Authority receives the whole package of the relevant Design Documentation in accordance with clause 7.8 (including any additional information required under this clause 7.9) from the Developer and [REDACTED]
- (d) If the Authority fails to give written notice to the Developer within the timeframe specified in clause 7.9(d), then the Authority will be deemed to have rejected the Design Documentation and either party may refer the matter to be resolved as a dispute pursuant to clause 48.
- (e) The parties acknowledge that the timeframe in which the Authority must respond as set out in clause 7.9(d) does not apply in relation to a delay caused or substantially contributed to by any mandatory requirement on the Authority to submit Design Documentation to the Minister for Planning for approval, consent, review or comment. The Authority must ensure that the relevant submission to the Minister is made as soon as practicable.
- (f) The Authority's receipt and review of any Design Documentation is solely for the purpose of monitoring the performance of the Developer. The Authority undertakes no responsibility or duty in relation to any aspect of the design of the Developer's

Project. The Developer is and remains wholly responsible for the design of the Developer's Project.

- (g) Neither comments by the Authority nor any failure to comment by the Authority regarding the Design Documentation will lessen or otherwise affect:
 - (i) the Developer's warranties or any of its other liabilities or responsibilities under this Agreement or otherwise according to Law; or
 - (ii) the rights of the Authority, whether under this Agreement or otherwise according to Law.
- (h) Where the Developer has elected, pursuant to clause 1.9(a)(iii)A, to submit Design Documentation to the Authority

(i)

(ii)

and the Developer must provide any information reasonably required by the Authority to substantiate the basis on which any Design Documentation satisfies the requirements set out in this clause 7.9(h).

7.10

7.11 Design warranty regarding Approved Design Documents

The Developer warrants that:

- (a) following the Authority having approved the Approved Design Documents, the Developer has checked and carefully considered the Approved Design Documents and that they are proper, adequate and suitable for the purposes for which the Works are intended to be used;
- (b) the design of the Works will:
 - (i) meet the requirements of the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings; and
 - (ii) be completed in accordance with the requirements of this Agreement;
- (c) it will procure the construction of the Works by a licensed contractor and in accordance with the Approved Design Documents:
 - (i) in a proper and workmanlike manner; and
 - (ii) using materials of a nature described in this Agreement, or failing any specific description then of high quality and fit for their intended purpose;
- (d) the Works will when constructed:
 - (i) meet the requirements of the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings; and
 - (ii) comply with all the requirements of this Agreement, of the Building Code of Australia and all relevant Government Agencies; and
- (e) the Works for the Public Domain will, when constructed, be the same or better standard as set out in clause 16.

7.12 Directions

- (a) Without limiting clause 16, to the extent only required in order to ensure that the Developer's Project complies with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, the Authority may, at any time during the Developer's Project, give reasonable directions to the Developer concerning design refinement including (but not limited to) massing, form, articulation, colours, quality, texture, style, public amenity or otherwise to ensure that the Developer's Project is constructed in accordance with the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings. The Developer must promptly comply with any direction so given.
- (b) The directions referred to in clause 7.12(a) may be given by the Authority to the Developer through its participation in Design Review Group.
- (c) Without limiting clause 7.12(a), the Authority may give directions to the Developer in the exercise of its statutory powers or exercising delegated power or authority on

behalf of any Government Agency in respect of the design and construction of the Developer's Project.

7.13 Consultation

(a)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)

[REDACTED]

7.14 Requirements for review of Tender Documentation packages

(a) Not less than 60 Business Days prior to the Builder putting a package of the Works:

- (i) for the Public Domain;
- (ii) [REDACTED]
- (iii) the Precinct Management Office; or
- (iv) relating to the external appearance of the built form of any buildings in the Developer's Project,

out for tender to specialist subcontractors for that works package, the Developer must notify the Authority of the relevant Works which are proposed to be put out to tender.

- (b) Within 10 Business Days after the receipt of the Developer's notice under clause 7.14(a), the Authority must notify the Developer in writing as to whether it requires to review the Tender Drawings in relation to any of the Works referred to in clause 7.14(a).
- (c) If the Authority notifies the Developer that it wishes to review the Tender Drawings in relation to any package of the Works referred to in clause 7.14(a), the Developer must provide the Tender Drawings to the Authority within 10 Business Days after receipt of the Authority's notice under clause 7.14(b).
- (d) Upon receipt of the Tender Documentation for a works package, the Authority will submit those drawings to its consultant team applicable to the relevant Works for technical review which must be carried out within 20 Business Days.
- (e) The Authority must, having regard to the comments of its consultants' team arising out of its review of the Tender Documentation, approve or reject (giving reasons in writing in case of rejection) the Tender Documentation within 30 Business Days after receipt of the Tender Documentation under clause 7.14(c). For the avoidance

of doubt, the Authority may only reject Tender Documentation on the basis of inconsistency with the then Approved Design Documents.

- (f) The Developer must amend the Tender Documentation to address the Authority's reasons for rejection or, if the Developer considers that the Authority's comments are inconsistent with the requirements of this clause 7, refer the matter for determination under clause 48.

7.15 Requirements for review of Issued for Construction Drawings

- (a) Where the Authority has approved Tender Documentation under clause 7.14 and not less than 60 Business Days prior to Developer proposing to commence construction of a package of the Works:
 - (i) for the Public Domain;
 - (ii) [REDACTED]
 - (iii) the Precinct Management Office; or
 - (iv) relating to the external appearance of the built form of any buildings in the Developer's Project,

the Developer must notify the Authority of the relevant package of the Works which are proposed to commence construction.

Within 10 Business Days after the receipt of the Developer's notice under clause 7.15(a), the Authority must notify the Developer in writing as to whether it requires to review the Issued for Construction Drawings in relation to any of the Works referred to in clause 7.15(a).

- (b) If the Authority notifies the Developer that it wishes to review the Issued for Construction Drawings in relation to any of the Works referred to in clause 7.15(a), the Developer must provide the relevant Issued for Construction Drawings to the Authority within 10 Business Days after receipt of the Authority's notice under clause 7.15(a) together with confirmation of the changes, if any, from the Tender Documentation approved by the Authority for the relevant works package.
- (c) Upon receipt of the Issued for Construction Drawings, the Authority will submit those drawings to its consultant team applicable to the relevant Works for technical review which must be carried out within 20 Business Days.
- (d) The Authority must, having regard to the comments of its consultants' team arising out of its review of the Issued for Construction Drawings, approve or reject (giving reasons in writing in case of rejection) the Issued for Construction Drawings within 30 Business Days after receipt of the Issued for Construction Drawings under clause 7.15(b). For the avoidance of doubt, the Authority may only reject Issued for Construction Drawings on the basis of inconsistency with the approved Tender Documentation for the relevant works package.
- (e) The Developer must amend the Issued for Construction Drawings to address the Authority's reasons for rejection or, if the Developer considers that the Authority's comments are inconsistent with the requirements of this clause 7, refer the matter for determination under clause 48.

8. Preparation of Applications

8.1 Concept Plan Mod 8

The Developer acknowledges and agrees that it is aware of the conditions of the Mod 8 Application and the Mod 8 Approval and it will not make any Claim in relation to the Mod 8 Application or the Mod 8 Approval.

8.2 Developer to prepare Applications

- (a) The Developer agrees to prepare at its Cost all Applications for the Developer's Project.
- (b) Subject to the subsequent provisions of this clause 8.2, the Authority will consider an Application if:
 - (i) it is consistent with the Final Bid;
 - (ii) (in respect of an Application for a Modification) the Concept Design Drawings for the Developer's Project have been approved by the Authority in accordance with clause 7;
 - (iii) it is consistent with any Approved Design Documents then in existence;
 - (iv) [REDACTED]
 - (v) in respect of an Application:
 - A. for a Modification, the Application complies with clause 7.3(f) and clause 7.3(g); and
 - B. other than for a Modification, the Application complies with clause 7.3(g).
- (c) [REDACTED]
- (d) For so long as a Third Party Appeal remains unresolved, the Developer must prepare Applications for Modifications and Approvals which deal with both Mod 8 and the Hotel Resort DA being in force and not being in force.
- (e) The Developer bears the risk of obtaining any Approval referred to in clause 8.2(c) and the risk of compliance with any such Approval.

8.3 Consultation with Authority and Consent Authorities

The Developer must:

- (a) consult and discuss with the Authority and all other relevant public authorities, and pay all due regard to any reasonable comments or suggestions the Authority or any relevant Government Agency may make in respect of:
 - (i) the proposed terms and conditions of an Application;

- (ii) terms and conditions the relevant Government Agency indicates may be imposed on any consent; and
 - (iii) terms and conditions the relevant Government Agency indicates are required as a matter of policy or as a matter of best industry practice; and
- (b) (unless otherwise agreed) give the Authority at least 3 Business Days' notice of any proposed meeting with a relevant Government Agency for the purpose of discussing an Application, giving details of the time, date, list of attendees and the matters to be discussed. The Authority may attend any proposed meeting.

8.4

9. Review of Significant Applications

9.1 Authority approval of Significant Applications

- (a) The Developer must not lodge any Significant Application to a Consent Authority without the Authority's prior written approval obtained in accordance with this clause.
- (b) Without limiting any other right of the Authority under this Agreement, the Authority must not object to a Significant Application solely on the basis that the Application seeks to have consent provisions included in the Approval to that Significant Application to the effect that a separate Planning Approval is not required for the fitting out, use, or change of use of individual retail shops within the Retail Component provided that the overall use of the Retail Component must remain retail at all times required by the Retail Leases.

9.2 Significant Applications must be lodged with the Authority

The Developer must:

- (a) at least 20 Business Days before the Significant Application is intended to be lodged with the relevant Consent Authority, give a Checklist to the Authority completed as appropriate having regard to the nature of the Significant Application and the particular requirements of this Agreement in relation to Significant Applications, and which is certified as correct by an employee of the Developer holding the title of Head of Construction (being [REDACTED] as at the date of this

Agreement) or the Head of Development NSW (being [REDACTED] as at the date of this Agreement); and

- (b) promptly provide the Authority with any further information or documentation and/or access to the Developer's consultants and/or employees for discussion as required by the Authority in order to consider the proposed Significant Application.

9.3 Authority's approval

The Developer acknowledges that, in respect of a Significant Application submitted under clause 9.2, the Authority:

- (a) may:
 - (i) give its approval to the Significant Application, with or without conditions;
 - (ii) withhold giving its approval to the Significant Application; or
 - (iii) reject the Significant Application; and
- (b) must act reasonably in considering any Significant Application except where:
 - (i) it is acting in its capacity as Roads Authority in which case it is only obliged to comply with its obligations under the *Roads Act 1993* (NSW); or
 - (ii) the Significant Application does not comply with clause 9.2.

9.4 Authority's review of Applications

The Developer acknowledges and agrees that:

- (a) the Authority is not required to review, consider, approve or withhold approval to a Significant Application which is not submitted in accordance with clause 9.2(a);
- (b) any time frames set out in this clause 9 within which the Authority must consider a Checklist for a Significant Application will not commence until that Checklist is validly given to the Authority in accordance with this clause and clause 51;
- (c) the Authority is not obliged to critically analyse the Applications and is not responsible for any errors, omissions or non-compliance with any law or the requirements of any Government Agency;
- (d) the Authority is not liable for any Loss, or Cost incurred by the Developer because of any defect in the design or construction of any part of the Works;
- (e) no comment, review or information supplied to the Developer by the Authority alters or alleviates the Developer's obligation to design, procure the construction and completion of the Works or otherwise procure the undertaking of the Developer's Project in accordance with the requirements of this Agreement; and
- (f) where the Authority consents to the lodgement of a Significant Application with a Consent Authority, it does not consent to the Design Documentation attached to that Significant Application and the Developer must separately comply with the provisions of clause 7 in relation to that Design Documentation or any further development of that Design Documentation before lodging the Significant Application for Approval.

10. Lodgement of Applications

10.1 Developer to lodge Application

- (a) If the Authority gives its approval to a Significant Application, the Developer must:
 - (i) promptly finalise that Significant Application in accordance with any conditions of the Authority's approval to that Significant Application;
 - (ii) submit a Formal Notice to the Authority:
 - A. attaching the finalised Significant Application;
 - B. attaching a Sustainability Compliance Report in relation to the Block being the subject of the relevant Significant Application;
 - C. attaching a current Social Outcomes Compliance Report; and
 - D. requesting the Authority's consent (as landowner) to the lodgement of that Significant Application with the Consent Authority for the purposes of assessment and determination; and
 - (iii) lodge that Significant Application in the form approved by the Authority with the Consent Authority no later than 5 Business Days after the Authority gives its consent to the lodgement of that Significant Application under clause 10.1(a)(ii).
- (b) If the Authority requires, the Authority may elect to be the applicant for any Application for a Modification, a Significant Application or any other Application for approval but the Developer must lodge any such Application with the Consent Authority and pay all fees in relation to it.
- (c) Despite any other provisions of this Agreement, where the Developer has submitted an Application to the Authority in accordance with this clause, the Authority may require by notice in writing that the Developer defers lodgement of that Application with the Consent Authority until a date specified in that notice (being not later than the date which is 40 Business Days after the date of the Authority's approval of that Application) and, if the Authority requires such a deferral, clause 21.3(a)(iii)X may apply.

10.2 Application procedures

- (a) Without limiting any of the Developer's other obligations under this Agreement, the Developer agrees that it must regularly consult with the Authority and keep the Authority fully informed in relation to all its dealings with the Consent Authority or any Government Agency in connection with or relating to a Significant Application, and must give a Formal Notice to the Authority, requesting the Authority's prior written approval (acting reasonably) to:
 - (i) each submission the Developer proposes to make;
 - (ii) each environmental assessment or revised environmental assessment the Developer proposes to submit;
 - (iii) each proposed response to issues raised, or any other document which the Developer proposes to submit; and

- (iv) details of each significant change, modification or condition of which the Developer becomes aware that the Consent Authority may consider necessary,

in relation to the relevant Significant Application or the proposed approval to that Application.

- (b) In giving or withholding its approval to any such documents or matters, the provisions of clauses 9.2, 9.3 and 9.4 must apply mutatis mutandis.

10.3 Obtaining other Approvals

The Developer agrees to:

- (a) do everything necessary or desirable to progress Applications and obtain other required Approvals promptly; and
- (b) ensure that those Applications for Approvals are consistent with:
 - (i) all Approvals previously obtained, except to the extent the Application seeks to amend previous Approvals;
 - (ii) the Approved Design Documents relevant to the Application, where they exist;
 - (iii) the Final Bid, except to the extent that deviations from the Final Bid have been approved by the Authority in writing or agreed as part of the design development process for that Application;
 - (iv) the Developer's Staging Plan;
 - (v) [REDACTED];
 - (vi) the requirements of the CPW.

10.4 Assistance by the Authority

Subject to the Developer complying with the provisions of clauses 7.14, 9 and this clause 10, the Authority:

- (a) in its capacity as landowner, agrees to sign all documents and promptly provide all authorisations, consents and approvals as may be reasonably required to enable the Developer to lodge any Application with a Consent Authority once that Design Documentation for the Application has been approved under clause 7 and in the case of a Significant Application, it has been approved under clause 9; and
- (b) do all things reasonably necessary, at the Developer's cost, to assist the Developer to obtain all Approvals,

but the Authority is not responsible or liable to indemnify the Developer for any failure by the Developer to obtain any Approval, or obtain an Approval on terms acceptable to the Developer.

10.5 High Street Landscaping Works

- (a) Without limiting the generality of clause 10.3, the Authority acknowledges that the Developer's obligation to carry out the High Street Landscaping Works is subject to the Developer obtaining a licence from the Council to enable it to carry out those Works.

- (b) The Developer must, at its cost, use its best endeavours to obtain that licence as soon as practicable after the design for the High Street Landscaping Works is approved by the Authority in accordance with this Agreement.
- (c) The Developer must prepare an application for the grant of a licence for the High Street Landscaping Works and submit it to the Authority at least 20 Business Days before that application is intended to be lodged with the Council.
- (d) The Authority must approve or refuse to approve (giving reasons for any refusal) that application within 20 Business Days after receiving the whole package of the application for the licence for the High Street Landscaping Works.
- (e) If:
 - (i) the Developer has used its best endeavours to obtain the licence for the High Street Landscaping Works; and
 - (ii) the Council has not granted that licence within [REDACTED]
 the Authority may give a notice to the Developer requiring the Developer to pay to the Authority the amount of the development and construction costs of the High Street Landscaping Works as notified to the Authority in accordance with clause 7.3(e) within 30 days after the date of the notice in lieu of carrying out the High Street Landscaping Works.
- (f) If the Authority gives a notice under clause 10.5(e), the Developer's obligations under this Agreement to carry out the High Street Landscaping Works are deemed to be discharged and released upon payment of the amount specified in clause 10.5(e).

10.6 Copies of Applications, Approvals and associated documents

The Developer must promptly give the Authority a copy of:

- (a) each Significant Application as lodged with any Consent Authority;
- (b) all correspondence between the Developer (or any person on behalf of the Developer) and any Consent Authority and Government Agency in connection with any Significant Application, proposed Significant Application, Approval or proposed or draft determination of any Significant Application;
- (c) all submissions or reports that may be made by or on behalf of the Developer, or provided to the Developer in connection with any Significant Application;
- (d) any response to issues raised in submissions, provided by the Developer in connection with any Significant Application; and
- (e) all Approvals received and notices gazetted in relation to any Significant Application.

10.7 Developer must comply with all Approvals

The Developer must:

- (a) subject to the terms of this Agreement, comply on time with all Approvals and all Laws in connection with the carrying out of the Works and the construction and use of Central Barangaroo; and

- (b) do everything necessary to ensure that each Approval remains effective and does not expire or become invalid or revoked due to any circumstance within the control of the Developer.

10.8 Authority not liable regarding Approvals

- (a) The Developer releases the Authority from, and agrees that the Authority is not liable for, Loss arising from, nor any Costs incurred in connection with any conditions attaching to an Approval.
- (b) The Authority will not be liable, in any manner whatsoever, for any approval or monitoring which the Authority is required to give or perform in connection with the Developer's Project.
- (c) The Developer is not relieved of any obligation under the Project Documents as a result of any approval or monitoring by the Authority. The Developer may not claim against the Authority for any actual or perceived Loss relating to the Authority's exercise of its right to approve and monitor.

11. Access to Central Barangaroo and use of surrounding areas

11.1 Use of Central Barangaroo

The Developer acknowledges that:

- (a) Central Barangaroo will be used by:
 - (i) LLMP and its Employees and Agents for:
 - A. [REDACTED]
 - B. staging activities for its construction on Barangaroo South;
 - (ii) Crown and its Employees and Agents for staging activities for its construction on Barangaroo South;
 - (iii) [REDACTED]
- (b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

11.2 Use of Hickson Road and licence for Bridge Works

- (a) The Developer acknowledges and agrees that:
 - (i) it has been made aware that it should make its own enquiries and carry out its own investigations in relation to the use of Hickson Road and the availability of access to Central Barangaroo from Hickson Road; and

- (ii) it has made its own enquiries and carried out its own investigations in relation to the use of Hickson Road and the availability of access to Central Barangaroo from Hickson Road and does not rely on any information provided to it by the Authority in relation to the use of Hickson Road and the availability of access to Central Barangaroo from Hickson Road; and
 - (iii) it will make no claim against the Authority for any Loss, Costs, liability or damages in relation to any lack of availability of Hickson Road or access to Central Barangaroo from Hickson Road.
- (b) The Developer acknowledges that Hickson Road will be used by:
- (i) LLMP and its Employees and Agents for:
 - A. [REDACTED]
 - B. the Hickson Road upgrade works to be carried out in 3 stages as follows:
 - 1) Stage 1 - Shelley to Napoleon Street;
 - 2) Stage 2 - Napoleon to Globe Street;
 - 3) Stage 3 - [REDACTED]
- [REDACTED] and the Developer acknowledges that 2 lanes of Hickson Road may be closed off from time to time, in such areas and for such time periods as are yet to be confirmed; and
- (ii) [REDACTED]
- (c) The Developer further acknowledges and agrees that the Authority is the Roads Authority for that part of Hickson Road as prescribed in the *Roads Regulation 2008* (NSW) from time to time and which, as at the date of this Agreement, is set out in clause 88A of the *Roads Regulation 2008* (NSW) and shown in the plan attached as Annexure BB.
- (d) Despite the preceding provisions of this clause, but subject to the Developer complying with clause 12, the Authority will grant in its capacity as Roads Authority or if it is not at the relevant time the Roads Authority it will procure the grant of a licence of such area of Hickson Road as the Road Authority determines is required to enable the Bridge Works to be carried out, and such licence will be substantially on the terms of the Construction Licence mutatis mutandis.

11.3 Use of Council land and licence for Bridge Works

- (a) The Developer acknowledges and agrees that:
 - (i) it has made its own enquiries and carried out its own investigations in relation to the use of any land owned by Council which is required in order to carry out the Bridge Works including, any land comprising part of High Street to which the bridge (which is to be constructed pursuant to the Bridge Works) will connect; and

- (ii) does not rely on any information provided to it by the Authority in relation to the use of any land owned by Council and the availability of access to that land in connection with the Bridge Works; and
 - (iii) it will make no claim against the Authority for any Loss, Costs, liability or damages in relation to any lack of availability or access to any third party land in connection with the Bridge Works.
- (b) Without limiting the generality of clause 11.2 and this clause 11.3, the Authority acknowledges that the Developer's obligation to carry out the Bridge Works is subject to:
- (i) the Developer obtaining all necessary Approvals (including all planning Approvals) to carry out the Bridge Works; and
 - (ii) the Developer obtaining a licence from the Council to enable it to carry out the Bridge Works.
- (c) The Developer must, at its cost, use its best endeavours to obtain that licence as soon as practicable after the design for the Bridge Works is approved by the Authority in accordance with this Agreement.
- (d) The Developer must prepare an application for the grant of a licence for the Bridge Works and submit it to the Authority at least 20 Business Days before that application is intended to be lodged with the Council.
- (e) The Authority must approve or refuse to approve (giving reasons for any refusal) that application within 20 Business Days after receiving the whole package of the application for the licence for the Bridge Works.
- (f) If:
- (i) the Developer has used its best endeavours to obtain the licence for the Bridge Works; and
 - (ii) the Council has not granted that licence within [REDACTED]
- the Authority may give a notice to the Developer requiring the Developer to pay to the Authority the amount of the development and construction costs of the Bridge Works (as notified to the Authority in accordance with clause 7.3(e)) within 30 days after the date of the notice in lieu of carrying out the Bridge Works.
- (g) If the Authority gives a notice under clause 11.3(f), the Developer's obligations under this Agreement to carry out the Bridge Works are deemed to be discharged and released upon payment of the amount specified in clause 11.3(f).

11.4 Availability of Central Barangaroo

- (a) Subject to this clause 11.4 and clauses 11.1 and 12.3 and provided that the conditions in clauses 12.1(b)(vi) and 12.2 are satisfied, the Authority must make access available to the Developer to each area of each Block as shown in the Block Release Plan on the Block Release Date for the relevant Block.
- (b) Not less than 6 months prior to each Block Release Date and every month thereafter, the Authority must issue a notice in writing to the Developer confirming that:

- (i) the Authority considers it will be capable of providing access to the relevant Block by the relevant Block Release Date; or
 - (ii) the Authority will be delayed in providing access to any Block prior to the relevant Block Release Date for that Block, in which case the Authority must specify the date by which it reasonably considers it will be capable of providing access to the relevant Block.
- (c) Despite the contents of any notice issued in accordance with clause 11.4(b), the Authority must:
 - (i) give notice to the Developer as soon as practicable after becoming aware of the likelihood of any delay to the date on which the Authority will be capable of providing access to a Block; and
 - (ii) keep the Developer regularly informed in respect of the revised anticipated timeframes in which the Authority reasonably considers it will be capable of providing access to a relevant Block to the Developer having regard to the circumstances giving rise to the delay.
- (d) The Developer acknowledges that any notice, information or material provided by the Authority to the Developer pursuant to clause 11.4(b) is given by the Authority for indicative information purposes only and the Developer is not entitled to rely on any such information or to make any claim against the Authority in respect of any such information given by the Authority.
- (e) The Authority must, as soon as practicable, notify the Developer when a Block becomes available for the carrying out of the Works.

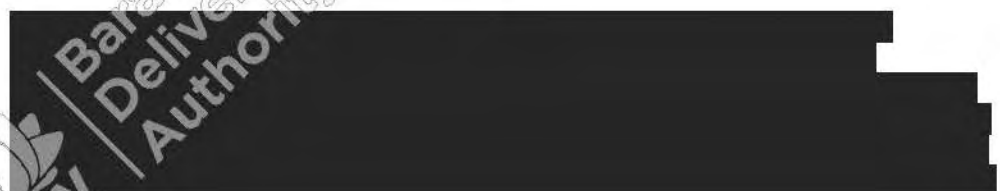
(f)



(g)



(h)



[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

(i) [REDACTED]

- [REDACTED]

- [REDACTED]

(j) [REDACTED]

- [REDACTED]

- [REDACTED]

(k) [REDACTED]

■ [REDACTED]

■ [REDACTED]

(l) [REDACTED]

(m) [REDACTED]

■ [REDACTED]

■ [REDACTED]

(n) [REDACTED]

■ [REDACTED]

[REDACTED]

(o)

11.5 Outgoings and other liabilities

Subject to clauses 45.7 and 45.8, on and from either the date on which the Authority makes access to a Block available to the Developer on or after the Block Release Date under clause 11.4(a), or, where clause 11.4(e) applies, from the date on which the Developer elects to avail itself of access prior to the relevant Block Release Date, the Developer must pay on time:

- (a) all Statutory Charges in relation to that part of Central Barangaroo whether imposed on the Authority, the Developer or Central Barangaroo (provided that, if such Statutory Charges are imposed on the Authority or Central Barangaroo, the Authority gives the Developer due notice of such Statutory Charges and the relevant dates for payment); and
- (b) all other costs and expenses in respect of that part of Central Barangaroo and any improvements on that part of Central Barangaroo, including all charges for electricity, gas, water and other services, as if the Developer were the owner of Central Barangaroo, and the Authority has no responsibility in that regard (provided that, if such costs and expenses are imposed on the Authority, the Authority gives the Developer due notice of such costs and expenses and the relevant dates for payment),

and if a Statutory Charge or a cost or expense is not separately assessed or attributable to that part of Central Barangaroo, the Developer must pay that proportion relevant to that part of Central Barangaroo determined by the Authority acting reasonably and notified by the Authority to the Developer.

11.6 Development within other projects

- (a) The Developer assumes the risk that any planned structure or project for other development projects within Barangaroo may not proceed, or may proceed in a different manner from that planned or anticipated as at the date of this Agreement.
- (b) The Authority does not accept any responsibility for a development project being developed in a different manner from the manner anticipated by the Developer.
- (c) The Developer will not be relieved of its obligations under this Agreement and may not make any Claim against the Authority for any actual or perceived Loss, Costs, liability or damage arising out of the development carried out by other developers or the Authority in other development projects in Barangaroo.
- (d) The Developer must not, and must not procure that any other party, make any Claim, objection or complaint in respect of any development application that is lodged with a Consent Authority and which is consistent with the Concept Plan or any Modification in force.
- (e) This clause 11.6 does not prevent the Developer from making a Claim in relation to any breach by the Authority of its obligations under clause 25.

11.7 Activities in adjoining properties

- (a) The Developer acknowledges the Authority has no rights or powers in relation to areas outside Barangaroo except in relation to its rights as Roads Authority under the *Roads Act 1993* (NSW).
- (b) The Developer must make its own enquiries in relation to the development of other development projects or other adjoining land outside Barangaroo and acknowledges that the Authority has made no representations or warranties in relation to the development of any other land outside Central Barangaroo.

11.8

[REDACTED]

11.9 No Claims by Developer

The Developer acknowledges and agrees that:

- (a) the matters referred to in this clause 11 may have an effect on the conduct of the Works and the Developer's Project;
- (b) without prejudice to the Developer's rights under clauses 21.1(e) or 11.4(h), it is not entitled to object to, or make a claim against the Authority because of the occurrence of any of the matters referred to in clause 11.

12. Conditions for grant of Construction Licence

12.1 Construction Licence Conditions Precedent

(a) The Authority will not:

- (i) enter into a Construction Licence of any Block;
- (ii) permit the Developer to enter onto Central Barangaroo or any part of Central Barangaroo; or
- (iii) grant a Construction Licence other than in accordance with clause 13.2,

unless and until all of the conditions in clause 12.1(b) are satisfied (or otherwise waived in the Authority's sole and absolute discretion).

(b) For the purposes of clause 12.1(a), the following conditions must be satisfied:

(i) the Authority is satisfied, acting reasonably, with each of the warranties, matters and materials provided in the Developer's Formal Notice under clause 12.2;

(ii) the Developer has provided the Performance Security in respect of the relevant Block to the Authority;

(iii)

(iv) without prejudice to the Developer's right to claim an extension of time under clause 21, in the case of:

- A. Block 5;
- B. Block 6;
- C. Block 7;
- D. Foreshore Block North; or
- E. Foreshore Block South,

the Block on which the Developer wishes to carry out Works has been vacated by all of the third parties referred to in clause 11.1;

(v)

(vi) in the case of the first Block for which a Construction Licence has been requested, the Developer has provided the Construction Commencement Bank Guarantee to the Authority.

12.2 Developer to satisfy conditions

The Developer must give a Formal Notice to the Authority at least 60 days before the Developer intends to commence construction:

- (a) **(Approvals)**
 - (i) confirming that the Developer has obtained any Modification required for the Developer's Project, and all Planning Approvals for the relevant Block; and
 - (ii) attaching copies of all relevant Approvals;
- (b) **(Insurance)**
 - (i) confirming that:
 - A. the Developer has effected all insurance policies required under clause 33; and
 - B. each of the insurance policies has been entered into in accordance with the relevant requirements of clause 33; and
 - (ii) attaching any certificates, documentation or other material required under clause 33.8;
- (c) **(Independent Certifier Deed)**
 - (i) attaching the Independent Certifier Deed executed by all parties to the document (other than the Authority); and
 - (ii) confirming that the Independent Certifier Deed conforms and has been prepared in accordance with the requirements of clause 29.8;
- (d) **(Financier's Side Deed)**
 - (i) (if relevant) warranting that the Developer has entered into a Financier's Side Deed with the Developer's Financiers (if any) on terms which have been agreed by the Authority pursuant to clause 44.7;
 - (ii) (where clause 12.2(d)(i) applies) attaching a copy of the Financier's Side Deed; and
 - (iii) [REDACTED]
- (e) **(Developed Design Documentation)**
 - (i) confirming that the Block and all works in respect of the Block will be carried out in accordance with the Developed Design Documentation for the Developer's Project in respect of Central Barangaroo; and
 - (ii) attaching the Developed Design Documentation in respect of the Block;
- (f) **(Developer's Staging Plan)**
 - (i) confirming that the Developer's Staging Plan for the Block accurately and appropriately reflects:

- A. the timeframes in which the Developer's Project on that Block will be carried out until Project Practical Completion; and
 - B. the physical and geographical growth of the Works on that Block throughout the course of the Developer's Project until the Date of Block Practical Completion;
 - (ii) attaching the current Developer's Staging Plan for the Block; and
- (g) **(Works Programme)**
 - (i) confirming that the Works Programme accurately and appropriately reflects:
 - A. the timeframes for major activities and the various Stages or parts in performing the Works on the Block; and
 - B. the programme which the Developer will carry out the Works to in order to achieve the Milestone Dates on the Block;
 - (ii) attaching the current Works Programme;
- (h) **(Building Contract - Public Domain Works)**
 - (i) (where any part of the Works relating to the Block comprises Public Domain Works) attaching a copy of:
 - A. the proposed Building Contract; and
 - B. the proposed Builder's Side Deed,

each in the form approved by the Authority pursuant to clause 29 and which has been duly signed by the Developer and the prospective Builder; and
 - (ii) confirming that the Building Contract and the Builder's Side Deed conform and have been prepared in accordance with the requirements of clause 29 and incorporate all changes as directed by the Authority under clause 29.3(b);
- (i) **(Infrastructure)**
 - (i) attaching the Developer's plan for the Infrastructure relating to the Block; and
 - (ii) warranting that the plan has been approved by the Authority in accordance with clause 26.4(a) and incorporates any reasonable changes required by the Authority;
- (j) **(Sustainability)** attaching a Sustainability Compliance Report together with the current version of the CPW in the form approved by the Authority under clause 23.5;
- (k) **(Social Outcomes)** attaching a current Social Outcomes Compliance Report;
- (l) [REDACTED]

(m) **(Work Health and Safety Management Plan)**

- (i) attaching a copy of the Work Health and Safety Plan; and
- (ii) confirming that the plan incorporates any reasonable changes required by the Authority in accordance with clause 30.5;

(n) **(General)**

confirming that, as at the date of the Formal Notice:

- (i) in relation to the Developer's obligations under this Agreement and any existing Construction Licence:
 - A. no Default Event exists; or
 - B. the Developer has satisfactorily rectified any Default Event which has previously arisen; or
 - C. the Developer is diligently working to rectify any default within the time period for the rectification as specified in the relevant Default Notice (and which period has not expired); or
 - D. the Developer is diligently complying with a Cure Plan to rectify any existing Default Event in accordance with clause 49;
- (ii) the Developer has met all payment obligations which have become due and payable under this Agreement; and
- (iii) the Developer will be able to pay when required:
 - A. the Development Rights Fees;
 - B. the Urban Art Contribution for each Block;
 - C. the Developer Contribution for each Block; and
- (iv) the Developer will be able to continue to finance the remainder of the Developer's Project.

12.3 Satisfaction/waiver of Construction Licence Conditions Precedent

(a) The parties acknowledge that the Construction Licence Conditions Precedent:

- (i) set out in clauses 12.1(b)(iii) and 12.1(b)(iv) are for the benefit of the Authority and the Developer and may only be waived by the Authority and the Developer; and
- (ii) except as specified in clause 12.3(a)(i) are for the benefit of the Authority and may only be waived by the Authority.

(b) The Developer must:

- (i) report at times reasonably required by the Authority on its progress in satisfying the Construction Licence Conditions Precedent; and

- (ii) respond reasonably and promptly to the requirements of the Authority or any Government Agency whose consent or approval the Developer must obtain to satisfy any Construction Licence Conditions Precedent by any relevant Sunset Date.
- (c) If:
 - (i) the Authority is not satisfied (acting reasonably, and including being unable to be satisfied because of a failure of the Developer to do or procure anything implicitly or explicitly required under clause 12.1, except for the satisfaction of the Construction Licence Conditions Precedent in clause 12.1(b)(iii) and 12.1(b)(iv)) in relation to the Developer satisfying the Construction Licence Conditions Precedent; or
 - (ii) the Authority has not waived any other Construction Licence Conditions Precedent, which have not otherwise been satisfied,

by the relevant Sunset Date for Sunset Event numbered 2 in Annexure B, the Authority may terminate any of the Project Documents (including this Agreement) in relation to the relevant Block or Blocks impacted by the Construction Licence Condition Precedent which has not been satisfied, by giving written notice to the Developer expiring on any day after the date of the notice, provided that should the Authority terminate some (but not all) of the Project Documents pursuant to this clause 12.3(c), it must also simultaneously terminate any Project Document which cannot be complied with because of the termination of any other Project Document. For the avoidance of doubt, a termination under this clause 12.3(c) will not apply in relation to a Block to the extent that, at the relevant time, a Construction Licence has been granted in respect of that Block and remains on foot at the time of the proposed termination.

(d)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


(e)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (f) The Authority and the Developer acknowledge and agree that this Agreement cannot be terminated as a result of the Construction Licence Conditions Precedent in clause 12.1(b)(iii) and clause 12.1(b)(iv) not being satisfied.
- (g) The Developer indemnifies the Authority for all Loss the Authority incurs as a result of the granting of development rights in relation to Central Barangaroo (either in whole or in part) following termination of the Agreement pursuant to clause 12.3(c), being the difference between the moneys it would have received from the Developer under this Agreement in relation to Central Barangaroo and the money which it did receive from a subsequent developer for the right to develop Central Barangaroo, in addition to the Authority's own costs arising as a result of the termination.
- (h) 

12.4 Notice of satisfaction of Construction Licence Conditions Precedent

If the Authority is satisfied that the Construction Licence Conditions Precedent have been satisfied, it must promptly give notice to the Developer confirming that the Construction Licence Conditions Precedent have been satisfied.

13. Construction Licence

13.1 Request for Construction Licence

At any time after the Authority has given notices under both of clauses 11.4(e) and 12.4, the Developer may give a Formal Notice to the Authority:

- (a) providing payment of any contributions which must be paid prior to the grant of a Construction Licence for the relevant Block to satisfy the requirements of clause 12.1(b) and in accordance with Annexure D (or if all relevant contributions have been paid in respect of the Block prior to the Developer giving a Formal Notice, confirming the amounts paid and the dates on which those payments were made); and
- (b) requesting the grant of a Construction Licence in respect of a Block for which a notice has been received under both of clauses 11.4(e) and 12.4.

13.2 Grant of Construction Licence

The Authority must grant a Construction Licence in favour of the Developer in respect of each Block within 10 Business Days of receipt of a request from the Developer under clause 13.1, provided that each of the Construction Licence Conditions Precedent has been satisfied.

13.3 No right to early access

- (a) Prior to satisfaction or waiver of the Construction Licence Conditions Precedent, the Developer must not enter parts of the relevant Block without the prior written approval of the Authority which may be granted or withheld by the Authority acting reasonably.
- (b) If the Authority agrees to permit the Developer to enter part of the Block prior to satisfaction of the Construction Licence Conditions Precedent, the Authority may require the Developer to execute a licence agreement in any form required by the Authority (acting reasonably) before allowing the Developer to enter onto a Block. The Developer must pay or reimburse the costs of the Authority in relation to the licence.

- (c) If this Agreement is terminated, and if requested by the Authority, the Developer must immediately Make Good (to the Authority's satisfaction) Central Barangaroo and any other part of Barangaroo which has been affected by the Developer's Project provided that the Developer need not remove any improvements erected on a Block which:
- (i) are the subject of a Lease; or
 - (ii) have achieved Stage Practical Completion; or
 - (iii) comprise underground basement areas, provided that:
 - A. the ground surface above any such underground basement areas must be constructed to a safe and stable condition; and
 - B. the underground basement areas must be waterproofed to the standard for their intended use as part of the Developer's Project.

13.4 No Estate

The Developer acknowledges that any licence granted to it under this clause 13, or any other Project Document does not entitle it to possession of or any legal or equitable estate in any part of Central Barangaroo.

14. Performance Security and Final Completion

14.1 Developer to provide Performance Security

Prior to commencing Works in respect of any Block, the Developer must provide to the Authority all Performance Securities for all Stages within the relevant Block (as calculated from time to time in accordance with Annexure G).

14.2 Using the Performance Security

- (a) The Authority may draw down upon the Performance Security in relation to any amount:
 - (i) which the Authority is expressly authorised to draw down under this Agreement or any Project Document;
 - (ii) which the Developer must reimburse to the Authority;
 - (iii) which the Authority pays on the Developer's behalf under this Agreement or any Project Document; or
 - (iv) which the Developer owes to the Authority (whether under this Agreement, the Construction Licence or any other Project Document).
- (b) The Developer acknowledges and agrees that:
 - (i) the amount secured by the Performance Security is a genuine pre-estimate of the detriment to the Authority arising from the Developer's failure to comply with the Project Documents (including, but not limited to, in respect of any obligation to reimburse or pay an amount to the Authority as described in clause 14.2(a) and from the delay in the provision of amenity to the people of New South Wales and visitors to Barangaroo due to that non-compliance);

- (ii) in calculating the amount for liquidated damages the Authority has:
 - A. carefully considered the amount of liquidated damages, relying on the agreement of the Developer and the General Guarantor that it is a genuine pre-estimate of those damages; and
 - B. taken into account the damage which will be suffered by the Authority, the Government and the State of New South Wales if those relevant obligations are not achieved by the relevant date specified in this Agreement; and
- (c) Presentation of, drawing on or enforcing the Performance Security will not prevent the Authority from seeking alternative or additional remedies or from claiming from the Developer Loss, expenses, costs or damages in excess of the amount received by the Authority on presentation or drawdown.

14.3 Developer to provide replacement Performance Security

The Developer must provide such replacement cash security or Bank Guarantees to the Authority as is necessary to ensure the amount secured by the Performance Security held by the Authority is at all times in accordance with Annexure G and this clause 14.

14.4 Reduction of Performance Security

- (a) Subject to clause 14.4(b), the Performance Security in respect of a Stage is reduced in the manner and at the times as set out in Part 2 of Annexure G for each Stage.
- (b) Despite clause 14.4(a), the Authority is not required to return or release any Performance Security in respect of a Stage unless and until the Developer has provided a replacement Performance Security for the reduced amount to which it is then entitled.

14.5 Requesting Final Certificate

- (a) The Developer must request the Independent Certifier to issue a Final Certificate in accordance with clause 14.5(c):
 - (i) **(in respect of each Stage, other than a Stage within a Foreshore Block):** subject to clause 14.5(b), at any time on or after the later of the date on which the Developer provides a final Occupation Certificate for the relevant Stage and the date which is 11 months after the Date of Stage Practical Completion for the Works carried out in respect of each Stage; or
 - (ii) **(in respect of each Stage within a Foreshore Block):** at any time on or after the later of the date on which the Developer provides a final Occupation Certificate for the relevant Stage and the date which is 23 months after the Date of Stage Practical Completion for the Works carried out in respect of each Stage within a Foreshore Block; or
 - (iii) **(in respect of each Stage which includes any Internal Infrastructure, equipment or shared facilities which are intended to service any other Stages within Central Barangaroo):** at any time on or after the date which is the later of the date on which the Developer provides a final Occupation Certificate for the relevant Stage and 23 months after the Date of Stage Practical Completion of the final Stage which is intended to be serviced by or which benefits from the Internal

Infrastructure, equipment or shared facilities included in the relevant Stage to which the Performance Security relates.

- (b) Despite clause 14.5(a)(i), where the Developer is unable to obtain a Final Occupation Certificate for a Stage which is part of the Office Component or the Residential Component, due to the Retail Component having not yet achieved Retail Final Completion, then provided all the Works required for the issue of a Final Occupation Certificate have been completed for both other Components, the Authority will accept an interim Occupation Certificate for the purpose of the issue of a Final Certificate. This clause 14.5(b) does not apply to the final Stage within Block 5 to achieve Practical Completion, at which time a final Occupation Certificate is required to be provided to the Authority for all Stages of the Developer's Project.
- (c) At the times specified in clause 14.5(a), the Developer must:
 - (i) provide to the Independent Certifier (with a copy to the Authority) evidence that the relevant Independent Sustainability Ratings required to have been achieved at that time have been obtained; and
 - (ii) request the Independent Certifier to issue a Final Certificate in respect of the Works for the relevant Stage and at the same time give the Authority a copy of that request.
- (d) On the date of expiry of the last Defects Liability Period in relation to the Developer's Project, the Developer must deliver to the Authority (with a copy to the Independent Certifier) the Climate Positive Certification.
- (e) The Independent Certifier must not issue the Final Certificate for the Block to which clause 14.5(d) applies until:
 - (i) the Developer has complied with its obligations under clause 14.5(d); and
 - (ii) all Independent Sustainability Ratings for the Developer's Project have been achieved.

14.6 Independent Certifier to assess

In respect of a Stage, within 5 Business Days after the receipt of the Developer's request under clause 14.5(b), the Independent Certifier must give the Developer (with a copy to the Authority at the same time) either:

- (a) a Final Certificate in relation to that Stage; 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.

14.7 Carrying out required work for Final Certificate

On receipt of the detailed list referred to in clause 14.6(b), the Developer must carry out the work referred to in that list and, on completion of that Work, request the Independent Certifier to issue a Final Certificate in respect of the relevant Stage, and clauses 14.5, 14.6 and this clause 14.7 will re-apply.

14.8 Notice of Final Certificate

In respect of each Stage, the Developer must give a Formal Notice to the Authority confirming that a Final Certificate has issued in respect of the Stage.

14.9 Authority to return Performance Security

- (a) Subject to the Authority exercising any right to draw upon the Performance Security in respect of a Stage, the Authority must return that unused part of the Performance Security in respect of each Stage to the Developer within 7 Business Days after the date specified in Column 5 of the table set out in Part 3 of Annexure G for that Stage.
- (b) Despite clause 14.9(a), the Authority is not obliged to return Performance Security provided in relation to Foreshore Block South for an amount equal to [REDACTED] of the Development Costs of Foreshore Block South on the issue of a Final Certificate for Foreshore Block South but is entitled to retain that Performance Security as security for the performance of the Developer's Sustainability Obligations. The Authority will return that Performance Security on the date being 10 Business Days after it receives the Climate Positive Certification.

15. Construction

15.1 Developer's general construction obligations

The Developer must procure the construction of the Works by a contractor (licensed as required by Law), and develop the Developer's Project:

- (a) in accordance with this Agreement, the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings, the Developer's Staging Plan and the Final Bid (including Variations approved in accordance with clauses 15.7, 15.8 or 16);
- (b) to ensure it accords with, the Objectives subject to the Final Bid except to the extent of any inconsistency agreed by the Authority in writing, or as agreed as part of the Design Review Documentation approval process under clauses 7.9 and 16.7 [REDACTED] or as required by the terms of any Approvals;
- (c) to ensure compliance with all Approvals, Law, the requirements of the CPW and requirements of any Government Agency;
- (d) in a timely manner and in accordance with the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo) so as to achieve each Milestone Event on or before the relevant Milestone Date for that Milestone Event;
- (e) using Good Design and Construction Practices;
- (f) to ensure that the Works are executed so that upon:
 - (i) each Date of Stage Practical Completion; and
 - (ii) each Date of Block Practical Completion;

the relevant Stage or Block (as applicable) complies with all Laws and standards which the Works are required to comply with, including (without limitation) those relating to safety for all uses contemplated in the Final Bid [REDACTED] and are fit for purpose (provided that, for the avoidance of doubt, the Developer will not be required to re-execute any Works forming part of a Stage to comply with any change in Law or standards that occurs after the Lease Commencement Date for that Stage);

- (g) in a manner that minimises disruption to other areas or Works within Barangaroo that may be caused by the Works or otherwise by the construction of the Developer's Project; and
- (h) to ensure it complies with any direction given by the Authority in accordance with this Agreement.

15.2 Adjoining precincts and land

- (a) The Developer must:
 - (i) [REDACTED] ensure the integration, co-ordination and physical compatibility of the carrying out of the Works with other development projects (including obtaining all necessary Approvals); and
 - (ii) [REDACTED]
- (b) The Developer acknowledges the importance of the integration, co-ordination and compatibility of the Internal Infrastructure within Central Barangaroo and between other development projects and must use its reasonable endeavours to ensure integration, co-ordination and compatibility of Internal Infrastructure with any External Infrastructure is achieved.
- (c) The Developer indemnifies the Authority for any Cost, Loss, liability or damage relating to physical damage to:
 - (i) adjoining development projects; or
 - (ii) completed development land outside Central Barangaroo; or
 - (iii) third parties,

caused or contributed to by anything arising out of, or connected with, the Developer's Project and which is the result of any negligent, wilful or wrongful act or omission of the Developer, or a breach of the Project Documents by the Developer.

[REDACTED]

15.3 Site Conditions

In addition to its obligations under clause 27, but subject to the Developer's rights under clause 21.3 and clause 6.2, the Developer acknowledges that:

- (a) it is aware of and [REDACTED] accepts responsibility for, all Site Conditions;
- (b) [REDACTED] it must procure the construction of the Developer's Project with proper consideration of the Site Conditions; and
- (c) [REDACTED] Central Barangaroo is fit for the purpose of the Developer's Project.

15.4 Subcontracting the Works

- (a) Subject to clauses 15.4(e) and 29.1, the Developer must not, without the Authority's prior written approval (such approval not to be unreasonably withheld or delayed), sub-contract or engage any consultants (other than the Key Consultants) for:
 - (i) any part of the Public Domain Works or any Works in connection with the delivery of the Internal Infrastructure; or
 - (ii) any component of Works for a value in excess of [REDACTED].
- (b) The Developer is not relieved of any of its obligations under this Agreement as a result of sub-contracting any part of the Works.
- (c) If the Developer wishes to sub-contract or engage any consultants (other than the Key Consultants engaged prior to the date of this Agreement) for any part of the Works, the Developer must give a Formal Notice to the Authority:
 - (i) attaching a copy of the relevant contract proposed to be entered into;
 - (ii) confirming that the proposed contract contains provisions which:
 - A. require that, if the Authority exercises a right to terminate the whole or any part of this Agreement, the Developer and the contractor must, at the election of the Authority, promptly execute a deed of novation novating the contract in favour of the Authority (to the extent that it relates to that part of this Agreement which has been terminated);
 - B. are sufficient to enable the Developer to grant the licence required under clause 40 of this Agreement; and
 - C. [REDACTED]
 - (iii) identifying those relevant provisions within the contract as referred to in clause 15.4(c)(ii); and
 - (iv) requesting the Authority's approval to enter into the proposed contract.
- (d) The Developer must procure that all consultants, including Key Consultants engaged prior to the date of this Agreement are engaged on the basis set out in clause 15.4(c)(ii).
- (e) The Authority consents to:
 - (i) Aqualand B Development Holding Pty Ltd, Aqualand 2 Development Pty Limited and Aqualand 5 Development Pty Limited being appointed to procure the carrying out of the Residential Component of the Works; and
 - (ii) Scentre Design and Construction Pty Limited being appointed by the Retail Investor to procure the carrying out of the Retail Component of the Works,
 on the terms of the Consortium Documents provided to, or approved by, the Authority.

15.5 Defective work

- (a) Prior to the Date of Stage Practical Completion in respect of any relevant Stage, if the Authority considers (acting reasonably) or receives notification from the Independent Certifier that the quality of any material or standard of workmanship in respect of any Public Domain Works (or any part of the Public Domain delivered as part of the Public Domain Works) does not comply with any Project Document, the Authority may:
 - (i) give written notice of this to the Developer requiring the Developer to promptly remove, re-execute, or replace the material or workmanship to rectify the default so as to comply with the requirements of this Agreement within a specified time which period must be reasonable in the opinion of the Authority having regard to the default; and
 - (ii) (if the Developer has not rectified the default in accordance with clause 15.5(a)(i)), itself remove, re-execute or replace the material or workmanship to rectify the default so that the relevant Works comply with the requirements of this Agreement.
- (b) The Developer indemnifies the Authority for any Loss, Costs, liability or damage incurred or suffered directly or indirectly by the Authority as a result of its failure to comply with clause 15.5(a).

15.6 Restriction on Variations

The Developer must not make any Variations except in accordance with clauses 15.7, 15.8 or 16.

15.7 Developer's Variations

- (a) The Developer may at any time before the Date for Block Practical Completion for the relevant Block request a Variation where it satisfies the Authority, acting reasonably, that:
 - (i) the Variation would be advantageous to the delivery of the Works or the achievement of the Objectives in the opinion of the Authority (reasonably held);
 - (ii) the Variation will not result in an overall reduction to the public benefit, amenity or value provided to the community, the State or the Authority in delivering the Developer's Project (without variation);
 - (iii) the Variation will not result in any delays to the Date for Project Practical Completion;
 - (iv) the Variation will not have an adverse effect on the:
 - A. workmanship or durability of an item of plant or equipment;
 - B. costs and timing of the provision of the Internal Infrastructure;
 - C. External Infrastructure; and
 - (v) the Variation is consistent with the Final Bid and the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo).
- (b) For the purposes of this clause 15.7, the Authority:

- (i) may approve or reject a Variation to the Public Domain Works in any of the Foreshore Blocks in its absolute discretion;
 - (ii) may give or withhold its approval to a Variation which relates to:
 - A. the interface between any Retail Component and any part of the Public Domain; or
 - B. the Internal Public Domain,
 in its reasonable discretion, provided that in exercising its reasonable discretion, the Authority must have regard to any potential adverse effect that not carrying out the Variation may cause to the quality or value of the Developer's Project (excluding the Public Domain); and
 - (iii) must not unreasonably withhold its approval to any Variation in respect of Works other than the Public Domain Works.
- (c) If the Developer wishes to propose a Variation under this clause 15.7 the Developer must submit a Formal Notice to the Authority attaching:
- (i) the proposed drawings and specifications;
 - (ii) reasons for the Variation; and
 - (iii) confirmation (together with appropriate substantiating information) that each of the requirements under clause 15.7(a) will be satisfied by the proposed Variation.
- (d) If the Authority approves the Variation the Developer may implement the Variation in the execution of the Works.
- (e) The Developer is not entitled to any extension of time to a Milestone Date as a consequence of a Variation proposed by the Developer.
- (f) The Developer must pay:
- (i) the costs of any Variation;
 - (ii) the Authority's reasonable costs incurred in assessing a Variation; and
 - (iii) the actual third party costs incurred by the Authority,
- in respect of any Variation considered by the Authority under this clause (whether or not that Variation is approved by the Authority).
- (g) Any dispute in relation to whether the Authority has reasonably rejected the Developer's proposed Variation under clause 15.7(b)(ii) and (iii) may be referred by the Developer for determination under clause 48.

15.8 Authority's Variations

- (a) The operation of this clause 15.8 to any Variation directed by the Authority under clause 16.8(c) or 16.8(d) in relation to any non-conforming materials, plant equipment or work, is subject to clause 16.8(e).
- (b) Subject to clause 15.8(a), at any time, the Authority is only entitled to propose a Variation:
- (i) to modify the means of vehicular or pedestrian ingress or egress to or from Central Barangaroo;
 - (ii) in relation to the Public Domain [REDACTED];
 - (iii) in relation to the Precinct Management Office, provided that such Variation does not result in the GFA of the Precinct Management Office exceeding the GFA referred to in clause 18.5(b) or result in a change of location from that specified in Annexure FF;
 - (iv) [REDACTED];
 - (v) [REDACTED]
- by giving written Notice to the Developer setting out details and specifications of the proposed Variation including the scope of works which the Authority requires to be carried out to effect the Variation. The Developer is not entitled to claim a Variation except where it has been directed to carry out a Variation by way of a Variation Order in accordance with this clause.
- (c) The Authority must not propose a Variation:
- (i) in respect of Works which have reached such a stage of construction completion that the Variation could not be incorporated into the Works;
 - (ii) [REDACTED] if that Variation is to the Internal Public Domain which:
 - A. will substantially alter or delete any vehicular or pedestrian ingress or egress to or from Central Barangaroo; and
 - B. would have a material adverse effect on the retail operations or operational viability of any income generating part of the shopping centre within the Retail Component (as evidenced in a written submission from the Developer as to that material adverse effect to the satisfaction of the Authority, acting reasonably),
 unless otherwise agreed by the Developer;
 - (iii) which would cause the Developer to be in breach of a Project Document (unless the Authority agrees in writing to waive that breach); or

- unless the Authority agrees to either waive that breach or obtain an amendment to that Approval to remedy the breach, at its cost.

- (d) Any dispute in relation to whether any proposed Variation has the effect set out in clause 15.8(c) may be referred by either party for determination under clause 48.
- (e) If the Authority proposes a Variation under clause 15.8(b) the Developer must within 20 Business Days after the date of receiving the Authority's proposal submit a 'Variation Offer' by issuing a Formal Notice to the Authority:
 - (i) specifying the Developer's genuine estimate of costs to vary the Works in accordance with the Authority's proposal comprising:

■ [REDACTED]

Barakat



■  ■

Barceloneta




































- (ii) attaching preliminary design drawings, plans or other relevant material which demonstrates how the Developer will carry out the Variation to ensure that Central Barangaroo continues to be fully integrated with the remainder of the surrounding areas together with any other information which the Developer considers would be relevant to the Authority's decision to proceed with that Variation (including any amendments to the Project Documents noting that amendments to the Project Documents will only be contemplated to the extent necessary to ensure that the Developer is not in breach of this Agreement as a result solely of carrying out the requested Variation);
- (iii) where the Developer considers that a proposed Variation will delay the achievement of Stage Practical Completion by the Date for Stage Practical Completion of the Stage to which the Variation applies or any other Stage which is impacted by the Variation, an estimate certified by the Independent Certifier of the duration of that anticipated delay; and
- (iv) where the Developer provides as part of the Formal Notice submitted in accordance with clause 15.8(e):
- A. evidence satisfactory to the Authority, acting reasonably, that the Variation would:
- 1) have a material adverse effect on the ability of the Developer to achieve Stage Practical Completion of a Stage of the Residential Component and registration of the strata scheme relating to that Stage by the sunset date under a majority of the

exchanged sale contracts for lots in that Stage (provided those sunset dates nominated in the contracts have reasonable regard to the Date for Practical Completion of the relevant Stage) and which would enable the purchasers under those exchanged sale contracts to rescind, and where the delay occasioned by that Variation is certified by the Independent Certifier; or

prevent or materially adversely affect access or egress to any Stage in the Residential Component as shown in the Schematic Design Drawings approved by the Authority to such an extent that the purchasers under a majority of the exchanged sale contracts for lots in that Stage would have the right to rescind (as confirmed in a legal opinion from the Developer's Solicitors provided to the Authority); and

B. confirmation from the Developer whether it:

- 1) refuses to carry out the Variation; or
- 2) will carry out the Variation (if directed to do so by the Authority pursuant to a Variation Order) and will accept an extension of time in respect of the relevant Milestone Date as determined in accordance with clause 21,

and any dispute in relation to whether any proposed Variation has such a material adverse effect may be referred by either party for determination under clause 48.

(f)

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- (g) Following the Developer's submission of a Variation Offer in response to a Variation proposed by the Authority, (unless the Developer has refused to carry out the Variation in accordance with clause 15.8(e)(iv)B.1)) and where that refusal has been referred for determination under clause 48, it has been determined that the Developer is entitled under clause 15.8(e)(iv) to refuse to carry out that Variation), the Authority and the Developer must use reasonable endeavours and negotiate in good faith to agree within 10 Business Days after the day on which the Authority receives the Variation Offer from the Developer (or such longer period as agreed between the parties) any amendment to the terms of the Variation Offer and (if applicable and agreed between the parties) any relevant Project Document (noting that amendments to the Project Documents will only be agreed to the extent necessary to ensure that the Developer is not in breach of this Agreement as a result solely of carrying out the requested Variation). If the parties have not so agreed the terms of the Variation Offer within that period of 10 Business Days, (or such longer period as is agreed between the parties), either party may refer the matter for determination under clause 48.
- (h) Following the Developer's submission of a Variation Offer in response to a Variation proposed by the Authority, if:
- (i) pursuant to clause 15.8(e)(iii) or 15.8(f) the Independent Certifier has assessed that the carrying out of the Variation which is the subject of the Variation Offer would directly cause the Developer to be delayed in achieving Stage Practical Completion by the relevant Date for Stage Practical Completion; and
 - (ii) the Developer has given confirmation under clause 15.8(e)(iv)B.2), where applicable, that it will carry out the Variation (if directed to do so by the Authority pursuant to a Variation Order),

the Developer's entitlement to an extension of time to the Date for Stage Practical Completion of the relevant Stage (if directed to be carried out pursuant to a Variation Order) will be determined in accordance with clause 21.

- (i) Except where the Developer has refused to carry out the Variation in accordance with clause 15.8(e)(iv)B.1), where applicable, and where that refusal has been referred for determination under clause 48, it has been determined that the Developer is entitled under clause 15.8(e)(iv) to refuse to carry out the Variation, the Authority may direct the Developer to carry out the Variation which is the subject of the Variation Offer by giving a Notice setting out details of the Variation and terms on which the Works are to be carried out (as amended and agreed under

clause 15.8(g) or, if referred for resolution under clause 48, as determined pursuant to that clause) (**Variation Order**).

- (j) If the Authority issues a Variation Order to the Developer:
 - (i) the Developer must promptly comply with the Variation Order (including, but not limited to, by carrying out such Works as specified in the Variation Order to effect the relevant Variation within the timeframe specified for those Works in the Variation Order (subject to the Developer's right to claim an extension of time in accordance with this Agreement);
 - (ii) the Authority must pay to the Developer the amounts specified in the Variation Order; and
 - (iii) on completion of the Works the subject of the Variation Order, the Independent Certifier must issue a certificate to the Developer and the Authority confirming that the relevant Works have been carried out in accordance with the Variation Order and the requirements of this Agreement.
- (k) The Developer may submit a Variation Works Claim to the Independent Certifier and the Authority, together with a copy of tax invoices (except where the relevant cost is not a taxable supply in which case reasonable evidence must be provided) from relevant third parties, evidencing the relevant Variation Works Costs incurred and paid by the Developer or payable by the Developer in respect of the relevant Variation Order in the month of the payment claim.
- (l) The Developer's Variation Works Claim must identify the total amount of Variation Works Costs relating to Works carried out in the month of the relevant payment claim as a percentage of the total Variation Works Costs.
- (m) Within 5 Business Days of receiving the payment claim under clause 15.8(k), the Independent Certifier must certify:
 - (i) that the Variation as set out in the Variation Order has been carried out in accordance with the Variation Order; and
 - (ii) that the Variation Works Costs for that Variation as set out in the Variation Works Claim are accordingly due for payment by the Authority to the Developer.
- (n) The Authority must pay to the Developer the amount certified under clause 15.8(m) within 20 Business Days of receipt by the Authority of the certificate issued by the Independent Certifier under clause 15.8(m) up to the aggregate amount of the Variation Order.
- (o) For the avoidance of doubt, the Developer is not entitled to claim from the Authority (and the Authority is not liable to pay) any amount arising from or in connection with the carrying out of Works to effect a Variation and which is in excess of amount specified in the relevant Variation Order to which those Works relate.
- (p) Where the Independent Certifier certifies Stage Practical Completion despite a Variation requested by the Authority under this clause 15.8 not being completed, the Developer must complete that Variation as soon as reasonably practicable after the relevant Date of Stage Practical Completion.

15.9 Quality assurance

- (a) The Developer must carry out or procure that the Works are carried out in accordance with the quality assurance systems conforming to the ISO 9000 or AS 3900 series of standards.
- (b) The Developer must, if requested by the Authority:
 - (i) provide evidence of its compliance with the Developer's quality assurance program;
 - (ii) permit the Authority to inspect any records relating to the Developer's quality assurance program at reasonable times and upon the provision of reasonable prior notice to the Developer; and
 - (iii) must procure that all subcontractors and consultants:
 - A. plan, establish and maintain a conforming quality system; and
 - B. use reasonable endeavours to ensure that the Authority has access to the quality system of the Developer's consultants and subcontractors so as to enable monitoring and quality auditing.
- (c) Any such quality assurance systems must be used only as an aid to achieving compliance with this Agreement and to document such compliance. The Developer is not relieved of any liability under this Agreement nor are its obligations to comply with this Agreement discharged, as a result of:
 - (i) compliance with the Developer's quality assurance program; or
 - (ii) anything which the Authority does or does not do with respect to the quality assurance program, including auditing the Developer's compliance with the program.

15.10 Safety and emergency

The Developer must at all times while performing the Works:

- (a) establish, maintain and comply with appropriate emergency safety and security procedures;
- (b) do all things prudent and necessary to protect people and property;
- (c) prevent nuisance and unreasonable noise and disturbance; and
- (d) protect Central Barangaroo and maintain security of the Works site and the perimeter of Central Barangaroo.

15.11 Safety and preservation work to prevent deterioration

- (a) If the Developer ceases to carry out the Works for a prolonged period (as determined by the Authority acting reasonably) the Developer must immediately upon a request by the Authority:
 - (i) protect and secure Central Barangaroo against weather and trespassers;
 - (ii) where relevant, treat, seal and cover all surfaces of Central Barangaroo to prevent deterioration; and

- (iii) make all Works safe.
- (b) If the Developer fails to comply with clause 15.11(a) within 7 days after the request by the Authority, the Authority may undertake those Works and may recover the cost of doing so from the Performance Security.

15.12 Reinstatement of damage

- (a) The Developer is wholly liable for all Loss, Costs, liability and damage which:
 - (i) occurs as a result of the execution of the Works; or
 - (ii) is caused on or in respect of any part of Central Barangaroo which is the subject of a Construction Licence; or
 - (iii) is occasioned upon any person or any property within any part of Central Barangaroo which is the subject of a Construction Licence.
- (b) Without limiting the Developer's liability in any way, the Developer must at the Developer's own cost promptly:
 - (i) Make Good any damage referred to in clause 15.12(a) to the satisfaction of the Authority (acting reasonably); or
 - (ii) compensate any party for any Loss, Costs, liability or damage referred to in clause 15.12(a),
- (c) The Developer is liable for all Loss, Costs, liability and damages which:
 - (i) occurs to any land surrounding Central Barangaroo; or
 - (ii) is occasioned on any person or any property on any land surrounding Central Barangaroo,

to the extent caused by the negligent act or omission of the Developer or the Developer's Employees and Agents. Without limiting the Developer's liability in any way, the Developer must at the Developer's own cost promptly Make Good any such Loss, Costs, liability or damage to the reasonable satisfaction of the Authority.

15.13 Defects Liability Period

- (a) If, at any time within the relevant Defects Liability Period, a defect in any aspect of:
 - (i) areas of the Developer's Project intended for use or access by the public;
 - (ii) the Internal Infrastructure; or
 - (iii) the Public Domain Works,
 becomes apparent, the Developer must rectify the defect.
- (b) For the purposes of clause 15.13(a), a 'defect' includes any design errors, construction faults, omissions, shrinkages, expansions or other construction or design defects.

- (c) Where appropriate, the Authority may issue a notice to the Developer during the Defects Liability Period stating any defect referred to in clause 15.13(a) relating to a Block which has achieved Block Practical Completion and specifying a reasonable time within which the Developer must rectify those defects (having regard to the nature of the defect) and which:
 - (i) ordinarily, must provide for a period of no less than 20 Business Days after the date of the Authority's notice to rectify the defect; but
 - (ii) if the Authority considers in its sole and absolute discretion that the defect poses a risk to the health and safety of any person, or could cause damage to any property, then may be for a period of less than 20 Business Days after the date of the Authority's notice to rectify the defect.
- (d) The Developer must promptly rectify any defects in the Works relating to a Block which has achieved Block Practical Completion at its own expense by appropriate rectification work and must complete the same within the time stipulated in the Authority's notice.
- (e) The obligations of the Developer under this clause 15.13 survive Block Practical Completion and Project Practical Completion.
- (f) [REDACTED]
- (g) [REDACTED]

15.14 Industrial relations

- (a) The Developer assumes all risks in relation to industrial relations in respect of the Developer's Project.
- (b) The Developer must:
 - (i) implement and maintain a best practice workplace relations programme; and
 - (ii) make improvements or modifications to the programme having regard to any suggestions the Authority may propose, acting reasonably, and providing that the workplace relations programme must at all times comply with all Laws.

15.15 Compliance with requirements of Government Agencies

The Developer must comply with all Approvals, Law and requirements of Government Agencies with respect to the development, occupation, maintenance and use of any part of Central Barangaroo:

- (a) including, without limitation:
 - (i) payment for all Services servicing Central Barangaroo;
 - (ii) meeting the requirements for provision of Internal Infrastructure in connection with Central Barangaroo;

- (iii) compliance with all Environmental Laws; and
- (iv) compliance with Laws administered by any municipal council whether it is the Council or the Authority or a transferee of municipal functions and powers in respect of Barangaroo,
- (b) on and from the earlier of:
 - (i) the date on which the Developer, occupies, uses or has a right to occupy or use the relevant part of Central Barangaroo; or
 - (ii) the date that the right to occupy or use that part of Central Barangaroo would have arisen but for the Developer's failure to provide the Performance Security required under clause 12.1(b)(ii).

15.16 Co-ordination and integration of Developer's Project

The Developer must co-ordinate and integrate all Stages of the Developer's Project generally, and also with regard to the colour, quality, style, form and amenity of the Developer's Project and Internal Infrastructure.

15.17 Key Personnel

- (a) The Developer must ensure that the Key Personnel are engaged in the execution of the Developer's Project in the roles described in Annexure E until Project Practical Completion has been completed unless:
 - (i) the Authority, acting reasonably, approves the substitution of a member of the Key Personnel;
 - (ii) the Authority, acting reasonably, approves the restructure of the Developer's resourcing of the Developer's Project having regard to the stage of completion of the Developer's Project at that time and the outstanding obligations of the Developer under this Agreement; or
 - (iii) a member of the Key Personnel dies, retires or resigns, other than to accept other employment with any other Related Entity of its employer, or otherwise suffers from ill health or a domestic necessity.
- (b) The Authority's consent is not required to:
 - (i) changes in position titles which do not impact on the performance of the Key Personnel's duties relevant to the Developer's Project; or
 - (ii) in the case of those members of the Key Personnel which are not designated in Annexure E as being fully dedicated to the Developer's Project, allocation of responsibilities to the relevant Key Personnel member which:
 - A. are unrelated to the Developer's Project; and
 - B. do not adversely impact the performance of the relevant Key Personnel's role and function in connection with the Developer's Project.
- (c) Any proposed change to Key Personnel by the Developer must:
 - (i) be notified in writing to the Authority within 15 Business Days of becoming aware of the need for change; and

- (ii) be accompanied by details of the name, qualifications and experience of the proposed replacement and a proposed handover program for that Key Personnel.
- (d) The Developer must promptly fill any vacancy in the Key Personnel with a person notified to the Authority under clause 15.17(c) and approved in writing by the Authority (such approval not to be unreasonably withheld).

15.18 Works Programme

- (a) The Developer must ensure that the Works Programme is maintained and updated to reflect the current status and progress of the Works (including any delays or adjustments to Works) and to show all major activities and the various Stages or parts in performing the Works in order to achieve each Milestone Event on or before the relevant Milestone Date for that Milestone Event.
- (b) The Developer must provide updated versions of the Works Programme to the Authority each month at the same time as the Project Co-ordination Group meets (or at such other monthly intervals as the Authority may direct from time to time).

15.19 Commencement of Final Retail Works

- (a) The Developer must give the Authority not more than 60 Business Days and not less than 30 Business Days' notice in writing of the date on which it proposes to commence construction of the Retail Final Works.
- (b) The Authority or the Developer may request the Independent Certifier to certify when the Retail Final Works have commenced.

16. Public Domain Works

16.1 Types of Public Domain Works and application of provisions

- (a) There are two types of Public Domain Works which are to be delivered by the Developer under this Agreement:
 - (i) Works in respect of the Internal Public Domain: including (but not limited to) such items as streets, footpaths, kerbing and guttering and nature strips within Block 5, Block 6 and Block 7 which will provide public access, open spaces and pathways between the buildings on those Blocks and surrounding land; and
 - (ii) Works in respect of the Foreshore Public Domain: being Works to construct the Public Domain (not comprising Internal Public Domain) within the Foreshore Block North and the Foreshore Block South.
- (b) For the avoidance of doubt, the provisions set out in this clause 16 apply only in relation to the Public Domain and the carrying out of the Public Domain Works.

16.2 Developer's obligation to carry out Public Domain Works and Authority's right to terminate

- (a) Subject to clause 16.2(b), the Developer must carry out the Public Domain Works in accordance with this Agreement and in doing so must ensure that:
 - (i) Foreshore Block North achieves Block Practical Completion by the Date for Block Practical Completion in respect of Foreshore Block North; and

- (ii) Foreshore Block South achieves Block Practical Completion by the Date for Block Practical Completion in respect of Foreshore Block South.
- (b) The Authority may in its sole and absolute discretion, exercisable at any time:
 - (i) direct the Developer to cease carrying out any part of the Public Domain Works in respect of any or all Foreshore Blocks, (excluding the area to be occupied by the Retail Component on Foreshore Block North as shown in Component Plan attached as Annexure AA);
 - (ii) despite any other provision of a Project Document, terminate any Construction Licence, Building Contract and any other agreement entered into between the Authority and the Developer (including the relevant provisions of this Agreement relating to Public Domain Works) in respect of the Foreshore Blocks or any Works in relation to any or all Foreshore Blocks;
 - (iii) require the Developer to vacate the Foreshore Blocks within a reasonable period of time, leaving in place any materials, improvements, fixtures or structures as directed by the Authority and removing any rubbish, equipment of the Developer and making good any damage to any or all Foreshore Blocks caused by the Developer (not being changes to those areas necessarily occasioned as a result of carrying out the Works up until the date of the Authority's direction under clause 16.2(b)(i)), to the reasonable satisfaction of the Authority;
 - (iv) appoint any other party to carry out the Public Domain Works in respect of any or all Foreshore Blocks;
 - (v) take any other action and do any other thing deemed reasonably necessary by the Authority to procure the timely and cost efficient delivery of the Public Domain Works in respect of any or all Foreshore Blocks in accordance with the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo).
- (c) Where the Authority has directed the Developer to cease carrying out Works in accordance with clause 16.2(b) the Developer must pay the amount of the Unspent Funding for the relevant component of the Public Domain Works calculated in accordance with clauses 19.2 and 19.3 to the Authority (and within the timeframe specified in clause 19.3).
- (d) For the avoidance of doubt, the Authority is not entitled pursuant to this clause 16.2, to direct the Developer to cease carrying out any part of the Public Domain Works which comprises Internal Public Domain.
- (e) If the Authority exercises its rights in relation to a Foreshore Block under clause 16.2(b), the Authority acknowledges and agrees that:
 - (i) the Authority must carry out and complete all Works required in relation to the relevant Foreshore Block in accordance with the Concept Plan (or if the Concept Plan is no longer in force, any replacement planning instrument governing Central Barangaroo); and
 - (ii) the non-completion or late completion of the Public Domain Works on a Foreshore Block due to the exercise by the Authority of its rights in accordance with clause 16.2(b) will not prevent the grant of a Lease over the relevant Premises in any Stage, or the release of any Performance Security due to be released, when Practical Completion of the relevant Stage is achieved.

- (f) The Authority is not obliged to exercise its rights under clause 16.2(b) in any circumstances whatsoever and will only do so at its own election. For the avoidance of doubt, the Authority is not required to exercise its rights under clause 16.2(b) even in circumstances where the developer has not delivered the Public Domain on a Foreshore Block on or before the relevant Milestone Date for the completion of the relevant Public Domain Works and may rely solely on its other rights under this Agreement.
- (g) The Authority is not liable for any Loss, Cost, liability or damage suffered by the Developer in exercising any of the Authority's rights under clause 16.2(b) and the Developer must not make any Claim, take any action or assert any right to set-off any amount which it is required to pay under this Agreement due to any matter arising from or in connection with the Authority exercising its rights under clause 16.2(b).

16.3 Co-ordination with development Works

The parties acknowledge and agree that it is optimal for the use and occupation of the Components to be constructed as part of the Developer's Project within Central Barangaroo that those parts of the Public Domain Works adjacent to or applicable to relevant Components are completed on or before the date of Stage Practical Completion for those Works on those Blocks being:

- (a) in relation to the first Stage to achieve Practical Completion in Block 7, Foreshore Block North; and
- (b) in relation to the first Stage in Block 5 to achieve Practical Completion, Foreshore Block South.

16.4 Benchmark for Public Domain Works

The Developer must ensure that, subject to any changes required by the Authority in accordance with this Agreement, all Public Domain Works are carried out to the standard of finishes and quality in accordance with the requirements as set out in clauses 7.2, 7.3, 7.4 and 16.8.

16.5 Consultation

Subject to the respective rights and obligations of the parties under this Agreement, the parties will work together in a consultative and collaborative way to facilitate the completion of the Public Domain Works applicable to a Stage (as set out in clause 16.3) on or before the Date for Stage Practical Completion for that Stage.

16.6 Costs of Public Domain

- (a) The costs of the Public Domain Works will be paid for by the Developer.
- (b) The Developer must carry out the Public Domain Works in accordance with this Agreement and by providing the contributions in the amounts and at the times as specified in the Public Benefit Delivery Cashflow in:
 - (i) Item 9 (Internal Public Domain); and
 - (ii) Item 10 (Foreshore Public Domain).

16.7 Public Domain documents

- (a) Discrepancies

- (i) If either party discovers any inconsistency, ambiguity or discrepancy in the Final Bid or any Approved Design Documents for the Public Domain Works, that party must give the other party and the Independent Certifier written notice of it. The Independent Certifier, thereupon, and upon otherwise becoming aware of those matters, must direct the Developer as to the interpretation and construction to be followed in accordance with the order of precedence set out in this Agreement.
- (ii) The Developer must bear the cost of compliance with any direction under this clause.
- (b) **Developer-supplied documents**
 - (i) The Developer must supply to the Authority the documents for the Public Domain Works and number of copies at the times or stages stated in clause 16.7(f).
 - (ii) Other documents and information relating to the Public Domain required by this Agreement, unless elsewhere stated in this Agreement, must be supplied not less than 20 Business Days before the work described in the documents is commenced and must be in a form satisfactory to the Authority (acting reasonably).
 - (iii) If the Developer submits a document relating to the Public Domain to the Authority, then except where this Agreement otherwise provides:
 - A. the Authority is not required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with this Agreement;
 - B. any acknowledgment or approval of the Authority does not prejudice the Developer's obligations; and
 - C. the Authority must give the appropriate direction in relation to the document within 20 Business Days including reasons the document is not suitable.
 - (iv) To the extent that:
 - A. the Design Documentation for the Public Domain does not comply with the requirements of this Agreement; and
 - B. the Authority issues a direction to the Developer to rectify the non-compliant elements in that Design Documentation,

such direction will not constitute a Variation.
 - (v) In assessing what is a Variation directed by the Authority, the Independent Certifier must not include as any part of the Variation any rectification of the Design Documentation which was non-compliant with the requirements of this Agreement prior to the direction being made.
- (c) **Design Documentation for Public Domain requiring permission to use**
 - (i) The Developer must not commence the manufacture, fabrication, erection or construction of any part of the Public Domain Works unless and until Design Documentation for those Works has been submitted to the Authority under clause 7 and the Authority has approved that Design Documentation pursuant to clause 7 for the execution of those Public Domain Works.

- (ii) At the time of submitting such design documents to the Authority, the Developer must notify the Authority in writing that they are documents for the Public Domain.
- (iii) Within 20 Business Days after the receipt by the Authority of any Design Documentation which has been so identified, the Authority may (acting reasonably and without being obliged to do so) give the Developer written notice that the Developer has permission to use the Design Documentation for the execution of the Public Domain Works or that the Developer does not have such permission.
- (iv) If the Authority notifies the Developer that it does not have such permission, the Authority must give reasons why permission was not given and the Developer must promptly submit new or amended Design Documentation for the Public Domain Works to the Authority and this clause 16.7(c) will apply to those documents.

(d) **No obligation to check documents**

The Authority is not required to:

- (i) review or comment on the Design Documentation for the Public Domain Works or any other documents or information provided by the Developer; or
- (ii) check the Design Documentation for the Public Domain Works or any other documents or information provided by the Developer for errors, omissions or compliance with this Agreement or any other requirements of this Agreement.

(e) **Availability**

The Developer must keep available to the Independent Certifier and the Authority:

- (i) on site, one complete set of the most recent Approved Design Documents for the Public Domain Works and supplied by a party; and
- (ii) at the place of manufacture or assembly of any significant part of the Public Domain Works off site, a set of the most recent Approved Design Documents for that part.

(f) **As built drawings, manuals and instructions**

- (i) As a condition precedent to Public Domain Practical Completion, the Developer must supply to the Authority, in addition to drawings and documents previously supplied in accordance with this clause:
 - A. one (1) preliminary printed set and preliminary electronic version of all drawings showing the levels, lines, positions, arrangements and dimensions of the Public Domain Works as built as at the date those documents are supplied to the Authority;
 - B. three (3) complete printed sets and complete electronic versions of the final operation and maintenance manuals (including operating and maintenance procedures) and other information required for the use, operation and maintenance of the Public Domain Works;

- C. 'As Built Documentation' - using the 'Building Information Modelling System' nominated by the Authority within 12 months of the date of this Agreement and in accordance with any format of landowner documentation adopted by the Authority [REDACTED]; and
 - D. such training agreed by the Authority (acting reasonably).
- (ii) Within 20 Business Days after the Date of Block Practical Completion in respect of a Foreshore Block, the Developer must supply to the Authority the number of complete printed sets and complete electronic versions of all drawings showing the levels, lines, positions, arrangements and dimensions of the Public Domain Works in final form and certified as reflecting the as built condition of the relevant Public Domain Works as at the date those documents are supplied to the Authority.
 - (iii) The Developer must progressively and promptly update the documents supplied under this clause as necessary to reflect any adjustments, modifications, additions or rectification work procured by the Developer to be carried out. The Developer must promptly provide the Authority with the number of complete printed sets and electronic versions of the updated documents as the Developer was required to provide under clause 16.7(f)(i).

16.8 Quality of Public Domain Works

(a) Quality of material and work

- (i) In carrying out the Public Domain Works, the Developer must use the materials, plant and equipment and standards of workmanship required by this Agreement.
- (ii) A description in this Agreement of any materials, plant, equipment or other items by a proprietary, trade or brand name, supplier's or manufacturer's name, model number or other specific means for the Public Domain Works does not in any way:
 - A. relieve, limit or exclude any of the Developer's obligations or liabilities under this Agreement with respect to the materials, plant, equipment or other items; or
 - B. limit or otherwise prejudice any of the warranties in this Agreement or other performance levels or performance requirements stated in this Agreement.

(b) Quality assurance

For the avoidance of doubt, in carrying out the Public Domain Works, the Developer must comply with clause 15.9.

(c) Defective work

- (i) If the Authority becomes aware of work done (including material provided) as part of the Public Domain Works by the Developer which does not comply with this Agreement, the Authority must as soon as practicable give the Developer written details thereof. If the subject work has not been rectified, the Authority may direct the Developer in writing to do any one or more of the following (including times for commencement and completion):

- A. remove the material from the site;
- B. demolish the work;
- C. redesign, reconstruct, replace or correct the work; and
- D. not deliver it to the site.

(ii)

If:

- A. the Developer fails to comply with such a direction within the time specified by the Authority in its direction; and
 - B. that failure has not been made good within 5 days after the Developer receives written notice from the Authority that it intends to have the work rectified by others,
- the Authority may have that work rectified and the Authority must certify the cost incurred as money due from the Developer to the Authority.

(d) **Acceptance of defective work**

Instead of a direction pursuant to clause 16.8(c), the Authority may direct the Developer in writing that the Authority elects to accept the subject work, and this will be deemed to be a Variation.

(e)

Variations due to non-conforming materials, plant, equipment or work

Any Variation directed by the Authority under clause 16.8(c) or 16.8(d), will be costed under clause 15.8(e)(i) and:

- (i) if the Variation so costed results in the Developer incurring less cost than would have been incurred if the Developer had been given a direction under clauses 16.8(c) or 16.8(d) or causes a decrease in the value to the Authority of the Public Domain Works, the Developer must within 20 Business Days after that Variation is completed, either:
 - A. pay the amount of the decrease to the Authority; or
 - B. offset the amount of the decrease against any other Variation for which the Authority must pay; and
- (ii) if the Variation (so costed) results in the Developer incurring more cost than would reasonably have been incurred if the Developer had been given a direction under clauses 16.8(c) or 16.8(d), the Developer must bear that increase.

(f)

General

- (i) The Developer must promptly remove, demolish, redesign, reconstruct, replace or correct any materials, plant, equipment, other items or work that is not in accordance with this Agreement.
- (ii) A failure by the Authority or anyone else to disapprove any materials, plant, equipment, other items or work, does not prejudice the power of the Authority to subsequently give a direction under clause 16.8(c), 16.8(d) or 16.8(e).
- (iii) Nothing in this clause prejudices any other right, power or remedy which the Authority or the Independent Certifier may have under this

Agreement or at law arising out of the failure of the Developer to provide materials, plant, equipment, other items or work in accordance with this Agreement.

- (iv) The Authority is not obliged to give a direction under this clause to assist the Developer.

(g) **Training and instruction**

If the Developer is required to provide any training or instruction to the Authority or its Employees and Agents in connection with the Public Domain Works, the Developer must:

- (i) ensure that all training or instruction is:
 - A. carried out by suitably qualified and skilled persons who are familiar with the operation, use and maintenance of the plant, equipment or services;
 - B. designed to meet the requirements of the trainee; and
 - C. carried out in accordance with the requirements of this Agreement; and
- (ii) provide the training and instruction (including but not limited to layout, operating systems and specialised equipment installed or acquired as part of the Public Domain Works) as a condition precedent to Public Domain Practical Completion.

(h) **Transfer of Ownership**

- (i) Ownership of Public Domain Works within a Block and within a Foreshore Block which must be completed as part of Practical Completion of that Block, including all materials, plant, equipment and other items supplied under this Agreement (other than temporary construction plant) will transfer to the Authority, free of any security interest on the Date of Block Practical Completion in respect of each Block.
- (ii) Until the Date of Block Practical Completion in respect of each Block, the Developer remains liable for all parts of the Block which are designated to become Public Domain and the Developer must ensure that all such land and everything on or under it, including fixtures, fittings, Internal Public Domain and Internal Infrastructure and the Public Domain within a Foreshore Block which must be completed as part of Practical Completion of any Stage in that Block is operated and maintained in a safe and secure condition and is adequately protected and insured (as directed by the Authority).

16.9 Liquidated Damages

- (a) The Developer must pay liquidated damages to the Authority monthly in arrears in accordance with clause 16.9(b) in relation to the failure to achieve each of:
 - (i) Public Domain Practical Completion in respect of any Public Domain Works in Foreshore Block North by the Date for Block Practical Completion for Foreshore Block North at the rate of [REDACTED] for the period commencing on the day after the Date for Block Practical Completion for the Foreshore Block North until the date when the

Developer achieves Public Domain Practical Completion in respect of any Public Domain Works in Foreshore Block North; and

- (ii) Public Domain Practical Completion in respect of any Public Domain Works in Foreshore Block South by the Date for Block Practical Completion for Foreshore Block South at the rate of [REDACTED] for the period commencing on the day after the Date for Block Practical Completion for the Foreshore Block South until the date when the Developer achieves Public Domain Practical Completion in respect of any Public Domain Works in the Foreshore Block South.
- (b) Subject to clause 16.9(c), the Developer must pay the amount of any liquidated damages (calculated from the Date for Block Practical Completion of the relevant Block) in accordance with clause 16.9(a) monthly in arrears commencing on the date which is one month after the relevant Date for Block Practical Completion and monthly thereafter for so long as liquidated damages are payable in respect of that Block.
- (c) Despite clause 16.9(b), the Authority agrees that, to the extent that the Developer has sought an extension of time in respect of achieving Block Practical Completion, the Authority must not demand payment under clause 16.9(b) unless and until the Independent Certifier (or any replacement Independent Certifier) issues a certificate specifying its determination of the Developer's claim for an extension of time, and upon the issuing of the Independent Certifier's determination, the full amount of all liquidated damages calculated pursuant to clause 16.9(a) (from the Date for Block Practical Completion so certified until the Date of Block Practical Completion) will be due and payable to the Authority on the date which is 10 Business Days after the date on which the Independent Certifier issues its determination.

16.10 Amount is genuine pre-estimate

The Developer and the General Guarantor:

- (a) acknowledge and agree that in relation to the Developer achieving Public Domain Practical Completion in respect of any Public Domain Works in any of the Foreshore Blocks:
 - (i) the amounts specified in clause 16.9 are a genuine pre-estimate of the detriment to the Authority of the delay in the provision of amenity to the people of New South Wales and visitors to Barangaroo if the Developer has not achieved Public Domain Practical Completion in respect of any Public Domain Works in any of the Foreshore Blocks on or before the Date for Block Practical Completion as relevant to each Block, and
 - (ii) in calculating the amount for liquidated damages the Authority has:
 - A. carefully considered the amount of liquidated damages, relying on the agreement of the Developer and the General Guarantor that it is a genuine pre-estimate of those damages; and
 - B. taken into account the damage which will be suffered by the Authority, the Government and the State of New South Wales if those relevant obligations are not achieved by the relevant date specified in this Agreement; and
- (b) agree to irrevocably waive, and forever surrender, give up and release, any right they may have, whether at Law or in equity, to challenge any demand the Authority makes for payment of any such amounts upon the basis that payment of those

invalid or unenforceable

16.11 Major Event Plan

- The parties acknowledge and agree that the Authority in accordance with the Retail Lease to remove the 'Casual Licensed Area' maximum of:
- (i) 10 events per annum
 - (ii) 48 hours per event



- [REDACTED]
- [REDACTED]
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- [REDACTED]
- [REDACTED]
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18.4 Dalgety Bond Stores

- (a) The Dalgety Bond Stores Agreement was entered into on or before the date of this Agreement. Some of the dates for performance of obligations under the Dalgety Bond Stores Agreement have passed as at the date of this Agreement.
- (b) The Developer must use all reasonable endeavours to procure that within 20 Business Days after the date of this Agreement, Aqualand Millers Point Pty Limited ACN 605 926 887:
 - (i) negotiates with the Authority, in good faith to endeavour to agree dates for the performance of those obligations under the Dalgety Bond Stores Agreement which are acceptable to Aqualand Millers Point Pty Limited, the Authority and TfNSW; and
 - (ii) acknowledges and agrees that the Authority may at any time permit TfNSW to occupy any part of the land comprising the Dalgety Bond Stores which the Authority is permitted to use or occupy pursuant to the Dalgety Bond Stores Agreement.
- (c) The Authority is not entitled to claim that Aqualand Millers Point Pty Limited is in breach of any of its obligations whose dates have passed as at the date of this Agreement until after those negotiations have been resolved, the Dalgety Bond Stores Agreement has been amended to reflect the outcome of those negotiations and Aqualand Millers Point Pty Limited has breached an obligation whose dates for performance have been so amended.

18.5 Precinct Management Office

The Developer must, at its own cost:

- (a) design and procure the construction of the Precinct Management Office in the location and otherwise in accordance with the Precinct Management Office Performance Brief and the Approved Design Documentation for the Precinct Management Office agreed in accordance with clause 7;

- (b) ensure that the Precinct Management Office will consist of a total maximum of

- (i) 5% less than the below ground GFA area specified above; and
- (ii) 5% less than the above ground GFA area specified above,

- (c) procure that the relevant Tenant grants a sublease to the Authority (or any nominee of the Authority being a Government Agency) of the Precinct Management Office on the terms set out in the Precinct Management Office Sub Lease and commencing on the Lease Commencement Date of the Lease of the Premises of which the Precinct Management Office forms part and in all circumstances, no later than the date on which any Lease is granted in respect of any Premises being the subject of the Works to deliver Block 7, Stage 5.

19. Public Benefit Delivery Cashflow

19.1 Developer to provide Public Benefit Contributions

- (a) The Public Benefit Contributions are to be provided by the Developer in accordance with this Agreement either by way of:

- (i) works in kind for:
 - A. the construction and landscaping of the Public Domain;
 - B. [REDACTED]
 - C. [REDACTED]
 - D. [REDACTED]
 - E. the fitting out of the Precinct Management Office; or

- (ii) Financial Contributions.

- (b) The Developer must provide the Public Benefit Contributions in the amounts (subject to any increases to those amounts contemplated by this Agreement and the notes in the Public Benefit Delivery Cashflow) and within the timeframes set out in the Public Benefit Delivery Cashflow and in accordance with this clause 19 and clauses 16, 17 and 18.

19.2 Calculation of Unspent Funding

- (a) If at any time the Developer is required to pay Unspent Funding to the Authority due to:
- (i) a decision being made by the Authority and notified to the Developer in accordance with:
 - A. clause 16.2(b) for the Developer to cease carrying out any of the Public Domain Works in respect of any or all of the Foreshore Blocks; or

B. [REDACTED]

(ii) [REDACTED]

the provisions of this clause 19.2 apply.

(b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c)

A Formal Notice for the purposes of clause 19.2(b) must:

(i) specify the Developer's assessment of the amount of committed non-recoverable or non-refundable Development Costs that have been reasonably incurred by the Developer in relation to the delivery of the Public Benefit Contribution which:

A. in the case of the Foreshore Public Domain Works, is calculated up until the date of the Authority's notice under clause 16.2(b); or

B. [REDACTED]

C. [REDACTED]

and

(ii) attach a report by the Quantity Surveyor certifying:

A. the amount of Development Costs incurred by the Developer in relation to the delivery of the relevant Public Benefit Contribution up until the date as relevantly determined under clause 19.2(c)(i);

- B. if the Authority has given a notice under clause 16.2(b), the amount of any demobilisation costs which are reasonably incurred by the Developer in ceasing to carry out the Public Domain Works on the relevant Foreshore Block;
- C. [REDACTED] and
- D. that those amounts as certified and all costs have been reasonably incurred and are non-recoverable or non-refundable in relation to the delivery of the relevant Public Benefit Contribution up until that date.
- (d) The amount of any 'Unspent Funding' in relation to the a Public Benefit Contribution is calculated as being the difference between:
- (i) the amount of the Public Benefit Contribution as relevantly specified in the Public Benefit Delivery Cashflow; and
 - (ii) the certified amount of Development Costs reasonably incurred by the Developer in relation to the relevant Public Benefit Contribution as specified in the report provided by the Quantity Surveyor under clause 19.2(c)(ii).

19.3 Payment of Unspent Funding

The Developer must pay to the Authority the amount of any Unspent Funding in relation to the [REDACTED] pursuant to this clause 19 on the basis and at the time required pursuant to one of the two methods specified below, (with such method to be elected by the Authority in its absolute discretion):

- (a) **(Method 1: payment in time with Public Benefit Delivery Cashflow)** - if directed by the Authority, on the date which the Public Benefit Contribution is required to be provided as specified in the Public Benefit Delivery Cashflow, the Developer must pay to the Authority the full amount of any Unspent Funding in respect of the [REDACTED] (as determined in accordance with clause 19.2); or
- (b) **(Method 2: early payment at net present value)** - if directed by the Authority, on the date specified in a notice given by the Authority, the Developer must pay to the Authority an amount representing the net present value of any Unspent Funding for the Public Benefit Contribution (as determined in accordance with clause 19.2) calculated by applying a discount rate of [REDACTED] and having regard to the date which the Public Benefit Contribution was required to be provided under the Public Benefit Delivery Cashflow and the date on which the Authority requires the Unspent Funding to be paid.

19.4 Monetary Public Benefit Contribution

- (a) If the Public Benefit Delivery Cashflow or this Agreement specifies that a Public Benefit Contribution is to be provided by way of payment of money to a third party, on or before the date for delivery of that Public Benefit Contribution specified in the Public Benefit Delivery Cashflow, the Developer must:
 - (i) pay the relevant amount of the Public Benefit Contribution to the third party specified under Public Benefit Delivery Cashflow; and

- (ii) provide a Formal Notice to the Authority:
 - A. confirming that the Developer has paid the relevant Public Benefit Contribution to the third party as contemplated by the Public Benefit Delivery Cashflow;
 - B. specifying the date of payment, the amount of the payment and the details of the third party to whom payment was made; and
 - C. attaching a copy of a written acknowledgement of receipt of the payment provided by the third party.
- (b) If the Public Benefit Delivery Cashflow specifies that a Public Benefit Contribution is to be provided by way of funding for the operation of any activities, facilities or other operations (including the funding of the early activation uses, [REDACTED]), the Developer must procure that any such funding is spent on the operation of the relevant activities, facilities or other operations during the time periods specified in the Public Benefit Delivery Cashflow.
- (c) To the extent that any funding obligation is insufficient to meet the costs of delivering other Public Benefit Contributions which the Developer is required to provide under the Public Benefit Delivery Cashflow, the Developer must bear the cost of meeting those obligations and is not entitled to any offset or credit to the extent that any funds expended by the Developer exceed the amount of funding required, or the value specified for any item of Public Benefit Contributions in the Public Benefit Delivery Cashflow.
- (d) If a Public Benefit Contribution is not provided on or before the date specified for that contribution in the Public Benefit Delivery Cashflow, the amount of that Public Benefit Contribution is escalated at the rate of [REDACTED] on each anniversary of the date on which that Public Benefit Contribution was required to be provided and until the date on which the Developer procures that the Public Benefit Contribution is provided.

20. Authority's rights to enter, inspect and carry out work

20.1 Authority's right to enter and inspect

- (a) Subject to clause 20.1(b), the Authority (and selected of its Employees and Agents) may, at the Authority's Cost, inspect the Works by entering onto that part of Central Barangaroo which is being occupied by the Developer to carry out the Works.
- (b) Subject to clause 20.5, where no notice requirements or restrictions apply, the Authority (and selected of its Employees and Agents) may only exercise its right to enter onto the relevant part of Central Barangaroo pursuant to clause 20.1(a) if:
 - (i) such inspection takes place during normal working hours and in the presence of a representative of the Developer;
 - (ii) the Authority has given the Developer not less than 2 Business Days' prior Notice of its intention to inspect the Works;
 - (iii) the Authority does not interfere with or impede the carrying out of the Works; and
 - (iv) the Authority complies with the Developer's site safety and security requirements (and which must be no more onerous than the Developer's Work Health and Safety Management Plan for the relevant Works).

20.2 Authority's notice to remedy

- (a) If at any time prior to Stage Practical Completion of a Stage the Authority reasonably believes that any part of that Stage, or any materials for incorporation into the relevant Stage, are materially inconsistent with:
- (i) the Approved Design Documents to the level of the Developed Design Documentation and where applicable, Tender Documentation and Issued for Construction Drawings relevant to that Stage (as amended pursuant to this Agreement); or
 - (ii) the requirements of this Agreement,
- then the Authority may provide the Developer with a Notice containing full details of any such inconsistency to the extent of the information available to the Authority.
- (b) The Developer must, within 5 Business Days after receiving a Notice from the Authority under clause 20.2(a), provide the Authority with a Formal Notice setting out the Developer's proposed plan for remedying any materials or workmanship identified by the Authority in its Notice.
- (c) The Authority must, within 10 Business Days after receiving a Formal Notice from the Developer under clause 20.2(b), provide a Notice to the Developer either:
- (i) approving the plan proposed by the Developer (and in giving its approval, the Authority may specify any conditions which it requires the Developer to comply with in implementing the plan); or
 - (ii) rejecting the plan proposed by the Developer and providing reasons why the plan is unacceptable to the Authority.
- (d) If the Authority gives a Notice under clause 20.2(c)(ii) rejecting a plan proposed by the Developer:
- (i) (if the Authority has not previously rejected a plan in respect of the same matter) the Developer must, within 5 Business Days after receiving the Notice, amend the plan to address the issues identified by the Authority and resubmit the plan for approval by the Authority under clause 20.2(c); or
 - (ii) (if the Authority has previously rejected a plan in respect of the same matter, and the revised plan submitted by the Developer remains unacceptable to the Authority) the Authority may (but is not required to) exercise any rights which it has under clause 20.3 without further Notice to the Developer.
- (e) If the Developer does not provide a Formal Notice setting out the Developer's proposed plan as required under clause 20.2(b), the Authority may (but is not required to) exercise any rights which it has under clause 20.3 without further Notice to the Developer.
- (f) If the Authority does not provide a Notice under clause 20.2(c):
- (i) the Authority's rights in respect of any matters under this clause 20 do not lapse, and the obligations of the Developer are not in any way deemed to be waived by the Authority; and
 - (ii) the Authority may give a Notice under clause 20.2(a) at any time whether or not it has previously given a Notice in respect of the same matter or thing.

20.3 Authority may take action

Subject to clauses 20.4 and 20.5, the Authority:

- (a) may do anything which should have been done by the Developer under this Agreement 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 Central Barangaroo for so long as it is reasonably necessary for that purpose; and
- (c) must use its reasonable endeavours not to interfere with the parts of Central Barangaroo not required by the Authority under this clause 20.3.

20.4 Notice of exercise of rights

The Authority may not exercise its rights under clause 20.3 unless:

- (a) the Developer has not remedied the relevant non-compliance in accordance with any plan for remedy agreed between the Authority and the Developer pursuant to clause 20.2(b) or otherwise within a reasonable time after it occurs after receiving Notice to remedy the non-compliance; and
- (b) the Authority has first given the Developer reasonable Notice of its intention to do so.

20.5 Emergencies

If there is, or the Authority or the Developer has grounds for believing there is, an emergency of any nature in connection with any Stage or Central Barangaroo:

- (a) on becoming aware of the emergency or possible emergency, the Authority or the Developer (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, the Developer or the Authority (as applicable) to address the emergency and ameliorate any risks; and
- (b) whether or not the Developer is aware of the emergency or possible emergency or is taking any action, the Authority is permitted to have reasonable access to Central Barangaroo, having regard to the nature of the emergency or possible emergency, and to take whatever action it reasonably considers is necessary to eliminate the emergency or assist the Developer to eliminate the emergency, and in doing so the Authority must use reasonable endeavours to comply with the Developer's site safety and security requirements subject to the nature of the emergency.

20.6 Costs of taking action

The Authority's rights under clauses 20.3 and 20.5 are in addition to any other remedies of the Authority for the Developer's non-compliance. The Developer must pay to the Authority on demand a sum equal to all Costs and liabilities reasonably incurred or suffered by the Authority in taking action under those clauses.

20.7 Release of Authority in relation to access and works

The Developer:

- (a) acknowledges that it is not entitled to make a Claim against the Authority (without prejudice to the Developer's rights under clause 21 to claim for an extension of time to achieve any Milestone Event by the relevant Milestone Date) in respect of anything arising out of clause 20; and

- (b) agrees that the Authority is not liable for, and releases the Authority from Claims, liability, Loss, Costs and damages arising from, and Costs incurred,

in connection with, anything the Authority is permitted to do under this clause 20 (except to the extent that any such Claim or Costs arises from the Authority failing to comply with any of its obligations under this clause 20 or by reason of any wrongful or reckless act by the Authority or any of the Authority's Employees and Agents).

20.8 Authority may carry out WH&S obligations

- (a) If the Developer fails to comply with an obligation under clause 30, the Authority may perform, or have performed, the obligation on the Developer's behalf and the Developer must pay to the Authority on demand an amount equal to the Costs incurred by the Authority in performing such obligations.
- (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 49, 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.

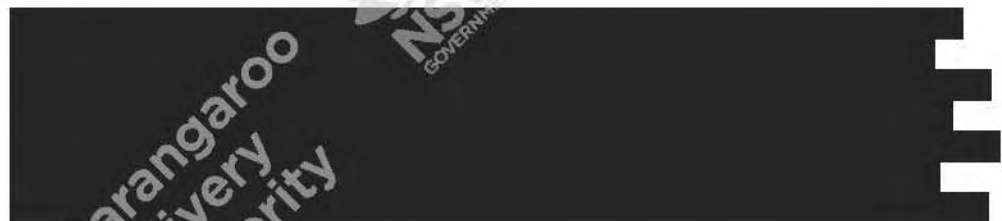
21. Timing

21.1 Progress and practical completion

The Developer must:

- (a) carry out the Works to ensure that Stage Practical Completion of each Stage occurs on or before the relevant Date for Stage Practical Completion;
- (b) carry out the Works to ensure that Block Practical Completion of each Block occurs on or before the relevant Date for Block Practical Completion for each Block;
- (c) carry out the Works to ensure that Project Practical Completion occurs on or before the Date for Project Practical Completion;
- (d) procure the Independent Certifier to deliver to the Authority a statement under which the Independent Certifier certifies to the Developer and the Authority that:
- (i) the relevant Milestone Event was achieved by the relevant Milestone Date or, if not, the date on which that Milestone Event was achieved; and
 - (ii) where the Milestone Event relates to the carrying out of the construction of Works, all construction Works in respect of that Milestone Event on the Developer's Project have been completed in accordance with this Agreement; and

- (e)



21.2 Notice of delays

- (a) If circumstances arise which cause a delay (or would reasonably be anticipated to cause or otherwise result in circumstances which would cause a delay) in the Developer achieving:
- (i) a Milestone Event by the relevant Milestone Date;
 - (ii) Stage Practical Completion of a Stage by the relevant Date for Stage Practical Completion of that Stage;
 - (iii) Block Practical Completion by the relevant Date for Block Practical Completion of that Block;
 - (iv) Public Domain Practical Completion for a Foreshore Block by the Date for Block Practical Completion for that Foreshore Block; or
 - (v) Project Practical Completion by the Date for Project Practical Completion,
- the Developer must give a Notice in accordance with clause 21.2(b).
- (b) Each and any time any circumstance described in clauses 21.2(a) or 21.4(a) arise, the Developer must, as soon as possible and in any event within 10 Business Days after the Developer or any of the Developer's Employees and Agents become aware, or ought reasonably have become aware, that:
- (i) the cause of the delay has arisen; or
 - (ii) (in respect of any ongoing event causing a delay or which would reasonably be anticipated to cause a delay) the commencement of that event,
- give Notice to the Independent Certifier and the Authority, specifying the details of that delay (or the circumstances which are anticipated to cause a delay).

21.3 Extensions of time

- (a) The Developer is entitled to an extension of time to a Milestone Date:
- (i) if the Developer is delayed in achieving:
 - A. a Milestone Event by the relevant Milestone Date;
 - B. Stage Practical Completion of a Stage by the relevant Date for Stage Practical Completion of that Stage;
 - C. Block Practical Completion by the relevant Date for Block Practical Completion of that Block;
 - D. Public Domain Practical Completion for a Foreshore Block by the Date for Public Domain Practical Completion for that Foreshore Block; or
 - E. Project Practical Completion by the Date for Project Practical Completion; and
 - (ii) except to the extent that the Developer's breach of this Agreement or the negligent act or omission of the Developer or its Employees and Agents has contributed to the relevant delay; and

- (iii) where the cause of the delay is:
- A. directly caused by the negligent act or omission of the Authority or its Employees and Agents or a breach by the Authority of its obligations under this Agreement;
 - B. a Force Majeure Event;
 - C. [REDACTED]
 - D. where the Developer has used all reasonable endeavours to obtain the consent to the carrying out of the High Street Landscaping Works from the landowner of the land on which the High Street Landscaping Works are being carried out, a failure by the landowner to consent to the carrying out of the High Street Landscaping Works within [REDACTED] from the date that the Developer lodges an application for consent to the carrying out of the High Street Landscaping Works (in the form approved by the Authority in accordance with this Agreement) with the landowner;
 - E. where the Developer has used all reasonable endeavours to obtain the development Approval of the Consent Authority to the High Street Landscaping Works, a failure by the Consent Authority to grant that development Approval within [REDACTED] from the date the Developer lodged the Application for that Approval with the Consent Authority (in the form approved by the Authority in accordance with this Agreement) and paid all fees in relation thereto;
 - F. where the Developer has used all reasonable endeavours to obtain the High Street Landscaping Works Licence, a failure by the Council to grant the Developer the High Street Landscaping Works Licence within [REDACTED] from the date that the Developer lodges an application for the High Street Landscaping Works Licence (in the form approved by the Authority in accordance with this Agreement);
 - G. where the Developer has used all reasonable endeavours to obtain the consent to the carrying out of the Bridge Works from the landowner of the land on which the Bridge Works are being carried out, a failure by the landowner to consent to the carrying out of the Bridge Works within [REDACTED] from the date that the Developer lodges an application for consent to the carrying out of the Bridge Works (in the form approved by the Authority in accordance with this Agreement) with the landowner;
 - H. where the Developer has used all reasonable endeavours to obtain the development Approval of the Consent Authority to the Bridge Works, a failure by the Consent Authority to grant that development Approval within [REDACTED] from the date the Developer lodged the Application for that Approval with the Consent Authority (in the form approved by the Authority in accordance with this Agreement) and paid all fees in relation thereto;

I. where the Developer has used its best endeavours to obtain a licence from Council in order to carry out the Bridge Works, a failure by the Council to grant the necessary licence within [REDACTED] from the date that the Developer lodges an application for that licence with Council (in the form approved by the Authority in accordance with this Agreement);

J. an event which:

- 1) causes damage or destruction of all or part of the Works; and
- 2) is outside the control of the Developer and the Developer's Employees and Agents; and
- 3) entitles the Developer to make a proper insurance claim under an insurance policy effected by or on behalf of the Developer in accordance with clause 33;

K. the Independent Certifier unreasonably withholding or delaying the granting of a Certificate of Practical Completion;

L. any Relics existing or discovered on Central Barangaroo;

M. any Threatened Species Claim or delay arising from the existence of Threatened Species;

N. Native Title Applications;

O.

[REDACTED]

[REDACTED]

[REDACTED]

P.

[REDACTED]

Q.

[REDACTED]

[REDACTED]

[REDACTED]

R.

[REDACTED]

S.

[REDACTED]

T. [REDACTED]

U. due to a suspension of rights of access to Central Barangaroo pursuant to clause 9 ('Suspension of right of access') of a Construction Licence except where that suspension is caused by or to the extent contributed to by the act or omission of the Developer, Aqualand or the Retail Investor (or any of their respective Employees and Agents) which would constitute a breach of the Construction Licence;

V. [REDACTED]

W. due to a failure by the Authority to provide details of the changes it requires to a Modification Application in accordance with clause 8.4(c); or

X. [REDACTED]

and to the extent that the Developer's breach of this Agreement or the negligent act or omission of the Developer or its Employees and Agents has not contributed to the relevant delay; and

(iv) the Developer has:

- A. given Notice to the Independent Certifier and the Authority in respect of that delay in accordance with clause 21.1(e); and
- B. made a request (in accordance with clause 21.3(b)) for the Independent Certifier to determine the Developer's entitlement to an extension of time; and
- C. complied with any requirements or requests for further information which the Independent Certifier has issued in response to the Developer's request under clause 21.3(b); and

(v) the Independent Certifier has determined that the Developer is entitled to an extension of time under this clause 21; and

(vi) the Developer gives a Formal Notice under clause 21.3(f).

(b) If the Developer reasonably considers that it is entitled to an extension of time to a Milestone Date, it may request the Independent Certifier to determine the Developer's entitlement to an extension of time by giving a Notice to the Independent Certifier (and at the same time, provide a copy of that Notice to the Authority);

(i) specifying the nature of the delay which the Developer asserts has arisen under clause 21.3(a)(iii);

- (ii) confirming that the Developer is not responsible for any contributing factors in causing the delay as referred to in clause 21.3(a)(iii); and
 - (iii) specifying the length of the delay in days claimed and providing supporting documentation reasonably required by the Independent Certifier to demonstrate the cause and length of the delay.
- (c) The Independent Certifier may require the Developer to provide further information or materials to enable the Independent Certifier to consider a request made under clause 21.3(b) and the Developer must promptly comply with any such requirement.
- (d) The Independent Certifier must give the Developer and the Authority written Notice of its determination within 10 Business Days after receipt of a request made under clause 21.3(b) including whether the Developer is entitled to an extension of time in accordance with this Agreement and, if so, the number of days of extension of time, which must not be more than the number of days claimed by the Developer. At all times subject to clauses 21.3(e) and (h), the determination of a request for an extension of time is final and binding on the Authority and the Developer.
- (e) Despite any other provision in this clause 21, if:
 - (i) more than one event is the subject of a notice under clause 21.2(b); and
 - (ii) those events cause concurrent delays to the achievement of a Milestone Event; and
 - (iii) to the extent that the delays are concurrent,

the Developer is entitled to an extension of time in accordance with this clause 21 but the Independent Certifier must not grant an additional extension of time, to the extent that the delays are concurrent and the subject of a notice previously given under clause 21.3(d).
- (f) If the Independent Certifier gives a Notice under clause 21.3(d) determining that the Developer is entitled to an extension of time, the Developer may apply that extension of time (as determined by the Independent Certifier) by giving a Formal Notice which:
 - (i) specifies the Milestone Date which is extended (which must be consistent with the Milestone Date which the Independent Certifier has determined was delayed);
 - (ii) specifies the period by which that Milestone Date is extended (which must not be longer than the period of the delay as determined by the Independent Certifier);
 - (iii) includes a warranty from the Developer confirming that the Developer is not responsible for any contributing factors in causing the delay as referred to in clause 21.3(a)(iii);
 - (iv) attaches a copy of:
 - A. the initial Notice given by the Developer under clause 21.2 in respect of the delay;
 - B. the Developer's request made in accordance with clause 21.3(b); and

- C. the Notice issued by the Independent Certifier under clause 21.3(d) determining that the Developer is entitled to an extension of time,

and the extension of time is deemed to apply in respect of the Milestone Date on the date of the Formal Notice.

- (g) A delay by the Independent Certifier to make a determination in response to a request for an extension of time under this clause 21 will not operate to extend a Milestone Date, but nothing in this paragraph prejudices any right of the Authority to damages, if any, payable in relation to a delay by the Developer for which it is not entitled to an extension of time.
- (h) If an event referred to in clause 21.3(a)(iii) (the occurrence of which would otherwise entitle the Developer to an extension of time) causes a delay which occurs at the same time as another event which is not referred to in clause 21.3(a)(iii), then to the extent the delays are concurrent, the Developer is not entitled to an extension of time.
- (i) The only extension of time which can be granted as a result of the events referred to in clauses 21.3(a)(iii)E and 21.3(a)(iii)F is an extension of time to the Milestone Date for Practical Completion of the High Street Landscaping Works.
- (j) The only extension of time which can be granted as a result of the events referred to in clauses 21.3(a)(iii)G, 21.3(a)(iii)H and 21.3(a)(iii)I is an extension of time to the Milestone Date for Practical Completion of the Bridge Works.
- (k) Any extension of time determined by the Independent Certifier as a result of an event referred to in clause 21.3(a)(iii)T will be determined on the basis that the Developer is entitled to an extension of the dates referred to in clause 21.3(a)(i) by one day for each day between 20 June 2017 and the date of satisfaction of the Conditions Precedent.

21.4 Sunset Dates

- (a) If circumstances arise which cause a delay (or would reasonably be anticipated to cause a delay) in the achievement of a Sunset Event by the Sunset Date for that Sunset Event the Developer must give a notice in accordance with clause 21.2(b).
- (b) The Developer is entitled to an extension of time to a Sunset Date:
- (i) if it is delayed in achieving a Sunset Event by the relevant Sunset Date; and
 - (ii) except to the extent that the Developer's breach of this Agreement or the negligent act or omission of the Developer or its Employees and Agents has contributed to the relevant delay; and
 - (iii) where the cause of the delay is:
 - A. directly caused by the negligent act or omission of the Authority or its Employees and Agents or the breach of this Agreement by the Authority;
 - B. a Variation pursuant to clause 15.8;
 - C. a Force Majeure Event, to the extent that the act or omission of the Developer or its Employees and Agents has not contributed to the delay;

- D. any of the events specified in clauses 21.3(a)(iii)C, 21.3(a)(iii)O, 21.3(a)(iii)P, 21.3(a)(iii)Q, 21.3(a)(iii)T, 21.3(a)(iii)W and 21.3(a)(iii)X,

and clauses 21.3(a)(iv), 21.3(b), 21.3(c), 21.3(d), 21.3(e), 21.3(f), 21.3(g) and 21.3(h) will apply as if the references to Milestone Dates in those clauses were references to Sunset Dates.

- (c) Any extension of time to any Sunset Date determined by the Independent Certifier as a result of an event referred to in clause 21.3(a)(iii)T will be determined on the basis that the Developer is entitled to an extension of that Sunset Date by one day for each day between 20 June 2017 and the date of satisfaction of the Conditions Precedent.

22. Environmental and native title obligations

22.1 Environmental Laws and Approvals

Without limiting any other provision of this Agreement, the Developer must:

- (a) promptly comply with and observe all Environmental Laws and relevant Approvals issued pursuant to any Environmental Law in carrying out the Developer's Project, the Remediation Works and its other obligations under this Agreement;
- (b) not cause any Contamination or Pollution.

22.2 Developer to minimise harm caused by Pollution

The Developer must take all reasonable steps to minimise the risk of harm to human health or the Environment arising from a Pollution Incident on any Block occupied by the Developer.

22.3 Environmental risk

The Developer acknowledges and agrees that subject to the express provisions of this Agreement, the Developer accepts all risk arising in relation to the matters disclosed or referred to in clause 22.7, 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,

excluding any wrongful or reckless act by the Authority or the Authority's Employees and Agents after the date of this Agreement.

22.4 Finding of Relics

The Developer:

- (a) acknowledges and agrees that:
 - (i) Relics may be found on, in or under the surface of Central Barangaroo or any other part of Barangaroo; and
 - (ii) as between the Authority and the Developer, 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 dealing with the Relic.

22.5 Native Title Applications and Threatened Species Claims

- (a) The Developer must do all things required under clause 22.5(b) if:
 - (i) there is a 'Native Title Application' (made pursuant to the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW)); or
 - (ii) a Threatened Species Claim is commenced, affecting any part of Central Barangaroo, any other part of Barangaroo or the carrying out of the Works.
- (b) Where clause 22.5(a) applies, the Developer must:
 - (i) continue to perform its obligations under this Agreement and the other Project Documents unless otherwise:
 - A. ordered by any court or tribunal; or
 - B. required by law; and
 - (ii) take all reasonable steps to mitigate any loss or Cost to the Authority in complying with its obligations under clause 22.5(b)(i).

22.6 No Claim by Developer

Subject to the Developer's right to make a claim for an extension of time in accordance with clause 21.3, the Developer may not make a Claim against the Authority for any Costs, Loss, liability or damages incurred by the Developer arising from or in connection with any of the matters referred to in clauses 22.4 and 22.5.

22.7 Condition of Central Barangaroo

- (a) The Developer acknowledges that it has been provided with the Disclosure Materials.
- (b) The Developer warrants that it has read and understood the Disclosure Materials.
- (c) [REDACTED] the Developer:
 - (i) [REDACTED]
 - (ii) accepts that Central Barangaroo is fit for the purpose of the Developer's Project;
 - (iii) releases the State in all of its capacities, the Authority and its officers and agents in relation to any Claims in relation to Site Conditions; and
 - (iv) will not make any claims against the Authority, the State or any other Government Agency for Costs, Loss, damage or Compensation, set off, damages or otherwise in respect of the condition of Central Barangaroo.
- (d) [REDACTED]

- (e) The Authority discloses that:
- (i) Mod 8 requires Hickson Park to extend into Block 5;
 - (ii) the current landscaping works proposed to be carried out by LLMP on that part of Block 5 which is Hickson Park are shown in the Hickson Park Drawing; and
 - (iii) [REDACTED]
- (f) [REDACTED]
- [REDACTED]
- [REDACTED]
- (g) The Developer releases the State in all of its capacities, the Authority and its officers and agents and indemnifies them against any Claims, Costs, Loss, damages, expenses, judgments, suits, awards and liabilities whatever (including any costs or expenses of defending or denying them and including the costs and expenses of preparing any necessary environmental assessment report or other report) arising out of or in respect of:
- (i) the suitability or condition of Central Barangaroo [REDACTED];
 - (ii) any Contaminant in, on, under or which has emanated from Central Barangaroo which is disclosed or referred to in the Environmental Reports;
 - (iii) any Contaminant caused, contributed to or exacerbated by the Developer or its agents, employees or contractors;
 - (iv) any work performed by or for the Developer to obtain any Approvals required in respect of any part of Central Barangaroo in order to allow for the Developer to carry out the Developer's Project or any failure of that work;
 - (v) any Approvals required in respect of any part of Central Barangaroo in order to allow for the Developer to carry out the Developer's Project being defective or invalid or having been improperly obtained or provided; and
 - (vi) any error, inaccuracy or deficiencies in any of the Disclosure Materials and any material related to the Disclosure Materials.
- (h) The release and indemnity provided by this clause 22.7:
- (i) will survive Project Practical Completion; and

(ii)

(i)

22.8 POEO Act Licence

The Developer acknowledges and agrees that:

- (a) the Authority holds the POEO Act Licence in respect of the Barangaroo project as a whole;
- (b) the POEO Act Licence regulates all activities conducted on all parts of Barangaroo including Central Barangaroo and the Works;
- (c) it must not commence any Works or do anything on Central Barangaroo which constitutes work or an activity which requires authorisation under the POEO Act unless and until a variation of the POEO Act Licence or a new licence under clause 22.8(j)(i) authorising that work or activity has been obtained in accordance with this clause;
- (d) it 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) it 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 Works, including any variation of the POEO Act Licence, as if the Developer was the licensee under the POEO Act Licence;
- (f) it must put in place, or comply with all management procedures, protocols or systems relating to compliance with the POEO Act Licence reasonably required by the Authority;
- (g) it 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) except to the extent prohibited by law, the Developer indemnifies the Authority against any Claim, Loss, Costs, liability or damages the Authority suffers or incurs arising out of or in any way in connection with a failure by the Developer to comply with its obligations under clauses 22.8(c) to (g);
- (i) to the extent that any variations to the POEO Act Licence are required to permit the carrying out of the Works, the Developer 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 may be withheld in its absolute discretion);
 - (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;
 - (v) on demand, reimburse any reasonable costs incurred by the Authority in its consideration and approval of the application; and
 - (vi) pay all fees and charges associated with any such variation; and
- (j) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

22.9 Remediation Works

- (a) Subject to clause 6, the Developer must at its own cost and risk:
 - (i) obtain all necessary Approvals for the Remediation Works;
 - (ii) (if required under the CLM Act) subject to the Authority's prior approval, appoint an accredited site auditor under the CLM Act in respect of the Remediation Works (**Site Auditor**);
 - (iii) (if required by an Approval) prepare any remedial action plan required under an Approval in consultation with the Authority for Central Barangaroo, and have the remedial action plan approved by the Site Auditor;
 - (iv) carry out the Remediation Works in accordance with all relevant Approvals, any remedial action plan, all requirements of the accredited site auditor, the requirements of any Environmental Laws and Government Agency and in accordance with any Technical Reports;
 - (v) obtain a site audit statement as defined in the CLM Act and its regulations in respect of Central Barangaroo which certifies that Central Barangaroo is suitable for its intended purpose; and
 - (vi) comply with and fulfil any and all conditions attaching to the Site Audit Statement relating to Central Barangaroo.
- (b) Subject to clause 21.3(a)(iii)S, the Developer acknowledges and agrees that, [REDACTED] the Developer assumes and is liable for all Loss, liability, Cost and risk associated with any remediation of any Contamination required to facilitate its development.
- (c) Subject to clause 21.3(a)(iii)S, [REDACTED] the Developer will carry out Remediation Works and bear all costs to complete the Remediation Works irrespective of the nature of the material which is required to be excavated.

22.10 Notification of and clean-up of Pollution Incidents

Where a Pollution Incident has occurred on any Block occupied by the Developer, the Developer must:

- (a) immediately (or as required by Environmental Law) notify the relevant Government Agency of any Reportable Pollution Incident in accordance with any duty to report under Environmental Law and notify the Authority as soon as possible thereafter;
- (b) notify the Authority as soon as reasonably practicable in relation to any Non-Reportable Pollution Incident in accordance with any agreed incident reporting protocol;
- (c) take all reasonable steps to protect people and the Environment from exposure to the Pollution Incident, until the nature and cause of the Pollution Incident has been identified and any required Clean-up Action has been completed to the reasonable satisfaction of the Authority and any relevant Government Agency that was, or should have been, notified;
- (d) undertake any Clean up Action necessary to clean up the Pollution arising from the Pollution Incident and rehabilitate the surrounding Environment if necessary;
- (e) promptly comply with any reasonable notice, order, direction or requirement of the Authority or any Government Agency in relation to any Pollution Incident;
- (f) promptly report to the Authority on any Clean up Action taken in relation to the Pollution Incident within a reasonable timeframe; and
- (g) permit the Authority access to any Block in accordance with any reasonable access requirements to determine whether or not the Developer has complied with its obligations under this clause 22.10.

22.11 Notice of breaches or complaints

Without limiting clause 22.10, the Developer must, as soon as practicable of its becoming aware, notify the Authority in writing of any:

- (a) breach or alleged breach of any Environmental Law relating to any Block occupied by the Developer (including any breach or alleged breach of any condition of any Approval issued pursuant to any Environmental Law) in accordance with any agreed incident reporting protocol and, as soon as reasonably practicable, specify whether such breach has been remedied or is not yet remedied, and details of the works and the proposed program to remedy the breach;
- (b) complaint received from any third party in relation to any Pollution Incident or Pollution into, on, affecting or from the any Block occupied by the Developer in accordance with any agreed incident reporting protocol; and
- (c) proceeding instituted or a notice, order, direction or requirement issued concerning non-compliance with any Environmental Law (including any breach or alleged breach of any condition of any Approval issued pursuant to any Environmental Law relating to the Developer's Project),

and provide a copy of any correspondence made to or received from any Government Agency concerning any matter referred to in this clause 22.11 and clause 22.10 to the Authority as soon as practicable after that correspondence is prepared or received by the Developer and any further information reasonably requested by the Authority in relation to the matter.

22.12 Waste Levies Proposal

- (a) The Developer may put a proposal to the Authority in relation to the waste levies payable in relation to the disposal of certain types of waste at waste disposal centres in the carrying out of the Works (**Waste Levies Proposal**).
- (b) If the Developer submits a Waste Levies Proposal to the Authority, the Developer must simultaneously provide evidence in writing of the assumptions it adopted in determining its estimates of the likely costs of waste levies likely to be incurred and the estimates of the cubic tonnages of various classifications of waste requiring disposal as a result of carrying out the Works.
- (c) The Authority and the Developer agree to negotiate in good faith to endeavour to agree the Waste Levies Proposal within [REDACTED].
- (d) If the Authority and the Developer agree the Waste Levies Proposal and all necessary Approvals are obtained in relation to it, the parties will enter into a deed to amend this Agreement, if necessary, to effect the Waste Levies Proposal.
- (e) If the Waste Levies Proposal has not been agreed and implemented by the date of Active Construction for Block 7, then this clause 22.12 is of no further force and effect.
- (f) Despite any other provision of this clause 22.12, the Developer must continue to comply with the Zero Waste Emissions Obligations.

22.13 Waste tracking information

If requested by the Authority, the Developer must promptly provide any information reasonably required by the Authority (in such format as reasonably requested by the Authority) in relation to:

- (a) the nature and quantum (measured by weight and volume) of any Waste handled or processed by the Developer at Central Barangaroo;
- (b) the methods used to process, treat, handle and transport any Waste at Central Barangaroo;
- (c) the process of disposal of any Waste (including details of contractors and end disposal point); and
- (d) any other matters in connection with the handling, stockpiling and tracking of Waste at Central Barangaroo as part of the Remediation Works or the Developer's Project.

23. Sustainability and Social Outcomes

23.1 Commitments by the Developer

The Developer acknowledges and agrees that in undertaking the Developer's Project it must at its cost and risk:

- (a) meet the Sustainability Obligations;

- (b) ensure that the Social Outcomes for each Block will be achieved no later than the relevant Social Study Date; and
- (c) do all that is required to be done to ensure that everything contemplated by the CPW is undertaken and completed in accordance with and by the dates specified within that plan and this Agreement provided that nothing in this clause 23.1(c) requires the Developer to do anything in connection with the use and operation of a Block after the date which is 24 months after the Date of Block Practical Completion in respect of that Block.

23.2 Preparation of CPW

- (a) The Developer must:
 - (i) within 90 Business Days after [REDACTED] the date on which the Developer elects to activate the operation of this clause pursuant to clause 1.9(a)(iii)A, update the CPW:
 - A. based on the draft in Annexure UU;
 - B. in accordance with the requirements of this clause 23;
 - C. so that it satisfies each of the requirements set out in the CPW Scope (as set out in clause 23.3); and
 - D. to include a program (setting out details including timeframes, processes and assessment methodologies) to demonstrate how, within [REDACTED] the Developer will determine what design, infrastructure, contractual frameworks and other systems it will implement in order to ensure that it will satisfy the Carbon Neutral Obligations, the Water Positive Obligations, Zero Waste Emissions Obligations and the Onsite Renewable Energy Generation Obligations (at the date on which those obligations must relevantly be satisfied); and
 - (ii) give a Formal Notice to the Authority:
 - A. attaching the proposed CPW;
 - B. attaching the certification given in accordance with clause 23.4;
 - C. confirming that the proposed CPW has been prepared in accordance with the requirements in clause 23.3; and
 - D. requesting the Authority's approval of that proposed CPW.
- (b) The Developer may, from time to time, seek the Authority's approval (such approval not to be unreasonably withheld or delayed) to an updated CPW prepared in accordance with this clause 23.

23.3 CPW Scope

- (a) The CPW must demonstrate how the Developer's Project will be undertaken to ensure that the Sustainability Obligations will be met as required by this Agreement.

- (b) The CPW must include:
- (i) the Sustainability Obligations and the processes, external certifications and other frameworks which the Developer will implement or procure in order to satisfy each of those Sustainability Obligations for the purposes of this Agreement;
 - (ii) details to demonstrate how the Sustainability Obligations will be satisfied, including minimising reliance upon the acquisition and retirement of Carbon Neutral Instruments;
 - (iii) details of all Internal Infrastructure which will be installed as part of the Works to deliver each Stage which is necessary to satisfy the Sustainability Obligations;
 - (iv) an appropriate procurement and approval regime in relation to any works to be carried out and any goods and services to be acquired under the CPW;
 - (v) critical milestone dates and activities which must be completed in order to ensure that the Sustainability Obligations will be achieved;
 - (vi) provisions ensuring the on-going maintenance and operation of any improvements, equipment, facilities, programs, services and any other items or initiatives which are provided pursuant to the CPW or which are otherwise required in order to achieve the Sustainability Obligations;
 - (vii) provisions ensuring that the CPW will be progressively complied with in respect of each Block as it achieves Practical Completion throughout the staged delivery of the Developer's Project provided that nothing in this clause requires the achievement of any Sustainability Obligation in respect of a Block which the draft CPW in Annexure UU contemplates as not being capable of satisfaction until either Block Practical Completion of another Block or Project Practical Completion is achieved;
 - (viii) the proposed consultation arrangements which the Developer will undertake with relevant public authorities and relevant utility providers;
 - (ix) provisions for the Developer to generally liaise with and provide information to the Authority to ensure that the Authority has sufficient detail to enable it to monitor the development of and compliance with the CPW;
 - (x) requirements for the Developer to keep the Authority informed as to the Developer's progress in achieving the Sustainability Obligations (which the parties acknowledge may be satisfied by reference to other reporting obligations carried out by the Developer in accordance with this Agreement); and
 - (xi) reasonable details regarding how the Developer proposes to satisfy each of the requirements under the CPW.

23.4 Certification regarding form of CPW

Simultaneously with the lodgement of any proposed (or amended proposed) CPW with the Authority for its approval, the Developer must also provide to the Authority a report prepared by the Developer (accompanied and supported by a report issued by the Lead Sustainability Consultant) which certifies that proper implementation of, and compliance by the Developer with, the CPW by the Developer in designing, constructing and delivering the Developer's Project the Sustainability Obligations will be met as required by this Agreement.