



Design and Construct Project Deed

- General obligations
- Roles and relationships
- Management and administration
- This deed
- Legal and other requirements
- Care of people, property and the Environment
- Insurance
- Security
- Access
- The Site and Services
- Quality
- Design development and documentation
- Construction
- Landscaping Maintenance
- Variations
- Defects
- Time and Completion
- Payment
- Notification of claims
- Dispute resolution
- Termination
- General
- Definitions and interpretation

- Schedules

IMPORTANT NOTE

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Pacific Highway Warrell Creek to Nambucca Heads

Deed made at **SYDNEY** on **11 JULY 2014**

Parties **Roads and Maritime Services (ABN 76 236 371 088)** of 101 Miller Street, North Sydney, NSW 2060 (RMS)

Acciona-Ferrovial Joint Venture an unincorporated joint venture comprising:

- (a) **Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251)** of Level 5, 88 Creek Street Brisbane QLD, 4000; and
- (b) **Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116)** of Level 9, 65 Berry Street North Sydney NSW 2060,
(together, the **Contractor**).

This deed provides

1. General obligations

1.1 General obligations (RMS and Contractor)

- (a) The Contractor:
 - (i) must investigate, design and construct the Project Works and Temporary Works in accordance with this deed;
 - (ii) warrants that the investigation, design and construction of the Project Works and Temporary Works will be fit for their intended purposes;
 - (iii) must perform the Landscaping Maintenance in accordance with this deed; and
 - (iv) subject to the express provisions of this deed, accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities or delays which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed.
- (b) RMS must pay the Contractor the Project Contract Sum in accordance with this deed.

1.2 Start and progress

The Contractor must:

- (a) start to perform its obligations under this deed from the date of this deed; and
- (b) regularly and diligently progress the Contractor's Work in accordance with this deed and ensure that Construction Completion is achieved by the Date for Construction Completion.

1.3 Co-operation

- (a) Each party must, without limiting any other obligations under this deed:
 - (i) do all it reasonably can to co-operate with the other party in all matters relating to this deed;
 - (ii) when requested, do all reasonable things necessary to avoid hindering the other party in the performance of that other party's obligations under this deed; and
 - (iii) promptly inform the other party of any fact, information or circumstance which comes to its attention and is reasonably likely to adversely affect:
 - A. the Date of Construction Completion, the Date of Final Completion, the Date of Opening Completion or any Milestone;
 - B. the cost of executing the Project Works, Landscaping Maintenance or Temporary Works; or
 - C. the quality of the Project Works, the Landscaping Maintenance or any other works or services required to be performed under this deed.
- (b) Nothing in clause 1.3(a) changes or in any way affects the rights or obligations of either



agroman
ferrovial

A

party under this deed, unless the parties agree in writing to change them.

2. Roles and relationships

2.1 Role of RMS Representative and RMS Surveillance Officers

- (a) RMS:
 - (i) must appoint a person to be RMS Representative for the purposes of this deed;
 - (ii) may at any time replace RMS Representative, in which event RMS must appoint another person as RMS Representative; and
 - (iii) must give written notice to the Contractor of all appointments under clauses 2.1(a)(i) and 2.1(a)(ii).
- (b) RMS Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of RMS Representative's functions under this deed (each a **RMS Assistant Representative**) and the notice must specify:
 - A. the functions which the RMS Assistant Representative may perform; and
 - B. whether the RMS Assistant Representative can give any Direction to the Contractor pursuant to this deed;
 - (ii) revoke or vary any appointment under clause 2.1(b)(i) by written notice to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing one or more RMS Assistant Representatives to exercise the function under clause 2.1(b)(i), provided that only one person may exercise the same function in relation to the same issue at any one time.
- (c) RMS Representative may:
 - (i) by written notice to the Contractor appoint one or a number of officers to perform the functions identified in clause 2.1(d) (each a **RMS Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 2.1(c)(i) by notice in writing to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a RMS Surveillance Officer to exercise the function under clause 2.1(c)(i).
- (d) The functions of a RMS Surveillance Officer may be all or any of the following:
 - (i) monitoring the Contractor's Work, including:
 - A. product quality;
 - B. quality management and verification;
 - C. environmental management;
 - D. occupational health, safety and rehabilitation;
 - E. control of traffic; and
 - F. community relations;
 - (ii) monitoring the Project Verifier's surveillance of the Contractor's activities; and
 - (iii) reporting the findings of its monitoring activities under clauses 2.1(d)(i) and 2.1(d)(ii) from time to time to RMS Representative.
- (e) RMS and the Contractor acknowledge and agree that:
 - (i) RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers act at all times as the servants or agents of RMS and are subject to the directions of RMS and will act solely in the interests of RMS;
 - (ii) subject to clause 2.1(e)(iii), a RMS Surveillance Officer is not entitled to issue a Direction to the Contractor, and if a RMS Surveillance Officer purports to do so:
 - A. the Contractor must not comply with and RMS is not bound by the purported Direction; and
 - B. RMS will not be liable for any Claim arising out of or in connection with any such purported Direction; and

- (iii) a RMS Surveillance Officer is entitled to issue a Direction to the Contractor under clause 5.7(f) and the Contractor must comply with any Direction by a RMS Surveillance Officer given or purported to be given under clause 5.7(f).
- (f) The Contractor must comply with any Direction by RMS Representative given or purported to be given under a provision of this deed. Only RMS Representative and, subject to the terms of any notice under clause 2.1(b)(i), RMS Assistant Representatives are authorised to give any Direction to the Contractor pursuant to this deed. The Contractor must not comply with, and RMS is not bound by, any Direction purporting to be made or given by any person on behalf of RMS, other than RMS Representative or a RMS Assistant Representative with relevant authority, or an RMS Surveillance Officer in the circumstances described in clause 2.1(e)(iii).

2.2 The Contractor's personnel

- (a) The Contractor must:
 - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
 - (ii) ensure that its personnel (including those referred to in clause 2.2(b)) as a team carry out the Contractor's Work in a manner that is courteous and co-operative and recognises the interests and needs of all stakeholders, including the local community.
- (b) The Contractor must:
 - (i) ensure those personnel specified in Schedule 19 perform the roles specified in Schedule 19;
 - (ii) subject to clause 2.2(b)(iii), not replace the personnel referred to in clause 2.2(b)(i) (or where the personnel are employees of a Subcontractor, ensure they are not replaced) without RMS Representative's prior written approval; and
 - (iii) if any of the personnel referred to in clause 2.2(b)(i):
 - A. die;
 - B. become seriously ill;
 - C. resign from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
 - D. become the subject of a direction under clause 2.2(d),
 replace them (or where they are personnel of a Subcontractor, ensure they are replaced) with personnel of at least equivalent experience, ability and expertise (including the experience, ability and expertise required by Schedule 19) approved by RMS Representative.
- (c) The personnel referred to in clause 2.2(b) (including any replacements) must:
 - (i) carry out the functions specified for them in this deed; and
 - (ii) otherwise be available for consultation with RMS Representative when RMS Representative reasonably requires.
- (d) RMS Representative may, if he or she considers it reasonable to do so, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 2.2(b), the Project Verifier and the Proof Engineer) from the Site, the Local Road Works Areas, the Temporary Works Areas, the Works and the Contractor's Work.
- (e) The Contractor must ensure that any person the subject of a direction under clause 2.2(d) is not again employed in the Contractor's Work or on the Site, the Local Road Works Areas, the Temporary Works Areas or the Works.
- (f) The Contractor must ensure that the Project Verifier, the Quality Manager, the Environmental Representative and each of the Contractor's Subcontractors:
 - (i) do all they reasonably can to co-operate with RMS Assistant Representatives and RMS Surveillance Officers;
 - (ii) do all they reasonably can to avoid hindering RMS Assistant Representatives and RMS Surveillance Officers; and

- (iii) provide, upon request, such information as a RMS Assistant Representative or a RMS Surveillance Officer reasonably requires.
- (g) Where the Contractor requests RMS Representative's approval of a replacement pursuant to clauses 2.2(b)(iii)A, 2.2(b)(iii)B or 2.2(b)(iii)C of any of the personnel referred to in clause 2.2(b)(i), RMS Representative must provide a response to the Contractor within 10 Business Days from the date the Contractor's request and any other information required by RMS Representative is submitted to RMS Representative.

2.3 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RMS to exercise any of its functions and powers pursuant to any Law.
- (b) The Contractor acknowledges and agrees that, without limiting clause 2.3(a), anything which RMS does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by RMS under this deed and will not entitle the Contractor to make any Claim against RMS.
- (c) The Contractor acknowledges and agrees that:
 - (i) there are many Authorities (other than RMS) with jurisdiction over aspects of the Contractor's Work, parts of the Site, the Local Road Works Areas, the Temporary Works Areas and areas affected by the Contractor's Work;
 - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Work; and
 - (iii) it bears the full risk of all occurrences of the kind referred to in clause 2.3(c)(ii) and will have no Claim against RMS arising out of or in any way in connection with such occurrences (including in circumstances where RMS may have become involved in matters relating to the Contractor's Work with a relevant Authority).

2.4 Project Verifier

- (a) The Project Verifier is to be engaged at the Contractor's cost on the terms of the Deed of Appointment of Project Verifier.

The Project Verifier's role is to:

 - (i) independently verify in accordance with the Deed of Appointment of Project Verifier that:
 - A. the Project Works; and
 - B. the relevant elements identified in Item 13A of Schedule 1 of the Temporary Works,comply with the requirements of this deed;
 - (ii) make determinations on matters that this deed expressly requires be determined by the Project Verifier; and
 - (iii) otherwise perform the functions and activities identified in the Deed of Appointment of Project Verifier.
- (b) The parties acknowledge and agree that the Project Verifier is obliged to act independently of the Contractor, RMS and any of their Subcontractors.
- (c) The Contractor must provide the Project Verifier with all information and documents and allow the Project Verifier:
 - (i) to attend design meetings, including the Project Design Group meetings;
 - (ii) access to the Construction Site and all places at which the Contractor's activities are being undertaken, provided that the Project Verifier must comply with the reasonable directions of Acciona Infrastructure Australia given in its capacity as Principal Contractor; and
 - (iii) to insert Hold Points or Witness Points in the Project Plans and designate the Nominated Authority to release these and any other Hold Points,all as may be:
 - (iv) necessary or reasonably required by the Project Verifier or RMS Representative, to

- allow the Project Verifier to perform its obligations under the Deed of Appointment of Project Verifier; or
- (v) reasonably requested by the Project Verifier or reasonably directed by RMS Representative.
- (d) The Contractor must provide to RMS Representative a certificate or certificates (as the case may be) executed by the Project Verifier in the form of:
- (i) Schedule 14:
 - A. every 3 months from the date of this deed up to the end of the Landscaping Maintenance Period; and
 - B. at the end of the Landscaping Maintenance Period as a condition precedent to RMS Representative issuing a notice to the Contractor under clause 14.5(b)(i);
 - (ii) Schedule 16 as a condition precedent to Construction Completion;
 - (iii) Schedule 17 on request in connection with the rectification of particular Defects nominated by RMS Representative; and
 - (iv) Schedule 18 upon the expiry of the last Defects Correction Period as a condition precedent to Final Completion.
- (e) Nothing that the Project Verifier does or fails to do pursuant to the purported exercise of its functions and activities under the Deed of Appointment of Project Verifier will entitle the Contractor to make any Claim against RMS.

2.5 Proof Engineer

- (a) Any Proof Engineer is to be engaged by the Contractor, at the Contractor's cost.
- (b) The Contractor:
 - (i) must obtain RMS approval to the identity of any Proof Engineer and any replacement Proof Engineer, each of whom must have the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed; and
 - (ii) warrants to RMS that each Proof Engineer:
 - A. has at least the qualifications, experience and expertise described in Schedule 47; and
 - B. has the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed.
- (ba) Where the Contractor requests RMS' approval to the identity of any Proof Engineer and any replacement Proof Engineer pursuant to clause 2.5(b)(i), RMS Representative must provide a response to the Contractor within 20 Business Days from the date the Contractor's request and any other information required by RMS Representative is submitted to RMS Representative.
- (c) A Proof Engineer's role is to:
 - (i) attend relevant Project Design Group meetings;
 - (ii) in respect of the relevant elements identified in Item 14 of Schedule 1 of each of the Project Works and the Temporary Works:
 - A. undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Project Works and associated Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;
 - B. provide to the Contractor, with copies to the RMS Representative and the Project Verifier, a comprehensive report on the assessment required under clause 2.5(c)(ii)A with conclusions and in accordance with the requirements of the section of the Scope of Works and Technical Criteria identified in Item 29(a) of Schedule 1; and
 - C. independently certify that those Project Works and any associated

Temporary Works:

- 1) are adequate and suitable for their intended purpose; and
 - 2) comply with the Scope of Works and Technical Criteria,
and issue the certification document referred to in clause 12.2(h)(iv); and
- (iii) make determinations on matters this deed expressly requires be determined by the Proof Engineer.
- (d) The parties acknowledge and agree that:
- (i) the Proof Engineer is obliged to act independently of the Contractor, RMS and any of their Subcontractors;
 - (ii) the Proof Engineer must not be an employee of the Contractor, RMS, the Project Verifier or any of their Subcontractors; and
 - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to the Contractor must be in writing and must be made available to RMS Representative, upon request.
- (e) The Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
- (i) to attend design meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of Acciona Infrastructure Australia given in its capacity as Principal Contractor,
all as may be:
 - (iii) necessary or reasonably required by the Proof Engineer or RMS Representative, to allow the Proof Engineer to perform its obligations under this deed; and
 - (iv) requested by the Proof Engineer or directed by RMS Representative.
- (f) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against RMS.

2.6 Environmental Representative

- (a) The Environmental Representative is to be engaged at the Contractor's cost on the terms of the Deed of Appointment of ER.
- (b) The Environmental Representative's role is to perform and fulfil the function of the "Environmental Representative" or "ER" as contemplated by the Planning Approval and in accordance with the Deed of Appointment of ER.
- (c) The parties acknowledge and agree that the Environmental Representative is obliged to act independently of the Contractor, RMS and any of their Subcontractors.
- (d) The Contractor must provide the Environmental Representative with all information and documents and allow the Environmental Representative:
- (i) to attend meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's activities are being undertaken, provided that the Environmental Representative must comply with the reasonable directions of Acciona Infrastructure Australia given in its capacity as Principal Contractor,
all as may be:
 - (iii) necessary or reasonably required by the Environmental Representative or RMS Representative, to allow the Environmental Representative to perform its obligations under the Deed of Appointment of ER; or
 - (iv) requested by the Environmental Representative or directed by RMS Representative.
- (e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of ER will entitle the Contractor to make any Claim against RMS.

2.7 Environmental Manager

- (a) In accordance with clause 2.2(b), the Contractor must ensure that there is an Environmental Manager who performs the role referred to in Schedule 19.
- (b) The Contractor must provide to RMS Representative a certificate executed by the Environmental Manager in the form of Schedule 29 every 3 months from the date of this deed until the Date of Construction Completion.

2.8 Subcontracts

- (a) Subject to clause 2.8(b), the Contractor may enter into Subcontracts for the performance of its obligations under this deed.
- (b) The Contractor must not enter into any Subcontract in respect of the categories of work set out in Schedule 24 (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under RMS pre-qualification and registration procedures or clause 2.8(c) applies.
- (c) Unless RMS Representative otherwise approves in writing (which must not be unreasonably withheld or delayed), the Contractor must enter into subcontracts with:
 - (i) the Subcontractors specified in Item 15 of Schedule 1 in respect of the relevant parts of the Contractor's Work specified in Item 15 of Schedule 1; and
 - (ii) the Proof Engineer specified in Item 11 of Schedule 1 in respect of the role of Proof Engineer under clause 2.5 of this deed.
- (d) The Contractor's obligations under this deed are not lessened or otherwise affected by entering into Subcontracts or by any approval by RMS or RMS Representative, and the Contractor is liable to RMS for the acts and omissions of Subcontractors as if they were acts and omissions of the Contractor.
- (e) The Contractor must give RMS Representative details of each Subcontract, including the name of the Subcontractor and the goods or services being provided under the Subcontract. The Contractor must satisfy itself and warrant to RMS that the proposed Subcontractor (whether a specified Subcontractor under Item 15 of Schedule 1 or otherwise) has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the work to be subcontracted.
- (f) Without limiting clause 22.7(c), but subject to clause 2.8(g)(ii), the Contractor must ensure that every Subcontract which has a contract value of or more includes the provisions set out in Schedule 25 and a clause to the same effect as this clause 2.8(f) which is binding on the Subcontractor, and provide evidence of this to RMS Representative when requested by RMS Representative.
- (g) Where a Subcontractor is to carry out design work:
 - (i) the Contractor must, within 7 days of the engagement of the Subcontractor provide RMS with a deed of covenant (duly stamped) executed by the Subcontractor in the form of Schedule 33; and
 - (ii) the Subcontract is not required to contain parts A and B of Schedule 25.

2.8A Constituting the Dispute Avoidance Board

- (a) Within 60 days of the date of this deed, the parties must procure that the Dispute Avoidance Board is constituted in accordance with this clause 2.8A.
- (b) RMS will:
 - (i) decide which of the two persons nominated in the Contractor's Tender as candidates for appointment as Dispute Avoidance Board members will be appointed to the Dispute Avoidance Board; and
 - (ii) nominate a second member in accordance with the criteria set out in Schedule 39.
- (c) The parties must request the selected nominees to confer to nominate the third member of the Dispute Avoidance Board in accordance with the criteria set out in Schedule 39, which third member is subject to the approval of RMS and the Contractor.
- (d) If, within 21 days of the parties' request for the selected nominees to nominate the third member of the Dispute Avoidance Board, the third member has not been nominated and approved in accordance with clause 2.8A(c), either party may request the President of The Institute of Arbitrators and Mediators Australia to nominate the third member in

accordance with the criteria set out in Schedule 39. This nomination will be final and conclusive.

- (e) The Dispute Avoidance Board is constituted by each nominated member of the Dispute Avoidance Board, RMS and the Contractor signing the DAB Agreement.

2.9 Dispute Avoidance Board

- (a) The role of the Dispute Avoidance Board is to:
 - (i) perform the functions and activities identified in Appendix 1 of the DAB Agreement;
 - (ii) make decisions on matters that this deed expressly requires be decided by the Dispute Avoidance Board; and
 - (iii) otherwise perform the functions and activities identified in the DAB Agreement.
- (b) The parties acknowledge and agree that the Dispute Avoidance Board is obliged to act honestly, impartially, without bias and independently of the Contractor, RMS and any of their Subcontractors.
- (c) Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against RMS.

2.10 Replacement of Dispute Avoidance Board Member

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:
 - (i) if that member is the chairperson, the remaining two members will appoint a replacement member which member is subject to the approval of RMS and the Contractor; and
 - (ii) if that member is not the chairperson then:
 - (A) if the parties have previously agreed upon one or more reserve members for the Dispute Avoidance Board, and one or more such members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Avoidance Board; or
 - (B) if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
- (b) If, within 42 days of a member declining to act or being unable to act on the Dispute Avoidance Board, the member has not been replaced by a person appointed in accordance with clause 2.10(a), either party may request the President of The Institute of Arbitrators and Mediators Australia to appoint a replacement member. This appointment will be final and conclusive.
- (c) Any appointment or nomination made under clause 2.10(a) or 2.10(b) must be made in accordance with the criteria set out in Schedule 39.

2.11 Termination of Dispute Avoidance Board

The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by RMS or the Contractor acting alone. Unless otherwise agreed by both parties, the Dispute Avoidance Board will terminate upon the later of:

- (a) the Dispute Avoidance Board having made a decision in accordance with clause 20.5 in respect of all Disputes that were referred to it; or
- (b) the Date of Final Completion.

2.12 Early Works and application of this deed

- (a) The parties agree that this deed applies retrospectively to all Early Works.
- (b) Any payment made to the Contractor under or in respect of the Early Works

Agreements is a pre-payment on account of the Project Contract Sum.

- (c) Subject to clause 2.12(d), the Contractor acknowledges that it is not entitled to make any Claim arising out of or in connection with any act, matter or thing which has occurred or should have occurred prior to the date of this deed.
- (d) Nothing in clause 2.12(c) affects the right of the Contractor to make a claim for payment in accordance with clause 18.

3. Management and administration

3.1 Start-up workshops

- (a) Within 28 days after the date of this deed (or such other time as the parties agree), RMS may convene a preliminary start-up workshop.
- (b) Within 28 days before the date indicated in the Contract Program as the date for commencement by the Contractor of the Project Works at the Construction Site (or such other time as the parties agree), RMS may convene a construction start-up workshop.
- (c) The workshops are intended to promote positive building of relationships and a culture of co-operation between the participants, through discussion and sharing of ideas but neither participation in the workshops nor anything concerning or arising out of or in connection with the workshops changes any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.
- (d) The workshops will be attended by:
 - (i) the Contractor's most senior manager or director with direct responsibility for civil works in New South Wales;
 - (ii) a senior manager or director of RMS with direct responsibility for the Works;
 - (iii) the Project Director (or his or her delegate);
 - (iv) RMS Representative (or his or her delegate);
 - (v) the Design Manager (or his or her delegate); and
 - (vi) the Project Verifier (or his or her delegate),and may be attended by any other person (including any other personnel of the Contractor or RMS, a Subcontractor and representatives of Authorities, end users and the local community) that the Project Director and RMS Representative agree to invite to either or both workshops.
- (e) Schedule 40 contains a guide for participants in the workshops, which may be used as the basis for an agenda.
- (f) RMS and the Contractor and any others who attend the workshops must meet their own costs of attendance at the workshops. Third party facilitation, venue and catering costs, if any, will be shared equally by RMS and the Contractor.

3.2 Site meetings

- (a) From establishment on the Construction Site to the Date of Construction Completion, the Contractor must convene meetings on the Construction Site at weekly intervals, or such other regular period as agreed by RMS Representative and the Project Director in writing.
- (b) The meetings referred to in clause 3.2(a) will be attended by:
 - (i) the Project Director (or his or her delegate);
 - (ii) RMS Representative (or his or her delegate); and
 - (iii) any other person (including any Subcontractor) required by RMS Representative.
- (c) Unless otherwise agreed by RMS Representative in writing, the Contractor must provide RMS Representative with an agenda prepared in consultation with RMS Representative for each meeting under clause 3.2(a) no less than 2 Business Days prior to each meeting.
- (d) The role of chairperson for meetings under clause 3.2(a) will be held by RMS Representative (or his or her delegate).

- (e) The chairperson of a meeting under clause 3.2(a) must give all persons who attended the meeting (and any other person nominated by RMS Representative) minutes of the meeting within 2 Business Days after the meeting.
- (f) The purpose of the meetings under clause 3.2(a) includes the review of (at least) the matters set out in the reports referred to in clause 3.7.
- (g) The meetings under clause 3.2(a) are in addition to such other meetings and discussions as may be necessary for the proper administration of this deed.

3.3 Evaluation and monitoring

- (a) RMS Representative and the Project Director must meet:
 - (i) on a regular monthly basis, immediately prior to each Project Control Group meeting; or
 - (ii) at such other times as agreed by RMS Representative and the Project Director, to evaluate and monitor performance of this deed (**Evaluation Meetings**), by jointly completing the Performance Evaluation Record Forms.
- (b) RMS Representative and the Project Director must decide jointly on participation in the Evaluation Meetings by others concerned with the Project Works and Temporary Works, including Subcontractors, representatives of Authorities, end users and the local community and the Project Verifier.
- (c) The obligations in this clause 3.3 and anything arising from their performance do not change any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.

3.4 Project Control Group

- (a) The Project Control Group comprises:
 - (i) RMS Representative;
 - (ii) any person RMS Representative reasonably requires from time to time;
 - (iii) the Project Director;
 - (iv) the Construction Manager(s);
 - (v) the Design Manager;
 - (vi) the Quality Manager;
 - (vii) the Environmental Manager;
 - (viii) the Community Relations Manager;
 - (ix) the Contractor's occupational health, safety and rehabilitation management representative;
 - (x) representatives of any of the Contractor's Subcontractors which RMS Representative reasonably requires; and
 - (xi) the Project Verifier.
- (b) Project Control Group functions include:
 - (i) reviewing:
 - A. conformity with the Quality Plan;
 - B. the progress of the Contractor's Work in relation to the Contract Program and the Subsidiary Contract Programs and the performance of the Contractor prior to Construction Completion;
 - C. issues arising out of community relations and community concerns;
 - D. issues arising out of the quality of the Contractor's Work;
 - E. matters arising from the Design Documentation, including any proposed design changes;
 - F. value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
 - G. environmental issues; and
 - H. safety issues; and

- (ii) where appropriate, referring matters to the Management Review Group for consideration and assistance in resolution.
- (c) The Project Control Group must meet:
 - (i) on a regular monthly basis prior to Construction Completion or such other regular period as RMS and the Contractor agree in writing;
 - (ii) in accordance with this clause 3.4; and
 - (iii) at other times which RMS Representative or the Contractor requires.
- (d) The Contractor must provide RMS Representative with an agenda prepared in consultation with RMS Representative for each meeting of the Project Control Group no less than 2 Business Days prior to each meeting.
- (e) The role of chairperson for meetings of the Project Control Group will alternate between the Project Director and RMS Representative with RMS Representative to chair the first such meeting.
- (f) The chairperson of a meeting of the Project Control Group must give all members of the Project Control Group (and any other person nominated by RMS Representative) minutes of the meeting within 2 Business Days after the meeting.

3.5 Management Review Group

- (a) The Management Review Group comprises:
 - (i) RMS Representative;
 - (ii) the Project Director;
 - (iii) a senior representative of RMS as notified by RMS to the Contractor from time to time; and
 - (iv) a senior representative of the Contractor as notified by the Contractor to RMS from time to time.
- (b) The functions of the Management Review Group include:
 - (i) reviewing the progress of the Project Works;
 - (ii) reviewing conformity with the Quality Plan;
 - (iii) considering any issues arising out of the execution of the Contractor's Work;
 - (iv) considering the Monthly Key Result Area Reports and Separate Monthly Key Result Area Reports;
 - (v) considering any matters which the Project Control Group refers to the Management Review Group; and
 - (vi) considering, and using its influence and guidance to assist in resolving, any issues identified by or referred to the Management Review Group.
- (c) The Management Review Group must meet:
 - (i) on a regular three-monthly basis, immediately after a Project Control Group meeting, or such other regular period as RMS and the Contractor agree in writing; and
 - (ii) at other times which any member of the Management Review Group requires, where that member provides at least 2 days' prior written notice to the other members of the Management Review Group. Any notice under this clause 3.5(c)(ii) must state the reasons why the member of the Management Review Group wishes to convene the required meeting.
- (d) At the first meeting of the Management Review Group, the Management Review Group must agree and document the procedures relating to meetings of the Management Review Group, including:
 - (i) the requirements for and timing of distribution of:
 - A. agendas; and
 - B. meeting minutes; and
 - (ii) chairing of the Management Review Group meetings.
- (e) Meetings of the Management Review Group will be attended by the members of the Dispute Avoidance Board.

3.6 Project Design Group

- (a) The Project Design Group must meet on a regular weekly basis, or such other regular period as RMS and the Contractor agree in writing.
- (b) The purpose of the meetings under clause 3.6(a) is:
 - (i) to consider:
 - A. the status of the Design Documentation;
 - B. the quality of the Design Documentation and the physical works the subject of the Design Documentation; and
 - C. any other matters required by RMS; and
 - (ii) to undertake the function under clause 3.6(b)(i):
 - A. in a co-operative manner which fosters open communication; and
 - B. with the objective of facilitating the development of the Design Documentation and resolving issues arising out of or in connection with or identified in the Design Documentation.
- (c) The Project Design Group comprises:
 - (i) at least one representative of the Contractor, including a senior construction representative of the Contractor, as notified by the Contractor to RMS from time to time;
 - (ii) the Contractor's Design Manager;
 - (iii) at least one representative of RMS, as notified by RMS to the Contractor from time to time; and
 - (iv) the Project Verifier,and the Contractor must ensure attendance at the relevant Project Design Group meeting of:
 - (v) representatives of the Contractor's design consultants;
 - (vi) the Proof Engineer; and
 - (vii) other persons, as any member of the Project Design Group reasonably requires from time to time, having regard to the elements of the Design Documentation being considered at the Project Design Group meeting.
- (d) The Contractor must provide the Project Design Group with an agenda prepared in consultation with RMS Representative for each meeting under clause 3.6(a) no less than 2 Business Days prior to each meeting.
- (e) The role of chairperson for Project Design Group meetings will be held by the Project Director.
- (f) The chairperson of a meeting under clause 3.6(a) must give RMS Representative and all other persons who attended the meeting (and any other person nominated by RMS Representative) minutes of the Project Design Group meeting within 2 Business Days after the Project Design Group meeting.

3.7 The Contractor's reporting obligations

The Contractor must provide reports to RMS and RMS Representative as required by the Contractor Documentation Schedule.

3.8 Project Plans

- (a) The Contractor must prepare the Project Plans specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(b) of Schedule 1.
- (b) Each Project Plan must:
 - (i) where an initial plan exists and is contained in the Appendices to the Scope of Works and Technical Criteria identified in Item 29(c) of Schedule 1, be based upon that initial plan; and
 - (ii) whether or not an initial plan exists, be prepared and further developed in accordance with this clause 3.8 and the section of the Scope of Works and Technical Criteria identified in Item 29(d) of Schedule 1.
- (c) Each Project Plan must be initially submitted to the Project Verifier and RMS

Representative within the time period specified in and containing the contents specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(e) of Schedule 1, for the initial submission.

- (d) RMS Representative may:
 - (i) review any Project Plan submitted under this clause 3.8; and
 - (ii) if he or she considers, acting reasonably, the Project Plan submitted does not comply with this deed, notify the Contractor of that within 21 days of the submission of the Project Plan giving reasons as to why the Project Plan submitted does not comply with this deed.
- (e) If the Contractor receives a notice under clause 3.8(d)(ii), the Contractor must promptly submit an amended Project Plan to the Project Verifier and RMS Representative.
- (f) In respect of any Project Plan submitted by the Contractor, including whether or not RMS Representative reviews it for errors, omissions or compliance with this deed and whether or not RMS Representative comments on it or engages in any act or omission in respect of it:
 - (i) RMS Representative owes no duty to the Contractor; and
 - (ii) the Contractor's liabilities or responsibilities and RMS' rights under this deed or otherwise will not be changed from what they otherwise would be.
- (g) The Contractor acknowledges and agrees that:
 - (i) an intended purpose of each Project Plan is for the Contractor to provide a detailed description of how the Contractor intends to carry out the Contractor's Work in accordance with the requirements of this deed (and in relation to the Maintenance Plan, how the Works should be maintained following Construction Completion) with respect to the subject matter of each Project Plan; and
 - (ii) it must undertake ongoing development, amendment and updating of the Project Plans throughout the duration of the Contractor's Work to take into account:
 - A. Variations;
 - B. Change in Law;
 - C. the commencement of new phases or stages of design and construction;
 - D. those events or circumstances expressly identified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(f) of Schedule 1, for each Project Plan;
 - E. any other events or circumstances which may have any effect on the manner in which the Contractor carries out the Contractor's Work;
 - F. any breach or potential breach of the warranty in clause 3.8(h); and
 - G. requirements specified in the Scope of Works and Technical Criteria, including the Appendix to the Scope of Works and Technical Criteria identified in Item 29(g) of Schedule 1,and promptly submit each further Project Plan to the Project Verifier and RMS Representative as it is further developed, amended or updated.
- (h) The Contractor warrants that each Project Plan will be fit for its intended purpose.
- (i) Without limiting clause 16, if RMS Representative believes, acting reasonably, that any Project Plan does not comply with this deed, he or she may by written notice direct the Contractor to further develop, update or amend the Project Plan specifying the reasons and the time within which a compliant Project Plan must be re-submitted. The Contractor must comply with that direction and submit a compliant Project Plan to the Project Verifier and RMS Representative within the time specified.
- (j) The Contractor must comply with each compliant Project Plan (other than the Maintenance Plan) but compliance will not in any way lessen or affect its liabilities or responsibilities or RMS' rights whether under this deed or otherwise according to Law.
- (k) The Contractor must comply with the restrictions upon the carrying out of the Contractor's Work specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(h) of Schedule 1.

- (l) To the extent they are relevant to maintenance of the Works after Construction Completion, all Project Plans must be incorporated into the Maintenance Plan.

3.9 Maintenance Plan

- (a) As a condition precedent to Construction Completion, the Contractor must develop a Maintenance Plan, in accordance with the requirements of this deed.
- (b) Without limiting clause 3.8, the Maintenance Plan must contain the contents required by the Scope of Works and Technical Criteria.
- (c) The Contractor must submit to RMS Representative an initial draft of the Maintenance Plan to a standard and detail no different in substance from the final draft (excluding the incorporation of the Project Plans required by clause 3.8(l)) but for minor details:
 - (i) no less than 180 days prior to the Date for Construction Completion; or
 - (ii) if either:
 - A. RMS Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 180 days prior to RMS Representative's reasonably anticipated Date of Construction Completion provided that RMS Representative gives the Contractor 35 days notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion will be earlier than the Date for Construction Completion, no less than 180 days prior to the reasonably anticipated Date of Construction Completion.
- (d) The Contractor must submit to RMS Representative a final draft of the Maintenance Plan (including incorporation of the Project Plans required by clause 3.8(l)):
 - (i) no less than 90 days prior to the Date for Construction Completion; or
 - (ii) if either:
 - A. RMS Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 90 days prior to RMS Representative's reasonably anticipated Date of Construction Completion provided that RMS Representative gives the Contractor 35 days notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion will be earlier than the Date for Construction Completion, no less than 90 days prior to the reasonably anticipated Date of Construction Completion.
- (e) The Contractor must submit to RMS Representative the final Maintenance Plan (including incorporation of the Project Plans required by clause 3.8(l)):
 - (i) no less than 30 days prior to the Date for Construction Completion; or
 - (ii) if RMS Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 30 days prior to RMS Representative's reasonably anticipated Date of Construction Completion provided that RMS Representative gives the Contractor 35 days notice of the required date for submission.
- (f) RMS Representative may:
 - (i) review the Maintenance Plan or any draft of it submitted under clause 3.9(d), 3.9(e), 3.9(g) or 3.9(l); and
 - (ii) within 21 days of the submission, acting reasonably, reject the Maintenance Plan or the draft specifying the reasons for rejection.
- (g) If the Maintenance Plan or any draft is rejected, the Contractor must promptly submit an amended Maintenance Plan to RMS Representative that addresses the reasons for rejection.
- (h) RMS Representative owes no duty to the Contractor to review the Maintenance Plan or any draft submitted by the Contractor for errors, omissions or compliance with this deed.
- (i) No review of, comments upon, rejection of or failure to reject the Maintenance Plan or

any draft of it or any other Direction by RMS Representative (including a direction under clause 3.9(l)) in respect of the Maintenance Plan or any draft of it will lessen or otherwise affect:

- (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) RMS' rights against the Contractor, whether under this deed or otherwise according to Law.
- (j) The Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Maintenance Plan under clause 3.8(l), the purposes of the Maintenance Plan include:
- (i) for the Contractor to provide a detailed description of how the Works should be maintained after the Date of Construction Completion; and
 - (ii) to incorporate the Landscaping Maintenance Plan which provides a detailed description of how the landscaping is to be maintained.
- (k) The Contractor warrants that the Maintenance Plan will be fit for its intended purpose.
- (l) Without limiting clause 16, if RMS Representative believes, acting reasonably, that the Maintenance Plan does not comply with the requirements of this deed, RMS Representative may by written notice direct the Contractor to amend the Maintenance Plan specifying:
- (i) the reasons why such amendment is required; and
 - (ii) the time within which such amendment must occur,
- and the Contractor must:
- (iii) further amend the Maintenance Plan as directed by RMS Representative; and
 - (iv) submit the further amended Maintenance Plan to RMS Representative within the time specified under clause 3.9(l)(ii).

3.10 Control of traffic

The Contractor:

- (a) is responsible for the control, direction and protection of all traffic in any way affected by the carrying out of the Contractor's Work;
- (b) must manage that traffic to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) the traffic carrying capacity of Local Roads is maintained; and
 - (iii) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum;
- (c) must at all times comply with the Traffic Management and Safety Plan and the requirements of the Scope of Works and Technical Criteria in respect of traffic management and safety; and
- (d) must comply with the directions of any relevant Authority and directions given by RMS Representative, RMS Representative acting reasonably, with respect to such management.

3.11 Community relations

The Contractor:

- (a) acknowledges that the areas where the Contractor's Work is being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
 - (i) required by the Scope of Works and Technical Criteria;
 - (ii) contained in the Community Involvement Plan; and
 - (iii) reasonably required by RMS from time to time.

3.12 Aboriginal participation

- (a) Where applicable, as indicated in Item 16 of Schedule 1, prior to commencing any

Contractor's Work on the Construction Site, the Contractor must document, submit and implement an Aboriginal Participation Plan in accordance with clause 3.8 and the NSW Government Aboriginal Participation in Construction Guidelines.

- (b) The Contractor must systematically manage its Aboriginal participation processes in accordance with the systems, plans, standards and codes specified in this deed.
- (c) The Contractor must demonstrate to RMS, whenever requested, that it has met and is meeting at all times its obligations under clauses 3.12(a) and 3.12(b).

3.13 Not used

3.14 Not used

3.15 Complaints and notifications

- (a) The Contractor must immediately notify RMS in writing if any:
 - (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,by anyone (including any Authority or any landowner, lessee or licensee near the Construction Site) against the Contractor or any of its Subcontractors or their respective employees in respect of or associated with any aspect of the carrying out of the Contractor's Work including:
 - (iv) Contamination arising out of, or in any way in connection with, the Contractor's Work;
 - (v) the Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder) or any Law regarding the Environment;
 - (vi) the Contractor's use or occupation of the Construction Site or the Works; or
 - (vii) loss or damage of the kind referred to in clauses 6.3(a)(ii) to 6.3(a)(iv).
- (b) The Contractor must (at its own cost):
 - (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 3.15(a);
 - (ii) take all measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 3.15(a), which:
 - A. contains full details of:
 - 1) each complaint, proceedings, letter of demand, order and direction; and
 - 2) the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - B. is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - C. may be inspected by RMS Representative whenever RMS Representative reasonably requires.
- (c) The Contractor must notify anyone who may be adversely affected by the Contractor's Work before the relevant work is carried out including notification of:
 - (i) the likely duration of that work; and
 - (ii) the name and contact details of the Community Relations Manager in case any person wishes to make a complaint.

3.16 Media publications

- (a) The Contractor must obtain RMS' prior written consent to:
 - (i) any press release or advertisement it wishes to make or place concerning this deed, RMS or the Contractor's Work; and
 - (ii) the release for publication in any media of any information, publication, document or article concerning this deed, RMS or the Contractor's Work.

- (b) The Contractor must refer any media enquiries concerning this deed, RMS or the Contractor's Work to RMS, for RMS' prior written consent to any proposed response, which consent may be given or withheld, in RMS' absolute discretion.
- (c) The Contractor must ensure that all of its Subcontractors comply with the requirements of this clause 3.16 and obtain RMS' prior written consent (through the Contractor) before making or placing any press release or advertisement, responding to any media enquiries or publishing anything of the type referred to in this clause 3.16.

3.17 Notices

- (a) Any notices contemplated by this deed must be in writing and delivered to the relevant address or sent to the facsimile number:
 - (i) for RMS, specified in Item 17 of Schedule 1;
 - (ii) for RMS Representative, specified in Item 18 of Schedule 1; and
 - (iii) for the Contractor, specified in Item 19 of Schedule 1,
 or to a party's new address or facsimile number which that party notifies to the others in writing from time to time.
- (b) A notice sent by post is taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile is taken to have been received on the next Business Day after the day shown on the transmission slip showing the facsimile number of the party to whom it is addressed in accordance with clause 3.17(a).
- (d) Subject to clauses 3.17(e) and 3.17(f), either party may give any notice contemplated by this deed to be given to RMS Representative or the Contractor by email to the relevant email address:
 - (i) for RMS Representative, specified in Item 18 of Schedule 1; and
 - (ii) for the Contractor, specified in Item 19 of Schedule 1,
 or to a new email address which RMS Representative or the Contractor notifies to the other in writing from time to time.
- (e) Any notice contemplated by this deed to be given to RMS must be delivered to RMS address or sent by facsimile in accordance with clause 3.17(a).
- (f) In relation to any notice, information or documentation under clauses 1.3(a)(ii), 2.1(a)(iii), 2.1(c)(i), 2.1(c)(ii), 3.15(a), 7.11(a), 10.4(a)(i), 10.6(b)(i), 12.2(d), 15.2(a), 15.3(a), 17.5(b), 17.8(a), 18.2, 18.7(b), 18.7(e), 19.1, 19.2, 20.2, 20.3, 20.4, 20.5, 21.1, 21.3 and 21.6:
 - (i) RMS, RMS Representative and the Contractor will only be permitted to give such a notice by email if the notice is concurrently delivered to the other party's address or sent by facsimile in accordance with clause 3.17(a); and
 - (ii) will be taken to have been received at the times set out in clause 3.17(b) for notices sent by post and clause 3.17(c) for notices given by facsimile.
- (g) Subject to clause 3.17(f), a notice given by email is taken to have been received on the next Business Day after the day on which the email was issued, provided the sender does not receive notification that the email was not successfully received in the recipient's inbox.

4. This deed

4.1 Law of this deed

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

4.2 Order of precedence

- (a) The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this deed:
 - (i) the deed excluding the schedules and exhibits; and
 - (ii) the schedules and exhibits.
- (b) If there is any inconsistency, ambiguity or discrepancies between the documents which

make up the Environmental Documents the order of precedence in Schedule 28 will apply.

- (c) The Scope of Works and Technical Criteria and the Environmental Documents are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in both.
- (d) If there is an ambiguity, discrepancy or inconsistency within the Scope of Works and Technical Criteria or the Environmental Documents or between the Scope of Works and Technical Criteria and the Environmental Documents:
 - (i) the order of precedence identified in the section of the Scope of Works and Technical Criteria identified in Item 29(ia) of Schedule 1 will apply; and
 - (ii) otherwise, the part of the document which prescribes or requires the highest standard of compliance, without causing any non-compliance with all Approvals will take precedence.

4.3 Ambiguous terms

- (a) If there is an ambiguity, discrepancy or inconsistency in this deed (including in any schedules or exhibits), including where the Contractor notifies RMS Representative in writing that the Contractor considers that there is an ambiguity, discrepancy or inconsistency in this deed (including in any schedules or exhibits), RMS Representative must, subject to clause 4.2, direct the interpretation of this deed which the Contractor must follow.
- (b) RMS Representative, in giving a direction in accordance with clause 4.3(a), is not required to state whether or not there is an ambiguity, inconsistency or discrepancy in respect of the terms of this deed.
- (c) Any direction which RMS Representative gives in accordance with clause 4.3(a):
 - (i) does not in any way lessen or otherwise affect:
 - A. the Contractor's obligations under this deed or otherwise at Law; and
 - B. RMS' rights against the Contractor, whether under this deed or otherwise according to Law; and
 - (ii) must, in respect of a notice given by the Contractor under clause 4.3(a), be given within 28 days of receipt of that notice.

4.4 No assignment

The Contractor must not assign or otherwise deal with any of its rights, interests or obligations under this deed without the prior written consent of RMS.

5. Legal and other requirements

5.1 Compliance with Law and other requirements

- (a) Subject to clause 5.1(b)(ii), the Contractor must in carrying out the Contractor's Work:
 - (i) comply with all applicable Law;
 - (ii) comply with, and provide RMS Representative with copies of, any requirement, notice, order or direction received from or given by any Authority, including any infringement notice, fine or penalty;
 - (iii) give all notices and pay all fees and other amounts which are required to be paid for or in respect of the performance of its obligations;
 - (iv) give RMS Representative copies of all notices, reports and submissions it gives to Authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, Authorities; and
 - (v) give RMS Representative copies of all documents (including Approvals and other notices) that Authorities issue to it.
- (b) The Contractor must:
 - (i) obtain all Approvals except for those specified in Schedule 41 which either:
 - A. were obtained by RMS prior to the date of this deed; or
 - B. will be obtained by RMS after the date of this deed if required;

- (ii) unless otherwise expressly specified in Schedule 28, comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or RMS) including those conditions and requirements which RMS is expressly or impliedly required under the terms of the Approvals specified in Schedule 41 to comply with, carry out and fulfil; and
 - (iii) as a condition precedent to Construction Completion, ensure that it has:
 - A. obtained all Approvals it is required to obtain under this deed;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out and fulfil under this deed; and
 - C. without limiting clauses 5.1(b)(iii)A and 5.1(b)(iii)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary,
 - including those Approvals which are required or must be satisfied for the purposes set out in paragraph (c) of the definition of "Approval" in clause 23.2.
- (c) Without limiting the Contractor's obligations under clause 5.1(b), before any documentation is submitted to an Authority for the purposes of seeking or otherwise in connection with any Approval which the Contractor is responsible for obtaining under this deed (**Approval Related Documentation**), the Contractor must:
- (i) throughout the preparation of the Approval Related Documentation, give RMS Representative, the Project Verifier and all relevant Authorities the opportunity to monitor the preparation of, and to review and comment on, the Approval Related Documentation as contemplated in this clause 5.1(c);
 - (ii) progressively develop and prepare the Approval Related Documentation and, at regular and frequent intervals, give RMS Representative, the Project Verifier and all relevant Authorities drafts of the Approval Related Documentation as it is being prepared;
 - (iii) allow RMS Representative, the Project Verifier and all relevant Authorities (if any of them elect to do so) to consult with the Contractor and to comment on the Approval Related Documentation submitted under clause 5.1(c)(ii);
 - (iv) consider and, to the extent the Contractor considers necessary, address any comments made by RMS Representative, the Project Verifier and all relevant Authorities under clause 5.1(c)(iii) in the Contractor's further preparation of the Approval Related Documentation;
 - (v) give RMS Representative, the Project Verifier and all relevant Authorities any information which any of RMS Representative, the Project Verifier and all relevant Authorities may reasonably request in order for any of them to review and consider the Approval Related Documentation;
 - (vi) submit to RMS Representative a draft of the final version of the applicable Approval Related Documentation which the Contractor proposes be submitted to an Authority for approval, together with a schedule detailing all the comments received from RMS Representative, the Project Verifier and all relevant Authorities under clause 5.1(c)(iii) and the actions (if any) taken by the Contractor to address those comments;
 - (vii) allow 7 days from the date the final version of the applicable Approval Related Documentation is submitted to RMS Representative under clause 5.1(c)(vi) for RMS Representative (if it elects to do so) to consult with the Contractor and/or:
 - A. comment on that documentation to the extent to which RMS Representative considers that it is not of a suitable standard or content having regard to the nature of the relevant Approval (which comments the Contractor may address to the extent the Contractor considers necessary); or
 - B. reject that documentation if it does not comply with the requirements of this deed; and

- (viii) if any Approval Related Documentation is rejected by RMS Representative under clause 5.1(c)(vii)B, promptly amend the documentation to comply with the requirements of this deed, submit the amended documentation to RMS Representative and the process in clause 5.1(c)(vii) and this clause 5.1(c)(viii) will re-apply to the amended documentation.
- (d) In respect of any documentation submitted:
 - (i) by the Contractor to RMS Representative under clause 5.1(c), including whether or not RMS Representative reviews it for errors, omissions, compliance with this deed or suitability for submission to the relevant Authority and whether or not RMS Representative comments on it or engages in any act or omission in respect of it;
 - (ii) by the Contractor to an Authority following the process in clause 5.1(c); or
 - (iii) by RMS (if RMS Representative agrees to do so in his or her absolute discretion or is required to by Schedule 28 of this deed) to an Authority following the process in clause 5.1(c),
 then:
 - (iv) RMS Representative owes no duty to the Contractor; and
 - (v) the Contractor's liabilities or responsibilities and RMS' rights under this deed or otherwise will not be changed from what they otherwise would be.
- (e) For the avoidance of doubt, the process in clause 5.1(c) is separate from, and does not in any way limit the operation of, any other review process set out in this deed, including the processes in clauses 3.8 and 12.2.

5.2 Environmental requirements

- (a) The Contractor must carry out the Contractor's Work:
 - (i) in an environmentally responsible manner so as to protect the Environment; and
 - (ii) subject to clause 5.1(b)(ii) and clause 5.2(b), in accordance with the Environmental Documents, the Environmental Management Plans and all relevant Law.
- (b) Except as specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(j) of Schedule 1, or Schedule 28, and without limiting the Contractor's other obligations under this deed, the Contractor must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which RMS is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works or Contractor's Work.
- (c) The Contractor must immediately notify RMS in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents or any Law regarding the Environment in the carrying out of the Contractor's Work.
- (d) If there is a legal challenge in relation to the assessment or determination of the Works under the:
 - (i) *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) EPBC Act; or
 - (iii) any other Law,
 the Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:
 - (iv) ordered by a court; or
 - (v) directed by RMS.
- (e) Subject to clause 5.2(g), where the Contractor is granted an extension of time due to a court order referred to in clause 5.2(d)(iv), RMS must pay the Contractor the reasonable net extra Direct Costs incurred by the Contractor arising directly as a result of a court order referred to in clause 5.2(d)(iv) (provided the Contractor has incurred them reasonably and has taken all possible steps to minimise them) as stated by RMS

Representative.

- (f) The Contractor's entitlement under clause 5.2(e) will be its only right to make any Claim for payment of money arising out of or in any way in connection with a court order referred to in clause 5.2(d)(iv).
- (g) Clause 5.2(e) does not apply to the extent that a legal challenge of the kind referred to in clause 5.2(d) is initiated or upheld due to the Contractor's non-compliance with its obligations under this deed.

5.3 Crown building work

- (a) The Contractor must, in relation to any Crown Building Work, certify (on behalf of RMS) as required by section 109R of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Nothing in clause 5.3(a) will lessen or otherwise affect:
 - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) RMS' rights against the Contractor, whether under this deed or otherwise according to Law.

5.4 Training

The Contractor must comply with the NSW Government Training Management Guidelines and the requirements of the section of the Scope of Works and Technical Criteria identified in Item 29(k) of Schedule 1.

5.5 Industrial relations

The Contractor must, in carrying out the Contractor's Work:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) keep RMS Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Work; and
- (c) to the extent not inconsistent with the Contractor complying with the requirements of clause 5.10, comply with the NSW Government Industrial Relations Management Guidelines dated December 1999 to the extent that they are applicable to the Contractor's Work.

5.6 Site induction

Without limiting the Contractor's obligations under clause 5.1(b) to comply with the conditions and requirements of all Approvals, the Contractor must provide safety and environmental site induction for persons nominated by RMS Representative, and for all personnel directly or indirectly engaged by the Contractor and requiring access to:

- (a) the Construction Site; and
- (b) other areas where the Contractor's Work is being performed.

5.7 Occupational health, safety and rehabilitation

- (a) In this clause 5.7, "place of work", "workplace", "construction project", "construction work" and "person conducting a business or undertaking" (PCBU) have the same meanings assigned to those terms in the WHS Laws.
- (b) Without limiting the Contractor's obligations under any other provisions of this deed:
 - (i) To the extent that the WHS Laws apply to the construction work component of the Contractor's Work and RMS is otherwise able to validly engage Acciona Infrastructure Australia as Principal Contractor under the WHS Laws, RMS:
 - A. engages Acciona Infrastructure Australia as the Principal Contractor under the WHS Laws in respect of all such construction work carried out by the Contractor under this deed; and
 - B. authorises Acciona Infrastructure Australia to:
 - 1) have management and control of the workplace; and
 - 2) discharge the duties of a Principal Contractor under the WHS

Laws for the construction project;

- (ii) Acciona Infrastructure Australia must:
 - A. where clause 5.7(b)(i) applies, exercise and fulfil the functions and obligations of the Principal Contractor under the WHS Laws; and
 - B. where clause 5.7(b)(i) does not apply or RMS is not otherwise able to validly engage Acciona Infrastructure Australia as Principal Contractor under the WHS Laws, exercise and fulfil the functions and obligations of the Principal Contractor under the WHS Laws, as if Acciona Infrastructure Australia had been validly engaged as the Principal Contractor under the WHS Laws so as to ensure that the responsibilities imposed on a Principal Contractor by the WHS Laws are discharged and for this purpose RMS authorises Acciona Infrastructure Australia to exercise such authority of RMS as is necessary to enable Acciona Infrastructure Australia to discharge the responsibilities imposed on a Principal Contractor under the WHS Laws.
- (c) Without limiting any other provision of this deed:
 - (i) the Contractor must discharge all the obligations under the WHS Laws and under any plan or any other laws relating to occupational health and safety;
 - (ii) Acciona Infrastructure Australia accepts its engagement as the Principal Contractor in connection with the Contractor's Work and the Construction Site and agrees that it has sufficient authority to comply with its obligations as Principal Contractor;
 - (iii) the Contractor accepts that it is the PCBU carrying out the construction work and the PCBU in respect of the Contractor's Work for the purposes of the WHS Laws;
 - (iv) Acciona Infrastructure Australia is responsible for all costs associated with performing the role of Principal Contractor;
 - (v) the Contractor must comply with any direction on safety issued by a relevant Authority;
 - (vi) the Contractor must immediately notify RMS of any Notifiable Incident in connection with the Contractor's Work and the Construction Site;
 - (vii) the Contractor must provide to RMS all notices and correspondence concerning occupational health and safety in connection with the Contractor's Work within 5 Business Days after the dispatch and/or receipt of any such notice or correspondence;
 - (viii) Acciona Infrastructure Australia acknowledges that it has control and management of the area of the Construction Site;
 - (ix) the Contractor, to the extent not prohibited by Law, indemnifies RMS against any damage, expense, loss or liability suffered or incurred by RMS arising out of or in connection with:
 - A. the failure of Acciona Infrastructure Australia to exercise or fulfil the functions and obligations of the Principal Contractor under the WHS Laws or under this clause, except to the extent that the failure is directly caused by an act, neglect, omission or default of RMS or its servants, agents, employees or contractors (other than the Contractor); and
 - B. any occupational health and safety claims in connection with the Contractor's Work and the Construction Site except to the extent that they are directly caused by an act, neglect, omission or default of RMS or its servants, agents, employees or contractors (other than the Contractor);
 - (x) the Contractor must itself comply, and ensure that all Subcontractors engaged by the Contractor in connection with the Contractor's Work comply with their respective obligations under the WHS Laws;
 - (xi) the Contractor must ensure that it carries out the Contractor's Work in a manner which ensures that RMS satisfies its obligations under the WHS Laws; and
 - (xii) Acciona Infrastructure Australia must display signs that are clearly visible from outside the place of work identifying Acciona Infrastructure Australia as the

Principal Contractor and stating the contact telephone numbers of Acciona Infrastructure Australia (including an after hours emergency telephone number) and the location of Acciona Infrastructure Australia main site administration facilities for the construction project.

- (d) RMS may, at its sole discretion, notify the Contractor that it has terminated Acciona Infrastructure Australia's engagement as Principal Contractor and advise the Contractor of the new Principal Contractor for the Contractor's Work. If Acciona Infrastructure Australia's appointment and engagement as Principal Contractor is terminated, then the Contractor must comply with all requirements of the new Principal Contractor in executing the Contractor's Work and its other obligations under this deed so as to enable the new Principal Contractor to meet its obligations under the WHS Laws.
- (e) Without limiting any other provision of this deed, the Contractor must:
 - (i) carry out the Contractor's Work safely so as to protect persons and property and the Environment;
 - (ii) have a corporate occupational health and safety management system which complies with the WHS Laws and is otherwise in accordance with the NSW Government Occupational Health & Safety Management Systems Guidelines; and
 - (iii) at all times comply with its Project WHS Management Plan.
- (f) If any of RMS Representative, RMS Assistant Representative or a RMS Surveillance Officer considers there is a risk of injury to people or damage to property or the Environment arising from the Contractor's Work:
 - (i) RMS Representative, RMS Assistant Representative or the RMS Surveillance Officer (as the case may be) may direct the Contractor to change its manner of working or to cease working; and
 - (ii) the Contractor must, at its cost, comply with any direction given under clause 5.7(f)(i).
- (g) Safety audit and general obligations:
 - (i) RMS may itself, have a third party, or require the Contractor to, conduct audits from time to time of the Contractor's compliance with its health and safety obligations under:
 - A. this deed; and
 - B. all WHS Laws,
(WHS Obligations).
 - (ii) The Contractor must comply with all requirements of a party undertaking an audit under this clause, including giving reasonable access to all documents necessary to conduct the audit, and access to the Construction Site.
 - (iii) If the Contractor is required to conduct an audit under this clause, it must do so within the time reasonably required by RMS and promptly report to RMS in writing on the outcome of the audit.
 - (iv) Any corrective work or action which the audit identifies as necessary to rectify any departure from the WHS Obligations must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the departure.
- (h) If the Contractor's Work will be partially or fully funded by the Commonwealth, as identified in Item 20 of Schedule 1, the Contractor must:
 - (i) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* (Cth), maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (**Scheme**) established by the *Fair Work (Building Industry) Act 2012* (Cth) (**FWBI Act**) while building work (as defined in section 5 of the FWBI Act) is carried out; and
 - (ii) comply with all conditions of Scheme accreditation.

5.8 Collusive arrangements

- (a) The Contractor:
 - (i) warrants that:

- A. prior to the close of Tenders; and
 - B. as at the date of this deed,
- the Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor's Tender price to any other Tenderer;
- (ii) warrants that, except as disclosed in the Tender and as agreed with RMS in writing, the Contractor:
 - A. has not made any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
 - 1) the Contractor will pay money to or confer any benefit upon any of the unsuccessful Tenderers; or
 - 2) the Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard fee) in respect of this deed;
 - B. has not made any allowance in the Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 5.8(a)(ii)A; and
 - C. will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 5.8(a)(ii)A; and
 - (iii) acknowledges that it is aware that RMS entered this deed in reliance upon the warranties in clauses 5.8(a)(i) and 5.8(a)(ii).
 - (b) RMS and the Contractor agree that if any matter warranted in clauses 5.8(a)(i) or 5.8(a)(ii) is found not to be true or not to be correct, in addition to any other rights that RMS may have, the Contractor:
 - (i) will be in fundamental breach of this deed (such breach going to the root of this deed); and
 - (ii) without limiting RMS' rights under clause 21.3, must pay to RMS as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 5.8(a)(ii).

5.9 Long service leave levy

Before commencing any construction work under this deed, the Contractor must:

- (a) pay to the Long Service Payments Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to RMS Representative the documents evidencing payment of the amounts referred to in clause 5.9(a).

5.10 Building Code

- (a) This clause 5.10 only applies if the Contractor's Work will be partially or fully funded by the Commonwealth, as identified in Item 20 of Schedule 1, or if the Contractor's Work is otherwise subject to the *Building Code 2013* dated 25 January 2013 (**Building Code**), issued under the *Fair Work (Building Industry) Act 2012* (Cth).
- (b) The Contractor must comply, in the performance of this deed, with the Building Code. Copies of the Building Code are available at <http://employment.gov.au/building-code>.
- (c) Compliance with the Building Code shall not relieve the Contractor from responsibility to perform this deed, or from liability for any Defect in the Project Works, Temporary Works or the Landscaping Maintenance arising from compliance with the Building Code.
- (d) Where a change in this deed is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commonwealth and RMS specifying the extent to which the Contractor's compliance with the Building Code will be affected.
- (e) The Contractor must maintain adequate records of the compliance with the Building

Code by:

- (i) the Contractor;
 - (ii) its Subcontractors; and
 - (iii) its related entities (as defined in Section 3(2) of the Building Code and referred to in Section 8 of the Building Code).
- (f) If the Contractor does not comply with the requirements of the Building Code in the performance of this deed such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.
- (g) While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders, the Contractor may give preference to Subcontractors that have a demonstrated commitment to:
- (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (h) The Contractor must not appoint a Subcontractor in relation to the Contractor's Work where:
- (i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (ii) the Subcontractor has had an adverse court or tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the Subcontractor has not fully complied, or is not fully complying, with the order.
- (i) The Contractor agrees to require that it and its Subcontractors and its related entities (as defined in Section 3(2) of the Building Code) provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
- (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Contractor's Work; and
 - (iii) interview any person,
- as is necessary to demonstrate its compliance with the Building Code.
- (j) The Contractor agrees, and the Contractor will require its related entities (as defined in Section 3(2) of the Building Code) to agree, to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.
- (k) The Contractor must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the obligations under this clause 5.10.

5.11 NSW Government Code of Practice for Procurement and Implementation Guidelines

- (a) In addition to the terms defined in this deed, terms used in this clause 5.11 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and the NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
- (b) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (c) The Contractor must notify the Construction Compliance Unit and RMS of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken within 24 hours of becoming aware of the possible non-compliance.
- (d) Where the Contractor engages a Subcontractor, the Contractor must ensure that the Subcontract imposes on the Subcontractor equivalent obligations to those in this clause

5.11, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

- (e) The Contractor must not appoint or engage another party in relation to the Contractor's Work where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.
- (f) The Contractor must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its Subcontractors and its related entities.
- (g) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the Construction Compliance Unit) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Construction Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Contractor's Work;
 - (v) have access to personnel; and
 - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines by the Contractor, its Subcontractors and its related entities.
- (h) The Contractor agrees to comply, and will require its related entities to comply, with a request from authorised personnel (including personnel of the Construction Compliance Unit) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (i) The Contractor warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (j) If the Contractor does not comply with, or fails to meet any obligation imposed on it by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.
- (k) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties;
 - (ii) the State of New South Wales (through its agencies, Ministers and the Construction Compliance Unit) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor or its related entities in respect of work to which the NSW Code and the NSW Guidelines apply.
- (l) The Contractor bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from RMS or the State of New South Wales for such costs.
- (m) Compliance with the NSW Code and the NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Work, or from liability for any Defect in the Project Works, Temporary Works or the Landscaping Maintenance or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.
- (n) Where a change in this deed or the Contractor's Work is proposed and that change may, or may be likely to, affect compliance with the NSW Code and the NSW Guidelines:
 - (i) the Contractor must immediately notify RMS (or RMS Representative) of the change or likely change, and specify:
 - A. the circumstances of the proposed change;

- B. the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - C. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or a Project WHS Management Plan); and
- (ii) RMS will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice from the Contractor.

5.12 RMS business ethics

The parties must comply with the RMS Statement of Business Ethics available at <http://www.rms.nsw.gov.au>.

5.13 Incident control by the New South Wales Police Force

Despite any other provision of this deed, where the New South Wales Police Force is controlling an incident, the Contractor:

- (a) must liaise with and obtain the approval of the New South Wales Police Force in relation to any proposed closure to a lane or shoulder;
- (b) must not restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of the Existing Highway, the Works or a Local Road contrary to the instructions of the New South Wales Police Force; and
- (c) if permitted to restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of the Existing Highway, the Works or a Local Road, must act in accordance with any instructions of the New South Wales Police Force including to suspend any of the Contractor's Work and to re-open the lane or shoulder. Except to the extent that compliance with any instructions of the New South Wales Police Force makes it impossible to do otherwise, this clause 5.13 does not relieve the Contractor from its obligations under this deed.

5.14 Road occupancy

- (a) Where any Contractor's Work will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Existing Highway or the Works, the Contractor must lodge with RMS Representative:
 - (i) an application in the form set out in Schedule 42 for a Road Occupancy Licence, providing all relevant details of the proposed Contractor's Work; and
 - (ii) a traffic control plan as required by the section of the Scope of Works and Technical Criteria identified in Item 29(l) of Schedule 1.
- (b) An application and traffic control plan under clause 5.14(a) must be lodged as early as possible prior to the date when the Contractor intends to undertake the Contractor's Work (and in any event no less than 10 days prior to that date), so as to allow RMS Representative to review the application and traffic control plan, issue a notice under clause 5.14(e) and, where appropriate, make arrangements for implementation of the Road Occupancy Licence.
- (c) In considering whether to issue a Road Occupancy Licence, RMS Representative may consider the following factors:
 - (i) the expected traffic flow at the time of the proposed Contractor's Work;
 - (ii) the relative importance and urgency of the proposed Contractor's Work; and
 - (iii) any other factor which RMS Representative believes to be relevant.
- (d) A Road Occupancy Licence will not be issued where RMS Representative considers that traffic volumes are likely to exceed the capacity of the subject road. This will occur during holiday periods, and may also occur during a special event or during other periods of, or other circumstances which give rise to, increased traffic volumes, reduced traffic speeds or lowered capacity of the road. For this purpose a special event is a local or regional event which generates increased traffic volumes, reduces traffic speed or lowers the capacity of the existing road. The Contractor must comply with the Road Occupancy Licence conditions as required by the section of the Scope of Works and Technical Criteria identified in Item 29(m) of Schedule 1.

- (e) RMS Representative must promptly review an application under clause 5.14(a)(i) and issue a notice to the Contractor stating whether or not the application for the Road Occupancy Licence has been approved and, if so, promptly issue the Road Occupancy Licence.
- (f) A Road Occupancy Licence may contain such terms and conditions as RMS Representative sees fit, including:
 - (i) a limitation on the hours during which the proposed Contractor's Work may be carried out; and
 - (ii) specific traffic control measures that must be taken.
- (g) The Contractor must liaise with RMS personnel to facilitate processing of applications for a Road Occupancy Licence as efficiently as possible.
- (h) The Contractor must not undertake any Contractor's Work, which has the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Existing Highway or the Works:
 - (i) without a Road Occupancy Licence under clause 5.14(e);
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of a Road Occupancy Licence.
- (i) A breach of a term or condition of a Road Occupancy Licence shall constitute a breach of this deed.

5.15 RMS Representative's directions

Without limiting clause 17.8 and despite any Road Occupancy Licence issued by RMS Representative for any lane or shoulder closure, RMS Representative may at any time direct the Contractor to temporarily suspend any Contractor's Work and to re-open the lane or shoulder.

5.16 Rail contracts

- (a) In this clause the terms "ARTC", "Licence Agreement", "Rail Facilities", "Rail Infrastructure Facilities", "Rail Safety Act", "Railway", "Railway Corridor", "Railway Works", "Third Party Operator" and "Track Possession" have the meaning given to them in the Rail Agreement, and "Safety Interface Agreement" has the meaning given to "interface agreement" in section 4 of the *Rail Safety National Law* (NSW) No 82a.
- (aa) The parties acknowledge that:
 - (i) as at the date of this deed, the terms of the Rail Agreement have not been finalised between RMS and ARTC and the current draft of the Rail Agreement is set out in Schedule 48;
 - (ii) following execution of the Rail Agreement, RMS will promptly give the Contractor a copy of the executed Rail Agreement;
 - (iii) within 7 days of receipt of the executed Rail Agreement, the Contractor must inform RMS Representative in writing of any difference between the terms of the executed Rail Agreement and the terms of the draft Rail Agreement set out in Schedule 48;
 - (iv) if RMS receives a notice from the Contractor under and within the time required by clause 5.16(aa)(iii), clause 15.6(h)(i) will apply in relation to the difference between the terms of the executed Rail Agreement and the terms of the draft Rail Agreement set out in Schedule 48; and
 - (v) this clause 5.16 will apply in accordance with its terms, notwithstanding that the Rail Agreement has not been executed as at the date of this deed or that there may be differences between the terms of the executed Rail Agreement and the terms of the draft Rail Agreement set out in Schedule 48.
- (b) The Railway Works form part of the Project Works and are described in Schedule 48. RMS will enter into the Rail Agreement with ARTC for the purposes of obtaining permission for the carrying out of the Railway Works within the Railway Corridor. The Contractor acknowledges that it has carefully reviewed the draft Rail Agreement in Schedule 48 and that it is aware that:

- (i) RMS will be responsible to ARTC under the terms of the Rail Agreement, the Licence Agreement and any Safety Interface Agreement (if any and to the extent relevant to the Contractor's Work) in respect of all parts of the Contractor's Work that relate to the Railway Works and any of the Contractor's Work within the Railway Corridor; and
 - (ii) RMS is relying upon the Contractor to properly perform the Contractor's Work so that RMS can fully meet its obligations to ARTC under the Rail Agreement, the Licence Agreement and any Safety Interface Agreement or otherwise at law.
- (c) Without limiting any other part of this deed:
- (i) the Contractor must comply with, carry out and fulfil each condition, requirement and obligation of RMS under the Rail Agreement, the Licence Agreement and any Safety Interface Agreement as part of the Contractor's Work, to the extent that those conditions, requirements and obligations relate to the Contractor's Work, so as to ensure that RMS is able to fully meet its obligations to ARTC under the Rail Agreement, the Licence Agreement and any Safety Interface Agreement or otherwise at law, except:
 - A. for any obligation which, by its nature, can only be performed solely by RMS (including entering into any agreement to which it is a party);
 - B. to the extent that RMS notifies the Contractor that RMS has already performed, or will be responsible for performing, an obligation, in which case the Contractor must cooperate in obtaining, producing and providing all necessary information and assistance to enable RMS to perform the relevant obligation, including participating in meetings with RMS and ARTC if requested to do so by RMS; and
 - C. RMS' obligations in clauses 14.1 and 14.2 of the Rail Agreement to effect and to provide evidence of the insurances referred to in those clauses (which RMS must satisfy);
 - (ii) in complying with clause 5.16(c)(i), the Contractor must take all actions necessary to ensure RMS complies with its obligations under the Rail Agreement, the Licence Agreement and any Safety Interface Agreement within the time required by the Rail Agreement, the Licence Agreement and any Safety Interface Agreement, including in the case of any notice by ARTC under clause 16.1(1), clause 16.1(5) or clause 16.1(6) of the Rail Agreement, take such action as RMS is required to take under clause 16.1(2), clause 16.1(5) or clause 16.1(6) of the Rail Agreement to ensure ARTC is not entitled to terminate the Rail Agreement pursuant to clause 16.1(7) of the Rail Agreement;
 - (iii) in carrying out the Contractor's Work:
 - A. the Contractor must comply with any directions of RMS Representative in relation to compliance with the conditions and requirements of the Rail Agreement, the Licence Agreement, any Safety Interface Agreement or other requirements of ARTC;
 - B. Acciona Infrastructure Australia must, if required by RMS or ARTC and without limiting any obligations under clause 5.7 or otherwise under this deed, for the purposes of the Rail Agreement, the Licence Agreement or any Safety Interface Agreement accept an engagement as Principal Contractor (within the meaning of the WHS Laws), and perform as, and comply with the obligations of, the Principal Contractor;
 - C. the Contractor must ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by RMS of its obligations to ARTC under the Rail Agreement, the Licence Agreement, any Safety Interface Agreement or otherwise at law;
 - D. the Contractor must provide to RMS Representative at the same time as ARTC, a copy of any notice or submission that the Contractor issues to ARTC;
 - E. the Contractor must provide to RMS Representative promptly, and in any case within one Business Day of receiving it, a copy of any notice or other document received from ARTC;

- F. the Contractor must ensure that RMS Representative is notified sufficiently in advance of and is invited to attend all proposed meetings between the Contractor and ARTC; and
 - G. the Contractor must otherwise act consistently with the terms of the Rail Agreement, the Licence Agreement and any Safety Interface Agreement;
- (iv) whenever pursuant to the terms of the Rail Agreement, the Licence Agreement or any Safety Interface Agreement RMS makes an acknowledgment or gives a release or warranty to ARTC, then, subject to the other terms of this deed, the Contractor is deemed to make the same acknowledgement or give the same release or warranty to RMS on the same terms and conditions as the acknowledgement, release or warranty made or given by RMS under the Rail Agreement, the Licence Agreement or Safety Interface Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty were set out in full in this deed with the appropriate changes to the parties;
 - (v) the Contractor acknowledges that the Rail Agreement, the Licence Agreement and any Safety Interface Agreement may contain provisions pursuant to which ARTC is stated to make no representation, give no warranties, assume no duty of care or incur no obligation in respect of a state of affairs, and agrees that RMS similarly makes no representation, gives no warranties, assumes no duty of care and incurs no obligation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Rail Agreement, the Licence Agreement and Safety Interface Agreement were set out fully in this deed with the appropriate changes to the parties;
 - (vi) subject to clauses 10.5(b) and 10.6, the Contractor bears the risk of all Contamination in accordance with clauses 7.3 and 7.4 of the Rail Agreement on the same basis as if the relevant provisions of clauses 7.3 and 7.4 of the Rail Agreement had been set out in full in this deed with the appropriate changes to the parties;
 - (vii) subject to clause 5.16(g) and clause 5.16(h), and despite clause 15.9(c), the Contractor acknowledges and agrees that RMS will not be liable upon any Claim by the Contractor arising out of or in connection with any act or omission by ARTC arising out of or in any way in connection with the Rail Agreement, the Licence Agreement and any Safety Interface Agreement, or the Railway Works, including the cancellation of, or changing of any date for, a Track Possession; and
 - (viii) nothing in this deed authorises the Contractor, and the Contractor must not under any circumstances purport, to exercise any right of RMS under, or to be RMS' agent for the purposes of, the Rail Agreement.
- (d) Without limiting any clause of this deed, the Contractor indemnifies RMS against any claim against RMS by ARTC or any Third Party Operator or any liability RMS may incur to ARTC or any Third Party Operator arising out of or in any way in connection with:
 - (i) an interruption to the Railway, the Rail Facilities or the operations of any Third Party Operator, to the extent that it is caused or contributed to by the Contractor or any of the Contractor's employees, contractors (of any tier), representatives, invitees or agents;
 - (ii) an act, omission or neglect of the Contractor or any of the Contractor's employees, contractors or agents in undertaking the Contractor's Work, including the Railway Works;
 - (iii) a breach by the Contractor of this deed, whether deliberate, unintentional, negligent or otherwise; or
 - (iv) occupation of the Railway Corridor by the Contractor or any of the Contractor's employees, contractors (of any tier), representatives, invitees or agents, including, but not limited to, any claim or liability arising out of or in connection with:
 - A. loss of or damage to property of ARTC;
 - B. damage, expense, loss or liability in respect of loss of or damage to any other property belonging to any third party; and
 - C. damage, expense, loss or liability in respect of personal injury to or death

of any person.

- (e) The Contractor's liability to indemnify RMS under clause 5.16(d) and clause 5.16(f) will be reduced proportionally to the extent that such liability was attributable to the wrongful, negligent or unlawful acts or omissions or wilful misconduct of, or a breach of this deed by, any of RMS or RMS' employees or agents.
- (f) The Contractor is responsible for paying, is liable for and must pay all amounts that RMS is or would otherwise be liable to pay to ARTC under and in accordance with the Rail Agreement (including where the event or circumstance giving rise to the amount occurs during the Defects Correction Period), including ARTC's costs under clauses 5.3(1)(b), 6.1, 10.1(1)(a) and 17(1)(b) of the Rail Agreement (**ARTC's Costs**) and any amounts payable under each and every indemnity provision of the Rail Agreement, the Licence Agreement and any Safety Interface Agreement where the event triggering the indemnity:
 - (i) arises before the Date of Final Completion; or
 - (ii) arises out of or in connection with any event or circumstance referred to in clause 5.16(d)(i) to 5.16(d)(iv).

Upon receipt of a statement or invoice from ARTC in respect of any amount that the Contractor is responsible for paying under this clause 5.16(f), RMS will promptly pass a copy to the Contractor who must pay RMS the required amount within 5 days of receipt of the statement or invoice.

If the Contractor fails to make the payment within the time required, the amount of the payment will be a debt due from the Contractor to RMS.

- (g) The Contractor is responsible for directly arranging with ARTC any Track Possession which it may require for the carrying out of the Contractor's Work.

For this purpose, the Contractor must comply with the procedure in the Rail Agreement, the Licence Agreement and any Safety Interface Agreement for arranging a Track Possession or any other access which the Contractor may require to the Rail Infrastructure Facilities or the Railway Corridor for the purpose of carrying out the Contractor's Work.

Subject to the Contractor's right to claim an extension of time for the Excusable Cause of Delay set out in paragraph (g) of the definition of that term, and despite clause 15.9(c), the Contractor acknowledges and agrees that RMS will not be liable upon any Claim by the Contractor arising out of or in connection with:

- (i) the time it may take for ARTC to grant a Track Possession;
 - (ii) the failure by ARTC to grant a Track Possession for the date, time or duration requested or required by the Contractor;
 - (iii) the dates upon which Track Possessions are granted by ARTC or the duration of any Track Possession granted by ARTC;
 - (iv) the need for the Contractor to coordinate its activities, and cooperate, with third parties that may be sharing a Track Possession that is available to the Contractor;
 - (v) any conditions imposed by ARTC in respect of the execution of the Contractor's Work to be undertaken during a Track Possession; or
 - (vi) anything else arising out of or in connection with the need for Track Possessions by the Contractor.
- (h) If:
 - (i) the terms of the executed Rail Agreement are different to the terms of the draft Rail Agreement in Schedule 48, and the Contractor has provided a written notice under and within the time required by clause 5.16(aa)(iii); or
 - (ii) after the execution of the Rail Agreement, ARTC changes ARTC's Requirements from those in effect as at the date of the executed Rail Agreement, then, to the extent that the different terms or change to ARTC's Requirements necessitates a change to the Railway Works which:
 - (iii) increases the cost of carrying out the Railway Works; or
 - (iv) delays the Contractor in carrying out the Railway Works,
- RMS must pay the Contractor the reasonable net extra Direct Costs incurred by the

Contractor arising directly out of the difference or change referred to under this clause 5.16(h).

- (i) Despite clause 17 and the meanings of Excusable Cause of Delay and Act of Prevention:
 - (i) none of the circumstances referred to under clause 5.16(h) will be taken to constitute an Excusable Cause of Delay or an Act of Prevention; and
 - (ii) the Contractor will not be entitled to an extension of time to the Date for Construction Completion, or to delay costs under clause 17,in relation to:
 - (iii) any difference between the terms of the executed Rail Agreement and the terms of the draft Rail Agreement in Schedule 48; or
 - (iv) a change to ARTC's Requirements, the Railway Works or any Variation or Direction,

Subject to any entitlement in accordance with clause 5.16(h), the Contractor acknowledges and agrees that RMS will not be liable upon any Claim by the Contractor arising out of or in connection with any difference between the terms of the executed Rail Agreement and the terms of the draft Rail Agreement in Schedule 48 or a change to ARTC's Requirements or the Railway Works.

6. Care of people, property and the Environment

6.1 Risk and indemnity

- (a) The Contractor is responsible for the care of, and bears the risk of, and indemnifies RMS against, loss or damage to:
 - (i) the Project Works and the Temporary Works and those parts of the Construction Site, from the date of this deed until:
 - A. in the case of each parcel of land within the Local Road Corridors, the date upon which RMS Representative has issued a written notice to the Contractor that the Contractor has completed the relevant part of the Local Road Works to which the land relates or for which it was provided, in accordance with clause 16.7(e)(i); or
 - B. in the case of the balance of the Construction Site and the Temporary Works Areas, the date in the notice given under clause 17.10(f)(i) or the Date of Opening Completion (whichever is the earlier); and
 - (ii) during the Landscaping Maintenance Period:
 - A. any item or thing entrusted to the Contractor by RMS for the purpose of carrying out the Landscaping Maintenance;
 - B. any thing brought onto the Works for any Landscaping Maintenance by any person for the purpose of carrying out the Landscaping Maintenance;
 - C. all maintenance plant and equipment;
 - D. the Landscaping Maintenance; and
 - E. any part of the Works or any other area affected by the Landscaping Maintenance.
- (b) After the expiry of a period referred to in clauses 6.1(a)(i)A or 6.1(a)(i)B, as relevant, the Contractor:
 - (i) remains responsible for the care of the Project Works, the Temporary Works, the Works, the Landscaping Maintenance to the extent affected by; and
 - (ii) bears the risk of, and indemnifies RMS against, loss or damage arising out of or in connection with,
the Contractor's Work including performing Variations, making good Defects, performing Landscaping Maintenance and removing any plant, goods or materials from the Construction Site or any other areas affected by the Contractor's Work.
- (c) The Contractor is responsible for, and bears the risk of, and indemnifies RMS against, all claims (including Claims), actions, loss or damage and all other liability arising out

of or in connection with:

- (i) any loss of, loss of use of (whether partial or total), or any destruction of or damage to any real or personal property (other than property covered under clause 6.1(a)(i));
- (ii) personal injury or death; and
- (iii) disruption of any Services,
arising out of or in connection with carrying out the Contractor's Work.

6.2 Reduction of Contractor's liability

The Contractor's liability and responsibility to indemnify RMS under clauses 6.1(a), 6.1(b) and 6.1(c) is reduced to the extent that an Excepted Risk contributes to an injury or death or loss or damage to property.

6.3 Responsibility for care

- (a) The Contractor is responsible for:
 - (i) preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Works, the Landscaping Maintenance, the Construction Site or any other areas affected by the Contractor's Work;
 - (ii) preventing loss or damage to adjoining and other properties and the Environment;
 - (iii) repairing or making good loss or damage to the Project Works, the Temporary Works, the Landscaping Maintenance, the Environment and the Construction Site or any other areas affected by the Contractor's Work; and
 - (iv) except as provided under clause 6.3(b), bearing the cost of repairing, or making good, loss or damage referred to in clause 6.3(a)(iii) or to adjoining and other properties,
arising out of, or in connection with, carrying out the Contractor's Work.
- (b) Where loss or damage referred to in clause 6.3(a)(iii) or clause 6.3(a)(iv) is caused or contributed to by an Excepted Risk:
 - (i) the Contractor must, if and to the extent directed by RMS Representative, repair or make good the loss or damage caused or contributed to by the Excepted Risk, which repair or making good will, to the extent caused by the Excepted Risk, be deemed to be a Variation under clause 15 and valued in accordance with clause 15.4; and
 - (ii) the Contractor is not required to repair or make good the loss or damage caused or contributed to by the Excepted Risk if RMS Representative does not direct the Contractor to do so.

6.4 RMS action

- (a) If urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately, RMS may take the action, at the Contractor's cost with any penalty, fine, damage, expense, cost, loss or liability suffered or incurred by RMS being recoverable, except to the extent prohibited by Law, as a debt due and payable from the Contractor to RMS upon demand.
- (b) If the Contractor fails to carry out any repair work or make good under clause 6.3(a)(iii), RMS may carry out such work and all damage, expense, cost, loss and liability suffered or incurred by RMS will be a debt due and payable from the Contractor to RMS upon demand.
- (c) Clause 6.4(a) does not relieve the Contractor from any of its obligations under this deed.

6.5 Limitation of liability

- (a) Subject to clauses 6.5(b) and 6.6, the Contractor's total aggregate liability to RMS arising out of or in connection with the Contractor's Work and this deed whether in contract, tort (including negligence) or otherwise at law or in equity is limited to an amount which is equal to the Project Contract Sum.
- (b) Clauses 6.5(a) and 6.6 do not limit the Contractor's liability:
 - (i) to the extent that it:

- A. cannot be limited at law;
 - B. arises out of or in connection with the Contractor's wilful or reckless act or omission, gross negligence, fraud or criminal conduct; or
 - C. arises out of or in connection with the Contractor's abandonment of its obligations under this deed;
- (ii) to the extent that the Contractor is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for:
- A. any act or omission of the Contractor; or
 - B. a reduction in the amount payable under a policy of insurance required to be effected by the Contractor under this deed because the insurer makes a successful Derogation Assertion (where Derogation Assertion means any:
 - 1) denial of liability; or
 - 2) reduction of liability,
 by the insurer by reason of inclusion in this deed of any provision); or
- (iii) under clause 6.1(c) in respect of personal injury (including death) or illness of any person or for loss of, loss of use of or destruction of or damage to any third party property; or
- (iv) for breach of confidence or privacy or misuse of Personal Information, or
- (v) which arises under clauses 5.16, 12.3, 17.9(d) or 17.9(j),
- and amounts of any liability referred to in clauses 6.5(b)(i) to 6.5(b)(v) will not be included in any calculation of the limit of the Contractor's total aggregate liability under clause 6.5(a).
- (c) This clause 6.5 will survive termination of this deed.

6.6 Exclusion of indirect loss

- (a) Subject to clause 6.5(b), the Contractor shall not be liable to RMS for:
- (i) loss of business opportunity;
 - (ii) loss of goodwill;
 - (iii) loss of contracts;
 - (iv) loss arising from business interruption;
 - (v) loss of or corruption of data;
 - (vi) loss of anticipated savings; or
 - (vii) the cost of capital or other financing costs, incurred by RMS or any third party, which loss or cost arises due to the performance of the Contractor's Work or this deed.
- (b) RMS shall not be liable to the Contractor for:
- (i) loss of business opportunity;
 - (ii) loss of goodwill;
 - (iii) loss of contracts;
 - (iv) loss arising from business interruption;
 - (v) loss of or corruption of data;
 - (vi) loss of anticipated savings; or
 - (vii) subject to clause 22.5, the cost of capital or other financing costs, incurred by the Contractor or any third party, arising out of or in connection with the performance of the Contractor's Work or this deed.
- (c) This clause 6.6 will survive termination of this deed.

7. Insurance

7.1 Principal arranged insurance

- (a) RMS has effected an insurance policy or policies as referred to in Items 1 and 2 of Schedule 36, to cover RMS, the Contractor and all Subcontractors employed from time to time in relation to the Project Works, the Temporary Works and the Landscaping Maintenance for their respective rights, interests and liabilities with respect to:
 - (i) (**contract works - material damage**) - liability for loss or damage referred to in clause 6.1(a)(i), including, subject to the exclusions as contemplated by clause 7.3, loss or damage to plant, equipment and materials of the Contractor or any Subcontractor used in or in relation to the carrying out of the Project Works, the Temporary Works and the Landscaping Maintenance or entrusted to the Contractor by RMS for that purpose, but not forming or intended to form part of the Project Works; and
 - (ii) (**third party liability**) - liabilities to third parties of the type set out in clause 6 and subject to the maximum limits of liability set out in Schedule 37.
- (b) (**professional indemnity**) RMS has effected a professional indemnity policy of insurance for its own benefit, as referred to in Item 3 of Schedule 36.
- (c) RMS may in its discretion have other insureds named or included in the policy or policies referred to in clause 7.1(a), including any other Authority with an interest in the Project Works, the Temporary Works, the Landscaping Maintenance or the Construction Site or any other areas affected by the Contractor's Work.
- (d) The policy or policies referred to in clause 7.1(a) will be maintained by RMS until the Date of Final Completion.
- (e) Before the earlier of:
 - (i) 10 Business Days after the date of this deed; or
 - (ii) the Contractor commencing to carry out any part of the Project Works or Temporary Works,the Contractor must contact the insurance broker nominated in writing to the Contractor as RMS insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clauses 7.1(a) and 7.1(b).
- (f) Full copies of the policy terms of the insurances effected under clause 7.1(a) will be provided by RMS.
- (g) If at any time the Project Contract Sum exceeds 125% of the Limit of Liability of the Contract Works identified in the contract works and third party products liability insurance policies in Schedule 37, RMS will effect a further contract works insurance policy covering liability for loss or damage referred to in clause 6.1(a) including, subject to the exclusions as contemplated by clause 7.3, loss or damage to plant, equipment and materials of the Contractor or any Subcontractor used in or in relation to the carrying out of the Project Works, the Temporary Works and the Landscaping Maintenance or entrusted to the Contractor by RMS for that purpose, but not forming or intended to form part of the Project Works, so as to ensure there is contract works insurance for the full value of the Project Contract Sum.
- (h) Any further insurance policy obtained by RMS under clause 7.1(g) shall extend to cover RMS, the Contractor and all Subcontractors employed from time to time in relation to the Project Works, the Temporary Works and the Landscaping Maintenance for their respective rights, interests and liabilities.

7.2 Contractor's acknowledgement and obligations

The Contractor:

- (a) acknowledges and agrees that:
 - (i) it has reviewed and examined the insurance policies effected by RMS pursuant to clause 7.1(a) which appear in Schedule 37 and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in clauses 6.1 and 6.3 and is aware that those insurance policies will not provide cover to the Contractor against all the risks

- assumed by the Contractor under clauses 6.1 and 6.3;
- (ii) in respect of the insurance referred to in clause 7.1(b):
 - A. RMS is the only beneficiary under that insurance; and
 - B. the insurer will not waive any rights of subrogation or action against the Contractor or any of the Contractor's Subcontractors;
- (iii) the obtaining of insurance by RMS in accordance with clause 7.1 does not limit or otherwise affect the Contractor's obligations under this deed, including those under clauses 6.1 and 6.3; and
- (iv) the policies of insurance referred to in clauses 7.1(a) and 7.1(b) have been obtained at RMS' cost;
- (b) is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a); and
- (c) may effect its own insurance to cover the amount of any excess.

7.3 Exclusions to RMS insurance

The insurance cover under clause 7.1(a) is subject to exclusions. These are set out in the actual insurance policies.

7.4 Reinstatement

- (a) If there is a claim for damage or destruction under the policy of insurance referred to in clause 7.1(a)(i) (as determined by RMS, acting reasonably):
 - (i) all settlement amounts must be paid by the insurer directly to RMS;
 - (ii) RMS may decide to have the Project Works reinstated, or may decide not to proceed with the Project Works, without creating any default by RMS under this deed; and
 - (iii) the Contractor must reinstate the Project Works if instructed to by RMS or RMS Representative and except as otherwise provided in this deed, may only make a Claim for payment for reinstatement of the Project Works progressively as and when the Contractor reinstates, in accordance with this deed, the Project Works and only up to the amount of any insurance settlement.
- (b) If, prior to the Date of Construction Completion, the Project Works or the Temporary Works are damaged or destroyed, the Contractor must:
 - (i) make secure the Project Works, the Temporary Works and the parts of:
 - A. the Site;
 - B. (to the extent appropriate) the Local Road Works Areas; and
 - C. the Temporary Works Areas,
 which are still under the control of the Contractor in accordance with clauses 9.1 and 9.4;
 - (ii) notify:
 - A. appropriate Authorities, emergency services and the like; and
 - B. the insurers for assessment,
 and comply with their instructions; and
 - (iii) promptly consult with RMS Representative to agree on steps to be taken to ensure that, to the greatest extent possible, the Contractor continues to comply with its obligations under this deed.

7.5 Contractor's insurance

- (a) Before starting any work for or in connection with this deed, the Contractor must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in Items 21 and 22 of Schedule 1, and pay all premiums for:
 - (i) **(workers compensation)** - workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW), as specified in Item 21 of Schedule 1 and Item 5 of Schedule 36; and
 - (ii) **(motor vehicle/mobile plant/third party property)** - either comprehensive motor

vehicle/mobile plant insurance or third party property damage insurance, as specified in Item 22 of Schedule 1 and Item 4 of Schedule 36.

- (b) The Contractor must ensure that every Subcontractor is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW).

7.6 Asbestos and waterborne craft

- (a) If any work for or in connection with this deed includes asbestos decontamination, the Contractor must pay all premiums and insure under an asbestos liability policy of insurance to cover risks with asbestos decontamination work, as specified in Item 23 of Schedule 1.
- (b) If any work for or in connection with this deed includes the use of waterborne craft of 8 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft, as specified in Item 24 of Schedule 1.

7.7 Contractor's insurance requirements

- (a) The Contractor must ensure that in respect of each insurance required to be effected or taken out as required by this clause 7 it:
 - (i) does not do anything which prejudices any insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) immediately notifies RMS of any event which may result in an insurance policy lapsing or being cancelled or if it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in clause 7 which could materially reduce the available limit of indemnity; and
 - (iv) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (b) The Contractor must ensure that in respect of each insurance required to be effected or taken out as required by this clause 7 by the Contractor or any Subcontractor it:
 - (i) reinstates or causes to be reinstated an insurance policy if it lapses; and
 - (ii) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of RMS.

7.8 Period of insurance

The Contractor must ensure that the insurances it is required to take out pursuant to this deed:

- (a) are (except for the insurance referred to in clause 7.6(a) and 7.6(b)) in force before starting any work for or in connection with this deed;
- (b) are maintained, in the case of the insurance referred to:
 - (i) in clause 7.5(a)(i), clause 7.5(a)(ii) and clause 7.6(a), until the end of all Defects Correction Periods; and
 - (ii) in clause 7.6(b), for the period stated in Item 24 of Schedule 1; and
- (c) are, in the case of the insurances referred to in clause 7.5(a)(ii), clause 7.6(a) and clause 7.6(b), effected with APRA authorised insurers, unless otherwise agreed by RMS acting reasonably.

7.9 Evidence of policies

Before the Contractor starts any work for or in connection with this deed and whenever requested in writing by RMS or RMS Representative, the Contractor must supply proof that all insurance policies which the Contractor is required to effect and maintain under this deed (including insurance policies required to be taken out by Subcontractors) are current and, except in the case of non-statutory insurances, provide copies of the full terms of those insurances.

7.10 RMS may effect necessary insurance

- (a) If the Contractor fails to comply with clauses 7.5, 7.6 and 7.9, RMS may effect and maintain that insurance and pay the necessary premiums.

- (b) RMS may recover from the Contractor the cost of the premiums and RMS' reasonable costs of effecting and maintaining the insurance, as a debt due and payable by the Contractor to RMS upon demand.
- (c) The Contractor must provide all reasonable assistance to RMS to allow it to exercise its rights under this clause 7.10, including by providing to RMS' Insurance Broker information required by insurers for the purposes of underwriting the relevant insurance.

7.11 Obligation to inform RMS

The Contractor must:

- (a) provide full particulars to:
 - (i) RMS Representative;
 - (ii) RMS' Insurance Co-ordinator; and
 - (iii) RMS' Insurance Broker,
 of any:
 - (iv) occurrence of an event that may give rise to a claim under any policy of insurance effected under, or as required by, this deed; and
 - (v) notice of any claim or subsequent proceeding or action and developments concerning the claim,
 as soon as possible, and in any case no later than 2 days after becoming aware of any such circumstance as referred to in clauses 7.11(a)(iv) and 7.11(a)(v); and
- (b) take such steps as are necessary or appropriate to ensure that a Subcontractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, take in relation to RMS similar action to that which the Contractor is required to take under clauses 7.7 and 7.11(a).

7.12 Obligations not affected

- (a) The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities (including, without limitation, indemnities given under clause 6) or other obligations under this deed.
- (b) The provisions of clauses 7.11 and 7.12(a) also apply to insurance arranged by RMS.

7.13 Insurance claims procedure

- (a) The Contractor must:
 - (i) comply with clauses 7.11(a) and 7.11(b);
 - (ii) not, without the consent of the insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and
 - (iii) promptly give all information and reasonable assistance to RMS and the insurer as RMS or the insurer, or its nominee, may require in the prosecution, defence or settlement of any occurrence or claim.
- (b) Nothing in this clause 7.13 prevents a party from taking immediate action to avoid loss of life or damage to property as contemplated by clauses 6.3 and 6.4 where that is reasonably necessary in the circumstances, and any such action will not prejudice the position of either party under the policies of insurance effected in respect of any loss or damage.

8. Security

8.1 Unconditional undertakings

- (a) The Contractor must give RMS, within 10 days of the date of this deed, three unconditional undertakings as follows:
 - (i) one for 2.5% of the Project Contract Sum;
 - (ii) one for 1.5% of the Project Contract Sum; and
 - (iii) one for 1% of the Project Contract Sum,
 each in the form of Schedule 6 and in favour of RMS and which are, where required,

duly stamped.

- (b) Subject to its rights to have recourse to the unconditional undertakings, RMS must:
 - (i) within 28 days after the Date of Construction Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(i);
 - (ii) within 28 days after the first anniversary of the Date of Construction Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(ii); and
 - (iii) within 28 days after the Date of Final Completion, release the remaining unconditional undertaking provided by the Contractor under clause 8.1(a)(iii).
- (c) RMS:
 - (i) may have recourse to any unconditional undertaking provided under this clause 8.1 at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - A. any unconditional undertaking; or
 - B. the proceeds of any unconditional undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in clause 8.1(c)(ii) on trust for the Contractor.
- (d) Any unconditional undertaking provided under this clause 8.1 must be issued by a financial institution approved by RMS.
- (e) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this clause 8.1 from paying RMS pursuant to the unconditional undertaking;
 - (ii) RMS from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 8.1 or receiving payment under any such unconditional undertaking; or
 - (iii) RMS using the money received under any unconditional undertaking provided under this clause 8.1.

8.2 Parent company guarantee

- (a) Subject to clause 8.2(b), the Contractor must within 20 days of the date of this deed give RMS a guarantee duly executed by the Parent Company Guarantor in favour of RMS in the form of Schedule 7 and which is, where required, duly stamped.
- (b) If the Contractor comprises more than one person, each person comprising the Contractor must within 10 days of the date of this deed give RMS a separate guarantee duly executed by its Parent Company Guarantor in favour of RMS in the form of Schedule 7 and which is, where required, duly stamped.

8.3 PPS Law

The Contractor agrees that the terms of this deed may constitute one or more Security Interests for the purposes of the PPSA and that:

- (a) to perfect any such Security Interest RMS may register one or more financing statement(s) on the Personal Property Securities Register;
- (b) the Contractor shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPSA;
- (d) the Contractor waives its right to receive notice of a verification statement under section 157 of the PPSA; and
- (e) the Contractor must, promptly on request by RMS or RMS Representative, provide any such information and execute and deliver any such documents as RMS may reasonably require to protect the Security Interests granted to RMS by the Contractor under or in relation to this deed.

9. Access

9.1 Access

- (a) Subject to clause 9.1(b), any other provision of this deed affecting access (including the Scope of Works and Technical Criteria) and any provision of the Planning Approval or other Approval affecting access, RMS must:
- (i) give, or ensure the Contractor has, sufficient access to the Site, the Local Road Works Areas and the Temporary Works Areas, by the dates set out in the Site Access Schedule; and
 - (ii) thereafter continue to allow, or ensure that the Contractor is continued to be allowed, sufficient access to the Site, the Local Road Works Areas and the Temporary Works Areas,
to allow the Contractor to carry out the Contractor's Work.
- (b) The Contractor acknowledges and agrees that:
- (i) RMS is not obliged to give the Contractor any type of access to any part of the Site, the Local Road Works Areas or the Temporary Works Areas, until the Contractor has:
 - A. effected the insurances required under clauses 7.5(a)(i), 7.5(a)(ii) and 7.6;
 - B. complied with clause 7.9 with respect to each insurance;
 - C. in respect of any Local Road Works Area, provided to RMS a copy of the written consent received from the relevant local government authorities, which consent is required for the performance of the Contractor's Work; and
 - D. complied with clauses 8.1(a) and 8.2;
 - (ii) it may not be given exclusive access to the Site, the Local Road Works Areas and the Temporary Works Areas;
 - (iii) RMS may engage other contractors or consultants to perform work on the Site, the Local Road Works Areas and the Temporary Works Areas, provided that RMS will require such persons to comply with the reasonable directions of Acciona Infrastructure Australia given in its capacity as Principal Contractor;
 - (iiia) an Authority may perform work on the Site, the Local Road Works Areas and the Temporary Works Areas, including in relation to Services; and
 - (iv) it will use reasonable endeavours to ensure that there is no substantial interference to the operations of:
 - A. RMS' other contractors and consultants; or
 - B. Authorities.
- (c) RMS' obligations under this clause 9.1 will cease upon the Date of Construction Completion.
- (d) Failure by RMS to give access as required by clauses 9.1(a)(i) and 9.1(a)(ii) will not be a breach of this deed but, subject to clause 15.9(e), will entitle the Contractor to an extension of time to the Date for Construction Completion under clause 17.5 if the requirements of clause 17.5 are satisfied.
- (e) The Contractor's entitlement under clause 17.6 will be its only right to payment of money arising out of or in any way in connection with RMS' failure to give access as required by clause 9.1(a).

9.2 RMS access

- (a) The Contractor must ensure that at all times RMS Representative, RMS Assistant Representatives, RMS Surveillance Officers and any person authorised by RMS (including visitors invited by RMS) have safe and convenient access to:
- (i) the Construction Site;
 - (ii) any other place where any part of the Contractor's Work is being carried out;
 - (iii) the Contractor's Work;
 - (iv) the Design Documentation; and

- (v) any other documentation created for the purposes of the Contractor's Work.
- (b) RMS Representative, RMS Assistant Representatives, RMS Surveillance Officers and any other person authorised by RMS that is given access pursuant to this clause must comply with the reasonable directions of Acciona Infrastructure Australia given in its capacity as Principal Contractor.

9.3 RMS right to inspect

- (a) RMS, RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers may at any time inspect the Contractor's Work.
- (b) Neither RMS, RMS Representative, RMS Assistant Representatives nor RMS Surveillance Officers owe any duty to the Contractor to:
 - (i) inspect or otherwise review or monitor the Contractor's Work or other actions or activities or lack of action; or
 - (ii) review, consider, identify or notify about any aspect of the Contractor's Work or errors, omissions, compliance or non-compliance with the requirements of this deed (whether or not it does so).
- (c) No inspection, review or monitoring of the Contractor's Work or of any construction by RMS, RMS Representative, RMS Assistant Representatives or RMS Surveillance Officers will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under this deed (including its obligations under clause 13.1(a)) or otherwise according to Law; or
 - (ii) RMS' rights against the Contractor whether under this deed or otherwise according to Law.

9.4 Controlling access

At all times after being given access under clause 9.1 until:

- (a) in the case of the Local Road Works Areas and those parts of the Site within the Local Road Corridors (other than parcels of land containing the roads and road infrastructure referred to in the sections of the Scope of Works and Technical Criteria identified in Item 29(n) of Schedule 1), the date upon which RMS Representative has issued a written notice to the Contractor that the Contractor has completed the relevant part of the Local Road Works to which the land relates or for which it was provided, in accordance with clause 16.7(e)(i) of this deed; or
 - (b) in the case of the balance of the Site and the Temporary Works Areas, the earlier of the Date of Opening Completion or the Date of Construction Completion,
- the Contractor must:
- (c) control access to, and ensure public safety on, the land described in clauses 9.4(a) and 9.4(b) (as relevant);
 - (d) provide for the continuous safe passage of the public, Service providers and road users on existing roads and access ways affected by the Contractor's Work in accordance with this deed, which passage must, unless otherwise consented to in writing by RMS Representative, be provided at a standard not less than that provided to the public, Service providers and road users prior to the commencement of the Contractor's Work; and
 - (e) subject to clauses 2.4(c)(ii), 2.5(e)(ii), 2.6(d)(ii), 9.1(b) and 9.2, and any relevant Law, limit access to the land described in clauses 9.4(a) and 9.4(b) (as relevant) to its employees and Subcontractors.

9.5 Extra Land

- (a) The Contractor must:
 - (i) at its own cost:
 - A. identify any land in addition to the Site, the Local Road Works Areas and the Temporary Works Areas, which is necessary or which it may deem requisite or necessary for the execution of the Contractor's Work including land required for the Local Road Works, Property Works and Service Works (**Extra Land**); and

- B. procure for itself the occupation or use of or relevant rights over any Extra Land;
- (ii) prior to the occupation or use of, or exercise of relevant rights over, any Extra Land, give to RMS Representative a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the Extra Land; and
- (iii) as a condition precedent to Construction Completion, provide RMS Representative:
 - A. a properly executed release on terms satisfactory to RMS Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the Extra Land that includes confirmation that the Extra Land has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the Extra Land; or
 - B. if the Contractor demonstrates to the satisfaction of RMS Representative, acting reasonably, that the Contractor is unable to obtain a release under clause 9.5(a)(iii)A despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the Extra Land has failed or refused to execute such a release within 21 days of it being provided by the Contractor to the owner, occupier or other person having an interest in the Extra Land following the proper completion of the work on that Extra Land.
- (b) The Contractor must ensure that:
 - (i) subject to clause 13.2(d)(ii), the use; and
 - (ii) subject to clause 13.2(e), the rehabilitation,
 of Extra Land is to the satisfaction of the owner of the Extra Land, the lessee of the Extra Land, RMS and all relevant Authorities.

9.6 Risk of obtaining access to Extra Land

The Contractor acknowledges that:

- (a) integration of the requirements for access to Extra Land is at the sole risk of the Contractor; and
- (b) RMS will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
 - (i) identifying and obtaining access to Extra Land; or
 - (ii) subject to clause 13.2(b)(iv)A.2), any delay, additional costs or other effects on the Contractor's Work related to the ability of the Contractor or its Subcontractors to obtain access to Extra Land.

10. The Site and Services

10.1 Services

The Contractor:

- (a) must obtain and pay for any Services and all connections for all Services it needs to perform its obligations under this deed;
- (b) must investigate, protect, relocate, modify and provide for all Services necessary for it to comply with its obligations under this deed;
- (c) assumes the risk of the existence, location, condition and availability of Services in respect of the Contractor's Work except to the extent that any Service is a Site Condition, and in respect of that Site Condition, the Contractor has complied with clause 10.6; and
- (d) must contract for, acquire or otherwise procure or provide the provision of all fuel and other materials required for the performance of its obligations under this deed.

10.2 Physical conditions

- (a) Without limiting clauses 10.2(d) or 22.10, the Contractor warrants that, prior to the date of this deed, the Contractor:
- (i) examined this deed, the Site and its surroundings, the Local Road Works Areas, the Temporary Works Areas and any other information that was made available in writing by RMS, or any other person on RMS' behalf, to the Contractor for the purpose of tendering;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all the obligations of this deed and of all matters and things necessary for the due and proper performance and completion of the Contractor's Work;
 - (iv) informed itself of:
 - A. all matters relevant to the employment of labour at the Site, the Local Road Works Areas and the Temporary Works Areas; and
 - B. all industrial matters relevant to the Site, the Local Road Works Areas, the Temporary Works Areas and the Contractor's Work;
 - (v) had sufficient opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of Information Documents; and
 - B. for design purposes and otherwise;
 - (vi) had sufficient opportunity to review and obtain, and obtained, all necessary legal, geotechnical and other technical advice in relation to this deed, the Deed of Disclaimer, the Information Documents (including the RMS Data), the physical conditions and characteristics of the Construction Site, the Environment and their surroundings, as well as the risks, contingencies and other circumstances having an effect on its Tender, the cost of performing its obligations and its potential liabilities under this deed; and
 - (vii) had sufficient access to the Site, the Local Road Works Areas and the Temporary Works Areas, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) The Contractor is responsible for, and assumes the risk of all increased costs and any damage, expense, loss, liability, disruption or delay it suffers or incurs arising out of or in connection with the physical conditions and characteristics of the Construction Site, the Environment or their surroundings including:
- (i) the existence of any Contamination;
 - (ii) the suitability or otherwise of any material on the Site, the Local Road Works Areas or the Temporary Works Areas, for use in the Contractor's Work; and
 - (iii) water, atmospheric and sub-surface conditions or characteristics including heritage and archaeological issues,
- except to the extent that those physical conditions and characteristics are a Site Condition and, in respect of that Site Condition, the Contractor has complied with clause 10.6.
- (c) Prior to the date of this deed the Contractor signed the Deed of Disclaimer and provided this to RMS after which RMS provided the Information Documents to the Contractor. Without limiting clause 10.2(d) or the warranties or acknowledgements in the Deed of Disclaimer:
- (i) RMS does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents (other than the RMS Data to the

- extent contemplated by clause 10.2(f));
- (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the Contractor acknowledges that:
 - A. the Information Document or part thereof does not form part of this deed and that clause 10.2(d) applies to the Information Document or part thereof; and
 - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and
 - (iii) RMS will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
 - A. the Information Documents (other than the RMS Data to the extent contemplated by clause 10.2(f)); or
 - B. a failure by RMS to provide any information to the Contractor.
- (d) The Contractor:
- (i) warrants that, subject to clause 10.2(f), it did not in any way rely upon:
 - A. any information, data, representation, statement or document made by, or provided to the Contractor, by RMS or anyone on behalf of RMS or any other information, data, representation, statement or document for which RMS is responsible or may be responsible whether or not obtained from RMS or anyone on behalf of RMS; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
for the purposes of entering into this deed;
 - (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that RMS has entered into this deed relying upon the warranties, acknowledgements and agreements in clauses 10.2(d)(i) and 10.2(d)(ii) and in the Deed of Disclaimer and the tender form submitted by the Contractor as part of its Tender.
- (e) The Contractor releases and indemnifies RMS from and against:
- (i) any Claim against RMS by, or liability of RMS to, any person; or
 - (ii) (without being limited by clause 10.2(e)(i)) any costs, losses, damages, expenses or liability suffered or incurred by RMS,
arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents (excluding the RMS Data to the extent contemplated by clause 10.2(f)) by the Contractor or any other person to whom the Information Documents are disclosed by or on behalf of the Contractor;
 - (iv) a failure by RMS to provide any information to the Contractor; or
 - (v) the Information Documents (excluding the RMS Data to the extent contemplated by clause 10.2(f)) being relied upon or otherwise used in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms under the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation).
- (f) Subject to clause 10.2(g), RMS acknowledges that the Contractor may rely on the RMS Data but only for the purposes of claiming:
- (i) Variations under and in accordance with clause 15.3(c); and
 - (ii) extensions of time, if any, under and in accordance with clause 17.5 arising from a Variation (if any) the subject of a Variation Order issued by the RMS Representative under and in accordance with clause 15.3(e).

- (g) The Contractor acknowledges that:
 - (i) the Contractor cannot rely on the RMS Data to the extent that:
 - A. the Contractor's review, tests, enquiries, investigations and advice indicate; or
 - B. a prudent and competent contractor in the position of the Contractor, who had examined:
 - 1) all information made available in writing by RMS or anyone on behalf of RMS to the Contractor for the purpose of tendering and up to the date of this deed;
 - 2) all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries; and
 - 3) the Construction Site, the Environment and their surroundings, would have known or determined, that the RMS Data was not correct; and
 - (ii) the acknowledgement of RMS under clause 10.2(f) does not extend to any interpretation, extrapolation, conclusion, assumption, projection or analysis of the RMS Data, whether it is contained or stated in the Information Documents, or made, drawn or undertaken by the Contractor.

10.3 Conditions of Construction Site and structures

- (a) Subject to clause 10.2(f), RMS makes no representation and gives no warranty to the Contractor in respect of:
 - (i) the condition of:
 - A. the Construction Site, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings;
 - (ii) the existence, location, condition or availability of Services in respect of the Construction Site; or
 - (iii) the feasibility or fitness for purpose of the Concept Design including, in respect of the constructability of the Concept Design having regard to the physical conditions and characteristics of the Site, the Local Road Works Areas and the Temporary Works Areas.
- (b) The Contractor must accept:
 - (i) the Construction Site; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site,
 in their present condition subject to all defects including all sub-surface conditions.
- (c) The Contractor must investigate, design and construct the Project Works and Temporary Works in accordance with this deed, whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (i) the Construction Site, the Environment or their surroundings; or
 - (ii) any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings,
 and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the characteristics of any of the matters referred to in clauses 10.3(c)(i) or 10.3(c)(ii) above.

10.4 Things of value found

Any things of value or archaeological or special interest found on the Site, the Local Road Works Areas and the Temporary Works Areas are, as between the Contractor and RMS, the property of RMS, in order for RMS to be able to return them to their rightful owner.

The Contractor must:

- (a) at its cost:

- (i) immediately notify RMS Representative if any such thing is found; and
- (ii) ensure that any such thing is protected and not disturbed; and
- (b) comply with all requirements of Authorities and directions of RMS Representative, RMS Representative acting reasonably, in relation to the thing.

RMS will pay the Contractor the reasonable net extra Direct Costs incurred by the Contractor in complying with clauses 10.4(a)(ii) and 10.4(b), as stated by RMS Representative.

10.5 Contamination

- (a) In addition to the requirements of the Environmental Documents and without limiting clauses 10.2 and 10.3, the Contractor bears the risk of all Contamination in, under or around the Construction Site which:
 - (i) is disturbed by the carrying out of the Contractor's Work; or
 - (ii) otherwise arises out of or in connection with the Contractor's Work, and the Contractor must:
 - (iii) dispose of, or otherwise deal with, such Contamination in accordance with Law and the Environmental Documents;
 - (iv) remediate the Construction Site to the extent it is in any way degraded by such Contamination; and
 - (v) subject to clause 10.5(b), indemnify RMS against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by RMS arising out of or in any way in connection with such Contamination, but the Contractor's liability shall be reduced proportionately to the extent that the act or omission of RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier and the ER) contributed to the claim, damage, expense, loss, liability, fine or penalty.
- (b) If any Contamination constitutes or involves a Site Condition under clause 10.6, then the Contractor's rights and entitlements in complying with clause 10.5(a) in respect of that Contamination will be determined in accordance with clause 10.6.

10.6 Site Conditions

- (a) Site Conditions are physical conditions or characteristics of the Site, the Local Road Works Areas and those parts of the Temporary Works Areas identified in Item 24A of Schedule 1:
 - (i) which consist of one or more objects or substances that:
 - A. it is reasonable to conclude were introduced and positioned by deliberate human intervention on the Site, the Local Road Works Areas or those parts of the Temporary Works Areas identified in Item 24A of Schedule 1; and
 - B. are specified in Item 25 of Schedule 1 as constituting a Site Condition, subject to satisfaction of the other requirements of this clause 10.6(a); and
 - (ii) which were:
 - A. in existence as at the date of this deed on the Site, the Local Road Works Areas or those parts of the Temporary Works Areas identified in Item 24A of Schedule 1; or
 - B. in existence as at the date of this deed on the surroundings to the Site and which migrated after the date of this deed to the Site, the Local Road Works Areas or those parts of the Temporary Works Areas identified in Item 24A of Schedule 1, except to the extent that the migration:
 - 1) was caused or contributed to by the Contractor or the Contractor's Subcontractors; or
 - 2) could have been prevented or minimised by the Contractor or the Contractor's Subcontractors by the implementation of measures that would have been taken by a prudent and competent contractor in the position of the Contractor or the Contractor's Subcontractors

- (as the case may be); and
- (iii) which were not known, or substantially known, to the Contractor; and
 - (iv) which differ materially in nature or scope from the physical conditions or characteristics that could have been reasonably anticipated by a prudent and competent contractor in the position of the Contractor, who had examined:
 - A. all information made available in writing by RMS or by anyone on behalf of RMS to the Contractor for the purpose of tendering and up to the date of this deed;
 - B. all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries; and
 - C. the Site, the Local Road Works Areas and those parts of the Temporary Works Areas identified in Item 24A of Schedule 1; and
 - (v) which unavoidably:
 - A. necessitate a Variation; and/or
 - B. delays achievement of Construction Completion.
- (b) If during the execution of the Contractor's Work the Contractor becomes aware of a Site Condition, the Contractor must:
- (i) notify RMS Representative of the existence and possible scope of the Site Condition as soon as practicable and in any event within one day of so becoming aware;
 - (ii) except to the extent necessary pursuant to clause 5.7, not disturb the Site Condition without the approval of RMS Representative; and
 - (iii) within five days of so becoming aware, provide a Site Condition Notice to RMS Representative.
- (c) A Site Condition Notice is a notice in writing which includes:
- (i) detailed particulars of why the Contractor believes the relevant condition or characteristic constitutes or involves a Site Condition;
 - (ii) the alternative measures that the Contractor considers are necessary and practicable to deal with the Site Condition, including a preliminary estimate of the extent to which each such alternative has a resourcing, cost, disruption or delay impact; and
 - (iii) any other information that the Contractor considers is relevant in the circumstances.
- (d) Following receipt of a Site Condition Notice, RMS Representative may request any additional information it reasonably requires from the Contractor to assess the Site Condition Notice (**Additional Contractor Information**).
- (e) If the condition referred to in the Site Condition Notice constitutes or involves a Site Condition, the provisions of clauses 15.1, 15.2 and 17.5 will be applied except that no regard will be had to the value of, and the Contractor waives any entitlement in respect of, any additional work carried out, constructional plant used or costs incurred in respect of the Site Condition earlier than five days before the date on which the Contractor gives the written notice under clause 10.6(b)(iii).
- (f) The entitlements referred to in clause 10.6(e) will be the Contractor's sole remedy, and the Contractor will have no entitlement to and RMS will not be liable for any other Claim arising out of or in connection with a Site Condition.
- (g) Within five days of receipt of:
- (i) the Site Condition Notice; and
 - (ii) the Additional Contractor Information (if any),
- whichever is later, RMS Representative must state whether it believes the condition referred to in the Site Condition Notice constitutes or involves a Site Condition and notify the Contractor accordingly.
- (h) If RMS Representative does not give a notice under clause 10.6(g) within the time period stated in clause 10.6(g), RMS Representative is deemed to have stated that the

condition referred to in the Site Condition Notice does not constitute or involve a Site Condition.

11. Quality

11.1 Quality system

- (a) The Contractor must implement a quality system for the management of all aspects of the Contractor's obligations under this deed and in accordance with the requirements of the section of the Scope of Works and Technical Criteria identified in Item 29(o) of Schedule 1, and the Quality Plan.
- (b) The Contractor must develop and implement a Quality Plan in accordance with the Appendix to the Scope of Works and Technical Criteria identified in Item 29(p) of Schedule 1.
- (c) The Contractor must not reduce the number of personnel, the minimum expertise of personnel or the scope of work or extent of surveillance included in the Quality Plan without the approval of RMS Representative.

11.2 Quality management and verification

- (a) RMS and the Contractor acknowledge that the design and construct project delivery method chosen for the Project Works:
 - (i) requires the Contractor to assume responsibility for all aspects of quality for the Contractor's Work and for the durability of the Project Works;
 - (ii) allows the Project Verifier to observe, monitor, audit and test all aspects of quality in the Contractor's Work and the durability of the Project Works to verify compliance with the requirements of this deed;
 - (iii) requires the Project Verifier by reviewing and assessing quality in the Contractor's Work and the durability of the Project Works, to verify the Contractor's compliance with the requirements of this deed; and
 - (iv) allows RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers to monitor compliance of the Contractor's Work with the requirements of this deed.
- (b) The Contractor must ensure a Quality Manager is engaged who must:
 - (i) independently certify the effectiveness and integrity of the Contractor's quality system in achieving conformity with the requirements of this deed;
 - (ii) report to RMS Representative, relevant RMS Assistant Representatives, the relevant RMS Surveillance Officers and the Project Verifier on quality issues in accordance with the requirements of this deed; and
 - (iii) have the requisite experience and ability described for the Quality Manager in Schedule 19.
- (c) The Contractor must provide to RMS Representative a certificate executed by the Quality Manager in the form of:
 - (i) Schedule 9:
 - A. every 3 months from the date of this deed up to the end of the Landscaping Maintenance Period; and
 - B. at the end of the Landscaping Maintenance Period as a condition precedent to RMS Representative issuing a notice to the Contractor under clause 14.5(b)(i);
 - (ii) Schedule 10 as a condition precedent to Construction Completion and as a condition precedent to Final Completion; and
 - (iii) Schedule 11 upon the expiry of the last Defects Correction Period and as a condition precedent to Final Completion.
- (d) The Project Verifier must audit and review each revision of the Quality Plan within 14 days of submission of that plan to RMS Representative.

11.3 Hold Points and Witness Points

The Contractor must comply with the Hold Point and Witness Point:

- (a) procedures set out in the Scope of Works and Technical Criteria and the Quality Plan; and
- (b) requirements inserted in the Project Plans by the Project Verifier.

11.4 Project quality non-conformity

- (a) The Contractor must comply with the procedure for non-conformities set out in the Scope of Works and Technical Criteria and the Quality Plan.
- (b) In addition to the procedure for non-conformities referred to in clause 11.4(a), and without limiting clause 16.2, if the Contractor has not complied with the Scope of Works and Technical Criteria, RMS Representative may give written notice to the Contractor of the Contractor's failure to comply and requiring compliance within a reasonable time.
- (c) If the Contractor does not comply with the notice referred to in clause 11.4(b), RMS may employ others to carry out the direction.
- (d) The amount of any cost, damage, expense, loss or liability RMS suffers or incurs in taking the action contemplated in clause 11.4(c) or as a result of the Contractor's failure to comply with clause 11.4(b) will be a debt due and payable from the Contractor to RMS upon demand.
- (e) Corrective actions implemented under the Contractor's quality system must comply with the requirements of this deed including the Scope of Works and Technical Criteria.
- (f) The Contractor must promptly issue all documents relating to quality non-conformities to RMS Representative.

11.5 Monitoring and audits by RMS Representative

- (a) The Contractor acknowledges that RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers may, at any time up to the Date of Final Completion, arrange monitoring and audits (including testing) to see if the Contractor is complying with this deed (including the Quality Plan, Environmental Management Plans and Project WHS Management Plan).
- (b) The Contractor must:
 - (i) make arrangements to ensure that RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers have access to all facilities, documentation, Records and personnel (including those of Subcontractors) that are needed by RMS Representative, RMS Assistant Representatives or RMS Surveillance Officers for the carrying out of the monitoring and audits referred to in clause 11.5(a); and
 - (ii) ensure that the Quality Manager, the Environmental Manager and the Contractor's occupational, health, safety and rehabilitation management representative are available, as necessary, to discuss details of quality matters with RMS Representative, relevant RMS Assistant Representatives and relevant RMS Surveillance Officers during the above monitoring and audits.

11.6 Testing

- (a) The Contractor must carry out all tests required:
 - (i) by this deed; or
 - (ii) otherwise directed by RMS Representative.
- (b) The costs of a test directed by RMS Representative and not otherwise required by this deed will be borne by RMS unless the test detects a Defect or is upon a Defect.
- (c) Where any test that is not otherwise required by this deed is directed by RMS Representative under clause 11.6(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify RMS Representative if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Construction Completion, giving details of the estimated delay and how the critical path to achieving Construction Completion and the Date of Construction Completion are

likely to be affected (if at all).

- (d) Despite clause 17.4(b), the requirement to notify RMS Representative in accordance with clause 11.6(c) is a condition precedent to the Contractor's entitlement to any extension of time in connection with a test directed by RMS Representative under clause 11.6(a)(ii).

11.7 No relief from obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 16) or otherwise according to Law nor will the rights of RMS whether under this deed or otherwise according to Law be limited or otherwise affected by:

- (a) the implementation and compliance with any quality system or the Quality Plan;
- (b) compliance with any Hold Point and Witness Point procedures and requirements;
- (c) failure by RMS, RMS Representative, RMS Assistant Representatives, RMS Surveillance Officers or any other person acting on behalf of RMS or engaged by RMS to detect any Defect whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or
- (d) any monitoring or audit arranged by RMS Representative, RMS Assistant Representatives or RMS Surveillance Officers, under clause 11.5 or discussions between the Quality Manager and RMS Representative, RMS Assistant Representatives or RMS Surveillance Officers, as contemplated under clause 11.5(b)(ii).

12. Design development and documentation

12.1 The Contractor's design obligations

The Contractor:

- (a) warrants to RMS that:
 - (i) the Contractor has checked and carefully considered the Scope of Works and Technical Criteria and Environmental Documents and that:
 - A. the Concept Design has been prepared by the Contractor and will be fit for its intended purpose;
 - B. it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the Scope of Works and Technical Criteria and Environmental Documents;
 - C. not used; and
 - D. it has taken into consideration and made due allowance for the risks and costs associated with carrying out the Contractor's Work and with assuming the obligations and potential liabilities imposed on it under this deed;
 - (ii) the Design Documentation will:
 - A. satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of this deed;
 - B. be as shown in, and in accordance with, the Concept Design, subject to such changes as may be necessary to ensure compliance with this deed or may be necessitated by any of the factors referred to in clauses 12.1(d)(ii)A and 12.1(d)(ii)B;
 - C. be fit for its intended purpose;
 - D. be completed in accordance with the requirements of this deed; and
 - E. integrate all the discrete design elements;
 - (iii) construction will be in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 12.2(k) and construction in accordance with the Design Documentation will satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of this deed;
 - (iv) the Project Works will:

- A. be completed in accordance with, and satisfy the requirements of, this deed; and
 - B. upon Construction Completion, be fit for their intended purposes; and
- (v) the Landscaping Maintenance will be completed in accordance with, and satisfy the requirements of, this deed;
- (b) in preparing the Design Documentation, if any change in accordance with clause 12.1(a)(ii)B and this deed is necessary from the Concept Design, no change is to be made that would reduce the:
 - (i) durability;
 - (ii) aesthetics and visible features;
 - (iii) whole of life performance;
 - (iv) user benefits; or
 - (v) functional performance,
 of any part of the Project Works or increase the user or maintenance costs of the Project Works;
- (c) agrees that its obligations under, and the warranties given in, this clause 12.1 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Project Works and Temporary Works notwithstanding:
 - (i) any design work carried out by others prior to the date of this deed and incorporated in this deed; or
 - (ii) any Variation the subject of a Direction by RMS Representative,
 and that the development of the Design Documentation in accordance with clauses 12.1 and 12.2 does not amount to a Variation; and
- (d) is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor or anyone claiming through the Contractor may suffer or incur arising out of or in connection with:
 - (i) the design of the Project Works in accordance with the Concept Design and the construction of the Project Works in accordance with the Design Documentation, including costing more or taking longer than anticipated; and
 - (ii) any differences between the Project Works which the Contractor is required to design or construct (excluding for this purpose any differences which are the subject of a Variation Order issued under clause 15.2, any approved Variation under clause 15.6(d) or any approved Minor Variation under clause 15.7(c)) and the Concept Design including:
 - A. differences necessitated by the physical conditions (including sub-surface conditions) or characteristics of the Construction Site, the Environment or their surroundings, except to the extent that those physical conditions or characteristics are a Site Condition, and in respect of that Site Condition, the Contractor has complied with clause 10.6; and
 - B. differences required to ensure that the Project Works will be fit for their intended purposes and satisfy the requirements of this deed,
 and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in clauses 12.1(a) to 12.1(c).

12.2 Preparation of Design Documentation

- (a) The Contractor must prepare, develop and complete all Design Documentation in accordance with this deed and comply with its design obligations under the WHS Laws.
- (b) Throughout the preparation of the Design Documentation, the Contractor must give the Project Verifier and RMS Representative, and where relevant, the Proof Engineer, the opportunity to review, to comment on and to monitor, in accordance with this clause 12.2, the design performance of the Contractor.
- (c) The Contractor must arrange regular meetings of the Project Design Group.
- (d) Subject to clause 12.2(kb), the Contractor must progressively develop and prepare the

Design Documentation, and at each of the Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation stages of each discrete design element in the Contractor's Work (including in respect of correction of any Defects) give RMS Representative, the Project Verifier, the Proof Engineer (where relevant) and all relevant Authorities:

- (i) for RMS, up to four sets of all Design Documentation as required by RMS Representative, and for the Project Verifier, the Proof Engineer (where relevant) and all relevant Authorities, up to two sets of all Design Documentation; and
- (ii) any other information which RMS Representative may reasonably request in order for RMS Representative to review and consider the Design Documentation.

The Contractor must also provide all data, inputs, calculations and outputs in electronic form that enables interrogation, manipulation and re-calculation by RMS Representative, the Project Verifier, and where relevant, the Proof Engineer. The design must be in the electronic form specified in the Scope of Works and Technical Criteria.

The Contractor must submit the Final Design Documentation and IFC Design Documentation on a progressive basis, at a reasonable rate of submission and in sufficient time to allow review and comment as contemplated by this clause 12.2 and prior to commencement of construction.

The Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation and the discrete design elements must comply with those shown in the Contractor Documentation Schedule and the Design Plan. The Design Documentation submitted at the Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation stages must be supported by a written report and information as specified in the section of the Appendix to the Scope of Works and Technical Criteria identified in Item 29(q) of Schedule 1.

- (e) The:
 - (i) Design Documentation for the Developed Concept Design completion stage of each discrete design element must, subject to changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a logical development of the Concept Design;
 - (ii) Design Documentation for the Substantial Detailed Design completion stage of each discrete design element must, subject to clause 12.2(kb) and changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a logical development of the relevant Design Documentation provided at the Developed Concept Design completion stage;
 - (iii) Final Design Documentation of each discrete design element must, subject to changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a logical development of the relevant Design Documentation provided to RMS Representative at the Substantial Detailed Design completion stage; and
 - (iv) IFC Design Documentation of each discrete design element must, subject to changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a finalisation of the relevant Design Documentation provided to RMS Representative at the Final Design Documentation completion stage, and address any comments or conditions noted in the Project Verifier's signed document in the form of Schedule 15.
- (f) Subject to clause 12.2(g), RMS may require the Contractor to amend and resubmit any Design Documentation and/or information where that Design Documentation or other relevant information does not comply with the requirements of clauses 12.1 and 12.2 and the process in clauses 12.2(d) to 12.2(j), as relevant, will re-apply to the amended Design Documentation.
- (g) RMS Representative, in his or her absolute discretion, may approve any non-compliance with clause 12.2(e). Such approval may include conditions, including a requirement for the Contractor to resubmit Design Documentation of earlier stages to show the development of the changed design. The Contractor must either fully comply with RMS Representative's approval conditions or must comply with clause 12.2(e).

- (h) The Final Design Documentation provided under clause 12.2(d) must be:
 - (i) verified by the Project Verifier by providing a signed document in the form of Schedule 15, which attaches a register of the Design Documentation the subject of the verification and by way of notation on each document;
 - (ii) where a Subcontractor has been involved in the preparation of the design, certified by the Subcontractor which prepared the design by providing a signed document in the form of Schedule 26;
 - (iii) certified by the Contractor by providing a signed document in the form of Schedule 20;
 - (iv) certified by the Proof Engineer, where applicable, by providing a signed document in the form of Schedule 27; and
 - (v) in the case of any Design Documentation in respect of the Local Road Works, approved by each Authority with jurisdiction over those Local Road Works by providing a written notice from each Authority with jurisdiction over those Local Road Works that the Authority is satisfied with the Design Documentation.
- (ha) The IFC Design Documentation provided under clause 12.2(d) must be verified by the Project Verifier by providing a signed document in the form of Schedule 15 (without any comments or conditions in respect of the IFC Design Documentation).
- (i) The Contractor must allow 14 days from the date each set of Final Design Documentation and any other information RMS Representative requested under clause 12.2(d)(ii) is submitted to RMS Representative for RMS Representative (if it elects to do so) to consult with the Contractor, comment on that Final Design Documentation and/or reject that Final Design Documentation.
- (j) If any Final Design Documentation is rejected by RMS Representative under clause 12.2(i), the Contractor must promptly amend the Final Design Documentation, and the process in clauses 12.2(h) to 12.2(j) will re-apply to the amended Final Design Documentation.
- (k) Unless otherwise expressly agreed in writing by RMS Representative or as otherwise expressly permitted in Item 25A of Schedule 1, the Contractor must not use for construction purposes any Design Documentation, including any Design Documentation for Temporary Works, unless the Design Documentation has been prepared, reviewed, certified, verified and not rejected in accordance with clauses 12.2(a) to 12.2(j) and has been verified by the Project Verifier as contemplated by clause 12.2(ha).
- (ka) If so expressly agreed by RMS Representative under clause 12.2(k) or otherwise expressly permitted in Item 25A of Schedule 1, the Contractor acknowledges and agrees that:
 - (i) any construction work undertaken by the Contractor using Design Documentation which has not been prepared, reviewed, certified, verified and not rejected in accordance with clauses 12.2(a) to 12.2(j) will be at the sole risk of the Contractor, including all delays and costs that may be suffered or incurred, or re-work required to be performed, by the Contractor as a result;
 - (ii) it will not be entitled to make, nor will RMS be liable upon, any Claim including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the carrying out of such construction work; and
 - (iii) for the avoidance of doubt, nothing in this clause 12.2(ka) or clause 12.2(k) limits or otherwise qualifies the Contractor's obligation to have all Design Documentation prepared, reviewed, certified, verified and not rejected in accordance with clauses 12.2(a) to 12.2(j).
- (kb) The Design Documentation for the Substantial Detailed Design stage is not required to include the design of:
 - (i) those elements of the Works set out in Item 25B of Schedule 1; or
 - (ii) any design element which RMS' Representative, in his or her absolute discretion, nominates as not requiring submission as part of the Substantial Detailed Design stage.
- (l) If the Contractor considers that a rejection of:

- (i) Design Documentation by RMS Representative under clause 12.2(i); or
 - (ii) a Design Documentation Minor Amendment Schedule under clause 12.2(m),
- constitutes or involves a Variation, the Contractor must give notice and submit a claim in accordance with, and otherwise comply with clause 15.3.
- (m) If the Contractor wishes to amend Design Documentation that has been prepared in accordance with clauses 12.2(a) to 12.2(k) and:
 - (i) the Contractor certifies that the proposed amendment is of minor or no consequence; and
 - (ii) the proposed amendment:
 - A. will not cause a non-compliance with this deed, then in that case the Contractor may submit to RMS Representative prior to construction, a Design Documentation Minor Amendment Schedule (in the form of Schedule 46) in respect of the proposed amendment, together with the verifications and certifications required under clause 12.2(h); or
 - B. may or will cause a non-compliance with this deed and is a Minor Variation, then in that case the Contractor must follow the process in clause 15.7,

but otherwise amendments to Design Documentation prepared in accordance with clauses 12.2(a) to 12.2(k) will need to be made in accordance with clauses 12.2(a) to 12.2(k).

The Contractor must allow 7 days from the date any Design Documentation Minor Amendment Schedule is submitted to RMS Representative for RMS Representative (if it elects to do so) to consult with the Contractor, comment on that Design Documentation Minor Amendment Schedule and/or reject that Design Documentation Minor Amendment Schedule.

If any Design Documentation Minor Amendment Schedule is rejected by RMS Representative, the Contractor is not entitled to make the amendment proposed in the Design Documentation Minor Amendment Schedule.

- (n) The Contractor acknowledges and agrees that:
 - (i) the Contractor is responsible for carrying out the design obligations under the WHS Laws;
 - (ii) neither RMS nor RMS Representative has any design obligations in respect of the Project Works, the Temporary Works or the Design Documentation;
 - (iii) neither RMS nor RMS Representative owes any duty to the Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation (within any time frames contemplated in this deed or otherwise); and
 - (iv) neither RMS participation in the Project Design Group, nor any review or rejection of, nor consultation or comments by, nor any approval (including any approval of any non-compliance or approval subject to conditions) by, RMS or RMS Representative, nor any failure by RMS or RMS Representative regarding any Design Documentation or any other Direction by RMS Representative in respect of any Design Documentation will lessen or otherwise affect:
 - A. the Contractor's warranties under clause 12.1 or any other of its liabilities or responsibilities under this deed or otherwise according to Law; or
 - B. RMS' rights against the Contractor, whether under this deed or otherwise according to Law.
- (o) The Contractor must give RMS Representative four sets and one copy in electronic format of surveys of work as executed and work as executed Design Documentation in accordance with the requirements of the Scope of Works and Technical Criteria.
- (p) In considering any Design Documentation submitted under this clause 12.2 RMS Representative is entitled to consult with and take into account any views and requirements of any relevant Authority.
- (q) In this clause 12.2, the terms:

- (i) Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation; and
 - (ii) discrete design element,
- have the meaning set out in the Contractor Documentation Schedule.

12.3 Ownership of Design Documentation

- (a) Ownership of, and all Intellectual Property Rights in, the Design Documentation vests in RMS when each item of Design Documentation comes into existence. Upon request by RMS, the Contractor must do all things necessary to perfect the vesting of such ownership and Intellectual Property Rights in RMS.
- (b) The Contractor has an irrevocable licence to use the Design Documentation for performing the Contractor's Work and performance of its obligations under this deed.
- (c) Subject to clause 12.3(g), the Contractor grants to RMS a perpetual, irrevocable, royalty-free licence to use (including to sub-licence) any computer software (including both source code and object code versions) which is required by RMS in order to obtain the full benefit of the Contractor's Work but in which the Intellectual Property Rights are not owned by RMS as a result of clause 12.3(a) (**Proprietary Software**).

This licence:

- (i) will permit RMS to use the Proprietary Software for all purposes associated with the Contractor's Work and the Works or the general performance by RMS of its statutory functions; and
- (ii) will survive the termination of this deed on any basis.
- (d) The Contractor warrants that:
 - (i) neither the Design Documentation, the Project Works (including any plant, equipment or material forming part of the Project Works) nor any method of working used by the Contractor in performing the Contractor's Work will infringe any Intellectual Property Right or any moral right in an artistic work; and
 - (ii) it has or will have sufficient interest in the Design Documentation and Proprietary Software to comply with its obligations under clauses 12.3(a) and 12.3(c).
- (e) The Contractor must indemnify RMS against any claim, loss, cost, expense, damage or liability suffered or incurred by RMS arising out of or in connection with Design Documentation, the Project Works (including any plant, equipment or materials forming part of the Project Works) or any method of working used by the Contractor in performing the Contractor's Work infringing or allegedly infringing any Intellectual Property Rights or any author's moral rights.
- (f) The Contractor must ensure that it obtains irrevocable written consent, for the benefit of RMS and the Contractor, from the author of any artistic work to be incorporated into, or used during the design or construction or maintenance of, the Project Works, including any necessary consents from its employees and any consultants engaged by it, to:
 - (i) any non-attribution or false attribution of authorship of the artistic work; and
 - (ii) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the artistic work or the Project Works.

The terms "artistic work" and "attribution" have the meanings in the *Copyright Act 1968* (Cth).

- (g) The licence in clause 12.3(c) will not extend to a part of the Proprietary Software that is not owned by the Contractor (**Third Party Rights**) if:
 - (i) the Third Party Rights are generally commercially available on reasonably commercial terms; or
 - (ii) the Contractor has:
 - A. been unable (despite using its best endeavours) to procure from the relevant third party the right to grant the licence in clause 12.3(c) in respect of those Third Party Rights; and
 - B. the Contractor has notified RMS:
 - 1) that it has been unable to procure the necessary licence rights for

- those Third Party Rights; and
- 2) as to the terms, if any, (including any cost) on which RMS will be able to procure the required rights to use, reproduce and modify those Third Party Rights.

12.4 Delivery up of Design Documentation

If this deed is terminated by RMS, the Contractor must immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not) then in existence to RMS.

13. Construction

13.1 Construction

- (a) The Contractor must construct the Project Works and Temporary Works:
 - (i) in accordance with the requirements of this deed including:
 - A. the Scope of Works and Technical Criteria;
 - B. subject to clause 13.1(b), any relevant Design Documentation which has:
 - 1) been verified by the Project Verifier and, where relevant, the Proof Engineer and certified by the Subcontractor who prepared it and by the Contractor under clause 12.2(h);
 - 2) been submitted under clause 12.2(d); and
 - 3) not been rejected under clause 12.2(i); and
 - C. any direction of RMS Representative given or purported to be given under a provision of this deed, including any Variation directed by RMS Representative by a Variation Order under clause 15.2;
 - (ii) with good workmanship and materials which are:
 - A. new (with respect to the Project Works) and free of Defects and other imperfections; and
 - B. of the quality specified in the Scope of Works and Technical Criteria; and
 - (iii) so that they are fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this deed and any Design Documentation which has been verified and certified under clause 12.2(h), submitted under clause 12.2(d) and not rejected under clause 12.2(i), then unless otherwise directed by RMS Representative, the requirements of this deed will prevail.

13.2 Property Works

- (a) Where any Property Works are required to be carried out on a Parcel, the Contractor must give a written notice to the owner or owners of the property (with a copy to RMS Representative) which:
 - (i) describes the Property Works to be carried out;
 - (ii) requests access for the purpose of carrying out the Property Works; and
 - (iii) specifies the intended date for commencement of the Property Works, not less than 10 days prior to the day which the Contractor intends to commence the Property Works.
- (b) If the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works from either:
 - (i) the date notified in the notice under clause 13.2(a); or
 - (ii) such other date as may be agreed between the Contractor and the owner or owners, the Contractor must:
 - (iii) give RMS Representative a notice stating this; and
 - (iv) at RMS' election, either:
 - A. not carry out the Property Works until RMS Representative gives the Contractor a notice specifying that the owner or owners of the property

have agreed to give access, in which event clause 13.2(a) will reapply and RMS Representative must either, in his or her absolute discretion:

- 1) waive the requirement for the relevant Property Works to be completed for Construction Completion to be achieved, in which case those Property Works must otherwise be completed in accordance with this deed and within a reasonable time, and in any event, prior to the expiry of the relevant Defects Correction Period; or
 - 2) use RMS Representative's discretion under clause 17.5(f) to extend the Date for Construction Completion to address any delay to Construction Completion caused by the owner or owners of a property failing to provide the Contractor with sufficient access; or
- B. if the Contractor demonstrates to the satisfaction of RMS Representative that:
- 1) the Contractor has used its best endeavours to obtain sufficient access to carry out the Property Works; and
 - 2) the Contractor will be delayed in achieving Construction Completion by the owner or owners of a property failing to provide access,
not carry out the relevant Property Works at all, in which case RMS Representative must give a notice to the Contractor directing a Variation under clause 15.2(a) deleting the relevant Property Works, following which relevant adjustments must be made under clause 15.4.
- (c) Upon being given access to any property for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (d) The Contractor must:
- (i) carry out the Property Works with respect to each Parcel:
 - A. in accordance with the Scope of Works and Technical Criteria;
 - B. so that they are fit for their purpose; and
 - C. in accordance with local government planning policies; and
 - (ii) in carrying out the Property Works, use reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or upon which, Property Works are being undertaken.
- (e) The Contractor must:
- (i) rehabilitate any part of a Parcel to the state it was in immediately prior to the Contractor obtaining access to the Parcel; and
 - (ii) otherwise repair any damage or degradation to any part of a Parcel arising out of or in any way in connection with the performance of its obligations under this clause 13.2,
including using all reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or upon which, the Property Works were undertaken.
- (f) The completion of all Property Works under this clause 13.2 including all work under clause 13.2(e) is a condition precedent to Construction Completion.
- (g) The Contractor must, after completion of the Property Works with respect to a Parcel, including the work described in clause 13.2(e), and as a condition precedent to Construction Completion, provide to RMS Representative:
- (i) a deed in the form of Schedule 35, duly executed by the owner or owners of any part of the Parcel; or
 - (ii) if the Contractor demonstrates to the satisfaction of RMS Representative, acting reasonably, that the Contractor is unable to obtain a deed under clause 13.2(g)(i) despite using its best endeavours to do so, a statement signed by the Contractor to

the effect that such owner or owners have failed or refused to execute a deed in the form of Schedule 35 within 21 days of it being provided by the Contractor to the owner or owners following the proper completion of the Property Works including the work described in clause 13.2(e).

- (h) The acceptance of a deed or statement provided by the Contractor under clause 13.2(g) by RMS Representative is not approval by RMS or RMS Representative of the Contractor's performance of its obligations under this clause 13.2.
- (i) The Contractor must indemnify RMS against any liability to or claim by the owner or owners of any part of a Parcel where:
 - (i) such owner or owners have not duly signed a deed in the form of Schedule 35; and
 - (ii) the liability or claim arises out of or in connection with the Property Works,but the Contractor's liability shall be reduced proportionally to the extent that the liability to, or claim by, the owner or owners of any part of a Parcel arises out of an act or omission of RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier and the ER).
- (j) The section of the Scope of Works and Technical Criteria identified in Item 29(r) of Schedule 1:
 - (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of "Property Works" in clause 23.2; and
 - (ii) does not limit or otherwise affect the Contractor's obligations under this deed in relation to the Property Works.

13.3 Notice of accidents and incidents

Where the Contractor becomes aware of:

- (a) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site; or
 - (b) any incidents affecting the Environment,
- the Contractor must:
- (c) promptly give RMS Representative a detailed written report of the accident or incident; and
 - (d) otherwise comply with Law, the Project WHS Management Plan, the Environmental Management Plans and the Community Involvement Plan.

13.4 Cleaning up

In carrying out the Contractor's Work, the Contractor must:

- (a) keep the Construction Site and any other areas affected by the Contractor's Work clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Construction Site and any other areas affected by the Contractor's Work; and
- (c) as a condition precedent to Construction Completion, remove all rubbish, surplus materials, plant, equipment and Temporary Works from the Construction Site and any other areas affected by the Contractor's Work except where the retention of any of these are required for the correction of Defects during the Defects Correction Periods and this is approved in writing by RMS Representative.

13.5 Work method

If:

- (a) this deed prescribes a particular work method or a work method is otherwise a part of this deed;
- (b) a work method is reviewed or approved (expressly or impliedly) by RMS or RMS Representative; or
- (c) any work method that the Contractor adopts or proposes to adopt is impractical or impossible,

and the Contractor, with or without the approval of RMS Representative, uses another work method (**New Work Method**):

- (d) the Contractor is not entitled to make any Claim against RMS arising out of or in any way in connection with the New Work Method; and
- (e) the New Work Method will not cause this deed to be frustrated.

13.6 Temporary Works Areas

As a condition precedent to Construction Completion, the Contractor must reinstate all Temporary Works Areas and the Contractor must as a minimum:

- (a) rehabilitate all Temporary Works Areas, except for area under the stockpile in the Temporary Works Area identified as the Sancrox Work Zone 7 in Exhibit B, to the state they were in immediately prior to the Contractor obtaining access to them; and
- (b) otherwise repair any damage or degradation to any part of a Temporary Works Areas arising out of or in any way in connection with the performance of its obligations under this deed.

14. Landscaping Maintenance

14.1 Landscaping Maintenance

Without limiting the Contractor's obligations under clause 16, the Contractor must during the Landscaping Maintenance Period perform the Landscaping Maintenance so that:

- (a) the Works are at all times during the Landscaping Maintenance Period open to the public for the safe, continuous and efficient passage of vehicles;
- (b) the Works remain fit for their intended purposes; and
- (c) the requirements of the Environmental Documents are met.

14.2 Access during Landscaping Maintenance Period

- (a) RMS must, during the Landscaping Maintenance Period, give, or ensure that the Contractor has, sufficient access to perform the Landscaping Maintenance.
- (b) RMS and RMS Representative may at any time inspect areas where the Landscaping Maintenance is being performed.
- (c) Neither RMS nor RMS Representative owes any duty to the Contractor to:
 - (i) inspect the Landscaping Maintenance; or
 - (ii) review any Landscaping Maintenance for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (d) No inspection or review of the Landscaping Maintenance by RMS or RMS Representative will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under this deed (including its obligations under clause 14.1) or otherwise according to Law; or
 - (ii) RMS' rights against the Contractor whether under this deed or otherwise according to Law.

14.3 Ensure performance of RMS statutory functions

- (a) The Contractor acknowledges that RMS has, by virtue of the *Roads Act 1993* (NSW), the *Road Transport (General) Act 2005* (NSW) and the *Road Transport (Safety and Traffic Management) Act 1999* (NSW) (together **Roads Legislation**) certain obligations and powers relating to the use and control of the Works.
- (b) In undertaking Landscaping Maintenance, the Contractor must:
 - (i) not interfere or cause interference with the exercise or performance by RMS of any of its obligations or powers under the Roads Legislation or any other applicable Law; and
 - (ii) perform the Landscaping Maintenance consistently with the obligations imposed on RMS under the Roads Legislation or any other applicable Law.

14.4 Performance of Landscaping Maintenance

- (a) Without limiting clause 14.1, in performing the Landscaping Maintenance the Contractor must:

- (i) give priority to the safety of motorists, and any other persons or vehicles, including pedestrians and pedal cyclists, using the Works or otherwise potentially affected by the performance of the Landscaping Maintenance;
 - (ii) minimise the impact of the performance of the Landscaping Maintenance on motorists and other users of the Works, Local Roads and Services and any access to the Works, Local Roads and Services;
 - (iii) ensure that no unnecessary interference is caused to members of the public or the operations of RMS or other Authorities;
 - (iv) do all things and take all measures necessary to protect people and property; and
 - (v) prevent nuisance, unreasonable noise and disturbance and comply with the requirements of Authorities including the Environmental Protection Authority.
- (b) Without limiting clause 14.1, the Contractor warrants that it will:
- (i) perform the Landscaping Maintenance using workmanship and materials to the standard required by this deed and which are fit for their purpose; and
 - (ii) if, in the performance of the Landscaping Maintenance, it is required to replace any dead, diseased or damaged plants or trees, the replacements will be:
 - A. of equal quality to those required under this deed; and
 - B. fit for their intended purpose.
- (c) The Contractor must take all reasonable precautions to avoid obstruction and damage to the Works, Local Roads, the Services and any property arising out of the performance of Landscaping Maintenance.
- (d) During the Landscaping Maintenance Period, if any damage is caused to the Works, Local Roads, the Services or any property by the Contractor, its employees, agents or Subcontractors, the Contractor must promptly make good the damage at its own cost and pay any compensation payable in connection with the damage.
- (e) Upon completion of any Landscaping Maintenance, the Contractor must promptly and in a good and workmanlike manner remove all temporary protection measures installed in connection with the Landscaping Maintenance.

14.5 Completion of Landscaping Maintenance

- (a) When the Contractor considers the Landscaping Maintenance has been completed, the Contractor must notify RMS Representative in writing. Thereafter RMS Representative and the Project Director must, within 7 days of receipt of a notice under this clause 14.5(a), jointly inspect the areas where the Landscaping Maintenance has been performed, at a mutually convenient time.
- (b) Following the joint inspection under clause 14.5(a) and in any event within 14 days of receipt of a notice under clause 14.5(a), RMS Representative must notify the Contractor whether, in the opinion of RMS Representative:
 - (i) the Landscaping Maintenance has been completed in accordance with this deed and the areas where the Landscaping Maintenance has been performed are ready to be handed over to RMS; or
 - (ii) the Landscaping Maintenance has not been completed in accordance with this deed and the services the RMS Representative believes must be completed before the Landscaping Maintenance can be considered to be completed.
- (c) If RMS Representative issues a notice under clause 14.5(b)(ii) the Contractor must proceed with the Landscaping Maintenance and thereafter when it considers the Landscaping Maintenance has been completed it must give RMS Representative a further written notice to that effect under clause 14.5(a), after which clauses 14.5(b) and 14.5(c) will reapply.
- (d) As conditions precedent to RMS Representative issuing a notice to the Contractor under clause 14.5(b)(i), the Contractor must provide to RMS Representative:
 - (i) a certificate executed by the Quality Manager in the form of Schedule 9;
 - (ii) a certificate executed by the Project Verifier in the form of Schedule 14; and
 - (iii) a certificate executed by the Contractor in the form of Schedule 22.
- (e) As a condition precedent to Final Completion, RMS Representative must issue a notice

to the Contractor under clause 14.5(b)(i).

15. Variations

15.1 Proposed Variations

- (a) Within 14 days of receipt of a notice in writing from RMS Representative titled "Variation Proposal Request" notifying the Contractor of a proposed Variation, the Contractor must, at its cost, provide RMS Representative with a written notice containing the following details:
- (i) the effect which the Contractor anticipates the Variation will have on:
 - A. the Design Contract Sum and the Design Payment Schedule;
 - B. the Construction Contract Sum and the Construction Payment Schedule;
 - C. the Contract Program, the Subsidiary Contract Programs and the Date for Construction Completion;
 - D. the performance of the Landscaping Maintenance; and
 - E. the functionality or integrity of any of the elements of the Contractor's Work or the quality or performance standards required by this deed including specific details of:
 - 1) the elements of the Contractor's Work that will be affected;
 - 2) how and to what extent the functionality, integrity or aesthetics of those elements will be affected;
 - 3) the quality or performance standards affected and how and to what extent they will be affected; and
 - 4) any adverse effect which the Variation will have on the Contractor's ability to satisfy its obligations under this deed; and
 - (ii) any other information concerning the proposed Variation which RMS Representative requires including:
 - A. sufficient details to allow RMS to reconsider the need for the Variation; and
 - B. the net extra Direct Costs that the Contractor anticipates would be incurred by it if a direction was given under clause 17.7 to compress the performance of the Contractor's Work to overcome:
 - 1) any delay in achieving Construction Completion caused by the Variation; or
 - 2) part of any delay in achieving Construction Completion caused by the Variation as specified in the Variation Proposal Request.
- (b) RMS will:
- (i) consider the details provided under clause 15.1(a)(i) and the information provided under clause 15.1(a)(ii); and
 - (ii) not be obliged to proceed with any proposed Variation the subject of a Variation Proposal Request.
- (c) RMS Representative may issue a Variation Proposal Request under clause 15.1(a) at any time up to Final Completion.

15.2 Variation Orders

- (a) Whether or not RMS Representative has issued a Variation Proposal Request under clause 15.1(a), RMS Representative may, by a written document titled "Variation Order", direct the Contractor to implement a Variation as specified in the Variation Order.
- (b) Where the Contractor has provided a notice under clause 15.1(a) with respect to the Variation, the Variation Order issued by RMS Representative will state whether any one or more of the following will be adjusted as set out in the Contractor's notice under clause 15.1(a):
- (i) the Design Contract Sum and the Design Payment Schedule;

- (ii) the Construction Contract Sum and the Construction Payment Schedule; and
- (iii) the Date for Construction Completion.
- (c) Where the Contractor receives a Variation Order, it must perform its obligations under this deed in accordance with the Variation specified in the Variation Order.
- (d) RMS Representative may issue a Variation Order under this clause 15.2 at any time up to Final Completion.

15.3 Notice of Variation

- (a) If the Contractor believes any Direction of RMS Representative, other than the issuing of a Variation Order under clause 15.2, constitutes or involves a Variation it must:
 - (i) without delay and before complying with the Direction, and in any event within 5 days of the Direction, give notice to RMS Representative:
 - A. that it considers the Direction constitutes or involves a Variation; and
 - B. which notice must state that it is a notice under this clause 15.3(a)(i); and
 - (ii) within 14 days of giving the notice under clause 15.3(a)(i), submit a written claim to RMS Representative which includes detailed particulars of why the Contractor believes the Direction constitutes or involves a Variation and all other details required by clause 19.2(b).
- (b) Despite the fact that the Contractor considers that a Direction by RMS Representative constitutes or involves a Variation, the Contractor must continue to perform its work in accordance with this deed including, unless otherwise directed, any work connected with the Direction of RMS Representative in respect of which notice has been given under clause 15.3(a).
- (c) If the RMS Data is not correct and the Contractor seeks to assert that reliance on the incorrect RMS Data unavoidably necessitates a Variation, the Contractor must:
 - (i) promptly, and in any event within 5 days of becoming aware that the RMS Data is not correct, give notice to RMS Representative:
 - A. that the RMS Data is not correct, including details; and
 - B. which notice must state it is a notice under this clause 15.3(c)(i); and
 - (ii) within 14 days of giving the notice under clause 15.3(c)(i), submit a written claim to RMS Representative which includes:
 - A. detailed particulars of the RMS Data that is not correct;
 - B. particulars of the proposed Variation which the Contractor believes is necessary to deal with the incorrect RMS Data; and
 - C. the information specified in clause 15.1(a)(i) in respect of the proposed Variation referred to in clause 15.3(c)(ii)B (notwithstanding that the claim under this clause 15.3(c)(ii) is not a notice in response to a Variation Proposal Request).
- (d) Within 28 days of receipt of a notice under clause 15.3(c)(ii), RMS Representative must state whether it believes the RMS Data referred to in the notice under clause 15.3(c)(ii) is not correct and that the Contractor's reliance on that incorrect RMS Data unavoidably necessitates a Variation, and notify the Contractor accordingly.
- (e) If the RMS Data referred to in the notice under clause 15.3(c)(ii) is not correct and the Contractor's reliance on the incorrect RMS Data unavoidably necessitates a Variation, RMS Representative must issue a Variation Order under clause 15.2(a).
- (f) If the RMS Enabling Works have not been carried out in accordance with the RMS Enabling Works Scope and Technical Criteria and the Contractor seeks to assert that such failure unavoidably necessitates a Variation, the Contractor must promptly, and in any event within 7 days of becoming aware of such failure, give notice to RMS Representative:
 - (i) that the RMS Enabling Works have not been carried out in accordance with the RMS Enabling Works Scope and Technical Criteria, including details; and
 - (ii) which notice must state:
 - A. it is a notice under this clause 15.3(f);
 - B. detailed particulars of the RMS Enabling Works which have not been

- carried out in accordance with the RMS Enabling Works Scope and Technical Criteria;
- C. particulars of the proposed Variation which the Contractor believes is necessary to deal with such failure; and
 - D. the information specified in clause 15.1(a)(i) in respect of the proposed Variation referred to in clause 15.3(f)(ii)C (notwithstanding that the claim under this clause 15.3(f) is not a notice in response to a Variation Proposal Request).
- (g) Within 28 days of receipt of a notice under clause 15.3(f), RMS Representative must state whether it believes the RMS Enabling Works referred to in the notice under clause 15.3(f) have not been carried out in accordance with the RMS Enabling Works Scope and Technical Criteria and if it has such a belief, whether either:
- (i) RMS will procure that the RMS Enabling Works be rectified so that they comply with the RMS Enabling Works Scope and Technical Criteria; or
 - (ii) such failure unavoidably necessitates a Variation, and notify the Contractor accordingly.
- (h) If the RMS Enabling Works have not been carried out in accordance with the RMS Enabling Works Scope and Technical Criteria, RMS Representative must either (at its election):
- (i) procure that the RMS Enabling Works be rectified so that they comply with the RMS Enabling Works Scope and Technical Criteria; or
 - (ii) if such failure unavoidably necessitates a Variation, issue a Variation Order under clause 15.2(a).
- (i) Failure of the RMS Enabling Works:
- (i) to be carried out in accordance with the RMS Enabling Works Scope and Technical Criteria; or
 - (ii) to be completed by the RMS Enabling Works Completion Date, will not be a breach of this deed by RMS.

15.4 Valuation

Subject to clauses 15.3, 15.6(g), 15.7(e), 15.8(c)(iv)A, 15.9(d), 16.4 and 19, one or more of the following will be adjusted for all Variations which have been the subject of a Direction by RMS Representative:

- (a) the Design Contract Sum and the Design Payment Schedule; and
- (b) the Construction Contract Sum and the Construction Payment Schedule, according to:
 - (c) where a Variation Order under clause 15.2 specifies any adjustments under clause 15.2(b), those adjustments as specified in the Variation Order;
 - (d) where a Variation Order under clause 15.2 specifies any adjustments and conditions of adjustment that have been agreed in writing between RMS and the Contractor in respect of the Variation specified in the Variation Order, those adjustments and conditions of adjustment as specified in the Variation Order; or
- (e) otherwise for the Design Contract Sum and the Construction Contract Sum and the Design Payment Schedule and the Construction Payment Schedule by the cost of the work and materials to be added or omitted as a result of the Variation, valued under clause 15.4(e)(i), clause 15.4(e)(ii) or clause 15.4(e)(iii), or a combination of them, as determined by RMS Representative (including as specified in a Variation Order):
 - (i) on the basis of the schedules of Contractor's rates and/or prices (if any) set out in the Design Payment Schedule;
 - (ii) where the Variation Order specifies that the Variation is to be carried out as Daywork, on the basis of the procedure set out in the Construction Payment Schedule, Cost Centre 9; or
 - (iii) on the basis of a reasonable amount, such value to be as stated by RMS Representative, including in each case the relevant

margin stipulated in the Design Payment Schedule and/or the Construction Payment Schedule. No other amounts are to be included in the RMS Representative's valuation of the Variation.

If the Variation will delay, disrupt or interfere with the Contractor in carrying out the Contractor's Work, any increased costs incurred by the Contractor due to the delay, disruption or interference in carrying out of the Contractor's Work will not be valued under this clause 15.4, and the Contractor's entitlement (if any) for that delay, disruption or interference will be determined under and in accordance with clauses 17.5 and 17.6.

15.5 Omissions

If RMS Representative directs a Variation omitting or deleting any work from the Contractor's Work:

- (a) RMS may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;
- (b) RMS will not be liable for any Claim by the Contractor as a result of any work being omitted or deleted from the Contractor's Work whether or not RMS thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and
- (c) except for work omitted or deleted by a direction by RMS Representative of a Pre-Agreed Variation made under clause 15.8(a) by the relevant date set out in section 1 of Schedule 44, the work which has been omitted or deleted shall be valued in accordance with clause 15.4.

15.6 The Contractor may propose Variation

- (a) RMS and the Contractor acknowledge that:
 - (i) the design and construct project delivery method chosen is intended, among other things, to allow the Contractor to identify project cost savings while maintaining or enhancing the quality of the Contractor's Work; and
 - (ii) it is their intention that any cost savings should benefit RMS and the Contractor equally.
- (b) The Contractor may propose a Variation by giving written notice to RMS Representative:
 - (i) with details of the proposed Variation; and
 - (ii) which notice must state that it is a notice under this clause 15.6(b).
- (c) On receiving a notice under clause 15.6(b), RMS Representative may give written notice to the Contractor requiring it to give RMS Representative:
 - (i) written details of:
 - A. the proposed Variation in addition to those details provided in accordance with clause 15.6(b);
 - B. the reason for the proposed Variation;
 - C. the effect of the proposed Variation on the Contractor's Work;
 - D. the effect of the proposed Variation on the Contract Program, the Subsidiary Contract Programs and the Date for Construction Completion; and
 - E. the cost effect of the proposed Variation including proposals for any cost savings arising from the Variation;
 - (ii) a written statement stating that the proposed Variation:
 - A. will not adversely affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Work or the performance standards required by this deed; and
 - B. will not adversely affect the quality standards required under this deed; and
 - (iii) any other information and supporting documentation RMS Representative requires.
- (d) RMS Representative:

- (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Variation the Contractor proposes; and
- (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor.

Prior to giving any direction under this clause 15.6(d), RMS Representative may seek to negotiate with the Contractor over the level of cost savings arising from the proposed Variation. If the parties agree in writing upon a different level of cost savings the Contractor's notice will be deemed to be amended by the inclusion of this different level of cost savings in place of the original cost savings notified by the Contractor.

- (e) If RMS Representative gives a direction under clause 15.6(d) approving the Variation, the Contractor must perform its obligations under this deed in accordance with the approved Variation.
- (f) With respect to any Variation the subject of a direction under clause 15.6(d), one or more of the following will be adjusted:
 - (i) the Design Contract Sum and the Design Payment Schedule; and
 - (ii) the Construction Contract Sum and the Construction Payment Schedule, to reflect 50% of the cost savings notified by the Contractor under clause 15.6(c)(i)E (or such other amount as may be agreed between RMS and the Contractor pursuant to clause 15.6(d) and prior to RMS Representative's direction under clause 15.6(d)).
- (g) The Contractor will:
 - (i) bear all costs:
 - A. associated with proposing a Variation under clause 15.6(b);
 - B. associated with providing any details, information, statements or documents under clause 15.6(c);
 - C. reasonably incurred by RMS (or RMS Representative) in assessing the proposed Variation (such costs to be a debt due and payable from the Contractor to RMS upon demand); and
 - D. associated with carrying out the proposed Variation where it is approved by RMS Representative; and
 - (ii) unless otherwise agreed, not be entitled to make any Claim against RMS arising out of or in connection with the Variation.

15.7 The Contractor may propose Minor Variation

- (a) The Contractor may propose a Minor Variation by giving written notice to RMS Representative:
 - (i) with details of the proposed Minor Variation; and
 - (ii) which notice must state that it is a notice under this clause 15.7(a).
- (b) On receiving a notice under clause 15.7(a), RMS Representative may give written notice to the Contractor requiring it to give RMS Representative:
 - (i) written details of:
 - A. the proposed Minor Variation in addition to those details provided in accordance with clause 15.7(a);
 - B. the reason for the proposed Minor Variation; and
 - C. the effect of the proposed Minor Variation on the Contractor's Work;
 - (ii) a written statement certifying that the proposed Minor Variation:
 - A. will not adversely affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Work or the performance standards required by this deed; and
 - B. will not adversely affect the quality standards required under this deed; and
 - (iii) any other information and supporting documentation RMS Representative requires.
- (c) Within 7 days of the later of receipt of a notice under clause 15.7(a) and any other information to be provided under clause 15.7(b), RMS Representative:

- (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Minor Variation the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Minor Variation for the convenience of, or to assist, the Contractor.
- (d) If RMS Representative gives a direction under clause 15.7(c) approving the Minor Variation, the Contractor must perform its obligations under this deed in accordance with the approved Minor Variation.
- (e) The Contractor will:
- (i) bear all costs:
 - A. associated with proposing a Minor Variation under clause 15.7(a);
 - B. associated with providing any details, information, statements or documents under clause 15.7(b);
 - C. reasonably incurred by RMS (or RMS Representative) in assessing the proposed Minor Variation (such costs to be a debt due and payable from the Contractor to RMS upon demand); and
 - D. associated with carrying out the proposed Minor Variation where it is approved by RMS Representative; and
 - (ii) not be entitled to make any Claim against RMS arising out of or in connection with the Minor Variation.

15.8 Pre-Agreed Variations and Pre-Agreed Exclusion Zone Works

Variation

- (a) RMS Representative may, in his or her absolute discretion and without being under any obligation to do so, direct by way of Variation any Pre-Agreed Variation by giving written notice to the Contractor.
- (b) RMS and the Contractor agree that if a notice pursuant to clause 15.8(a) is given in respect of a Pre-Agreed Variation by the relevant date specified in the table in section 1 of Schedule 44, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in section 2 of Schedule 44 from the date the Contractor receives such notice.
- (ba) If RMS has not obtained the Minister's Approval by the date specified in Item 25C of Schedule 1, the RMS Representative will direct by way of Variation the Pre-Agreed Exclusion Zone Works Variation by giving written notice to the Contractor.
- (bb) RMS and the Contractor agree that if a notice pursuant to clause 15.8(ba) is given in respect of a Pre-Agreed Exclusion Zone Works Variation, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in Schedule 44A from the date the Contractor receives such notice.
- (c) Where RMS Representative directs:
 - (i) a Pre-Agreed Variation by giving written notice to the Contractor by the relevant date referred to in clause 15.8(b); or
 - (ii) the Pre-Agreed Exclusion Zone Works Variation by giving written notice to the Contractor in accordance with clause 15.8(ba),
 the Contractor, in respect of that Pre-Agreed Variation or the Pre-Agreed Exclusion Zone Works Variation (as applicable):
 - (iii) must carry out its obligations under this deed as amended by clause 15.8(b) or clause 15.8(bb) (as applicable); and
 - (iv) acknowledges and agrees that:
 - A. any adjustment of the components of the Project Contract Sum made pursuant to clause 15.8(b) or clause 15.8(bb) (as applicable) will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Project Contract Sum under clause 15.4; and
 - B. the Contractor is not entitled to make any Claim for:

- 1) any acceleration to the carrying out of the Contractor's Work which the Contractor must perform at any time in order to achieve Construction Completion by the Date for Construction Completion; or
 - 2) any extension of time for any delay to the carrying out of the Contractor's Work,
- in connection with the issue of such a notice or the amendment of this deed pursuant to clause 15.8(b) or clause 15.8(bb) (as applicable).
- (d) Nothing in this clause 15.8 prevents RMS Representative from:
- (i) issuing a Variation Proposal Request as referred to in clause 15.1(a); or
 - (ii) directing a Variation by issue of a Variation Order under clause 15.2(a),
- that involves the same (or similar) changes to the Project Works or the Landscaping Maintenance as a Pre-Agreed Variation after the relevant date for giving notice of the Pre-Agreed Variation specified in section 1 of Schedule 44.
- (e) If RMS Representative:
- (i) issues a Variation Proposal Request as referred to in clause 15.1(a); or
 - (ii) directs a Variation by issue of a Variation Order under clause 15.2(a),
- which involves the same or similar changes to the Project Works or the Landscaping Maintenance as are required by a Pre-Agreed Variation and which is issued or directed (as relevant) after the relevant date in section 1 of Schedule 44 for that Pre-Agreed Variation, RMS and the Contractor agree that the Variation will be valued in accordance with clause 15.4.

15.9 Change in Law

- (a) Where there is a Change in Law:
- (i) if either RMS or the Contractor wishes clause 15.9(a)(ii) to apply, then that party must within 14 days of the Change in Law, give a written notice to the other party and RMS Representative stating that clause 15.9(a)(ii) applies and containing:
 - A. details of the Change in Law; and
 - B. that party's estimate of the increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law including sufficient information to support the estimate;
 - (ii) RMS and the Contractor will meet within 28 days of a notice being given under clause 15.9(a)(i) and will negotiate and endeavour to agree any increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law and where agreement is reached as to the amount of the increase or decrease in costs:
 - A. in the case of a decrease, the relevant component or components of the Project Contract Sum will be decreased and if either:
 - 1) the Project Contract Sum has been paid in full; or
 - 2) the Project Contract Sum has not been paid in full but the amount of payment due from the Contractor to RMS exceeds the Project Contract Sum less amounts paid under clause 18.4 on account of the Project Contract Sum,
 then the amount will be a debt due and payable from the Contractor to RMS upon demand; and
 - B. in the case of an increase, the relevant component or components of the Project Contract Sum will be increased;
 - (iii) if no agreement is reached within 28 days (or such other period that RMS and the Contractor agree upon) of a notice being given under clause 15.9(a)(i):
 - A. in the case of a decrease in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law, the amount of the decrease in the Contractor's costs will be a debt due and payable from the Contractor to RMS upon demand, such amount to be as stated by

- RMS Representative; and
- B. in the case of an increase in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law, the amount of the increased costs actually incurred will, subject to the Contractor having taken all reasonable steps to mitigate those increased costs, increase the relevant component or components of the Project Contract Sum, such amount to be as stated by RMS Representative; and
- (iv) the Contractor must comply with the Change in Law.
- (b) Subject to clause 15.9(c), the Contractor will have no Claim against RMS arising out of or in any way in connection with:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
- (ii) a change in an Approval after the date of this deed.
- (c) If a requirement of:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed (including a requirement which becomes the responsibility of the Contractor to comply with, carry out or fulfil by virtue of a notice given by RMS Representative as contemplated by clause 2(d) of Schedule 28); or
- (ii) a change in an Approval after the date of this deed,
- necessitates a Variation, the Contractor must within 14 days of the new Approval or change taking effect notify RMS Representative in writing with detailed particulars of the reason why the new Approval or change necessitates a Variation. If the Contractor gives such a notice and the new Approval or change does necessitate a Variation, RMS Representative will direct a Variation under clause 15.2(a) after which, subject to clause 15.9(d), relevant adjustments will be made under clause 15.4.
- (d) If a requirement necessitating a Variation referred to in clause 15.9(c):
- (i) could reasonably have been anticipated by a prudent, competent and experienced contractor in the position of the Contractor; or
- (ii) arises out of or in connection with an act or omission of the Contractor, including any design development by the Contractor, or any change in the Contractor's construction methodology,
- no adjustments will be made under clause 15.4 and the Contractor will have no entitlement to, and RMS will not be liable for, any Claim arising out of or in connection with that Variation.
- (e) Without limiting clauses 15.9(b) or 15.9(c), and subject to:
- (i) the Contractor's entitlements under clause 15.4 in respect of the Variation Order directed by RMS Representative requiring the Contractor to implement the Extra Mechanisms; and
- (ii) the Contractor's entitlements in accordance with this deed upon the occurrence of the cause of delay in paragraph (h) of the definition of the Excusable Cause of Delay,
- the Contractor acknowledges and agrees that it will have no entitlement to, and RMS will not be liable for, any Claim (including any claim relating to a failure by RMS to give access as required by clause 9.1(a)) arising out of or in connection with:
- (iii) the implementation of the Extra Mechanisms; or
- (iv) any delay in obtaining, or a failure by RMS to obtain, the Minister's Approval.

16. Defects

16.1 Defects

- (a) The Contractor must promptly give RMS Representative a detailed written report of:
- (i) any Defect it detects; and
- (ii) all action proposed to correct that Defect, including the estimated time required.
- (b) Subject to any direction under clause 16.2(c) and to clause 16.4, the Contractor must

correct all Defects whether or not RMS Representative notifies it of them and, in the case of Defects detected:

- (i) prior to Construction Completion, those Defects must be corrected prior to and as a condition precedent to achieving Construction Completion; and
- (ii) after Construction Completion, those Defects must, subject to any direction under clause 16.3(a), be corrected as soon as practicable after detection.

16.2 RMS Representative's direction

If RMS Representative discovers or believes there is a Defect or is given notice of a Defect under clause 16.1(a), RMS Representative may, without prejudice to any other rights which RMS may have under this deed or otherwise at Law, give the Contractor one or more of the following directions specifying the Defect and:

- (a) requiring the Contractor to correct the Defect or any part of it and the direction may specify the time within which the rectification work must be carried out and other matters associated with the carrying out of the rectification work;
- (b) requiring the Contractor to carry out a Variation to overcome the Defect or any part of it and specifying the time within which this must be carried out and may specify other matters associated with the carrying out of the Variation; or
- (c) advising the Contractor that RMS will accept the work or any part of it despite the Defect,

and the Contractor will only be entitled to receive an extension of time (if relevant) or to have any component of the Project Contract Sum adjusted for correcting the Defect (or the part of it) or for carrying out the Variation if:

- (d) it complies with clause 17.5 or clause 19 (as the case may be); and
- (e) the Defect (or the part of it) is something for which the Contractor is not responsible.

16.3 Correction of Defect or Variation

If a direction is given under clause 16.2(a) or clause 16.2(b) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, or in the case of a Defect in the Landscaping Maintenance, the Landscaping Maintenance Period, the Contractor must correct the Defect (or the part of it) or carry out the Variation:

- (a) within any time period specified in RMS Representative's direction, which time must be reasonable; and
- (b) if during the Defects Correction Period applicable to the relevant part of the Project Works, or in the case of a Defect in the Landscaping Maintenance, the Landscaping Maintenance Period:
 - (i) at times and in the manner agreed with RMS Representative;
 - (ii) in accordance with the requirements of any relevant Authority;
 - (iii) so as to minimise the impact on the use of the relevant part of the Project Works or the Works;
 - (iv) in a manner which causes as little inconvenience as possible to users of the Works, a Local Road, a Service or any access and the adjacent community; and
 - (v) where the Contractor proposes to perform any work which will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Works the Contractor must apply for a Road Occupancy Licence under clause 5.14.

16.4 RMS correction of Defects

- (a) If RMS Representative discovers or believes there is a Defect or is given notice of a Defect under clause 16.1(a) which RMS Representative reasonably believes:
 - (i) involves an event serious enough to cause significant inconvenience and disruption to users of the Works, a Local Road, a Service or any access or to the adjacent community; and
 - (ii) the Contractor will be unable to remedy the relevant Defect in the time required by RMS Representative to prevent the event, inconvenience or disruption described in clause 16.4(a)(i) occurring,

then, without prejudice to any other rights which RMS may have under this deed or otherwise at Law:

- (iii) RMS may correct the Defect at the risk and cost of the Contractor; and
 - (iv) the Contractor must pay to RMS the costs of the correction work incurred by RMS.
- (b) Nothing in this clause 16.4 requires RMS to inspect any part of the Project Works or the Landscaping Maintenance for Defects or to correct any Defect and the Contractor is not relieved from, and remains fully responsible for, its obligations under this deed.

16.5 Acceptance of work

If a direction is given under clause 16.2(c) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, or in the case of a Defect in the Landscaping Maintenance, the Landscaping Maintenance Period, and the Contractor is responsible for the Defect (or the part of it), the relevant component of the Project Contract Sum will be reduced by the amount which represents the reasonable cost of correcting the Defect (or the part of it), such amount to be as stated by RMS Representative.

16.6 Works

The Works have:

- (a) a Defects Correction Period which begins on the Date of Construction Completion and ends on the third anniversary of that date; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) during the Defects Correction Period which begins on the date of the correction of the Defect or completion of the Variation.

16.7 Local Road Works

- (a) Each discrete part of the Local Road Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date notified under clause 16.7(e)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Local Road Works) during the Defects Correction Period, which begins on the date of the correction of the Defect or completion of the Variation.
- (b) The completion of the Local Road Works will be assessed on a road by road basis.
- (c) When the Contractor considers that each discrete part of the Local Road Works is complete, subject to clause 16.7(d), it must notify RMS Representative in writing and RMS Representative, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Road Works at a mutually convenient time.
- (d) In the case of any Local Road Works in respect of the roads referred to in the sections of the Scope of Works and Technical Criteria identified in Item 29(s) of Schedule 1, the Contractor must not give notice under clause 16.7(c) prior to the date which is 14 days before the earlier of the anticipated Date of Opening Completion and the anticipated Date of Construction Completion.
- (e) Following the joint inspection under clause 16.7(c), RMS Representative must notify the Contractor in writing:
 - (i) if the discrete part is complete, of the date on which the Contractor has completed the discrete part of the Local Road Works in accordance with this deed, which subject to clause 16.7(f)(i), will be the relevant date for the purposes of clause 16.7(a)(i); or
 - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 16.7(c) will reapply).
- (f) Subject to clause 16.7(g), it is a condition precedent to:
 - (i) the commencement of the Defects Correction Period for a discrete part of the Local Road Works that the Contractor provide RMS Representative with a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; and

- (ii) Construction Completion that the written notices required under clause 16.7(f)(i) have been provided to RMS Representative for all discrete parts of the Local Road Works.
- (g) If the Contractor demonstrates to the satisfaction of RMS Representative that an Authority has failed to provide a written notice required under clause 16.7(f), despite the Contractor using its best endeavours to obtain the written notice, and that failure has prevented:
 - (i) the commencement of the Defects Correction Period applicable to a discrete part of the Local Road Works; or
 - (ii) the Contractor achieving Construction Completion,
 RMS Representative may, in his or her absolute discretion, waive the requirement for the Contractor to obtain the written notice as a condition precedent to the commencement of the relevant Defects Correction Period or Construction Completion (as the case may be).

16.8 Service Works

- (a) Each discrete part of the Service Works has:
 - (i) a Defects Correction Period of 12 months, which begins when:
 - A. the relevant Authority which has jurisdiction in respect of the Service gives written notice that the work is complete; and
 - B. RMS Representative has been provided with a copy of the notice; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Service Works) during the Defects Correction Period, which begins when:
 - A. the relevant Authority gives written notice that the Defect has been corrected or the Variation completed; and
 - B. RMS Representative has been provided with a copy of the notice.
- (b) Subject to clause 16.8(c), it is a condition precedent to Construction Completion, that:
 - (i) a written notice of the kind referred to in clause 16.8(a)(i) has been given for each discrete part of the Service Works; and
 - (ii) RMS Representative has been provided with a copy of each such notice.
- (c) If the Contractor demonstrates to the satisfaction of RMS Representative that an Authority has failed to provide a written notice required under clauses 16.8(a)(i)A, 16.8(a)(ii)A or 16.8(b), despite the Contractor using its best endeavours to obtain the written notice, and that failure has prevented:
 - (i) the commencement of the relevant Defects Correction Period applicable to a discrete part of the Service Works; or
 - (ii) the Contractor achieving Construction Completion,
 RMS Representative may, in his or her absolute discretion, waive the requirement for the Contractor to obtain the written notice required for commencement of the relevant Defects Correction Period or as a condition precedent to Construction Completion (as the case may be).

16.9 Property Works

Each discrete part of the Property Works has:

- (a) a Defects Correction Period of 12 months, which begins upon:
 - (i) the completion of the Property Works; and
 - (ii) submission by the Contractor of a deed or signed statement (as the case may be) to RMS Representative under clause 13.2(g),
 whichever is the later; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect or completion of the Variation.

16.10 Failure by the Contractor to comply with direction

- (a) Without limiting clause 22.9, if the Contractor does not comply with a direction referred to in clause 16.2(a) or clause 16.2(b), RMS may employ others to carry out that direction.
- (b) The costs, losses, expenses, damages and liability suffered or incurred by RMS in taking the action contemplated in clause 16.10(a) or as a result of the Contractor's failure to comply with clause 16.3 will be a debt due and payable from the Contractor to RMS on demand.

16.11 Rights not affected

Neither RMS' rights, nor the Contractor's liability, whether under this deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period or the Landscaping Maintenance Period, will be in any way affected or limited by:

- (a) the rights conferred upon RMS or RMS Representative by this clause 16 or any other provision of this deed;
- (b) the exercise of, or the failure by RMS or RMS Representative to exercise, any such rights; or
- (c) any direction of RMS Representative under clause 16.2 or act under clause 16.4.

16.12 Use of defective facilities

The Contractor must not allow the use of any part of the Project Works, Temporary Works or Works which the Contractor knows are defective or unsafe and which threaten the safety of members of the public.

17. Time and Completion

17.1 The Contractor's programming obligations

- (a) Within 28 days of the date of this deed, the Contractor must prepare and submit to the Project Verifier and RMS Representative subsidiary programs for all activities to be undertaken in carrying out the Contractor's Work (including procurement of goods and materials).
- (b) The Subsidiary Contract Programs must be based upon, and be consistent with, the Contract Program.
- (c) The Contract Program and the Subsidiary Contract Programs must:
 - (i) comply with the requirements in the section of the Appendix to the Scope of Works and Technical Criteria identified in Item 29(t) of Schedule 1; and
 - (ii) be in hard copy form and in an electronic form and include such detail as RMS Representative reasonably requires and be accurate, comprehensive and complete in all respects.

The requirements of this clause 17.1(c) and the underlying program logic must be accessible and clearly shown in the electronic form of the Contract Program and all Subsidiary Contract Programs. The software used by the Contractor must be acceptable to RMS Representative.

- (d) The Contract Program and all Subsidiary Contract Programs must be reviewed and updated as reasonably required by RMS Representative and in any event at least:
 - (i) on a monthly basis and at the same time as the Contractor submits a progress claim under clause 18.2; and
 - (ii) within 14 days of the granting of each extension of time under clause 17.5(d) and of each direction to compress the Contractor's Work under clause 17.7,

to take into account the actual progress of the Contractor's Work and the impact of each extension of time and direction to compress and must disclose the Contractor's proposed changes to activities, sub-activities and events from the previously provided Contract Program or Subsidiary Contract Program. These updated programs must be given to the Project Verifier and RMS Representative with the reports required by the section of the

Contractor Documentation Schedule identified in Item 30(b) of Schedule 1.

- (e) RMS Representative may reject a program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program within 14 days of that program being given to the RMS Representative if it does not comply with the requirements of clauses 17.1(b), 17.1(c) or 17.1(d). If RMS Representative rejects a program submitted by the Contractor as a Contract Program or a Subsidiary Contract Program the Contractor must submit a corrected program within 7 days. If the RMS Representative raises no objection and the program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program complies with clauses 17.1(b), 17.1(c) and 17.1(d) (as relevant), it becomes the Contract Program or Subsidiary Contract Program, as applicable.
- (f) A program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program that is rejected by RMS Representative is not a Contract Program or a Subsidiary Contract Program for the purposes of this deed.
- (g) Neither a Direction relating to, nor review of nor comment upon, a program (including the Contract Program and any Subsidiary Contract Program) by RMS or RMS Representative, nor the inclusion of the Contract Program as an exhibit to this deed, will:
 - (i) relieve the Contractor from or reduce its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 17.2;
 - (ii) evidence or constitute an extension of time by RMS Representative or a Direction by RMS Representative to compress, accelerate, disrupt, prolong or vary any, or all, of the Contractor's Work; or
 - (iii) reduce the time for carrying out of RMS or RMS Representative's obligations under this deed, including by obliging RMS or RMS Representative to perform an obligation earlier than it was required to do so at the date of this deed.
- (h) Whether or not the Contractor chooses to compress or accelerate the carrying out of the Contractor's Work:
 - (i) neither RMS nor RMS Representative will be obliged to take or avoid taking any action to assist or enable the Contractor to achieve Construction Completion by or before the Date for Construction Completion; and
 - (ii) the time for the carrying out of RMS' or RMS Representative's obligations will not be affected.
- (i) Where the Contractor chooses to compress or accelerate the carrying out of the Contractor's Work:
 - (i) neither RMS nor RMS Representative will be obliged to avoid inhibiting the Contractor from achieving Construction Completion by or before the Date for Construction Completion; and
 - (ii) the time for the carrying out of RMS' or RMS Representative's obligations will not be affected.

17.2 Date for Construction Completion

The Contractor must achieve Construction Completion by the Date for Construction Completion.

17.3 Importance of Construction Completion on time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 17.2 to enhance the benefit of the Contractor's Work to the people of New South Wales; and
- (b) the Date for Construction Completion will only be extended as set out in clause 17.5.

17.4 Risk and notice of delay

- (a) Except as expressly provided for in clause 17.5, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Work and the performance of its obligations under this deed.
- (b) Except as provided under clause 11.6(d), within 5 days of when the Contractor first became aware, or should reasonably have first become aware, that an event has caused

or will or is likely to cause any delay, the Contractor must give RMS Representative written notice of the event and estimated delay, with details of the event and how the critical path to achieving Construction Completion and the Date of Construction Completion are likely to be affected (if at all).

17.5 Extension of time

- (a) If the Contractor has been or will be delayed in achieving Construction Completion by an Excusable Cause of Delay, the Contractor may submit a claim for an extension to the Date for Construction Completion.
- (b) To claim an extension of time the Contractor must:
 - (i) within 14 days of the earlier of when the Contractor:
 - A. became aware; or
 - B. should reasonably have become aware,of the Excusable Cause of Delay that has or will cause delay to achieving Construction Completion, submit a written claim to RMS Representative for an extension to the Date for Construction Completion, which:
 - C. gives detailed particulars of the Excusable Cause of Delay and the events or circumstances giving rise to the delay and the period of the delay;
 - D. states the date on which the Excusable Cause of Delay giving rise to the delay first arose; and
 - E. states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the delay involves an activity which is critical to the maintenance of progress in the execution of the Contractor's Work and which has or will actually delay the Contractor in achieving Construction Completion in the manner described in clause 17.5(c)(iii); and
 - (ii) if the delay continues beyond the period referred to in the particulars provided under clause 17.5(b)(i)E and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to RMS Representative:
 - A. every 14 days after the first written claim until 7 days after the end of the effects of the delay; and
 - B. containing the information required by clauses 17.5(b)(i)C and 17.5(b)(i)E.
- (c) Without limiting the operation of clause 17.5(f), each of the following is a condition precedent to the Contractor's entitlement to an extension of time:
 - (i) the Contractor must have given all notices and claims required by clauses 11.6(c), 17.4(b) and 17.5(b) in accordance with the requirements of those clauses, including within the time frames required by those clauses;
 - (ii) the Excusable Cause of Delay was beyond the reasonable control of the Contractor;
 - (iii) the Excusable Cause of Delay has or will actually delay the Contractor in achieving Construction Completion and the delay is evidenced by delay to an activity or activities on the critical path as identified on the Contract Program and any relevant Subsidiary Contract Program; and
 - (iv) the RMS Representative has not given the Contractor a Direction under clause 17.7 to compress the Contractor's Work in respect of the delay in question.
- (d) If the conditions precedent in clause 17.5(c) have been satisfied, RMS Representative must extend the Date for Construction Completion by:
 - (i) if the cause of delay is a Variation, any adjusted Date for Construction Completion notified in the relevant Variation Order under clause 15.2(b); or
 - (ii) otherwise, a reasonable period not exceeding the period of delay, as stated by RMS Representative,in either case having regard to any reduction in accordance with clauses 17.5(e) or 17.7(b).

RMS Representative must notify RMS and the Contractor of the extension of time that has been granted within 28 days after the Contractor's last claim under clause 17.5(b).

- (e) The Contractor's entitlement to any extension to the Date for Construction Completion under clause 17.5(d)(i) or clause 17.5(d)(ii) will be reduced to the extent:
 - (i) that the Contractor could have avoided or lessened the delay by taking reasonable steps to avoid or prevent the cause of the delay or to avoid or minimise the delay and its consequences; and
 - (ii) where more than one event causes delay and the cause of at least one of those delays is not an Excusable Cause of Delay, of any concurrency.
- (f) RMS Representative may in his or her absolute discretion unilaterally extend the Date for Construction Completion by any period specified in a notice to the Contractor and RMS, whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 17.5.

The power to extend the Date for Construction Completion under this clause 17.5(f):

 - (i) may only be exercised by RMS Representative and RMS Representative is not required to exercise his or her discretion under this clause 17.5(f) for the benefit of the Contractor; and
 - (ii) is not a Direction which can be the subject of a Dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

17.6 Agreed costs

- (a) The Contractor will be entitled to be paid:
 - (i) delay costs at the rate or rates specified in Item 26 of Schedule 1 for each day by which the Date for Construction Completion is extended due to:
 - A. a breach of this deed by RMS or clause 9.1(d);
 - B. subject to clauses 15.6, 15.7, 16.2, 17.6(b) and 17.6(ba), a Variation the subject of a Direction by RMS Representative; or
 - C. the cause of delay described in paragraph (h) of the definition of "Excusable Cause of Delay";
 - (iA) in respect of the cause of delay described in paragraph (e) of the definition of "Excusable Cause of Delay" (inclement weather), delay costs (if any) which are calculated in accordance with Item 26A of Schedule 1; and
 - (ii) after the Date of Construction Completion, if the Date of Construction Completion occurs after the Date for Construction Completion as at the date of this deed, an amount (A) calculated in accordance with the formula below:

$$A = \Sigma [B \times C \times D] \times \left[\frac{(E - F)}{(G - F)} \right]$$

where:

- A** = amount payable by RMS, provided (A) has a positive value. If (A) has a negative value, no amount is payable;
- B** = number of Project Verifier personnel on the Construction Site during each period of time in respect of which extensions of time have been granted under clause 17.5 during the construction phase, but excluding periods in relation to extensions of time granted in respect of events referred to in clauses 17.6(a)(i)A and 17.6(a)(i)B;
- C** = the rates applicable to the personnel in B above, as set out in clause 6 of Schedule 12C to the Deed of Appointment of Project Verifier;
- D** = each period of extension of time granted under clause 17.5 during the construction phase but excluding periods in relation to extensions of time granted in respect of events referred to in clauses 17.6(a)(i)A and 17.6(a)(i)B;
- E** = total number of days between the Date for Construction Completion as at the date of this deed and the Date of Construction Completion, provided no days are counted beyond the Date for Construction Completion as at

Construction Completion;

F = total number of days of extensions of time granted under clause 17.5 during the construction phase in respect of events referred to in clauses 17.6(a)(i)A and 17.6(a)(i)B; and

G = total number of days of extensions of time granted under clause 17.5 during the construction phase.

- (b) Despite clause 15.9, the Contractor will not be entitled to delay costs under clause 17.6(a) arising out of or in any way in connection with a Change in Law or:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed (other than in respect of the cause of delay described in paragraph (h) of the definition of "Excusable Cause of Delay"); or
 - (ii) a change in an Approval after the date of this deed,
- regardless of whether a Change in Law, new Approval or change in an Approval necessitates a Variation.
- (ba) The Contractor will have no entitlement to, and RMS will not be liable for, any delay costs under clauses 17.6(a)(i)(A) or 17.6(a)(i)(B) arising out of or in connection with the Variation Order directed by RMS Representative requiring the Contractor to implement the Extra Mechanisms.
- (c) The delay costs that the Contractor is entitled to under clause 17.6(a):
- (i) are the agreed damages which will be payable by RMS where the Date for Construction Completion is extended due to a breach of this deed by RMS; and
 - (ii) will be a limitation upon RMS liability to the Contractor for any delay, disruption or interference which arises out of or in connection with any breach of this deed by RMS.
- (ca) If RMS Representative has unilaterally extended the Date for Construction Completion under clause 17.5(f), RMS Representative may in his or her absolute discretion decide to pay delay costs to the Contractor for such amount as RMS Representative in his or her absolute discretion sees fit.
- The power to pay delay costs to the Contractor under this clause 17.6(ca):
- (i) may only be exercised by RMS Representative and RMS Representative is not required to exercise his or her discretion under this clause 17.6(ca) for the benefit of the Contractor; and
 - (ii) is not a Direction which can be the subject of a Dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).
- (d) The Contractor will not be entitled to make, nor will RMS be liable upon any Claim including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the Contractor's Work, other than for any amount which is paid or payable by RMS under this clause 17.6.

17.7 Compression

- (a) Subject to clause 17.7(b), RMS Representative may direct the Contractor to compress the Contractor's Work by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of any delay, which may include taking those measures necessary to achieve Construction Completion by the Date for Construction Completion, whether or not the cause of any delay entitles the Contractor to an extension of time to the Date for Construction Completion.
- RMS Representative may not give a direction under this clause 17.7(a) which requires the Contractor to compress the Contractor's Work so as to achieve Construction Completion earlier than the Date for Construction Completion.
- (b) RMS Representative may only direct the Contractor to compress the Contractor's Work under clause 17.7(a) to the extent that the compression is reasonably capable of being achieved or would be reasonably capable of being achieved by a prudent and competent contractor in the position of the Contractor.
- (c) If, following receipt of a claim under clause 17.5(b), RMS Representative gives the Contractor a direction to compress under clause 17.7(a):

- (i) and the direction to compress only applies to part of the delay, the Contractor's entitlement to any extension of time to which it may otherwise have been entitled will be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome or minimise the delay, as stated by RMS Representative; and
 - (ii) RMS Representative may at any time by notice in writing withdraw the direction after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled to in respect of the claim, such entitlement to an extension of time to be reduced to the extent that any compression of the Contractor's Work pursuant to the direction undertaken by the Contractor prior to the withdrawal of the direction has overcome or minimised the delay the subject of that claim, as stated by RMS Representative.
- (d) If RMS Representative gives a direction to the Contractor under clause 17.7(a):
- (i) the Contractor must compress the performance of the Contractor's Work to overcome and minimise the delay to the extent to which the direction requires the Contractor to overcome and minimise the delay;
 - (ii) to the extent that the Contractor would, but for the direction, have been entitled to an extension of time to the Date for Construction Completion for the cause of delay in respect of which the Contractor made a claim under clause 17.5(b), the Contractor will be entitled to be paid:
 - A. if the direction relates to:
 - 1) all of the delay caused by a Variation; or
 - 2) part of any delay caused by a Variation as specified in the relevant Variation Proposal Request under clause 15.1,
any amount notified by the Contractor under clause 15.1(a)(ii)B and approved by RMS Representative; or
 - B. otherwise, the reasonable net extra Direct Costs incurred by the Contractor (which if RMS Representative gives a notice to withdraw the direction under clause 17.7(a), will be those reasonable net extra Direct Costs incurred prior to the giving of such notice) and directly attributable to compressing the performance of the Contractor's Work as required by RMS Representative's direction under clause 17.7(a) (provided it has incurred them reasonably and has taken all steps reasonably practicable to minimise them) as stated by RMS Representative; and
 - (iii) the Contractor will have no Claim arising out of or in connection with the cause of delay or the delay or any direction under clause 17.7(a) (whether for an extension of time to the Date for Construction Completion which the Contractor might have had but for the direction or otherwise) except for its entitlements under clause 17.7(b) and clause 17.7(d)(ii).
- (e) RMS' rights to liquidated damages under clause 17.9 for a failure by the Contractor to achieve Construction Completion by the Date for Construction Completion are not affected by RMS Representative giving the Contractor a Direction to compress under this clause 17.7.

17.8 Suspension

- (a) RMS Representative may direct the Contractor to suspend and subsequently to re-commence performance of all or any of the Contractor's obligations under this deed.
- (b) If the suspension arises as a result of:
 - (i) the Contractor's failure to carry out its obligations under this deed, the Contractor will not be entitled to make any Claim against RMS arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to perform its obligations under this deed:
 - A. a direction to suspend under this clause 17.8 will entitle the Contractor to:
 - 1) be paid by RMS the reasonable net extra Direct Costs incurred by it as a result of the suspension as stated by RMS Representative;

and

- 2) an extension of time to the Date for Construction Completion where it is otherwise so entitled under clause 17.5;
- B. the Contractor must take all steps reasonably practicable to mitigate the net extra Direct Costs incurred by it as a result of the suspension; and
- C. the Contractor will not be entitled to make any Claim against RMS arising out of, or in any way in connection with, the suspension other than under this clause 17.8(b)(ii).

17.9 Liquidated damages for delay in reaching Construction Completion

- (a) RMS and the Contractor agree and acknowledge that RMS as a statutory body representing the Crown, is pursuing a policy of upgrading the main roads of New South Wales for the purpose of:
 - (i) improving the efficiency of the New South Wales road network so that the costs of travelling (both in time and money) on New South Wales roads are reduced as well as the cost of freight transport in New South Wales; and
 - (ii) eliminating dangerous stretches of road in order to reduce damage to property and the number of fatalities and injuries caused by motor accidents.
- (b) The Contractor and RMS acknowledge and agree that the Contractor's Work represents a most important element of implementing the policy outlined in clause 17.9(a) and will generally improve travel times, reduce freight costs and improve the local environment whilst reducing accidents and accident costs.
- (c) The Contractor acknowledges and agrees that its failure to achieve Construction Completion by the Date for Construction Completion in accordance with this deed, will not only result in direct losses to RMS, but will also lead to the failure of RMS to achieve its policy objectives on behalf of the Crown to the immediate detriment of RMS and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of RMS to achieve its policy objectives is not capable of easy or precise calculation.
- (d) Therefore, the Contractor agrees that if it does not achieve Construction Completion by the Date for Construction Completion, it will pay RMS:
 - (i) the amount specified in Item 27 of Schedule 1 (which is exclusive of GST) for every day after the Date for Construction Completion up to and including:
 - A. the Date of Opening Completion (if any);
 - B. the Date of Construction Completion; or
 - C. the date that this deed is validly terminated,whichever first occurs; and
 - (ii) where Opening Completion has been achieved but Construction Completion has not, and RMS Representative issues a notice under clause 17.12, the amount specified in Item 28 of Schedule 1 (which is exclusive of GST), for every day after the Date of Opening Completion (if any) up to and including:
 - A. the Date of Construction Completion; or
 - B. the date that this deed is validly terminated,whichever first occurs.
- (e) The liquidated damages provided by clause 17.9(d) are a genuine pre-estimate of RMS' damages if Construction Completion occurs after the Date for Construction Completion and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by RMS for both its own loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of the Contractor to achieve Construction Completion by the Date for Construction Completion.
- (f) RMS and the Contractor acknowledge and agree that they are both parties contracting at arms length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.

- (g) The Contractor agrees to pay the liquidated damages under clause 17.9(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of RMS.
- (h) The Contractor entered into the obligation to pay the amounts specified in clause 17.9(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.
- (i) The Contractor agrees to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts.
- (j) The Contractor agrees that if clause 17.9(d) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle RMS from recovering liquidated damages, RMS will be entitled to recover common law damages as a result of the Contractor failing to achieve Construction Completion by the Date for Construction Completion, but the Contractor's liability for such damages (whether per day or in the aggregate) will not be any greater than the liability which it would have had if clause 17.9(d) had not been void, invalid or otherwise inoperative.

17.10 Construction Completion

- (a) The Contractor must give RMS Representative:
 - (i) 3 months; and
 - (ii) 1 month,
 written notice of the estimated Date of Construction Completion.
- (b) RMS Representative and the Project Director must, within 7 days of receipt of the notice referred to in clause 17.10(a)(ii), jointly inspect the Contractor's Work at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.10(b), RMS Representative must give the Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before Construction Completion is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Construction Completion that it is not practicable to issue a list as contemplated in clause 17.10(c)(i).
- (d) When the Contractor considers it has achieved Construction Completion, the Contractor must notify RMS Representative in writing.
- (e) RMS Representative and the Project Director must, within 7 days of receipt of the Contractor's notice referred to in clause 17.10(d), jointly inspect the Contractor's Work at a mutually convenient time.
- (f) Following the joint inspection under clause 17.10(e) and in any event within 14 days of receipt of a notice under clause 17.10(d), RMS Representative must state and notify the Contractor of:
 - (i) if Construction Completion has been achieved, the date on which the Contractor achieved Construction Completion; and
 - (ii) if Construction Completion has not been achieved:
 - A. the items, including any Defects, which remain to be completed before Construction Completion is achieved; or
 - B. that the Contractor is so far from achieving Construction Completion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.10(f)(ii)A.
- (g) If RMS Representative issues a notice under clause 17.10(f)(ii) the Contractor must proceed with the Contractor's Work and thereafter when it considers it has achieved Construction Completion it must give RMS Representative a further written notice to that effect under clause 17.10(d) after which clauses 17.10(e) and 17.10(f) will reapply.
- (h) The Contractor:

- (i) acknowledges that, at the date of this deed, it is anticipated that Construction Completion before the Date for Construction Completion will be of benefit to RMS; and
- (ii) must co-operate to ensure that any potential for early Construction Completion is maximised in light of RMS total requirements for the development of the Existing Highway.

17.11 Part of the works or section

- (a) If required by RMS, the Contractor must:
 - (i) permit RMS to use; or
 - (ii) permit the opening for use by the public of, any parts of the Works and any Local Road, irrespective of whether Opening Completion and/or Construction Completion has been achieved.
- (b) Such use of a part of the Works or a Local Road prior to Opening Completion and/or Construction Completion under clause 17.11(a) will not relieve the Contractor from any of its responsibilities, obligations or liabilities under this deed, including its responsibility for the care of the Contractor's Work under clauses 6.1 and 6.3.

17.12 Opening Completion

- (a) If Opening Completion has been achieved, RMS Representative may, in his or her absolute discretion, and even though Construction Completion has not been achieved, give a written notice to the Contractor stating that it proposes to open the Works to the public for the continuous passage of vehicles by a date stated in the notice being no less than 5 days after the date of the issue of the notice. RMS will then have the right to open the Works for the use of the public from the date stated in RMS Representative's notice.
- (b) If RMS Representative gives any such notice, this will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Construction Completion by the Date for Construction Completion.

17.13 Opening of the Works following Construction Completion

If required by RMS, the Contractor must open the Works to the public for the safe, efficient and continuous passage of vehicles within 1 day after the date of issue of a notice under clause 17.10(f)(i).

17.14 Warranties by others

- (a) The Contractor must, as a condition precedent to Final Completion, obtain and provide RMS with all warranties required by this deed, from the relevant Subcontractors in favour of RMS on the terms in Schedule 34.
- (b) The provision of those warranties will not derogate from any rights which RMS may have against the Contractor in respect of the subject matter of those warranties.

17.15 Final Completion

- (a) The Contractor must give RMS Representative two month's written notice of the estimated Date of Final Completion.
- (b) RMS Representative and the Project Director must, within 21 days of the notice referred to in clause 17.15(a), jointly inspect the Works at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.15(b), RMS Representative must give the Contractor a list of items which must be completed before Final Completion is achieved.
- (d) When the Contractor considers it has achieved Final Completion, the Contractor must notify RMS Representative in writing and RMS Representative and the Project Director must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 17.15(d) and in any event within 28 days of receipt of a notice under clause 17.15(d), RMS Representative must state and notify the Contractor:
 - (i) if Final Completion has been achieved, of the date on which the Contractor achieved Final Completion; or

- (ii) if Final Completion has not been achieved:
 - A. of the items which remain to be completed before Final Completion is achieved; or
 - B. that the Contractor is so far away from achieving Final Completion, it is not practicable to specify the items referred to in clause 17.15(e)(ii)A.
- (f) If RMS Representative issues a notice under clause 17.15(e)(ii)B, the Contractor must proceed with the Contractor's Work and thereafter when it considers it has achieved Final Completion it must give RMS Representative further written notice to that effect under clause 17.15(d) after which clauses 17.15(e) and 17.15(f) will reapply.

17.16 Effect of notice of Construction Completion, Landscaping Maintenance or Final Completion

A notice issued under clause 14.5(b)(i), 17.10(f)(i) or 17.15(e)(i) will not:

- (a) constitute approval by RMS or RMS Representative of the Contractor's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that the Project Works or the Landscaping Maintenance comply with this deed; or
- (c) prejudice any rights or powers of RMS or RMS Representative, including the right to correct any Defect that may have existed upon the issue of a notice under clause 17.10(f)(i), whether or not the Defect was known to exist.

18. Payment

18.1 RMS payment obligation for design and construction

- (a) Subject to clauses 20.10 and 22.8 and to any other right to set-off which RMS may have, RMS must pay the Contractor the Project Contract Sum in accordance with this clause 18, the Design Payment Schedule and the Construction Payment Schedule for the progressive completion of the Contractor's Work.
- (b) Without limiting this clause 18, the Design Payment Schedule and the Construction Payment Schedule set out (among other things):
 - (i) those parts of the Contractor's Work which must be completed before the Contractor may claim a progress payment with respect to that part;
 - (ii) the payment the Contractor may claim for each progress payment;
 - (iii) any limitations or other constraints on the Contractor's ability to make claims for payment; and
 - (iv) restrictions on the timing and sequencing of the Contractor's Work with which the Contractor must comply.
- (c) The Design Contract Sum is not subject to rise and fall.
- (d) The Construction Contract Sum is subject to adjustment in accordance with Construction Rise and Fall, except to the extent as otherwise agreed in writing between RMS and the Contractor.

18.2 Payment claims

- (a) The Contractor must give RMS Representative a progress claim, with respect to the Project Contract Sum, on each Reference Date. For the purposes of this clause 18.2(a), a Reference Date is the later to occur of:
 - (i) the twenty-fifth day of each month; and
 - (ii) the date on which the last of the following occurs:
 - A. the Contractor demonstrates that it has complied with clauses 2.5(a), 2.8(g), 8.1(a) and 8.2;
 - B. the Contractor demonstrates that it has complied with clause 5.3;
 - C. the Contractor demonstrates that it has effected and is maintaining all insurances required to be effected by the Contractor under clause 7 and has complied with clause 7.9;

- D. the Contractor provides a statement by the Quality Manager in the form of Schedule 8;
 - E. the Contractor provides verification by the Project Verifier in the form of Schedule 13; and
 - F. the Contractor provides a contractor statement and a supporting statement in the form of Schedule 5:
 - 1) which is executed on or after twenty-fifth day of the relevant month; and
 - 2) which has been duly executed by a representative of the Contractor who is in a position to know the facts declared.
- (b) The Contractor agrees with RMS that the Reference Date prescribed by clause 18.2(a) is, for the purposes of section 8 of the SOP Act, the "reference date" under this clause 18.
- (ba) The Contractor agrees that the amount of a progress payment (for the purposes section 9 of the SOP Act and this clause 18) will be calculated by reference to:
- (i) the Contractor's Work which has been certified by:
 - A. the Quality Manager in the form of Schedule 8; and
 - B. the Project Verifier in the form of Schedule 13; and
 - (ii) the Contractor's Work that has been completed up to and including the date on which the contractor statement and supporting statement in the form of Schedule 5 was executed.
- (c) For each claim made under clause 18.2(a) the Contractor must give RMS Representative (at the same time as the claim is made) a statement in a format required by RMS Representative (including electronic format) showing the amount the Contractor claims, including rise and fall calculations.
- (d) RMS Representative must, on behalf of RMS, within 10 Business Days of receipt of the Contractor's claim under clause 18.2(a), issue to the Contractor and RMS a payment schedule:
- (i) identifying the payment claim to which it relates;
 - (ii) stating the amount of the payment that RMS proposes to make to the Contractor or that is due from the Contractor to RMS (**Progress Payment**), including details of the calculation of the Progress Payment, noting that if the Contractor has not provided the monthly Contract Program and all Subsidiary Contract Programs as required by clause 17.1(d)(i) the calculation of the Progress Payment will include a retention of 0.5%. This retention amount may be claimed in a subsequent progress claim once the Contractor has provided the documentation required by clause 17.1(d)(i) for the relevant month; and
 - (iii) if the Progress Payment is less than the amount claimed by the Contractor, setting out why the Progress Payment is less and, if the reason for the difference is that RMS has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (e) In issuing a payment schedule RMS Representative may deduct from the amount which would otherwise be payable to the Contractor, any amount which RMS is entitled to retain, deduct, withhold or set-off under this deed, including any amount which RMS is entitled to set-off or withhold under clause 22.8.
- Failure by RMS Representative to set out in a payment schedule an amount which RMS is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by RMS will not prejudice RMS' right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
- (f) RMS Representative may at any time (but is not obliged to) issue a payment schedule to the Contractor as if a progress claim was made on the twenty-fifth day of a month.
- (g) The Contractor agrees with RMS that a progress claim submitted to RMS Representative under this clause 18.2 is received by RMS Representative as agent for RMS and that a payment schedule issued by RMS Representative under this clause 18.2 is issued by RMS Representative as agent for RMS.

18.3 Payment on account

A payment schedule issued under clause 18.2 is not:

- (a) evidence of the value of work but is only on account of the relevant component or components of the Project Contract Sum;
- (b) an admission of liability; or
- (c) approval by RMS or RMS Representative of the Contractor's performance or compliance with this deed.

Despite clause 19.6(a), RMS Representative may modify or amend any payment schedule issued under clause 18.2 (including any amount included in a RMS Representative's Statement made under any of clauses 5.2(e), 10.4, 15.4(e), 15.9(a)(iii), 16.4, 17.7(d), 17.8(b)(ii)A.1), 18.2(d), 18.7(h), 19.6(c)(i) and 21.7).

18.4 Due date for payment

- (a) On the due date for payment of a Progress Payment payable to the Contractor, RMS must pay the Progress Payment to the Contractor, subject to RMS' rights to retain, deduct, withhold or set off payment of all or some of the progress amount under clauses 18.5, 18.6, 20.10 and 22.8 and, in respect of a Progress Payment under clause 18, the Design Payment Schedule and the Construction Payment Schedule.

The due date for payment for the purposes of this clause 18.4(a) is the date that is 15 Business Days after the day on which the Contractor made the progress claim under clause 18.2(a).

- (aa) On or before the due date for payment of a Progress Payment payable to the Contractor, RMS will provide a RCTI to the Contractor in respect of the Contractor's supply to which the payment relates except where the parties have agreed that the Contractor will issue a tax invoice.
- (b) On the due date for payment of a Progress Payment payable to RMS, the Contractor shall pay the Progress Payment to RMS.

The due date for payment for the purposes of this clause 18.4(b) is 10 Business Days after the issue of a payment schedule under clauses 18.2(d) or 18.2(f).

18.5 Payment of Subcontractors, workers compensation and payroll tax

- (a) If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to the Contractor's Work, and produces to RMS the court order and a statutory declaration that it remains unpaid, RMS may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid shall be a debt due and payable from the Contractor to RMS upon demand.

- (b) After the:

- (i) Contractor is placed under administration; or
- (ii) making of a winding up order in respect of the Contractor,

RMS will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

- (c) Nothing in this clause 18.5 limits or otherwise affects RMS' rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), Schedule 2, Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

18.6 Unfixed goods and materials

- (a) The value of unfixed goods and materials must not be included in a payment schedule under clauses 18.2(d) or 18.2(f), and RMS is under no obligation to pay, and RMS and the Contractor are under no obligation to authorise payment, for such value unless:

- (i) the Contractor:

- A. has provided to RMS at the same time as its progress claim under clause 18.2(a) an unconditional undertaking in the form of Schedule 6 in favour

of RMS and issued by a financial institution approved by RMS equal to the payment claimed for the goods and materials; and

- B. gives RMS Representative such evidence as may be required by RMS Representative that title to the unfixed goods and materials will vest in RMS upon payment and that no other person holds a Security Interest in the unfixed goods and materials;
- (ii) the goods and materials are clearly marked as the property of RMS and are on, or available for immediate delivery to, the Site, the Local Road Works Areas or the Temporary Works Areas; and
- (iii) the goods and materials are properly stored in a place approved by RMS Representative.
- (b) Upon payment of a payment schedule under clauses 18.2(d) or 18.2(f), which includes unfixed goods and materials, title in the unfixed goods and materials will vest in RMS.
- (c) The Contractor agrees that RMS may, but is not obliged to, perfect, for the purposes of the PPS Law, any Security Interest it holds in unfixed goods and materials for which RMS pays.
- (d) If the Contractor provides an unconditional undertaking for payment for unfixed goods and materials, RMS must release that unconditional undertaking to the Contractor if those goods and materials are:
 - (i) incorporated into the Project Works; and
 - (ii) fit for their purpose.

18.7 Incentive Amount

- (a) In addition to the Project Contract Sum, the Contractor may be entitled to be paid the Incentive Amount, up to an amount no more, in aggregate, than the Incentive Amount Pool.
- (b) Within 5 days of the end of every month, until the Date of Construction Completion, the Contractor must provide RMS Representative with:
 - (i) a written statement detailing the level of achievement of the Key Result Areas against the relevant Key Performance Indicators for the previous month;
 - (ii) the Contractor's proposed calculation of the Incentive Amount for the preceding month (**Monthly Incentive Estimate**), having regard to:
 - A. the information set out at clauses 18.7(b)(i) and 18.7(b)(iii); and
 - B. Schedule 31; and
 - (iii) all relevant supporting information including:
 - A. all data relied on to calculate the Contractor's performance in relation to the Key Result Areas against each of the relevant Key Performance Indicators; and
 - B. all worksheets, spreadsheets, tables and calculations relied upon by the Contractor to substantiate its proposed calculation of the Monthly Incentive Estimate.
- (c) RMS Representative and the Project Director will meet on a monthly basis to review the Contractor's achievement of the Key Result Areas against each of the relevant Key Performance Indicators for the month ending immediately prior to their meeting having regard to:
 - (i) the Incentive Data;
 - (ii) other relevant information available to RMS Representative; and
 - (iii) Schedule 31.
- (d) Following the meeting under clause 18.7(c), RMS Representative must within 5 days:
 - (i) assess the level of achievement; and
 - (ii) prepare a report of his or her assessment of the level of achievement (**Monthly Key Result Area Report**),

of the Key Result Areas against the relevant Key Performance Indicators for the month ending immediately prior to their meeting and provide a copy of the Monthly Key

Result Area Report to the Project Director.

- (e) If the Project Director disagrees with the assessment in the Monthly Key Result Area Report, the Project Director must within 5 days of receipt of the Monthly Key Result Area Report:
 - (i) notify RMS Representative that he or she does not agree with RMS Representative's assessment in the Monthly Key Result Area Report and in what specific respect he or she does not agree and why;
 - (ii) separately prepare a report for the Management Review Group which details his or her assessment of the level of achievement of the Key Result Areas against the relevant Key Performance Indicators for the period the subject of the Monthly Key Result Area Report (**Separate Monthly Key Result Area Report**); and
 - (iii) provide RMS Representative with the Separate Monthly Key Result Area Report for submission to the Management Review Group.
- (f) At least 5 days prior to each meeting of the Management Review Group referred to in clause 3.5(c)(i), RMS Representative must provide the Monthly Key Result Area Reports and Separate Monthly Key Result Area Reports, prepared in the previous quarter under clauses 18.7(d) and 18.7(e) to the Management Review Group.
- (g) At the Management Review Group meeting referred to in clause 3.5(c)(i), the Management Review Group must consider the Monthly Key Result Area Reports and the Separate Monthly Key Result Area Reports prepared under clauses 18.7(d) and 18.7(e) and provided under clause 18.7(f).
- (h) Within 1 month after:
 - (i) the Date of Construction Completion; or
 - (ii) termination of this deed under clause 21.6,whichever is earlier, RMS Representative must:
 - (iii) state the Incentive Amount by evaluating the Contractor's level of achievement in respect of each Key Result Area against each of the relevant Key Performance Indicators and taking account of:
 - A. the Incentive Data;
 - B. other relevant information available to RMS Representative; and
 - C. Schedule 31; and
 - (iv) issue to the Contractor an Incentive Amount Assessment Notice.
- (i) Subject to:
 - (i) RMS' rights to retain, deduct, withhold or set-off payment under clauses 20.10 and 22.8; and
 - (ii) the Contractor providing RMS with a tax invoice that complies with the GST law (but except where the parties have agreed that RMS will issue a RCTI in respect of the Contractor's supply to which the payment relates),RMS must pay the Contractor the Incentive Amount set out in the Incentive Amount Assessment Notice within 1 month after issue of the Incentive Amount Assessment Notice.
- (j) To the extent that any portion of the Incentive Amount Pool is not earned by the Contractor in accordance with this clause 18.7, it will not be payable under this deed and the Contractor will have no Claim whatsoever to that portion of the Incentive Amount Pool that does not form part of the Incentive Amount.

18.8 GST

- (a) Words or expressions used in this clause 18.8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this deed, unless specifically described in this deed as 'GST inclusive', does not include an amount on account of GST.
- (c) Despite any other provision in this deed, if a party (**Supplier**) makes a supply under or in connection with this deed on which GST is imposed (not being a supply the consideration for which is specifically described under this deed as 'GST inclusive');

- (i) the consideration payable or to be provided for that supply under this deed but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on the supply (**GST Amount**); and
 - (ii) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand (subject to clause 22.8 of this deed), at the same time as the GST Exclusive Consideration is payable or to be provided.
- (d) If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. For the purposes of this clause 18.8(d), the Contractor shall be deemed to be entitled to a full input tax credit in respect of such losses, costs or expenses, unless it can demonstrate to RMS' reasonable satisfaction that it is not so entitled.
- (e) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- (f) Except in relation to a supply for which RMS will issue a recipient created tax invoice (**RCTI**) to the Contractor in accordance with clause 18.8(g), the Recipient need not make a payment of a GST Amount in respect of a taxable supply made under or in connection with this deed unless the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (g) The parties agree that, unless otherwise agreed in writing, the following will apply to all supplies made by the Contractor to RMS under or in connection with this deed:
- (i) RMS will issue to the Contractor a RCTI for each taxable supply made by the Contractor to RMS under this deed;
 - (ia) RMS will only be required to provide a single RCTI for taxable supplies made by all of the persons comprising the Contractor and will not be required to apportion or itemise the consideration between such persons in any way;
 - (ii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to RMS;
 - (iii) each party acknowledges and warrants that at the time of entering into this deed, it is registered for GST and will notify the other party if it ceases to be registered; and
 - (iv) RMS may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this deed, in which case, from that point in time, RMS will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices pursuant to clause 18.8(f).
- (ga) The Contractor warrants that it is not a GST joint venture for the purposes of section 51-5 of the GST law and that it will not form a GST joint venture in respect of the Project Works at any time before the Date of Final Completion.
- (h) Each of the persons comprising the Contractor will ensure that it has provided its ABN to RMS prior to the earlier of the date on which RMS is required to:
- (i) issue a payment schedule; or
 - (ii) make a payment to the Contractor.
- (i) The Contractor acknowledges and agrees that if RMS has not been provided with the ABN of each person comprising the Contractor on or before the time RMS is required to make a payment to the Contractor pursuant to this deed, then RMS will withhold from the amounts due to the Contractor as required by section 12-190 of Schedule 1 to the *Tax Administration Act 1953* (Cth), unless the Contractor is able to establish to the reasonable satisfaction of RMS that one of the exceptions outlined in that section applies.

18.9 Security of Payment Act

- (a) The Contractor must not at any time, without the written consent of RMS, divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or

relied upon by RMS or any details thereof in respect of an adjudication application made under Part 3 Division 2 of the SOP Act (in this paragraph, the **Information**). For the avoidance of doubt:

- (i) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of Information;
 - (ii) despite the Contractor's obligation in respect of the Information, RMS has a sole and unfettered discretion to divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person the Information;
 - (iii) RMS may divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Contractor or any details thereof in respect of an adjudication application made under Part 3 Division 2 of the SOP Act; and
 - (iv) any Information which RMS provides or relies upon in respect of an adjudication application made under Part 3 Division 2 of the SOP Act is made without prejudice to RMS' right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.
- (b) When an adjudication occurs under the SOP Act and RMS has paid an adjudicated amount to the Contractor:
- (i) the amount will be taken into account by the RMS Representative in issuing a payment schedule under clause 18.2; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by RMS ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to RMS which the Contractor must pay to RMS upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (c) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably chooses the Institute of Arbitrators & Mediators, Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this deed.
- (d) If RMS receives a payment withholding request from a Subcontractor under section 26A of the SOP Act, RMS will be entitled to withhold the amount in the request from any payment due to the Contractor without any obligation on RMS to consider whether the notice is valid and whether section 26B(2) of the SOP Act applies.

18.10 Price adjustment for Provisional Sum Work

- (a) To the extent to which Provisional Sum Work is included in the Design Contract Sum and/or the Construction Contract Sum, the Design Contract Sum and/or the Construction Contract Sum (as the case may be) will be adjusted for the item(s) of Provisional Sum Work by the difference between:
 - (i) the applicable amount allowed for the item(s) of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule (as the case may be); and
 - (ii) either:
 - A. an amount agreed between the Contractor and RMS Representative; or
 - B. if they fail to agree, an amount determined by RMS Representative for the actual, necessary and reasonable costs to be incurred by the Contractor in carrying out the Provisional Sum Work, but without any allowance for preliminaries, any on-site or off-site overheads or profits.
- (b) Except as allowed for in clause 18.10(a), any Service Works which are not Provisional Sum Work are deemed to be covered by the lump sum portions of the Project Contract Sum.

19. Notification of claims

19.1 Notice of Claims

Except for Claims:

- (a) for a Variation to which clause 15.3 applies;
 - (b) with respect to a Change in Law under clause 15.9(a);
 - (c) arising out of:
 - (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed, under clause 15.9(c);
 - (d) for an extension of time under clause 17.5; or
 - (e) for payment under clause 18 of any part of the original Project Contract Sum,
- the Contractor must give RMS Representative the notices required by clause 19.2 if it wishes to make a Claim against RMS in respect of any Direction of RMS, RMS Representative, RMS Assistant Representatives with relevant authority or other act, fact, matter or thing (including a breach of this deed by RMS) under, arising out of, or in any way in connection with, this deed or the Contractor's Work including anything in respect of which:
- (f) the Contractor is otherwise given an express entitlement under this deed; or
 - (g) this deed expressly provides that:
 - (i) costs are to be paid to the Contractor; or
 - (ii) the Project Contract Sum, Design Contract Sum or Construction Contract Sum will be increased or adjusted by an amount stated by RMS Representative.

19.2 Prescribed notices

The notices referred to in clause 19.1 are:

- (a) within 21 days of the first occurrence of the Direction or other act, fact, matter or thing upon which the proposed Claim will be based, a written notice by the Contractor that it proposes to make the Claim and the Direction or other act, fact, matter or thing upon which the proposed Claim will be based; and
- (b) within 28 days of giving the notice under clause 19.2(a), a written notice by the Contractor which must include:
 - (i) detailed particulars concerning the Direction or other act, fact, matter or thing on which the proposed Claim will be based;
 - (ii) the legal basis for the proposed Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the proposed Claim in sufficient detail to permit verification; and
 - (iv) details of the amount the Contractor proposes to claim and how it has been calculated.

19.3 Continuing events

If the Direction or act, fact, matter or thing upon which the proposed Claim under clause 19.1 will be based, is continuing, or if the consequences of the Direction or act, fact matter or thing are continuing, the Contractor must continue to give the information required by clause 19.2(b) every 28 days after the written notice under clause 19.2(b) was submitted or given, until after the Direction or act, fact, matter or thing upon which the proposed Claim will be based has, or the consequences thereof have, ceased.

19.4 Bar

If the Contractor fails to comply with clauses 5.16(aa)(iii), 15.3, 15.9(a)(i), 15.9(c), 17.5, 19.1 or 19.3, RMS will not be liable for any Claim by the Contractor, arising out of or in any way in connection with, the relevant Direction or act, fact, matter or thing (as the case may be).

19.5 Other provisions unaffected

Nothing in clauses 19.1 to 19.4 will limit the operation or effect of any other provision of this deed which requires the Contractor to give notice to RMS Representative in order to preserve an entitlement to make a Claim against RMS.

19.6 RMS Representative's Statements

- (a) Without limiting the rights of RMS Representative under clause 18.3, either party may seek to have any RMS Representative's Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 20 by giving a Notice of Dispute to the other party in accordance with clause 20.2. If either party wishes to have a RMS Representative's Statement opened up, reviewed, decided and substituted it must give the Notice of Dispute required under clause 20.2 within 21 days of the date of receipt of the RMS Representative's Statement.
- (b) Subject to clause 19.6(c) but without limiting the rights of RMS Representative under clause 18.3, each party acknowledges and agrees that its sole means of altering, redressing, replacing or overturning any RMS Representative's Statement (except for typographical errors and errors of mathematical calculation) is by giving a Notice of Dispute in accordance with clause 20.2.
- (c) Where the Contractor incurs additional cost arising out of a RMS Representative's Statement and that RMS Representative's Statement is subsequently altered, redressed, replaced or overturned pursuant to clause 20, the Contractor will be entitled to be paid:
 - (i) where the RMS Representative Statement is one described in paragraphs (c), (d), (e), (i), (j), (k), (n) or (o) of the definition of RMS Representative's Statement the Contractor's reasonable net extra Direct Costs incurred in complying with the relevant RMS Representative's Statement (provided it has incurred them reasonably and has taken all possible steps to minimise them) as stated by RMS Representative; and
 - (ii) interest calculated in accordance with clause 22.5(a),
by RMS, but that entitlement will be the Contractor's sole remedy, and the Contractor will have no entitlement to, and RMS will not be liable for, any Claim for any cost, loss, damage, expense, fine, penalty or liability suffered or incurred by the Contractor arising out of or in connection with that RMS Representative's Statement or any action in response to it.
- (d) If neither party gives a Notice of Dispute in accordance with clause 20.2 within 21 days of the date of receipt of a RMS Representative's Statement, then, subject to clause 18.3:
 - (i) the RMS Representative's Statement will be binding upon the parties and will not thereafter be capable of being opened up or reviewed by any person, including any expert, arbitrator, court or tribunal, at the request of or upon any application by either party; and
 - (ii) neither party will be liable for any Claim by the other party arising out of or in any way in connection with the relevant RMS Representative's Statement (other than in accordance with the RMS Representative's Statement).

19.7 Carbon Pollution Reduction Scheme

- (a) This clause applies if:
 - (i) any:
 - A. Carbon Scheme commences; or
 - B. Carbon Fuel Scheme commences; and
 - (ii) the Contractor's cost of purchasing fuel used for carrying out the Contractor's Work increases.
- (b) Subject to clause 19.7(c), the Contractor may recover from RMS any increase in the Contractor's cost of purchasing fuel used for carrying out the Contractor's Work which:
 - (i) arises directly and solely from the introduction of a Carbon Scheme or Carbon Fuel Scheme; and
 - (ii) is not otherwise recoverable under another provision of this deed.
- (c) The Contractor must:

- (i) demonstrate to RMS Representative's satisfaction that it has incurred increased costs in purchasing fuel used for carrying out the Contractor's Work; and
 - (ii) provide RMS with access to all relevant Records to enable RMS to verify the Contractor's claim.
- (d) The Contractor is not entitled to any other Claim or additional costs arising out of or in connection with the introduction of any Carbon Scheme or Carbon Fuel Scheme.

20. Dispute resolution

20.1 Dispute

Subject to clause 20.12, if a dispute or difference arises between the Contractor and RMS or between the Contractor and RMS Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, a RMS Representative's Statement, the Contractor's Work or this deed, or either party's conduct before the date of this deed (**Dispute**), and a party requires the Dispute to be resolved, the Dispute must be determined in accordance with the procedure in this clause 20.

20.2 Notice of Dispute

Where such a Dispute arises, the party requiring the Dispute to be resolved must promptly give a notice in writing to the other party (**Notice of Dispute**). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied;
- (c) set out the position which the party believes is correct; and
- (d) in the case of a Dispute in respect of a RMS Representative's Statement, be given within any time periods required by clause 19.6.

20.3 Executive negotiations

- (a) Where a Notice of Dispute is given under clause 20.2, the Dispute must be referred to the Chief Executive of RMS (or his or her delegate) and the chief executive officer of the Contractor (or his or her delegate) who must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- (b) If the Dispute is not fully resolved within 28 days after a Notice of Dispute is given under clause 20.2, either party may, by giving notice in writing to the other party and the Dispute Avoidance Board in accordance with clause 20.4, require the Dispute, or parts of the Dispute, be referred to the Dispute Avoidance Board for resolution in accordance with clause 20.5.

20.4 Referral to Dispute Avoidance Board

- (a) If a party wishes to refer a Dispute, or parts of the Dispute, to the Dispute Avoidance Board, it must give notice in writing to the other party and the Dispute Avoidance Board (**Notice of Referral to DAB**).
- (b) A Notice of Referral to DAB must:
 - (i) state that it is a Notice of Referral to DAB under this clause 20.4; and
 - (ii) include or be accompanied by reasonable particulars of the Dispute referred to the Dispute Avoidance Board for resolution, or those parts of the Dispute which the party requires to be resolved by the Dispute Avoidance Board, as the case may be.

20.5 Obtaining Dispute Avoidance Board's Decision

- (a) If a Dispute is referred to the Dispute Avoidance Board under clause 20.4, the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral to DAB is received by the chairperson of the Dispute Avoidance Board. The decision of a Dispute by the Dispute Avoidance Board under this clause 20.5 must be made in accordance with the rules in Appendix 2 of the DAB Agreement, or such other rules as are agreed between the parties and the Dispute Avoidance Board.
- (b) Both parties must promptly make available to the Dispute Avoidance Board:
 - (i) all such additional information;

- (ii) access to the Construction Site and all places at which the Contractor's activities are being undertaken, provided that the members of the Dispute Avoidance Board must comply with the reasonable directions of Acciona Infrastructure Australia given in its capacity as Principal Contractor; and
- (iii) appropriate facilities,
as the Dispute Avoidance Board may require for the purposes of making a decision on the Dispute.
- (c) The function of the Dispute Avoidance Board is not arbitration and the members of the Dispute Avoidance Board do not act as arbitrators.
- (d) Despite anything else, to the extent permitted by Law, the Dispute Avoidance Board will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (e) Within 35 days after receiving a Notice of Referral to DAB under clause 20.4, or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must give its decision. The decision of the Dispute Avoidance Board:
 - (i) must be in writing, must state that it is given under this clause 20.5(e) and must set out reasons for the decision;
 - (ii) will be:
 - A. to the extent that it decides the subject of an RMS Representative's Statement, substituted for the RMS Representative's Statement 28 days after receipt by RMS of the decision; and
 - B. final and binding,
unless a party gives a notice of its dissatisfaction to the other party in accordance with clause 20.5(f); and
 - (iii) subject to clause 20.5(i) and clause 20.10, is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.
- (f) If the Dispute Avoidance Board gives a decision that either party is dissatisfied with, then, subject to clause 20.5(i), the dissatisfied party may give a notice to the other party of its dissatisfaction within 56 days after receipt of the decision.
- (g) If the Dispute Avoidance Board fails to give its decision within the period of 35 days (or such other period as is approved by both parties) after receiving a Notice of Referral to DAB under clause 20.4, then either party may give notice to the other party of its dissatisfaction.
- (h) If a notice of dissatisfaction is given in accordance with either clause 20.5(f) or clause 20.5(g), the notice of dissatisfaction must state that it is given under clause 20.5(f) or clause 20.5(g) (as the case may be), and must set out the matter in dispute and the reason(s) for dissatisfaction. Except as provided under clause 20.7 and clause 20.8, neither party will be entitled to commence arbitration of a Dispute unless a notice of dissatisfaction has been given in accordance with clause 20.5(f) or clause 20.5(g).
- (i) Where the decision of the Dispute Avoidance Board requires that one party (**first party**) owes the other (**second party**) money, the first party must pay the second party the money within 28 days of receipt of the decision, provided that:
 - (i) if either party has given a notice of dissatisfaction to the other party under clause 20.5(f) within 28 days of receipt of the decision, the first party is not required to pay the money within 28 days of receipt of the decision; and
 - (ii) neither payment of the money, nor a failure by the first party to give a notice of dissatisfaction, within 28 days of receipt of the decision prejudices the rights of the first party under clause 20.5(f).
- (j) Once a decision of the Dispute Avoidance Board has become final and binding under clause 20.5(e), clause 20.5(h) or clause 20.6(b) as the case may be, neither party will be entitled to challenge the decision on the basis that a member of the Dispute Avoidance Board did not, at the time of making the decision, meet the criteria set out in Schedule 39.

20.6 Amicable Settlement

Where a notice of dissatisfaction has been given under clause 20.5(f) or clause 20.6(g), the parties may attempt to settle the Dispute amicably before the commencement of arbitration. However, if no amicable settlement has been reached by the 14th day after the day on which the notice of dissatisfaction was given (or such longer period as the parties agree in writing):

- (a) subject to clause 20.6(b), either party may refer the Dispute to arbitration under clause 20.9; or
- (b) if neither party has referred the matter to arbitration under clause 20.9 within 56 days after the day on which the notice of dissatisfaction was given, the decision of the Dispute Avoidance Board will be final and binding.

20.7 Failure to Comply with Dispute Avoidance Board's Decision

If in respect of any binding or final and binding decision of the Dispute Avoidance Board a party fails to comply with the decision, then the other party may, without prejudice to any other rights it may have, refer the failure itself as a Dispute to arbitration under clause 20.9. In these circumstances clauses 20.1 to 20.5 will not apply to this reference and in making an award the arbitrator will not be entitled to open up and review the decision of the Dispute Avoidance Board, including any decision in respect of which a notice of dissatisfaction was given in accordance with clause 20.5(f) or clause 20.5(g).

20.8 No Dispute Avoidance Board in place

If a Dispute arises and there is no Dispute Avoidance Board in place, whether by reason of the expiry of the Dispute Avoidance Board's appointment or otherwise (including the Dispute Avoidance Board not being properly constituted, by reason of unavailability of one or more members), clause 20.3(a) will still apply, and if the Dispute is not resolved within 28 days after a Notice of Dispute is given under clause 20.2:

- (a) clauses 20.3(b), 20.4, 20.5, 20.6 and 20.7 will not apply; and
- (b) the Dispute may be referred by either party directly to arbitration under clause 20.9.

20.9 Arbitration

- (a) Any Dispute which is referred to arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 21 days after the Dispute has been referred to arbitration, appointed by the President for the time being of The Institute of Arbitrators and Mediators Australia.
- (b) To the extent that they are not inconsistent with this deed, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia will apply to the arbitration.
- (c) The seat of the arbitration will be Sydney, Australia.
- (d) The arbitrator will have power to grant all legal, equitable and statutory remedies and, subject to clause 20.7, to open up, review and substitute any decision of the Dispute Avoidance Board under clause 20.5 that is not final and binding on the parties pursuant to clause 20.5(e).
- (e) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (f) All aspects of the arbitration, including:
 - (i) any proceedings or hearings;
 - (ii) any meetings;
 - (iii) any submissions;
 - (iv) any materials in the proceedings created for the purpose of the arbitration; and
 - (v) documents produced in the proceedings which are not otherwise in the public domain,
must be kept private and confidential except:
 - (vi) where the parties expressly agree in writing to the contrary;

- (vii) as required by Law; or
- (viii) as required in order to enforce an arbitration award.

20.10 Payments

RMS may withhold payment of that part of any amount which is the subject of a Dispute.

20.11 Contractor to Continue Performing Obligations

Despite the existence of a Dispute between the parties to this deed, the Contractor must:

- (a) continue to carry out the Contractor's Work; and
- (b) otherwise comply with its obligations under this deed.

20.12 Urgent Relief

Nothing in this clause 20 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court in respect of a Dispute. In respect of any such proceedings, the parties agree that:

- (a) the Supreme Court of New South Wales shall have exclusive jurisdiction in respect of those proceedings; and
- (b) by agreeing to, or by taking action under this clause 20.12, the parties do not intend to relinquish or otherwise adversely affect their rights to have a Dispute resolved by way of arbitration.

20.13 Disputes under Third Party Agreements

- (a) A Dispute under this deed may be concerned with matters that also arise in respect of the respective rights and obligations of RMS and a Third Party (a **Common Dispute**), including where:
 - (i) RMS is in breach of a provision of this deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;
 - (ii) RMS is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this deed;
 - (iii) the Contractor has rights against RMS under a warranty or indemnity or specific right of reimbursement or recovery in this deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or
 - (iv) the Contractor has a Claim against RMS and RMS has a Claim against a Third Party based on the same or similar events or circumstances.
- (b) In the event that there is a Common Dispute then:
 - (i) clauses 20.1 to 20.9 will not apply to the resolution of that Common Dispute; and
 - (ii) the Contractor acknowledges and agrees that the purpose of this clause 20.13 is:
 - A. to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against RMS in respect of Common Disputes by reference to RMS' rights and entitlements under or in connection with Third Party Agreements; and
 - B. not to reduce or disentitle or otherwise affect the validity of any Claim by RMS against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.
- (c) In respect of all Common Disputes:
 - (i) the Contractor's entitlement to receive compensation from RMS, and RMS liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;
 - (ii) if any compensation is payable by RMS to the Contractor under this deed in respect of a Common Dispute, the Contractor will have the same entitlement to recover compensation under this deed as RMS has to recover that compensation from a Third Party under the respective Third Party Agreement;
 - (iii) any rights the Contractor has against RMS will not exceed the equivalent relief, benefit or payment to which RMS is entitled under the relevant Third Party Agreement; and

- (iv) RMS will pass through to the Contractor the proportion of the damages or other form or relief to which RMS is entitled:
 - A. to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and
 - B. determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.
- (d) RMS agrees to:
 - (i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;
 - (ii) if it is unable to obtain the Third Party's consent as contemplated under clause 20.13(d)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and
 - (iii) provide:
 - A. regular updates to the Contractor; and
 - B. whatever information and documents the Contractor reasonably requests, as to the progress of the Common Dispute.
- (e) RMS' liability to pay the Contractor:
 - (i) is satisfied by payment to the Contractor in accordance with this clause 20.13; or
 - (ii) if the Third Party is not liable to RMS, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:
 - A. RMS has complied with its obligations under this clause 20.13 with respect to recovery of RMS and the Contractor's entitlements from the Third Party; and
 - B. all appeals from such determination have been exhausted.
- (f) The Contractor agrees:
 - (i) to provide all documents, assistance, and cooperation reasonably requested by RMS (and in the time requested by RMS) in connection with the Common Dispute;
 - (ii) that where a Third Party Agreement contemplates:
 - A. alternative dispute resolution (including arbitration and expert determination):
 - 1) a like process will apply to the Common Dispute between the parties; and
 - 2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process; and
 - B. litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and
 - (iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this deed.
- (g) The Contractor's entitlement to a remedy will not be reduced to the extent to which RMS' entitlements under a Third Party Agreement are reduced or extinguished due to RMS' breach or failure to comply with the Third Party Agreement or other wrongful, negligent or unlawful act or omission (to the extent not caused by the Contractor).
- (h) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this deed, then the Contractor is not entitled to the same compensation under this clause 20.13.
- (i) Any payment to which the Contractor is entitled under this clause 20.13 shall be paid by RMS to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

20.14 Survive Termination

This clause 20 will survive the termination of this deed.

21. Termination

21.1 Notice of default

RMS may give a written notice to the Contractor under this clause 21.1 if the Contractor commits a substantial breach of this deed. A substantial breach includes if the Contractor:

- (a) does not commence to perform its obligations in accordance with the requirements of this deed;
- (b) does not progress the Contractor's Work in accordance with clause 1.2;
- (c) does not comply with any Direction of RMS Representative made in accordance with this deed;
- (d) fails to comply with clause 5.7;
- (e) abandons the carrying out of the Contractor's Work;
- (f) suspends the carrying out of the Contractor's Work, other than pursuant to a Direction under clause 5.15 or clause 17.8(a) or an entitlement to do so under the SOP Act;
- (g) fails to obtain or maintain any Approvals for which it is responsible to obtain;
- (h) fails to provide unconditional undertakings as required under clause 8.1;
- (i) fails to provide a parent company guarantee from the Parent Company Guarantor as required under clause 8.2;
- (j) in respect of any insurance the Contractor is required to effect pursuant to clause 7:
 - (i) fails to provide evidence of the insurance as required under clause 7;
 - (ii) does not effect insurance that meets the requirements of clause 7; or
 - (iii) fails to maintain the insurance policy as required under clause 7; or
- (k) breaches a term or condition of a Road Occupancy Licence.

21.2 Contents of notice

The notice under clause 21.1 must state:

- (a) that it is a notice under clause 21.1;
- (b) the breach relied upon;
- (c) that RMS requires the Contractor to remedy the breach; and
- (d) the time and date by which the Contractor must remedy the breach, which shall not be less than 7 days after the notice is given to the Contractor under clause 21.1.

21.3 Termination for insolvency or breach

Without limiting clause 21.8, RMS may terminate this deed by notice in writing to the Contractor from the date stated in the notice if:

- (a) an Insolvency Event occurs to:
 - (i) the Contractor;
 - (ii) where the Contractor comprises more than one person, any one of those persons; or
 - (iii) the Parent Company Guarantor,which Insolvency Event will be a fundamental breach of this deed;
- (b) the Contractor does not remedy a breach of this deed the subject of a notice under clause 21.1 within the time specified in the notice under clause 21.1; or
- (c) the Contractor is in fundamental breach as contemplated in clause 5.8(b)(i).

21.4 RMS' entitlements after termination

After termination under clause 21.3:

- (a) RMS will:
 - (i) be entitled to take over and use or have removed from the Construction Site or any

- area affected by the Contractor's Work any plant, equipment, materials and other things of the Contractor or Temporary Works;
- (ii) not be obliged to make any further payments to the Contractor, including any money the subject of a progress claim under clause 18.2 or a payment schedule under clause 18.2;
- (iii) be entitled to have recourse to any unconditional undertaking held under clause 8.1; and
- (iv) be entitled to recover from the Contractor any losses, expenses, costs and damages suffered or incurred by RMS arising out of or in any way in connection with the breach, Insolvency Event or termination of this deed; and
- (b) property in all information, documents and Records relating to the Contractor's Work will immediately vest in RMS and the Contractor must:
 - (i) immediately hand over all information, documents and Records, except for one copy of such information, documents and Records which it may retain for use in connection with this deed; and
 - (ii) must do all other things to enable RMS to complete the design and construction of the Project Works and Temporary Works, and to undertake the Landscaping Maintenance.

21.5 Repudiation by RMS

- (a) If RMS repudiates this deed and the Contractor terminates this deed, the Contractor will:
 - (i) only be entitled to claim damages; and
 - (ii) not be entitled to a quantum meruit, which election the Contractor hereby irrevocably makes.
- (b) This clause 21.5 will survive the termination of this deed.

21.6 Termination for convenience

Without prejudice to any of RMS' other rights or entitlements or powers under this deed, RMS may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter either itself or by a third party complete the uncompleted part of the Contractor's Work.

21.7 Consequences of termination for convenience

If RMS terminates this deed under clause 21.6, without prejudice to any of RMS' other rights, entitlements or powers under this deed, the Contractor will be entitled to payment of the following amounts:

- (a) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the Contractor submitted a payment claim under clause 18.2 for work carried out to the date of termination;
- (b) the cost of goods or materials or other items reasonably ordered by the Contractor for the Contractor's Work and for which it is legally bound to pay provided that:
 - (i) the value of the goods, materials and other items have not been previously paid or included in the amount payable under clause 21.7(a); and
 - (ii) title in the goods or materials will vest in RMS upon payment;
- (c) the reasonable cost of removing from the Site, the Local Road Works Areas and the Temporary Works Areas and the Works all plant and equipment and other things used in the performance of the Contractor's obligations;
- (d) costs reasonably incurred by the Contractor in the expectation of completing the Contractor's Work and not included in any other payment by RMS; and
- (e) where termination occurs prior to Construction Completion, 2% of the unearned balance (if any) of:

- (i) the Construction Contract Sum as that balance stands after payment of the amounts payable under clauses 21.7(a) to 21.7(d); and
 - (ii) the Incentive Amount,
- such amounts to be as stated by RMS Representative.

Property in all information, documents and Records relating to the Contractor's Work will immediately vest in RMS and the Contractor must:

- (f) take all steps possible to mitigate the costs referred to in clauses 21.7(b) to 21.7(d); and
- (g) immediately hand over all information, documents and Records, except for one copy of such information, documents and Records, which it may retain for use in connection with this deed.

Upon payment of the amount payable under this clause 21.7 title in the goods and materials referred to in clause 21.7(b) will vest in RMS.

The amount to which the Contractor is entitled under this clause 21.7 will be the maximum monetary compensation the Contractor is entitled to arising out of, or in any way in connection with, the termination of this deed and RMS will not be liable to the Contractor for any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 21.7.

This clause 21.7 will survive the termination of this deed under clause 21.6.

21.8 Preservation of rights

Nothing in this clause 21 or that RMS does or fails to do pursuant to this clause 21 will prejudice the right of RMS to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 22.8) which it may have where the Contractor breaches (including repudiates) this deed.

22. General

22.1 Cost

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this deed and the performance of its obligations in respect of this deed.

22.2 Taxes

Without limiting clauses 5.1 and 15.9, the Contractor must pay all Taxes which may be payable in respect of the Contractor's Work, including any customs duty and primage applicable to imported materials, plant and equipment required for the Contractor's Work.

22.3 Indemnities to survive

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

22.4 Variations

This deed may only be varied by a document signed by or on behalf of both RMS and the Contractor.

22.5 Interest

- (a) RMS will pay simple interest at the rate of 1% above the Bank Bill Rate on any amount that is due and owing to the Contractor under this deed, but which is not paid when due.
This will be the Contractor's sole entitlement to interest or to damages for loss of use of, or the cost of borrowing, money.
- (b) The Contractor will pay simple interest at the rate of 1% above the Bank Bill Rate on any amount that is due and owing to RMS under this deed, but which is not paid when due.

22.6 Confidentiality

- (a) Subject to clause 22.6(b), the Contractor must:
 - (i) keep confidential this deed and any information relating to the Contractor's Work and any discussions concerning this deed; and
 - (ii) ensure that each of its officers, employees and Subcontractors complies with the terms of clause 22.6(a)(i).
- (b) The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. given with the written consent of RMS; or
 - C. given to a court in the course of proceedings to which the Contractor is a party or to a member of the Dispute Avoidance Board or an arbitrator appointed under this deed.

This clause 22.6 will survive the termination of this deed.

22.7 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 22.7(a) it is further agreed that the rights, obligations and liabilities of RMS and the Contractor (including those relating to proportionate liability) are as specified in this deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (c) The Contractor further agrees that:
 - (i) subject to clause 22.7(c)(iii), it will include in each Subcontract it enters into for the carrying out of the Contractor's Work provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise;
 - (ii) where the Subcontract is for design work, it will use its best endeavours to include in each Subcontract it enters into for the carrying out of the Contractor's Work provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise; and
 - (iii) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of the Contractor's Work, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

22.8 Right of set-off

- (a) RMS may at any time deduct from moneys otherwise due to the Contractor:
 - (i) any debt or other moneys due from the Contractor to RMS; or
 - (ii) any claim to money which RMS may have against the Contractor whether for damages (including liquidated damages) or otherwise,whether under this deed or otherwise.
- (b) This clause 22.8 will survive the termination of this deed.

22.9 RMS may act

- (a) If the Contractor fails to perform an obligation under this deed, then RMS may take such action as may be necessary to remedy the failure by the Contractor and RMS may for this purpose enter the Construction Site and any other land upon which the Contractor's Work is being carried out.
- (b) The costs, losses, expenses, damages and liability suffered or incurred by RMS in so performing such an obligation will be a debt due and payable from the Contractor to RMS upon demand.

22.10 Non-reliance

Without limiting clauses 10.2 or 10.3, the Contractor:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the Contractor by RMS or anyone on behalf of RMS for the purposes of entering into this deed;
- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that RMS has entered into this deed relying upon the warranties in clauses 22.10(a) and 22.10(b).

22.11 Entire agreement

This deed and the Deed of Disclaimer embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties and supersede any prior agreement (whether in writing or not in writing) between the parties, in relation to the subject matter of this deed and the Deed of Disclaimer.

22.12 All work included

- (a) Except to the extent otherwise expressly provided in this deed, the Contractor warrants that it has allowed to, and must, without adjustment to any component of the Design Contract Sum or Construction Contract Sum, provide all services, work, labour, plant, equipment and materials necessary for the Contractor's Work whether or not they are expressly mentioned in this deed or the Design Documentation prepared by the Contractor.
- (b) Such services, work, labour, plant, equipment and materials must be undertaken and provided by the Contractor at its own cost and will not constitute a Variation or otherwise entitle the Contractor to make a Claim.

22.13 Unlimited discretion

- (a) Except as expressly provided in this deed (including in clause 22.13(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by law) is intended to be imposed upon the manner in which RMS or RMS Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 22.13(a):
 - (i) except as expressly provided in this deed (including in clause 22.13(c)), neither RMS nor RMS Representative will be:
 - A. constrained in the manner in which it exercises; or
 - B. under any obligation to exercise,any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement; and
 - (ii) any approval or consent referred to in, or required under, this deed from RMS or RMS Representative may be given or withheld, or may be given subject to any conditions, as RMS or RMS Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise.

- (c) Nothing in this clause 22.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

22.14 Indemnity

The Contractor must indemnify RMS against:

- (a) any liability to or claim by any other person; and
- (b) all costs, losses, damages, expenses, liabilities, fines or penalties suffered or incurred by RMS,

caused by, arising out of, or in any way in connection with, the Contractor's breach of a term of this deed, but the Contractor's liability shall be reduced proportionally to the extent that the act or omission of RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier and the ER) contributed to the costs, losses, damages, expenses, liabilities, fines or penalties.

22.15 No partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between RMS on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

22.16 Waiver

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

22.17 Provisions limiting or excluding liability

Any provision of this deed which seeks to limit or exclude a liability of RMS or the Contractor, is to be construed as doing so only to the extent permitted by Law.

22.18 Survivorship

- (a) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any warranties, guarantees, licences or indemnities given under this deed.
- (b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

22.19 Joint and several liability

- (a) The obligations of the Contractor, if more than one person, under this deed, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own.
- (b) The rights of the Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the Contractor (and not severally or jointly and severally).
- (c) A payment by RMS under this deed to an account nominated in writing by the Contractor, or failing such nomination, to any one or more persons constituting the Contractor, will be deemed to be payment to all persons constituting the Contractor.
- (d) The Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the Contractor.

22.20 Severability

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

22.21 Privacy

If under this deed the Contractor is required to disclose Personal Information, the Contractor must:

- (a) if the disclosure is not authorised under the Privacy Acts, obtain the consent of the natural person to whom that Personal Information relates in relation to RMS' collection and use of that Personal Information for the purposes of this deed or the purposes authorised by this deed;
- (b) ensure that the Personal Information disclosed is accurate; and
- (c) inform that natural person:
 - (i) that the Personal Information has been collected by or on behalf of RMS; and
 - (ii) of any other matters required by the Privacy Acts.

23. Definitions and interpretation

23.1 Interpretation and contra proferentum

- (a) In this deed unless the context otherwise requires:
 - (i) the expression "person" includes an individual, body politic, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
 - (ii) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
 - (iii) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
 - (iv) a reference to any Authority, institute, association or body is:
 - A. if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - B. if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
 - (v) a reference to this deed or to any other deed, agreement, document, instrument, guideline or code of practice includes, respectively, this deed or such other deed, agreement, document, instrument, guideline or code of practice as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under it;
 - (vii) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
 - (viii) headings are for convenience only and do not affect the interpretation of this deed;
 - (ix) a reference to a clause, schedule or exhibit is a reference to a clause, schedule or

exhibit of or to this deed;

- (x) a reference to:
 - A. this deed includes all schedules and the Exhibits referred to in Item 31(a) of Schedule 1 and, subject to clause 17.1(e), the Contract Program; and
 - B. a reference to the Scope of Works and Technical Criteria includes all Appendices to the Scope of Works and Technical Criteria;
- (xi) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (xii) where under this deed:
 - A. a notice, certificate or direction is required to be given;
 - B. payment of money must be made;
 - C. an unconditional undertaking must be released; or
 - D. a default must be remedied,within a stated number of days (not being stated as Business Days), then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
- (xiii) for the purposes of:
 - A. clause 12.2, any reference to "day"; and
 - B. clauses 17.5 and 17.6:
 - 1) any extension of time stated in days; or
 - 2) any reference to "day",will exclude public holidays and include only those days which are stated in the most recent Subsidiary Contract Program submitted under clause 17.1(d) as working days;
- (xiv) for all purposes other than as set out in clauses 23.1(a)(xii) and 23.1(a)(xiii), "day" means calendar day;
- (xv) a reference to a "month" is a reference to a calendar month;
- (xvi) a reference to "\$" is to Australian currency;
- (xvii) any reference in this deed or in the Environmental Documents (or in any documents referred to in the Environmental Documents) to:
 - A. the "Project Environmental Plan", or "PEMP";
 - B. the "Construction Environmental Plan", "Construction Environmental Management Plan" or "CEMP";
 - C. the "Environmental Management Plan (Construction Stage)", or "EMP (Construction Stage)";
 - D. the "environmental management plan", "EMP" or "EMP(s)"; and
 - E. any other form of letters or words indicating an intention to refer to a plan relating to environmental management,will be read as a reference to the Environmental Management Plans;
- (xviii) for the avoidance of doubt, the Environmental Representative will perform the role and functions of the Environmental Representative or the ER under the Planning Approval and this deed, but all references to the Environmental Representative or ER in all other Environmental Documents and in the documents referred to in the documents comprising the Planning Approval or in the Environmental Documents, means the Environmental Manager; and
- (xix) a reference to 'fit for purpose', 'fit for the purpose', 'fit for its purpose', 'fit for their purpose', 'fitness for purpose', 'fit for the intended purpose', 'fit for its intended purpose', 'fit for their intended purpose', 'adequate and suitable for their intended purpose', 'effective and durable for its intended purpose' and 'used for their intended purpose' means the purpose or purposes as stated in, implied from or contemplated by, this deed.

- (b) In the interpretation of this deed, no rule of construction applies to the disadvantage of

one party on the basis that the party put forward or drafted this deed or any provision in it.

23.2 Definitions

In this deed, unless the context otherwise indicates:

Aboriginal Participation Plan means the Project Plan referred to as the Aboriginal Participation Plan (if any) in the Appendix to the Scope of the Works and Technical Criteria identified in Item 29(u) of Schedule 1.

Acciona Infrastructure Australia means Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street Brisbane QLD, 4000.

Act of Prevention means:

- (a) an act or omission (including breach of this deed) by RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier and the ER), unless the act or omission is a Reserved Act; and
- (b) subject to clauses 15.6, 15.7 and 16.2, a Variation the subject of a Direction by RMS Representative.

Additional Contractor Information has the meaning in clause 10.6(d).

Approval means any licence, permit, consent, approval (including the Planning Approval), determination, certificate or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be):

- (a) to perform or to enable the performance of the Contractor's Work;
- (b) in connection with the Construction Site;
- (c) for the use and occupation of the Project Works including for the safe, efficient and continuous passage of vehicles after Construction Completion; or
- (d) otherwise to comply with Law,

but does not include:

- (e) any Direction given by RMS or RMS Representative pursuant to this deed; or
- (f) the exercise by RMS of its rights under this deed.

ARTC's Requirements means the design, technical and engineering conditions and other requirements of ARTC in respect of the Railway Works identified and listed in Schedule 2 of the Rail Agreement, as those conditions and other requirements may be varied by ARTC from time to time.

Authority means:

- (a) any governmental or semi governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Contractor's Work; or
- (c) any other person having jurisdiction over, or ownership of, the Services, the Service Works, the Local Roads or the Local Road Works.

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

Bank Bill Rate is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average mid rate on the Reuters Monitor System Page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if no average mid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the Contractor and RMS for Bank Bills having a tenor as described above.

Building Code has the meaning given to that term in clause 5.10(a).

Business Day means any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

Carbon Fuel Scheme means any law with respect to the production, emission, reduction, limitation, cessation, prevention, offset or sequestration of any Greenhouse Gas which applies to the use and or purchase of any fuel or to the transport sector, including without limitation the commencement of any new or any change to any existing fuel tax, fuel tax credits, carbon tax, statutory emissions trading scheme or similar arrangement for the management of Greenhouse Gas emissions.

Carbon Scheme means any law with respect to the production, emission, reduction, limitation, cessation, prevention, offset or sequestration of any Greenhouse Gas, including without limitation any carbon tax, statutory emissions trading scheme or similar arrangement for the management of Greenhouse Gas emissions.

Change in Law means (if it takes effect after the date of this deed):

- (a) a change in an existing Law (other than a change in an Approval); or
- (b) a new Law (other than a new Approval),

compliance with which:

- (c) has a direct effect on the Contractor carrying out the Contractor's Work; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Work,

but excludes a change in an existing Law or a new Law:

- (e) in respect of income tax on taxable income (as that term is used in the *Income Tax Assessment Act 1936* (Cth)) or which is related to the calculation of taxable income;
- (f) which directly results in an increase or decrease in any category of cost dealt with in Construction Rise and Fall; or
- (g) in respect of a Carbon Scheme or Carbon Fuel Scheme.

Claim includes any claim for an increase in the Design Contract Sum or the Construction Contract Sum for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, thing or relationship connected with the Contractor's Work or either party's conduct prior to the date of this deed; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution including restitution based on unjust enrichment.

Code Monitoring Group means the group established by the Commonwealth under the *'Building Code 2013 – Supporting Guidelines for Commonwealth Funding Entities'* to monitor implementation and compliance matters with the Building Code.

Common Dispute has the meaning given in clause 20.13(a).

Commonwealth means the Commonwealth of Australia.

Community Involvement Plan means the Project Plan referred to as the Community Involvement Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(v) of Schedule 1.

Community Relations Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Concept Design means the concept design prepared by the Contractor and included in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(w) of Schedule 1.

Construction Completion means the stage when:

- (a) the Project Works are complete in accordance with this deed, except for Defects not

known;

- (b) without limiting paragraph (a), the Project Works are capable of being opened to the public for the continuous safe passage of vehicles;
- (c) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Construction Completion; or
 - B. must necessarily be carried out and passed before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles;
 - (ii) obtained all Approvals that it is required under this deed to obtain before Construction Completion and provided such Approvals to RMS Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Construction Completion;
 - (iv) given to RMS Representative all documents or other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the Project Works which:
 - A. are required to be given to RMS Representative before Construction Completion; or
 - B. must necessarily be handed over before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles; and
 - (v) executed a certificate in the form of Schedule 21 and provided it to RMS Representative;
- (d) the Project Verifier has executed a certificate in the form of Schedule 16 and provided it to RMS Representative;
- (e) the Quality Manager has executed a certificate in the form of Schedule 10 and provided it to RMS Representative;
- (f) the Contractor has provided the final Maintenance Plan in accordance with clauses 3.8 and 3.9; and
- (g) the Contractor has done everything else which it is required to do before Construction Completion.

Construction Contract Sum means the sum specified in Item 2 of Schedule 1, as adjusted in accordance with this deed.

Construction Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Construction Payment Schedule means Schedule 3.

Construction Plan means the Project Plan referred to as the Construction Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(x) of Schedule 1.

Construction Rise and Fall means the rise and fall calculation set out in Schedule 4.

Construction Site means the Site, the Local Road Corridors, the Temporary Works Areas and any Extra Land.

Contamination:

- (a) means any waste, Pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils; and
- (b) without limiting paragraph (a), has the meaning given to Contamination in the *Contaminated Land Management Act 1997* (NSW).

Contract Program means the overall program for design and construction activities which is the Exhibit referred to in Item 31(c) of Schedule 1 as updated in accordance with clause 17.1.

Contractor means the contractor specified in Item 1 of Schedule 1.

Contractor Documentation Schedule means the Appendix to the Scope of Works and Technical Criteria identified in Item 29(y) of Schedule 1.

Contractor's Work means all things and tasks which the Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed to design and construct the Project Works and Temporary Works and to perform the Landscaping Maintenance.

Crown Building Work has the meaning in section 109R(1) of the *Environmental Planning and Assessment Act 1979* (NSW).

DAB Agreement means the agreement entered into between the Contractor, RMS and each member of the Dispute Avoidance Board and substantially in the form of Schedule 38.

Date for Construction Completion means:

- (a) as at the date of this deed, the date specified in Item 3 of Schedule 1; or
- (b) where an extension of time for Construction Completion is granted by RMS Representative or allowed in any decision of the Dispute Avoidance Board, arbitration or litigation proceedings, the date resulting therefrom.

Date of Construction Completion means:

- (a) the date notified in accordance with clause 17.10(f)(i) as the date Construction Completion was achieved; or
- (b) where another date is determined in any decision of the Dispute Avoidance Board, arbitration or litigation proceedings as the date upon which Construction Completion was achieved, that date.

Date of Final Completion means:

- (a) the date notified in accordance with clause 17.15(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined in any decision of the Dispute Avoidance Board, arbitration or litigation proceedings as the date upon which Final Completion was achieved, that date.

Date of Opening Completion means the date (if any) notified in accordance with clause 17.12 as the date on which the Works are to be opened to the public for the continuous passage of vehicles.

Daywork means a Variation carried out by the Contractor which is valued on the basis of daily job time and cost records for workmen, constructional plant, materials, services and other costs as provided in the Construction Payment Schedule, Cost Centre 8.

Deed of Appointment of ER means the deed entered into between the Contractor, RMS and the Environmental Representative and substantially in the form of Schedule 30.

Deed of Appointment of Project Verifier means the deed entered into between the Contractor, RMS and the Project Verifier and substantially in the form of Schedule 12.

Deed of Disclaimer means the Deed of Disclaimer signed by the Contractor in favour of RMS, a copy of which appears in the Exhibit referred to in Item 31(d) of Schedule 1.

Defect means any:

- (a) defect, shrinkage, movement, deficiency, subsidence, fault, error or omission in the Project Works, Temporary Works or the Landscaping Maintenance; or
- (b) other aspect of the Project Works, Temporary Works or the Landscaping Maintenance, which is not in accordance with the requirements of this deed.

Defects Correction Period means a period referred to in clauses 16.6, 16.7(a), 16.8(a) or 16.9.

Design Contract Sum means the sum specified in Item 4 of Schedule 1, as adjusted in accordance with this deed.

Design Documentation means all:

- (a) design documentation (including design standards, design reports, durability reports,

specifications, models, samples, calculations, drawings, shop drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Work, or which the Contractor or any other person creates in performing the Contractor's Work (including the design of Temporary Works); and

- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Work.

Design Documentation Minor Amendment Schedule means a schedule in the form of Schedule 46.

Design Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Design Payment Schedule means Schedule 2.

Design Plan means the Project Plan referred to as the Design Plan in the Appendix to the Scope of the Works and Technical Criteria identified in Item 29(z) of Schedule 1.

Developed Concept Design has the meaning in clause 12.2(q).

Direct Cost means:

- (a) the amount of wages and allowances paid or payable by the Contractor at rates as agreed by the Contractor and RMS Representative or, if no agreement, at reasonable rates as stated by RMS Representative;
- (b) the labour on-costs paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the wages paid or payable;
- (c) the amount of hire charges in respect of constructional plant used on the work in accordance with such hiring rates and conditions as may be agreed by RMS Representative and the Contractor or, if no agreement, in accordance with reasonable rates and conditions as stated by RMS Representative;
- (d) the reasonable amounts paid by the Contractor for services, Subcontracts and professional fees;
- (e) the reasonable actual cost to the Contractor at the Site, the Local Road Works Areas and the Temporary Works Areas of all materials supplied and required for the work;
- (f) a margin to cover on-site overheads, site supervision, establishment costs and attendance; and
- (g) a margin to cover off-site overheads and profit, which margin is to be determined by reference to the margin in the Design Payment Schedule and/or the Construction Payment Schedule.

Direction means any certificate, decision, demand, determination, direction, instruction, order, rejection, request, requirement or RMS Representative's Statement, but does not include a decision on the part of RMS Representative not to reject Design Documentation submitted under clause 12.2(d), or the absence of a rejection of Design Documentation submitted under clause 12.2(i).

Dispute has the meaning given in clause 20.1.

Dispute Avoidance Board means the board consisting of the members nominated pursuant to clause 2.8A or their replacements referred to in clause 2.10.

Early Works means any act which has or should have been performed by or on behalf of the Contractor, or matter or thing that occurred or should have occurred, prior to the date of this deed and which this deed contemplates as constituting Contractor's Work, including:

- (a) design work undertaken or required to be undertaken;
- (b) Project Plans prepared or required to be prepared;
- (c) services provided or required to be provided;
- (d) decisions or determinations made or required to be made;
- (e) Approvals sought and/or obtained or required to be sought and/or obtained; and
- (f) any other obligations of the Contractor,

under the Early Works Agreements.

Early Works Agreements means:

- (a) the agreement (if any) entered into between RMS and the Contractor and described in Item 4A of Schedule 1;
- (b) the agreement entered into between RMS, the Contractor and the Project Verifier for the Project Verifier to perform the role of Project Verifier in respect of the Contractor's activities under the agreement (if any) referred to in paragraph (a); and
- (c) the agreement entered into between RMS, the Contractor and the Environmental Representative for the Environmental Representative to perform the role of Environmental Representative in respect of the Contractor's activities under the agreement (if any) referred to in paragraph (a).

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

Environmental Documents means the Planning Approval and the Appendix to the Scope of Works and Technical Criteria identified in Item 29(aa) of Schedule 1.

Environmental Management Plans means the Project Plans referred to as the Environmental Management Plans in the Appendix to of the Scope of Works and Technical Criteria identified in Item 29(bb) of Schedule 1.

Environmental Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Environmental Representative or ER means the person specified in Item 5 of Schedule 1 or such other person(s) as may be engaged by RMS and the Contractor in accordance with a Deed of Appointment of ER.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Evaluation Meetings has the meaning in clause 3.3(a).

Excepted Risks means:

- (a) any negligent act or omission of RMS or RMS Representative or the employees, consultants or agents of RMS;
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents.

Excusable Cause of Delay means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event;
- (c) a Change in Law;
- (d) a Site Condition;
- (e) inclement weather;
- (f) a court order referred to in clause 5.2(d)(iv);
- (g) a failure by ARTC to give a reasonable Track Possession under the Rail Agreement, provided that the Contractor complies with its obligations under clause 5.16(g) and Schedule 48 in respect of obtaining Track Possessions;

- (ga) a failure by RMS to obtain an executed Rail Agreement by 2 March 2015;
- (h) after 12 December 2014, the Contractor is unable to commence Construction (as defined in the Planning and Infrastructure Minister's Approval) due to:
 - (i) a failure by RMS to obtain the Minister's Approval by 12 December 2014; or
 - (ii) the requirement for the Contractor to implement the Extra Mechanisms, provided that the Contractor has satisfied all requirements in this deed for which it is responsible (other than the requirement for the Contractor to implement the Extra Mechanisms) that need to be satisfied before the Contractor is entitled to commence Construction (as defined in the Planning and Infrastructure Minister's Approval) in accordance with this deed; or
- (i) the RMS Enabling Works are not complete (except for minor defects) by the RMS Enabling Works Completion Date.

Existing Highway means the highway stated in Item 6 of Schedule 1.

Extra Land has the meaning in clause 9.5(a)(i)A.

Extra Mechanisms means the requirements set out and referred to in:

- (a) the fourth column of Table 2-1 of the Referral, titled "Mechanisms used to minimise the impacts on MNES";
- (b) the paragraph titled "Excluded Activities" in section 2.7 of the Referral; and
- (c) section 4.2.2 of the Referral.

Final Completion means the stage when:

- (a) the last Defects Correction Period has expired;
- (b) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Final Completion; or
 - B. must necessarily be carried out and passed to verify that the Works are in the condition this deed requires them to be in at Final Completion;
 - (ii) obtained all Approvals that it is required under this deed to obtain but which were not obtained before Construction Completion, and provided such Approvals to RMS Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Final Completion;
 - (iv) given to RMS Representative all documents or other information in respect of the design, construction, use, occupation, maintenance and repair of the Works which are required to be handed over to RMS before Final Completion; and
 - (v) executed a certificate in the form of Schedule 23 and provided it to RMS Representative;
- (c) the Quality Manager has executed a certificate in the form of Schedule 9 in accordance with clause 14.5(d)(i) and provided it to RMS Representative;
- (d) the Quality Manager has executed a certificate in the form of Schedule 10 and provided it to RMS Representative;
- (e) the Quality Manager has executed a certificate in the form of Schedule 11 and provided it to RMS Representative;
- (f) the Project Verifier has executed a certificate in the form of Schedule 14 in accordance with clause 14.5(d)(ii) and provided it to RMS Representative;
- (g) the Project Verifier has executed a certificate in the form of Schedule 18 and provided it to RMS Representative;
- (h) the Contractor has executed a certificate in the form of Schedule 22 in accordance with clause 14.5(d)(iii) and provided it to RMS Representative;
- (i) RMS Representative has issued a notice under clause 14.5(b)(i); and
- (j) the Contractor has done everything else which it is required to do before Final Completion.

Final Design Documentation has the meaning in clause 12.2(q).

Force Majeure Event means:

- (a) earthquake;
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents,

but excludes any act of vandalism.

Greenhouse Gas means:

- (a) carbon dioxide;
- (b) methane;
- (c) nitrous oxide;
- (d) sulphur hexafluoride;
- (e) a hydrofluorocarbon of a kind specified in the *National Greenhouse and Energy Reporting Regulations 2008* (Cth); or
- (f) a perfluorocarbon of a kind specified in the *National Greenhouse and Energy Reporting Regulations 2008* (Cth).

GST, GST law and other terms used in clause 18.8 have the same meanings assigned to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except GST law also includes any applicable rulings and any reference to GST payable by the Supplier includes GST payable by the representative member of any GST group of which the Supplier is a member.

GST Amount has the meaning in clause 18.8(c)(i).

GST Exclusive Consideration has the meaning in clause 18.8(c)(i).

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of a Nominated Authority.

IFC Design Documentation has the meaning in clause 12.2(q).

Incentive Amount means the amount stated by RMS Representative as being payable to the Contractor in accordance with clause 18.7(h).

Incentive Amount Assessment Notice means the notice issued by RMS Representative under clause 18.7(h)(iv) which sets out the Incentive Amount.

Incentive Amount Pool means the amount specified in Item 7 of Schedule 1.

Incentive Data means the statement, calculation and information to be provided pursuant to clause 18.7(b).

Information has the meaning in clause 18.9(a).

Information Documents means the following documents in any format or medium including any electronic form:

- (a) the documents specified in Schedule 45;
- (b) all other information or documents provided to the Contractor prior to, on or after the date of this deed and which were expressly stated to be Information Documents; and
- (c) any other information or document which is referred to or incorporated by reference in information or a document referred to in paragraphs (a) or (b), unless such information or document is otherwise expressly stated not to form part of this deed.

Insolvency Event means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with its obligations under this deed for financial reasons;

- (b) execution is levied against a person by a creditor; or
- (c) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) the corporation entering a deed of company arrangement with creditors;
 - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (iv) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (v) a winding up order is made in respect of the corporation;
 - (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members voluntary winding-up); or
 - (vii) a mortgagee of any property of the corporation takes possession of that property.

Intellectual Property Right means any copyright, patent or registered or unregistered rights including design, circuit layouts, trade marks or name or other protected right.

Key Performance Indicator means a key performance indicator set out in section 1 of Schedule 31 that will be used to measure performance and delivery of individual Key Result Areas.

Key Result Areas means one or more key result areas identified in section 2 of Schedule 31.

Landscaping Maintenance means the services described in the section of the Scope of Works and Technical Criteria identified in Item 29(cc) of Schedule 1.

Landscaping Maintenance Plan means the plan for maintenance of the landscaping described as the Landscaping Maintenance Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(dd) of Schedule 1.

Landscaping Maintenance Period means the period of time specified in Item 8 of Schedule 1 which commences on the Date of Construction Completion, as extended:

- (a) due to the operation of clause 14.5(c); and
- (b) otherwise by agreement by RMS and the Contractor.

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) common law; and
- (c) Approvals (including any condition or requirement under them).

Local Road Corridors means those areas indicated in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(ee) of Schedule 1, which include the Local Road Works Areas.

Local Roads means all local roads, service roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) cross;
- (b) are adjacent to;
- (c) intersect;
- (d) connect to;
- (e) are made redundant by;
- (f) become service roads as part of the road networks as a consequence of; or
- (g) are in any way affected by,

the Works, Property Works, Service Works or Temporary Works.

Local Road Works means those works specified in the sections of the Scope of Works and Technical Criteria identified in Item 29(ff) of Schedule 1 that the Contractor must design and construct and hand over to RMS, the relevant Authority or any other person in

accordance with this deed.

Local Road Works Areas means those areas indicated in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(gg) of Schedule 1, which are to be provided for Local Road Works.

Long Service Payment Scheme means the scheme established under the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

Long Service Payments Corporation means the corporation established under the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

Maintenance Plan means the Project Plan referred to as the Maintenance Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(hh) of Schedule 1, as developed in accordance with clauses 3.8 and 3.9, including the Project Plans incorporated into it as required by clause 3.8(l).

Management Review Group means the group referred to in clause 3.5(a).

Milestone means any milestone specified in the Design Payment Schedule or the Construction Payment Schedule.

Minister has the meaning given to that term in the Minister's Approval.

Minister's Approval means the approval identified as such in Item 10 of Schedule 1 and conditions referred to in paragraphs (b) and (c) of the definition of Planning Approval in this clause 23.2.

Minor Variation means a Variation that:

- (a) does not have any time or cost implications;
- (b) will not give rise to any Claim;
- (c) does not affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Work;
- (d) does not adversely affect the performance standards required by this deed; and
- (e) does not adversely affect the quality standards required under this deed.

Monthly Incentive Estimate has the meaning in clause 18.7(b)(ii).

Monthly Key Result Area Report has the meaning in clause 18.7(d)(ii).

Nominated Authority has the meaning in the section of the Scope of Works and Technical Criteria identified in Item 29(ii) of Schedule 1.

Notice of Dispute has the meaning given in clause 20.2.

Notice of Referral to DAB has the meaning given in clause 20.4(a).

Notifiable Incident has the meaning given under the WHS Laws.

NSW Code means the New South Wales Government's Code of Practice for Procurement dated 18 January 2005.

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction dated July 2013.

Opening Completion means the stage when:

- (a) the Project Works are complete in accordance with this deed except for minor Defects which:
 - (i) do not prevent the Project Works from being reasonably capable of being used for their intended purpose;
 - (ii) can be corrected without prejudicing the convenient or intended use of the Project Works; and
 - (iii) the Contractor has reasonable grounds for not promptly rectifying;
- (b) without limiting paragraph (a), the Project Works are capable of being opened to the public for the safe, efficient and continuous passage of vehicles; and
- (c) the Contractor has carried out and passed all tests which must necessarily be carried out

and passed before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles.

Parcel means a parcel of land and property of which RMS is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.

Parent Company Guarantor means the person or persons specified in Item 9 of Schedule 1.

Performance Evaluation Record Forms means the forms set out in Schedule 32.

Personal Information has the meaning given to that term in:

- (a) the Privacy and Personal Information Protection Act 1998 (NSW); and
- (b) the *Health Records and Information Privacy Act 2002* (NSW).

Planning Approval means:

- (a) the approvals specified in Item 10 of Schedule 1;
- (b) all conditions to the approvals referred to in paragraph (a) above and includes all documents incorporated by reference, as those approvals and conditions may be modified from time to time; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning and Infrastructure Minister's Approval or the Minister's Approval (as applicable) from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Planning and Infrastructure Minister's Approval means the approval identified as such in Item 10 of Schedule 1 and conditions referred to in paragraphs (b) and (c) of the definition of Planning Approval in this clause 23.2, which appears as the Exhibit referred to in Item 31(e) of Schedule 1.

Pollution includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations; and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a) above.

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Pre-Agreed Variation means any of the Variations listed in section 2 of Schedule 44.

Pre-Agreed Exclusion Zone Works Variation means the Variation listed in Schedule 44A.

Principal Contractor has the meaning given to the term "principal contractor" in the WHS Laws.

Privacy Acts means:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the *Health Records and Information Privacy Act 2002* (NSW).

Progress Payment has the meaning in clause 18.2(d)(ii).

Project Contract Sum means the sum of the following components:

- (a) the Design Contract Sum; and
- (b) the Construction Contract Sum.

Project Control Group means the group referred to in clause 3.4.

Project Design Group means the group referred to in clause 3.6.

Project Director means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Project WHS Management Plan means the Project Plan referred to as the Project WHS Management Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(kk) of Schedule 1.

Project Plan means any plan of the kind referred to in clause 3.8(a) as that plan may be updated, amended and further developed under clause 3.8.

Project Verifier means the person specified in Item 12 of Schedule 1 or such other person(s) as may be engaged by RMS and the Contractor in accordance with a Deed of Appointment of Project Verifier.

Project Works means the physical works which the Contractor must design, construct, complete and hand over under this deed including the Works, Service Works, Property Works and Local Road Works, but excluding Temporary Works and Landscaping Maintenance.

Proof Engineer means the person or persons specified in Item 11 of Schedule 1 or such other person or persons as may be engaged from time to time by the Contractor to perform the role of Proof Engineer, and approved by RMS.

Property Works means:

- (a) those works described or specified in the sections of the Scope of Works and Technical Criteria identified in Item 29(ll) of Schedule 1; and
- (b) all other works necessary to ensure that:
 - (i) the amenity of;
 - (ii) access to and egress from; or
 - (iii) the functionality of,
any property (including any structure thereon) including such property located outside of the Site, the Local Road Works Areas and the Temporary Works Areas which is affected by the Contractor's Work, is maintained to at least the standard that it was in immediately prior to the date of this deed including:
 - (iv) fencing work to separate the property located outside the Site from the property located within the Site, the Local Road Works Areas and the Temporary Works Areas;
 - (v) construction of access;
 - (vi) construction of drainage; and
 - (vii) reinstatement and landscaping.

Proprietary Software has the meaning in clause 12.3(c).

Provisional Sum Work means that part of the Service Works expressly:

- (a) described or contemplated in the Concept Design; or
- (b) required in writing by a service Authority after the date of this deed to be carried out to the extent to which it is different to that described or contemplated in the Concept Design, and which has been approved in writing by RMS Representative,

but does not include physical works, services, materials and equipment for Services that are part of the:

- (c) Works (including for lighting and ITS);
- (d) Local Road Works (including for lighting and ITS);
- (e) Temporary Works (including for site compound facilities) excluding any Temporary Works that are part of the Service Works as described in the sections of the Scope of Works and Technical Criteria identified in Item 29(rr) of Schedule 1;
- (f) Property Works; or
- (g) survey associated with set out and preparation of as constructed drawings.

Quality Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed and any person appointed as a replacement under clause 2.2(b).

Quality Plan means the Project Plan referred to as the Quality Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(mm) of Schedule 1.

Rail Agreement means the deed to be entered into between RMS and ARTC in relation to the Railway Works, a draft of which is set out in Schedule 48.

RCTI has the meaning in clause 18.8(f).

Recipient has the meaning in clause 18.8(c)(i).

Records include both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans, drawings, invoices, dockets, receipts, vouchers and computer programs.

Reference Date has the meaning in clause 18.2(a).

Referral means the referral submitted by RMS in respect of the Project under the EPBC Act (reference number 2013/7101) a copy of which appears as the Exhibit referred to in Item 31(h) of Schedule 1. A copy of the "Notification of Referral Decision and Designated Proponent – Controlled Action Decision on Assessment Approach" made in respect of the Referral appears as the Exhibit referred to in Item 31(i) of Schedule 1.

Reserved Act means an act or omission by RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier and the ER) authorised or permitted under this deed, other than:

- (a) a direction by RMS under clause 5.2(d)(v), provided the relevant legal challenge is not initiated or upheld due to, or the direction is not attributable to, the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
- (b) a direction by RMS Representative under clause 5.15, provided the direction is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
- (c) tests directed by RMS Representative under clause 11.6(a)(ii) and not otherwise required by this deed, unless the test detects a Defect or is upon a Defect;
- (d) a direction by RMS Representative under clause 17.8(a), provided the direction is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
- (e) a requirement by RMS for the Contractor:
 - (i) in accordance with clause 17.11(a)(i), to permit RMS to use (other than use as contemplated by this deed); or
 - (ii) in accordance with clause 17.11(a)(ii), to permit the opening for use by the public of,
any parts of:
 - (iii) the Works (irrespective of whether Opening Completion and/or Construction Completion has been achieved); or
 - (iv) any Local Road before the relevant part of the Local Road Works has been completed,
provided the requirement by RMS is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission; or
- (f) opening required by RMS, in accordance with clause 17.12(a), of the Works for use by the public for continuous passage of vehicles after Opening Completion has been achieved provided that:
 - (i) the opening occurs before the Date for Construction Completion; and
 - (ii) the requirement by RMS is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission.

RMS means Roads and Maritime Services.

RMS Assistant Representative has the meaning in clause 2.1(b).

RMS Data means RMS Geotechnical Data, RMS Noise Data and RMS Flood Data.

RMS Enabling Works means the package(s) of work described in the applicable part of the RMS Enabling Works Scope and Technical Criteria.

RMS Enabling Works Completion Date means, in respect of each separate package of RMS Enabling Works, the date for completion of that package of RMS Enabling Works set out in Item 12A of Schedule 1.

RMS Enabling Works Scope and Technical Criteria means the RMS enabling works scope and technical criteria identified in the section of the Scope of Works and Technical Criteria identified in Item 29(qq) of Schedule 1.

RMS Flood Data means raw factual data:

- (a) only within the categories confirmed in Schedule 43A to be raw factual data; and
- (b) which is contained in Information Documents that are identified in writing by RMS as flood data for the purposes of this definition.

RMS Geotechnical Data means raw factual data:

- (a) only within the categories confirmed in Schedule 43 to be raw factual data; and
- (b) which is contained in Information Documents that are identified in writing by RMS as geotechnical reports for the purposes of this definition.

RMS' Insurance Broker means RMS external insurance broker from time to time, whose contact details at the date of this deed are set out in Item 13 of Schedule 1.

RMS' Insurance Co-ordinator means the officer of RMS so designated or, if that role ceases to exist, the officer of RMS who is responsible for the functions of that officer, and for the purposes of this deed, that officer may be communicated with in writing as follows:

RMS Insurance Co-ordinator
Roads and Maritime Services
Level 9, 101 Miller Street
NORTH SYDNEY NSW 2060.

RMS Noise Data means raw factual data:

- (a) only within the categories confirmed in Schedule 43B to be raw factual data; and
- (b) which is contained in Information Documents that are identified in writing by RMS as noise data for the purposes of this definition.

RMS Representative means:

- (a) the person appointed by RMS under clause 2.1(a)(i); or
- (b) any other person appointed from time to time by RMS under clause 2.1(a)(ii).

RMS Representative's Statement means any one of the following statements by RMS Representative:

- (a) pursuant to clause 5.2(e), the reasonable net extra Direct Costs incurred by the Contractor arising directly as a result of a court order referred to in clause 5.2(d)(iv);
- (b) pursuant to clause 10.4, the reasonable net extra Direct Costs incurred by the Contractor in complying with clauses 10.4(a)(ii) and 10.4(b);
- (c) pursuant to clause 10.6(g), whether a condition referred to in a Site Condition Notice constitutes or involves a Site Condition;
- (d) pursuant to clause 14.5(b):
 - (i) whether the Landscaping Maintenance has been completed; or
 - (ii) if the Landscaping Maintenance has not been completed, the services to be completed before the Landscaping Maintenance can be considered to be completed;
- (e) pursuant to clause 15.3(d), whether the RMS Data referred to in a notice issued under clause 15.3(c)(ii) is not correct and whether reliance on this unavoidably necessitates a

Variation;

- (f) pursuant to clause 15.4(e), a valuation pursuant to clause 15.4(e);
- (g) pursuant to clause 15.9(a)(iii), the amount of the decreased or increased costs of carrying out the Contractor's Work;
- (h) pursuant to clause 16.4, the amount which represents the cost of correcting the Defect;
- (i) pursuant to clause 16.7(e):
 - (i) whether the discrete part of the Local Roads Works is complete in accordance with this deed, and if so, the date on which the Contractor completed this discrete part; or
 - (ii) if the discrete part of the Local Road Works is not complete, the items which remain to be completed;
- (j) pursuant to clause 17.5(d), the reasonable period for the extension to the Date for Construction Completion;
- (k) pursuant to clause 17.7(b), the reduction in an extension of time in relation to compression of the Contractor's Work;
- (l) pursuant to clause 17.7(d), the reasonable net extra Direct Costs incurred by the Contractor and directly attributable to compressing the performance of the Contractor's Work as required by RMS Representative's direction under clause 17.7(a);
- (m) pursuant to clause 17.8(b)(ii)A.1), the reasonable net extra Direct Costs incurred by the Contractor as a result of the suspension;
- (n) pursuant to clause 17.10(f):
 - (i) whether Construction Completion has been achieved, and if so, the date on which Construction Completion was achieved; or
 - (ii) if Construction Completion has not been achieved:
 - A. the items which remain to be completed before Construction Completion is achieved; or
 - B. whether the Contractor is so far from achieving Construction Completion that it is not practicable to notify the Contractor of the items which remain to be completed;
- (o) pursuant to clause 17.15(e):
 - (i) whether Final Completion has been achieved, and if so, the date on which Final Completion was achieved; or
 - (ii) if Final Completion has not been achieved:
 - A. the items which remain to be completed before Final Completion is achieved; or
 - B. whether the Contractor is so far from achieving Final Completion that it is not practicable to notify the Contractor of the items which remain to be completed;
- (p) pursuant to clauses 18.2(d) and 18.2(f), the Progress Payment due to the Contractor;
- (q) pursuant to clause 18.7(h), the Incentive Amount due to the Contractor;
- (r) pursuant to clause 19.6(c)(i), the reasonable net extra Direct Costs incurred in complying with a RMS Representative Statement;
- (s) pursuant to clause 21.7, the amounts stated in respect of clauses 21.7(a) to 21.7(e); and
- (t) pursuant to the definition of "Direct Costs" in clause 23.2, the reasonable rates in paragraph (a) and the reasonable rates and conditions in paragraph (c).

RMS Surveillance Officer has the meaning in clause 2.1(c).

Road Occupancy Licence is a licence which the Contractor must obtain from RMS under clause 5.14.

Roads Legislation has the meaning in clause 14.3(a).

Scheduled Progress means the rate of progress to be achieved by the Contractor in designing and constructing the Contractor's Work, such that the Contractor is proceeding with due expedition and without undue delay (other than a delay for which the Date for

Construction Completion is adjusted under this deed), so that it will (or is likely to) complete the Contractor's Work by the Date for Construction Completion.

Scope of Works and Technical Criteria means the Exhibit referred to in Item 31(f) of Schedule 1.

Security Interest means any 'security interest' as defined in the PPS Law.

Separate Monthly Key Result Area Report has the meaning in clause 18.7(e)(ii).

Service means any service or item of infrastructure, including water, electricity, gas, fuel, telephone, existing drainage, sewerage, railway, airport, industrial waste disposal and electronic communications service.

Service Works means those works specified in the sections of the Scope of Works and Technical Criteria identified in Item 29(rr) of Schedule 1 that the Contractor must design and construct and hand over to RMS, the relevant Authority or any other person in accordance with this deed.

Site means the land and airspace more particularly described as the Site in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(nn) of Schedule 1.

Site Access Schedule means the Exhibit referred to in Item 31(g) of Schedule 1.

Site Condition has the meaning in clause 10.6(a).

Site Condition Notice means a notice under and in accordance with clause 10.6(c).

SOP Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Subcontract includes an agreement for the performance of works, an agreement for the supply of goods or services (including plant hire) or an agreement with a consultant (including a designer) or any of them.

Subcontractor includes a subcontractor, a supplier of goods or services (including plant hire) or a consultant (including a designer) or any of them.

Subsidiary Contract Program means a program for all activities of the kind referred to in clause 17.1(a), which complies with clauses 17.1(b) and 17.1(c), as updated under clause 17.1(d).

Substantial Detailed Design has the meaning in clause 12.2(q).

Supplier has the meaning in clause 18.8(c).

Taxes means income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Temporary Works means any temporary physical structure, appliance or thing used in the carrying out of the Contractor's Work but which does not form part of the Project Works.

Temporary Works Areas means those areas indicated in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(oo) of Schedule 1.

Tender means the response provided by a Tenderer to undertake the Contractor's Work.

Tenderer means an entity which submits a tender for the Contractor's Work.

Third Party means a party to a Third Party Agreement other than RMS.

Third Party Agreement means any agreement between RMS and an Authority arising out of, in connection with, or for the purposes of enabling, the Contractor's Work.

Third Party Rights has the meaning in clause 12.3(g).

Traffic Management and Safety Plan means the Project Plan referred to as the Traffic Management and Safety Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(pp) of Schedule 1.

Variation means any change to the Landscaping Maintenance, the Project Works or the Temporary Works, and includes additions, increases, decreases, omissions, deletions, demolition or removal to or from any of the Landscaping Maintenance, the Project Works or the Temporary Works.

Variation Order means a notice in writing issued under and in accordance with clause 15.2(a) from RMS Representative directing the Contractor to implement a Variation as specified in the notice.

Variation Proposal Request means a notice in writing issued under and in accordance with clause 15.1(a) from RMS Representative notifying the Contractor of a proposed Variation.

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

Witness Point means a point in a work process for which the Contractor must give prior notice to RMS Representative to allow RMS Representative to attend and witness the point in the work process should it choose to do so.

WorkCover means the WorkCover Authority of NSW.

Workplace Relations Management Plan means the Project Plan referred to as the Workplace Relations Management Plan in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(jj) of Schedule 1.

Works means the physical works, Services, materials and equipment within the Site which the Contractor must design, construct, complete and hand over to RMS in accordance with this deed excluding:

- (a) the Local Road Works;
- (b) the Property Works; and
- (c) the Service Works.

Signing page

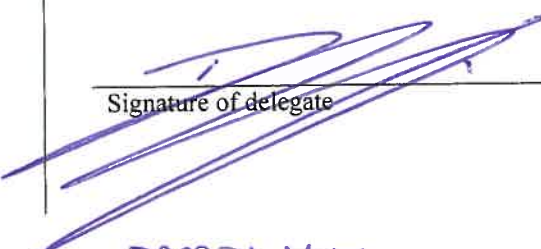
EXECUTED as a deed.

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Signed for Roads and Maritime Services (ABN 76 236 371 088) by an authorised delegate in the presence of:



Signature of Witness



Signature of delegate

DARREN MOY

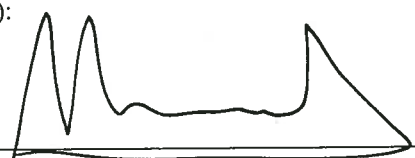
Name of delegate

CHRISTOPHER PAUL CLARK

Name of Witness in full

Office held:
GENERAL MANAGER C3DS


Signed by Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) in accordance with section 127(1) of the Corporations Act 2001 (Cth):



Signature of Director

ANTONIO BUSTAMANTE GARAY

Name of Director in full



Signature of Secretary/other Director

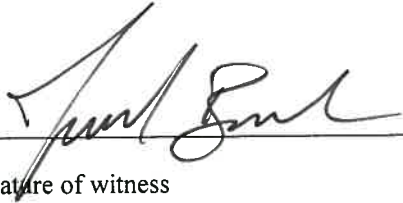
KIRSTY MAYER

Name of Secretary/other Director in full

ferrovial
agroman

A

Signed for Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) under power of attorney in the presence of:



Signature of witness

MICHAEL BRANSCOMB

Name of witness



Signature of attorney

Enrique Blanco Gómez

Name

Dated 4 July 2011
(Registered on 3 April 2014, Bk 4665 No 564)

Date of power of attorney

ferrovial
agroman

Contract Information

| Item | Clause | Insert information |
|------|--|---|
| 1. | Contractor (Clause 23.2: Definition) | Acciona-Ferrovial Joint Venture an unincorporated joint venture comprising: a) Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street Brisbane QLD, 4000; and b) Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street North Sydney NSW 2060. |
| 2. | Construction Contract Sum (Clause 23.2: Definition) | |
| 3. | Date for Construction Completion (Clause 23.2: Definition) | 25 May 2017 |
| 4. | Design Contract Sum (Clause 23.2: Definition) | |
| 4A | Early Works Agreements (Clause 23.2: Definition) | The Professional Services Contract No. 14.2544.0724 entered into by RMS and the Contractor on 16 April 2014. |
| 5. | Environmental Representative (Clause 23.2: Definition) | Name: David Bone Onsite Environmental Management Pty Ltd ABN: 33107764312 Address: PO Box 3233, Valentine NSW 2280 Ph: 0407 461 092 |
| 6. | Existing Highway (Clause 23.2: Definition) | A1 Pacific Highway |
| 7. | Incentive Amount Pool (Clause 23.2: Definition) | |
| 8. | Landscaping Maintenance Period (Clause 23.2: Definition) | 36 months |

| | | |
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| 9. | Parent Company Guarantor (Clause 23.2: Definition) | <p>In respect of Acciona Infrastructure Australia Pty Ltd: Acciona Infraestructuras SA CIF A81638108 of Avenida de Europa 18, Parque Empresarial, La Moraleja 28108, Alcobendas, Madrid Spain</p> <p>In respect of Ferrovial Agroman (Australia) Pty Ltd: Ferrovial Agroman SA CIF A28019206 of Ribera del Loira 42, Parque Empresarial, Puerta de las Naciones E-28042, Madrid Spain</p> |
| 10. | Planning Approval (Clause 23.2: Definition) | <p>The approval under section 75J of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by the Minister for Planning and Infrastructure dated 19 July 2011 in respect of Application No. MP 07_0112 for the construction and operation of approximately 42 kilometres of two lane divided carriageways, referred to as the Pacific Highway Upgrade - Warrell Creek to Urunga Project, as modified by:</p> <ul style="list-style-type: none"> • Modification of Minister for Planning and Infrastructure’s approval under section 75W of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 20 November 2012 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending condition C27. to modify the approval process for minor ancillary facilities (Modification 07_0112 MOD 1); • Modification of Minister for Planning and Infrastructure’s approval under section 75W of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 4 December 2012 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending condition C27. to modify the approval process for minor ancillary facilities (Modification 07_0112 MOD 2); • Modification of Minister for Planning and Infrastructure’s approval under section 75W of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 18 February 2013 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending conditions A1. and A2. to correct minor administrative errors (Modification 07_0112 MOD 3); • Modification of Minister for Planning and Infrastructure’s approval under section 75W of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 22 March 2013 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending the definition of construction in Schedule 1 (Modification 07_0112 MOD 4); • Modification of Minister for Planning and Infrastructure’s approval under section 75W of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 18 December 2013 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending the definitions to heritage and heritage item and modifying the requirements for heritage impacts regarding archaeology (Modification 07_0112 MOD 5); and • Modification of Minister for Planning and Infrastructure’s approval under section 75W of the <i>Environmental Planning</i> |

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| | | <p><i>and Assessment Act 1979 (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 17 March 2014 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending the terms of Project Approval and heritage requirements (Modification 07_0112 MOD 6),</i></p> <p>(together, the Planning and Infrastructure Minister's Approval).</p> <p>The approval to be granted by the Minister under sections 130(1) and 133 of the EPBC Act in respect of the proposed action described in EPBC Act referral 2013/7101 as may be modified from time to time (Minister's Approval).</p> |
| 11. | Proof Engineer (Clause 23.2: Definition) | Name: Cardno (NSW/ACT) Pty Ltd ABN: 95 001 145 035 Address: Level 9, The Forum, 203 Pacific Highway St Leonards NSW 2065 |
| 12. | Project Verifier (Clause 23.2: Definition) | Name: Davis Langdon Australia Pty Limited ABN: 40 008 657 289 Address: Level 21, 420 George Street Sydney NSW 2000 |
| 12A | RMS Enabling Works Completion Date (Clause 23.2: Definition) | As described in Appendix 20 of the Scope of Works and Technical Criteria. |
| 13. | RMS Insurance Broker (Clause 23.2: Definition) | Corporate Risk Services Aon Risk Services Australia Limited ABN 17 000 434 720 Level 33, Aon Tower 201 Kent Street Sydney NSW 2000 Telephone: 61 2 9253 8407 Facsimile: 61 2 9253 7106 |
| 13A | Elements of the Temporary Works to be verified by Project Verifier (Clause 2.4(a)(i)(B)) | Those elements of the Temporary Works that may: <ul style="list-style-type: none"> (a) have any impact on the amenity, performance or functionality of areas open to members of the public; or (b) pose any potential risk to the health or safety of any member of the public, or any potential risk of damage to property of any person. |

| 14. | Elements of the Project Works and the Temporary Works to be assessed and verified by Proof Engineer (Clause 2.5(c)(ii)) | <p>The following elements of infrastructure in the Project Works and Temporary Works:</p> <ul style="list-style-type: none"> (a) bridge spans exceeding 35m; (b) retaining walls with effective retained heights greater than 6m; (c) cable stayed or suspension bridges; (d) steel orthotropic decks; (e) bascule span bridges; (f) post-tensioned concrete structures; (g) bridges with skews exceeding 35°; (h) railway bridges over roads and road bridges over railways; (i) structures under railways; (j) precast arch structures; (k) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure; and (l) bridges where the superstructure is made fully integral with the substructure. | | | | | | | | | | |
|--|--|---|-------------------------------|---------------|--|--|---|--|-------------------------------------|--|---|--|
| 15. | Subcontractors (Clause 2.8(c)) | <table border="1"> <thead> <tr> <th data-bbox="619 801 963 875">Part of the Contractor's Work</th> <th data-bbox="963 801 1375 875">Subcontractor</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 875 963 1037">Design Consultant(s) including structural designers, road and bridge designers and flood mitigation designers:</td> <td data-bbox="963 875 1375 1037" rowspan="4"> Name: Arup Aurecon Design Joint Venture an unincorporated joint venture comprising: Arup Pty Limited ABN: 18 000 966 165 Address: Level 16, 77 Castlereagh Street, Sydney NSW 2000 and Aurecon Australasia Pty Ltd ABN: 54 005 139 873 Address: Level 8, 850 Collins Street Docklands, Victoria 3008 </td> </tr> <tr> <td data-bbox="619 1037 963 1137">Geotechnical and Environmental Design Consultant:</td> </tr> <tr> <td data-bbox="619 1137 963 1216">Urban and Landscape Design Consultant:</td> </tr> <tr> <td data-bbox="619 1216 963 1444">Noise Mitigation Design Consultant:</td> </tr> <tr> <td data-bbox="619 1444 963 1630">Community Relations Strategic Advisor:</td> <td data-bbox="963 1444 1375 1630"> Denise Wilson I D Planning Pty Ltd ABN: 95 092 969 643 Address: Suite 407, 460 Pacific Highway, St Leonards NSW 2065 </td> </tr> </tbody> </table> | Part of the Contractor's Work | Subcontractor | Design Consultant(s) including structural designers, road and bridge designers and flood mitigation designers: | Name: Arup Aurecon Design Joint Venture an unincorporated joint venture comprising: Arup Pty Limited ABN: 18 000 966 165 Address: Level 16, 77 Castlereagh Street, Sydney NSW 2000 and Aurecon Australasia Pty Ltd ABN: 54 005 139 873 Address: Level 8, 850 Collins Street Docklands, Victoria 3008 | Geotechnical and Environmental Design Consultant: | Urban and Landscape Design Consultant: | Noise Mitigation Design Consultant: | Community Relations Strategic Advisor: | Denise Wilson I D Planning Pty Ltd ABN: 95 092 969 643 Address: Suite 407, 460 Pacific Highway, St Leonards NSW 2065 | |
| Part of the Contractor's Work | Subcontractor | | | | | | | | | | | |
| Design Consultant(s) including structural designers, road and bridge designers and flood mitigation designers: | Name: Arup Aurecon Design Joint Venture an unincorporated joint venture comprising: Arup Pty Limited ABN: 18 000 966 165 Address: Level 16, 77 Castlereagh Street, Sydney NSW 2000 and Aurecon Australasia Pty Ltd ABN: 54 005 139 873 Address: Level 8, 850 Collins Street Docklands, Victoria 3008 | | | | | | | | | | | |
| Geotechnical and Environmental Design Consultant: | | | | | | | | | | | | |
| Urban and Landscape Design Consultant: | | | | | | | | | | | | |
| Noise Mitigation Design Consultant: | | | | | | | | | | | | |
| Community Relations Strategic Advisor: | Denise Wilson I D Planning Pty Ltd ABN: 95 092 969 643 Address: Suite 407, 460 Pacific Highway, St Leonards NSW 2065 | | | | | | | | | | | |
| 16. | Aboriginal participation (Clause 3.12(a)) | <p>Is an Aboriginal Participation Plan required?</p> <p>Yes</p> <p>The Project Aboriginal Participation Category is:</p> <p>Category 3</p> | | | | | | | | | | |

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| 17. | Notice details for RMS (Clause 3.17(a)(i)) | Address for notices: 101 Miller Street North Sydney NSW 2060 (for delivery by hand) Locked Bag 928 North Sydney NSW 2059 (for delivery by post) Fax: 02 8588 4171 Attention: Director Infrastructure Development Division |
| 18. | Notice details for RMS Representative (Clauses 3.17(a)(ii) & 3.17(d)(i)) | Address for notices: 76 Victoria Street, Grafton NSW 2460 Fax: 02 6604 9380 Attention: Col Solomon Email: colin.solomon@rms.nsw.gov.au |
| 19. | Notice details for Contractor (Clauses 3.17(a)(iii) & 3.17(d)(ii)) | Address for notices: Level 9, 65 Berry Street, North Sydney, NSW, 2060 Fax: 02 8736 9699 Attention: Jose Miguel San Millan Email: jmsanmillan@afjv.com.au |
| 20. | National Code of Practice for Construction Industry (Clause 5.10(a)) | Contractor's Work is partially or fully funded by the Commonwealth. |
| 21. | Workers compensation insurance (Clauses 7.5(a) & 7.5(a)(i)) | Minimum cover: As required by Law Period of cover: Until the end of all Defects Correction Periods. Insurer & Policy Number: Acciona Infrastructure Australia Pty Ltd: QBE – 1LF0158035GWC154 Ferrovial Agroman (Australia) Pty Ltd: QBE – 1SF0157096GWC154 |
| 22. | Motor vehicle fleet / mobile plant insurance (Clauses 7.5(a) & 7.5(a)(ii)) | Minimum cover: for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences. Period of cover: Until the end of all Defects Correction Periods Insurer & Policy Number: Acciona Infrastructure Australia Pty Ltd: Lumley Insurance - SYMO-0077-2569 Ferrovial Agroman (Australia) Pty Ltd: Lumley Insurance – SYLS 0344 0966 |

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| 23. | Asbestos liability insurance (Clause 7.6(a)) | <p>Minimum cover:</p> <p>Insurer:</p> <p>Policy number:</p> <p>Period of cover:</p> | <p>If any work for or in connection with this deed includes asbestos decontamination, any one occurrence in respect of public liability and in the aggregate during the period of insurance in respect of products liability.</p> <p>Asbestos removalists liability sub-limited to any one claim and in the aggregate during the period of insurance (claims made).</p> <p><i>[To be advised to RMS by the Contractor prior to undertaking any work for or in connection with this deed that includes asbestos decontamination]</i></p> <p><i>[To be advised to RMS by the Contractor prior to undertaking any work for or in connection with this deed that includes asbestos decontamination]</i></p> <p>Until the end of all Defects Correction Periods</p> |
| 24. | Marine liability and marine protection and indemnity insurance (Clause 7.6(b)) | <p><i>Marine liability</i></p> <p>Minimum cover:</p> <p>Insurer:</p> <p>Policy number:</p> <p>Period of cover:</p> <p><i>Marine protection and indemnity</i></p> <p>Minimum cover:</p> <p>Insurer:</p> <p>Policy number:</p> <p>Period of cover:</p> | <p>For any work to which clause 7.6(b) applies, for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.</p> <p><i>[To be advised to RMS by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.6(b).]</i></p> <p><i>[To be advised to RMS by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.6(b).]</i></p> <p>The whole of the period of use of waterborne craft of 8 or more metres in length on work for or in connection with this deed</p> <p>For any work to which clause 7.6(b) applies, for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.</p> <p><i>[To be advised to RMS by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.6(b).]</i></p> <p><i>[To be advised to RMS by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.6(b).]</i></p> <p>The whole of the period of use of waterborne craft of 8 or more metres in length on work for or in connection with</p> |

| | | this deed |
|------------|--|--|
| 24A | Site Conditions (Clause 10.6(a)) | The following parts of the Temporary Works Areas: <ul style="list-style-type: none"> • Temporary Works Areas identified in SWTC Appendix 2 Figure 2.1 Site Temporary Works Areas and Local Works Areas, Sheet 0004 |
| 25. | Site Conditions (Clause 10.6(a)(iB)) | <ul style="list-style-type: none"> ✓ Aboriginal heritage ✓ European heritage ✓ Contamination, being Contamination that is not introduced or caused by the Contractor or the Contractor's Subcontractors <p>Other: (please specify)</p> <input type="checkbox"/> NIL..... <input type="checkbox"/> <input type="checkbox"/> |
| 25A | Preparation of Design Documentation (Clause 12.2(k)) | <p>Subject to clause 12.2(ka), the Contractor may use for construction purposes Design Documentation which has not been prepared, reviewed, certified, verified and not rejected in accordance with clauses 12.2(a) to 12.2(j) in respect of the following aspects of the Project Works:</p> <ul style="list-style-type: none"> • works necessary to expedite the commencement of construction as defined in section 1.2(i) of the SWTC; • ground remediation or treatment works in the vicinity of the flying fox area where access may be limited or restricted due to environmental approvals; • temporary works associated with the commencement of rock platforms and other ancillary items associated with construction of the Nambucca River, Warrell Creek, Williamson Creek or Upper Warrell Creek bridges; • cross drainage pipe and box culvert structures and associated treatments to connect these structures back to the existing watercourse and or defined channels; • utility relocation works; • earthworks, access works and other enabling works associated with establishment of the site facilities; • earthworks preparatory works (topsoil stripping, clearing, ground preparation and the like); • cleanwater cut-off drains and channels, construction stage sedimentation basins and other ERSED devices; and • procurement of various bridgeworks items including but not limited to: launching gantry, pile liners, reinforcement, driven piles, formwork systems (including those for the U girders) and other temporary materials that may form part of, or shape, the permanent works. |
| 25B | Preparation of Design Documentation (Clause 12.2(kb)) | <p>The following elements of the Works are not required to be included in the Design Documentation for the Substantial Detailed Design stage:</p> <ul style="list-style-type: none"> • Fencing • Linemarking • Signs and signposting • Lighting. |

| 25C | Date for direction of Pre-Agreed Exclusion Zone Works Variation (Clause 15.8(ba)) | 1 July 2014 | | | | | | | | | | | | | | |
|---|---|--|---|--|---|---|--|--|--|--|---|--|--|--|--|--|
| 26. | Agreed delay costs (Clause 17.6(a)(i)) | <p>For any extension of time under clause 17.5 that qualifies under clause 17.6 for payment of agreed costs, only one of the following rates applies, according to when the relevant period of delay occurs (as determined by RMS Representative, acting reasonably):</p> <table border="1" data-bbox="638 528 1364 1503"> <thead> <tr> <th data-bbox="638 528 1094 640">Period during the Contractor's Work when the relevant delay occurs</th> <th data-bbox="1094 528 1364 640">Delay costs rate (\$/day) (excluding GST)</th> </tr> </thead> <tbody> <tr> <td data-bbox="638 640 1094 969">Delay occurring in connection with the Contractor's Work prior to commencement of construction activities on the Construction Site.</td> <td data-bbox="1094 640 1364 969">or per day where the delay arises from the cause of delay in paragraph (h) of the definition of "Excusable Cause of Delay"</td> </tr> <tr> <td data-bbox="638 969 1094 1099">Delay occurring in connection with the Contractor's Work after commencement of construction activities on the Construction Site:</td> <td data-bbox="1094 969 1364 1099"></td> </tr> <tr> <td data-bbox="638 1099 1094 1200">a. during the first quarter of the construction activities associated with the Contractor's Work</td> <td data-bbox="1094 1099 1364 1200"></td> </tr> <tr> <td data-bbox="638 1200 1094 1301">b. during the second quarter of the construction activities associated with the Contractor's Work</td> <td data-bbox="1094 1200 1364 1301"></td> </tr> <tr> <td data-bbox="638 1301 1094 1402">c. during the third quarter of the construction activities associated with the Contractor's Work</td> <td data-bbox="1094 1301 1364 1402"></td> </tr> <tr> <td data-bbox="638 1402 1094 1503">d. during the final quarter of the construction activities associated with the Contractor's Work</td> <td data-bbox="1094 1402 1364 1503"></td> </tr> </tbody> </table> | Period during the Contractor's Work when the relevant delay occurs | Delay costs rate (\$/day) (excluding GST) | Delay occurring in connection with the Contractor's Work prior to commencement of construction activities on the Construction Site. | or per day where the delay arises from the cause of delay in paragraph (h) of the definition of "Excusable Cause of Delay" | Delay occurring in connection with the Contractor's Work after commencement of construction activities on the Construction Site: | | a. during the first quarter of the construction activities associated with the Contractor's Work | | b. during the second quarter of the construction activities associated with the Contractor's Work | | c. during the third quarter of the construction activities associated with the Contractor's Work | | d. during the final quarter of the construction activities associated with the Contractor's Work | |
| Period during the Contractor's Work when the relevant delay occurs | Delay costs rate (\$/day) (excluding GST) | | | | | | | | | | | | | | | |
| Delay occurring in connection with the Contractor's Work prior to commencement of construction activities on the Construction Site. | or per day where the delay arises from the cause of delay in paragraph (h) of the definition of "Excusable Cause of Delay" | | | | | | | | | | | | | | | |
| Delay occurring in connection with the Contractor's Work after commencement of construction activities on the Construction Site: | | | | | | | | | | | | | | | | |
| a. during the first quarter of the construction activities associated with the Contractor's Work | | | | | | | | | | | | | | | | |
| b. during the second quarter of the construction activities associated with the Contractor's Work | | | | | | | | | | | | | | | | |
| c. during the third quarter of the construction activities associated with the Contractor's Work | | | | | | | | | | | | | | | | |
| d. during the final quarter of the construction activities associated with the Contractor's Work | | | | | | | | | | | | | | | | |
| 26A | Agreed delay costs (Clause 17.6(a)(iA)) | <p>(a) The Contractor will be entitled to be paid an amount equal to the IWDC to be determined by RMS Representative using the following formula:</p> $IWDC = \sum_{n=1}^n (d_n - b) R_n$ <p>where: d_n = Inclement EOT Days for month n. b = Benchmark Inclement EOT Days for a month. n = the number of the applicable month in the Qualifying Period (counted from the commencement of the Qualifying Period) and where the maximum value of n is equal to the total number of months (or part months) in the Qualifying Period. R_n = per day (exclusive of GST) which rate, as at the date of this deed, is based on 5 working days per week less statutory holidays</p> | | | | | | | | | | | | | | |

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| | | <p>and RDOs, but which rate is to be proportionally adjusted (as applicable) to the extent to which the current Subsidiary Contract Program submitted under clause 17.1(d) for the month is not based on a 5 working day week.</p> <p>(b) A provisional determination of the Contractor's entitlement under paragraph (a) will be made by RMS Representative applying the formula in paragraph (a) each month during the Qualifying Period, subject to and in accordance with this Item 26A.</p> <p>(c) Subject to paragraph (d), the Contractor will be provisionally paid an amount such that the total payment to the Contractor under this Item 26A for the period up to and including current month n is equal to the IWDC amount determined under paragraph (b) provided the IWDC amount is greater than zero.</p> <p>(d) To the extent that the Contractor has received any payment under paragraph (c) and in any one or more subsequent months the IWDC is:</p> <p>(i) less than zero; or</p> <p>(ii) less than the IWDC calculated in the previous month,</p> <p>RMS is entitled to be repaid by the Contractor on demand, provided however that the Contractor's obligation to make a payment under this paragraph (d) will cease upon the Contractor having repaid all amounts received under paragraph (c) during the course of the Qualifying Period.</p> <p>(e) For the purposes of this item 26A:</p> <p>Benchmark Inclement EOT Days means:</p> <p>(i) where month n is a full month in the Qualifying Period, 7 days (which number of days, as at the date of this deed, is based on 5 working days per week less statutory holidays and RDOs, but which number of days is to be proportionally adjusted (as applicable) to the extent to which the current Subsidiary Contract Program submitted under clause 17.1(d) for the month is not based on a 5 working day week); or</p> <p>(ii) where month n is a part month in the Qualifying Period (which may apply in the first and last month n), a pro rata reduction of 7 days (which number of days, as at the date of this deed, is based on 5 working days per week less statutory holidays and RDOs, but which number of days is to be proportionally adjusted (as applicable) to the extent to which the current Subsidiary Contract Program submitted under clause 17.1(d) for the month is not based on a 5 working day week) rounded to the nearest whole number, based on the number of days in the part month n compared to a 30 day month.</p> <p>Inclement EOT Days means, in respect of the applicable month n in the Qualifying Period, the total number of days that the Contractor is granted an extension of time under clause 17.5 for the cause of delay referred to in paragraph (e) of the definition of "Excusable Cause of Delay" (inclement weather).</p> <p>IWDC means, at the time of calculation, the amount</p> |
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| | | <p>calculated in accordance with paragraph (a).</p> <p>Qualifying Period means the period:</p> <p>(i) commencing on the commencement of substantial clearing and grubbing activities prior to major earthworks associated with the Contractor's Work on the Construction Site, as determined by RMS Representative; and</p> <p>(ii) ending on the earlier of:</p> <p>(A) the Date for Construction Completion; and</p> <p>(B) the Date of Construction Completion.</p> <p>(f) To assist in the interpretation of this Item 26A, a worked example has been agreed between RMS and the Contractor as to the operation of this Item 26A, which is included as Attachment A to this Schedule 1.</p> |
| 27. | Liquidated Damages (Clause 17.9(d)(i)) | |
| 28. | Liquidated Damages where Opening Completion has been achieved (Clause 17.9(d)(ii)) | |
| 29. | References to Scope of Works and Technical Criteria | |
| | (a) (Clause 2.5(c)(ii)B) | Section 5.15(f) |
| | (b) (Clause 3.8(a)) | Appendix 21 |
| | (c) (Clause 3.8(b)(i)) | Appendices 35 to 38 or 40 to 45 |
| | (d) (Clause 3.8(b)(ii)) | Section 2.10 |
| | (e) (Clause 3.8(c)) | Appendix 21 |
| | (f) (Clause 3.8(g)(ii)D) | Appendix 21 |
| | (g) (Clause 3.8(g)(ii)G) | Appendix 21 |
| | (h) (Clause 3.8(k)) | Appendix 21 |
| | (i) Not used | |
| | (ia) (Clause 4.2(d)(i)) | Section 5.4.2 |
| | (j) (Clause 5.2(b)) | Appendix 4 |
| | (k) (Clause 5.4) | Section 2.9 |
| | (l) (Clause 5.14(a)(ii)) | Section 7.15 |
| (m) (Clause 5.14(d)) | Section 7.15.2(a) | |

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| (n) (Clause 9.4(a)) | Sections 7.12(a)(iii) and 7.12(a)(iv) |
| (o) (Clause 11.1(a)) | Section 3 |
| (p) (Clause 11.1(b)) | Appendix 21 |
| (q) (Clause 12.2(d)) | Section 24.3 of Appendix 24 |
| (r) (Clause 13.2(j)) | Section 2.3.1(b) |
| (s) (Clause 16.7(d)) | Sections 7.12(a)(iii) and 7.12(a)(iv) |
| (t) (Clause 17.1(c)(i)) | Section 24.2 of Appendix 24 |
| (u) (Definition of 'Aboriginal Participation Plan') | Appendix 21 |
| (v) (Definition of 'Community Involvement Plan') | Appendix 21 |
| (w) (Definition of 'Concept Design') | Appendix 30 |
| (x) (Definition of 'Construction Plan') | Appendix 21 |
| (y) (Definition of 'Contractor Documentation Schedule') | Appendix 24 |
| (z) (Definition of 'Design Plan') | Appendix 21 |
| (aa) (Definition of 'Environmental Documents') | Appendix 4 |
| (bb) (Definition of 'Environmental Management Plans') | Identified in Appendix 21 as Environmental Management Plan |
| (cc) (Definition of 'Landscaping Maintenance') | Section 2.2.2 |
| (dd) (Definition of 'Landscaping Maintenance Plan') | Appendix 21 |
| (ee) (Definition of 'Local Road Corridors') | Appendix 2 |

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| | (ff) (Definition of 'Local Road Works') | Sections 2.3.1(c) and 6.2 |
| | (gg) (Definition of 'Local Road Works Areas') | Appendix 2 |
| | (hh) (Definition of 'Maintenance Plan') | Appendix 21 |
| | (ii) (Definition of 'Nominated Authority') | Section 3.1.4(a) |
| | (jj) (Definition of 'Workplace Relations Management Plan') | Appendix 21 |
| | (kk) (Definition of 'Project WHS Management Plan') | Appendix 21 |
| | (ll) (Definition of 'Property Works') | Sections 2.3.1(b) and 6.1 |
| | (mm) (Definition of 'Quality Plan') | Appendix 21 |
| | (nn) (Definition of 'Site') | Appendix 2 |
| | (oo) (Definition of 'Temporary Works Areas') | Appendix 2 |
| | (pp) (Definition of 'Traffic Management and Safety Plan') | Appendix 21 |
| | (qq) (Definition of 'RMS Enabling Works Scope and Technical Criteria') | Section 2.19 |
| | (rr) (Definition of 'Service Works') | Sections 2.3.1(d) and 6.3 |
| 30. | References to Contractor Documentation Schedule | |
| | (a) Not used | |
| | (b) (Clause 17.1(d)) | Section 24.1.1 of Appendix 24 |

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| 31. | References to Exhibits | |
| | (a) (Clause 23.1(a)(x)A) | Exhibits A, B and D |
| | (b) (Clause 23.1(a)(x)A) | Exhibit C |
| | (c) (Definition of 'Contract Program') | Exhibit C |
| | (d) (Definition of 'Deed of Disclaimer') | Exhibit D |
| | (e) (Definition of 'Planning and Infrastructure Minister's Approval') | Exhibit E |
| | (f) (Definition of 'Scope of Works and Technical Criteria') | Exhibit A and Exhibit F |
| | (g) (Definition of 'Site Access Schedule') | Exhibit B |
| | (h) (Definition of 'Referral' – Copy of Referral) | Exhibit G |
| | (i) (Definition of 'Referral' – Copy of Controlled Action Decision) | Exhibit H |

Wet Weather Delay Costs

Worked example

| | | | | | | | | | | Total |
|---|-----|-----|-----|--|--|--|--|--|--|-------|
| Month n | N/A | N/A | N/A | | | | | | | |
| Daily rate for delay costs (in thousands) | 0 | 0 | 0 | | | | | | | |
| Benchmark Inclement EOT Days | N/A | N/A | N/A | | | | | | | |
| Inclement EOT Days | N/A | N/A | N/A | | | | | | | |
| Total Inclement EOT Days over Benchmark Inclement EOT Days | | | | | | | | | | |
| <p>It is assumed that the Qualifying Period expires at the end of month 12</p> <p>It is assumed that the Subsidiary Contract Program is based on 5 working days, less statutory holidays and RDOs for the entire Qualifying Period</p> <p>(Inclement EOT Days) - (Benchmark Inclement EOT Days)</p> <p>[(Inclement EOT Days) - (Benchmark Inclement EOT Days)] x (Daily rate)</p> <p>Cumulative assessment of IWDC (in thousands)</p> <p>Monthly payment (if any) by RMS to the Contractor (in thousands)</p> <p>Monthly payment (if any) by Contractor to RMS (in thousands)</p> | | | | | | | | | | |

Design Payment Schedule

(clause 23.2 (definition of "Design Payment Schedule"))

The following schedule is for payment for the performance of the Contractor's obligations to prepare all Design Documentation for each element of the Project Works and Temporary Works set out in the schedule.

| Milestone | Description | Value (Excl. GST) |
|------------------|---|------------------------------|
| 1 | Works horizontal and vertical road alignments including cross sections | |
| 2 | Local Road Works horizontal and vertical road alignments including cross sections | |
| 3 | Geotechnical design, including foundation and batter treatments | |
| 4 | Property Works | |
| 5 | Provisional Sum Work <ul style="list-style-type: none"> a) Electrical b) Telstra c) Optus d) Water e) Sewer f) Nextgen g) ARTC h) Other | |
| 6 | Noise attenuation works | |
| 7 | Environmental works | |
| 8 | Surface drainage, pavement drainage and water quality basins | |
| 9 | Subgrade and pavement | |
| 10 | Interchanges and intersections | |
| 11 | Bridges: | |
| | Main Carriageway bridges: | |
| | (a) bridge over Upper Warrell Creek (including over Service Road A and North Coast Railway Line) | |
| | (b) twin bridges over Warrell Creek (including over Scotts Head Road) | |
| | (c) bridge over Nambucca River (including over River Street, Nursery Road and Existing Highway) | |
| | (d) twin bridges over Nambucca Floodplain 1 at chainage 50.20km north of Kempsey | |
| | (e) twin bridges over Nambucca Floodplain 2 at chainage 50.93km north of Kempsey | |
| | (f) twin bridges over Williamson Creek | |
| | Transverse bridges over the Main Carriageways at: | |
| | (g) Local Access Road D (including over Service Road) | |
| | (h) Rosewood Road | |
| | (i) Albert Drive | |

| | | |
|-----|---|--|
| | (j) Bald Hill Road Interchange | |
| | (k) Old Coast Road South | |
| | (l) Mattick Road | |
| | (m) Old Coast Road North | |
| | Other bridges and structures: | |
| | (n) Cockburns Lane Underpass of Main Carriageways | |
| 12 | Drainage culverts and structures | |
| 13 | Fauna underpasses | |
| 14 | Farm access underpasses | |
| 15 | Soil and slope structures including retaining walls | |
| 16 | Roadside furniture, including safety barriers, bus facilities, signposting, delineation and lighting; | |
| 16A | Services and infrastructure for ITS including variable message signs | |
| 17 | Urban design, landscaping and regeneration | |
| 18 | Temporary Works | |
| 19 | Project Verifier's design verification services: (a) Project Verifier's Fees (b) Contractor's margin and contingency | |
| 20 | Proof Engineer | |
| 21 | Environmental Representative's design phase services: (a) Environmental Representative's Fees (b) Contractor's margin and contingency | |
| 22 | Additional and/or balancing items required to complete the design and documentation of the Project Works and Temporary Works. | |
| | TOTAL (Excl. GST) | |

Payment Constraints:

1. With respect to any Milestone in the Design Payment Schedule:
 - (a) subject to paragraphs 1(b) and 2, RMS will pay the Contractor for progressive completion of the Milestone determined on a monthly basis having regard to the value of work carried out in accordance with this deed. Payment for each stage of the Design Documentation process for each discrete design element of the Contractor's Work for Milestones 1 to 18 inclusive will not exceed:
 - (i) 50% of the total value of the discrete design element at the Developed Concept Design stage;
 - (ii) 80% of the total value of the discrete design element at the Substantial Detailed Design stage;
 - (iii) 100% of the total value of the discrete design element at the Final Design Documentation stage; and
 - (b) notwithstanding paragraph (a):
 - (i) the Contractor may not make any claim for payment for progressive completion of a Milestone in any month where the value of the work carried out on that Milestone is less than 2½ percent of the total value of the Milestone; and
 - (ii) RMS will not be obliged to make any payment to the Contractor in any month for any Milestone where the amount which would otherwise be payable in that month for that Milestone is less than 2½ percent of the total value of the Milestone.
2. With respect to any Milestone in the Design Payment Schedule, RMS is not obliged to pay

the Contractor any more than 90% of the value of the Milestone until all Final Design Documentation relevant to that Milestone have:

- (a) been verified by the Project Verifier and Proof Engineer, and certified by the relevant Subcontractor and the Contractor under clause 12.2(h) of this deed;
- (b) been submitted to RMS Representative under clause 12.2(d) of this deed; and
- (c) not been rejected by RMS Representative under clause 12.2(i) of this deed.

3. **Contractor's Hourly Rates:**

The Contractor's hourly rates for valuing adjustments to the Design Contract Sum arising from Variations valued under clause 15.4(e)(i) of this deed are listed below. Rates listed below do not include profit margin, off-site overheads or GST. These rates will not be subject to Construction Rise and Fall.

| CATEGORY | RATE (\$/HOUR) (excl. GST) |
|--|-------------------------------|
| Project Director (design consultant) | |
| Senior Design Manager (design consultant) | |
| Design Manager (design consultant) | |
| Principal MX Designer / CADD Operator | |
| Senior Draftsman / CADD or MX Operator | |
| Experienced Draftsman/CADD or MX operator | |
| Draftsman/CADD or MX operator | |
| Principal Hydrologist/Drainage Designer | |
| Senior Hydrologist/Drainage Designer | |
| Experienced Hydrologist/Drainage Designer | |
| Hydrologist/Drainage Designer | |
| Principal Geotechnical Engineer/Scientist | |
| Senior Geotechnical Engineer/Scientist | |
| Experienced Geotechnical Engineer/Scientist | |
| Geotechnical Engineer/Scientist | |
| Senior Geotechnical Field Supervisor | |
| Geotechnical Field Supervisor | |
| Laboratory Technician | |
| Principal Pavements Design Engineer | |
| Senior Pavements Design Engineer | |
| Experienced Pavements Design Engineer | |
| Pavements Design Engineer | |
| Principal Environmental Engineer/Scientist | |
| Senior Environmental Engineer/Scientist | |
| Experienced Environmental Engineer/Scientist | |
| Environmental Engineer/Scientist | |
| Principal Urban/Landscape Design Architect | |
| Senior Urban/Landscape Design Architect | |
| Experienced Urban/Landscape Design Architect | |
| Principal Utilities Designer/Manager | |
| Senior Utilities Designer/Manager | |
| Experienced Utilities Designer/Manager | |
| Utilities Designer/Manager | |

| CATEGORY | RATE (\$/HOUR) (excl. GST) |
|-----------------------------|---------------------------------------|
| Graduate Engineer/Scientist | |
| Senior Administrator | |
| Administration Assistant | |

Project Director (design consultant)

Typically has greater than 15 years experience in major road and bridge design projects. The Project Director (design consultant) must have (as a minimum) an appropriate bachelor degree qualification, and must have worked on road or bridge projects in a similar role to that nominated within the last 5 years.

Senior Design Manager (design consultant)

Typically has greater than 15 years experience in major road and bridge design projects. The Senior Design Manager (design consultant) must have (as a minimum) an appropriate bachelor degree qualification, and must have worked on road or bridge projects in a similar role to that nominated within the last 5 years.

Design Manager (design consultant)

Typically has greater than 10 years experience in major road and bridge design projects. The Design Manager (design consultant) must have (as a minimum) an appropriate bachelor degree qualification, and must have worked on road or bridge projects in a similar role to that nominated within the last 5 years.

Hierarchy of Skills/Experience

All engineers nominated within the schedule must have (as a minimum) a bachelor degree in an appropriate field of engineering (being, unless otherwise agreed by RMS, civil, environmental, structural or geotechnical engineering). All scientists nominated within the schedule must have (as a minimum) a bachelor degree in an appropriate field of science.

1. **Principal** – Typically greater than 15 years experience in major road and bridge projects in the same or similar role to that nominated. Must have had a high performance within positions held, and appropriate formal education level for the position. Resource must have worked on road or bridge projects in a similar role to that nominated within the last 5 years.
2. **Senior** - Senior resource with greater than 10 years experience in road and bridge projects in a similar role to that nominated. Must have had high performance within positions held, and appropriate formal education level for position. Resource must have worked on road or bridge projects in a similar role to that nominated within the last 5 years.
3. **Experienced** – Resource with greater than 5 years experience in major road and bridge projects in a similar role to that nominated. Must have appropriate formal education level for position. Resource must have worked on road or bridge projects in a similar role to that nominated within the last 5 years.
4. **Designer/Engineer/Scientist** - Qualified resource with greater than 2 years of relevant and recent (within past 5 years) experience.
5. **Graduate / Qualified** – Resource has achieved relevant qualification and is working as a professional.

4. Margin for Variations

Where the adjustment to the Design Contract Sum is to be made as a result of valuing Variations under clause 15.4(e)(i) or clause 15.4(e)(iii) of this deed, the total amount to be added to the reasonable cost of the relevant work (exclusive of GST) on account of off-site overheads and profit margin is **10%**, regardless of whether the adjustment to the Design Contract Sum is to be an increase or a decrease.

Construction Payment Schedule

(clause 23.2 (definition of "Construction Payment Schedule"))

Cost Centre 1 Preliminaries and General Requirements

This Cost Centre 1 is for payment for all those obligations and ongoing activities throughout this deed not associated directly with any other Cost Centre in the Construction Payment Schedule or any Milestone in the Design Payment Schedule.

Typical items include initial capital investment in plant and equipment; provision and maintenance of offices; workshops and vehicles; community liaison activities; overall site management; provision of performance undertakings, guarantees and insurances; quality assurance management and construction verification, testing and commissioning; providing ER and Project Verifier's services, monitoring and protecting the environment; programming and monitoring of progress; providing photographs and videos; final removal of facilities and cleaning up of the Construction Site and other work areas; and general contingencies for risks required to be carried by the Contractor, and not otherwise included elsewhere.

| Milestone | Description | Value (Excl. GST) |
|-----------|--|----------------------|
| 1.1 | Mobilisation and demobilisation of general plant, equipment, personnel and establishment of site facilities (including the Project Verifier's site facilities). | |
| 1.2 | Provision of the following: a) Insurances, fees, levies b) Long Service Levy c) Bank guarantees d) Initial dilapidation surveys e) Final dilapidation surveys | |
| 1.3 | Provision of all staff | |
| 1.4 | Provision and maintenance of all site accommodation, site laboratories and equipment and site vehicles (including the Project Verifier's site facilities) | |
| 1.5 | Attendance by designers at the Contractor's construction activities | |
| 1.6 | Provision of Project Verifier's construction verification services: a) Project Verifier's Fee b) Contractor's margin and contingency | |
| 1.7 | Provision of requirements in respect of safety, traffic control, site security and other risks and obligations not included elsewhere | |
| 1.8 | Project Plans: a) Prepare, initially submit and amend Project Plans b) Ongoing development, amendment and updating of Project Plans | |

| Milestone | Description | Value (Excl. GST) |
|------------------|--|------------------------------|
| 1.9 | Provision of Environmental Representative's construction phase services: a) Environmental Representative's Fee b) Contractor's margin and contingency | |
| 1.10 | Maintenance during construction | |
| 1.11 | As constructed drawings | |
| 1.12 | Additional and/or balancing items required to complete the work in this cost centre, including site investigations, environmental monitoring and environmental plans | |
| | TOTAL (Excl. GST) | |

Payment Constraints

1. For Milestones 1.3, 1.4, 1.5, 1.6, 1.7, 1.8(b), 1.9, 1.10 and 1.12 the proportion of the value of the Milestone that will be certified for any monthly payment under clause 18.2 of this deed will be in the same proportion as the value certified for that monthly payment with respect to Cost Centres 2 to 6 is to the total value of Cost Centres 2 to 6.
2. For Milestone 1.1 mobilisation shall be considered as 70% of the Milestone and demobilisation as 30%.
3. For Milestone 1.2, certification will be made as the relevant certificates, payment receipts, letters or reports are provided.
4. With respect to any Milestone, except for 1.1, 1.2 and 1.8, in this Preliminaries and General Requirements schedule, RMS is not obliged to pay the Contractor any more than 98.75% of the value of the Milestone until the Contractor has provided all "as constructed drawings" relating to the Milestone 1.11.

Cost Centre 2 Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping

Southern Section 1

The work of this Cost Centre 2 comprises all permanent and Temporary Works, including the Warrell Creek Interchange and intersections and excluding the bridges identified in Cost Centre 6, associated with the construction of the Project Works between the southern tie-in to the Pacific Highway (near Browns Crossing Road) and Chainage 47km050, including the connections to the existing traffic network.

The work also includes any traffic adjustments required to maintain existing access and traffic flows.

| Milestone | Description | Value (Excl. GST) |
|------------------|---|------------------------------|
| 2.1 | Traffic management and control | |
| | Works | |
| 2.2 | Fauna fencing | |
| 2.3 | Fencing (excluding fauna fencing): a) Road reserve/property boundary fencing b) All other fencing | |
| 2.4 | Environmental mitigation measures, including: a) construction phase erosion and sedimentation control and water quality basins b) all other environmental mitigation measures | |
| 2.5 | Topsoil stripping and stockpiling | |
| 2.6 | Demolition | |
| 2.7 | Foundation treatments a) soft soil treatments b) other foundation treatments | |
| 2.8 | Cuttings and embankments | |
| 2.9 | Subsurface drainage | |
| 2.10 | Cut and batter treatments | |
| 2.11 | Noise attenuation measures | |
| 2.12 | Structures: a) Drainage culverts and structures b) Fauna underpasses c) Farm access underpasses d) Soil and slope structures, including retaining walls | |
| 2.13 | Pavements, including pavement drainage | |
| 2.14 | Roadside furniture including safety barriers, bus facilities, signposting, delineation and lighting | |
| 2.14A | Services and infrastructure for ITS including variable message signs | |
| 2.15 | Urban design and landscaping | |
| 2.16 | Additional and/or balancing items required to complete the Works | |
| | Local Road Works | |
| 2.17 | Local Road Works (excluding bridges): a) Roadworks b) Additional and/or balancing items required to complete the Local Road Works | |
| | Property Works | |

| Milestone | Description | Value (Excl. GST) |
|------------------|--------------------------|------------------------------|
| 2.18 | Property Works | |
| | TOTAL (Excl. GST) | |

Payment Constraints

1. With respect to any Milestone in this Cost Centre 2:
 - (a) subject to paragraph (b), RMS will pay the Contractor for progressive completion of the Milestone determined on a monthly basis having regard to the value of work carried out in accordance with this deed; and
 - (b) notwithstanding paragraph (a):
 - (i) the Contractor may not make any claim for payment for progressive completion of a Milestone in any month where the value of the work carried out on that Milestone is less than 2½ percent of the total value of the Milestone; and
 - (ii) RMS will not be obliged to make any payment to the Contractor in any month for any Milestone where the amount which would otherwise be payable in that month for that Milestone is less than 2½ percent of the total value of the Milestone.
2. Until completion of removal of Temporary Works, reinstatement and landscaping of this Cost Centre 2, RMS is not obliged to pay the Contractor under this Cost Centre 2 any more than 95% of the total value of this Cost Centre 2.
3. Environmental mitigation measures and surface drainage in this Cost Centre 2 must be complete prior to either the foundation treatments or cuttings and embankments construction in this Cost Centre reaching the stage of 20% complete. Payment will not be made for foundation treatments or cuttings and embankments construction in excess of this 20% limit until the environmental mitigation measures and surface drainage is complete.
4. Fencing on the road reserve / property boundaries must be complete in this Cost Centre prior to any payment under this Cost Centre.

Cost Centre 3 Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping

Southern Section 2

The work of this Cost Centre 3 comprises all permanent and Temporary Works, including Bald Hill Road Interchange and intersections and excluding the bridges identified in Cost Centre 6, associated with the construction of the Project Works between Chainage 47km050 and Chainage 52km500, including the connections to the existing traffic network.

The work also includes any traffic adjustments required to maintain existing access and traffic flows.

| Milestone | Description | Value (Excl. GST) |
|-----------|---|----------------------|
| 3.1 | Traffic management and control | |
| | Works | |
| 3.2 | Fauna fencing | |
| 3.3 | Fencing (excluding fauna fencing): a) Road reserve/property boundary fencing b) All other fencing | |
| 3.4 | Environmental mitigation measures, including: a) construction phase erosion and sedimentation control and water quality basins b) all other environmental mitigation measures | |
| 3.5 | Topsoil stripping and stockpiling | |
| 3.6 | Demolition | |
| 3.7 | Foundation treatments a) soft soil treatments b) other foundation treatments | |
| 3.8 | Cuttings and embankments | |
| 3.9 | Subsurface drainage | |
| 3.10 | Cut and batter treatments | |
| 3.11 | Noise attenuation measures | |
| 3.12 | Structures: a) Drainage culverts and structures b) Fauna underpasses c) Farm access underpasses d) Soil and slope structures, including retaining walls | |
| 3.13 | Pavements, including pavement drainage | |
| 3.14 | Roadside furniture including safety barriers, bus facilities, signposting, delineation and lighting | |
| 3.15 | Urban design and landscaping | |
| 3.14A | Services and infrastructure for ITS including variable message signs | |
| 3.16 | Additional and/or balancing items required to complete the Works | |
| | Local Road Works | |
| 3.17 | Local Road Works (excluding bridges): a) Roadworks b) Additional and/or balancing items required to complete the Local Road Works | |
| | Property Works | |

| Milestone | Description | Value (Excl. GST) |
|------------------|--------------------------|------------------------------|
| 3.18 | Property Works | |
| | TOTAL (Excl. GST) | |

Payment Constraints:

1. With respect to any Milestone in this Cost Centre 3:
 - (a) subject to paragraph (b), RMS will pay the Contractor for progressive completion of the Milestone determined on a monthly basis having regard to the value of work carried out in accordance with this deed; and
 - (b) notwithstanding paragraph (a):
 - (i) the Contractor may not make any claim for payment for progressive completion of a Milestone in any month where the value of the work carried out on that Milestone is less than 2 ½ percent of the total value of the Milestone; and
 - (ii) RMS will not be obliged to make any payment to the Contractor in any month for any Milestone where the amount which would otherwise be payable in that month for that Milestone is less than 2 ½ percent of the total value of the Milestone.
2. Until completion of removal of Temporary Works, reinstatement and landscaping of this Cost Centre 3, RMS is not obliged to pay the Contractor under this Cost Centre 3 any more than 95% of the total value of this Cost Centre 3.
3. Environmental mitigation measures and surface drainage in this Cost Centre 3 must be complete prior to either the foundation treatments or cuttings and embankments construction in this Cost Centre reaching the stage of 20% complete. Payment will not be made for foundation treatments or cuttings and embankments construction in excess of this 20% limit until the environmental mitigation measures and surface drainage is complete.
4. Fencing on the road reserve / property boundaries must be complete in this Cost Centre prior to any payment under this Cost Centre.

Cost Centre 4 Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping

Northern Section 1

The work of this Cost Centre 4 comprises all permanent and Temporary Works, including intersections and excluding the bridges identified in Cost Centre 6, associated with the construction of the Project Works between Chainage 52km500 and Chainage 56km965, including the connections to the existing traffic network.

The work also includes any traffic adjustments required to maintain existing access and traffic flows.

| Milestone | Description | Value (Excl. GST) |
|-----------|---|----------------------|
| 4.1 | Traffic management and control | |
| | Works | |
| 4.2 | Fauna fencing | |
| 4.3 | Fencing (excluding fauna fencing): a) Road reserve/property boundary fencing b) All other fencing | |
| 4.4 | Environmental mitigation measures, including: a) construction phase erosion and sedimentation control and water quality basins b) all other environmental mitigation measures | |
| 4.5 | Topsoil stripping and stockpiling | |
| 4.6 | Demolition | |
| 4.7 | Foundation treatments: a) soft soil treatments b) other foundation treatments | |
| 4.8 | Cuttings and embankments | |
| 4.9 | Subsurface drainage | |
| 4.10 | Cut and batter treatments | |
| 4.11 | Noise attenuation measures | |
| 4.12 | Structures: a) Drainage culverts and structures b) Fauna underpasses c) Farm access underpasses d) Soil and slope structures, including retaining walls | |
| 4.13 | Pavements, including pavement drainage | |
| 4.14 | Roadside furniture including safety barriers, bus facilities, signposting, delineation and lighting | |
| 4.14A | Services and infrastructure for ITS including variable message signs | |
| 4.15 | Urban design and landscaping | |
| 4.16 | Additional and/or balancing items required to complete the Works | |
| | Local Road Works | |
| 4.17 | Local Road Works (excluding bridges): a) Roadworks b) Additional and/or balancing items required to complete the Local Road Works | |
| | Property Works | |

| Milestone | Description | Value (Excl. GST) |
|------------------|--------------------------|------------------------------|
| 4.18 | Property Works | |
| | TOTAL (Excl. GST) | |

Payment Constraints:

1. With respect to any Milestone in this Cost Centre 4:
 - (a) subject to paragraph (b), RMS will pay the Contractor for progressive completion of the Milestone determined on a monthly basis having regard to the value of work carried out in accordance with this deed; and
 - (b) notwithstanding paragraph (a):
 - (i) the Contractor may not make any claim for payment for progressive completion of a Milestone in any month where the value of the work carried out on that Milestone is less than 2½ percent of the total value of the Milestone; and
 - (ii) RMS will not be obliged to make any payment to the Contractor in any month for any Milestone where the amount which would otherwise be payable in that month for that Milestone is less than 2½ percent of the total value of the Milestone.
2. Until completion of removal of Temporary Works, reinstatement and landscaping of this Cost Centre 4, RMS is not obliged to pay the Contractor under this Cost Centre 4 any more than 95% of the total value of this Cost Centre 4.
3. Environmental mitigation measures and surface drainage in this Cost Centre 4 must be complete prior to either the foundation treatments or cuttings and embankments construction in this Cost Centre reaching the stage of 20% complete. Payment will not be made for foundation treatments or cuttings and embankments construction in excess of this 20% limit until the environmental mitigation measures and surface drainage is complete.
4. Fencing on the road reserve / property boundaries must be complete in this Cost Centre prior to any payment under this Cost Centre.

Cost Centre 5 Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping

Northern Section 2

The work of this Cost Centre 5 comprises all permanent and Temporary Works, including intersections and excluding the bridges identified in Cost Centre 6, associated with the construction of the Project Works between Chainage 56km965 and the northern tie-in with the Pacific Highway upgrade, Nambucca Heads to Urunga, including the connections to the existing traffic network.

The work also includes any traffic adjustments required to maintain existing access and traffic flows.

| Milestone | Description | Value (Excl. GST) |
|-----------|---|----------------------|
| 5.1 | Traffic management and control | |
| | Works | |
| 5.2 | Fauna fencing | |
| 5.3 | Fencing (excluding fauna fencing): a) Road reserve/property boundary fencing b) All other fencing | |
| 5.4 | Environmental mitigation measures, including: (a) construction phase erosion and sedimentation control and water quality basins (b) all other environmental mitigation measures | |
| 5.5 | Topsoil stripping and stockpiling | |
| 5.6 | Demolition | |
| 5.7 | Foundation treatments (a) soft soil treatments (b) other foundation treatments | |
| 5.8 | Cuttings and embankments | |
| 5.9 | Subsurface drainage | |
| 5.10 | Cut and batter treatments | |
| 5.11 | Noise attenuation measures | |
| 5.12 | Structures: a) Drainage culverts and structures b) Fauna underpasses c) Farm access underpasses d) Soil and slope structures, including retaining walls | |
| 5.13 | Pavements, including pavement drainage | |
| 5.14 | Roadside furniture including safety barriers, bus facilities, signposting, delineation and lighting | |
| 5.14A | Services and infrastructure for ITS including variable message signs | |
| 5.15 | Urban design and landscaping | |
| 5.16 | Additional and/or balancing items required to complete the Works | |
| | Local Road Works | |
| 5.17 | Local Road Works (excluding bridges): a) Roadworks b) Additional and/or balancing items required to complete the Local Road Works | |
| | Property Works | |

| Milestone | Description | Value (Excl. GST) |
|-----------|--------------------------|----------------------|
| 5.18 | Property Works | |
| | TOTAL (Excl. GST) | |

Payment Constraints:

1. With respect to any Milestone in this Cost Centre 5:
 - (a) subject to paragraph (b), RMS will pay the Contractor for progressive completion of the Milestone determined on a monthly basis having regard to the value of work carried out in accordance with this deed; and
 - (b) notwithstanding paragraph (a):
 - (i) the Contractor may not make any claim for payment for progressive completion of a Milestone in any month where the value of the work carried out on that Milestone is less than 2½ percent of the total value of the Milestone; and
 - (ii) RMS will not be obliged to make any payment to the Contractor in any month for any Milestone where the amount which would otherwise be payable in that month for that Milestone is less than 2½ percent of the total value of the Milestone.
2. Until completion of removal of Temporary Works, reinstatement and landscaping of this Cost Centre 5, RMS is not obliged to pay the Contractor under this Cost Centre 5 any more than 95% of the total value of this Cost Centre 5.
3. Environmental mitigation measures and surface drainage in this Cost Centre 5 must be complete prior to either the foundation treatments or cuttings and embankments construction in this Cost Centre reaching the stage of 20% complete. Payment will not be made for foundation treatments or cuttings and embankments construction in excess of this 20% limit until the environmental mitigation measures and surface drainage is complete.
4. Fencing on the road reserve / property boundaries must be complete in this Cost Centre prior to any payment under this Cost Centre.

Cost Centre 6 Bridges

The work of this Cost Centre 6 comprises all work associated with bridges.

| Milestone | Description | Value (Excl. GST) |
|------------------|--|------------------------------|
| 6.1 | Main Carriageway bridges: | |
| | (a) bridge over Upper Warrell Creek (including over Service Road A and North Coast Railway Line) | |
| | (b) twin bridges over Warrell Creek (including over Scotts Head Road) | |
| | (c) bridge over Nambucca River (including over River Street, Nursery Road and Existing Highway) | |
| | (d) twin bridges over Williamson Creek | |
| | (e) twin bridges over Nambucca Floodplain 1 at chainage 50.20km north of Kempsey | |
| | (f) twin bridges over Nambucca Floodplain 2 at chainage 50.93km north of Kempsey | |
| 6.2 | Transverse bridges over the Main Carriageways at: | |
| | a) Local Access Road D (including over Service Road) | |
| | b) Rosewood Road | |
| | c) Albert Drive | |
| | d) Bald Hill Road Interchange | |
| | e) Old Coast Road South | |
| | f) Mattick Road | |
| | g) Old Coast Road North | |
| 6.3 | Other bridges and structures: | |
| | a) Cockburns Lane Underpass of Main Carriageways | |
| | TOTAL (Excl. GST) | |

Payment Constraints:

1. With respect to any Milestone in this Cost Centre 6:
 - (a) subject to paragraph (b), RMS will pay the Contractor for progressive completion of the Milestone determined on a monthly basis having regard to the value of work carried out in accordance with this deed; and
 - (b) notwithstanding paragraph (a):
 - (i) the Contractor may not make any claim for payment for progressive completion of a Milestone in any month where the value of the work carried out on that Milestone is less than 2½ percent of the total value of the Milestone; and
 - (ii) RMS will not be obliged to make any payment to the Contractor in any month for any Milestone where the amount which would otherwise be payable in that month for that Milestone is less than 2½ percent of the total value of the Milestone.
2. Work deemed to be included within the value of each bridge includes (where appropriate) work associated with:
 - Fencing, environmental works, Property Works, erosion and sediment control, topsoil stripped and stockpiled;
 - Earthworks;
 - Structures;
 - Pavement and drainage;
 - Furniture, median, barriers signage and linemarking;

- Landscaping and noise attenuation; and
- Local Road adjustments.

The value of any bridge not listed in this Cost Centre is deemed to be included in other Cost Centres.

Cost Centre 7

Landscaping Maintenance

This Cost Centre 7 covers payment for all Landscaping Maintenance during the Landscaping Maintenance Period. The Contractor is entitled to claim quarterly payments in accordance with the schedule below and upon completion of all Landscaping Maintenance for each quarterly payment period during the Landscaping Maintenance Period.

| Quarter Payment Period | Payment (Excl. GST) |
|-------------------------------|----------------------------|
| 1st quarter | |
| 2nd quarter | |
| 3rd quarter | |
| 4th quarter | |
| 5th quarter | |
| 6th quarter | |
| 7th quarter | |
| 8th quarter | |
| 9th quarter | |
| 10th quarter | |
| 11th quarter | |
| 12th quarter | |
| Total (Excl. GST) | |

Cost Centre 8

Provisional Sum Work

The work of this Cost Centre 8 comprises all Provisional Sum Work.

| Milestone | Description | Value (Excl. GST) |
|------------------|--------------------------|------------------------------|
| 8.1 | Electrical | |
| 8.2 | Telstra | |
| 8.3 | Optus | |
| 8.4 | Water | |
| 8.5 | Sewer | |
| 8.6 | Nextgen | |
| 8.7 | ARTC | |
| 8.8 | Other | |
| | Total (Excl. GST) | |

Payment Constraints:

1. Any Service Works not identified as Provisional Sum Works must be allowed for elsewhere in the either the Design Payment Schedule or the Construction Payment Schedule.

Cost Centres 1 to 8 - Construction Contract Sum

| Cost Centre | Description | Value (Excl. GST) |
|--------------------|---|------------------------------|
| 1 | Preliminaries and General Requirements | |
| 2 | Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping – Southern Section 1 | |
| 3 | Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping – Southern Section 2 | |
| 4 | Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping – Northern Section 1 | |
| 5 | Earthworks, Drainage, Pavement, Roadside Furnishings and Landscaping – Northern Section 2 | |
| 6 | Bridges | |
| 7 | Landscaping Maintenance | |
| 8 | Provisional Sum Works | |
| | Construction Contract Sum (Excl. GST) | |

Cost Centre 9 Schedule of Daywork Rates and Prices and Margins for Variations

9.1 Rates for Variations directed as Daywork

The hourly and daily rates for the purpose of valuing Variations directed as Daywork under clause 15.4(e)(ii) of this deed for all classes of labour and plant intended for use during the construction phase are listed below. Rates listed below include on-site overheads (including supervision above leading hand level), but are exclusive of off-site overheads, profit margin and GST. Plant hire rates are inclusive of operators and fuel costs unless identified otherwise. These rates are inclusive of rise and fall and will not be subject to rise and fall in accordance with Construction Rise and Fall.

Labour Rates

| Item No | Description | Unit | Rate (excl GST) |
|----------------|--------------------------------|-------------|------------------------|
| L1.1 | Labourer (Ordinary Time) | hour | |
| L1.2 | Labourer (Time and a Half) | hour | |
| L1.3 | Labourer (Double Time) | hour | |
| L2.1 | Tradesperson (Ordinary Time) | hour | |
| L2.2 | Tradesperson (Time and a Half) | hour | |
| L2.3 | Tradesperson (Double Time) | hour | |
| L3.1 | Leading Hand (Ordinary Time) | hour | |
| L3.2 | Leading Hand (Time and a Half) | hour | |
| L3.3 | Leading Hand (Double Time) | hour | |

Plant Rates

| Item No | Plant Description (includes operator and fuel) | Unit | Rate (all hours – excl GST) |
|----------------|---|-------------|------------------------------------|
| P1 | Skidsteer loader (Bobcat) | hour | |
| P2 | Skidsteer loader and broom | hour | |
| P3 | Backhoe (dig depth up to 5 m) | hour | |
| P4 | Backhoe + hammer | hour | |
| P5 | Dozer 98 to 145 kW (equivalent to Caterpillar D6) | hour | |
| P6 | Dozer 145 to 175 kW (equivalent to Caterpillar D7) | hour | |
| P7 | Dozer 220 to 305 kW (equivalent to Caterpillar D8) | hour | |
| P8 | Dozer 305 to 400 kW (equivalent to Caterpillar D9) | hour | |
| P9 | Grader 160 kW (equivalent to Caterpillar 14H) | hour | |
| P10 | Loader (up to 90 kW) | hour | |
| P11 | Roller, multi-tyred < 14 t | hour | |

| Item No | Plant Description (includes operator and fuel) | Unit | Rate (all hours – excl GST) |
|----------------|---|-------------|------------------------------------|
| P12 | Roller, multi-tyred > 15 t | hour | |
| P13 | Roller, padfoot < 12 t | hour | |
| P14 | Roller, padfoot > 12 t | hour | |
| P15 | Roller, smooth drum < 12 t | hour | |
| P16 | Roller, smooth drum > 12 t | hour | |
| P17 | Scraper, open bowl, 17 to 28 m ³ | hour | |
| P18 | Excavator < 10 t | hour | |
| P19 | Excavator < 10 t + hammer | hour | |
| P20 | Excavator 12 t | hour | |
| P21 | Excavator 12 t + hammer | hour | |
| P22 | Excavator 20 t | hour | |
| P23 | Excavator 20 t + hammer | hour | |
| P24 | Excavator 30 t | hour | |
| P25 | Excavator 30 t + hammer | hour | |
| P26 | Watercart 15,000 L | hour | |
| P27 | Truck 13 t payload | hour | |
| P28 | Truck and dog 30 t payload | hour | |
| P29 | Vacuum broom | hour | |
| P30 | Road profiler < 1 m cutting width | hour | |
| P31 | Road profiler > 1 m cutting width | hour | |
| P32 | Air compressor (without operator) 41 L/s | day | |
| P33 | Air compressor (without operator) 83 L/s | day | |
| P34 | Generator 6.8 kVA (without operator) | day | |
| P35 | Water Pump < 1,000 L/min (without operator) | day | |
| P36 | Water Pump 1,000 to 2,000 L/min (without operator) | day | |
| P37 | Wacker packer (without operator) | day | |
| P38 | Wacker plate (without operator) | day | |
| P39 | Handheld pneumatic hammer 10 kg (without operator) | day | |
| P40 | Quick cut concrete saw (without operator) | day | |
| P41 | Flexi drive motor and poker vibrator (without operator) | day | |
| P42 | Flexi drive motor and pump (without operator) | day | |

9.2 Procedure for valuing Variations directed as Daywork

- (a) If the RMS Representative directs that a Variation be carried out as Daywork, the RMS Representative may direct the amount, type and conditions of use of labour, plant and materials to be used in the Variation.
- (b) The Contractor must record the particulars of all resources used by the Contractor each day in carrying out the Variation. The method of recording the resources must be agreed in advance by the RMS Representative.
- (c) When submitting a claim for payment for the Variation in a progress claim under clause 18.2 of this deed, the Contractor must submit the records and all time sheets, wages sheets, invoices, receipts and other documents that are necessary to support the claim for payment for the Variation.
- (d) The RMS Representative must assess the value of the Variation to be paid to the Contractor in respect of each progress claim and in making its assessment must have regard to the following:
 - (i) the amount of wages and allowances for labour calculated by multiplying the hourly rate of the nearest appropriate labour classification in this Schedule, by the relevant labour hours worked on the Variation;
 - (ii) the amount of hire charges for construction plant and vehicles hired from third parties or owned by the Contractor, calculated by multiplying the hourly rate of the nearest appropriate construction plant and vehicle classification in this Schedule, by the relevant plant or vehicle hours worked on the Variation;
 - (iii) where there is no appropriate construction plant or vehicles listed in this Schedule, then the reasonable actual amount of hire charges for that construction plant and vehicles hired from third parties or owned by the Contractor as recorded on invoices or other relevant documentation;
 - (iv) the reasonable actual mobilisation and demobilisation costs of construction plant and vehicles (where brought to Site only for the directed Daywork);
 - (v) the reasonable costs to the Contractor of Subcontractor work involved in carrying out the Variation;
 - (vi) the reasonable actual cost at the Site of all materials; and
 - (vii) the reasonable actual cost of additional supervisory and administrative staff brought to the Site only for the directed Daywork.
- (e) Assessment by the RMS Representative of the value of a Variation carried out as Daywork will include valuation of all reasonable and necessary costs incurred of personnel, plant, vehicles, Subcontractors, and materials used by the Contractor in carrying out the Variation as instructed by the RMS Representative, subject to:
 - (i) the valuation of the Variation will only include costs for actual time of any resources which are employed on the Variation; and
 - (ii) the costs of supervisory, technical and administrative personnel that are normally engaged on the Works and continue to be so during the Daywork will not be included in the RMS Representative's assessment of the valuation of the Variation.
- (f) Subject to clause 9.2(e) and clause 9.3(a), no other costs are to be included in the RMS Representative's valuation of the Variation carried out by Daywork, other than those costs outlined in clause 9.2(d).

9.3 Margins for Variations

- (a) Where the adjustment to the Construction Contract Sum is to be made as a result of valuing a Variation as Daywork under clause 15.4(e)(ii) of this deed, the total amount to be added to the reasonable cost of the relevant work (exclusive of GST) on account of all additional overheads and profit margin is **12%**.
- (b) Where the adjustment to the Construction Contract Sum is to be made as a result of valuing a Variation under clause 15.4(e)(iii) of this deed, the total amount to be added to the reasonable cost of the relevant work (exclusive of GST) on account of off-site overheads and profit margin is **10%**, regardless of whether the adjustment to the Construction Contract Sum is to be an increase or a decrease.

Construction Rise and Fall

(Clause 23.2 (definition of "Construction Rise and Fall"))

1 Method of cost adjustment

- 1.1 Each payment under clause 18 in respect of the Construction Contract Sum will be adjusted in accordance with this paragraph 1.
- 1.2 The method of adjustment is as follows (in the order set out below):
 - 1.2.1 Deduct from the value of the payment schedule referable to the Construction Contract Sum otherwise proposed to be made by RMS under clause 18.2 the sum of:
 - A. the value of the immediately preceding payment schedule referable to the Construction Contract Sum; and
 - B. amounts payable to the Contractor for items referred to in paragraph 5 for work carried out in performance of the Contractor's Work and incorporated in the Project Works since the date of the immediately preceding payment schedule.
 - 1.2.2 Multiply the result by the Costs Adjustment Factor in paragraph 2.
 - 1.2.3 If the net Costs Adjustment Factor is positive, add the result to the value of the payment to be made.
 - 1.2.4 If the net Costs Adjustment Factor is negative, subtract the result from the value of the payment to be made.

2 Costs adjustment formula

- 2.1 Subject to paragraph 3, the Costs Adjustment Factor is determined by the following formula:

$$C = r \left(\frac{Rn}{Ro} \times \frac{Xn - Xo}{100 + Xo} + \frac{Rn}{Ro} \times \frac{Yn - Yo}{100 + Yo} \right) + 0.85 \left(\frac{Rn - Ro}{Ro} \right)$$

where

- C = Costs Adjustment Factor
- r = Labour costs proportion of the Construction Contract Sum which for the purposes of this paragraph is 0.425 only for bridge construction contracts (and the bridge construction portion of combined road and bridge construction contracts) and 0.350 only for roadworks, earthworks and drainage contracts (and the roadworks construction portion of combined road and bridge construction contracts).
- Rn = Road and Bridge Construction New South Wales Index Number 3101, which is in 6427.0 - Producer Price Indexes, Australia Division E Table 15 as published by the Australian Bureau of Statistics applicable to the calendar month immediately preceding the last calendar month in which the work the subject of the relevant payment schedule was carried out.
- Ro = Road and Bridge Construction New South Wales Index Number 3101, which is in 6427.0 - Producer Price Indexes, Australia Division E Table 15 as published by the Australian Bureau of Statistics applicable to the calendar month preceding the calendar month during which tenders closed.
- Xn = Current Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable to the

calendar month immediately preceding the last calendar month in which the work the subject of the relevant payment schedule was carried out.

X_o = Base Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable as at the calendar month immediately preceding the calendar month during which tenders closed.

Y_n = Current Workers' Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the Workers' Compensation Act 1987, Insurance Premiums Order 2002-2003 for Road and Bridge Construction (Group 412 Class 412100) applicable as at the calendar month immediately preceding the last calendar month in which the work the subject of the relevant payment schedule was carried out.

Y_o = Base Workers' Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the Workers' Compensation Act 1987, Insurance Premiums Order 2002-2003 for Road and Bridge Construction (Group 412 Class 412100) applicable on the first day of the calendar month immediately preceding the calendar month during which tenders closed.

NOTE: Rates published by Australian Bureau of Statistics are for quarterly periods and the rate for the calendar month will be the rate for the quarter containing that calendar month.

3 Adjustment of new rates

3.1 If RMS directs a Variation Order under clause 15.2 which is not of the same class of works referred to in Schedule 3, every payment made under clause 18 for the relevant Variation will be adjusted in the following manner:

3.1.1 the value of the Contractor's Work to be stated by RMS Representative in a payment schedule under clause 18.2 will be multiplied by the Costs Adjustment Factor referred to in paragraph 2 as varied by paragraph 3.1.3;

3.1.2 the amount which is produced as a result of the operation of paragraph 3.1.1 will, where the Costs Adjustment Factor (as varied by this paragraph) is positive, be added to, or where the Cost Adjustment Factor (as varied by this paragraph) is negative, be subtracted from the value of the Contractor's Work to be stated by RMS Representative in the payment schedule under clause 18.2 in respect of the Contractor's Work; and

3.1.3 for the purposes of paragraph 3, the words "the calendar month in which the Contractor submitted or RMS Representative stated the rate or price referred to in paragraph 3" replace the words "the calendar month during which tenders closed" in the definition of each of the terms "R_o", "X_o" and "Y_o" in paragraph 2.

4 Index Numbers as first published

The Index Numbers referred to in this paragraph as being published by the Australian Bureau of Statistics are the numbers as first published for a particular month by the Australian Bureau of Statistics. For the purposes of this paragraph, those numbers are not subject to alteration following publication of revised, amended or corrected numbers.

5 Items not to be adjusted

Payments made to the Contractor for the following items will not be adjusted at all:

5.1 extra work as a result of a Variation directed by RMS Representative under clause 15.2 to be executed by the Contractor at a price or prices agreed between RMS and the Contractor in accordance with clause 15.4(d) unless the agreement expressly provides for cost adjustment;

5.2 extra work as a result of a Variation directed by RMS Representative under clause 15.2 and valued under clause 15.4(e)(i), clause 15.4(e)(ii) or clause 15.4(e)(iii) unless notified otherwise by RMS Representative; and

5.3 items subject to a separate cost adjustment under paragraph 6.

6 Cost adjustment for the supply of bitumen

6.1 The Construction Contract Sum will be subject to adjustments for variations in the cost of bitumen supplied by the Contractor. The adjustment must be effected in the payment claims submitted by the Contractor in accordance with clause 18.2 and the payment schedules issued under clause 18.2.

6.2 Any cost adjustment under this paragraph 6 will be calculated from the formula:

$$D = (C - B) \times A$$

where -

A = the quantity of bitumen derived from -

1. The calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat.
2. The approved design binder content where the product is asphalt.
3. The approved residual binder content where the product is a bituminous slurry surfacing.

B = the Price of Class 170 bitumen applicable on the last day of the month immediately preceding the month during which the tenders closed;

C = the Price of Class 170 bitumen on the last day of the month immediately preceding the month during which the work is performed; and

D = the applicable cost adjustment for this payment claim.

The Price of Class 170 bitumen will be the average of the prices for the suppliers contracted to supply the RMS on its panel contract for the Supply of Bitumen and Related Products.

7 No other costs adjustment

Unless expressly provided elsewhere in this deed, there is no adjustment for any costs changes except as provided by paragraphs 1-6 inclusive. The Contractor accepts the provisions under paragraphs 1-6 inclusive in full compensation for all costs changes which occur after the closing date of tenders irrespective of their nature and including those consequent upon alteration in the standard working hours and industrial conditions applicable to or prescribed for any industry generally by an Act, Court, Commission or Authority.

Contractor's Statement

(clause 18.2(a)(ii)(F))

Part 1: Contractor Statement

Contractor Statement

Payment of Workers, Worker's Compensation Premiums & Payroll Tax



This Statement must be provided whenever payment is sought for any work carried out for Roads and Maritime Services (RMS) by a Contractor (see Notes 1 & 5 overleaf).
RMS is entitled to withhold payment until this Statement is provided (see Note 2).

Workers Compensation
 Insurance Certificate of
 Currency for the work
 period in question. Unless
 the contractor is exempt

Details

| | | | |
|--|---------------------------|-------------------------|---------------------------------------|
| Contractor's Legal Name | <input type="text"/> | | |
| Contractor's Trading / Business Name | <input type="text"/> | | |
| Contractor's ABN | <input type="text"/> | <input type="text"/> | Contractor's ACN <input type="text"/> |
| Contractor's Address | <input type="text"/> | | |
| Name or description of Contract or Works | <input type="text"/> | | |
| Period of Work this Statement applies to (see Note 3) | From <input type="text"/> | To <input type="text"/> | |
| Invoice or Payment Claim Numbers this applies to | <input type="text"/> | | |
| Invoice or Payment Claim Dates this Statement applies to | <input type="text"/> | | |

Statement Validity Period

This Statement applies to all work performed by the Contractor for RMS in respect of the above Contract/ Works for the period stated above (see Notes 3 & 4).

Declaration

Tick one in each row

I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:

| | |
|---|--------------------------|
| • All workers engaged by the Contractor in respect of the works have been paid (see Note 6); | <input type="checkbox"/> |
| • All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or | <input type="checkbox"/> |
| • the Contractor is an exempt employer for workers compensation purposes (see Note 7); | <input type="checkbox"/> |
| • The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees; or | <input type="checkbox"/> |
| • the Contractor is not required to be registered; | <input type="checkbox"/> |
| • The Contractor has not engaged any subcontractors for the works; or | <input type="checkbox"/> |
| • The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true) | <input type="checkbox"/> |
| • I am authorised to make this declaration and I am in a position to know the truth of its contents | <input type="checkbox"/> |

Signature of Authorised Person

Name of Signatory (print)

Date

Position / Job Title of Signatory (print - see Note 4)

(see Notes on page 2)

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Notes

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to “Subcontractor” and “Principal Contractor” in the legislation mentioned below have been changed in this Statement to “Contractor” and “RMS” respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* (“IRA”), section 175B of the *Workers Compensation Act 1987* (“WCA”) and Schedule 2 Part 5 of the *Payroll Tax Act 2007* (“PTA”). These provisions allow RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:
 - a. all workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where RMS is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for RMS. Generic versions of this Statement for non-RMS use can be obtained at:

http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or

<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

RMS will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rprt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office

of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Part 2. Supporting Statement

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

*Head contractor: [*business name of head contractor*] ABN [*insert ABN*] has entered into a contract with [*business name of subcontractor*] ABN [*insert ABN*], contract number/identifier [*insert*].

OR

*Head contractor [*business name of head contractor*] ABN [*insert ABN*] has entered into a contract with the subcontractors listed in the attachment to this statement.

*[*delete whichever of the above does not apply*]

This statement applies for work between [*start date*] and [*end date*] inclusive (the construction work concerned), subject of the payment claim dated [*date*].

I, [*full name*] being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: _____ Date: _____

Full Name: _____ Position/Title: _____

Attachment to the Supporting Statement

| Schedule of subcontractors paid all amounts due and payable | | | | |
|--|------------|-----------------------------------|-------------------------------|--|
| Subcontractor | ABN | Contract number/identifier | Date of works (period) | Payment claim dated (head contractor claim) |
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| Schedule of subcontractors for which an amount is in dispute and has not been paid | | | | |
|---|------------|-----------------------------------|-------------------------------|--|
| Subcontractor | ABN | Contract number/identifier | Date of works (period) | Payment claim dated (head contractor claim) |
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Notes for Supporting Statement

Offences for False Statement

In terms of s 13(8) of the *Building and Construction Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

Unconditional Undertaking

(clause 8.1(a))

This deed poll ("Undertaking")
made the _____ day of _____ 20____
in favour of: **ROADS AND MARITIME SERVICES, (ABN 76 236 371 088) ("the Principal")**
given by: **[Insert name of Financial Institution] ("Financial Institution")**

The Contractor: » **[Insert Contractor's name]**
ABN: » **[Insert Contractor's ABN]**
Security Amount: » \$.....
The Contract: The Project Deed between the Principal and the Contractor
Contract Title: » **[Insert project description]**
Contract Number: » **[Insert contract number]**

Other words and phrases in this Undertaking have the meanings given in the Project Deed.

Undertaking

1. At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
3. The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This Undertaking continues until one of the following occurs:
 - 4.1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - 4.2 this Undertaking is returned to the Financial Institution; or
 - 4.3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
5. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

SIGNED as a deed poll.

Signed sealed and delivered for and on behalf of **[Insert name of Financial Institution]** by its Attorney under a Power of Attorney dated *[insert date]*, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Attorney

Signature of Witness

Name of Attorney in full

Name of Witness in full

Parent Company Guarantee

Deed of Guarantee and Indemnity

made at _____ on _____ 20____

between **ROADS AND MARITIME SERVICES**, ABN 76 236 371 088 of Level 9, 101 Miller Street North Sydney 2060
(Beneficiary)

and **[insert Guarantor's name]** (ABN **[insert Guarantor's ABN]**) of **[insert Guarantor's address]** (**Guarantor**)

Recitals

- A The Beneficiary has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provides this Deed.
 - B The Guarantor considers that by providing this Deed there will be a commercial benefit flowing to the Guarantor.
-

This Deed witnesses

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Contract means the deed dated on or about the date of this Deed between the Beneficiary and the Contractor for the design and construction of the Pacific Highway upgrade – Warrell Creek to Nambucca Heads.

Contractor means Acciona-Ferrovial Joint Venture an unincorporated joint venture comprising: Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street Brisbane QLD, 4000 and Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street, North Sydney NSW 2060.

Contractor's Obligations means the due and punctual performance by the Contractor of all of its liabilities, obligations and agreements (present or future, actual or contingent) to the Beneficiary pursuant to or in connection with the Contract and each other Transaction Document but excluding all of the Contractor's Obligations with respect to payment of the Guaranteed Money.

Encumbrance means a mortgage, charge, pledge, lien, hypothecation, guarantee (including the guarantee under this Deed), indemnity, letter of credit, letter of comfort, performance bond or other avoidance against loss which secures any obligation which is or may be or becomes owing by any other Relevant Person to the Guarantor.

Government Agency means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

Guaranteed Money means all money which the Contractor (whether alone or with any other person) is or at any time becomes actually or contingently liable to pay to, or for the account of, the Beneficiary on any account whatsoever under or in connection with the Contract or other Transaction Document including, without limitation, by way of interest, fees, costs, indemnities, charges, duties and expenses, or through payment of damages under or in relation to, or as a consequence of any breach or default of, the Contract or any other Transaction Document.

Guaranteed Obligations means the due and punctual payment of the Guaranteed Money and the due and punctual performance of the Contractor's Obligations.

Material Adverse Effect means, in respect of a person, a material adverse effect on:

- (a) its business, assets or financial condition; or
- (b) its ability to perform its obligations under any Transaction Document.

Relevant Person means the Contractor, the Guarantor and any person who has executed a Security in favour of the Beneficiary.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including the guarantee under this Deed), indemnity (including the indemnity under this Deed), letter of credit, letter of comfort, performance bond, or other assurance against loss which secures the Guaranteed Money, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means 2% above the Overdraft Index Rate fixed from time to time by the Commonwealth Bank of Australia.

Tax means any present or future tax, GST, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine and expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on overall net income.

Transaction Document means each of:

- (a) this Deed;
- (b) the Contract;
- (c) any other document which the Guarantor and the Beneficiary so designate in writing;
- (d) each other document contemplated by or required in connection with any of the above or the transactions they contemplate; and
- (e) each document entered into for the purpose of amending, novating, restating or replacing any of the above.

Unpaid Amount means an amount which is not paid on the date on which it is due and payable under this Deed.

1.2 The Contract

Defined words and expressions used in this Deed have the meanings given to them in the Contract.

1.3 Interpretation

In this Deed unless the context indicates a contrary intention:

- (a) if the "Contractor" is more than one person, "Contractor" means each of them severally and every two or more of them jointly;
- (b) if the Guarantor is more than one person, "Guarantor" means each of them severally and every two or more of them jointly;
- (c) "person" includes an individual, a body politic, a corporation and a statutory or other authority or association whether incorporated or unincorporated;
- (d) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (e) a reference to any document or agreement is to such document or agreement as amended, novated, supplemented or replaced from time to time;
- (f) the singular includes the plural (and vice versa) and words denoting a given gender include all other genders;
- (g) headings are for convenience only and do not affect interpretation; and
- (h) unless otherwise stated, a reference to any amount is a reference to all or part of the amount.

1.4 No contra proferentem

No term or provision of this Deed shall be construed against a party on the basis that the Deed or the term or provision in question was put forward or drafted by that party.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Beneficiary:

- (a) the due and punctual payment by the Contractor of the Guaranteed Money; and
- (b) the due and punctual performance by the Contractor of all of the Contractor's Obligations.

2.2 Payment of Guaranteed Money

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Beneficiary the Guaranteed Money which is then due and payable.

2.3 Perform obligations

If the Contractor defaults in the performance or observance of any of the Contractor's Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Beneficiary, immediately perform (or procure the performance of) any of the Contractor's Obligations then required to be performed by the Contractor in the same manner and on the same terms as the Contractor is required to perform the Contractor's Obligations.

3. Indemnity

Subject to clause 3A, as a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiary and at all times to keep the Beneficiary indemnified against any loss or damage suffered by the Beneficiary arising out of or in connection with:

- (a) any failure by the Contractor to pay the Guaranteed Money duly and punctually; or
- (b) any failure by the Contractor to observe or perform any of the Contractor's Obligations; or
- (c) any Transaction Document being wholly or partly void, voidable or unenforceable against the Contractor or the Guarantor for any reason and whether or not the Beneficiary knew or ought to have known of that reason, with the result in any such case that:
 - (i) sums which would (but for the voidness, voidability or unenforceability) have been Guaranteed Money are not recoverable by the Beneficiary under clause 2; or
 - (ii) obligations which would (but for the voidness, voidability or unenforceability) have been Contractor's Obligations are not guaranteed under clause 2.3; or
- (d) a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or any other applicable laws.

3A. Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
 - (ii) the liability of the Guarantor under this Deed in respect of a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Contractor and the Guarantor liable for the same loss twice for the one breach of the Contract by the Contractor; and
 - (iv) payment by one of the Contractor or the Guarantor to or in favour of the Beneficiary shall be deemed to be good discharge against the Beneficiary in respect of that payment.
- (b) The limitation of liability under this clause 3A does not apply to liability to pay any

GST in accordance with clause 7.3 of this Deed or otherwise.

- (c) Nothing in this clause shall limit the Guarantor's liability for Contractor's Obligations which arise from or would have arisen from unenforceable Contractor's Obligations referred to in clause 3(c) of this Deed (if those Contractor's Obligations had not been voided, avoided or unenforceable), subject to such liability not exceeding the liability that the Contractor would have had if the Contractor's Obligations had not been unenforceable Contractor's Obligations.

4. Nature and preservation of liability

4.1 Absolute liability

The liability of the Guarantor under this Deed arises immediately on execution and delivery of this Deed by the Guarantor and:

- (a) arises notwithstanding that any person expressed to be a party to this Deed does not execute and deliver this Deed, that there is any invalidity, forgery or irregularity in the execution or purported execution of this Deed by any person, or that this Deed is or becomes unenforceable against any such person for any reason; and
- (b) is not conditional on the entering into by any other person of any other document or agreement which might benefit (directly or indirectly) the Guarantor, or on the satisfaction of any other condition.

4.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any thing which, but for this clause 4.2, would release the Guarantor from or reduce that liability, including but not limited to:

- (a) (**Invalidity etc.**): any Security or any Transaction Document being terminated or discharged (whether by any party thereto or by operation of law) or being or becoming void, voidable or unenforceable for any reason;
- (b) (**Other Securities**): the Beneficiary accepting or declining to accept any Security from any person;
- (c) (**Time or indulgence**): the Beneficiary granting or agreeing with the Guarantor or the Contractor to grant time, waiver or other indulgence or concession to, or making any composition or compromise with any person whether or not pursuant to any Transaction Document;
- (d) (**Forbearance**): the Beneficiary not exercising or delaying in the exercise of any remedy or right it has at any time to terminate or enforce its rights under this Deed, any Transaction Document or any Security;
- (e) (**Variation**): any variation, novation or alteration to or substitution of this Deed, any Transaction Document or any Security, whether or not that variation, novation or alteration permits or results in a change in the Guaranteed Obligations including the amount of the Guaranteed Money or a change in the date by which it must be paid, or a change in the identity of the Contractor;
- (f) (**Release**): the partial or conditional release or discharge by the Beneficiary or by operation of law of any Relevant Person from its obligations under any Transaction Document or any Security, except only to the extent that RMS has, in writing, provided a release or discharge which has the effect of reducing the obligations of the Relevant Person;
- (g) (**Securities**): the Beneficiary enforcing, releasing, disposing of, surrendering, wasting, impairing, destroying, abandoning, prejudicing, or failing or delaying to perfect, maintain, preserve, realise or enforce any Transaction Document or any Security, whether negligently or otherwise;
- (h) (**Accounts**): the opening or operation of any new account with the Beneficiary by the Contractor;
- (i) (**Change of constitution**): any change for any reason in the name or manner in which the Beneficiary or any Relevant Person carries on business, including any change in any partnership, firm or association of which the Beneficiary or any Relevant Person is a member;

- (j) **(Disclosure):** any failure by the Beneficiary to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known by, or which ought to have been known by, the Beneficiary relating to or affecting any Relevant Person before or at any time after the date of this Deed;
- (k) **(Prejudicial conduct):** any breach by the Beneficiary of any term of any Transaction Document or Security or any other act or omission (negligent or otherwise) of the Beneficiary with regard to any Transaction Document, any Security or any Relevant Person which is prejudicial to the interests of the Guarantor;
- (l) **(Preference):** any claim by any person that a payment to, receipt by, or other transaction in favour of the Beneficiary in or towards satisfaction of the Guaranteed Money is void, voidable or capable of being set aside under any law relating to bankruptcy, insolvency or liquidation being upheld, conceded or compromised;
- (m) **(Assignment):** the transfer, assignment or novation by the Beneficiary or any Relevant Person of all or any of its rights or obligations under any Transaction Document or Security to which it is a party;
- (n) **(Death or incapacity):** (where the Guarantor is an individual) the death or mental incapacity of the Guarantor;
- (o) **(Administration):** the provisions of section 440J of the *Corporations Act 2001* (Cth) so operating as to prevent or delay:
 - (i) the enforcement of this Deed against the Guarantor; and/or
 - (ii) any claim for contribution against the Guarantor; or
- (p) **(Disclaimer):** a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

4.3 No marshalling

The Beneficiary is under no obligation to marshal or appropriate in favour of the Guarantor or to exercise, apply, transfer or recover in favour of the Guarantor any Security or any funds or assets that the Beneficiary holds, has a claim on, or is entitled to receive.

4.4 Void or voidable transactions

If:

- (a) the Beneficiary has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed or any Security executed by the Guarantor; or
 - (ii) any assets of the Guarantor from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of the Beneficiary;
- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under a law relating to bankruptcy, insolvency or liquidation; and
- (c) that claim is upheld, conceded or compromised,

then:

- (d) **(Restitution of rights):** the Beneficiary will immediately become entitled against the Guarantor to all such rights (including under any Security) as it had immediately before that release or discharge;
- (e) **(Restore Beneficiary's position):** the Guarantor must immediately do all things and execute all documents as the Beneficiary may reasonably require to restore to the Beneficiary all those rights; and
- (f) **(Indemnity):** the Guarantor must indemnify and keep indemnified the Beneficiary against costs, losses and expenses suffered or incurred by the Beneficiary as a result of the upholding, concession or compromise of the claim.

4.5 No double proof

This Deed constitutes a guarantee of the whole of the Guaranteed Obligations, even if the Beneficiary and the Guarantor have agreed or agree at any time that the Guarantor's liability

under this Deed will be limited to a maximum amount. Accordingly, the Guarantor is not entitled to:

- (a) lodge any proof of debt in the winding up of the Contractor;
- (b) exercise any right of subrogation; or
- (c) otherwise be entitled to the benefit of any Security held by the Beneficiary, with respect to any claim arising as a result of the Guarantor making a payment under this Deed, unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

4.6 Suspense account

The Beneficiary may retain and carry to a suspense account and appropriate at the discretion of the Beneficiary any dividend received by the Beneficiary in the winding up of any Relevant Person, plus any other sums received by the Beneficiary on account of the Guaranteed Money, until the Beneficiary has received the full amount of the Guaranteed Money.

4.7 Proof of debt in competition with Beneficiary

The Guarantor must prove in the winding up of any Relevant Person in respect of any claim it has against that Relevant Person other than a claim arising as a result of the Guarantor making a payment under this Deed, and agrees to hold any dividend received in respect of that proof on trust for the Beneficiary in or towards satisfaction of the Guarantor's obligations under this Deed.

4.8 Claim on the Guarantor

The Beneficiary is not required to take any steps to enforce its rights under any Transaction Document or any Security before enforcing its rights against the Guarantor under this Deed.

4.9 No representation by Beneficiary

The Guarantor acknowledges that in entering into this Deed it has not relied on any representation, warranty or statement by the Beneficiary.

4.10 No contribution

The Guarantor must not make a claim under or enforce any right of contribution it may have against any other Relevant Person unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

5. Corporate representations and warranties

5.1 Representations and warranties

If the Guarantor is a body corporate, it represents and warrants to the Beneficiary that:

- (a) **(Constitution)**: the execution, delivery and performance of this Deed does not violate its constitution or any other document, agreement, law or rules by which it is bound;
- (b) **(Corporate power)**: it has taken all action required to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed;
- (c) **(Filings)**: it has filed all notices and effected all registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law, and those filings and registrations are current, complete and accurate;
- (d) **(Corporate benefit)**: the execution of this Deed is in the best commercial interests of the Guarantor;
- (e) **(Consideration)**: this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (f) **(Status)**: it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth) ('ASC Law'), or the subject of an investigation under, or taken to be under, the ASC Law;

- (g) (**Ownership of property**): it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (h) (**Ranking of obligations**): this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (i) (**No litigation**): no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, would be likely to have either separately or in aggregate a Material Adverse Effect on it or any of its subsidiaries;
- (j) (**Financial statements**): its financial statements current as at the date of this Deed have been prepared in accordance with the laws of Australia or laws in its jurisdiction of incorporation and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a Material Adverse Effect on it, or on it and its subsidiaries on a consolidated basis;
- (k) (**Other information**): the written information and reports (if any) which it has given to the Beneficiary in connection with the negotiation and preparation of this Deed:
 - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
 - (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed; and
- (l) (**No filings or Taxes**): it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Deed that this Deed or any other instrument be filed or registered with any Government Agency or that any Taxes be paid.

5.2 Reliance on representations and warranties

The Guarantor acknowledges that the Beneficiary entered into the Contract in reliance on the representations and warranties in this clause 5.

5.3 No representations to Guarantor

The Guarantor confirms that it has not executed this Deed as a result of or in reliance upon any promise, representation, statement or information of any kind or nature whatever given or offered to it by or on behalf of the Beneficiary whether in answer to any inquiry by or on behalf of the Guarantor or not.

6. Payments

6.1 On demand

All money payable by the Guarantor under this Deed must be paid on demand by the Beneficiary in immediately available funds to the account and in the manner notified from time to time by the Beneficiary to the Guarantor.

6.2 Payment in gross

All money received or recovered by the Beneficiary on account of the Guaranteed Money will be treated as payments in gross.

6.3 Appropriation of payments

The Beneficiary may appropriate any money received by it under or in respect of this Deed, any Transaction Document or any Security in the manner and order and at all times as the Beneficiary in its absolute discretion determines.

6.4 Interest

The Guarantor must on demand by the Beneficiary from time to time pay interest on all Unpaid Amounts. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment at the Specified Rate and, if not paid when due, will itself bear interest in accordance with this clause 6.4. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

6.5 Merger

If the liability of the Guarantor to pay to the Beneficiary any money under this Deed becomes merged in any judgment or order, then as an independent obligation the Guarantor must pay interest on the amount of that money at the rate which is the higher of that payable under clause 6.4 and that fixed by or payable under the judgment or order.

6.6 Withholding for Taxes

All payments by the Guarantor under this Deed will be without deduction or withholding for any present or future Taxes unless the Guarantor is compelled by law to make any deduction or withholding and if this is the case, the Guarantor must pay to the Beneficiary any additional amounts as are necessary to enable the Beneficiary to receive, after all those deductions and withholdings, a net amount equal to the full amount which would otherwise have been payable had no deduction or withholding been required to be made.

7. Expenses, stamp duty and GST

7.1 Expenses

The Guarantor must on demand indemnify and keep indemnified the Beneficiary against all reasonable expenses, including legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Beneficiary in connection with the successful enforcement, attempted enforcement or preservation of any rights under this Deed.

7.2 Stamp duties

The Guarantor must:

- (a) **(Payment of all duties):** pay all stamp duties, registration and similar Taxes, including fines and penalties, financial institutions duty (if any) and debits tax (if any) in connection with the execution, delivery, performance, enforcement or attempted enforcement of this Deed or any payment or other transaction under or contemplated in this Deed; and
- (b) **(Indemnity):** indemnify and keep indemnified the Beneficiary against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

7.3 Goods and Services Tax

- (a) Capitalised expressions which are not defined in this clause 7.3 but which have a defined meaning in the GST Law have the same meaning in this clause 7.3.

In this clause 7.3 and elsewhere in this Deed where relevant:

- (i) **GST** means the goods and services tax imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed;
- (ii) **GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;
- (iii) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (iv) **Payment** means:

- (A) the amount of any monetary consideration (other than a GST Amount payable under this clause 7.3); and
 - (B) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed or the Contract and includes an amount payable by way of indemnity, reimbursement, compensation or damages.
- (b) The parties agree that:
 - (i) all Payments have been set or determined at an amount which is net of GST;
 - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Beneficiary, the GST Amount in respect of the Payment must be paid by, or on behalf of, the Guarantor to the Beneficiary as any additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
 - (iii) the Beneficiary will provide a Tax Invoice, before any GST Amount is payable under this clause 7.3(b).
- (c) If a payment (including a Payment as defined in this clause 7.3) to the Beneficiary by the Guarantor under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Beneficiary, then the payment will be reduced by the amount of any input tax credit to which the Beneficiary is entitled for that loss, cost or expense.

8. Assignments

The Beneficiary may at any time assign or otherwise transfer all or any part of its rights under any Transaction Document and may disclose to a proposed assignee or transferee any information in the possession of the Beneficiary relating to the Guarantor.

9. Governing law and jurisdiction

9.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 9.3 of Schedule 7A, is governed by and will be construed in accordance with the laws of the State or Territory which govern the Contract.

9.2 Jurisdiction

- (a) **(Acceptance of jurisdiction):** The Guarantor irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State or Territory whose laws govern this Deed with respect to any legal action or proceedings which may be brought at any time relating in any way to this Deed.
- (b) **(No objection to inconvenient forum):** The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

10. Miscellaneous

10.1 Certificate of Beneficiary

A certificate in writing of the Beneficiary certifying the amount payable by the Contractor or the Guarantor to the Beneficiary or stating any other act, matter or thing relating to this Deed, any Transaction Document or any Security will be prima facie evidence of the contents of the certificate.

10.2 Notices

Every notice or other communication to be given or made under or arising from this Deed:

- (a) must be in writing;
- (b) must be signed by a person duly authorised to do so by the sender;

- (c) will be deemed to have been duly given or made to a person if delivered or posted by prepaid post to the address, or sent by fax to the fax number of that person set out in clause 10.3 (or any other address or fax number as is notified in writing by that person to the other parties from time to time); and
- (d) will be deemed to be given or made:
 - (i) (in the case of prepaid post) on the fifth day after the date of posting;
 - (ii) (in the case of delivery by hand) on delivery; and
 - (iii) (in the case of fax) on receipt of a transmission report confirming successful transmission.

10.3 Address for notices

The addresses and fax numbers of the parties for the purposes of clause 10.2 are:

The Guarantor

Address: [insert Guarantor's address]
Fax No.: [insert Guarantor's facsimile]
Attention: [insert]

The Beneficiary

Address: 101 Miller Street North Sydney NSW 2060
Fax No.: 02 8588 4171
Attention: Director Infrastructure Development Division

10.4 Continuing obligation

This Deed will be a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, a disclaimer of any contract (including any Transaction Document) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws, express or implied revocation or any other matter or thing, and continues to entitle the Beneficiary to the due and punctual payment of any of the Guaranteed Money which becomes due or owing or is incurred after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantor.

10.5 Further assurance

The Guarantor will immediately on demand by the Beneficiary, and at the entire cost and expense of the Guarantor, perform all things and execute all agreements, assurances and other documents as the Beneficiary reasonably requires, to perfect or give effect to the rights and powers of the Beneficiary created, or intended to be created, by this Deed.

10.6 Form of demand

A demand on the Guarantor for performance under this Deed may be in the form and contain any information as the Beneficiary determines. Where the demand relates to the payment of Guaranteed Money it shall specify the amount demanded and the basis of the calculation.

10.7 Severability of provisions

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

10.8 Remedies cumulative

The rights and remedies conferred by this Deed on the Beneficiary are cumulative and in addition to all other rights or remedies available to the Beneficiary by law or by virtue of any Transaction Document or any Security.

10.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Beneficiary will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver, consent or approval given by the Beneficiary under this Deed will only be effective and binding on the Beneficiary if it is given or confirmed in writing by the Beneficiary, or given verbally and subsequently confirmed in writing by the Beneficiary.
- (c) No waiver by the Beneficiary of a breach of any term of this Deed will operate as a waiver of another breach of that term or of a breach of any other term of this Deed.

10.10 Consents and approvals

Where under this Deed the consent or approval of the Beneficiary is required to any act or thing then, unless expressly provided otherwise in this Deed, that consent or approval may be given or withheld in the absolute and unfettered discretion of the Beneficiary.

10.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all legislation whether existing now or in the future, operating directly or indirectly:

- (a) to lessen or otherwise to vary or affect in favour of the Guarantor any obligation under this Deed; or
 - (b) to delay or otherwise prevent or prejudicially affect the exercise of any rights or remedies conferred on the Beneficiary under this Deed,
- are expressly waived and excluded.

10.12 Debit accounts and set-off

The Beneficiary may without prior notice to the Guarantor set-off any amount which is owing on any account whatsoever by the Beneficiary to the Guarantor against any liability of the Guarantor to the Beneficiary under this Deed. The rights of the Beneficiary under this clause 10.12 are without prejudice and in addition to any other right or remedy to which it is at any time entitled.

10.13 Counterparts

This Deed may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed, and all of which together constitute one and the same instrument.

10.14 Execution by less than all parties

This Deed binds each of the persons executing it notwithstanding:

- (a) that one or more of the persons named in this Deed as a Guarantor may not execute or may not become or may cease to be bound by this Deed; or
- (b) that the Beneficiary may not execute or may only subsequently execute this Deed.

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Contractor's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on the Guarantor and the Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

10.16 No right to be heard

To the fullest extent permitted by law, the Guarantor waives and expressly disclaims any right to be heard at or appear in any proceedings (whether judicial, arbitral, administrative or of any other nature including but not limited to any alternative dispute resolution) conducted for the purpose of settling or resolving or attempting to settle or resolve any dispute referred to in

clause 10.15 or otherwise to be involved in the settlement or resolution of any such dispute.

10.17 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 10.17(a), it is further agreed that the rights, obligations and liabilities of the Beneficiary and the Guarantor (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

Executed as a deed.

Executed by [insert Guarantor's name and ABN] by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Signed Sealed and Delivered by

as an authorised delegate of **Roads and Maritime Services (ABN 76 236 371 088)** in the presence of:

Signature

Signature of Witness

Name of Witness in full

Dispute provisions for certain foreign Guarantors

(Clause 9)

Explanatory Note: Where the Guarantor is a foreign entity and resident in a jurisdiction with reciprocity of treatment in relation to the enforcement of judgments for the purposes of the *Foreign Judgments Act 1991* (Cth), clause 9.2 of the Deed will apply. If, however, the Guarantor is a foreign entity and resident in a jurisdiction where there is no reciprocity, clause 9.1 of the Deed and clauses 9.3 to 9.8 of this Schedule will apply.

9.3 Reference to arbitration

- (a) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (b) The seat of the arbitration will be Sydney.
- (c) The number of arbitrators will be three.
- (d) The language of the arbitration will be English.

9.4 General principles

The parties further agree to the following general principles relating to the procedure of the arbitration:

- (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause 9 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
- (c) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (i) how many written submissions will be allowed;
 - (ii) where appropriate, the length of written submissions;
 - (iii) the extent of document discovery permitted, if any;
 - (iv) the consolidation of arbitration proceedings, when requested;
 - (v) the joinder of parties or the consolidation of proceedings, when requested;
 - (vi) the length of any hearing; and
 - (vii) the number of experts, if any, each party is allowed to appoint; and
- (d) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

9.5 Expedited proceedings

- (a) The parties agree that the arbitral tribunal will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (b) All evidence in chief will be in writing, unless otherwise ordered by the arbitral tribunal.
- (c) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (d) After consultation with the parties the arbitral tribunal will determine whether to conduct the proceedings on the basis of documents and other materials only or whether

an oral hearing will be held. In doing so the arbitral tribunal shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.

- (e) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
- (i) the duration of the oral hearings shall be fixed by the arbitral tribunal;
 - (ii) unless otherwise ordered by the arbitral tribunal, the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;
 - (iii) oral evidence in chief at the hearing shall be permitted only with the permission of the arbitral tribunal for good cause;
 - (iv) not less than 14 days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitral tribunal, each party shall give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination; and
 - (v) in exceptional circumstances the arbitral tribunal may extend the time for the oral hearing set pursuant to clause 9.5(e)(i) above.

9.6 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

9.7 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

9.8 Award final and binding

Any award will be final and binding upon the parties.

Joint Venture provisions

Explanatory Note: If the Contractor is a Joint Venture, the following amendments to the Deed apply:

- (a) the definition of 'Relevant Person' is amended to read:
Relevant Person means the Contractor, each Parent Company Guarantor and any person who has executed a Security in favour of the Beneficiary.

- (b) clause 2.2 is amended to read:

2.2 Payment of Guaranteed Money

- (a) Subject to clause 2.2(b), if the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Beneficiary the Guaranteed Money which is then due and payable.
- (b) The Guarantor shall not be liable to pay to the Beneficiary any part or parts of the Guaranteed Money which have been paid to the Beneficiary by another Parent Company Guarantor.

- (c) clause 2.3 is amended to read:

2.3 Perform obligations

- (a) Subject to 2.3(b), if the Contractor defaults in the performance or observance of any of the Contractor's Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Beneficiary, immediately perform (or procure the performance of) any of the Contractor's Obligations then required to be performed by the Contractor in the same manner and on the same terms as the Contractor is required to perform the Contractor's Obligations.
- (b) The Guarantor shall not be responsible for performing the Contractor's Obligations to the extent the relevant Contractor's Obligations have been performed by another Parent Company Guarantor.

- (d) the first paragraph of clause 4.2 is amended to read:

4.2 Unconditional liability

Except to the extent of a reduction in the Guarantor's liability expressly provided for in clauses 2.2(b) or 2.3(b), the liability of the Guarantor under this Deed will not be affected by any thing which, but for this clause 4.2, would release the Guarantor from or reduce that liability, including but not limited to:

- (e) clause 4.2(o) is amended to read:

- (o) (**Administration**): the provisions of section 440J of the *Corporations Act 2001* (Cth) so operating as to prevent or delay:
- (i) the enforcement of this Deed against any Guarantor; and/or
- (ii) any claim for contribution against any Guarantor; or

- (f) clause 4.3 is amended to read:

4.3 No marshalling

The Beneficiary is under no obligation to marshal or appropriate in favour of any Guarantor or to exercise, apply, transfer or recover in favour of any Guarantor any Security or any funds or assets that the Beneficiary holds, has a claim on, or is entitled to receive.

- (g) clause 10.15 is amended to read:

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Contractor's liability under or in connection with the Contract, in accordance with the

procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on each of the Guarantors and a Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

Schedule 8

Quality Manager's Certificate – Payment Claim

(clause 18.2(a)(ii)D)

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Quality Manager's name]**
("Quality Manager")

In accordance with the terms of clause 18.2(a)(ii)D of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, I hereby certify that all work the subject of the attached form of progress claim which is intended to be submitted by the Contractor for **[month][year]** has been executed and is in accordance with the requirements of the deed, subject to the following:

[If applicable, insert details of any exceptions]

.....
Signed by

[Insert Quality Manager's name]

Quality Manager's Certificate – Progressive and at end of Landscaping Maintenance Period

(clause 11.2(c)(i), clause 14.5(d)(i) (when applicable) and clause 23.2 (definition of "Final Completion"))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Quality Manager's name]**
("Quality Manager")

In accordance with the terms of clause 11.2(c)(i) [*and clause 14.5(d)(i)*] of the deed between the Roads and Maritime Services and **[Insert contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated *[insert date]* with respect to the Project, I hereby certify that between the following dates **[Insert dates of preceding 3 month period]**:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with RMS D&C Q6 and AS/NZS ISO 9001:2008 Quality management systems - Requirements;
- (b) the Contractor complied with and satisfied the requirements of RMS D&C Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to RMS Representative and the Project Verifier in accordance with the deed.

.....
Signed by
[Insert Quality Manager's name]

Quality Manager's Certificate - Construction Completion / Final Completion

(clauses 11.2(c)(ii) and 23.2 (definition of "Construction Completion" and "Final Completion"))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Quality Manager's name]**
("Quality Manager")

In accordance with the terms of clauses 11.2(c)(ii) and 23.2 (definitions of "Construction Completion" and "Final Completion") of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated *[insert date]* with respect to the Project, I hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed;
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Project Verifier and RMS Representative in accordance with the deed.

.....
Signed by
[Insert Quality Manager's name]

Quality Manager's Certificate – Final Completion / Last Defects Correction Period

(clauses 11.2(c)(iii) and 23.2 (definition of "Final Completion"))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Quality Manager's name]**
("Quality Manager")

In accordance with the terms of clauses 11.2(c)(iii) and 23.2 (definition of "Final Completion") of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated *[insert date]* with respect to the Project, I hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) all design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with this deed; and
- (c) all documentation has been recorded and submitted to RMS Representative in accordance with the deed.

.....
Signed by
[Insert Quality Manager's name]

Deed of Appointment of Project Verifier

(clause 23.2 (definition of "Deed of Appointment of Project Verifier"))

This Deed made at Sydney on

Parties

Acciona-Ferrovial Joint Venture an unincorporated joint venture comprising:

- Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street, Brisbane, QLD, 4000; and
- Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street, North Sydney, NSW, 2060

(together, the "**Contractor**")

Roads and Maritime Services,

(ABN 76 236 371 088) of Level 9, 101 Miller Street North Sydney 2060 ("**RMS**")

Davis Langdon Australia Pty Limited,

(ABN 40 008 657 289) of Level 21, 420 George Street Sydney NSW 2000 ("**Project Verifier**")

Recitals

- A. On or about the date of this Deed, the Contractor entered into the Project Deed with RMS in respect of the Project.
- B. The Project Verifier represents that it is experienced generally in construction and project management and, in particular, in the construction and project management of works similar to the Project Works and offers its expertise in those fields.
- C. The Project Deed contemplates that the Project Verifier will discharge those functions set out in Schedule 12B.
- D. The Project Verifier will perform its obligations on the terms and conditions of this Deed.

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

In this Deed words and expressions which have a defined meaning in the Project Deed have the same meaning in this Deed, except where otherwise expressly defined in this Deed, and:

Construction Verification Services means all Services relating to the verification of the construction of the Project Works, the Temporary Works, the Landscaping Maintenance and the performance by the Contractor of its construction obligations under the Project Deed.

Design Verification Services means all Services relating to the verification of the design of the Project Works, the Temporary Works and the performance by the Contractor of its design obligations under the Project Deed, including those specified in clause 12 of the Project Deed.

Early Works means any act which has or should have been performed by or on behalf of the Contractor or the Project Verifier, or matter or thing that occurred or should have occurred, prior to the date of the Project Deed and which this Deed or the Project Deed contemplates as constituting obligations, functions, duties or Services of the Project Verifier, or which the Project Documents contemplate as constituting Contractor's Work, including:

- (a) design work undertaken or required to be undertaken;
- (b) Project Plans prepared or required to be prepared;
- (c) services provided or required to be provided;
- (d) decisions or determinations made or required to be made;
- (e) Approvals sought and/or obtained or required to be sought and/or obtained; and
- (f) any other obligations of the Project Verifier or the Contractor under the Early Works Agreements.

Early Works Agreements means:

- (a) the Early Works Design and Documentation Agreement;
- (b) the Early Works Deed of Appointment of Project Verifier; and
- (c) the Early Works Deed of Appointment of ER

Early Works Deed of Appointment of ER means the agreement entered into (if any) between RMS, the Contractor and the Environmental Representative for the Environmental Representative to perform the role of Environmental Representative in respect of the Contractor's activities under the Early Works Design and Documentation Agreement.

Early Works Deed of Appointment of Project Verifier means the agreement entered into (if any) between RMS, the Contractor and the Project Verifier for the Project Verifier to perform the role of Project Verifier in respect of the Contractor's activities under the Early Works Design and Documentation Agreement.

Early Works Design and Documentation Agreement means the Professional Services Contract No 14.2544.0724 entered into between RMS and the Contractor dated 16 April 2014.

Fee means the amount payable to the Project Verifier for the performance of the Services in accordance with the Payment Schedule.

GST, GST law and other terms used in clause 8.3 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 8.3) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Initial Verification and Monitoring Plan means the initial verification and monitoring plan contained in Part 1 of Schedule 12D to this Deed.

Minimum Requirements means the minimum requirements for the Verification and Monitoring Plan, as set out in Schedule 12F to this Deed.

Minimum Resources Commitment means the minimum level of resources to be provided by the Project Verifier for the performance of the Services, as set out in Clause 1 of Schedule 12I to this Deed.

Minimum Surveillance is the minimum level of continual attendance, monitoring and verification of the status of a product, and analysis of records to ensure that product requirements are being met, as set out in Schedule 12E to this Deed.

NCR means a non-conformity report.

Other Parties means RMS and the Contractor.

Payment Schedule means Schedule 12C to this Deed.

Project means the design and construction of the Pacific Highway upgrade – Warrell Creek to Nambucca Heads as set out in the Project Deed.

Project Deed means the deed between RMS and the Contractor dated on or about the

date of this Deed.

Project Documents means those agreements and other documents described in Schedule 12A to this Deed, and includes the Planning Approval.

Project Verifier's Representative means the relevant person referred to in clause 3.3(c)(i) or clause 3.3(c)(ii) and any person holding that position in accordance with clause 3.3(b).

Services means those services listed in Schedule 12B to this Deed.

Verification and Monitoring Plan means the plan the Project Verifier is required to prepare in accordance with clause 3.6, and in respect of which RMS and the Contractor have not issued a notice under clause 3.6(b)(ii), as that plan is updated from time to time in accordance with clause 3.7 of this Deed.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Governing Law

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

2. Appointment of the Project Verifier

2.1 Appointment

- (a) Each of the Other Parties appoints the Project Verifier under this Deed to perform the Services.
- (b) The Project Verifier confirms its acceptance of the appointment referred to in clause 2.1(a).

2.2 Payment

- (a) The Contractor will pay the Project Verifier, and warrants to RMS that it will pay the Project Verifier, the Fee in accordance with the Payment Schedule.

- (b) The Project Verifier must notify RMS in writing if any part of the Fee that is due and payable under and in accordance with this Deed remains unpaid 90 days after the due date for payment under and in accordance with this Deed for the purposes of RMS determining, in its absolute discretion, whether to refer the issue for consideration by the Management Review Group under clause 3.5 of the Project Deed.

2.3 Nature of Services

The Project Verifier and the Other Parties acknowledge and agree that the Verification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Project Verifier's obligations under the Deed.

2.4 Early Works and application of this Deed

- (a) The parties agree that:
 - (i) this Deed applies retrospectively to all Project Verifier services under the Early Works Deed of Appointment of Project Verifier and all Early Works, and subject to paragraph 2.4(a)(ii), all decisions made and documents issued by the Project Verifier under the Early Works Deed of Appointment of Project Verifier will be deemed to have been made or issued (as appropriate) by the Project Verifier under this Deed and the terms of this Deed will apply to them;
 - (ii) all decisions made and documents issued by the Project Verifier under the Early Works Deed of Appointment of Project Verifier must be remade or reissued (as appropriate) by the Project Verifier under this Deed to the extent that they relate to:
 - (A) any differences between the relevant sections of the Scope of Works and Technical Criteria and the Base Scope of Works and Technical Criteria which forms part of the Early Works Design and Documentation Agreement; or
 - (B) aspects of the Design Documentation which have been the subject of a Variation (within the meaning of that term under the Project Deed); and
 - (iii) the Project Deed applies retrospectively to all Early Works and the Early Works constitute a part of, and will be taken to be incorporated into, the Contractor's Work.
- (b) Any payment made to the Project Verifier under or in respect of the Early Works Agreements is a pre-payment on account of the Fee and will be deducted from amounts which would otherwise have been payable under this Deed, had the Early Works Deed of Appointment of Project Verifier not been entered into.
- (c) Subject to clause 2.4(d), the Project Verifier acknowledges that it is not entitled to make any claim arising out of or in connection with any act, matter or thing which has occurred or should have occurred prior to the date of the Project Deed.
- (d) Nothing in clause 2.4(c) affects the right of the Project Verifier to make a claim:
 - (i) for payment in accordance with clause 2.2; or
 - (ii) which by law cannot be excluded.

3. Project Verifier's obligations

3.1 Acknowledgement

The Project Verifier acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "Project Verifier" under the Project Documents.

3.2 Further acknowledgements and warranties

The Project Verifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the knowledge, skill, expertise and experience of the Project Verifier in the performance of its obligations under this Deed; and

- (ii) may suffer loss if the Project Verifier does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and the Project Documents, and where no time is prescribed, within a reasonable time, and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Project Verifier under or pursuant to this Deed or the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services in accordance with this Deed; and
 - (ii) without limiting subparagraph (i), to the extent the Verification and Monitoring Plan is not inconsistent with:
 - A. the Project Documents; or
 - B. the nature of the Services,
 it will carry out and perform the Services in accordance with the Verification and Monitoring Plan;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's activities are being undertaken, comply with the reasonable directions of the Principal Contractor; and
- (g) will provide transport on site for the use of its site personnel.

3.3 Project Verifier's Organisation and Personnel

- (a) The Project Verifier must provide a dedicated management team and personnel who are engaged under an effective organisation structure and have appropriate and a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under this Deed. The organisation structure must clearly identify positions, roles, skills, expertise, experience levels, tasks, resourcing levels, delegated authorities and responsibilities and internal and external lines of authority, communication and reporting, including those with RMS Representative and the Contractor.
- (b) The Project Verifier must ensure that the people referred to in clause 3.3(c):
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
 - A. they must be replaced by people of at least equivalent ability, knowledge, skill, expertise and experience (including the ability, knowledge, skill, expertise and experience required by clause 2 of Schedule 12I to this Deed); and
 - B. prior to removal and replacement, there must be a proper and adequate handover to ensure that the new personnel have a reasonable understanding of the Project and the Services; and
 - (iii) are available for consultation as any party may reasonably require from time to time.
- (c) The people required to perform the Services are:
 - (i) Warwick Irwin as Project Verifier's Representative for the Design Verification Services;

- (ii) Warwick Irwin as Project Verifier's Representative for the Construction Verification Services;
 - (iii) Gernot Schubert as Project Verifier's project director; and
 - (iv) the other persons listed in clause 2 of Schedule 12I to this Deed.
- (d) The Other Parties may direct the Project Verifier to remove from the performance of the Services any of the people referred to in clause 3.3(c) and the Project Verifier must comply with any such direction.
- (e) The Project Verifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 12B which the Project Verifier is required to execute as part of the Services (being Schedules 13, 14, 15, 16, 17 and 18 of the Project Deed). The Project Verifier must ensure that these certificates and documents are signed by the person or persons so notified.

3.4 Subcontracting

- (a) Subject to clause 3.3, the Project Verifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (b) The Project Verifier remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting, and will be liable for the acts and omissions of any subcontractor as if they were acts and omissions of the Project Verifier.
- (c) Unless the Other Parties otherwise approve in writing, the Project Verifier must contract with the subcontractors set out below in respect of the relevant part of the Services set out below:

| Name of subcontractor | Relevant Services |
|------------------------------|--------------------------|
| Nil | Not applicable |

3.5 Quality Assurance

- (a) The Project Verifier must implement and comply with a quality system in accordance with ISO 9000 and ISO 9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The Contractor must develop and implement a quality plan which documents the requirements of the quality system referred to in clause 3.5(a). The quality plan:
- (i) may be combined and integrated with the Verification and Monitoring Plan identified in clause 3.6 as a single document;
 - (ii) must nominate the quality manager who has the defined authority and responsibility for ensuring that the requirements of the quality plan are implemented and maintained;
 - (iii) must define the responsibilities and authority and reporting functions of personnel primarily responsible for upholding the quality assurance provisions of this deed;
 - (iv) must identify how independent inspection, witnessing, monitoring and reporting will be carried out;
 - (v) must identify the qualifications, experience and required competencies of personnel who must undertake the duties required in each of clauses 3.5(b)(ii), (iii) and (iv) inclusive; and
 - (vi) must contain systems, processes and procedures which give effect to and co-ordinate the implementation of the Verification and Monitoring Plan.
- (c) The Project Verifier will not be relieved of any requirement to perform any obligation under this Deed as a result of:
- (i) compliance with the quality assurance requirements of this Deed; or

- (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Verification and Monitoring Plan or any audit under clause 3.9.

3.6 Verification and Monitoring Plan

- (a) The Project Verifier must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Verification and Monitoring Plan" which must:
 - (i) be based on the Initial Verification and Monitoring Plan;
 - (ii) address the matters identified in Part 2 of Schedule 12D to this Deed;
 - (iii) comply with the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment and clause 2 of Schedule 12I to this Deed; and
 - (iv) be a quality assurance document prepared in accordance with "AS/NZS ISO 9001-2008 Quality management systems - Requirements".
- (b) RMS may:
 - (i) review the Verification and Monitoring Plan submitted under clause 3.6(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, or if RMS believes that the Verification and Monitoring Plan does not comply with the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment or clause 2 of Schedule 12I to this Deed, notify the Project Verifier with details of the non-compliance.
- (c) If the Project Verifier receives a notice under clause 3.6(b)(ii), the Project Verifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clause 3.6(b) will reapply.
- (d) If the Project Verifier does not receive a notice under clause 3.6(b)(ii) within 21 days after the submission of the relevant Verification and Monitoring Plan, the relevant Verification and Monitoring Plan submitted will be the Verification and Monitoring Plan with which the Project Verifier must comply (as it is updated from time to time under and in accordance with clause 3.7).

3.7 Revisions to the Verification and Monitoring Plan

- (a) The Project Verifier must:
 - (i) progressively amend, update and develop the Verification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Contractor's Work, and Variations under the Project Deed and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Verification and Monitoring Plan under clause 3.7(a)(i) are consistent with, and comply with, the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment and clause 2 of Schedule 12I to this Deed; and
 - (iii) submit each revision of the Verification and Monitoring Plan to the Other Parties.
- (b) RMS may:
 - (i) review the Verification and Monitoring Plan submitted under clause 3.7(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, including that the revised Verification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Initial Verification and Monitoring Plan, notify the Project Verifier with details of the non-compliance or reduction.
- (c) If the Project Verifier receives a notice under clause 3.7(b)(ii), the Project Verifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clauses 3.7(a) to 3.7(c) will re-apply.
- (d) RMS owes no duty to the Project Verifier to review the Verification and Monitoring Plan for errors, omissions or compliance with this Deed.
- (e) Without limiting clause 3.2(e), the Project Verifier must not, either in the preparation of the Verification and Monitoring Plan required by clause 3.6(a) or the amending,

updating and development of the Verification and Monitoring Plan required by clause 3.7(a)(i), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise contained in the Initial Verification and Monitoring Plan without the prior written approval of RMS Representative.

- (f) The Project Verifier must not amend the Verification and Monitoring Plan other than in accordance with this clause 3.7.

3.8 Progress Reports by the Project Verifier

During the period from the date of this Deed until the end of the Landscaping Maintenance Period, the Project Verifier must provide a monthly progress report (one hard copy plus simultaneous provision of an electronic copy) to each of RMS Representative and the Contractor by the seventh day of the following month and in such format as is required by RMS Representative, containing, identifying or setting out:

- (a) details of the current version of the Verification and Monitoring Plan and a summary of any amendments, updates and developments by the Project Verifier to the Verification and Monitoring Plan during the reporting period;
- (b) details of training and skills development of the Project Verifier's personnel, including its subcontractors, that has or will be undertaken to enhance the capabilities and skills of the personnel and to ensure continuous improvement in the Project Verifier's delivery of the Services;
- (c) a list or schedule of design and construction surveillance, monitoring, auditing and certification activities undertaken by the Project Verifier during the reporting period, together with a comparison of these activities with those proposed for the reporting period in the previous monthly report and commentary and reasons for any significant and material departures or differences from those proposed;
- (d) details of any Contractor non-conformities raised by the Project Verifier or RMS and details on the verification of the rectification by the Contractor of the non-conformities, including the structured verifiable processes and reporting protocols utilised for the rectification;
- (e) details on the monitoring of the integrity and efficiency of the Contractor's quality system undertaken by the Project Verifier to enable it to certify the Contractor's quality system;
- (f) a summary of key risks and issues relating to the Services, including the outcomes from the risk management process used to determine the levels and scope of surveillance by the Project Verifier;
- (g) the Project Verifier's current and planned resources and staffing levels;
- (h) details of the surveillance, monitoring and auditing proposed to be undertaken by the Project Verifier in the forthcoming reporting period; and
- (i) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Services, together with detailed particulars on how the Project Verifier is dealing or proposes to deal with any such act, matter or thing.

3.9 Audit and surveillance

- (a) The Project Verifier must:
 - (i) allow any audit of its quality assurance system under this Deed by a third party, at the request of the Other Parties or any one of them; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Project Verifier must, at all times:
 - (i) give to the third party access to premises occupied by the Project Verifier where the Services are being undertaken; and
 - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

3.10 Access to records

- (a) From the date of this Deed and for a period of seven years following completion of the

Services, the Project Verifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents prepared or generated by or on behalf of the Project Verifier arising out of or in connection with the carrying out the Services.

- (b) Digital media records are to be provided in both native format and formats with the greatest potential for long term survival such as Portable Document Format specialised for the preservation of electronic documents (PDF/A-1) or equivalent.

3.11 ARTC

On execution of this Deed (or at such later time as required by RMS Representative following the execution of the Rail Agreement), the Project Verifier must execute and provide to ARTC the deed poll in Schedule 12H to this Deed, and must provide a copy of the executed deed poll to RMS at the same time.

4. Independence and Confidentiality

4.1 Project Verifier to be independent

The Project Verifier warrants to the Other Parties that in performing the Services, it will act:

- (a) independently of the Other Parties;
- (b) honestly, diligently and reasonably;
- (c) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the design and construction of major engineering works in particular; and
- (d) within the time prescribed under this Deed or the Project Documents or as anticipated by the Contract Program.

4.2 Confidentiality

The Project Verifier must keep confidential details of this Deed and all information and documents provided to, or by, the Project Verifier relating to the Services, the Project or the Project Documents and not provide, disclose or use the information or documents except:

- (a) to the Other Parties;
- (b) for the purposes of performing the Services;
- (c) where required by law or to obtain legal advice on this Deed; or
- (d) with the prior written consent of the Other Parties.

This obligation will survive completion of the Services or the termination of this Deed.

5. Obligations of the Other Parties

5.1 No Interference or Influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Project Verifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this Deed will not of itself constitute a breach of this clause.
- (b) Clause 5.1(a) does not prevent the Other Parties from providing written comments to the Project Verifier in respect of the Design Documentation or any other aspect of the Contractor's Work.

5.2 Co-operation by Contractor

Without limiting or otherwise affecting any of the Contractor's obligations under this Deed or the Project Documents, the Contractor must:

- (a) co-operate with and provide the Project Verifier with all information and documents necessary or reasonably required by the Project Verifier, or otherwise requested by the Project Verifier or directed by RMS;
- (b) allow the Project Verifier to attend all design meetings and procure for the Project Verifier access to such premises as may be reasonably necessary to enable the Project Verifier to perform the Services or as requested by the Project Verifier or directed by RMS, including allowing access to the Construction Site and all places at which the

Contractor's activities are being undertaken, provided that the Project Verifier must comply with the reasonable directions of the Principal Contractor;

- (c) ensure that Hold Points and Witness Points are included in the Project Plans as required by the Project Verifier to enable the Project Verifier to perform the Services; and
- (d) establish, provide, maintain, operate, service and remove, at the Contractor's cost, the site facilities required by the Project Verifier for use by the Project Verifier's personnel. The Project Verifier's site facilities must be a separate building that adjoins the Contractor's main site administration facilities and must be provided by the Contractor to the satisfaction of the Project Verifier, including requirements for all weather car parking, covered walkways, office fit out, furnishings, air conditioning, fencing and gates, security systems, information technology and communications infrastructure (including network computers). The Project Verifier's site facilities must be available for use at least two months prior to the commencement of construction activities on the Construction Site and until four months after the Date of Construction Completion.

5.3 RMS to have no liability

- (a) Each party acknowledges that RMS is not, nor will be taken to have a liability, or to have assumed or become (on enforcement of any of their powers or otherwise), liable:
 - (i) to any party to this Deed by reason of RMS being a party to this Deed; or
 - (ii) for the performance of, or failure to perform, any obligation of the Contractor or the Project Verifier under this Deed or the Project Documents.
- (b) Without limiting clause 5.3(a), each party acknowledges and agrees that the Project Verifier does not have the authority to authorise any non-compliance with the Project Documents.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the Project Verifier's liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to any claims arising out of or in connection with any of the following on the part of the Project Verifier or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the Project Verifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed.

6.3 Insurances

The Project Verifier must from the date of the Project Deed effect and maintain the policies of insurance listed in Schedule 12G to this Deed:

- (a) on the terms;
- (b) for the types;
- (c) for the periods; and
- (d) for the sums

specified in Schedule 12G to this Deed.

6.4 Notice of matter affecting insurance

The Project Verifier must notify the Other Parties of any:

- (a) occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Deed; and
- (b) notice of any claim or subsequent proceeding or action and developments concerning the claim,

as soon as possible, and in any case no later than 2 business days after becoming aware of any such event or circumstance.

6.5 Provision of information

Before the Project Verifier starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the Project Verifier must supply proof that all insurance policies which the Project Verifier is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.

If a notification is made pursuant to clause 6.4 of this Deed, the Project Verifier must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

The Project Verifier must ensure that any subcontractor engaged by the Project Verifier, who is not covered by the professional indemnity policy of insurance effected and maintained by the Project Verifier, effects and maintains a professional indemnity policy of insurance on the terms, for the period and for the sum specified in Schedule 12G to this Deed.

6.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 6 does not limit the liability or other obligations of the Project Verifier under this Deed.

6.8 Indemnity

Subject to clause 6.1, the Project Verifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:

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

insofar as the liability, loss, claim, expense or damage arises out of the negligent act, error or omission of the Project Verifier, its employees, agents, subcontractors or consultants.

7. Termination of appointment

7.1 Notice of termination

The Other Parties may jointly terminate this Deed by notice in writing served on the Project Verifier if:

- (a) the Project Verifier is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the Project Verifier is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Project Verifier; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the Project Verifier a notice of termination of this Deed, on a date specified in the notice, being not less than 21 days after the date of issue of the notice.

7.2 Prior agreement on replacement

Prior to serving a notice under clause 7.1, RMS and the Contractor must have agreed upon another person to act as a replacement for the Project Verifier.

7.3 Termination

Where a notice is served on the Project Verifier under clause 7.1, the appointment of the

Project Verifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 7.1; or
- (b) the appointment of a replacement for the Project Verifier.

7.4 Delivery of documents

Upon the date of termination of the appointment of the Project Verifier, the Project Verifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Project Verifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for the purposes of the Project Documents and the Project.

7.5 Reasonable assistance

Where the Other Parties give a notice of termination under clause 7.1, the Project Verifier must provide full assistance to the Other Parties and any replacement for the Project Verifier appointed in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

7.6 Payment until date of termination

Where this Deed is terminated under clause 7.1(d), the Project Verifier is only entitled to be paid by the Contractor the proportion of the Fee for Services performed up to the date of the termination.

7.7 Termination without payment

Termination of this Deed will be without prejudice to any claim which one or both of the Other Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

7.8 Survive termination

This clause 7 will survive the termination of this Deed by the Other Parties under clause 7.1.

7.9 Rights upon Termination

If this Deed is terminated pursuant to clauses 7.1(a) to 7.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the Deed had the Project Verifier repudiated the Deed and the Other Parties elected to treat the Deed as at an end and recover damages.

8. Expenses, Stamp Duty and GST

8.1 Expenses

Except as otherwise provided in this Deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Deed.

8.2 Stamp Duties

- (a) The Contractor must:
 - (i) pay all stamp duties (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed; and
 - (ii) indemnify each other party against any liability arising from failure to comply with clause 8.2(a)(i).
- (b) The Contractor is authorised to make any application for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

8.3 GST

- (a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.

- (b) If GST becomes payable on any supply made by a party (the "**Supplier**") under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
 - (ii) an additional amount will be payable by the party to whom that supply is made (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause (b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 14 days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

9. Miscellaneous

9.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Deed.

9.2 Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Name: Roads and Maritime Services
Address: 101 Miller Street
 North Sydney NSW 2060
 (for delivery by hand)

Locked Bag 928
 North Sydney NSW 2059
 (for delivery by post)

Fax no: 02 8588 4170
For the attention of: Director, Infrastructure Development

Name: RMS Representative
Address: 76 Victoria Street
Grafton NSW 2460
(for delivery by hand)

PO Box 576
Grafton NSW 2460
(for delivery by post)

Fax no: +61 2 6604 9380

For the attention of: Col Solomon

Name: Acciona-Ferrovial Joint Venture
Address: Level 9, 65 Berry Street, North Sydney, NSW, 2060
Fax no: +61 2 8736 9699
For the attention of: Jose Miguel San Millan

Name: Davis Langdon Australia Pty Limited
Address: Level 21, 420 George Street Sydney NSW 2000
Fax no: +61 2 8934 0001
For the attention of: Warwick Irwin

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the third business day after the date of posting to an address within Australia, and on the fifth business day after the date of posting to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non business day, or is after 5.00pm on a business day, when that communication will be deemed to be received at 9.00am on the next business day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non business day, or after 5.00pm on a business day, when that communication will be deemed to be received at 9.00am on the next business day,

and where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

9.3 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 9.3(a).

9.4 Amendments

This Deed may only be varied by a document signed by or on behalf of each of the parties.

9.5 Assignment

No party to this Deed may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party to this Deed.

9.6 Waiver

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

9.7 Consents

Any consent or approval referred to in, or required under, this Deed from any party may be given or withheld, or may be given subject to any conditions as that party (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

9.8 Counterparts

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

9.9 Indemnities

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

9.10 Entire agreement

To the extent permitted by law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

9.11 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Deed.

9.12 Relationship of the parties

- (a) The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing herein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) It is understood that the Project Verifier is acting as an independent contractor for the Other Parties and therefore, the Project Verifier is not authorised to enter into any binding obligations on behalf of either or both of the Other Parties.

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or
- (b) ceases to exist,

this Deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body.

9.14 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

9.15 Moratorium Legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this Deed or otherwise, are expressly waived.

9.16 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 9.16(a) it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

Schedule 12A - Project Documents

| | Contract Name and Parties | Contract Date |
|---|---|--------------------------|
| 1 | Project Deed and Schedules | On or about 11 July 2014 |
| 2 | Exhibits to the Project Deed and Appendices | On or about 11 July 2014 |

Schedule 12B - Project Verifier Services

1. Project Deed functions

The Project Verifier must discharge the functions, obligations, duties and services which the Project Documents contemplate will be discharged by the Project Verifier, which include the following:

- (a) functions, obligations, duties and services identified in the Project Deed (where the clause references below are to clauses in the Project Deed):

- Clause 2.4(a)(i) Independently verify in accordance with this Deed that:
- (a) the Project Works: and
 - (b) the relevant elements of the Temporary Works identified in Item 13A of Schedule 1 of the Project Deed,
- comply with the requirements of the Project Deed;
- Clause 2.4(a)(ii) Make determinations on matters that the Project Deed expressly requires be determined by the Project Verifier;
- Clause 2.4(c) Receive all information and documents, attend all design meetings, obtain access to such premises as may be necessary or reasonably required for the performance of the obligations of the Project Verifier under this Deed and insert Hold Points or Witness Points in the Project Plans and designate the Authority to release the Hold Points;
- Clause 2.4(d) Execute and provide certificates in the form of:
- (a) Schedule 14 every 3 months from the date of the Project Deed until the end of the Landscaping Maintenance Period;
 - (b) Schedule 16 as a condition precedent to Construction Completion and, if applicable, as a condition precedent to Interim Completion;
 - (c) Schedule 17 on request in connection with the rectification of particular Defects nominated by RMS Representative; and
 - (d) Schedule 18 upon the expiry of the last Defects Correction Period;
- Clause 2.5(c)(ii)B Receive from the Proof Engineer a copy of a comprehensive report on the independent assessment of all factors influencing the final integrity of elements of the Project Works and associated Temporary Works;
- Clause 3.1(d) Attend preliminary start-up and construction start-up workshop;
- Clause 3.2(b) When required by RMS Representative, attend weekly Construction Site meetings;
- Clause 3.3(b) When required by RMS Representative or the Project Director, attend Evaluation Meetings;
- Clause 3.4 Attend meetings of the Project Control Group and exercise the functions of a member of the Project Control Group;
- Clause 3.6(a) Attend meetings of the Project Design Group;
- Clause 3.8(c) Receive each Project Plan;
- Clause 3.8(e) Receive each amended Project Plan;
- Clause 3.8(g)(ii) Receive each further developed, amended or updated Project Plan;
- Clause 3.8(i) Receive each compliant Project Plan;
- Clause 5.1(c)(i) Monitor the preparation of, and review and comment on, the Approval Related Documentation prepared by the Contractor;
- Clause 5.1(c)(ii) Receive all Approval Related Documentation;
- Clause 5.1(c)(iii) Consult (if necessary or desirable) with the Contractor and comment on the Approval Related Documentation;

- Clause 5.1(c)(v) If necessary or desirable, request and receive information from the Contractor in order to review and consider the Approval Related Documentation;
- Clause 11.2(a)(ii) Observe, monitor, audit and test all aspects of quality in the Contractor's Work and the durability of the Project Works to verify compliance with the requirements of the Project Deed;
- Clause 11.2(a)(iii) Review and assess the quality of the Contractor's Work, and the durability of the Project Works to verify the Contractor's compliance with the requirements of the Project Deed;
- Clause 11.2(b)(ii) Receive reports on quality issues from the Quality Manager;
- Clause 11.2(d) Audit and review each revision of the Quality Plan within 14 days of submission of the plan to RMS Representative;
- Clause 12.2(b) Review, comment on and monitor the design performance of the Contractor in accordance with clause 12.2 of the Project Deed;
- Clause 12.2(d) Receive Design Documentation;
- Clause 12.2(h) Verify that Final Design Documentation (and any amended versions of Final Design Documentation):
- (a) comply with the Project Deed including the Scope of Works and Technical Criteria (and in particular the durability and design life requirements); and
 - (b) are documented to enable construction in compliance with the Project Deed (including to the extent applicable in respect of the correction of Defects),
- by providing design verification in the form of Schedule 15 to the Project Deed attaching a register of drawings the subject of the verification. Such verification may only be subject to comments or conditions that are minor in nature (for example, correcting incorrect drawing references). For the avoidance of doubt, such comments or conditions must not relate to any aspect of the Design Documentation that may impact or adversely effect the performance or the functional integrity of the Works;
- Clause 12.2(ha) Verify the IFC Design Documentation (and any amended versions of IFC Design Documentation) by providing design verification in the form of Schedule 15 to the Project Deed attaching a register of drawings the subject of the verification. Such verification must not be subject to any comments or conditions (whether minor or otherwise);
- Clause 14.5(d)(ii) Execute and provide a certificate to RMS Representative in the form of Schedule 14 to the Project Deed as a condition precedent to RMS Representative issuing a notice to the Contractor under clause 14.5(b)(i) of the Project Deed;
- Clause 17.1(a) Receive subsidiary programs for all activities to be undertaken in carrying out the Contractor's Work (including procurement of goods and materials);
- Clause 17.1(d) Receive reviewed and updated Contract Programs and Subsidiary Contract Programs along with the reports required by section 24.1.1 of the Contractor Documentation Schedule;
- Clause 18.2(a)(ii)E Verify in the form of Schedule 13 of the Project Deed that the parts of the Contractor's Work the subject of a draft progress claim comply with the requirements of the Project Deed, as contemplated by clause 18.2(a) of the Project Deed;
- (b) otherwise discharge the role, functions, obligations, duties and services of the Project Verifier under the Project Deed, including those identified in the Scope of Works and Technical Criteria; and
 - (c) become familiar with the role, functions, obligations, duties and services (express or implied) under the Project Deed of the "Project Verifier" and review information made

available to the Project Verifier by the Other Parties in order to become fully acquainted with the Project.

2. General

In discharging the functions, obligations, duties and services required by clause 1. above, the Project Verifier must, as a minimum but not be limited to:

- (a) attend meetings and report as required from time to time by the Other Parties;
- (b) carry out any additional services in relation to the Project as jointly directed in writing by the Other Parties;
- (c) discharge the role, functions, obligations, duties and services of the Project Verifier under the Rail Agreement, including those ARTC requirements identified in Schedule 12H to this Deed and Schedule 48B of the Project Deed;
- (d) undertake, as a minimum, the surveillance listed in Schedule 12E to this Deed;
- (e) continually observe, monitor, undertake surveillance, audit, review, assess and test, as necessary, the Contractor's Work and the quality and durability of the Project Works and the Temporary Works to determine, verify and ensure the Contractor's compliance of its design, construction and maintenance activities with the requirements of the Project Deed, including ;
 - (i) auditing, surveillance and monitoring of the Contractor's design and construction activities;
 - (ii) identify all Hold Points and Witness Points required or allowed by the Project Deed, including those identified by the Project Verifier under the provisions of clause 2.4(c) of the Project Deed, and those Hold Points and Witness Points to be released by the Project Verifier;
 - (iii) compliance of the Project Plans with the requirements of the Project Deed and the Contractor's compliance with each compliant Project Plan (other than the Maintenance Plan). The Project Verifier must audit all the initially submitted, amended, developed and updated Project Plans required by clauses 3.8(c), 3.8(e), 3.8(g)(ii) and 3.8(i) of the Project Deed within one month of receipt of the Project Plans from the Contractor and at three monthly intervals thereafter ;
 - (iv) the Contractor's environmental monitoring and protection activities;
 - (v) the Contractor's actions in response to reviews, comments and consultation with RMS in relation to Design Documentation and construction activities;
 - (vi) off-site surveillance of critical activities, including precasting yards, concrete production plants and steel fabrication;
- (f) develop and implement strategies, systems, procedures, processes, methodologies and reporting protocols to determine, certify, verify and ensure the Contractor's compliance of its design, construction and maintenance activities with the requirements of the Project Deed, including;
 - (i) the planning the timing of progressive performance of its functions, obligations, duties and services, including the timing for conducting audits of Project Plans and other aspects of the Contractor's Work
 - (ii) a methodology for certification of Design Documentation of the Project Works and Temporary Works identified in the Project Deed, including addressing the Contractor's obligations to address the reviews, comments and consultation with RMS in relation to Design Documentation;
 - (iii) the processes and risk management strategy to manage and deliver the Project Verifier's services, including the processes to determine the required levels and scope of auditing, surveillance and monitoring of the Contractor's design and construction activities;
 - (iv) identifying, controlling and managing the Project Verifier's work to be subcontracted, including the quality, reporting and communication requirements

- (v) records management, including electronic and digital records, and documenting and maintaining conformity records in the form of a schedule
 - (vi) the quality and quantum of work the subject of progress claims made by the Contractor in order to provide the certificate in the form of Schedule 13 to the Project Deed;
 - (vii) the verification of compliance of the Contractor's testing, calibration and parallel testing to check compliance and test error;
 - (viii) the verification of compliance of the interfaces between processes and elements in different Project Plans;
 - (ix) the verification of compliance of Contractor's management and control of Subcontractors;
 - (x) the verification of compliance of the contractor's safety in design obligations;
 - (xi) the verification of durability in all aspects of the design and construction of the Project Works;
 - (xii) the verification of compliance of the Contractor's constructability obligations, including its compliance with the approved and updated traffic control plans;
 - (xiii) the verification of compliance of the Contractor's obligations for which it is responsible in the Environmental Documents and Approvals;
 - (xiv) the verification of compliance of the Contractor with the requirements of the CEMP and the environmental protection licence, including those requirements that require integration and implementation in the Contractor's design and construction activities; and
 - (xv) the verification of rectification of non-conformities.
- (g) train and develop the skills of the Project Verifier's personnel, including its subcontractors, to enhance the capabilities and skills of the Project Verifier's personnel and to provide continuous improvement in the Project Verifier's delivery of the Services

Verification of Landscaping Maintenance will be taken to be part of the Construction Verification Services and not part of the Design Verification Services.

Schedule 12C - Payment Schedule

1. Payment claim

At the end of each month after the date of the Project Deed, the Project Verifier must submit to the Contractor a claim for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this Deed during the relevant month;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as the Contractor may reasonably require,

(Payment Claim).

The Project Verifier must, at the time of submission of its Payment Claim to the Contractor, provide a copy of the Payment Claim to RMS.

2. Payment

The Contractor must, within 30 days after receipt of the Payment Claim for the month, pay the Project Verifier that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

The Contractor must pay the Project Verifier any amount included in a Payment Claim which it does not dispute. If the Contractor disagrees with an amount included in the Payment Claim, the Contractor must within 10 Business Days after receipt of the relevant Payment Claim notify the Project Verifier and RMS in writing of the reasons for any amount which is disputed. If the Contractor fails to give any such notice, the Contractor must pay the Project Verifier the amount claimed by the Project Verifier in the Payment Claim.

4. The Fee

(a) The Fee consists of the following components:

- (i) a lump sum of exclusive of GST for the Design Verification Services; and
- (ii) a lump sum of exclusive of GST for the Construction Verification Services, subject to adjustment in accordance with clauses 4(b) or 4(c) below (as the case may be).

(b) Where:

- (i) there has been a significant delay to the performance of the Construction Verification Services having regard to the Contract Program;
- (ii) the date of Construction Completion occurs after the Date for Construction Completion as at the date of the Project Deed; and
- (iii) clause 17.6(a)(ii) of the Project Deed applies,

the lump sum referred to in clause 4(a)(ii) will be adjusted by the amount (A) determined under and in accordance with clause 17.6(a)(ii) of the Project Deed.

(c) In addition to clause 4(b), adjustments will be made to the lump sums referred to in clause 4(a) in accordance with:

- (i) the appropriate rates set out in the schedule of rates in clause 6 of this Payment Schedule; and
- (ii) the disbursements set out in clause 7 of this Payment Schedule, for reasonable increases or decreases in the cost to the Project Verifier of performing the Design Verification Services and/or the Construction Verification Services which arise as a result of (without double counting):
 - (iii) a Variation directed by RMS Representative under the Project Deed;

(iv) any re-verification of previously certified design packages due to changes in Design Documentation. In relation to the re-verification of any design packages during the provision of the Construction Verification Services, adjustments will be made to the lump sum for the Design Verification Services referred to in

clause 4(a)(i) only to the extent that the time involved in undertaking the re-verification work, and addressing non-conformities, by the Project Verifier exceeds 150 hours in total;

- (v) a significant delay to the performance of the Design Verification Services and/or Construction Verification Services having regard to the Contract Program, but only to the extent that:
 - A. in the case of the Design Verification Services, the Design Verification Services are required to be carried out for longer than 18 months; and
 - B. in the case of the Construction Verification Services, the delay was caused by:
 - 1) the Contractor; or
 - 2) a breach of the Project Deed by RMS and, in respect of that breach, an extension of time has been granted under clause 17.5 of Project Deed;
- (vi) the review and verification of more than 275 design packages in total; or
- (vii) any additional services jointly directed in writing by the Other Parties, as required by paragraph 2(b) under the heading "General" in Schedule 12B of this Deed.

In this clause, a "design package" means each submission of the Design Documentation to the Project Verifier and other information required by clause 12.2(d) of the Project Deed relating to each discrete design element of the Contractor's Work and includes the Design Documentation that is produced for each of the Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation stages.

- (d) The Project Verifier acknowledges that (except as described in and payable under clause 7 of this Payment Schedule) it has allowed in the lump sums referred to in clause 4(a) for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from the Construction Site and excluding provision of the Project Verifier site facilities referred to in clause 5.2(d) of this Deed), disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.

5. Rise and Fall

The lump sum payment for the Construction Verification Services identified in Clause 4(a)(ii) of this Payment Schedule and the rates in the Schedule of Rates identified in clause 6 of this Payment Schedule for the Construction Verification Services adjustments are subject to adjustment for rise and fall, by applying the Costs Adjustment Factor in clause 2.1 of Schedule 4 of the Project Deed.

The lump sum payment for the Design Verification Services identified in Clause 4(a)(i) of this Payment Schedule and the rates in the Schedule of Rates identified in clause 6 of this Payment Schedule for the Design Verification Services adjustments are not subject to adjustment for rise and fall.

6. Schedule of Rates

Design Verification Services – adjustments

| Role | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|-----------------------------------|---------------------|---------------------------------|
| Project Director | Gernot Schubert | |
| Project Verifier's Representative | Warwick Irwin | |
| Design Review Manager | Edmond Lee | |
| Highways Civil | Malcolm Forbes | |
| Alignment | Grant Reynolds | |
| Drainage (Hydrology & Flooding) | Michael Daly | |
| Drainage | Ng We Lim | |

| Role | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|-----------------------|-----------------------------|--|
| Bridges | Darryl Myers | |
| Flood Modelling | Dr Saima Aijaz & Simon Bell | |
| Non-bridge Structures | Tung Le | |
| Pavement | John Figueroa | |
| Geotechnical Engineer | Nathan Mackenzie | |
| Durability | James Aldred | |
| Geological | Patrick Cox | |
| Noise | Gayle Greer | |
| Drainage | Bruce Withnall | |
| Bridges | Christopher Gagg | |
| Road Geometry | Chris Hand | |
| Bridges | Max Bridgman | |
| Road Safety | Tom Brimson | |

Construction Verification Services (including Landscaping Maintenance) – adjustments

| Role | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|------------------------------------|----------------------------|--|
| Project Director | Gernot Schubert | |
| Project Verifier Representative | Warwick Irwin | |
| Senior Project Engineer | Tariq Rashid | |
| Project Engineer Structures | Dependra Rai | |
| Project Engineer Civil | Steve Woodward | |
| Surveillance Officer Civil | Mike Rixon | |
| Surveillance Officer Civil | Alina Franco | |
| Surveillance Officer Civil | Peter Robertson | |
| Surveillance Officer Structural | Mick Marshall | |
| Surveillance Officer Structural | Phil Minty | |
| Project Auditor | Andrew Skotnicki | |
| Document Control Office Manager | Keily Bain | |
| Quality Manager/Systems | Judi Gardiner | |
| Project Support | Geoff Hose | |

These rates contain allowances for the provision of all labour, materials, plant and equipment, and work, including telecommunications, vehicles, accommodation, disbursements and any other costs necessary for and arising out of or in connection with the Services for which the Project Verifier is to be paid on a schedule of rates basis under this Deed excluding:

- (a) disbursements described in and payable under clause 7 of this Payment Schedule; and
- (b) reasonable costs for transport outside the Greater Sydney area, which incorporates Newcastle and Wollongong, and the areas within and in the vicinity of the Construction Site.

When claiming payment for any Services for which the Project Verifier is to be paid on a schedule of rates basis the Project Verifier must provide details of the time expended by the Project Verifier in performing the Services for which the Project Verifier is entitled to be paid on a schedule of rates basis.

7. Disbursements

- (a) The Project Verifier will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the Project Verifier is to be paid on a schedule of rates basis under this Deed if those disbursements:
 - (i) have been reasonably and properly incurred for the sole purpose of performing Services for which the Project Verifier is to be paid on a schedule of rates basis in accordance with this Deed and do not fall into the category of one of the disbursements described in clause 7(b);
 - (ii) were approved in writing by the Contractor and RMS prior to being incurred where they exceed ; and
 - (iii) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and RMS.
- (b) The Project Verifier is not entitled to reimbursement of costs relating to vehicles, local transport (within the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site), car parking, computers, insurance, general office consumables and telecommunications.
- (c) The Project Verifier will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the Project Verifier is to be paid on a lump sum basis under this Deed if those disbursements:
 - (i) were not possible to be identified at the tender stage;
 - (ii) have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits on the Contractor's Work at locations outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site;
 - (iii) were approved in writing by the Contractor and RMS prior to being incurred where they exceed; and
 - (iv) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and RMS.
- (d) The Project Verifier will not be entitled to make any claim against the Contractor arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clauses 7(a) and 7(c) above.

8. Monthly payment schedule for lump sums

The Project Verifier is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to clauses 1 and 2 of this Payment Schedule, the indicative monthly payment to be made under the lump sums (excluding disbursements) is set out in the following table:

| Month after date of the Project Deed | Payment (\$ excluding GST) |
|--------------------------------------|----------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |

| | |
|--------------|--|
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
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| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| 29 | |
| 30 | |
| 31 | |
| 32 | |
| 33 | |
| 34 | |
| 35 | |
| 38 | |
| 41 | |
| 44 | |
| 47 | |
| 50 | |
| 53 | |
| 56 | |
| 59 | |
| 62 | |
| 65 | |
| 68 | |
| 71 | |
| TOTAL | |

9. GST

All lump sums, rates and amounts in this Payment Schedule exclude GST.

Schedule 12D - Initial Verification and Monitoring Plan

Part 1

Schedule Part 1 of Schedule 12D contains the Initial Verification and Monitoring Plan, which consists of the Davis Langdon document titled:

Pacific Highway Upgrade
Warrell Creek to Nambucca Heads
Initial Verification and Monitoring Plan
Revision: Initial Verification and Monitoring Plan VMP v2 dated 28/11/2013,

which is included as an electronic file named Schedule 12D.pdf on separate disc titled:

Design and Construction of
Pacific Highway upgrade
Warrell Creek to Nambucca Heads
Contract No. 12.2544.2579
Electronic Files - Project Deed Schedule 12D

Part 2

The issues identified below must be addressed in the preparation of the Verification and Monitoring Plan based on the initial Verification and Monitoring Plan, referred to in Part 1 above, to ensure compliance with this deed.

Ensuring that this Verification and Monitoring Plan addresses the issues referred to below will not in any way limit the warranty given by the Contractor under clause 3.8(h) of the deed that Verification and Monitoring Plan EMP will be fit for its intended purpose.

The identified issues to be addressed are not exhaustive and RMS does not warrant that:

- (a) it has checked the relevant documents for compliance with the requirements of the deed; or
- (b) compliance with the requirements of Schedule 1 will ensure that the Contractor fulfils all the deed requirements.

| Issue No. | Issues to be addressed in the development of the Verification and Monitoring Plan |
|-----------|---|
| 1 | <p>Verification and Monitoring Plan – the VMP must more fully and correctly address the Project Verifier’s obligations, processes, procedures and management systems for the verification of the Project Works, the Temporary Works, the Landscaping Maintenance and the Contractor’s Work. The processes, procedures and management systems nominated in the VMP must be consistent with and comply with the requirements of this Deed including the issues identified below in Issue No. 2 to 5, inclusive.</p> |
| 2 | <p>Verification and Monitoring Plan Requirements - the VMP must comprehensively address and comply with the requirements of Schedules 12B, 12E and 12F to this Deed, including more fully addressing and providing details in relation to the following:</p> <ul style="list-style-type: none"> • Hold Point and Witness Point requirements, including the identification of all Hold Points and Witness Points required by the Project Verifier, in the form of a schedule which identifies all Hold Points to be released by the Project Verifier as required by clause (f) of Schedule 12F to this Deed; • the Project Verifier's comprehensive plans for off-site surveillance of critical activities, including precasting yards, concrete production plants and steel fabrication as required by clause (g) D. of Schedule 12F to this Deed; and • the Project Verifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied to achieve and satisfy the following requirements to comply with clause (i) A and D of Schedule 12F to this Deed: <ul style="list-style-type: none"> - verification of the quality and quantum of work the subject of progress claims made by the Contractor in order to provide the certificate in the form of Schedule 13 to the Project Deed; and - verification of the Contractor's processes for the control of Subcontractors. |
| 3 | <p>Project Verifier’s Personnel – the VMP must more fully address and provide details of the allocation of personnel for the provision of the Services and the level of resources must reflect and be consistent with the minimum levels of resources identified in Schedule 12H to this Deed.</p> |
| 4 | <p>ARTC - the VMP must more fully address and provide details of the processes to comply with requirements of ARTC deed</p> |
| 5 | <p>RISK - the VMP must more fully address and provide details of the risk management with reference to project specific risks</p> |

Schedule 12E - Minimum Surveillance by Project Verifier during the Contractor's Work

| Surveillance Activity | Minimum Frequency for Type A Category of the Contractor's Work | Minimum Frequency for Type B Category of the Contractor's Work |
|--|---|---|
| <p>Environmental Surveillance</p> <p>Monitor for the implementation of controls, for day and night work, for:</p> <ul style="list-style-type: none"> • noise and vibration; • dust; • mud on roadways; • water pollution; • stormwater; • property accesses; • temporary pedestrian pathways; • working within the approved hours; • spoil stockpiling and disposal; • acid sulphate soil; • soil erosion; • contaminated lands; • waste management and recycling; • indigenous heritage; • European heritage; and • threatened species. | <p style="text-align: center;">} Twice/week</p> | <p style="text-align: center;">} Daily</p> |
| <p>Traffic Surveillance</p> <p>Monitor traffic management and traffic controls to assess compliance with the conditions of Road Occupancy Licences, including:</p> <ul style="list-style-type: none"> • as-built layouts for compliance with approved traffic control plans, including sign maintenance and delineation; • provisions for cyclists, pedestrians, disabled persons and buses; • timing and duration of road occupancies; • qualifications of traffic control personnel; • haulage routes off the Construction Site; and • night inspections of roadworks. <p>Monitor traffic management and traffic controls to assess compliance with the conditions of property access provisions.</p> | <p>Daily</p> <p style="text-align: center;">} Weekly</p> <p>Immediately after each traffic switch and monthly thereafter</p> <p>Daily</p> | <p>Daily</p> <p style="text-align: center;">} Daily</p> <p>Immediately after each traffic switch and weekly thereafter</p> <p>Daily</p> |

| Surveillance Activity | Minimum Frequency for Type A Category of the Contractor's Work | Minimum Frequency for Type B Category of the Contractor's Work |
|---|---|---|
| <p>Work Health and Safety Surveillance</p> <p>Inspect and monitor the Contractor's Work on the Construction Site for compliance with the work health and safety provisions of the Project Deed.</p> <p>Monitor:</p> <ul style="list-style-type: none"> the Contractor's safety inspections; interfaces between different work groups on the Construction Site; the preparation and induction of job safety analyses; Construction Site vehicle and plant movements; and the security of the public as a consequence of the Contractor's Work. | <p>Daily</p> <p>Twice/Week</p> | <p>Daily</p> <p>Twice/Week</p> |
| <p>Construction Surveillance</p> <p>Monitor the Contractor's obligation to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses.</p> <p>Monitor on-site design changes.</p> <p>Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with clause 12.2 of the Project Deed.</p> <p>Check that durability requirements of the Project Works are being addressed and satisfied.</p> <p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> all operations management and control systems and infrastructure; use of materials, plant and equipment that differs from accepted industry practices; concrete and AC pavements; and blasting. <p>Record general and detailed work in progress and non-conformances using photographs and video recording of significant activities (time and GPS referenced).</p> | <p>Monthly</p> <p>All changes 50% of design lots</p> <p>20% of design lots</p> <p>Each trial and test</p> <p>200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.</p> | <p>Monthly</p> <p>All changes 50% of design lots</p> <p>20% of design lots</p> <p>Each trial and test</p> <p>200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.</p> |
| <p>Quality Management Surveillance</p> <p>Inspect work in progress for compliance with the requirements of the Project Deed.</p> <p>Inspect Construction Site circumstances where</p> | <p>Daily</p> <p>Each occurrence</p> | <p>Daily</p> <p>Each occurrence</p> |

| Surveillance Activity | Minimum Frequency for Type A Category of the Contractor's Work | Minimum Frequency for Type B Category of the Contractor's Work |
|--|---|--|
| <p>significant non-conformities are or are likely to be reported.</p> <p>Check compliance with method statements</p> | Daily | Daily |
| <p>Check implementation of inspection and test plans, including:</p> <ul style="list-style-type: none"> • testing frequencies; • test methods; • test result verifications; and • release of hold points. <p>Monitor the implementation of significant approved NCR dispositions.</p> | <p>} Daily</p> <p>All dispositions</p> | <p>} Daily</p> <p>All dispositions</p> |
| <p>Quality Product Surveillance</p> <p>Monitor and inspect foundation and subgrade preparation and treatments, including:</p> <ul style="list-style-type: none"> • structure foundations; • pavement subgrades; • cast-in-place pile foundations; and • inaccessible drainage foundations. | <p>} Initial preparation and treatment and twice/week thereafter</p> | <p>} Initial preparation and treatment and twice/week thereafter</p> |
| <p>Monitor and inspect compaction of earthworks and reinforced soil.</p> <p>Monitor and inspect:</p> <ul style="list-style-type: none"> • water testing and grouting. <p>Monitor and inspect:</p> <ul style="list-style-type: none"> • preparation and testing of grout test specimens. <p>Monitor and inspect preparation of shotcrete test specimens</p> <p>Monitor and inspect concrete supply, including:</p> <ul style="list-style-type: none"> • audits of each batch plant; • reviews of grout, mortar, concrete and shotcrete mix designs (including offsite work); and • monitoring of supplied mixes compared with mix designs. | <p>Daily</p> <p>} Initial testing, grouting and stressing and twice/week thereafter</p> <p>Monthly</p> <p>Each mix</p> <p>Monthly</p> | <p>Daily</p> <p>} Initial testing, grouting and stressing and twice/week thereafter</p> <p>} Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.</p> <p>Monthly</p> <p>Monthly</p> <p>Each mix</p> <p>Monthly</p> |

| Surveillance Activity | Minimum Frequency for Type A Category of the Contractor's Work | Minimum Frequency for Type B Category of the Contractor's Work |
|--|--|--|
| <p>Monitor and inspect concreting (road and bridge), including:</p> <ul style="list-style-type: none"> • preparation; • production conformity records • formwork (including certification); • bracing; • reinforcement (including heating and welding); • placing; • finishing; • curing; and • stripping formwork. <p>Monitor and inspect:</p> <ul style="list-style-type: none"> • water testing and grouting; and • stressing operation, <p>of post-tensioned concrete.</p> <p>Monitor and inspect casting, transport, delivery and storage of:</p> <ul style="list-style-type: none"> • precast structures, reinforced concrete pipes and reinforced concrete box culverts • Pretensioned precast structures <p>Monitor and inspect concrete pavement subbases and bases, including:</p> <ul style="list-style-type: none"> • thickness, levels, relative density, curing, cracking and surface profile for rideability; • pavement strengths prior to trafficking by vehicular traffic; and • conditions for trafficking of pavements by heavy (off road) vehicles. | <p>Initial activity and daily thereafter</p> <p>Twice/structure</p> <p>Initial unit and twice weekly thereafter</p> <p>Initial member then weekly thereafter</p> <p>Twice/week</p> <p>Twice/week</p> <p>Initial conditions</p> | <p>Initial activity and daily thereafter</p> <p>Twice/structure</p> <p>Initial unit and twice weekly thereafter</p> <p>Initial member then weekly thereafter</p> <p>Daily</p> <p>Daily</p> <p>Initial conditions</p> |
| <p>Monitor and inspect asphaltic concrete supply, including:</p> <ul style="list-style-type: none"> • audits of each batch plant; • reviews of AC mix designs; and • monitoring of supplied mixes compared with mix designs. <p>Monitor and inspect the laying of asphaltic concrete, including:</p> <ul style="list-style-type: none"> • thickness, levels, relative density; and • surface profile for rideability. <p>Monitor and inspect Steel fabrication, including:</p> <ul style="list-style-type: none"> • reviews of welding procedures; and • monitoring of the fabrication and welding processes for major members (off-site). <p>Monitor protective treatment systems (off-site).</p> <p>Monitor the interfaces of civil and electrical works, including:</p> | <p>Monthly</p> <p>Each mix</p> <p>Weekly</p> <p>Twice/week</p> <p>Each procedure</p> <p>Each procedure</p> <p>Twice/week</p> <p>Twice/week</p> <p>Initial backfilling and</p> | <p>Monthly</p> <p>Each mix</p> <p>Weekly</p> <p>Daily</p> <p>Each procedure</p> <p>Each procedure</p> <p>Twice/week</p> <p>Twice/week</p> <p>Initial backfilling and</p> |

| Surveillance Activity | Minimum Frequency for Type A Category of the Contractor's Work | Minimum Frequency for Type B Category of the Contractor's Work |
|--|--|--|
| <ul style="list-style-type: none"> • backfilling of cabling conduit trenches. Monitor landscaping preparation and implementation Monitor Landscaping Maintenance | daily thereafter Daily Initially weekly, then twice a month thereafter | daily thereafter Daily Initially weekly, then twice a month thereafter |

For the purposes of this schedule 12E:

- (a) "Type A Category of the Contractor's Work" is the Contractor's Work associated with the Local Road Works, Property Works and Service Works; and
- (b) "Type B Category of the Contractor's Work" is the Contractor's Work associated with the Works and Temporary Works.

Schedule 12F - Minimum Requirements

(a) **General**

The Verification and Monitoring Plan must,

- (i) be a quality assurance document that is prepared in accordance with, addresses all the requirements of and is structured in accordance with “AS/NZS ISO 9001-2008 Quality management systems - Requirements”;
- (ii) identify and comprehensively address and detail all the Services required by Schedule 12B of this deed, including comprehensive information and details on the Project Verifier's:
 - (A) role, functions, obligations, duties and services under the Rail Agreement;
 - (B) strategies, systems, procedures, processes, methodologies and reporting protocols to determine, certify, verify and ensure the Contractor's compliance of its design, construction and maintenance activities with the requirements of the Project Deed; and
 - (C) observation, monitoring, surveillance, auditing, reviewing, assessment, testing of the Contractor's Work and the quality and durability of the Project Works and the Temporary Works; and
- (iii) also address and include the content and information identified in clause (b) below under the relevant requirements of “AS/NZS ISO 9001-2008 Quality management systems - Requirements”.

(b) **Content and Information in the Verification and Monitoring Plan**

(i) Definitions

Define the terms used in the Verification and Monitoring Plan

(ii) Organisational Structure, Roles and Responsibilities, Authority, Delegations and Lines of Communication

Address the requirements of clause 3.3 of this deed, including the:

- (A) organisational structure of the Project Verifier's management team and personnel. The organisation structure must clearly identify positions, personnel, and sub-contractors to be engaged in the provision of the Project Verifier Services, both on and off the Site;
- (B) roles, skill levels, expertise, experience levels, tasks, delegated authorities and responsibilities and resourcing levels for the Project Verifier's personnel, including its sub-contractors; and
- (C) Project Verifier's internal and external lines of authority, communication and reporting, including those between the RMS Representative and the Contractor.

(iii) Reporting

Address the reporting requirements of clause 3.8 of this deed.

Schedule 12G – Insurance Schedule

(Clause 6.3)

| TYPES OF INSURANCES | MINIMUM SUM INSURED | PERIOD OF INSURANCE | INSURANCE COVER IS TO INCLUDE THE FOLLOWING | QUALIFICATIONS |
|---|---|--|--|--|
| Broad form Public Liability and Product Liability | <p>Public Liability: Each and every occurrence</p> <hr/> <p>Product Liability: Each and every occurrence & in the aggregate for all occurrences</p> | <p>Annually, from the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Project Verifier, whichever is earlier).</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below;</p> <p>(c) Lists RMS as an additional named insured; and</p> <p>(d) Includes a cross liability clause as defined in clause 3, and a waiver of subrogation clause as defined in clause 4, of the Definitions and Notes below.</p> | <p>If no products are being supplied then only Public Liability cover is required.</p> |
| Motor Vehicle Comprehensive or Third Party Property Damage | <p>For any single occurrence</p> | <p>Annually from the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Project Verifier, whichever is earlier).</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) Covers motor vehicles owned or used by the Project Verifier or its subcontractors directly or indirectly engaged in performance of the Services; and</p> <p>(c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;</p> | <p>Only required if the Project Verifier will use a motor vehicle in the course of providing the Services or if the Project Verifier will use or park their motor vehicles on premises owned or occupied by RMS.</p> |
| Professional Indemnity | <p>Each and every occurrence and in the aggregate for all occurrences</p> | <p>From the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Project Verifier, whichever is earlier) plus 6 years following the Date of Final Completion (or the date of termination of the Deed of Appointment of Project Verifier, whichever is earlier).</p> <p>The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the Project Deed.</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) One automatic restatement per period of insurance; and</p> <p>(c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.</p> | |
| Workers Compensation | <p>As per the relevant Workers Compensation legislation.</p> | <p>Annually from the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Project Verifier, whichever is earlier).</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; and</p> <p>(b) Is as per relevant Workers Compensation legislation.</p> | |

Definitions and Notes:

1. Policies (other than statutory policies) of insurance must be effected with an approved insurer which means:
 - (a) an insurance company which is authorised by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a ‘fronting’ placement is acceptable from an insurer list in Note 1(a) or 1(b).

Note the workers compensation insurance must be effected with an insurer authorised to write this class of insurance in New South Wales.

2. Insurances policies must be subject to the laws of an Australian State or Territory and the jurisdiction of the courts of the Australian State or Territory, and the courts competent to determine appeals from those courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the Insurers agree to waive all rights of subrogation that they may have or acquire against RMS where required to do so under the contract.

Schedule 12H - Project Verifier and ARTC Deed

Deed poll made at Sydney on 20[] by:

Davis Langdon Australia Pty Limited (ABN 40 008 657 289) of Level 21, 420 George Street Sydney NSW 2000 ("**Project Verifier**")

in favour of:

Australian Rail Track Corporation Limited (ABN 75 081 455 754) of off Sir Donald Bradman Drive, Passenger Terminal Road, Mile End, SA 5031.

Recitals

- A. On or about the date of this Deed Poll, the Contractor entered into the Project Deed with RMS in respect of the Project.
- B. On or about the date of this Deed Poll, RMS and ARTC entered into the Railway Works Deed in respect of the Project.
- C. On or about the date of this Deed Poll, the Contractor, RMS, and the Project Verifier entered into the Deed of Appointment of Project Verifier.
- D. The Project Verifier is experienced generally in construction and project management and, in particular, in the construction and project management of major engineering works and offers its expertise in those fields.
- E. The Project Deed contemplates that the Project Verifier will discharge those functions set out in the Deed of Appointment of Project Verifier.
- F. The Project Verifier will perform its duties and responsibilities in respect of the Project on the terms and conditions of this Deed Poll.

This deed poll provides:

1. Definitions and interpretation

1.1 Definitions

In this Deed:

"**ARTC**" means Australian Rail Track Corporation Ltd, ABN 75 081 455 754.

"**Contractor**" means Acciona-Ferrovial Joint Venture an unincorporated joint venture comprising: Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street Brisbane QLD, 4000 and Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street North Sydney NSW 2060.

"**Completion**" has the same meaning as "Construction Completion" in the Project Deed.

"**Deed of Appointment of Project Verifier**" means the deed so entitled between the Contractor, RMS and the Project Verifier dated on or about the date of the Project Deed.

"**Law**" has the same meaning as in the Project Deed.

"**Project**" means the design and construction of two road bridges over the North Coast Railway at 564.500km from Sydney as set out in the Project Deed.

"**Project Deed**" means the deed so entitled between RMS and the Contractor in respect of the Project.

"**Project Works**" has the same meaning as in the Project Deed.

"**Railway Works Deed**" means the agreement so entitled made between RMS and ARTC on or about the date of the Project Deed.

"**RMS**" means Roads and Maritime Services of New South Wales.

"**Services**" has the same meaning as in the Deed of Appointment of Project Verifier.

1.2 Governing law

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

1.3 Condition precedent

The rights and obligations of the parties under this Deed Poll (other than this clause 1) will only become effective upon the valid and effective execution of the Project Deed by RMS and the Contractor.

2. Project Verifier's obligations

2.1 Acknowledgement

The Project Verifier acknowledges and agrees that:

- (a) it has received copies of the Railway Works Deed and the Project Deed and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "Project Verifier" under the Project Deed and the Railway Works Deed, and that it owes a duty of care to ARTC in respect of such obligations, functions, duties and services.

2.2 Further acknowledgements and warranties

The Project Verifier:

- (a) acknowledges that:
 - (i) ARTC is relying upon the skill and expertise of the Project Verifier in the performance of its obligations under this Deed Poll and the Deed of Appointment of Project Verifier; and
 - (ii) ARTC may suffer loss if it does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to ARTC that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience, skill and care which would be expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular;
- (c) warrants to ARTC that, at all times, it will act within the time requirements for the performance of its obligations under this Deed Poll and the Deed of Appointment of Project Verifier;
- (d) acknowledges that ARTC may provide written comments and submissions to the Project Verifier as contemplated in the Railway Works Deed and the Project Verifier must give due consideration to those submissions under the Railway Works Deed;
- (e) must certify as a prerequisite to the achievement of Completion that the Project Works comply with the requirements of the Railway Works Deed; and
- (f) without limiting clauses 2.2(a) and 2.2(b), acknowledges that ARTC is entitled to and will rely on any certificate signed or given by the Project Verifier under or pursuant to the Project Deed.

3. Independence and Confidentiality

3.1 Project Verifier to be independent

The Project Verifier warrants to ARTC that in performing the Services, it will:

- (a) act independently of ARTC, RMS and the Contractor;
- (b) act honestly and reasonably;
- (c) act with the degree of professional care, knowledge, experience, skill and diligence which would be expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular; and
- (d) act within the time prescribed under the Project Deed and the Deed of Appointment of Project Verifier.

3.2 Confidentiality

The Project Verifier must keep confidential details of this Deed Poll and all information and documents provided to, or by, the Project Verifier relating to the Services and not provide, disclose or use the information or documents except:

- (a) to ARTC, RMS and the Contractor;
- (b) for the purposes of performing the Services under and in accordance with the Deed of Appointment of Project Verifier;
- (c) where required by law or to obtain legal advice on this Deed Poll or the Deed of Appointment of Project Verifier; or
- (d) with the prior written consent of ARTC.

This obligation will survive completion of the Services or the termination of this Deed Poll.

3.3 Copies of communications

The Project Verifier will promptly give ARTC a copy of all written communications between the Project Verifier and the Contractor, or between the Project Verifier and RMS, which relate to the Railway Works.

4. Limitation of liability

4.1 Limitation of liability

Subject to clause 4.2, the Project Verifier's liability under this Deed Poll, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to

4.2 Exclusions

The limitation of liability in clause 4.1 does not apply to any claims arising out of or in connection with any of the following on the part of the Project Verifier or anyone for whom it is responsible:

- (a) fraud;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious or intentional indifference to any provision of this Deed Poll or the rights or welfare of those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the Project Verifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by another party to the Deed Poll.

EXECUTED as a deed poll

Signed sealed and delivered by [*Name of signatory*] as attorney for **Davis Langdon Australia Pty Limited** under power of attorney dated [*date of power of attorney*] registered number [*registered number*] book number [*book number*] and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of

Signature of witness



Signature of attorney



Name of witness (print)

Schedule 12I - Project Verifier's Personnel

1. Minimum Resources Commitment

The Project Verifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 12I are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Project Verifier to perform the Services in accordance with this Deed.

References to "days" exclude public holidays and include only those days which are stated in the Contract Program as working days.

1.1 Design Verification

The Project Verifier must provide the following key personnel to perform the Design Verification Services with the minimum days to be committed to the Project at each phase as set out below:

| Position | Name | Minimum commitment | |
|-----------------------------------|-----------------------------|--|---|
| | | During performance of design activities associated with the Contractor's Work, until all discrete design elements have passed IFC Design Documentation Stage | During performance of construction activities associated with the Contractor's Work, including until the expiry of the last "Defects Correction Period" |
| Project Director | Gernot Schubert | 2 | |
| Project Verifier's Representative | Warwick Irwin | 11 | |
| Design Review Manager | Edmond Lee | 93 | 7 |
| Highways Civil | Malcolm Forbes | 53 | 3 |
| Alignment | Grant Reynolds | 59 | 3 |
| Drainage (Hydrology & Flooding) | Michael Daly | 16 | 1 |
| Drainage | Ng We Lim | 36 | 5 |
| Flooding | Dr Saima Aijaz & Simon Bell | | |
| Bridges | Darryl Myers | 80 | 5 |
| Non-bridges Structures | Tung Le | 93 | 6 |
| Pavement | John Figueroa | 16 | 1 |
| Geotechnical Engineer | Nathan Mackenzie | 26 | 1 |
| Durability | James Aldred | 18 | 1 |
| Geological | Patrick Cox | 26 | 1 |
| Noise | Gayle Greer | 20 | 1 |
| Drainage | Bruce Withnall | 7 | 1 |
| Bridges | Christopher Gagg | 93 | 3 |
| Road Geometry | Chris Hand | 39 | 1 |
| Bridges | Max Bridgman | 32 | 1 |
| Road Safety | Tom Brimson | 9 | 1 |

1.2 Construction Verification

The Project Verifier must provide the following personnel, as a minimum, for the durations and at the locations set out below to perform the relevant aspects of the Construction Verification Services:

| Position | Name | Minimum Commitment |
|---|--|---|
| Project Verifier's Representative, Construction | Warwick Irwin | Full time during the performance of the Contractor's Work, and to be based on the Construction Site full time Monday to Saturday inclusive during the construction of the Project Works and Temporary Works |
| Senior Project Engineer – Civil and Structural Works construction (1 No.) | Tariq Rashid | Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil and structural works components of the Project Works and Temporary Works. |
| Project Engineer – Civil Works Construction (1 No.) | Steve Woodward | Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works |
| Project Engineer – Structural Works Construction (1 No.) | Dependra Rai/ | Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works |
| Surveillance Officer – Civil Works Construction (3 No.) | Mike Rixon; Alina Franco; Peter Robertson | Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works |
| Surveillance Officer – Structural Works Construction (2 No.) | Mick Marshall; Phil Minty | Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works |
| Document Controller/Site Administrative assistant (1 No.) | Keily Bain | Based on the Construction Site full time Monday to Friday inclusive during the construction of the Project Works and Temporary Works |

1.3 Landscaping Maintenance Verification

The Project Verifier must provide the following personnel, as a minimum, for the durations set out below to perform the relevant aspects of the Services:

| Position | Name | Minimum Man Days to be committed to the Project |
|----------------------|-----------------------|--|
| Project Engineer | Steve Woodward | Part Time, 36 days (Full Time Equivalent) |
| Surveillance Officer | Mike Rixon | Part Time, 36 days (Full Time Equivalent) |

- 1.4 Construction Verification Services during the period from the expiration of the Landscaping Maintenance Period until the expiration of the last "Defects Correction Period"

The Project Verifier must provide the following personnel, as a minimum, for the durations set out below to perform the relevant aspects of the Services:

| Position | Name | Minimum Man Days to be committed to the Project |
|----------------------|-----------------------|---|
| Project Engineer | Steve Woodward | Part Time, 6 days (Full Time Equivalent) |
| Surveillance Officer | Mike Rixon | Part Time, 6 days (Full Time Equivalent) |

2. Minimum Ability, Knowledge, Skill, Expertise and Experience of Project Verifier's Personnel

2.1 Project Verifier's project director

- (a) The Project Verifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work.
- (b) The Project Verifier's project director must at all times have authority to act on behalf of the Project Verifier in respect of the Services.

2.2 Project Verifier's Representative for the Design Verification Services

The Project Verifier's Representative for the Design Verification Services must possess a recognised qualification relevant to the position and the Services and have at least five years experience in the design project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 20 years of experience in the design of major road projects.

2.3 Project Verifier's Representative for the Construction Verification Services

The Project Verifier's Representative for the Construction Verification Services must possess a recognised qualification relevant to the position and the Services and have at least five years experience in the construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 20 years of experience in construction including strong experience in road and bridge construction.

2.4 Senior Project Engineer – Civil and Structural Works Construction

The senior project engineer – civil and structural works construction must possess a recognised qualification relevant to the position and the Services and have at least three years experience in the construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 15 years of experience in construction including strong experience in road and bridge construction.

2.5 Project Engineer – Civil Works Construction

The project engineer – civil works construction must possess a recognised qualification relevant to the position and the Services and have experience in construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 10 years of experience in civil construction including strong experience in road construction.

2.6 Project Engineer – Structural Works Construction

The project engineer – structural works construction must possess a recognised qualification relevant to the position and the Services and have experience in

construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 10 years of experience in the construction of structures including experience in structures construction.

2.7 Surveillance Officer – Civil Works Construction

The surveillance officer – civil works construction must have at least 15 years of experience in the civil engineering construction industry and at least 10 years in surveillance of roadworks construction, including rigid and flexible pavements, drainage, earthworks, asphaltting, and spray sealing.

2.8 Surveillance Officer – Structural Works Construction

The surveillance officer - structural works construction must have at least 15 years of experience in the civil engineering construction industry and at least 10 years in surveillance of the construction of structures, including piling, concrete work, precasting, prestressing, steel fabrication and erection.

2.9 Document Controller/Site Administrative Assistant

The Document Controller/Site Administrative assistant must have experience in document control and site administration on major civil engineering projects.

Executed as a deed.

Signed Sealed and Delivered by an authorised delegate of **Roads and Maritime Services (ABN 76 236 371 088)** in the presence of:

Signature of officer

Signature of Witness

Name of officer

Office held

Name of Witness in full

Executed by **Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251)** in accordance with s.127 of the Corporations Act 2001:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Signed for **Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116)** under power of attorney in the presence of:

Signature of Attorney

Signature Witness

Name of Attorney

Name of Witness

Date of power of attorney

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney

Executed by Davis Langdon Australia Pty Limited (ABN 40 008 657 289) in accordance with s.127 of the *Corporations Act 2001*:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Project Verifier's Certificate – Payment Claim

(clause 18.2(a)(ii)E)

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Project Verifier's name]**
(ABN **[Insert Project Verifier's ABN]**)
("Project Verifier")

In accordance with the terms of clause 18.2(a)(ii)E of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, we hereby certify that all work the subject of the attached form of progress claim which is intended to be submitted by the Contractor for **[month]****[year]** has been executed and is in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria, subject to the following:

[If applicable, insert details of any exceptions].

.....
Signed for and on behalf of
[Insert Project Verifier's name]

Project Verifier's Certificate – Progressive and at end of Landscaping Maintenance Period

(clause 2.4(d)(i), clause 14.5(d)(ii) (when applicable) and clause 23.2 (definition of "Final Completion"))

Project Verifier's Certificate – Progressive

[*Insert Project description*] ("**Project**")

To: RMS Representative

From: [*Insert Project Verifier's name*] ABN [*Insert Project Verifier's ABN*]
 ("**Project Verifier**")

In accordance with the terms of clause 2.4(d)(i) [*and clause 14.5(d)(ii)*] of the deed between the Roads and Maritime Services [*Insert Contractor's name*] (ABN [*Insert Contractor's ABN*]) ("**Contractor**") dated [*insert date*] with respect to the Project, we hereby certify that to the extent any of the activities referred to below occurred, or should have occurred, between the following dates [*insert date*]:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with RMS D&C Q6 and AS/NZS ISO 9001:2008 Quality management systems - Requirements;
- (b) the Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system have been in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the Scope of Works and Technical Criteria;
- (f) (*strike out if not applicable*) the Landscaping Maintenance undertaken by the Contractor has been undertaken in accordance with the deed, including the Scope of Works and Technical Criteria;
- (g) (*strike out if not applicable*) the Landscaping Maintenance has been completed in accordance with the deed, including the Scope of Works and Technical Criteria, and the areas where the Landscaping Maintenance has been performed are ready to be handed over to RMS; and
- (h) that documentation has been recorded and submitted to RMS Representative in accordance with the deed.

.....
Signed for and on behalf of
[*Insert Project Verifier's name*]

Project Verifier's Certificate – Design Documentation

(clause 12.2(h)(i))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Project Verifier's name]**
(ABN **[Insert Project Verifier's ABN]**)
("Project Verifier")

In accordance with the terms of clause [12.2(h)(i)] / [12.2(ha)] of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated [insert date] with respect to the Project, we hereby certify that the attached Design Documentation:

- (a) complies with all the requirements of the deed, including the Scope of Works and Technical Criteria, and in particular, the durability requirements of sections 2.13 and 5.9 of the Scope of Works and Technical Criteria, section 12.1(c) of Appendix 12 and section 13.2 of Appendix 13 of the Scope of Works and Technical Criteria and the design life requirements of section 5.5 of the Scope of Works and Technical Criteria; and
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects),
[subject to the satisfaction following comments or conditions:
- (c) **insert** [Note: this qualification wording can only be included in this certificate in relation to Final Design Documentation, and must not be included in relation to IFC Design Documentation].

.....
Signed for and on behalf of
[Insert Project Verifier's name]

Project Verifier's Certificate – Construction Completion/Interim Completion

(clauses 2.4(d)(ii) and 23.2 (definition of "Construction Completion" and, if applicable, "Interim Completion"))

[Insert project description] ("Project")

To: RMS Representative

From: **[Insert Project Verifier's name]**
(ABN **[Insert Project Verifier's ABN]**)
("Project Verifier")

In accordance with the terms of clauses 2.4(d)(ii) and 23.2 (definition of "Construction Completion" and, if applicable, "Interim Completion") of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated *[insert date]* with respect to the Project, we hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed;
- (c) the release of all Hold Points has been undertaken in accordance with the deed;
- (d) all documentation has been recorded and submitted to RMS Representative in accordance with the deed;
- (e) the design used by the Contractor for construction purposes is in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria;
- (f) the construction complies with the requirements of the deed, including the Scope of Works and Technical Criteria; and
- (g) each of the following designs
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) Services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the Project Works and Temporary Works carried out by the Contractor,

is in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria.

.....
Signed for and on behalf of
[Insert Project Verifier's name]

Project Verifier's Certificate – nominated Defects

(clause 2.4(d)(iii))

[Insert project description] ("Project")

To: RMS Representative

From: **[Insert Project Verifier's name]** (ABN **[Insert Project Verifier's ABN]**)
("Project Verifier")

In accordance with the terms of clause 2.4(d)(iii) of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, we hereby certify that between the following dates **[insert dates]**, the rectification of all Defects nominated by RMS Representative under clause 2.4(d)(iii) of the deed, including all design, construction, inspection, repairs and monitoring by the Contractor, has been undertaken in accordance with the deed, including the Scope of Works and Technical Criteria.

.....
Signed for and on behalf of
[Insert Project Verifier's name]

Project Verifier's Certificate – Final Completion

(clauses 2.4(d)(iv) and 23.2 (definition of "Final Completion"))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Project Verifier's name]** (ABN **[Insert Project Verifier's ABN]**)
("Project Verifier")

In accordance with the terms of clauses 2.4(d)(iv) and 23.2 (definition of "Final Completion") of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated *[insert date]* with respect to the Project, we hereby certify that as at the date of the expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) the Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (c) all design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the Scope of Works and Technical Criteria;
- (d) all documentation, reports, submissions, notices, approvals and the like have been submitted to RMS Representative in accordance with the deed; and
- (e) each of the following designs:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) Services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the Project Works and Temporary Works carried out by the Contractor,

is in accordance with the requirements of the deed, including the Scope of Works and Technical Criteria.

.....
Signed for and on behalf of
[Insert Project Verifier's name]

Contractor's Personnel

(clauses 2.2(b), 2.7(a) and 11.2(b)(iii))

Project Director

- (a) The Project Director must possess a recognised qualification relevant to the position and the Contractor's Work and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works.
- (b) The Project Director must at all times have authority to act on behalf of the Contractor in respect of the Contractor's Work.
- (c) The Project Director must be available:
 - (i) full time during the design phase; and
 - (ii) full time in attendance on or around the Construction Site during the construction phase.
- (d) At the date of this deed, the Project Director is Jose Miguel San Millan.

Design Manager

- (a) The Design Manager must possess a recognised qualification relevant to the position and the Contractor's Work and be experienced in the management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works and Temporary Works. The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Contract Program and the Subsidiary Contract Programs).
- (b) At the date of this deed, the Design Manager is Jaime Granell.

Construction Managers

- (a) The Construction Managers must possess recognised qualifications relevant to the position and the Contractor's Work and have at least eight years experience in the overall management of construction on large projects similar to the Project Works and Temporary Works.
- (b) The Construction Managers must be full-time on or around the Construction Site during the construction phase of the Contractor's Works and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Work.
- (c) At the date of this deed, the Construction Manager is Manuel Gil.

Quality Manager

- (a) The Quality Manager must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Work and verified relevant experience in quality management systems within the construction industry;
 - (ii) be full time on or around the Construction Site during the construction phase of the Contractor's Work with responsibilities limited to quality management of the Contractor's Work;
 - (iii) have experience on projects similar to the Project Works and Temporary Works;
 - (iv) be available as RMS primary contact with the Contractor on matters of quality;
 - (v) give RMS Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels; and
 - (vi) be given authority by the Contractor to act freely and independently and to stop the progress of the relevant part of the Contractor's Work when any non-conformity with the quality requirements of this deed is identified and at specified Hold Points.

- (b) At the date of this deed, the Quality Manager is *to be advised*.

Community Relations Manager

- (a) The Community Relations Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Work and have experience in community involvement on projects similar to the Project Works and Temporary Works and an understanding of the community attitudes and needs in relation to the Project Works and Temporary Works;
 - (ii) have a minimum of 5 years communications/community relations experience with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;
 - (iii) have experience in the preparation and implementation of community involvement plans and strategies;
 - (iv) have experience and understanding of government public affairs processes; and
 - (v) be full-time on or around the Construction Site during the establishment phase of the project, part-time during the construction phase of the Contractor's Works and be available at all times:
 - A. to take a proactive role in the community relations processes relating to the Contractor's Work as set out in this deed; and
 - B. for contact by local residents and other community representatives to answer questions and deal with complaints relating to the Contractor's Work.
- (b) At the date of this deed, the Community and Communications Manager is Janice Smith.

Community Relations Strategic Advisor

- (a) The Community Relations Strategic Advisor must support the Community Relations Manager by:
- (i) advising on the strategic management of issues;
 - (ii) providing training in complaints management and conflict resolution;
 - (iii) developing external communication protocols;
 - (iv) performing internal audits the complaints data base; and
 - (v) facilitating complex public meetings.
- (b) The Community Relations Strategic Advisor must facilitate a community issues and risk project workshop involving key RMS and Contractor personnel for the purposes of educating and coaching the Contractor's personnel to:
- (i) identify community issues; and
 - (ii) understand and effectively handle community concerns.
- (c) The Community Relations Strategic Advisor must be available when required.
- (d) At the date of this deed, the Community Relations Strategic Advisor is Denise Wilson.

Environmental Manager

- (a) The Environmental Manager must:
- (i) possess a recognised tertiary qualification which includes Environmental Science, Environmental Engineering, Planning or Natural Resources and have recent relevant experience in an environmental management position on similar projects;
 - (ii) have a minimum 8 years environmental management experience, with extensive experience in the preparation and implementation of environmental management plans and environmental systems;
 - (iii) experience in regulatory liaison and consultation;
 - (iv) facilitate an induction and training programme for all persons involved in construction activities;

- (v) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the environmental requirements of this deed is identified; and
 - (vi) be engaged full time on or around the Construction Site during the execution of the Contractor's Work until the Date of Construction Completion with responsibility to develop and implement the Environmental Management Plans.
- (b) At the date of this deed, the Environmental Manager is Noelene Rutherford.

Site Safety Representative

- (a) The Site Safety Representative must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Work and have recent relevant experience in occupational health and safety management of similar projects;
 - (ii) facilitate an occupational health and safety induction and training programme for all persons involved in construction activities;
 - (iii) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the occupational health and safety requirements of this deed is identified; and
 - (iv) be engaged full time on or around the Construction Site during the execution of the Contractor's Work until the Date of Construction Completion with responsibility to develop and implement the Occupational Health, Safety and Rehabilitation Management Plan.
- (b) At the date of this deed, the Site Safety Representative is Brad Lewis.

Traffic Manager

- (a) The Traffic Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Work and have recent relevant experience in a traffic management position on similar projects;
 - (ii) have a minimum 5 years traffic management experience, with extensive experience in the preparation and implementation of traffic management plans and traffic control plans;
 - (iii) have experience in regulatory liaison and consultation;
 - (iv) facilitate a traffic management and safety induction and training programme for all persons involved in construction activities;
 - (v) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise adverse traffic impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the traffic management requirements of this deed is identified; and
 - (vi) be engaged full-time on or around the Construction Site during the construction phase of the Contractor's Work with responsibility for the management of traffic and must at all times have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Work and be available at all times for matters regarding Road Occupancy Licences.
- (b) At the date of this deed, the Traffic Manager is Keith Varga.

Landscape Representative

- (a) The Landscape Representative must:
- (i) possess a recognised tertiary qualification in horticulture, forestry or landscape design;
 - (ii) have a minimum 5 years experience in the design and implementation of landscaping; and

- (iii) be engaged full-time on or around the Construction Site during the performance of landscaping activities, including ground preparation, seeding, planting and mulching operations. The Landscape Representative must have responsibility for the landscaping activities, including the Landscaping Maintenance, and must at all times have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Work.

(b) At the date of this deed, the Landscaping Representative is Chris Houghton.

Geotechnical Design Manager

(a) The Geotechnical Design Manager must:

- (i) possess a recognised qualification relevant to the position and the Contractor's Work and have recent relevant experience in a geotechnical design management position on similar projects;
- (ii) have a minimum 8 years geotechnical design management experience, with extensive experience in the geotechnical design of road, bridge and tunnel projects;
- (iii) have strong project management and leadership skills;
- (iv) have a strong understanding of environmental, urban design and landscaping issues associated with the geotechnical design of road, bridge and tunnel projects; and
- (v) have the ability to work as part of a multi-disciplinary team and develop innovative solutions.

(b) At the date of this deed, the Geotechnical Design Manager is David Garcia Cueto.

General Superintendent

(a) The General Superintendent must:

- (i) have a minimum of 15 years of supervision experience on large-scale road and bridge construction projects, in similar role;
- (ii) have experience on projects similar to the Project Works and Temporary Works;
- (iii) have extensive knowledge of road and bridge construction;
- (iv) have skills in planning and implementing project delivery (including resourcing of plant, equipment and labour) and managing the subcontractors and suppliers;
- (v) have experience in consultation with stakeholders and local communities;
- (vi) have the ability to work as part of a multi-disciplinary team;
- (vii) have knowledge and understanding of safety, quality and environmental management systems and an understanding of the community attitudes and needs in relation to the Project Works and Temporary Works;
- (viii) manage and co-ordinate the site operations so as to comply with all safety, environmental, community, quality and industrial relations objectives; and
- (ix) be engaged full-time on or around the Construction Site during the construction phase of the Contractor's Works and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Work on the construction site.

(b) At the date of this deed, the General Superintendent is *to be advised*.

Contractor's Certificate – Design Documentation

(clause 12.2(h)(iii))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Contractor's name]**
(ABN **[Insert Contractor's ABN]**)
("Contractor")

In accordance with the terms of clause 12.2(h)(iii) of the deed between the Roads and Maritime Services and the Contractor dated *[insert date]* with respect to the Project, we hereby certify that:

- (a) the attached Design Documentation:
 - (i) complies with all the requirements of the deed, including the Scope of Works and Technical Criteria, and in particular, the durability requirements of sections 2.13 and 5.9 of the Scope of Works and Technical Criteria, section 12.1(c) of Appendix 12 and section 13.2 of Appendix 13 of the Scope of Works and Technical Criteria and the design life requirements of section 5.5 of the Scope of Works and Technical Criteria;
 - (ii) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects); and
 - (iii) does not involve or constitute a Variation which has not been the subject of a Variation Order under clause 15.2, or a notice under clauses 15.6(d) or 15.7(c) approving the Variation; and
- [(b) the Contractor has addressed all issues of review, comment and consultation with RMS in respect of the Design Documentation as required by the deed.]

.....
Signed for and on behalf of
[Insert Contractor's name]

Contractor's Certificate – Construction Completion/Interim Completion

(clause 23.2 (definition of "Construction Completion" and, if applicable, "Interim Completion"))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Contractor's name]**
(ABN **[Insert Contractor's ABN]**)
("Contractor")

In accordance with the terms of clause 23.2 (definition of ["Construction Completion"/["Interim Completion"]]) of the deed between the Roads and Maritime Services and the Contractor dated *[insert date]*, we hereby certify that [Construction Completion]/[Interim Completion] has been achieved by the Contractor on *[insert date]* in accordance with the terms and conditions of the deed between the Roads and Maritime Services and the Contractor dated *[insert date]* with respect to the Project.

.....
Signed for and on behalf of
[Insert Contractor's name]

Schedule 22

Contractor's Certificate – End of Landscaping Maintenance Period

(clauses 14.5(d)(iii) and 23.2 (definition of "Final Completion"))

[Insert project description]
("Project")

To: RMS Representative
From: **[Insert Contractor's name]**
(ABN **[Insert Contractor's ABN]**)
("Contractor")

In accordance with the terms of clause 14.5(d)(iii) of the deed between the Roads and Maritime Services and the Contractor dated [insert date] with respect to the Project, we hereby certify that the Landscaping Maintenance has been completed in accordance with the terms and conditions of the deed between the Roads and Maritime Services and the Contractor dated [insert date].

.....
Signed for and on behalf of
[Insert Contractor's name]

Schedule 23

Contractor's Certificate – Final Completion

(clause 23.2 (definition of "Final Completion"))

[Insert project description]
("Project")

To: RMS Representative
From: **[Insert Contractor's name]**
(ABN **[Insert Contractor's ABN]**)
("Contractor")

In accordance with the terms of clause 23.2 (definition of "Final Completion") of the deed between the Roads and Maritime Services and the Contractor dated *[insert date]* with respect to the Project, we hereby certify that Final Completion has been achieved by the Contractor on *[insert date]* in accordance with the terms and conditions of the deed between the Roads and Maritime Services and the Contractor dated *[insert date]*.

.....
Signed for and on behalf of
[Insert Contractor's name]

RMS Subcontractor Pre- Qualification

(clause 2.8.(b))

Subcontractors for the following categories of work must be pre-qualified or registered in accordance with RMS procedures including to the appropriate level for the contract sum of the Subcontract:

1. **Pre-qualified categories of work:**

- (a) roadworks;
- (b) asphalt paving;
- (c) protective treatment;
- (d) bridgeworks;
- (e) pretensioned concrete;
- (f) concrete paving; and
- (g) steel fabrication.

2. **Registered categories of work:**

- (a) drainage;
 - (b) earthworks
 - (c) bridge formwork erection;
 - (d) traffic control;
 - (e) construction industry laboratories
 - (f) erosion, sedimentation and soil conservation consultancy services;
 - (g) fabrication of minor steel items;
 - (h) urban design services;
 - (i) demolition of properties; and
 - (j) stabilisation.
-

Terms to be included in Subcontracts

(clauses 2.8(f) and 2.8(g)(ii))

The following terms must be included in each Subcontract referred to in clause 2.8(f) of this deed.

- A. Options as to form of security
- A clause which allows the Subcontractor to lodge an unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.
 - A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, any retention moneys or other cash security then held will be promptly released to the Subcontractor.
- B. Trust for Cash Security and Retention Moneys
- A clause which has the effect that:
 - (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into a trust account with a bank within 24 hours of receipt or conversion;
 - (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract; and
 - (c) the security holder must account to the security provider for the trust moneys.
- C. Payment Provisions
- A clause which has the effect:
 - (a) of requiring the Contractor to pay the Subcontractor for work for which payment is claimed by the Subcontractor no later than 30 business days after a payment claim was made by the Subcontractor for such work;
 - (b) that states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from RMS, or before the time stipulated in that clause; and
 - (c) that if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.
 - A clause which prescribes an interest rate for overdue payments which is not less than the interest rate specified in clause 22.5 of this deed.
- D. Alternative Dispute Resolution
- A clause incorporating expert determination procedures which are the same as the procedures which apply in this deed.
 - A clause making it optional for the Subcontractor to comply with the expert determination process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.
- E. Documents to be provided to Subcontractors
- A clause which requires the Contractor to provide the Subcontractor with copy extracts from this deed before the Subcontractor starts work under the Subcontract. The extracts which are required to be provided are:
 - (a) clause 18;
 - (b) clause 20; and
 - (c) clause 22.5.
- F. Civil Liability Act
- A clause that complies with the requirements set out in clause 22.7(c).

- G. Personal Property Securities Act
- A clause substantially the same as clause 8.3, except that references to 'the Contractor' must be replaced with references to 'the Subcontractor' and references to 'RMS' or 'RMS Representative' must be replaced with references to 'the Contractor'.
- H. Work Health and Safety Obligations
- A clause requiring the Subcontractor to comply with all reasonable directions of the Principal Contractor.

Subcontractor's Certificate – Design Documentation

(clause 12.2(h)(ii))

[Insert project description]
("Project")

To: RMS Representative
From: **[Insert Subcontractor's name]**
(ABN **[Insert Subcontractor's ABN]**)
("Subcontractor")

In accordance with the terms of clause 12.2(h)(ii) of the deed between the Roads and Maritime Services and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, we hereby certify that the attached Design Documentation:

- (a) complies with all the requirements of the deed, including the Scope of Works and Technical Criteria, and in particular, the durability requirements of sections 2.13 and 5.9 of the Scope of Works and Technical Criteria, section 12.1(c) of Appendix 12 and section 13.2 of Appendix 13 of the Scope of Works and Technical Criteria and the design life requirements of section 5.5 of the Scope of Works and Technical Criteria; and
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects).

.....
Signed for and on behalf of
[Insert Subcontractor's name]

Proof Engineer's Certificate – Design Documentation

(clause 12.2(h)(iv))

[Insert project description]
("Project")

To: RMS Representative
From: **[Insert Proof Engineer's name]**
(ABN **[Insert Proof Engineer's ABN]**)
("Proof Engineer")

In accordance with the terms of clause 12.2(h)(iv) of the deed between the Roads and Maritime Services and **[insert Contractor's name]** (ABN **[insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project (**Project Deed**), we hereby:

- (a) confirm that we have undertaken the full and independent assessment as required under, and in accordance with, clause 2.5(c)(ii)A of the Project Deed; and
- (b) certify that in respect of those elements of the Project Works and any associated Temporary Works identified in Item 14 of Schedule 1 to the Project Deed, that those elements of the Project Works and any associated Temporary Works identified in the attached Design Documentation:
 - (i) are adequate and suitable for their intended purpose as stated in, implied from or contemplated by the Project Deed; and
 - (ii) comply with the Scope of Works and Technical Criteria.

.....
Signed for and on behalf of
[Insert Proof Engineer's name]

Environmental Documents

(clauses 4.2, 5.1(b)(ii) and 5.2(b))

1. Order of Precedence

The order of precedence of the Environmental Documents is set out below:

- a) the specific requirements of Appendix 4 of the Scope of Works and Technical Criteria;
- b) the Planning Approval.

2. RMS Obligations in respect of Environmental Documents

The only obligations identified in the Environmental Documents and the Approvals that remain the responsibility of RMS are that RMS is:

- a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically to the Project Works, Temporary Works, Landscaping Maintenance or Contractor's Work;
- b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Construction Completion, except for any that relate specifically to the Contractor's Work and the Landscaping Maintenance after the Date of Construction Completion;
- c) in relation to the Planning and Infrastructure Minister's Approval:
 - (i) to be responsible for condition A3., to the extent only that RMS is responsible for compliance with the Director General's requirements in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Planning and Infrastructure Minister's Approval as indicated in this clause 2;
 - (ii) to be responsible for condition A5.;
 - (iii) to be responsible for condition A6., to the extent only that RMS is to obtain the existing and future Approvals identified in Schedule 41;
 - (iv) to be responsible for condition A7.;
 - (v) to be responsible for condition A9.;
 - (vi) to be responsible for condition B2., to the extent only as identified in and as constrained by section 4.6 of Appendix 4 of the Scope of Works and Technical Criteria
 - (vii) to be responsible for condition B4., to the extent only as identified in and as constrained by section 4.6 of Appendix 4 of the Scope of Works and Technical Criteria;
 - (viii) to be responsible for condition B6., to the extent only as identified in and as constrained by section 4.8 of Appendix 4 of the Scope of Works and Technical Criteria;
 - (ix) to be responsible for condition B7., to the extent only as identified in and as constrained by section 4.13 of Appendix 4 of the Scope of Work and Technical Criteria;
 - (x) to be responsible for condition B8., except that the Contractor must provide RMS with all the information, details and data as a consequence of the Contractor's Work that RMS requires to develop the Biodiversity Offset Strategy;
 - (xi) to be responsible for condition B9., except that the Contractor must provide RMS with all the information, details and data as a consequence of the Contractor's Work that RMS requires to prepare the Biodiversity Offset Package;
 - (xii) to be responsible for condition B10., to the extent only as identified in and as

constrained by section 4.15 of Appendix 4 of the Scope of Works and Technical Criteria;

- (xiii) to be responsible for condition B15.;
- (xiv) to be responsible for condition B16. only for the obligations relevant to the Project Works and not those relevant to the Contractor's Work and except that the Contractor must provide RMS with all the information, details and data as a consequence of the Project Works that RMS requires to provide the assistance;
- (xv) to be responsible for condition B17., except for condition B17.(e) and to the extent only as identified in and as constrained by section 4.18 of Appendix 4 of the Scope of Works and Technical Criteria;
- (xvi) to be responsible for condition B18.;
- (xvii) to be responsible for condition B19.;
- (xviii) to be responsible for condition B20.;
- (xix) to be responsible for condition B22., to the extent only as identified in and as constrained by section 4.30 of Appendix 4 of the Scope of Works and Technical Criteria;
- (xx) to be responsible for condition B24.;
- (xxi) to be responsible for condition B25., except that the Contractor must provide RMS, within 10 Business Days of receipt by the Contractor of a request from RMS to do so, with all the information, details and data as a consequence of the Contractor's Work that RMS requires to implement the Compliance Tracking Program;
- (xxii) to be responsible for condition B26., except that the Contractor must provide RMS with all the electronic information, details and data as a consequence of the Contractor's Work that RMS requires to establish and maintain the new website;
- (xxiii) to be responsible for condition B29., to the extent only that RMS is to nominate to and receive approval from the Director General to the Environmental Representative and to employ the Environmental Representative jointly with the Contractor by way of the Deed of Appointment of Environmental Representative;
- (xxiv) to be responsible for condition B30 and conditions B31.(b)(i), (ii), (iii), (iv) and (vi) to the extent only that RMS:
 - A. has undertaken the pre-construction surveys and updated the sensitive area/vegetation maps for the purposes of the preparation of the plans and strategies identified in sub-clauses B to F below;
 - B. has prepared, submitted to the Director General and obtained the Director General's approval to a Giant Barred Frog management plan;
 - C. has prepared, submitted to the Director General and obtained the Director General's approval to a micro-bat management strategy;
 - D. has prepared, submitted to the Director General and obtained the Director General's approval to a Green – Thighed Frog management strategy;
 - E. has prepared, submitted to the Director General and obtained the Director General's approval to a Yellow-Bellied Glider monitoring strategy as a part of the procedure for dealing with threatened species; and
 - F. has prepared, submitted to the Director General and obtained the Director General's approval to a threatened flora management plan as a part of the procedure for dealing with EEC/threatened species; and only as identified in and as constrained by sections 4.9, 4.10, 4.11, 4.12.2 and 4.13 of Appendix 4 of the Scope of Work and Technical Criteria; and
 - G. is to submit the Plan to the Director General;
- (xxv) to be responsible for condition D1.; and

- (xxvi) to be responsible for condition E1., except that the Contractor must provide RMS with all the information, details and data as a consequence of the Contractor's Work that RMS requires to undertake the operational noise monitoring and prepare the Operational Noise Report.
- d) in relation to the Minister's Approval, to be responsible for all requirements and conditions other than those notified by RMS Representative to the Contractor in writing as being the responsibility of the Contractor. For the avoidance of doubt, if RMS Representative provides such a notice to the Contractor, then the Contractor must comply with, carry out and fulfil the applicable conditions and requirements in accordance with this deed and clause 15.9(c) will apply in accordance with its terms.

Environmental Manager's Certificate

(clause 2.7(b))

[Insert project description] ("Project")

To: RMS Representative
From: *[Insert Environmental Manager's name]*
(ABN *[Insert Environmental Manager's ABN]*)
("Environmental Manager")

In accordance with the terms of clause 2.7(b) of the deed between the Roads and Maritime Services and *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("**Contractor**") dated *[insert date]* with respect to the Project, I hereby certify that between the following dates *[Insert dates of preceding 3 month period]*:

- (a) the Contractor's Environmental Management System under section 2.5.1 of the Scope of Works and Technical Criteria was in accordance with AS/NZS ISO 14001;
- (b) Subcontractors' Environmental Management Systems which form a part of the Contractor's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Contractor complied with and satisfied the requirements of RMS D&C G36;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Project Verifier and RMS Representative in accordance with the deed.

.....
Signed by
[Insert Environmental Manager's name]

Deed of Appointment of ER

(clause 23.2 (definition of "Deed of Appointment of ER"))

This deed made at Sydney on

Parties

Acciona-Ferrovial Joint Venture an unincorporated joint venture comprising:

- Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street, Brisbane, QLD, 4000; and
- Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street, North Sydney, NSW, 2060

(together, the "**Contractor**")

Roads and Maritime Services

(ABN 76 236 371 088) of Level 9, 101 Miller Street North Sydney 2060 ("**RMS**")

Onsite Environmental Management Pty Ltd

(ABN 33 107 764 312) of Unit 3, 2 Saltspray Close, Redhead NSW 2290 ("**ER**")

Recitals

- A. On or about the date of this Deed, the Contractor entered into the Project Deed with RMS in respect of the Project.
- B. The ER represents that it is experienced generally in environment management and, in particular, in the environment management of works similar to the Project Works and offers its expertise in those fields.
- C. The Project Deed contemplates that the ER will discharge those functions set out in Schedule 30B.
- D. The ER will perform its obligations on the terms and conditions of this Deed.

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

In this Deed words and expressions which have a defined meaning in the Project Deed have the same meaning in this Deed, except where otherwise expressly defined in this Deed, and:

Construction Phase Services means all Services directly related to the construction of the Project Works.

Design Phase Services means all Services directly related to the design of the Project Works.

DOP means the Department of Planning.

Fee means the amount payable to the ER for the performance of the Services in accordance with the Payment Schedule.

GST, GST law and other terms used in clause 8.3 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except "GST law" also includes any

applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 8.3) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Other Parties means RMS and the Contractor.

Payment Schedule means Schedule 30C to this Deed.

Project means the design and construction of the Pacific Highway Warrell Creek to Nambucca Heads as set out in the Project Deed.

Project Deed means the deed between RMS and the Contractor dated on or about the date of this Deed.

Project Documents means those agreements and other documents described in Schedule 30A to this Deed and includes the Planning Approval.

Services means those services listed in Schedule 30B to this Deed.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments) (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Governing Law

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

2. Appointment of the ER

2.1 Appointment

- (a) Each of the Other Parties appoints the ER under this Deed to perform the Services.
- (b) The ER confirms its acceptance of the appointment referred to in clause 2.1(a).

2.2 Payment

- (a) The Contractor will pay the ER, and warrants to RMS that it will pay the ER, the Fee in accordance with the Payment Schedule.

- (b) The ER must notify RMS in writing if any part of the Fee that is due and payable under and in accordance with this Deed remains unpaid 90 days after the due date for payment under and in accordance with this Deed for the purposes of RMS determining, in its absolute discretion, whether to refer the issue for consideration by the Management Review Group under clause 3.5 of the Project Deed.

3. ER's obligations

3.1 Acknowledgement

The ER acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "ER", "Environment Representative" or the "Environmental Representative" under the Planning Approval.

3.2 Further acknowledgements and warranties

The ER:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill and expertise of the ER in the performance of its obligations under this Deed; and
 - (ii) may suffer loss if the ER does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, experience, skill and care which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate, approval, report, direction or instruction signed or given by the ER under or pursuant to the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that it will carry out and perform the Services;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's activities are being undertaken, comply with the reasonable directions of the Principal Contractor;
- (g) will provide transport to perform the Services; and
- (h) warrants that it has qualifications in compliance with AS/NZS ISO 19011:2003 Guidelines for Quality and/or Environmental Management Systems Auditing.

3.3 Key Personnel

- (a) The ER must provide experienced and skilled personnel to perform its obligations under this Deed.
- (b) The ER must ensure that the person referred to in clause 3.3(c):
 - (i) performs all of the Services;
 - (ii) is not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if the person is removed, that person must be replaced by a person of at least equivalent skill and experience and whose appointment is approved by the Director General of DOP; and
 - (iii) is available for consultation as any party may reasonably require from time to time.

- (c) The person required to perform all of the Services is David Bone.

3.4 Subcontracting

- (a) Subject to clause 3.3, the ER may not subcontract the performance of any of its Services.
- (b) The ER remains responsible for the performance of the Services in accordance with this Deed, notwithstanding the performance of the Services by any person in accordance with clause 3.3.

3.5 Quality Assurance

- (a) The ER must implement a quality system in accordance with ISO 9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The ER must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Services Implementation Plan" which gives a detailed description of how the ER intends to carry out and perform the Services. The ER must:
 - (i) progressively amend, update and develop the Services Implementation Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Contractor's Work and any changes in the manner of performing the Services;
 - (ii) submit each revision of the Services Implementation Plan to the Other Parties for their review and comment; and
 - (iii) include in the Services Implementation Plan details of the proposed timing for the performance of discrete elements of the Services.
- (c) RMS may:
 - (i) review the Services Implementation Plan submitted under clause 3.5(b); and
 - (ii) if the Services Implementation Plan does not comply with this Deed, notify the ER of the non-compliance.
- (d) If the ER receives a notice under clause 3.5(c), the ER must promptly submit an amended Services Implementation Plan to the Other Parties.
- (e) The Other Parties owe no duty to the ER to review the Services Implementation Plan for errors, omissions or compliance with this Deed.
- (f) The ER will not be relieved of any requirement to perform any obligation under this Deed as a result of:
 - (i) compliance with the quality assurance requirements of this Deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Services Implementation Plan or any audit under clause 3.6.

3.6 Audit

- (a) The ER must:
 - (i) allow any audit of its quality assurance system under this Deed by a third party, at the request of the Other Parties; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the ER must, at all times:
 - (i) give to the third party access to premises occupied by the ER where the Services are being undertaken; and
 - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

4. Independence and Confidentiality

4.1 ER to be independent

The ER warrants to the Other Parties that in performing the Services, it will act:

- (a) independently of the Other Parties;

- (b) honestly and reasonably;
- (c) with the degree of professional care, knowledge, experience, skill and diligence which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular; and
- (d) within the time prescribed under the Project Documents or as anticipated by the Contract Program.

4.2 Confidentiality

The ER must keep confidential details of this Deed and all information and documents provided to, or by, the ER relating to the Services and not provide, disclose or use the information or documents except:

- (a) to the Other Parties;
- (b) for the purposes of performing the Services;
- (c) where required by law or to obtain legal advice on this Deed; or
- (d) with the prior written consent of the Other Parties.

This obligation will survive completion of the Services or the termination of this Deed.

5. Obligations of the Other Parties

5.1 No Interference or Influence

The Other Parties will not interfere with or attempt to improperly influence the ER in the performance of any of the Services.

5.2 Co-operation by Contractor

Without limiting or otherwise affecting any of the Contractor's obligations under this Deed or the Project Documents, the Contractor must:

- (a) co-operate with and provide the ER with all information and documents necessary or reasonably required by the ER, or otherwise requested by the ER or directed by RMS;
- (b) allow the ER to attend all meetings and procure for the ER access to such premises as may be reasonably necessary to enable the ER to perform the Services or as requested by the ER or directed by RMS, including allowing access to the Construction Site and all places at which the Contractor's activities are being undertaken, provided that the ER must comply with the reasonable directions of the Principal Contractor; and
- (c) ensure that appropriate Hold Points and Witness Points are included in the Project Plans as required by the ER to enable the ER to perform the Services.

5.3 Co-operation by RMS

RMS must co-operate with and provide the ER with all information and documents necessary and not obtainable by the ER from the Contractor.

5.4 RMS to have no liability

Each party acknowledges that RMS is not, nor will be taken to have a liability, or to have assumed or become (on enforcement of any of their powers or otherwise), liable:

- (a) to any party to this Deed by reason of RMS being a party to this Deed;
- (b) for the performance of or failure to perform, any obligation of the Contractor or the ER under this Deed or the Project Documents; or
- (c) for any stop work direction being issued by the ER to either or both the Contractor and RMS.

5.5 Audit

Without limiting or otherwise affecting any of the Contractor's or the ER's obligations under this Deed or the Project Documents, the Contractor and the ER must:

- (a) allow DOP at any time to conduct an audit of actions undertaken by the ER and any approvals issued by the ER; and
- (b) facilitate and assist DOP in the conduct of any such audit.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the ER's liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to any claims arising out of or in connection with any of the following on the part of the ER or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the ER knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed.

6.3 Insurances

The ER must from the date of the Project Deed effect and maintain the policies of insurance listed in Schedule 30D to this Deed:

- (a) on the terms;
- (b) for the types;
- (c) for the periods; and
- (d) for the sums

specified in Schedule 30D to this Deed.

6.4 Notice of matter affecting insurance

The ER must notify the Other Parties of any:

- (a) occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Deed; and
- (b) notice of any claim or subsequent proceeding or action and developments concerning the claim,

as soon as possible, and in any case no later than 2 business days after becoming aware of any such event or circumstance.

6.5 Provision of information

Before the ER starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the ER must supply proof that all insurance policies which the ER is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.

If a notification is made pursuant to clause 6.4 of this Deed, the ER must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

The ER must ensure that any subcontractor engaged by the ER, who is not covered by the professional indemnity policy of insurance effected and maintained by the ER, effects and maintains a professional indemnity policy of insurance on the terms, for the period and for the sum specified in Schedule 30D to this Deed.

6.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 6 does not limit the liability or other obligations of the ER under this Deed.

6.8 Indemnity

Subject to clause 6.1, the ER is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:

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

insofar as the liability, loss, claim, expense or damage arises out of the negligent act, error or omission of the ER, its employees, agents, subcontractors or consultants.

7. Termination of appointment

7.1 Notice of termination

The Other Parties may jointly terminate this Deed by notice in writing served on the ER if:

- (a) the ER is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the ER is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the ER; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the ER a notice of termination of this Deed, on a date specified in the notice, being not less than 21 days after the date of issue of the notice.

7.2 Prior agreement on replacement

Prior to serving a notice under clause 7.1:

- (a) RMS and the Contractor must have agreed upon another person to act as a replacement for the ER; and
- (b) the person so agreed upon must have been approved as a replacement of the ER by the Director General of DOP.

7.3 Termination

Where a notice is served on the ER under clause 7.1, the appointment of the ER will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 7.1; or
- (b) the appointment of a replacement for the ER.

7.4 Delivery of documents

Upon the date of termination of the appointment of the ER, the ER:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the ER relating to the Services provided that the ER may keep a copy of all such material for its own internal records; and
- (b) acknowledges that the Other Parties have the right to use all such documents for the purposes of the Project Documents and the Project.

7.5 Reasonable assistance

Where the Other Parties give a notice of termination under clause 7.1, the ER must provide full assistance to the Other Parties and any replacement for the ER appointed in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

7.6 Payment until date of termination

Where this Deed is terminated under clause 7.1(d), the ER is only entitled to be paid by the Contractor the proportion of the Fee for Services performed up to the date of the termination.

7.7 Termination without payment

Termination this Deed will be without prejudice to any claim which one or both of the Other

Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

7.8 Survive termination

This clause 7 will survive the termination of this Deed by the Other Parties under clause 7.1.

7.9 Rights upon Termination

If this Deed is terminated pursuant to clauses 7.1(a) to 7.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the Deed had the ER repudiated the Deed and the Other Parties elected to treat the Deed as at an end and recover damages.

8. Expenses, Stamp Duty and GST

8.1 Expenses

Except as otherwise provided in this Deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Deed.

8.2 Stamp Duties

(a) The Contractor must:

- (i) pay all stamp duties (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed; and
- (ii) indemnify each other party against any liability arising from failure to comply with clause 8.2(a)(i).

(b) The Contractor is authorised to make any application for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

8.3 GST

(a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.

(b) If GST becomes payable on any supply made by a party (the "**Supplier**") under or in connection with this Deed:

- (i) any amount payable or consideration to be provided under this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
- (ii) an additional amount will be payable by the party to whom that supply is made (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
- (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.

(c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause (b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 14 days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.

- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

9. Miscellaneous

9.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Deed.

9.2 Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
(b) must be addressed as shown below:

Name: **Roads and Maritime Services**
Address: 101 Miller Street
North Sydney NSW 2060
(for delivery by hand)
Locked Bag 928
North Sydney NSW 2059
(for delivery by post)
Fax no: 02 8588 4170
For the attention of: Director, Infrastructure Development

Name: **RMS Representative**
Address: 76 Victoria Street
Grafton NSW 2460
(for delivery by hand)
PO Box 576
Grafton NSW 2460
(for delivery by post)
Fax no: +61 2 6604 9380
For the attention of: Col Solomon

Name: **Acciona-Ferrovial Joint Venture**
Address: Level 9, 65 Berry Street,
North Sydney, NSW, 2060
Fax no: +61 2 8736 9699
For the attention of: Jose Miguel San Millan

Name: **Onsite Environmental Management Pty Ltd**
Address: Unit 3, 2 Saltspray Close,
Redhead NSW 2290
Fax no: +61 4944 9492

For the attention of: David Bone

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the third business day after the date of posting to an address within Australia, and on the fifth business day after the date of posting to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non business day, or is after 5.00pm on a business day, when that communication will be deemed to be received at 9.00am on the next business day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non business day, or after 5.00pm on a business day, when that communication will be deemed to be received at 9.00am on the next business day,

and where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

9.3 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 9.3(a).

9.4 Amendments

This Deed may only be varied by a document signed by or on behalf of each of the parties.

9.5 Assignment

No party to this Deed may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party to this Deed.

9.6 Waiver

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

9.7 Consents

Any consent or approval referred to in, or required under, this Deed from any party may be given or withheld, or may be given subject to any conditions as that party (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

9.8 Counterparts

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

9.9 Indemnities

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

9.10 Entire agreement

To the extent permitted by law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

9.11 No representation or reliance

(a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

(b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Deed.

9.12 Relationship of the parties

(a) The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing herein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.

(b) It is understood that the ER is acting as an independent contractor for the Other Parties and therefore, the ER is not authorised to enter into any binding obligations on behalf of either or both of the Other Parties.

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or
- (b) ceases to exist,

this Deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body.

9.14 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

9.15 Moratorium Legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this Deed or otherwise, are expressly waived.

9.16 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 9.16(a) it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

Schedule 30A - Project Documents

| | Contract Name and Parties | Contract Date |
|---|---|--------------------------|
| 1 | Project Deed and Schedules | On or about 11 July 2014 |
| 2 | Exhibits to the Project Deed and Appendices | On or about 11 July 2014 |

Schedule 30B - ER Services

In this Schedule 30B, Construction has the meaning given in the Planning and Infrastructure Minister's Approval.

The ER must:

- (a) discharge the role, functions, obligations, duties and services which the Project Deed (including the Scope of Works and Technical Criteria (SWTC)) requires to, or contemplates will, be discharged by the ER, including those identified in the Planning and Infrastructure Minister's Approvals;
- (b) become familiar with the role, functions, obligations, duties and services (express or implied) under the Project Deed of the "ER", "Environment Representative" and the "Environmental Representative" (which are collectively referred to in this Schedule as the ER) and review information made available to the ER by the Other Parties in order to become fully acquainted with the Project;
- (c) attend meetings and report as required from time to time by the Other Parties;
- (d) carry out any additional services in relation to the Project as jointly directed in writing by the Other Parties;
- (e) submit in sufficient time to the Other Parties for review and comment, a copy of any proposed submission, certificate, approval or report to be issued by the ER (and each proposed direction or instruction, to the extent there is sufficient time for this to be done) before such document is issued by the ER;
- (f) provide any written submissions, approvals and certification required by the Planning and Infrastructure Minister's Approvals from the ER and ensure that copies of any such approvals and certification are provided at the same time to the Other Parties;
- (g) certify, prior to the commencement of Construction of the project on or within those areas likely to alter flood conditions, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared and implemented the Hydrological Mitigation Report required by condition B13. of the Planning and Infrastructure Minister's Approvals and that it complies with the requirements of that condition;
- (h) certify, prior to the provision of each schedule to the relevant Councils and the Department, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared and submitted the schedules required by condition B14. of the Planning and Infrastructure Minister's Approvals and that they comply with the requirements of that condition;
- (i) certify, at least 5 weeks prior to the commencement of Construction, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared the Urban Design and Landscape Plan required by condition B21. of the Planning and Infrastructure Minister's Approvals and that it complies with the requirements of that condition;
- (j) periodically certify, at no greater than 6 monthly intervals during the performance of the Contractor's Work, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has continuously implemented the Urban Design and Landscape Plan required by condition B21. of the Planning and Infrastructure Minister's Approvals and that it complies with the requirements of that condition;
- (k) certify, prior to the commencement of Construction, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared the Community Communication Strategy required by condition B28. of the Planning and Infrastructure Minister's Approvals and that it complies with the requirements of that condition;
- (l) periodically certify, at no greater than 6 monthly intervals during the performance of the Contractor's Work, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has continuously implemented the Community Communication Strategy required by condition B28. of the Planning and Infrastructure Minister's Approvals and that it complies with the requirements of that condition;
- (m) certify, at least 5 weeks prior to the commencement of Construction, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared the Construction Environment Management Plan (CEMP) required by condition B30. of the Planning and Infrastructure Minister's Approvals and that it complies with the requirements

- of that condition;
- (n) certify, at least 5 weeks prior to the commencement of Construction, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared all sub plans to the CEMP including, but not limited to, those required by condition B31. of the Planning and Infrastructure Minister's Approvals and that they comply with the requirements of that condition;
 - (o) monitor the implementation of environmental management plans and monitoring programs required by the Planning and Infrastructure Minister's Approvals and periodically certify, at no greater than 6 monthly intervals during the performance of the Contractor's Work, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has continuously implemented the Construction Environment Management Plan required by B30. of the Planning and Infrastructure Minister's Approvals and the all sub plans to the CEMP including, but not limited to, those required by condition B31. of the Planning and Infrastructure Minister's Approvals and that they comply with the requirements of those conditions;
 - (p) certify, within six months of the commencement of Construction, to the Other Parties, and submit copies of the certification to the Other Parties, that the Contractor has prepared and implemented the review of the proposed operational noise mitigation measures required by condition C12. of the Planning and Infrastructure Minister's Approvals and the review and its findings comply with the requirements of that condition;
 - (q) periodically audit and monitor the Contractor's environmental activities, at no greater than 3 monthly intervals, to evaluate the implementation, effectiveness and level of compliance of construction activities with the CEMP, including carrying out site inspections of the Project Works, Temporary Works and the Contractor's Work. The ER must provide quarterly reports to the Other Parties on the outcomes of the audits and monitoring;
 - (r) review corrective and preventive actions to ensure the effective implementation of mitigation measures to avoid or minimise the adverse impacts on the environment and/or to identify changes to the CEMP resulting from the audits and monitoring;
 - (s) record and provide a written report, at least monthly, to the Other Parties identifying non-conformities with the CEMP that require the Contractor to undertake mitigation measures to avoid or minimise any adverse impacts on the environment and/or report on changes required to the CEMP;
 - (t) provide monthly reports to the Other Parties on matters relevant to carrying out the ER's role, including details on any approvals or rejections by the ER of minor amendments to the CEMP made by the Contractor, any steps that the ER has required to be taken by the Contractor to avoid or minimise unintended or adverse environmental impacts and any directions given by the ER to the Contractor to cease actions in the event that an adverse impact to the environment was likely to occur;
 - (u) immediately, and at the same time, provide advice to the Other Parties of any major environmental issues resulting from the construction of the Project Works or the Temporary Works that were not dealt with expediently or adequately by the Contractor;
 - (v) pursuant to section 1.4(f) of the SWTC, receive submissions required by RMS D&C specifications and, in addition, review, consider, comment upon and take any other action in relation to the submissions as necessary to perform the other ER Services;
 - (w) pursuant to section 2.5.2 of the SWTC, perform the role of chair of the Environmental Review Group (ERG) established by the Contractor and, in addition, ensure that:
 - (i) meetings of the ERG are held at appropriate intervals to enable the ERG to satisfy the purposes contemplated for it in the SWTC; and
 - (ii) administrative matters in relation to the ERG are attended to appropriately, including the timely preparation and circulation of agendas, minutes, invitations to attend, reports to be considered by the ERG and reports from the ERG to the Contractor and RMS;
 - (x) receive, review, consider, comment upon, and, pursuant to section 2.10 of the SWTC and where appropriate, identify requirements and make recommendations to the Contractor for incorporation in the Project Plans (including updated Project Plans);
 - (y) pursuant to sections 2.11 and 7.20 of the SWTC, receive the reports, submissions, Approvals, updates of the Contract Program and Subsidiary Contract Programs, durability assessment

reports, Design Documentation, as constructed documentation, construction completion report, pavement report and other documentation required to be issued or submitted to the ER by the Contractor under those sections and, in addition, review, consider, comment upon, make recommendations or take any other action in relation to this documentation as necessary to perform the other ER Services;

- (z) use the local area network, which the Contractor makes available to the ER pursuant to section 2.16 of the SWTC, for exchanging, searching and sharing the Contractor's information and data;
- (aa) access, as necessary the Contractor's quality system records and all records relating to the quality of the Project Works, the Temporary Works and the Contractor's Activities, which the Contractor provides pursuant to section 3.1.1 of the SWTC, and review and consider these records as necessary to perform the other ER Services;
- (bb) pursuant to section 3.1.4 of the SWTC, receive notices of the proposed release of Hold Points and, in addition, witness any inspections and tests preceding the release of any Hold Points as necessary to perform the other ER Services and, where nominated, accept nomination as the Nominated Authority to release specified Hold Points;
- (cc) pursuant to section 3.1.5 and 3.1.6 of the SWTC, receive copies of NCRs, CARs and reports on non-conformities from the Contractor and, in addition, advise the Contractor of apparent non-conformities that come to the attention of the ER;
- (dd) attend, as necessary, the Issues Group meetings which the Contractor facilitates and manages pursuant to section 8.3 of the SWTC, as necessary to perform the other ER Services;
- (ee) pursuant to section 8.4 of the SWTC, attend information sessions and respond to questions;
- (ff) pursuant to section 4.7(h) of Appendix 4 of the SWTC, consult with the Contractor in its preparation of the detailed work method statement for the design, construction, operation, maintenance and decommissioning of working platforms; and
- (gg) pursuant to sections 4.24(a), (b), (c) and (d) of Appendix 4 of the SWTC, attend the workshops and, in addition, actively participate in the workshops to assist in achieving the workshop objectives.

Schedule 30C - Payment Schedule

1. Payment claim

At the end of each month after the date of the Project Deed, the ER must submit to the Contractor a claim for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this Deed during the relevant month;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as the Contractor may reasonably require.

(Payment Claim).

The ER must, at the time of submission of its Payment Claim to the Contractor, provide a copy of the Payment Claim to RMS.

2. Payment

Subject to clause 8 of this Payment Schedule, the Contractor must within 30 days after receipt of the Payment Claim for the month, pay the ER that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

The Contractor must pay the ER any amount included in the Payment Claim which it does not dispute. If the Contractor disagrees with an amount included in the Payment Claim, the Contractor must within 10 Business Days after receipt of the relevant Payment Claim notify the ER and RMS in writing of the reasons for any amount which is disputed. If the Contractor fails to give any such notice, the Contractor must pay the ER the amount claimed by the ER in the Payment Claim.

4. The Fee

- (a) The Fee consists of the following components:

- (i) a lump sum of exclusive of GST for the Design Phase Services; and
- (ii) a lump sum of exclusive of GST for the Construction Phase Services,

subject to adjustments in accordance with clause 4(b) below:

- (b) Adjustments will be made to the lump sums referred to in clause 4(a) in accordance with:

- (i) the appropriate rates set out in the Schedule of Rates in clause 6 of this Payment Schedule, and
- (ii) the disbursements set out in clause 7 of this Payment Schedule,

for reasonable increases or decreases in the cost to the ER of performing the Design Phase Services and/or the Construction Phase Services which arise as a result of (without double counting):

- (i) a Variation directed by RMS Representative under the Project Deed,
- (ii) any significant delay to the performance of the Design Phase Services and/or the Construction Phase Services having regard to the Contract Program or
- (iii) additional Services jointly directed in writing by the Other Parties.

- (c) The ER acknowledges that (except as described in and payable under clause 7 of this Payment Schedule) it has allowed in the lump sums referred to in clause 4(a) above for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation, disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.

5. Rise and Fall

The lump sum payment for the Construction Phase Services identified in Clause 4(a)(ii) of this Payment Schedule and the rates in the Schedule of Rates identified in clause 6 of this Payment Schedule for the Construction Phase Services adjustments are subject to adjustment for rise and fall, by applying the Costs Adjustment Factor in clause 2.1 of Schedule 4 of the Project Deed.

The lump sum payment for the Design Phase Services identified in Clause 4(a)(i) of this Payment Schedule and the rates in the Schedule of Rates identified in clause 6 of this Payment Schedule for the Design Phase Services adjustments are not subject to adjustment for rise and fall.

6. Schedule of Rates

Design Phase Services – adjustments

| Nominated Personnel | Daily Rate (\$) (excluding GST) |
|-----------------------------|---------------------------------|
| David Bone | |
| Tim Mouton | |
| Travel (greater than 200km) | |
| | |

Construction Phase Services - adjustments

| Nominated Personnel | Daily Rate (\$) (excluding GST) |
|-----------------------------|---------------------------------|
| David Bone | |
| Tim Mouton | |
| Travel (greater than 200km) | |
| | |

These rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements and other costs necessary for and arising out of or in connection with the Services for which the ER is to be paid on a Schedule of Rates basis under this Deed, excluding disbursements described in and payable under clause 7 of this Payment Schedule and reasonable costs for transport outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site.

When claiming payment for any Services for which the ER is to be paid on a Schedule of Rates basis the ER must provide details of the time expended by the ER in performing the Services for which the ER is entitled to be paid on a Schedule of Rates basis.

7. Disbursements

- (a) The ER will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the ER is to be paid on a Schedule of Rates basis under this Deed if those disbursements:
 - (i) have been reasonably and properly incurred for the sole purpose of performing Services for which the ER is to be paid on a Schedule of Rates basis in accordance with this Deed and do not fall into the category of one of the disbursements described in clause 7(b);

- (ii) were approved in writing by the Contractor and RMS prior to being incurred where they exceed ; and
 - (iii) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and RMS.
- (b) The ER is not entitled to reimbursement of costs relating to vehicles, local transport (within the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site), car parking, computers, insurance, general office consumables and telecommunications.
- (c) The ER will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the ER is to be paid on a lump sums basis under this Deed if those disbursements:
- (i) were not possible to be identified at the tender stage;
 - (ii) have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits on the Contractor's Work at locations outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site;
 - (iii) were approved in writing by the Contractor and RMS prior to being incurred where they exceed; and
 - (iv) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and RMS.
- (d) The ER will not be entitled to make any claim against the Contractor arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clauses 7(a) and 7(c) above.

8. Monthly payment schedule for lump sums

The ER is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to clauses 1 and 2 of this Payment Schedule, the indicative monthly payment to be made under the lump sums (excluding disbursements) is set out in the following table:

| Month after date of the Project Deed | Payment (\$ excluding GST) |
|--------------------------------------|----------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
| 18 | |

| | |
|------------------|-----------------------------------|
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| 29 | |
| 30 | |
| 31 | |
| 32 | |
| 33 | |
| | |
| Audits | Payment (\$ excluding GST) |
| 12 Month Audit | |
| 2 Further Audits | |

9. GST

All lump sums, rates and amounts in this Payment Schedule exclude GST.

Schedule 30D – Insurance Schedule

(Clause 6.3)

| TYPES OF INSURANCES | MINIMUM SUM INSURED | PERIOD OF INSURANCE | INSURANCE COVER IS TO INCLUDE THE FOLLOWING | QUALIFICATIONS |
|---|--|---|--|--|
| Broad form Public Liability and Product Liability | <p>Public Liability: Each and every occurrence</p> <hr/> <p>Product Liability: Each and every occurrence & in the aggregate for all occurrences</p> | <p>Annually, from the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, which ever is earlier).</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below;</p> <p>(c) Lists RMS as an additional named insured; and</p> <p>(d) Includes a cross liability clause as defined in clause 3, and a waiver of subrogation clause as defined in clause 4, of the Definitions and Notes below.</p> | <p>If no products are being supplied then only Public Liability cover is required.</p> |
| Motor Vehicle Comprehensive or Third Party Property Damage | <p>For any single occurrence</p> | <p>Annually from the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, which ever is earlier).</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) Covers motor vehicles owned or used by the ER or its subcontractors directly or indirectly engaged in performance of the Services; and</p> <p>(c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;</p> | <p>Only required if the ER will use a motor vehicle in the course of providing the Services or if the ER will use or park their motor vehicles on premises owned or occupied by RMS.</p> |
| Professional Indemnity | <p>Each and every occurrence and in the aggregate for all occurrences</p> | <p>From the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, which ever is earlier)</p> <p>plus 6 years following the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, which ever is earlier).</p> <p>The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the Project Deed.</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) One automatic restatement per period of insurance; and</p> <p>(c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.</p> | |
| Workers Compensation | <p>As per the relevant Workers Compensation legislation.</p> | <p>Annually from the date of the Project Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, which ever is earlier).</p> | <p>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below; and</p> <p>(b) Is as per relevant Workers Compensation legislation.</p> | |

Definitions and Notes:

1. Approved insurer means:
 - (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).

2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the Insurers agree to waive all rights of subrogation that they may have or acquire against RMS where required to do so under the contract.

Executed as a deed.

Executed by Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) in accordance with s.127 of the *Corporations Act 2001*:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Signed for Ferrovia Agroman (Australia) ABN 98 150 820 116 under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name

Name

Date of power of attorney

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Signed Sealed and Delivered by
as an authorised delegate of **Roads and Maritime Services (ABN 76 236 371 088)** in the presence of:

Signature

Signature of Witness

Name of Witness in full

Executed by Onsite Environmental Management Pty Ltd (ABN 33 107 764 312) in accordance with s.127 of the *Corporations Act 2001*:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Incentive Amount

(clauses 18.7 and 23.2 (definitions of "Key Result Areas" and "Key Performance Indicators"))

Section 1 – Key Performance Indicators

The Key Result Areas are:

- Uniformity of Concrete in Pavements;
- Uniformity of Concrete in B80 Elements;
- Bridge Construction Quality – Deck Cracking 28 days after casting;
- Pavement Ride Quality; and
- Presentation upon Opening.

Section 2 – Key Result Areas

2.1 Uniformity of Concrete in Pavements

The KPI to measure the level of achievement of the KRA for Uniformity of Concrete in Pavements will be evaluated by determining the coefficient of variation (CV) of 28 day compressive strength for concrete paving. Uniformity of concrete must be:

- measured on all concrete paving in accordance with RMS D&C R83 and R84 as applicable;
- except as required by this section 2.1, measured in accordance with RMS D&C R83 and R84 as applicable;
- measured as the coefficient of variation of 28 day compressive strength which is defined as the standard deviation divided by the mean and presented as a percentage. The mean coefficient of variation shall be calculated as the volume weighted average of the coefficient of variation for each individual concrete mix design; and
- determined as a percentage in accordance with the criteria noted in Table 31.1 with the percentage pro-rated for intermediate mean coefficient of variation of 28 day compressive strength values in Table 31.1 and rounded to one decimal point.

For example, Mix 1 has a CV of 4% and comprises 40% of the total volume of concrete paving in the project; Mix 2 has a CV of 5.5% and comprises 50% of the total volume of concrete paving in the project. Mix 3 has a CV of 4.8% and comprises 10% of the total volume of concrete paving in the project. The mean coefficient of variation of 28 day compressive strength is calculated as:

- $(4 \times 0.4) + (5.5 \times 0.5) + (4.8 \times 0.1) = 4.8\%$; and
- the percentage for Uniformity of Concrete in Pavements is determined using Table 31.1 as 60%.

Table 31.1

| Mean coefficient of variation of 28 day compressive strength (rounded to one decimal point) | Percentage for Uniformity of Concrete in Pavements |
|---|--|
| More than 6% | 0 |
| 5% | 50% |
| 4% or less | 100% |

2.2 Uniformity of Concrete in B80 Elements

The KPI to measure the level of achievement of the KRA for Uniformity of Concrete in B80 Elements will be evaluated by determining the coefficient of variation (CV) of 28 day compressive strength for B80 elements. Uniformity of concrete must be:

- measured for all concrete placed on site and off site, excluding all blinding concrete, for all RMS D&C B80 bridge elements;
- except as required by this section 2.2, measured in accordance with RMS D&C B80;
- measured as the coefficient of variation of 28 day compressive strength which is defined as the standard deviation divided by the mean and presented as a percentage. The mean coefficient of variation shall be calculated as the volume weighted average of the coefficient of variation for each individual concrete mix design; and
- determined in accordance with the criteria noted in Table 31.2 with the percentage pro-rated for intermediate mean coefficient of variation of 28 day compressive strength values in Table 31.2 and rounded to one decimal point.

For example, Mix 1 has a CV of 6% and comprises 40% of the total volume of B80 concrete in the project; Mix 2 has a CV of 7.5% and comprises 50% of the total volume of B80 concrete in the project. Mix 3 has a CV of 6.8% and comprises 10% of the total volume of B80 concrete in the project. The mean coefficient of variation of 28 day compressive strength is calculated as:

- $(6 \times 0.4) + (7.5 \times 0.5) + (6.8 \times 0.1) = 6.8\%$; and
- the percentage for Uniformity of Concrete in B80 Elements is determined using Table 31.2 as 60%.

Table 31.2

| Mean coefficient of variation of 28 day compressive strength (rounded to one decimal point) | Percentage for Uniformity of Concrete in B80 Elements |
|---|---|
| More than 8% | 0 |
| 7% | 50% |
| 6% or less | 100% |

2.3 Bridge Construction Quality – Deck Cracking 28 days after casting

The KPI to measure the level of achievement of the KRA for Bridge Construction Quality – Deck Cracking 28 days after casting will be evaluated by determining the percentage of bridge deck segments affected by cracking greater than or equal to 0.1mm measured in accordance with RMS D&C B80. A bridge deck segment is defined as:

- a quarter of a span for single Main Carriageway bridges; and
- a half a span for twin Main Carriageway bridges and Local Road bridges.

Link slabs are excluded from this assessment.

2.4 Pavement Ride Quality

The KPI to measure the level of achievement of the KRA for Pavement Ride Quality is the roughness number (defined as the mean of the roughness counts plus one standard deviation of roughness counts for each 100m section) on concrete base courses, asphalt wearing courses and bridge wearing courses on the travel lanes of the Main Carriageways. Ride quality must be:

- measured on all of the concrete base courses (excluding ramps and 20 m either side of bridge joints), whether or not it is to be overlaid by asphaltic wearing courses;
- measured on all asphalt wearing course surfaces (excluding across bridges and 20 m either side of bridge joints);

- measured on all Main Carriageway bridge wearing courses, including 20 m either side of bridge joints (extended as required to provide minimum 100m measuring lengths);
- except as required by this section 2.4, measured in accordance with RMS D&C specifications;
- determined as a separate percentage for:
 - the PCP base course (PCP Percentage) in accordance with the criteria noted in Table 31.3;
 - the asphalt wearing course (Asphalt Percentage) in accordance with the criteria noted in Table 31.3; and
 - the bridge wearing course (Bridge Percentage) in accordance with the criteria noted in Table 31.4.
- The percentage for Pavement Ride Quality must be calculated as follows:
 - Percentage for Pavement Ride Quality = (PCP Percentage x 0.30) + 3(Asphalt Percentage x 0.60) + (Bridge Percentage x 0.10)

Table 31.3

| Roughness Number | Percentage |
|------------------|------------|
| Greater than 35 | 0 |
| 34 | 12.5 |
| 33 | 25.0 |
| 32 | 37.5 |
| 31 | 50.0 |
| 30 | 62.5 |
| 29 | 75.0 |
| 28 | 87.5 |
| 27 | 100.0 |

Table 31.4

| Roughness Number | Percentage |
|------------------|------------|
| Greater than 40 | 0 |
| 39 | 12.5 |
| 38 | 25.0 |
| 37 | 37.5 |
| 36 | 50.0 |
| 35 | 62.5 |
| 34 | 75.0 |
| 33 | 87.5 |
| 32 | 100.0 |

2.5 Presentation upon Opening

The KPI to measure the level of achievement of presentation of the Project Works at completion, including landscaping, will be determined by inspection of the urban design elements and visual amenity of the Works 1 month after opening to traffic. The score for this KRA will be determined by scoring each of the criteria in Table 31.5 using the assessment guide in Table 31.6. An average score for the four criteria will be determined. An average score of 7.0 or less will attract an incentive score of 0%. An average score 9.0 or greater will attract an incentive score of 100%. An average score between 7 and 9 will attract an incentive score for Presentation upon Opening of between 0% and 100% on a pro-rata basis.

Table 31.5
Urban design and Landscaping – Presentation Checklist

| No | Criteria |
|----|--|
| 1 | Presentation of Landscape |
| | Checklist Examples: <ul style="list-style-type: none"> • Areas of revegetation/ planting beds completed • No weed infestations • Mulching completed • Tree guards all properly attached • Grass sward complete and mown without bare earth patches |
| 2 | Presentation of Structures |
| | Checklist Examples: <ul style="list-style-type: none"> • Concrete cleaned off and pour joints smooth • Joints and edges to noise wall panels, parapets, abutments etc aligned and continual. • Tops of walls smoothly flowing if curved or straight • Graffiti removed • Culverts neatly finished • Shotcrete, where applied, neatly masked off without overspray • Barriers neatly connected, mesh fastened and taut. • Rock around abutments neatly placed and correctly sized |
| 3 | Presentation of Road Furniture |
| | Checklist Examples: <ul style="list-style-type: none"> • Signage neatly set out and not obscured by other signs or planting • Signage and public utility junction boxes not obscuring road and footpath cycleway sight lines • Temporary masking on signage neatly applied • Lighting set out neatly and regularly and aligned • Barriers neatly connected, aligned and clean • Fencing taut, vertical, neatly aligned and painted black (where required) |
| 4 | Presentation of General Road Environment |
| | Checklist Examples: <ul style="list-style-type: none"> • All debris and rubbish cleared away • No temporary spoil or soil stock piles left • Road and footpath pavements cleaned of mud and dirt • Footpaths neatly edged without bitumen slumping into landscape areas • Road marking neat and precise |

Table 31.6
Assessment Guide for Criteria

| Score | Description |
|--------------|---|
| 1 | General non-compliance. Does not meet the required standard. |
| 2 | Major weaknesses. Rarely meets the required standard. |
| 3 | Significant weaknesses. Works often below the required standard. |
| 4 | Moderate weaknesses. Does not always meet the required standard. |
| 5 | Minimal achievement of the required standard. Some errors, risks, weaknesses or omissions which are possible to correct and make acceptable. |
| 6 | Reasonable achievement of the required standard. Some errors, risks, weaknesses or omissions which are possible to correct with minimal effort. |
| 7 | Reasonable achievement of the required standard. Some errors, risks, weaknesses or omissions which may be acceptable as offered. |
| 8 | Sound achievement of the required standard. Minimal minor errors, weaknesses or omissions which are acceptable as offered. |
| 9 | Often exceeds the required standard. Negligible minor errors, risks, weaknesses or omissions. |
| 10 | Outstanding. Always well above the required standard. No errors, risks, weaknesses or omissions. |

Section 3 – Incentive payments

| Item | KRA | Description and Measurement of KRA and KPI | Portion of the Incentive Amount Pool Applicable to the KRA | Formula to calculate the Incentive Amount |
|------|---|---|--|---|
| 1 | Uniformity of Concrete in Pavements | As detailed in section 2.1 of this Schedule | | <p>The portion of the Incentive Amount Pool applicable to the Uniformity of Concrete in Pavements KRA is calculated by multiplying the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA" by the percentage for Uniformity of Concrete in Pavements derived in accordance with section 2.1 divided by 100 and must be:</p> <ul style="list-style-type: none"> • no less than ; and • no greater than the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA". |
| 2 | Uniformity of Concrete in B80 Elements | As detailed in section 2.2 of this Schedule | | <p>The portion of the Incentive Amount Pool applicable to the Uniformity of Concrete B80 Elements KRA is calculated by multiplying the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA" by the percentage for Uniformity of Concrete in B80 Elements derived in accordance with section 2.2 divided by 100 and must be:</p> <ul style="list-style-type: none"> • no less than ; and • no greater than the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA". |
| 3 | Bridge Construction Quality – Deck Cracking 28 days after casting | As detailed in section 2.3 of this Schedule | | <p>The portion of the Incentive Amount Pool applicable to the Bridge Construction Quality – Deck Cracking 28 days after casting KRA is calculated by multiplying the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA" by the percentage for the Bridge Construction Quality – Deck Cracking 28 days after casting derived in accordance with section 2.3 divided by 100 and must be:</p> |

| | | | | |
|---|---------------------------|---|--|--|
| | | | | <ul style="list-style-type: none"> • no less than ; and • no greater than the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA". |
| 4 | Pavement Ride Quality | As detailed in section 2.4 of this Schedule | | <p>The portion of the Incentive Amount Pool applicable to the Pavement Ride Quality KRA is calculated by multiplying the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA" by the percentage for the Pavement Ride Quality derived in accordance with section 2.4 divided by 100 and must be:</p> <ul style="list-style-type: none"> • no less than ; and • no greater than the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA". |
| 5 | Presentation upon opening | As detailed in section 2.5 of this Schedule | | <p>The portion of the Incentive Amount Pool applicable to the Presentation upon opening KRA is calculated by multiplying the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA" " by the percentage for Presentation upon Opening derived in accordance with section 2.5 divided by 100 and must be:</p> <ul style="list-style-type: none"> • no less than ; and • no greater than the amount shown in the column titled "Portion of the Incentive Amount Pool Applicable to the KRA". |

Performance Evaluation Record Forms

(clauses 3.3(a) and 23.2 (definition of "Performance Evaluation Record Forms"))

Form 1: Performance Evaluation

(This form is provided for guidance only)

*Design and Construct
Project Deed title:*

Date:

Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

| Topic | Objectives | Your rating (this period) | Group rating (this period) |
|-----------------------------|--|---------------------------|----------------------------|
| Communication | Open, honest, constructive, timely, efficient and effective communications. <ul style="list-style-type: none"> Quality communications including co-operation between parties, compliance with request not to hinder performance, providing early warning, and evaluation and monitoring. <i>Refer to clauses 1.3 and 3.3.</i> | | |
| Time | Completion by Contractual Completion Dates <ul style="list-style-type: none"> time management - milestone achievement on or before the due date. extensions of time <i>Refer to clauses 1.2, 17.1, 17.2, 17.5, 17.10 and 17.15.</i> | | |
| Financial | Meeting or bettering deed requirements <ul style="list-style-type: none"> Financial management, including early warning and agreement to Variations, quantity measurement, payments, final payment. <i>Refer to clauses 15 and 18.</i> | | |
| Quality | Meets or exceeds specified/agreed requirements <ul style="list-style-type: none"> Quality management. Including quality standards, design requirements, fitness for purpose, innovation, Defect rectification, defect-free Construction Completion, post Construction Completion. Encourage continuous improvement and personnel development through planning, flexibility and common sense. <i>Refer to clauses 11.1 – 11.5, 12.2, 13.1, 13.2, 16, 17.10 and 17.15.</i> | | |
| Safety | Safe working environment for project team and general public. <ul style="list-style-type: none"> Occupational health, safety and rehabilitation management. Including co-operation between parties, minimising OH&S incidents, evaluation and monitoring <i>Refer to clause 5.6 and 5.7.</i> | | |
| Claims and Issue Resolution | <ul style="list-style-type: none"> Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency <i>Refer to clauses 3.5, 19 and 20.</i> | | |
| Environment | Environmental management. Including planning energy & water conservation, waste management, resource conservation, pollution reduction, protection of environment, healthy work environment <ul style="list-style-type: none"> Pro-active management of impacts and commitments. Minimise environmental incidents <i>Refer to clauses 5.2, 6.1, 6.3 and 10.5.</i> | | |
| Contract Relations | Co-operative contract relationships including compliance with NSW Government codes of practice and guidelines; industrial relations management; and Subcontractor performance, <ul style="list-style-type: none"> Enjoy work and working together. Enhanced reputations of personnel and organisations involved. <i>Refer to clause 5.</i> | | |
| Community Relations | <ul style="list-style-type: none"> Proactively enhance and maintain good community relations Minimise impacts on the community. Proactive management of commitments to individuals and groups. <i>Refer to clauses 3.3 and 3.11.</i> | | |
| Traffic Management | <ul style="list-style-type: none"> Minimise disruption and inconvenience to traffic and provide safe traffic conditions. Safe access to the Site for the project team, subcontractors, suppliers and visitors. Safe access for adjacent residents. <i>Refer to clause 3.10.</i> | | |

The participants should decide on an action plan during the meeting, after discussing project and contract objectives, comments, observations and suggestions for improvement.

Form 2: Performance Evaluation Record

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

*Design and Construct
Project Deed title:*

Date:

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

| Objectives | | Score | Comments |
|-----------------------------------|--|-------|----------|
| Communication | Open, honest, constructive, timely, efficient, effective | | |
| Time | Milestone achievement on or before due date | | |
| Financial | Meeting or bettering deed requirements | | |
| Quality | Meets or exceeds specified/agreed requirements | | |
| Safety | Safe working environment for project team and general public. | | |
| Claim and Issue Resolution | Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency. | | |
| Environment | Planning, conservation of resources, protection of environment, healthy work environment. Pro-active management of impacts and commitments. Minimise environmental incidents | | |

*Design and Construct
Project Deed title:*

Date:

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

| Objectives | | Score | Comments |
|---------------------------|--|--------------|-----------------|
| Contract Relations | <p>Co-operative relationships, compliance with NSW Government codes of practice and guidelines; I.R. management; and Subcontractor performance,</p> <p>Enjoy work and working together.</p> <p>Enhanced reputations.</p> | | |
| Community | <p>Proactively enhance and maintain good community relations. Minimise impacts on the community.</p> <p>Proactive management of commitments to individuals and groups.</p> | | |
| Traffic Management | <p>Minimise disruption and inconvenience to traffic and provide safe traffic conditions.</p> | | |
| AVERAGE | | | |

Form 3: Performance Evaluation Record

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

Group

Design and Construct

Project Deed title:

Date:

Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

| Group Members | RMS Team | | | | | | | Contractor Team | | | | | | | Other | | | | | | | | | | |
|------------------------------|----------|---|---|---|---|---|-----|-----------------|---|---|---|---|---|---|---------|---|---|---|---|----------------|---|---|---|-------|---------|
| | | | | | | | RMS | | | | | | | | COMPANY | | | | | SUB-CONTRACTOR | | | | OTHER | OVERALL |
| 1 Communication | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 2 Time | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 3 Cost | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 4 Quality | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 5 Safety | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 6 Claim and Issue Resolution | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 7 Environment | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 8 Contract Relations | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 9 Community Relations | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| 10 Traffic Management | | | | | | | 0 | | | | | | | | 0 | | | | | | | | | | 0 |
| AVERAGE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| No Month | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 Jan-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 Feb-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 Mar-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 Apr-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 May-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 Jun-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 Jul-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 Aug-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 Sep-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 Oct-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 Nov-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 Dec-[insert year] | | | | | | | | | | | | | | | | | | | | | | | | | |

Designer's Deed of Covenant

(clause 2.8(g)(i))

To: **ROADS AND MARITIME SERVICES**, (ABN 76 236 371 088) of Level 9, 101 Miller Street North Sydney 2060

Recitals

- A. RMS has engaged [*Insert Contractor's name*] (ABN [*Insert Contractor's ABN*]) of [*Insert Contractor's address*] ("**Contractor**") to carry out certain works for RMS by deed dated [*insert date*] ("**Deed**").
- B. The Contractor has engaged [*Insert Designer's name*] ("**Designer**") to carry out the design work specified in the Schedule for the purposes of its obligations under the Deed ("**Design Work**").
- C. Under the Deed the Contractor is required to procure the Designer to execute this deed poll in favour of RMS.

Operative

1. Duty of care

The Designer warrants to RMS that in performing the Design Work and in providing any certificate under clause 12.2(h) of the Deed:

- (a) it will owe a duty of care to RMS;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that RMS will be relying upon the skill and judgement of the Designer in performing the Design Work.

2. Governing law and jurisdiction

This deed poll will be construed in accordance with the law of the State of New South Wales and the Designer irrevocably submits to the jurisdiction of the Courts of that State.

Schedule

[Insert description of Design Work]

EXECUTED as a deed poll.

Executed by [_____]
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Owner's Deed Poll

(clauses 13.2(g) and 13.2(i))

This deed poll is in favour of the Roads and Maritime Services.

Property Address: **[Insert Property Address]**

-
1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:
[Insert Description of Property Works]

 2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.

 3. I/We release the Roads and Maritime Services from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

SIGNED as a deed poll.

Signed sealed and delivered by

in the presence of:

Signature

Signature of Witness

Name of Witness in full

Insurance Schedule

(clauses 7.1(a), 7.1(b), 7.5(a)(i) and 7.5(a)(ii))

| | TYPES OF INSURANCES | MINIMUM SUM INSURED | PERIOD OF INSURANCE | INSURANCE COVER IS TO INCLUDE THE FOLLOWING |
|---|--|---|--|---|
| <p>Principal Arranged Insurance (RMS)</p> <p>The details of the policies below are provided in the Aon certificate of currency. A copy of these may be inspected by appointment at the offices of the RMS insurance broker. Capitalised terms which are not defined in the deed are defined in the policies in Schedule 37.</p> | | | | |
| 1 | Contract Works | Contract Works – as per Declared Value | Duration of the Works – covering RMS, Contractor and subcontractors and other parties as specified in the contract | RMS has arranged standard policies of insurance for contract works insurance |
| Excess for Contract Works | <p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the contract are:</p> <ul style="list-style-type: none"> • Contract Works greater than: <ul style="list-style-type: none"> ○ Water damage – excess is per Event/Occurrence ○ Any other claim - excess is per Event/Occurrence ○ Tunnelling contracts - excess is per Event/Occurrence (where applicable) <p>The Contractor may effect insurance to cover the amount of that excess at its own cost.</p> | | | |
| 2 | Public and Products Liability | Public and Products Liability | Maintained until the Date of Completion – covering RMS, Contractor and subcontractors and other parties as specified in the contract | RMS has arranged standard policies of third party liability insurance |
| Excess for Public and Product Liability | <p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the contract are:</p> <ul style="list-style-type: none"> • Injury to Contractors – excess is Event/Occurrence • Products Liability – excess is per Event/Occurrence • Underground Services – excess is per Event/Occurrence • Any other claim - excess is per Event/Occurrence <p>The Contractor may effect insurance to cover the amount of that excess at its own cost.</p> | | | |
| 3 | Professional Indemnity | RMS has effected a Principal Professional Indemnity policy for its own benefit. | | |
| Contractor Arranged Insurances | | | | |
| 4 | Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as | for any single occurrence | Annually to the Date of Completion. | (a) Motor vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the contract. |

| | TYPES OF INSURANCES | MINIMUM SUM INSURED | PERIOD OF INSURANCE | INSURANCE COVER IS TO INCLUDE THE FOLLOWING |
|---|---|--|-------------------------------------|--|
| | defined in Definitions and Notes clause 1 below | | | (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below. (c) If applicable to the contract – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly in the performance of the contract. |
| 5 | Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below | As per the relevant Workers Compensation legislation | Annually to the Date of Completion. | As per State Workers Compensation legislation. |
| 6 | Professional Indemnity | RMS will not set any requirements for the minimum sum insured for professional indemnity in the deed. The contractor / consultant / supplier should make their own independent decision regarding their own professional indemnity requirements. | | |

Definitions and Notes

1. Approved insurer means:
 - (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).
2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit of the policy.

Schedule 37

Contract works and third party products liability insurance policies

(clauses 7.1(a) and 7.2(a)(i))

Dispute Avoidance Board Agreement

(clause 2.9 (Dispute Avoidance Board) and clause 20 (Dispute resolution))

This Agreement made at Sydney on the _____ day of _____ 20____
between the following parties:

Parties **Acciona-Ferrovial Joint Venture** an unincorporated joint venture comprising:

- Acciona Infrastructure Australia Pty Ltd (ABN 52 140 915 251) of Level 5, 88 Creek Street, Brisbane, QLD, 4000; and
- Ferrovial Agroman (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street, North Sydney, NSW, 2060

(together, the "**Contractor**").

and

Roads and Maritime Services (ABN 76 236 371 088) ("**RMS**")

of: 101 Miller Street
North Sydney NSW 2060
(for delivery of notices by hand)

or:
Locked Bag 928
North Sydney NSW 2059
(for delivery by post)

Fax no: (02) 8588 4170
Attention: Director Infrastructure Services

and

Members of the Dispute Avoidance Board, namely:

Dr Donald Charrett

of: 215 William Street Melbourne Victoria 3000
Fax No: 03 8660 2842
Email: d.charrett@me.com

Mr Graeme Peck

of 6 Avona Crescent Seaforth New South Wales 2029
Fax No: 02 9907 9638
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Mr Kenneth Roy Hammond

of: 16 Lyle Avenue, Lindfield, NSW 2070
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(collectively "**Members**" or "the **Dispute Avoidance Board**")

Recitals

- A. On or about the date of this Agreement, the Contractor entered into the Project Deed with RMS in respect of the Warrell Creek to Nambucca Heads Upgrade.
- B. The Project Deed provides for a dispute resolution process through the establishment and the operation of a dispute avoidance and resolution board to assist the parties in preventing disputes from arising under the Project Deed and if a dispute cannot be prevented, to decide it.
- C. The Members represent that they are experienced generally in construction and project management and, in particular, in the construction and project management of, and the resolution of issues and disputes in relation to, works similar to the Project Works and offer their expertise in those fields.
- D. The Project Deed contemplates that the Members will discharge those functions set out in Appendix 1 to this Agreement.
- E. This Agreement sets out the rights, obligations and duties of the Members, RMS and the Contractor in relation to the Dispute Avoidance Board.

This Agreement provides:

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Members means the three individuals appointed to the Dispute Avoidance Board in accordance with this Agreement, or the continuing Members and any replacement Member in the circumstances contemplated under clause 13(b) of this Agreement, as the case may be.

Other Parties means RMS and the Contractor.

Rules has the meaning in clause 4(b) of this Agreement.

1.2 Terms defined in the Project Deed

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Deed.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:

- (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
- (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
- (i) a party or clause is a reference to a party or clause of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. Project Deed to prevail

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Project Deed, the terms of the Project Deed will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 2.11 of the Project Deed.

3. Formation of the Dispute Avoidance Board

3.1 Appointment of Members

- (a) Each of the Other Parties appoints each of the Members to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the Project Deed and this Agreement.
- (b) The Members each confirm their acceptance of the appointment referred to in clause 3.1(a).

3.2 Formation

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Members; and
- (c) must perform its obligations and functions under the Project Deed and this Agreement.

3.3 Chairperson

The Members will determine which of them will act as chairperson from time to time.

4. Establishment of procedures

- (a) During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, site visits and other matters (excluding the rules governing the Dispute Avoidance Board determination of a Dispute referred to it pursuant to clause 20.4 of the Project Deed) in accordance with the procedures included in Appendix 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with:
 - (i) the general operating procedures in Appendix 1 to this Agreement; and
 - (ii) the rules for the Dispute Avoidance Board decision process (**Rules**) set out in Appendix 2 to this Agreement in respect of any Dispute referred to the Dispute Avoidance Board pursuant to clause 20.4 of the Project Deed.

5. Dispute Avoidance Board Member's obligations

5.1 Dispute Prevention

Each Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Other Parties in preventing Disputes from arising under the Project Deed and if a Dispute cannot be prevented, to decide it in accordance with clause 20 of the Project Deed and this Agreement.

5.2 Impartiality

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Avoidance Board.

5.3 Independence

Each Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in

accordance with clause 5 of this Agreement.

5.4 General duties

Each Member agrees to carry out his or her obligations as a Member of the Dispute Avoidance Board:

- (a) with due care and diligence;
- (b) in compliance with the Project Deed and this Agreement; and
- (c) in compliance with all applicable Laws.

6. Costs and fees

- (a) The Other Parties are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3.
- (b) The Other Parties agree as between themselves that:
 - (i) they will each pay one half of:
 - (A) the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3;
 - (B) any third party costs incurred in holding any conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any decision process of the Dispute Avoidance Board.
- (c) Each Member agrees that they will submit separate tax invoices to each of RMS and the Contractor at one monthly intervals (unless a different frequency is agreed by the Other Parties), covering the preceding month's activities by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) (**Payment Amount**) in sufficient detail to enable the Other Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3. If either of the Other Parties is not satisfied that the Payment Amount is calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3, then either of the Other Parties may request clarification from the relevant Member.
- (d) Each Member agrees that they will issue separate tax invoices to each of RMS and the Contractor, for one half of the agreed Payment Amount.
- (e) The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(d) within 30 days of receipt.
- (f) The Members are not entitled to engage any third party consultants or advisers in the performance of their obligations under this Agreement unless the Other Parties agree in writing for them to do so, and on the terms on which they may do so.

7. RMS commitment and responsibilities

RMS acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the Project Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the prevention

and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

8. Contractor's commitments and responsibilities

The Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the Project Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the avoidance and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

9. Confidentiality

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than complying with its obligations under this Agreement or the resolution of any Dispute referred to the Dispute Avoidance Board; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. Conflict of interest

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform RMS and the Contractor and the other Members of the Dispute Avoidance Board.
- (b) The other Members of the Dispute Avoidance Board will within five Business Days of notification under clause 10(a) confer and inform the Other Parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

11. Liability

Except in the case of fraud:

- (a) the Members shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board or the Members; and
- (b) the Other Parties jointly and severally hereby release the Members against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "**claims**") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:
 - (i) under or in any connection with this Agreement;
 - (ii) in tort for negligence, negligent advice or otherwise; or
 - (iii) otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without

limitation for unjust enrichment,
arising out of, or in connection with, the Project or the Dispute Avoidance Board's activities or any other process conducted pursuant to this Agreement.

12. Indemnity

RMS and the Contractor hereby jointly and severally indemnify and keep indemnified the Members against all claims including without limitation claims by third parties upon any of the bases set out in clause 11 (or otherwise):

- (a) against the Other Parties, or any of them; and
- (b) against the Members or any of them,

arising out of anything done or omitted to be done by the Dispute Avoidance Board or the Members in the proper performance of their duties under this Agreement and the Project Deed.

13. Termination of Agreement

- (a) This Agreement may be terminated by written agreement of RMS and the Contractor.
- (b) Where:
 - (i) a Member resigns under clause 10(b) or 14.1; or
 - (ii) the appointment of a Member is terminated by RMS and the Contractor under clause 14.2,

then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 14.3(d), at which time this Agreement terminates.

14. Members' termination

14.1 Resignation

A Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to the other Members, RMS and the Contractor (unless RMS and the Contractor agree to a shorter notice period).

14.2 Termination

A Member may be terminated at any time by written agreement of RMS and the Contractor.

14.3 Replacement

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 10(b) or 14.1; or
 - (b) the appointment of a Member is terminated by the Other Parties under clause 14.2,
- then:

- (c) a replacement Member may be appointed in accordance with clause 2.10 of the Project Deed; and
- (d) RMS, the Contractor, the continuing Members and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment and re-constitution of the Dispute Avoidance Board under the terms of the Project Deed.

15. Governing law

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

16. Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between RMS, the Contractor and the Members as that of partners, joint venturers or any other fiduciary relationship.

17. Notices

- (a) Any formal notices contemplated by this Agreement must be in writing and delivered to the relevant address or sent to the facsimile number as set out in the parties' details on page 1 of this Agreement (or to any new address or facsimile number that a party notifies to the others).
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day which is a Business Day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a).

18. Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that another party may reasonably require to give full effect to this Agreement.

19. Survival of terms

The parties agree that clauses 6, 9, 11, 12 and 15 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

20. Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

21. Operation of this Agreement

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

22. Goods and Services Tax

22.1 Interpretation

Words or expressions used in this clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

22.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

22.3 Gross up of consideration

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

22.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

22.5 Tax invoices

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

22.6 Adjustment event

If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement then the consideration payable in respect of the supply shall also be adjusted as follows:

- (a) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
- (b) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to

the Recipient.

Any payment that is required under this clause 22.6 will be made within five Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

23. Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

24. Counterparts

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

25. Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as an agreement

**SIGNED FOR AND ON BEHALF OF
ROADS AND MARITIME SERVICES
(ABN 76 236 371 088)** by its duly
authorised delegate in the presence of:

Signature of Witness

Signature of Delegate

Name of Witness (Please Print)

Name of Delegate (Please Print)

**SIGNED BY Acciona Infrastructure Australia Pty Ltd
(ABN 52 140 915 251)** in accordance with s.127 of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

**SIGNED for Ferrovia Agroman (Australia) Pty Ltd
(ABN 98 150 820 116)** under power of attorney in the
presence of:

Witness

Signature of attorney

Name of Witness in full

Name of attorney in full

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Signature of Member

Name of Witness (Please Print)

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Signature of Member

Name of Witness (Please Print)

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Signature of Member

Name of Witness (Please Print)

Name of Member in full (Please Print)

APPENDIX 1

Dispute Avoidance Board General Operating Procedures

1. General

- 1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the Project Deed in order to assist the Other Parties in firstly attempting to avoid or prevent and, if unable to avoid or prevent, in determining Disputes under clause 20 of the Project Deed in a timely manner.
- 1.2 The Other Parties will furnish to each of the Dispute Avoidance Board Members all documents necessary for the Dispute Avoidance Board to perform its functions, including copies of all Project Deed documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Avoidance Board Members of matters in relation to the Project.
- 1.3 The individual Dispute Avoidance Board Members are not the representative of the party which appointed that representative. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- 1.4 The Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.5 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 20 of the Project Deed.

2. Frequency of Regular Meetings and Construction Site Visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the project circumstances will generally be agreed between the Dispute Avoidance Board and the Other Parties.
- 2.2 In the case of a failure to agree between the Dispute Avoidance Board and the Other Parties, the Dispute Avoidance Board will schedule the meetings and visits as it sees fit.
- 2.3 The frequency of meetings of the Dispute Avoidance Board should generally be two or three monthly and coincide with the same day as meetings (which the Members will attend) of the Management Review Group under the Project Deed, but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. In any event, meetings of the Dispute Avoidance Board may be convened separately to meetings of the Management Review Group.
- 2.4 The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.

3. Agenda for Regular Meetings

- 3.1 The chairperson of the Dispute Avoidance Board will develop an agenda for each regular meeting in accordance with the requirements of the Project Deed and this Agreement.
- 3.2 Dispute Avoidance Board meetings held for the purposes of briefing and updating the Members on performance and progress of the work under the Project Deed and issues or potential issues arising between the Other Parties shall be held on an in-confidence and “without prejudice” basis to encourage full and frank disclosure and discussions.
- 3.3 The provisions of clause 3.2 of this Appendix 1 as they relate to a “without prejudice basis” shall not apply to any inspection or conference convened in accordance with

Appendix 2 - Rules for Dispute Avoidance Board Decisions in relation to a Dispute referred to the Dispute Avoidance Board for determination.

- 3.4 Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by clause 3, the Dispute Avoidance Board will generally inspect the Works, the Temporary Works and the Construction Site in the company of representatives of both of the Other Parties. Any areas of the Project Works, the Temporary Works or the Construction Site that are or may be the subject of any potential issue or Dispute will be pointed out by the Other Parties.

4. Minutes of Meetings

- 4.1 The Management Review Group, under clause 3.5(d) of the Project Deed, will agree and document procedures relating to meetings of the Management Review Group, and any minutes of Management Review Group meetings will be circulated to the Dispute Avoidance Board Members for information only.
- 4.2 In accordance with clause 3.2 above, the minutes of the Dispute Avoidance Board meetings, held other than in accordance with Appendix 2 - Rules for Dispute Avoidance Board Decisions, shall be marked "in-confidence, without prejudice". The minutes of Dispute Avoidance Board meetings will be prepared by the chairperson of the Dispute Avoidance Board and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.
- 4.3 Minutes as may be amended will be adopted by the Dispute Avoidance Board Members at the next meeting.

5. Communications

- 5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by the Project Deed and this Agreement, the Other Parties shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- 5.2 There must be no communication between Dispute Avoidance Board Members and employees of the Other Parties during the life of the Dispute Avoidance Board without the Dispute Avoidance Board Members informing the Other Parties. The Other Parties must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- 5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to the Other Parties should be addressed to the RMS Representative and the Contractor's Representative.
- 5.4 Except as required under this Agreement or under the Project Deed, communication by email is an acceptable alternative to physical delivery or facsimile transmission.

6. Representation

Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project executive and at least one senior off-site executive to whom the on-site executive reports. The Other Parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.

7. Advisory Opinions

Where requested by the Other Parties, the Dispute Avoidance Board may provide an advisory opinion on any issue referred to it by the Other Parties. Any such advisory opinion will not be a decision as that term is referred to in Appendix 2.

8. Other Attendees

Where requested by the Other Parties, and approved by the Members, or where requested by the Members, and approved by the Other Parties, other persons who may be involved in the Project (such as the design manager or independent verifier) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project.

APPENDIX 2

Rules for Dispute Avoidance Board Decisions

1. Written submissions

- 1.1 Within 7 days after the referral of a Dispute to the Dispute Avoidance Board under clause 20.4 of the Project Deed, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party A (i.e. the party who gave the Notice of Referral to DAB under clause 20.4 of the Project Deed) must, in addition to any particulars provided by Party A in the relevant Notice of Referral to DAB, give the other party and the Dispute Avoidance Board a written statement of the Dispute referred to the Dispute Avoidance Board, any agreed statement of facts, and a written submission (which may include witness statements) on the Dispute in support of Party A's contentions.
- 1.2 Within 14 days after the statement in clause 1.1 is served, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, the other party (Party B) must give Party A and the Dispute Avoidance Board a written response to Party A's submissions.
- 1.3 If the Dispute Avoidance Board considers it appropriate, Party A may reply in writing to Party B's response in clause 1.2 within the time allowed by the Dispute Avoidance Board.
- 1.4 If the Dispute Avoidance Board decides further information or documentation is required for the determination of the Dispute, the Dispute Avoidance Board may direct one or more of the Other Parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
- 1.5 The Dispute Avoidance Board must disclose to both of the Other Parties all submissions, further submissions, information and documents received.
- 1.6 Any failure by a party to make a written submission will not terminate or discontinue the decision making process.

2. Conference

- 2.1 Either of the Other Parties may, in writing, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- 2.2 If neither of the Other Parties requests the Dispute Avoidance Board to call a conference, the chairperson of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.
- 2.3 Unless the Members and the Other Parties agree otherwise, the conference will be held at the Construction Site.
- 2.4 At least five days before the conference, the Dispute Avoidance Board must inform the Other Parties in writing of the date, venue and agenda for the conference.
- 2.5 The Other Parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.4, the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.
- 2.6 The Other Parties:
 - (a) may be accompanied at a conference by legal or other advisers; and
 - (b) will be bound by any procedural directions as may be given by the Dispute Avoidance Board in relation to the conference both before and during the course of the conference.
- 2.7 The conference must be held in private.
- 2.8 If agreed between the parties, transcripts of the conference proceedings may be taken

and made available to the Dispute Avoidance Board and the Other Parties.

3. The decision

3.1 As soon as possible after receipt of the submissions referred to in Rule 1 or after any conference referred to in Rule 2 and, in any event not later than 35 days after referral of a Dispute to the Dispute Avoidance Board under clause 20.4 of the Project Deed (or such other period as the parties may agree), the Dispute Avoidance Board must:

- (a) decide the Dispute between the Other Parties; and
- (b) notify the Other Parties of that decision.

3.2 The decision of the Dispute Avoidance Board must:

- (a) be in writing stating the Dispute Avoidance Board's decision and giving reasons;
- (b) be made on the basis of the submissions (if any) of the Other Parties, the conference (if any), and the Dispute Avoidance Board's own expertise; and
- (c) meet the requirements of the Project Deed.

3.3 If the Dispute Avoidance Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the decision.

4. Modification

These rules may be modified only by agreement in writing of RMS and the Contractor.

APPENDIX 3**Schedule of Fees and Disbursements****Mr Donald Charrett**

| Description | Fee (ex-GST) |
|--|---------------------------------|
| Daily rate for attendance at Dispute Avoidance Board meetings and any Management Review Group meetings held on the same day (excluding travel and accommodation outside of Sydney) | |
| Initial review of Contract documentation, routine review of project minutes & reports, preparation for DAB meetings & internal communications between DAB members | per month in non-meeting months |
| Hourly rate for all other services | |
| Capped daily rate for all other services | |
| Travel and accommodation outside of Sydney | At cost |

Mr Graeme Peck

| Item | Work Scope description | Fee Arrangement | Fee rate excl GST |
|-------------|---|--|---|
| 1. | Routine DAB or Management Review Group meetings (nominal frequency, 3 month intervals): | Daily fee. Normal meeting duration on site ≈1 day, including travel time | (i) meeting on site. (ii) meeting if held in Sydney. Rate for item (i) assumes meetings on site can be managed without overnight accommodation in either Coffs Harbour or Kempsey |
| 2. | Initial review of Contract documentation, routine review of project minutes & reports, preparation for DAB meetings & internal communications between DAB members | Monthly fee | per month in non-meeting months; |
| 3. | Dealing with dispute referrals, research and incidental matters related to potential or actual disputes (if and when required). | Hourly fee. | |
| 4. | TRAVEL EXPENSES (if required out of Sydney) and reasonable out-of-pocket expenses | Reimbursed at Cost, supported by receipts. | As noted, whether for items 1, 2 or 3. |
| 5. | Escalation provision | Annual adjustment, from 1 November 2014. | Rates increased on the basis of the Sydney CPI percentage |

| | | | |
|--|--|--|-------------------------------|
| | | | increase from 1 November 2013 |
|--|--|--|-------------------------------|

Mr Kenneth Roy Hammond

| Item | Work Scope description | Fee Arrangement | Fee rate excl GST |
|-------------|---|---|---|
| 1. | Routine DAB or Management Review Group meetings (nominal frequency, 3 month intervals): | Per meeting. Normal meeting duration on site ≈1 day, including travel time, plus preparation and meeting notes. | (i) meeting on site. (ii) meeting if held in Sydney. |
| 2. | Initial review of Contract documentation, routine review of project minutes & reports, preparation for DAB meetings & internal communications between DAB members | Monthly Fee. | per month in non-meeting months; |
| 3. | Dealing with dispute referrals, research and incidental matters related to potential or actual disputes (if and when required). | Hourly fee. | |
| 4. | TRAVEL EXPENSES (if required out of Sydney) and reasonable out-of-pocket expenses | Reimbursed at Cost, supported by receipts. | As noted, whether for items 1, 2 or 3. |
| 5. | Escalation provision | Annual adjustment, from 1 December 2014. | Rates increased on the basis of the Sydney CPI percentage increase from 1 December 2013 as base date. |

Criteria for Members of Dispute Avoidance Board

(clauses 2.8A and 2.10(c))

1. Criteria

The Dispute Avoidance Board Members must meet the following criteria:

(a) Experience

At least one Dispute Avoidance Board Member (and preferably all) must be experienced in the type of construction required for the Contractor's Work, interpretation of project documents and resolution of construction issues or disputes. At least two of the Dispute Avoidance Board Members must be experienced in Dispute Avoidance Boards or Dispute Resolution Boards.

(b) Neutrality

- (i) The Members must be neutral, act impartially and be free of any conflict of interest.
- (ii) For the purposes of this clause 1, the term "Member" also refers to the Member's current primary or full time employer, and "involved" means having a contractual relationship with either party to the Project Deed, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.

(c) Prohibitions and disqualifying relationships for prospective Members

Members must not have:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board;
- (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the Project Deed, except for fee-based consulting services on other projects;
- (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the reasonable opinion of either party, could suggest partiality; or
- (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Avoidance Board's activities.

(d) Prohibitions and disqualifying relationships for Members

The following matters may be construed as a conflict of interest in respect of a Member:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board; or
- (ii) the Member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

2 Disclosure Statement

A disclosure statement for each prospective Member must be submitted to RMS and the Contractor (including for a person nominated by the remaining two Members under clause 2.10(a)(i) of the Project Deed). Each disclosure statement must include:

- (a) a resume of relevant experience;
- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective Member's primary or full time employer, to the project and with all entities involved in the project, including subcontractors, designers and consultants;
- (c) disclosure of a close professional or personal relationship with any key members of any entity involved in the project; and
- (d) disclosure of any other matter relevant to the criteria identified in clause 1(c) above.

Start-up workshops: Program

(clause 3.1(e))

Opening

The first speaker's tasks should be to focus the participants on goals and on issues such as teamwork, co-operation, achieving a successful project, and the major foreseeable challenges.

Discussions on co-operation

The parties aim to promote a culture of co-operation which participants in the workshop should understand and be committed to.

The workshop participants may break into small groups to discuss sections of the contract dealing with co-operation, and how they apply to the Contractor's Work.

Communication framework and directory

The workshop participants should reach consensus on a framework to allow participants to co-operate on all aspects of the project. Communication arrangements should be recorded and names and contact information exchanged.

Concerns and problems

The participants should identify concerns or possible future problems and jointly prepare an action plan for their resolution.

Opportunities for innovation

The parties aim to encourage innovation. Opportunities may be lost if they are recognised too late. Participants may identify, discuss opportunities and plan for pursuing innovation and present them to the workshop. These ideas may then be developed if feasible and appropriate.

Evaluation and monitoring process

This process is explained so that participants understand their roles at the regular monitoring meetings. The evaluation and monitoring forms are discussed, and altered if necessary to suit particular needs of the project and the contract. The participants decide when the regular monitoring meetings will occur, and who will attend.

Conclusion

Before the workshop concludes, all participants should have an opportunity to comment and provide feedback for possible improvements to future workshops and monitoring meetings.

Approvals

(clause 5.1(b)(i))

Existing Approvals

- a) The approval under section 75J of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the Minister for Planning and Infrastructure dated 19 July 2011 in respect of Application No. MP 07_0112 for the construction and operation of approximately 42 kilometres of two lane divided carriageways, referred to as the Pacific Highway Upgrade - Warrell Creek to Urunga Project, as modified by:
- Modification of Minister for Planning and Infrastructure's approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 20 November 2012 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending condition C27. to modify the approval process for minor ancillary facilities (Modification 07_0112 MOD 1);
 - Modification of Minister for Planning and Infrastructure's approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 4 December 2012 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending condition C27. to modify the approval process for minor ancillary facilities (Modification 07_0112 MOD 2);
 - Modification of Minister for Planning and Infrastructure's approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 18 February 2013 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending conditions A1. and A2. to correct minor administrative errors (Modification 07_0112 MOD 3); and
 - Modification of Minister for Planning and Infrastructure's approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 22 March 2013 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending the definition of construction in Schedule 1 (Modification 07_0112 MOD 4).
 - Modification of Minister for Planning and Infrastructure's approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 18 December 2013 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending the definitions to heritage and heritage item and modifying the requirements for heritage impacts regarding archaeology (Modification 07_0112 MOD 5).
 - Modification of Minister for Planning and Infrastructure's approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning and Infrastructure on 17 March 2014 in respect of the Pacific Highway Upgrade - Warrell Creek to Urunga Project amending the terms of Project Approval and heritage requirements (Modification 07_0112 MOD 6).
- b) The Director General's approval required by condition B6. of the Planning and Infrastructure Minister's Approval in respect of a Nest Box Plan, noting that the Nest Box Plan is titled Warrell Creek to Urunga: Nest Box Plan of Management and the Director General's approval refers to this plan of management.
- c) The Director General's approval required by condition B7. of the Planning and Infrastructure Minister's Approval in respect of a management plan for *Amorphospermum whitei* and *Marsdenia longiloba*, noting that the management plan is titled Warrell Creek to Urunga Upgrade Threatened Flora Management Plan and the Director General's approval refers to

- this management plan.
- d) The Director General's approval required by condition B30. and B31. of the Planning and Infrastructure Minister's Approval in respect of a Giant Barred Frog management plan, noting that the management plan is titled Pacific Highway Upgrade: Warrell Creek to Urunga Giant Barred Frog (*Mixophyes iteratus*) Management Strategy and the Director General's approval refers to this management strategy.
 - e) The Director General's approval required by condition B30. and B31. of the Planning and Infrastructure Minister's Approval in respect of a Green - Thighed Frog management strategy, noting that the management strategy is titled Pacific Highway Upgrade: Warrell Creek to Urunga Green - Thighed Frog Management Strategy and the Director General's approval refers to this management strategy.
 - f) The Director General's approval required by condition B30. and B31. of the Planning and Infrastructure Minister's Approval in respect of a micro-bat management strategy, noting that the management strategy is titled Pacific Highway Upgrade: Warrell Creek to Urunga Microchiropteran Bat Management Strategy and the Director General's approval refers to this management strategy.
 - g) The Director General's approval required by condition B30. and B31. of the Planning and Infrastructure Minister's Approval in respect of a threatened flora management plan as part of the procedure for dealing with EEC/threatened species, noting that the management plan is titled Warrell Creek to Urunga Upgrade Threatened Flora Management Plan and the Director General's approval refers to this management plan.

Future Approvals to be obtained by RMS

The Minister's Approval

Road Occupancy Licence Application Form

(clause 5.14(a)(i))

ROAD OCCUPANCY LICENCE APPLICATION FORM

| 1. Work Location Details | | |
|-----------------------------------|--------------------|-----------|
| Start location | Reference point | |
| | Direction | |
| | Distance | |
| | Roadloc (if known) | |
| End location | Reference point | |
| | Direction | |
| | Distance | |
| | Roadloc (if known) | |
| General Locality | | |
| Length of Work | | |
| Project Name | | |
| Description of Work | | |
| 2. General Reference | | |
| Map Reference | | |
| Council and LGA No. | | |
| Traffic Control Plan No. | | |
| Traffic Management Plan No. | | |
| 3. The Applicant | | |
| Organisation | | |
| Postal Address | | |
| Contact Name | | |
| Contact Numbers | Phone: | Fax: |
| E-mail Address | | |
| Period of Operation | From: | To: |
| Time of Operation | From: | To: |
| Site Contact Person | | |
| Phone No | | |
| 4. The Project | | |
| Type of Closure | | |
| Type of Work | | |
| Traffic Control to be Implemented | | |
| Estimated Cost | | |
| Description of Work Area | | |
| Dimensions of Work Area | | |
| Speed Limit | Existing: | Proposed: |

| | |
|-------------------|--|
| Unsealed Surfaces | |
|-------------------|--|

RMS Geotechnical Data

(clauses 10.2, 15.3 and 23.2 (definition of "RMS Geotechnical Data"))

Categories constituting raw factual data are laboratory test results and the data identified in the table below:

Raw factual data

Boreholes

Date of Drilling (start and end)
Location (Easting/Northing)
Elevation (RL)
Depth (total)
Diameter
Pocket Penetrometer Tests (*depth and reading*)
SPT (*depth and reading*)
Vane Shear Tests (*depth and reading*)
Point Load Testing
Sample depths
Core Photographs

Backhoe Test Pits

Date of Excavation
Location (Easting/Northing)
Elevation (RL)
Depth (total)
DCP (*blow count and depth*)
Pocket Penetrometer Tests (*depth and reading*)
Sample depths
Test Pit Photos

Window Sampling

Date of Sampling
Location (Easting/Northing)
Elevation (RL)
Depth (total)
DCP (blow count & depth)
Pocket Penetrometer Tests (depth & reading)
Sample depths
Sample Photos

Hand Augers

Date of Excavation
Location (Easting/Northing)
Elevation (RL)
Depth (total)
Auger Diameter
DCP (*blow count and depth*)

Raw factual data

Sample depths
Test Pit Photos

Excavator Test Pits

Date of Excavation
Location (Easting/Northing)
Elevation (RL)
Depth (total)
Pocket Penetrometer Tests (*depth and reading*)
Hand Vane Shear Tests (*depth and reading*)
Sample depths
Test Pit Photos

Seismic

Date
Location (Easting/Northing)
Elevation (RL)
Geophone Spacing
Shot Spacing
Total Line Length
Raw data

RAAX Imaging

Date
BH Number
Location (Easting/Northing)
Elevation (RL)
Images

CPT's

Date
Location (Easting/Northing)
Elevation (RL)
Depth
Results (qc, fs, Rf, u2)

Pavement Test Pits

Date of Excavation
Location (Easting/Northing)
Depth (total)
Auger Diameter
DCP (*blow count and depth*)
Sample depths
Test Pit Photos

Deflectograph

Date of Deflectograph Measurements
Roadloc Chainages
Length Analysed
Results

RMS Flood Data

(clauses 10.2, 15.3 and 23.2 (definition of "RMS Flood Data"))

Categories constituting raw factual data are identified in the table below:

| Raw factual data |
|--|
| Hydrologic model, except for the sizes and dimensions of the existing culverts on the North Coast Railway Line |
| Hydraulic model, except for the sizes and dimensions of the existing culverts on the North Coast Railway Line |

RMS Noise Data

(clauses 10.2, 15.3 and 23.2 (definition of "RMS Noise Data"))

Categories constituting raw factual data are test results and the data identified in the table below:

| Raw factual data |
|-------------------------|
| Noise logger results |
| Dates |
| Times |
| Date time |
| Noise levels |
| Weather information |
| Traffic data |

Project Deed Amendments due to Pre-Agreed Variations

(clauses 15.5(c), 15.8(b), 15.8(d), 15.8(e) and 23.2 (definition of "Pre-Agreed Variation"))

Section 1 – Relevant Date

| Relevant Date (clause 15.8(b) of the deed) |
|---|
| The relevant date means a date on or before the date which is 73 weeks prior to the Date for Construction Completion (as adjusted in accordance with the deed). |

Section 2 – Relevant Amendments

The amendments to this deed for Pre-Agreed Variation are described in the table below:

| Clause/Item | Amendment Description |
|--------------------|--|
| SWTC | <p>Section 2.3.1(e) of the Scope of Works and Technical Criteria is amended to include:</p> <p>"(ix) temporary connection works from the Main Carriageways to the Existing Highway north and south of the flying fox colony:</p> <p style="padding-left: 40px;">A. constructed in accordance with design at Item 43 of Appendix 30 of the SWTC and the requirements of Appendices 9 and 46 to the SWTC; and</p> <p style="padding-left: 40px;">B. opened to the public, for the safe, efficient and continuous passage of vehicles, the Main Carriageways, except for the sections of the Main Carriageways impacted by the flying fox colony between chainage 49km750 and chainage 50km250, and the temporary connections, to traffic (Interim Completion) by the Date for Interim Completion in accordance with Appendix 43 of the SWTC.</p> <p>The Contractor must remove and rehabilitate all the areas affected by the temporary connections by the Date for Construction Completion."</p> |
| Project Deed | <p>1. Clause 1.2 is amended in the following manner:</p> <p style="padding-left: 40px;">Delete "and" from the end of clause 1.2(a)</p> <p style="padding-left: 40px;">Delete "." from the end of clause 1.2(b) and replace it with "; and"</p> <p style="padding-left: 40px;">Insert a new clause 1.2(c) after 1.2(b) as follows:</p> <p style="padding-left: 80px;">"(c) regularly and diligently progress the Contractor's Work in accordance with this deed and ensure that Interim Completion is achieved by the Date for Interim Completion."</p> <p>2. Insert the following words into clause 2.4(d)(ii) immediately after the words "Construction Completion":</p> <p style="padding-left: 40px;">" and Interim Completion (as the case may be)"</p> <p>3. Insert the following words into clause 1.3(a)(iii) immediately after the words "Construction Completion, ":</p> <p style="padding-left: 40px;">"Date for Interim Completion,"</p> <p>4. Insert the following words into clause 5.16(i)(ii) immediately after the words</p> |

| | |
|--|---|
| | <p>"Construction Completion,":</p> <p style="padding-left: 40px;">"the Date for Interim Completion,"</p> <p>5. Insert the following words into clause 9.1(d) immediately after the words "Construction Completion":</p> <p style="padding-left: 40px;">" or the Date of Interim Completion"</p> <p>6. Clause 10.6(a)(v) is amended in the following manner:</p> <p style="padding-left: 40px;">Delete "and/or" from 10.6(a)(v)A</p> <p style="padding-left: 40px;">Delete "." from 10.6(a)(v)B and replace with "; and/or"</p> <p style="padding-left: 40px;">Insert new subclause 10.6(a)(v)C as follows:</p> <p style="padding-left: 80px;">"C. delays achievement of Interim Completion."</p> <p>7. Delete entire clause 11.6(c) and replace with the following new subclause 11.6(c):</p> <p style="padding-left: 40px;">"(c) Where any test that is not otherwise required by this deed is directed by RMS Representative under clause 11.6(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify RMS Representative if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Construction Completion or Interim Completion, giving details of the estimated delay and how the critical path to achieving Construction Completion or Interim Completion and the Date of Construction Completion or Date for Interim Completion are likely to be affected (if at all)."</p> <p>8. Insert the following words into subclause 15.1(a)(i)C immediately after the words "Subsidiary Contract Programs":</p> <p style="padding-left: 40px;">", the Date for Interim Completion"</p> <p>9. Insert the following words into subclause 15.1(a)(ii)B(1) immediately after the words "Construction Completion":</p> <p style="padding-left: 40px;">"or Interim Completion"</p> <p>10. Insert the following words into clause 15.1(a)(ii)B(2) immediately after the words "Construction Completion"</p> <p style="padding-left: 40px;">"or Interim Completion"</p> <p>11. Make the following amendments to clause 15.2(b):</p> <p style="padding-left: 40px;">Delete "; and" in clause 15.2(b)(ii) and replace it with ";"</p> <p style="padding-left: 40px;">Delete "." at the end of clause 15.2(b)(iii) and replace it with "; and"</p> <p style="padding-left: 40px;">Insert a new subclause (iv) as follows:</p> <p style="padding-left: 80px;">"(iv) the Date for Interim Completion."</p> <p>12. Insert the following words into clause 15.6(c)(i)D immediately after the words "Subsidiary Contract Programs":</p> <p style="padding-left: 40px;">", the Date for Interim Completion"</p> <p>13. Insert the following words into clause 15.8(c)(iv)B(1) immediately after the words "Date for Construction Completion":</p> <p style="padding-left: 40px;">"or in order to achieve Interim Completion by the Date for Interim Completion"</p> <p>14. Insert the following words into clause 17.1(h)(i) immediately after the words "Date for Construction Completion":</p> <p style="padding-left: 40px;">"or to achieve Interim Completion by or before the Date for Interim Completion"</p> |
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| | <p>15. Insert the following words into clause 17.1(i)(i) immediately after the words "Date for Construction Completion":</p> <p style="padding-left: 40px;">"or from achieving Interim Completion by or before the Date for Interim Completion"</p> <p>16. Delete entire clause 17.2 and replace with the new clause 17.2 below:</p> <p style="padding-left: 40px;">"17.2 Date for Construction Completion and Date for Interim Completion The Contractor must achieve:</p> <p style="padding-left: 80px;">(a) Construction Completion by the Date for Construction Completion; and</p> <p style="padding-left: 80px;">(b) Interim Completion by the Date for Interim Completion."</p> <p>17. Insert the following words into clause 17.3(b) immediately after the words "Construction Completion":</p> <p style="padding-left: 40px;">" or the Date for Interim Completion"</p> <p>18. Delete entire subclause 17.4(b) and replace with the new subclause 17.4(b) below:</p> <p style="padding-left: 40px;">"(b) Except as provided under clause 11.6(d), within 5 days of when the Contractor first became aware, or should reasonably have first become aware, that an event has caused or will or is likely to cause any delay, the Contractor must give RMS Representative written notice of the event and estimated delay, with details of the event and how the critical path to achieving Construction Completion and the Date of Construction Completion or Interim Completion and the Date of Interim Completion (as the case may be), are likely to be affected (if at all)."</p> <p>19. Insert the following new subclause 17.5(aa) immediately after clause 17.5(a):</p> <p style="padding-left: 40px;">"(aa) If the Contractor has been or will be delayed in achieving Interim Completion by an Excusable Cause of Delay, the Contractor may submit a claim for an extension to the Date for Interim Completion."</p> <p>20. Insert the following words into clause 17.5(b)(i) immediately after the words "delay to achieving Construction Completion":</p> <p style="padding-left: 40px;">" or Interim Completion"</p> <p>21. Insert the following words into clause 17.5(b)(i) immediately after the words "extension to the Date for Construction Completion":</p> <p style="padding-left: 40px;">" or the Date for Interim Completion (as the case may be)"</p> <p>22. Insert the following words into clause 17.5(b)(i)E immediately after the words "in achieving Construction Completion":</p> <p style="padding-left: 40px;">" or Interim Completion (as the case may be),"</p> <p>23. Insert the following words into clause 17.5(c)(iii) immediately after the words "achieving Construction Completion":</p> <p style="padding-left: 40px;">" or Interim Completion (as the case may be),"</p> <p>24. Insert the following words into clause 17.5(d) immediately after the words "the Date for Construction Completion":</p> <p style="padding-left: 40px;">" or the Date for Interim Completion (as the case may be),"</p> <p>25. Insert the following words into clause 17.5(d)(i) immediately after the words "adjusted Date for Construction Completion":</p> <p style="padding-left: 40px;">" or any adjusted Date for Interim Completion (as the case may be),"</p> <p>26. Insert the following words into clause 17.5(e) immediately after the words "Date for Construction Completion":</p> |
|--|--|

| | |
|--|--|
| | <p>" or Date for Interim Completion (as the case may be),"</p> <p>27. Insert the following words into clause 17.5(f) immediately after the words "unilaterally extend the Date for Construction Completion":</p> <p>" or Date for Interim Completion,"</p> <p>28. Insert the following words into clause 17.5(f) immediately after the words "The power to extend the Date for Construction Completion":</p> <p>" or Date for Interim Completion"</p> <p>29. Delete entire subclause 17.7(a) and replace with the following new subclause 17.7(a):</p> <p>"(a) Subject to clause 17.7(b), RMS Representative may direct the Contractor to compress the Contractor's Work by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of any delay, which may include taking those measures necessary to achieve:</p> <p style="padding-left: 40px;">(i) Construction Completion by the Date for Construction Completion; or</p> <p style="padding-left: 40px;">(ii) Interim Completion by the Date for Interim Completion,</p> <p>whether or not the cause of any delay entitles the Contractor to an extension of time to the Date for Construction Completion or Date for Interim Completion (as the case may be).</p> <p>RMS Representative may not give a direction under this clause 17.7(a) which requires the Contractor to compress the Contractor's Work so as to achieve Construction Completion or Interim Completion earlier than the Date for Construction Completion or Date for Interim Completion (as the case may be)."</p> <p>30. Insert the following words into clause 17.7(d)(ii) immediately after the words "the Date for Construction Completion":</p> <p>"or the Date for Interim Completion (as the case may be),"</p> <p>31. Insert the following words into clause 17.7(d)(iii) immediately after the words "the Date for Construction Completion":</p> <p>"or the Date for Interim Completion,"</p> <p>32. Insert the following words into clause 17.7(e) immediately after the words "the Date for Construction Completion":</p> <p>", or achieve Interim Completion by the Date for Interim Completion,"</p> <p>33. Insert the following words into clause 17.8(b)(ii)A(2) immediately after the words "extension of time to the Date for Construction Completion":</p> <p>" or the Date for Interim Completion (as the case may be),"</p> <p>34. Insert the following words into clause 17.9(c) immediately after the words "the Date for Construction Completion":</p> <p>" or failure to achieve Interim Completion by the Date for Interim Completion"</p> <p>35. Clause 17.9(d)(ii) is deleted and replaced by new clauses 17.9(d)(ii) and 17.9(d)(iii) as follows:</p> <p style="padding-left: 40px;">"(ii) where Interim Completion has been achieved but Opening Completion or Construction Completion has not, and RMS Representative issues a notice under clause 17.12A, the amount specified in Item 27A of Schedule 1 (which is exclusive of GST), for every day after the Date of Interim Completion (if any) up to and including:</p> |
|--|--|

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| | <p>A. the Date of Construction Completion;</p> <p>B. the Date of Opening Completion; or</p> <p>C. the date that this deed is validly terminated, whichever first occurs; and</p> <p>(iii) where Opening Completion has been achieved but Construction Completion has not, and RMS Representative issues a notice under clause 17.12, the amount specified in Item 28 of Schedule 1 (which is exclusive of GST), for every day after the Date of Opening Completion (if any) up to and including:</p> <p>A. the Date of Construction Completion; or</p> <p>B. the date that this deed is validly terminated, whichever first occurs; and"</p> <p>36. New clause 17.9(da) is inserted directly below clause 17.9(d) as follows:</p> <p>"(da)Therefore, the Contractor agrees that if it does not achieve Interim Completion by the Date for Interim Completion, it will pay RMS the amount specified in Item 27 of Schedule 1 (which is exclusive of GST) for every day after the Date for Interim Completion up to and including:</p> <p>(i) the Date of Interim Completion;</p> <p>(ii) the Date of Construction Completion; or</p> <p>(iii) the date that this deed is validly terminated, whichever first occurs."</p> <p>37. Delete entire subclause 17.9(e) and replace it with the following new subclause 17.9(e):</p> <p>"(e) The liquidated damages provided by:</p> <p>(i) clause 17.9(d) are a genuine pre-estimate of RMS' damages if Construction Completion occurs after the Date for Construction Completion and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by RMS for both its own loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of the Contractor to achieve Construction Completion by the Date for Construction Completion; and</p> <p>(ii) clause 17.9(da) are a genuine pre-estimate of RMS' damages if Interim Completion occurs after the Date for Interim Completion and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by RMS for both its own loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of the Contractor to achieve Interim Completion by the Date for Interim Completion."</p> <p>38. Insert the following words into clause 17.9(g) immediately after the words "clause 17.9(d)":</p> <p>"and clause 17.9(da)"</p> <p>39. Insert the following words into clause 17.9(h) immediately after the words "clause 17.9(d)":</p> <p>"and clause 17.9(da)"</p> <p>40. Delete entire subclause 17.9(j) and replace it with the following new subclause 17.9(j):</p> <p>"(j) The Contractor agrees that if clause 17.9(d) or clause 17.9(da) is found for any reason to be void, invalid or otherwise inoperative so</p> |
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as to disentitle RMS from recovering liquidated damages, RMS will be entitled to recover common law damages as a result of the Contractor failing to achieve Construction Completion by the Date for Construction Completion or failing to achieve Interim Completion by the Date for Interim Completion (as the case may be), but the Contractor's liability for such damages (whether per day or in the aggregate) will not be any greater than the liability which it would have had if clause 17.9(d) or clause 17.9(da) (as the case may be) had not been void, invalid or otherwise inoperative."

41. Insert the following new clause 17.10A immediately after clause 17.10:

"17.10A Interim Completion

- (a) The Contractor must give RMS Representative:
 - (i) 3 months; and
 - (ii) 1 month,written notice of the estimated Date of Interim Completion.
- (b) RMS Representative and the Project Director must, within 7 days of receipt of the notice referred to in clause 17.10A(a)(ii), jointly inspect the Contractor's Work at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.10A(b), RMS Representative must give the Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before Interim Completion is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Interim Completion that it is not practicable to issue a list as contemplated in clause 17.10A(c)(i).
- (d) When the Contractor considers it has achieved Interim Completion, the Contractor must notify RMS Representative in writing.
- (e) RMS Representative and the Project Director must, within 7 days of receipt of the Contractor's notice referred to in clause 17.10A(d), jointly inspect the Contractor's Work at a mutually convenient time.
- (f) Following the joint inspection under clause 17.10A(e) and in any event within 14 days of receipt of a notice under clause 17.10A(d), RMS Representative must state and notify the Contractor of:
 - (i) if Interim Completion has been achieved, the date on which the Contractor achieved Interim Completion; and
 - (ii) if Interim Completion has not been achieved:
 - A.the items, including any Defects, which remain to be completed before Interim Completion is achieved; or
 - B.that the Contractor is so far from achieving Interim Completion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.10A(f)(ii)A.
- (g) If RMS Representative issues a notice under clause 17.10A(f)(ii) the Contractor must proceed with the Contractor's Work and thereafter when it considers it has achieved Interim Completion it must give RMS Representative a further written notice to that effect under clause 17.10A(d) after which clauses 17.10A(e) and 17.10A(f) will reapply.
- (h) The Contractor:
 - (i) acknowledges that, at the date of this deed, it is anticipated that Interim Completion before the Date for Interim Completion will be of benefit to RMS; and
 - (ii) must co-operate to ensure that any potential for early Interim Completion is maximised in light of RMS total requirements for

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| | <p style="text-align: center;">the development of the Existing Highway."</p> <p>42. Insert the following words into clause 17.11(a) immediately after the words "Opening Completion":</p> <p style="padding-left: 40px;">", Interim Completion"</p> <p>43. Insert the following words into clause 17.11(b) immediately after the words "Opening Completion":</p> <p style="padding-left: 40px;">", Interim Completion"</p> <p>44. Insert the following words into clause 17.12(a) immediately after the words "even though Construction Completion":</p> <p style="padding-left: 40px;">"or Interim Completion"</p> <p>45. Delete entire subclause 17.12(b) and replace with the following new subclause 17.12(b):</p> <p style="padding-left: 40px;">"(b) If RMS Representative gives any such notice, this will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve:</p> <p style="padding-left: 80px;">(i) Construction Completion by the Date for Construction Completion; or</p> <p style="padding-left: 80px;">(ii) Interim Completion by the Date for Interim Completion."</p> <p>46. Insert the following new clause 17.12A immediately after clause 17.12:</p> <p style="padding-left: 40px;">"17.12A Interim Completion</p> <p style="padding-left: 80px;">(a) If Interim Completion has been achieved, RMS Representative may, in his or her absolute discretion, give a written notice to the Contractor stating that it proposes to open the Interim Works to the public for the continuous passage of vehicles by a date stated in the notice being no less than 5 days after the date of the issue of the notice. RMS will then have the right to open the Interim Works for the use of the public from the date stated in RMS Representative's notice.</p> <p style="padding-left: 80px;">(b) If RMS Representative gives any such notice, this will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Construction Completion by the Date for Construction Completion."</p> <p>47. Insert the following reference into clause 17.16 immediately after "17.10(f)(i)":</p> <p style="padding-left: 40px;">"17.10A(f)(i)"</p> <p>48. Insert the following words into clause 17.16(c) immediately after "17.10(f)(i)":</p> <p style="padding-left: 40px;">" or 17.10A(f)(i)"</p> <p>49. Insert the following words into subclause (e)(iii) of the definition of "Reserved Act" in clause 23.2, immediately after the words "Opening Completion":</p> <p style="padding-left: 40px;">", Interim Completion"</p> <p>50. Insert the following words into subclause (j) of the definition of "RMS Representative's Statement" in clause 23.2, immediately after the words "Date for Construction Completion":</p> <p style="padding-left: 40px;">"or the Date for Interim Completion"</p> <p>51. Insert the following new subclause(na) into the definition of "RMS Representative's Statement" in clause 23.2, immediately subclause (n):</p> |
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| | <p>"(na) pursuant to clause 17.10A(f):</p> <ul style="list-style-type: none"> (i) whether Interim Completion has been achieved, and if so, the date on which Interim Completion was achieved; or (ii) if Interim Completion has not been achieved: <ul style="list-style-type: none"> A.the items which remain to be completed before Interim Completion is achieved; or B.whether the Contractor is so far from achieving Interim Completion that it is not practicable to notify the Contractor of the items which remain to be completed;" <p>52. Clause 23.2 of the deed is amended to include the following definitions:</p> <p>"Date of Interim Completion means:</p> <ul style="list-style-type: none"> (a) the date notified by RMS in accordance with clause 17.10A(f)(i) as the date Interim Completion was achieved; or (b) where another date is determined in any decision of the Dispute Avoidance Board, arbitration or litigation proceedings as the date upon which Interim Completion was achieved, that date." <p>"Date for Interim Completion means</p> <ul style="list-style-type: none"> (a) 25 May 2017, as adjusted (on a day for day basis) for each extension of time for Construction Completion which has been granted by RMS Representative or allowed in any decision of the Dispute Avoidance Board on or before the date on which RMS provides a notice to the Contractor under clause 15.8(a), but excluding any extensions of time relating solely to that part of the Contractor's Work to be undertaken between chainage 49km750 and chainage 50km250; or (b) where, after the date nominated in clause (a) of this definition, an extension of time for Interim Completion is granted by RMS or allowed in any decision of the Dispute Avoidance Board, arbitration or litigation proceedings, the date resulting therefrom." <p>"Interim Completion means the stage when:</p> <ul style="list-style-type: none"> (a) the Interim Works are complete in accordance with this deed, except for Defects not known; (b) without limiting paragraph (a), the Interim Works are capable of being opened to the public for the continuous safe passage of vehicles; (c) the Contractor has: <ul style="list-style-type: none"> (i) carried out and passed all tests which must necessarily be carried out and passed before the Interim Works are opened to the public for the safe, efficient and continuous passage of vehicles; (ii) obtained all Approvals that it is required under this deed to obtain before Interim Completion and provided such Approvals to RMS Representative; (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Interim Completion; (iv) given to RMS Representative all documents or other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the Interim Works, as applicable, which: |
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| | <p>A. are required to be given to RMS Representative before Interim Completion; or</p> <p>B. must necessarily be handed over before the Interim Works are opened to the public for the safe, efficient and continuous passage of vehicles; and</p> <p>(v) executed a certificate in the form of Schedule 21 and provided it to RMS Representative;</p> <p>(d) the Project Verifier has executed a certificate in the form of Schedule 16 and provided it to RMS Representative; and</p> <p>(e) the Contractor has done everything else which it is required to do before Interim Completion."</p> <p>"Interim Works means the Project Works, excluding that part of the Project Works between chainage 49km750 and chainage 50km250."</p> | | | | | | | | | |
|-------------------------------|---|-------------------------|---|-------------------------|------|---|-------------------------|----|--|-------------------------|
| Construction Contract Sum | Item 2 of Schedule 1 of the deed is amended to increase the amount of the Construction Contract Sum by (excluding GST). | | | | | | | | | |
| Liquidated Damages | <p>Item 27 of Schedule 1 of the deed is deleted and replaced with the following:</p> <table border="1" data-bbox="467 842 1307 954"> <tr> <td data-bbox="467 842 568 954">27</td> <td data-bbox="568 842 852 954">Liquidated Damages (Clause 17.9(d)(i) and clause 17.9A(da))</td> <td data-bbox="852 842 1307 954">per day (excluding GST)</td> </tr> </table> <p>Schedule 1 of the deed is amended to include a new Item 27A as follows:</p> <table border="1" data-bbox="467 1048 1307 1128"> <tr> <td data-bbox="467 1048 568 1128">27A</td> <td data-bbox="568 1048 852 1128">Liquidated Damages (Clause 17.9(d)(ii))</td> <td data-bbox="852 1048 1307 1128">per day (excluding GST)</td> </tr> </table> <p>Item 28 of Schedule 1 of the deed is deleted and replaced with the following:</p> <table border="1" data-bbox="467 1223 1307 1301"> <tr> <td data-bbox="467 1223 568 1301">28</td> <td data-bbox="568 1223 852 1301">Liquidated Damages (Clause 17.9(d)(iii))</td> <td data-bbox="852 1223 1307 1301">per day (excluding GST)</td> </tr> </table> | 27 | Liquidated Damages (Clause 17.9(d)(i) and clause 17.9A(da)) | per day (excluding GST) | 27A | Liquidated Damages (Clause 17.9(d)(ii)) | per day (excluding GST) | 28 | Liquidated Damages (Clause 17.9(d)(iii)) | per day (excluding GST) |
| 27 | Liquidated Damages (Clause 17.9(d)(i) and clause 17.9A(da)) | per day (excluding GST) | | | | | | | | |
| 27A | Liquidated Damages (Clause 17.9(d)(ii)) | per day (excluding GST) | | | | | | | | |
| 28 | Liquidated Damages (Clause 17.9(d)(iii)) | per day (excluding GST) | | | | | | | | |
| Construction Payment Schedule | <p>The Construction Payment Schedule is amended by:</p> <p>(a) inserting the following additional milestone in Cost Centre 3 of Schedule 3 (immediately after milestone 3.18):</p> <table border="1" data-bbox="467 1458 1364 1619"> <thead> <tr> <th data-bbox="467 1458 617 1563">Milestone</th> <th data-bbox="617 1458 1171 1563">Description</th> <th data-bbox="1171 1458 1364 1563">Value (Excl GST)</th> </tr> </thead> <tbody> <tr> <td data-bbox="467 1563 617 1619">3.19</td> <td data-bbox="617 1563 1171 1619">Temporary Connections</td> <td data-bbox="1171 1563 1364 1619"></td> </tr> </tbody> </table> <p>(b) increasing the "TOTAL (Excl. of GST)" by</p> | Milestone | Description | Value (Excl GST) | 3.19 | Temporary Connections | | | | |
| Milestone | Description | Value (Excl GST) | | | | | | | | |
| 3.19 | Temporary Connections | | | | | | | | | |

Project Deed Amendments due to Pre-Agreed Exclusion Zone Works Variation

(clauses 15.8(ba), 15.8(bb) and 23.2 (definition of "Pre-Agreed Exclusion Zone Works Variation"))

The amendments to this deed for the Pre-Agreed Exclusion Zone Works Variation are described in the table below:

| Relevant amendments | | |
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| <p>(a) The Construction Contract Sum is increased by the amount of (excluding GST);</p> <p>(b) the Construction Payment Schedule is amended by inserting the following additional milestone in Cost Centre 1 of Schedule 3 (immediately below milestone 1.11):</p> | | |
| Milestone | Description | Value (Excl GST) |
| 1.11A | The consequence of RMS not obtaining the Minister's Approval by the date specified in Item 25C of Schedule 1 | |
| <p>(c) The following additional payment constraints are added to the Payment Constraints in Cost Centre 1 of Schedule 3:</p> <p>5. For Milestone 1.11A the proportion of the value of the Milestone that will be certified for any monthly payment under clause 18.2 of this deed will be a pro-rata amount of the total value of the Milestone representing the proportion of the work carried out.</p> | | |

Information Documents

(clauses 10.2 and 23.2 (definition of "Information Documents"))

| Information Document No | Description of Information Document |
|-------------------------|---|
| 1. | Upgrading the Pacific Highway - Warrell Creek to Urunga Environmental Assessment Jan-10 ISBN 978-1-921692-63-5 (Note that WC2U_WP4 is a confidential paper and will not be released at this stage) |
| 2 | Upgrading the Pacific Highway - Warrell Creek to Urunga Submissions and Preferred Project Report Nov-10 ISBN 987-1-921766-75-6 |
| 3 | Project Approval (By the NSW Minister for Planning and Infrastructure), Section 75J of the Environmental Planning and Assessment Act 197 19-Jul-11 File No: S02/01634 |
| 4 | Upgrading the Pacific Highway - Warrell Creek to Urunga Project approval documents Oct-11RTA/Pub.11.282 ISBN 978-1-921899-56-0 |
| 5 | Major Project Assessment: Pacific Highway Upgrade – Warrell Creek to Urunga (MP07-0112) Director General’s Environmental Assessment Report Section 75I of the Environmental Planning and Assessment Act 1979 Jul-11 |
| 6 | Not used: Upgrading the Pacific Highway Warrell Creek to Urunga Concept Design Report Revision 4 Draft November 2011 |
| 7 | Registration of Interest, Schedule ES Invitation Form (provided in Word format so Applicants can complete the form) |
| 8 | Upgrading the Pacific Highway - Warrell Creek to Urunga Concept Design Report including Appendices (Excluding Appendix E) Revision 5 Jan-12 |
| 9 | Upgrading the Pacific Highway - Warrell Creek to Urunga Preliminary Concept Design Drawings (Concept Design Report Rev 5, Appendix E) Jan-12 |
| 10 | Pacific Highway upgrade Warrell Creek to Urunga Instrument of Approval MOD1 (07_0112 MOD 1) |
| 11 | Letter: DP&I TO: Bob Higgins ATT: Belinda Bock FROM: Felicity Greenway DATE: 18 February 2013 SUBJECT: Pacific Highway Upgrade - Warrell Creek to Urunga Modification Request – Minor Error Correction (07_0112 MOD3) |
| 12 | Consolidated instrument including Modification 3 to the Project Approval (By the NSW Minister for Planning and Infrastructure), Section 75J of the Environmental Planning and Assessment Act 18-Feb-13 File No: S02/01634 |
| 13 | Pacific Highway upgrade Warrell Creek to Urunga Director-General's Environmental Assessment Report (07_0112 MOD 1) |
| 14 | Pacific Highway Upgrade – Warrell Creek to Urunga Upgrade Addendum to Submissions Report – Fauna Crossing Structures |

| Information Document No | Description of Information Document |
|-------------------------|---|
| 15 | Pacific Highway upgrade Warrell Creek to Urunga WC2U Staging Report Final Draft |
| 16 | Warrell Creek to Urunga: Nest Box Plan of Management Feb-13 Revision D |
| 17 | Pacific Highway upgrade: Warrell Creek to Urunga Microchiropteran Bat Management Strategy Apr-13 Revision L |
| 18 | Pacific Highway upgrade: Warrell Creek to Urunga Giant Barred Frog (<i>Mixophyes iteratus</i>) Management Strategy Revision F |
| 19 | Pacific Highway upgrade: Warrell Creek to Urunga Green-thighed Frog Management Strategy Mar-13 Revision G |
| 20 | Letter: DP&I TO: Bob Higgins ATT: Belinda Bock FROM: Felicity Greenway DATE: 16 April 2013 SUBJECT: Pacific Highway Upgrade: Warrell Creek to Urunga (07_0112) Frog Management Strategies (Condition B31(b)) |
| 21 | Warrell Creek to Urunga Upgrade Threatened Plant Species Management Plan 6/03/2013 |
| 22 | Pacific Highway upgrade Warrell Creek to Urunga - DP&I approval letter for preconstruction ER |
| 23 | Pacific Highway upgrade Warrell Creek to Urunga - DP&I endorsement of template CEMP and sub-plans |
| 24 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Template CEMP |
| 25 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Template CEMP Agency Comments |
| 26 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Template CEMP Sub Plans |
| 27 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Template CEMP Sub Plans Agency Comments |
| 28 | Pacific Highway upgrade Warrell Creek to Urunga - APPENDIX B1 Construction Traffic Management Sub Plan Warrell Creek to Urunga |
| 29 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Modification Request – Minor Ancillary Facilities |
| 30 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Biodiversity Offset Strategy |
| 31 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Compliance Tracking Program |
| 32 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Archaeological Salvage Works |
| 33 | Pacific Highway upgrade Warrell Creek to Urunga - Standard Management Procedure – Unexpected Archaeological Finds |

| Information Document No | Description of Information Document |
|-------------------------|--|
| 34 | Pacific Highway upgrade Warrell Creek to Urunga - WC2U Soil and Water Management Sub Plan |
| 35 | Pacific Highway upgrade Warrell Creek to Urunga - Pacific Highway Projects – Dewatering Practice Note |
| 36 | Pacific Highway upgrade Warrell Creek to Urunga - Pacific Highway Projects – Temporary Clean Water Diversion Practice Note |
| 37 | Pacific Highway upgrade Warrell Creek to Urunga - Environmental Incident Classification and Reporting Procedure June 2012 |
| 38 | Pacific Highway upgrade Warrell Creek to Urunga - Pre-Clearing / Ground Disturbance Inspection Checklist |
| 39 | Pacific Highway upgrade Warrell Creek to Urunga - Fauna Handling and Rescue Policy |
| 40 | Pacific Highway upgrade Warrell Creek to Urunga - Unexpected Threatened Flora Species and EEC Find Procedure |
| 41 | EPBC Act environmental assessment process - referral |
| 42 | ENVIRONMENTAL ASSESSMENT - Geotechnical Testing Works as Part of the WC2U Project May-12 |
| 43 | PACIFIC HIGHWAY – WARRELL CREEK TO URUNGA UPGRADE GEOTECHNICAL INVESTIGATIONS ENVIRONMENTAL MANAGEMENT PLAN Roads and Traffic Authority, NSW GEOTLCOV24043AB-AE Rev 3 18-Dec-10 |
| 44 | Pacific Highway upgrade Warrell Creek to Urunga - Freshwater Wetland EEC GIS Data. |
| 45 | Pacific Highway Upgrade - Warrell Creek to Urunga - Sinclair Knight Merz - EN02286 Create design model Created - Kumar 16/09/2011 |
| 46 | PROJECT - Pacific Highway Upgrade - Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create design model CREATED - Kumar 16/09/2011 GENIO DES SEC3 LOCAL |
| 47 | PROJECT - Pacific Highway Upgrade - Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create design model CREATED - Kumar 16/09/2011 GENIO DES SEC3 |
| 48 | PROJECT - Pacific Highway Upgrade - Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create design model CREATED - Kumar 16/09/2011 GENIO DES SEC4A LOCAL |
| 49 | PROJECT - Pacific Highway Upgrade - Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create design model CREATED - Kumar 21/02/2012 GENIO DES SEC4A |

| Information Document No | Description of Information Document |
|-------------------------|--|
| 50 | PROJECT - Pacific Highway Upgrade - Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create design model CREATED - Kumar 16/09/2011 GENIO DES SEC4B LOCAL |
| 51 | PROJECT - Pacific Highway Upgrade - Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create design model CREATED - Kumar 16/09/2011 GENIO DES SEC4B |
| 52 | PROJECT - Pacific Highway Upgrade – Warrell Creek to Urunga NUMBER - Sinclair Knight Merz - EN02286 INPUT - Create combined alignment FILE – des combined_ALG.inp CREATED - Kumar 15/07/2011 |
| 53 | GENIO DES SEC3 CROSSOVER - Genio Design Model – Southern Connection |
| 54 | GENIO DES SEC 3 ALTERNATE ALIGN |
| 55 | Warrell Creeek to Nambucca Heads Alternate Designs |
| 56 | Warrell Creek to Nambucca Heads Alternate route options for Flyingfox (North of Bald Hill Road Interchange) |
| 57 | Design - Constructability Review WC2U |
| 58 | HW10 Non Conformance Review WC2U |
| 59 | RMS Survey – MX Survey/Genio Input File Metadata Pacific Highway Upgrade – Nambucca to Urunga - Date of transfer: 22/03/2012 |
| 60 | Pacific Highway Upgrade - Warrell Creek to Urunga - ALS survey model data |
| 61 | Pacific Highway Upgrade - Warrell Creek to Urunga - ALS survey model data |
| 62 | Pacific Highway upgrade, Nambucca Heads to Urunga - ECW Files |
| 63 | Pacific Highway upgrade, Nambucca Heads to Urunga - AGS gINT databases |
| 64 | Digital Data Licence Agreement Land and Property Information - Cadastral Data for RMS Northern Region Pacific Highway upgrade, Nambucca Heads to Urunga |
| 65 | Pacific Highway upgrade, Nambucca Heads to Urunga - Cadastral Data for RMS Northern Region |
| 66 | Pacific Highway upgrade Nambucca Heads to Urunga - Cadastral Data for RMS Northern Region |
| 67 | Pacific Highway upgrade Nambucca Heads to Urunga - Cadastral Boundary Drawings |
| 68 | Pacific Highway upgrade Nambucca Heads to Urunga - Additional Cadastral Boundary Drawings |
| 69 | Pacific Highway upgrade Warrell Creek to Urunga - Project Boundary File |
| 70 | RMS Survey – MX Survey/ Genio Input File Metadata - Pacific Highway Upgrade – Nambucca to Urunga Date of Transfer: 22/03/12 |
| 71 | Early Works Options Assessment |

| Information Document No | Description of Information Document |
|-------------------------|--|
| 72 | Interpretive Report |
| 73 | WC2NH Stage 1 and 2 Geotechnical Investigation Report - <i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i> |
| 74 | WC2NH Stage 4 Phase1 Geotechnical Investigation Report - <i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i> |
| 75 | WC2NH Stage 4 Phase2 Geotechnical Investigation Report |
| 76 | WC2NH_Investigation Report |
| 77 | Nambucca Shire Council, Nambucca River and Warrell Creek Flood Study - Final Report Jan-13 WMAwater |
| 78 | Warrell Creek to Nambucca Heads: Pacific Hwy - Hydrologic Mitigation Report Draft Report May-13 WMAwater |
| 79 | Warrell Ck to Urunga: Pacific Hwy Upgrade – Modelling Final Report Jun-12 WMAwater |
| 80 | Review of Bellinger, Kalang and Nambucca River Catchments Hydrology - Final Report Jul-11 WMAwater |
| 81 | Pacific Highway Upgrade - Warrell Creek to Nambucca Heads Sinclair Knight Merz - EN02286 Create design model Created - Kumar 16/09/2011 |
| 82 | Warrell Creeek to Nambucca Heads Alternate route options for Flyingfox (North of Bald Hill Road Interchange) |
| 83 | RMS Survey – MX Survey/Genio Input File Metadata - Pacific Highway Upgrade – Warrell Creek to Nambucca Heads |
| 84 | Pacific Highway Upgrade - Warrell Creek to Nambucca Heads - ALS survey model data |
| 85 | Pacific Highway Upgrade - Warrell Creek to Nambucca Heads - ALS survey model data |
| 86 | Pacific Highway upgrade, Warrell Creek to Nambucca Heads - ECW Files |
| 87 | Pacific Highway upgrade Warrell Creek to Nambucca Heads - Cadastral Boundary File |
| 88 | Pacific Highway Warrell Creek to Nambucca Heads - Cadastral Boundary File |
| 89 | Nambucca Heads to Urunga - Draft Urban and landscape plan - Stage 1 (NH2U) |
| 90 | Warrell Creek to Urunga - Biodiversity Offset Strategy - Extension - Approval |

| Information Document No | Description of Information Document |
|-------------------------|--|
| 91 | <p>WC2NH Biodiversity and Heritage GIS files</p> <p>Aboriginal_Heritage_SKM_7August2012_rev2_WC2NH (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>Heritage_areas_NonIndigenous_WC2NH- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>Culverts_MGA56_2071112MicrobatSurveySites-GISAttributes-MATCHED (1) - (dbf, dbf.xml)</p> <p>Culverts_MGA56_2071112MicrobatSurveySites-GISAttributes-MATCHED - (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>Culverts_MGA56_2071112MicrobatSurveySites-GISAttributes-NOT-MATCHED- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>EEC_Dec2011- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>EN04164_FlyingFoxCamp_20130501- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>EN04164_FlyingFoxCamp_Indicative- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>LEWIS_ECOLOGICAL_SURVEY_HBT_121102- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>WC2U_Squirrel_Glider- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> <p>Green_Thighed_Frog_GIS Data.zip</p> <p>2071112b-GiantBarredfrogMapping.zip</p> <p>eco_FLORA_Field_Data_121115- (dbf, prj, sbn, sbx, shp, shp.xml, and shx)</p> |
| 92 | <p>Warrell Creek to Nambucca Heads Memo - Approved Project Boundary - Information document Clearing boundary</p> <p>Prepared by: Rob Van Iersal</p> |
| 93 | <p>Warrell Creek to Nambucca - Warrell Creek to Nambucca Heads- Stage 4 Geotech Investigation Environmental Management Plan</p> |
| 94 | <p>Warrell Creek to Nambucca Heads</p> <p>Assessment of Severity of environments</p> <p>Investigation Report Warrell Creek to Nambucca Heads 3.pdf</p> <p>Appendix to the Report Warrell Creek to Nambucca Heads.pdf</p> <p>Test Results on existing Upper Warrell Creek, Lower Warrell Creek and Macksville Bridges</p> <p>CoT 8484 Chloride Content.pdf</p> <p>SE110971__F_RADHE_KHATRI_PM_ANALYTICALREPORT.PDF</p> <p>SE110971__F_RADHE_KHATRI_PM_DQO.PDF</p> <p>SE110971_F_SGS_SAMP.XLS</p> <p>SE110971_RECEIPT_5.PDF</p> |
| 95 | <p>Warrell Creek to Nambucca Heads - Final ground model (Information Document No.83 issued with Package 2 is superseded by this document) RTA QA files - Triangulation</p> |

| Information Document No | Description of Information Document |
|---|---|
| 96 | <p>Golder Associates (November 2007) - Project Memorandum, Warrell Creek to Urunga - Preliminary Geotechnical Analyses for Embankment Treatments on Soft Soil.</p> <p>Golder Associates (May 2008) – Project Memorandum, Warrell Creek to Urunga - Geotechnical Investigations for Concept Design – Geological Summary.</p> <p>Golder Associates (July 2008) – Technical Memorandum, Warrell Creek to Urunga - Preliminary Geotechnical Pile Design Parameters at Proposed Bridge Locations.</p> <p>Golder Associates (October 2008) – Draft Report – Warrell Creek to Urunga – Acid Sulphate Soils.</p> <p>Golder Associates (August 2008) – Draft Geotechnical Interpretative Report – Warrell Creek to Urunga – Section 1.</p> <p>Golder Associates (November 2008) – Draft Geotechnical Interpretative Report – Warrell Creek to Urunga – Section 2.</p> <p>Golder Associates (October 2008) – Draft Geotechnical Interpretative Report – Warrell Creek to Urunga – Section 3.</p> <p>Golder Associates (September 2008) – Draft Geotechnical Interpretative Report – Warrell Creek to Urunga – Section 4.</p> <p>Golder Associates (September 2008) – Draft Report – Warrell Creek to Urunga – Preliminary Contamination Assessment Report.</p> <hr/> <p>Golder Associates (May 2005) – Pacific Highway Upgrading Program Macksville to Urunga – Geotechnical Investigation at Options Investigation Phase. -</p> <p><i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i></p> <hr/> <p>Golder Associates (October 2009) – Factual Report – Warrell Creek to Urunga – Geotechnical Investigations for the Preferred Route -</p> <p><i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i></p> |
| 97 | <p>Coffey Geotechnics (16th July 2013) - WC2NH Stage 4 Phase 2 Geotechnical Investigation Report</p> <p>Volume_1_(16.7.13).pdf, Volume_2_(16.7.13).pdf, and Volume_3_(16.7.13).pdf</p> <p>Pacific Highway Upgrade, Warrell Creek to Nambucca Heads, AGS gINT database</p> <p>Pacific Highway Upgrade, Warrell Creek to Nambucca Heads, Geotechnical Investigations GIS Shape File</p> <p>POINT.cpg, POINT.dbf, POINT.idx, POINT.prj, POINT.shp and POINT.shx</p> <p><i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i></p> |
| (Information Document No.75 issued with Package 1 is superseded by this document) | <p>98</p> <p>RMS (July 2013) - Pavement Investigation Report, HW10 Pacific Highway Upgrade, Warrell Creek to Nambucca Heads, Pavement Investigation for Detailed Design.</p> <p><i>- This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i></p> <hr/> <p>RMS (July 2013) - AGS gINT database for the Warrell Creek to Nambucca Heads Pavement Investigation.</p> |

| Information Document No | Description of Information Document |
|---|---|
| 99 | RTA Report G2878 (June 1999) - SH 10 Pacific Highway, Warrell Creek Deviation - Geotechnical Report - <i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i> |
| | RTA Report G2990 (June 1999) - SH 10 Pacific Highway, Warrell Creek Deviation - Materials Report RTA Report G2996 (June 1999) - SH 10 Pacific Highway, Warrell Creek Deviation - Report on Foundation Investigations for Bridges RTA Final report G3447 (April 2003) – SH 10 Pacific Highway, Slope No. 5196 at Telegraph Point, Slope Nos. 5197 and 5198 at Cooperabung Range, Slope Nos. 111 and 112 at Scotts Head Turnoff, South of Macksville – Slope Inspection and Slope Remedial Works. |
| 100 | State Highway No. 10 Department of Main Roads NSW - WAE for the bridge over Upper Warrell Creek WAE - Extension for the bridge over Upper Warrell Creek |
| 101 | State Highway No. 10 Department of Main Roads NSW - WAE for the bridge over Lower Warrell Creek |
| 102 | State Highway No. 10 Main Roads Board of NSW - WAE for the bridge over Nambucca River, Shire of Nambucca |
| 103 | Warrell Creek to Nambucca Heads - Forestry Corporation NSW interface issue Agreement - Property adjustments and Harvesting |
| 104 | Warrell Creek to Nambucca Heads - Deed of Agreement for site access to Nambucca State Forest Consolidated document with Addendum No 1 |
| (Information Document No.77 issued with Package 1 is superseded by this document) | 105 Nambucca Shire Council, Nambucca River and Warrell Creek Flood Study - Final Report and Figures (1 to 36) Jan-13 WMAwater |
| 106 | Warrell Creek to Nambucca Heads Value Management Workshop - Alternative alignment options for Flying fox camp Background paper and Presentation |
| 107 | Warrell Creek to Nambucca Heads - Crown Land Parcels within the project |
| 108 | Warrell Creek to Nambucca Heads - Early Tenderer Interaction Workshop 1 Presentation - 18 July 2013 |

| Information Document No | Description of Information Document |
|-------------------------|---|
| 109 | Warrell Creek to Nambucca Heads - Utility Relocation Aerial Plans showing all utility relocations over mapped EEC areas WC2NH EA 19 06 13_1, utilities.pdf WC2NH EA 19 06 13_2, utilities.pdf WC2NH EA 19 06 13_3, utilities.pdf WC2NH EA 19 06 13_4, utilities.pdf WC2NH EA 19 06 13_5, utilities.pdf WC2NH EA 19 06 13_6, utilities.pdf WC2NH EA 19 06 13_7, utilities.pdf WC2NH EA 19 06 13_8, utilities.pdf WC2NH EA 19 06 13_9, utilities.pdf WC2NH EA 19 06 13_10, utilities.pdf WC2NH EA 19 06 13_11, utilities.pdf WC2NH EA 19 06 13_12, utilities.pdf |

| Information Document No | Description of Information Document |
|-------------------------|--|
| 110 | <p>Warrell Creek to Nambucca Heads - Utility Relocation</p> <p>Electrical relocation works tender documents</p> <p>Drawing Schedule</p> <p>Drawings - Zone 1</p> <p>D11172 E01 Rev E Certified for Construction Sht 1 of 2.pdf</p> <p>d11172 ee02 proposal sketch 27 june 13 jm.pdf</p> <p>Revised underbore location for EE02 conflict.pdf</p> <p>Drawings - Zone 2</p> <p>D11172 E03 Rev D Certified for Construction Sht 1 of 4.pdf</p> <p>D11172 E04A Rev E Certified for Construction Sht 2 of 4.pdf</p> <p>D11172 E05 Rev D Certified for Construction Sht 3 of 4.pdf</p> <p>D11172 E06 Rev D Certified for Construction Sht 4 of 4.pdf</p> <p>D11172 E07 Rev C Certified for Construction Sht 1 of 1.pdf</p> <p>Drawings - Zone 3</p> <p>D11172 E08 Rev D Certified for Construction Sht 1 of 2.pdf</p> <p>D11172 E08A Rev D Certified for Construction Sht 2 of 2.pdf</p> <p>Drawings - Zone 4</p> <p>D11172 E09 Rev D Certified for Construction Sht 1 of 1.pdf</p> <p>D11172 E10 Rev D Certified for Construction Sht 1 of 1.pdf</p> <p>Drawings - Zone 5 (Certified drawings)</p> <p>2013_06_18__101906__ Certified Construction Drawing Sheet 2 E12 RevG.pdf</p> <p>2013_06_18__101906__ Certified Construction Drawing Sheet 3 E13 RevG.pdf</p> <p>2013_06_18__101906__ Certified Construction Drawing Sheet 6 E15 A RevG.pdf</p> <p>2013_06_18__101906__Profiles P7 Rev F Sht 1 of 7 to Sht 7 of 7.pdf</p> <p>Certified Construction drawing 1 of 6 E11 Rev D.pdf</p> <p>Certified Construction drawing 4 of 6 E14 Rev D.pdf</p> <p>Certified Construction drawing 5 of 6 E15 Rev D.pdf</p> <p>Drawings - Zone 5 (Revised uncertified drawings)_</p> <p>D11172 E11 Rev E.pdf</p> <p>D11172 E12 Rev H.pdf</p> <p>D11172 E15A Rev H.pdf</p> <p>Drawings - Zone 6</p> <p>101932-P1 Rev D.PDF</p> <p>D11172 E16 Rev D Certified for Construction Sht 1 of 2.pdf</p> <p>D11172 E17 Rev D Certified for Construction Sht 2 of 2.pdf</p> <p>Specifications, Contract & Other Documents</p> <p>2181-1040 WC2U Utilities Relocation EA - Southern Chainage _WC2NH_ Draft 2.pdf</p> <p>Tender Specification Rev A FL 26-06-13.docx</p> <p>Utility Works Contract C65 Electrical Distribution_120703 FL.doc</p> <p>Post Tender Meeting Information issued to all tenderers clarifying conflicting information in Tender Documents</p> |
| 111 | <p>Warrell Creek to Nambucca Heads - Utility Relocation</p> <p>Telstra relocation tender documents</p> <p>Draft WC2NH Utilities Relocation EA - Southern Chainage.pdf</p> <p>QI 105210-1 Conflict Report WC2U (UPDATED TELSTRA RESOLUTIONS) 13-04-12..xls</p> <p>QI 105210-5 (ZONES 6 & 7) REV B (13-05-13).dwg</p> |

| Information Document No | Description of Information Document |
|--|---|
| 112 | <p>Warrell Creek to Nambucca Heads - Utility Relocation</p> <p>Water and Sewer relocation documents</p> <p>1904434 Final Civil Specification - General V2</p> <p>1904435 Final Civil Specification - PE enveloping & carrier pipes V2</p> <p>2012-02-02 Nambucca SC specification</p> <p>Modified Nambucca Water Supply Construction Spec_2010.pdf</p> <p>W-001.pdf; W-002.pdf;</p> <p>WAT-1102.pdf; WAT-1106.pdf;</p> <p>WAT-1107.pdf; WAT-1202.pdf;</p> <p>WAT-1205.pdf; WAT-1300.pdf;</p> <p>Warrell Creek to Nambucca Heads - Utility Relocation</p> <p>Water Relocations</p> <p>NSC - Bald hills Road</p> <p>1904526 001D.pdf; 1904527 002D.pdf; 1904528 003D.pdf</p> <p>NSC - Gumma Road</p> <p>1904526 041C.pdf</p> <p>NSC - Jacks Ridge Road</p> <p>1904526 011D.pdf; 1904527 012D.pdf; 1904528 013D.pdf; 1904528 014D.pdf</p> <p>NSC - Old Coast Road</p> <p>1904526 021D.pdf; 1904527 022D.pdf; 1904528 023D.pdf</p> <p>Typical Details applicable to all</p> <p>1904527 101D.pdf; 1904527 102D.pdf</p> <p>Sewer Relocations</p> <p>NSC - Gumma Road and Typical Details applicable to all</p> <p>1904529 051B.pdf; 1904529 052B.pdf; 1904530 053B.pdf; 1904530 054B.pdf;</p> <p>1904530 055B.pdf; 1904531 056B.pdf</p> |
| 113 | <p>Warrell Creek to Nambucca Heads - Utility Relocation</p> <p>Optus relocations on Old Coast Road</p> |
| 114 | <p>Warrell Creek to Nambucca Heads - Utility Relocation</p> <p>Fibre Access Points</p> |
| 115 (Information Document No.78 issued with Package 1 is superseded by this document) | <p>Warrell Creek to Nambucca Heads: Pacific Hwy - Hydrologic Mitigation Report - Draft Report and Figures(1 to 8) May-13 WMAwater</p> |
| 116 (Information Document No.79 issued with Package 1 is superseded by this document) | <p>Warrell Ck to Urunga: Pacific Hwy Upgrade – Modelling - Final Report and figures(1 to 57) Jun-12 WMAwater</p> |

| Information Document No | Description of Information Document |
|---|--|
| 117 (Information Document No.80 issued with Package 1 is superseded by this document) | Warrell Ck to Urunga: Pacific Hwy Upgrade - Review of Bellinger, Kalang and Nambucca River Catchments Hydrology - Final Report and figures(1 to 39) Jul-11 WMAwater |
| 118 | Warrell Creek to Nambucca Heads - Hydrology Review Nambucca Rive Bridge Letter from WMA to Chris Clark |
| 119 | Warrell Creek to Nambucca Heads Flood Modelling <hr/> model/runs/results/bc_dbase/Nambucca_Existing_Model_Log.xlsx (electronic file TUFLOW_Nambucca_Existing) – <i>This Information Document is flood data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> <hr/> model/runs/results/bc_dbase/Nambucca_Concept_Model_Log.xlsx (electronic file TUFLOW_Nambucca_Warrell_Concept) <hr/> model/runs/results/bc_dbase/UWC_Concept_Model_Log.xlsx (electronic file TUFLOW_UpperWarrell_Concept) <hr/> model/runs/results/bc_dbase (electronic file TUFLOW_UpperWarrell_NewTerrain) – <i>This Information Document is flood data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> <hr/> Design_36hr_NA.wbn/Design_36hr_NA_Meta.out/Design_36hr_NA_QA.out/Design_48hr_NA.wbn/Design_48hr_NA_5y_10Y_loss_sensitivity_7-5.wbn/Design_48hr_NA_5y_10Y_loss_sensitivity_7-5_Meta.out/Design_48hr_NA_5y_10Y_loss_sensitivity_7-5_QA.out/Design_48hr_NA_Meta.out/Design_48hr_NA_QA.out/NA_2000yr.WBN/NA_2000yr_Meta.out/NA_2000yr_QA.out/NA_PMP.wbn/NA_PMP_Meta.out/NA_PMP_QA.out/ReadMe_NA.txt (electronic file WBNM_Nambucca.zip) – <i>This Information Document is flood data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> |
| 120 | Warrell Creek to Nambucca Heads - Value Management Workshop Alternative alignment options for Flying fox camp Value Management Workshop Final Report |
| 121 | Nambucca Heads to Urunga - GENIO DESIGN Southern Zone 1A |
| 122 | ECI Tender Process and Engagement Protocol |
| 123 (Information Document No.122 issued with Package 5 is superseded by this document) | ECI Tender Process and Engagement Protocol |
| 124 | WC2NH SWTC Addenda 1 Issued 06-09-2013 (Track changes) |
| 125 | WC2NH SWTC Appendix 4 Addenda 1 Issued 06-09-2013 (Track changes) |
| 126 | WC2NH SWTC Appendix 9 Addenda 1 Issued 06-09-2013 (Track changes) |
| 127 | WC2NH SWTC Appendix 13 Addenda 1 Issued 06-09-2013 (Track changes) |
| 128 | WC2NH SWTC Appendix 15 Addenda 1 Issued 06-09-2013 (Track changes) |

| Information Document No | Description of Information Document |
|--|---|
| 129 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 1 - Draft Geotech Investigation Stage 7 - Tenderer's Request Site investigation Schedules |
| 130 | Warrell Creek to Nambucca Heads - Nambucca River and Warrell Creek HECRAS models |
| 131 | Warrell Creek to Nambucca Heads - Road and railway drainage structures in the vicinity of Albert Drive and Rosewood Road, West of Chainage 45 500 - survey data Railway Drainage Structures zises and location - Excel Worksheet Survey - Triangulation Survey - Ground model Railway Drainage Structures zises and location pdf document |
| 132 | Warrell Creek to Nambucca Heads - Additional RMS Owned Lands |
| 133 (Information Document Number 55 issued with Package 1 is superseded by this document) | Warrell Creek to Nambucca Heads Alternate Designs Alternate Designs Index 133-1 - Uturn bay (southern end) - dgn and pdf files 133-2 - Upper Warrell Creek Intersection with off ramp 133-3 - Upper Warrell Creek Intersection without off ramp 133-4 - Upper Warrell Creek Intersection with improved South bound on ramp- dgn and pdf files 133-5 - Upper Warrell Creek rail tunnel 133-6 - Upper Warrell Creek single bridge option 133-7 - Upper Warrell Creek Bridge - under pass option for Property access (Property Identification Number 007) 133-8 - Albert drive realignment- txt and pdf files 133-9 - Quarry Access approved Business Case - dgn and pdf files 133-10 - Bald Hill road interchange approved Business Case- txt and pdf files 133-11 - Nambucca River Single Bridge and future 6 lane options Nambucca River Single Bridge and future 6 lane options plan Nambucca River Single Bridge and future 6 lane options long section 133-12 - Amended North Macksville Interchange - txt and pdf 133-13 - Old coast Road over bridge option 1 - TXT and pdf files 133-14 - Old coast Road over bridge option 2 - TXT and pdf files |
| 134 | Warrell Creek to Nambucca Heads - Extract from Table 3 of Warrell Creek to Urunga Threatened Flora Management Plan Word and pdf files |
| 135 | Warrell Creek to Nambucca Heads - Flyingfox Monitoring Report July 2013 |
| 136 | Warrell Creek to Nambucca Heads - Flyingfox Monitoring Report August 2013 |
| 137 | Warrell Creek to Nambucca Heads - Macksville floor level survey - csv and pdf files |
| 138 | Warrell Creek to Nambucca Heads - Deposted Plans for partial acquisitions. |
| 139 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Allgoamera Deviation - Supplementary Drawings - folder contains 33 TIF files |
| 140 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Allgoamera Deviation Plans - floder contains 67 TIF files |
| 141 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Lower Warrell Creek Macksville - floder contains 17 TIF files |

| Information Document No | Description of Information Document |
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| 142 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Eungai Railway Overbridge to Warrell Creek - Supplementary Drawings - folder contains 102 TIF files |
| 143 (Information Document No 101 issued with Package 3 is superseded by this document) | Warrell Creek to Nambucca Heads - Works as Executed Drawings WAE Lower Warrell Ck Bald Hill - folder contains 22 TIF files |
| 144 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Warrell Creek Deviation - Plan and Long - folder contains 4 TIF files |
| 145 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Warrell Creek Deviation - telstra Optical fibre coaxial cable |
| 146 | Warrell Creek to Nambucca Heads - Works as Executed Drawings Warrell Creek Deviation Plans- folder contains 20 TIF files |
| 147 | Warrell Creek to Nambucca Heads - Noise Monitoring Data a) Raw Noise Monitoring Data 5 - 4201 Pacific HWY 111 - 40-56 Albert Drive 114 - 43 Albert Drive 114 - 43 Albert Drive 129 - 18A Albert Drive 130 - 11 Albert Drive 132 - 4723 Pacific HWY 139 - 4 Scotts Head 146 - 38 Kerr Drive 152 - 58 Harrimans Lane 152 - 58 Harrimans Lane 666 - 22 Letitia Close 3008 - 6858 Pacific Hwy <i>This Information Document is noise data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed</i> |
| 148 | Warrell Creek to Nambucca Heads - Noise Monitoring Data b) Raw Traffic Data 40 Renzo.zip Nambucca.zip <i>This Information Document is noise data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed.</i> |
| 149 | Warrell Creek to Nambucca Heads - Noise Monitoring Data c) Raw Weather BOM Data <i>This Information Document is noise data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed.</i> |
| 150 | Warrell Creek to Nambucca Heads - Noise Monitoring Data d) Monitoring Locations <i>This Information Document is noise data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed.</i> |
| 151 | Warrell Creek to Nambucca Heads - Survey Data Extents |

| Information Document No | Description of Information Document |
|---|---|
| 152 | Warrell Creek to Nambucca Heads Site Contamination Assessment for arsenic contamination - AEC2 and Cut 12 <i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i> |
| 153 | Warrell Creek to Nambucca Heads - Rock Platform Assessment Report Figures B Appendix C Appendix D Figures 1-39 Figures 1-39 |
| 154 | Warrell Creek to Nambucca Heads Subsurface Drainage Details - Electronic Files Volume 1 Volume 2 Volume 2 Volume 3 Volume 4 Volume 5 Volume 6 Volume 6 |
| 155 | Warrell Creek to Urunga - WC2U Acad drawings Warrell Creek to Urunga - Xref files files Warrell Creek to Urunga - shape files |
| (Information Document Numbers 129 issued with Package 8 is superseded by this document) | 156 Geotech Investigation Stage 7 - Tenderer's Request Site investigation Schedules Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 1 - Draft Investigation Report Drawings - Stage 7 Cover letter from Coffey's Attachment A Attachment B Attachment C |
| 157 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 2 - Draft Data Package Number 3 - Draft |
| (Information Documents Numbers 44 issued with Package 1 and 91 issued with Package 3 are superseded by this document) | 158 Warrell Creek to Nambucca Heads - GIS Data History sheet Biodiversity, Vegetation, Wetland and Heritage |

| Information Document No | Description of Information Document |
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| 159 (Information Documents Numbers 65, 66, 67 and 68 issued with Package 1 is superseded by this document) | Warrell Creek to Nambucca Heads |
| 160 | WC2NH SWTC Addenda 2 Issued 18-09-2013 (Track changes) |
| 161 | WC2NH SWTC Appendix 4 Addenda 2 Issued 18-09-2013 (Track changes of TCEMP from Versions issued as information documents No 24 & 26) |
| 162 | Word version of Warrell Creek to Nambucca Heads Project Deed Schedules issued with RFT Issued 28-08-2013 |
| 163 | Word version of Warrell Creek to Nambucca Heads Project Deed issued with RFT 28-08-2013 |
| 164 | WC2NH SWTC Appendix 2 RFT Issued 18-09-2013 (Track changes) |
| 165 | WC2NH Draft and Certified Utilities issued 18-09-2013 |
| 166 | Additional RMS owned land Issued 18-09-2013 |
| 167 | WC2NH Tidal Information from Manly Hydraulics Laboratory Issued 19-09-2013 |
| 168 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 4 - Draft |
| 169 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 5 - Draft Data Package Number 5 - GINT data |
| 170 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 6 - Draft |
| 171 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 7 - Draft |
| 172 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 8 - Draft |
| 173 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 9 - Draft |
| 174 | Warrell Creek to Nambucca Heads - Waterway Photos |
| 175 | Warrell Creek to Nambucca Heads - Mean High Water Level Reading Location Coordinates of Tidal information issued as Info Doc No 167 with Package 12 Email from Manly Hydraulics Laboratory to RMS |
| 176 | Warrell Creek to Nambucca Heads - Flyingfox area Waterbody Survey information Location and boundary Survey data |

| Information Document No | Description of Information Document |
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| 177 | Warrell Creek to Nambucca Heads Flyingfox area - GIS data Water Depth Survey Points |
| 178 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 10 - Draft |
| 179 | Warrell Creek to Nambucca Heads - Geotechnical Interpretation Report - Volume 1 Rev 1 - 12 September 2013 |
| 180 | Warrell Creek to Nambucca Heads - Geotechnical Interpretation Report - Volume 2 Rev 1 - 12 September 2013 |
| 181 | Warrell Creek to Nambucca Heads - Geotechnical Interpretation Report - Volume 3 Rev 1 - 12 September 2013 |
| 182 | Warrell Creek to Nambucca Heads - Tenderer Briefing and Site Inspection - 11 September 2013 Tenderer Briefing Notes |
| 183 | Warrell Creek to Nambucca Heads - Assessment for Work Platforms at Upper Warrell Creek, Warrell Creek and Nambucca River - TUFLOW models <i>TUFLOW_Nambucca_Concept – This Information Document is flood data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> <i>TUFLOW_Nambucca_Existing – This Information Document is flood data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> <i>TUFLOW_UpperWarrellCreek_Concept – This Information Document is flood data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> TUFLOW_UpperWarrellCreek_Existing |
| 184 | Warrell Creek to Nambucca Heads - Utility Relocation Electrical relocation works tender documents Electrical Design Information Packages |
| 185 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 11 - Draft |
| 186 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 12 - Draft |
| 187 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 13 - Draft |
| 188 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 14 - Draft |
| 189 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 15 - Draft |

| Information Document No | Description of Information Document |
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| 190 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 16 - Draft |
| 191 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 17 - Draft |
| 192 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 18 - Draft |
| 193 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 19 - Draft |
| 194 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 20 - Draft |
| 195 | Warrell Creek to Nambucca Heads - Track changed versions of Addendum No 3 issued on 30 September 2013 RFT Project Deed Schedules SWTC Appendix 2 SWTC Appendix 4 SWTC Appendix 10 SWTC Appendix 11 SWTC Appendix 13 |
| 196 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 21 - Draft |
| 197 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 22 - Draft |
| 198 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 23 - Draft |
| 199 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 24 - Draft |
| 200 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 25 - Draft |
| 201 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 26 - Draft |
| 202 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 27 - Draft |
| 203 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 28 - Draft |

| Information Document No | Description of Information Document |
|---|---|
| 204 | Warrell Creek to Nambucca Heads N2010177 - Warrell Creek to Nambucca Heads - Cadastral boundaries |
| 205 | Warrell Creek to Nambucca Heads - Mean High Water Level - Upper Warrell Creek and Lower Warrell Creek Email from WMA Water to RMS Mean High Water Level data - Upper Warrell Creek and Lower Warrell Creek <i>This Information Document is Flood Data for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed.</i> |
| 206 | Warrell Creek to Nambucca Heads Revised design year (2026) night time noise contours for the extension of the low noise pavement opposite Warrell Creek to chainage 44km065 <i>This Information Document is Noise Data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed.</i> |
| 207 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 29 - Draft |
| 208 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 30 - Draft |
| 209 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 31 - Draft |
| 210 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 32 - Draft |
| 211 | Warrell Creek to Nambucca Heads - Utilities - Essential Energy Further information to Information Document No. 165 issued with Package 11 Essential Energy Certified Cad Plans |
| 212(Information Document No.113 issued with Package 3 is superseded by this document) | Warrell Creek to Nambucca Heads - Utility Relocation Optus relocations on Old Coast Road |
| 213 | Warrell Creek to Nambucca Heads - Bridge Inspection Report - Bridge No.10221 (Stock underpass H10) under Highway 10 at North Warrell Creek |
| 214 | Warrell Creek to Nambucca Heads - Noise Model – 101013 <i>This Information Document is noise data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed.</i> |
| 215 | Warrell Creek to Nambucca Heads - Combined Schedule A of Schedule 1 issued with Information Documents Packages 1 - 17 |
| 216 | Warrell Creek to Nambucca Heads - Tenderers request - Additional flows Email from WMA Water to RMS Additional Tuflow data <i>This Information Document is a geotechnical report for the purposes of the definition of RMS Flood Data in clause 23.2 of the Project Deed</i> |
| 217 | Warrell Creek to Nambucca Heads - Oyster Industry Sustainable Aquaculture Strategy Nambucca River Oyster Aquaculture |

| Information Document No | Description of Information Document |
|--|--|
| 218 | Warrell Creek to Nambucca Heads - Australian Rail Track Corporation Track Possesions Program for 2014 |
| 219 (Information Document Nos.131 and 95 issued with Packages 9 and 3 respectively are superseded by this document) | Warrell Creek to Nambucca Heads - Survey Data - upadated survey data with the infill survey 700m North of Warrell Creek Information Document Nos.131and 95 issued with Packages 9 and 3 respectively are superseded by this document. Survey - Triangulation (Information Document Nos.131 and 95 issued with Packages 9 and 3 respectively are superseded by this document). Survey - Ground model (Information Document Nos.131, 95 & 83 issued with Packages 9, 3 and 2 respectively are superseded by this document). |
| 220 (Information Document No.131 issued with Package 9 is superseded by this document) | Warrell Creek to Nambucca Heads - Road and railway drainage structures in the vicinity of Albert Drive and Rosewood Road, West of Chainage 45 500 - re issued for clarity Railway Drainage Structures sizes and location - Excel Worksheet Railway Drainage Structures sizes and location pdf document |
| 221 | Warrell Creek to Nambucca Heads Environmental Representative - Approval Letter from Department of Planning and Infrastructure |
| 222 | Warrell Creek to Nambucca Heads Arsenic Management Guidelines and Plans General Information |
| 223 (Information Document Numbers 158, 91 and 44 issued with Packages 10, 9 and 1 respectively are superseded by this document) | Warrell Creek to Nambucca Heads GIS Data Environment |

| Information Document No | Description of Information Document |
|--|---|
| 224 (Information Document Numbers 158, 91 and 44 issued with Packages 10, 9 and 1 respectively are superseded by this document) | Warrell Creek to Nambucca Heads GIS Data Society |
| 225 (Information Documents 159 Pack 10; 87, 88 Pack 2; 65, 66, 67 and 68 Pack 1 are superseded by this document) | Warrell Creek to Nambucca Heads GIS Data Property |
| 226 | Warrell Creek to Nambucca Heads - Operational Noise Modelling Assessment Report |
| 227 | Warrell Creek to Nambucca Heads - Modelling Information <i>This Information Document is noise data for the purposes of the definition of RMS Noise Data in clause 23.2 of the Project Deed.</i> |
| 228 | Warrell Creek to Nambucca Heads - Ground Water Monitoring Program Final Revision 1 - 23.10.2013 |
| 229 | Warrell Creek to Nambucca Heads - Surface Water Monitoring Program Final - 18.10.2013 |
| 230 | Warrell Creek to Nambucca Heads - Methodology for whole of life assessment of pavements subject to settlement |
| 231 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 33 - Draft |
| 232 | Warrell Creek to Nambucca Heads - Contamination assessment Site Contamination Assessment for arsenic contamination - AEC2 and Cut 12, Bald Hill Road |
| 233 | Warrell Creek to Nambucca Heads - Track changed versions of Addendum No 4 issued on 24 October 2013 ECI RFT SWTC SWTC Appendix 2 SWTC Appendix 4 SWTC Appendix 9 SWTC Appendix 14 Project Deed |

| Information Document No | Description of Information Document |
|--|---|
| 234 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 34 |
| 235 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 35 |
| 236 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 36 |
| 237 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 37 |
| 238 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 38 |
| 239 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 39 |
| 240 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 40 |
| 241 | Warrell Creek to Nambucca Heads - Upper Warrell Creek Service Road Amended Design |
| 242 | Warrell Creek to Nambucca Heads - Utility Relocation - Essential Energy Certified CAD plans Further information and updates to Information Document No 165 issued with Package 11 Further information to Information Document No 165 issued with Package 11 - Draft Update to Information Document No 165 "D11172 E02A Concept for new route.dgn" issued with Package 11- Draft Further information and updates to Information Document No 165 "D11172_E08A Rev D.dgn" issued with Package 11 - Draft |
| 243 (Information Document No.219 issued with Package 18 is superseded by this document) | Warrell Creek to Nambucca Heads Survey Data - updated survey data with extra survey around Upper Warrell Creek Survey - Triangulation Survey - Ground model |
| 244 (Information Document No.238 issued with Package 21 is superseded by this document) | Warrell Creek to Nambucca Heads Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 38 - Draft |

| Information Document No | Description of Information Document |
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| 245 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 41- Draft |
| 246 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 42- Draft |
| 247 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 43- Draft |
| 248 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 44- Draft |
| 249 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 45- Draft |
| 250 | Warrell Creek to Nambucca Heads - Ecological Monitoring Plan - Draft |
| 251 | Warrell Creek to Nambucca Heads - Assesment of Potential Platypus Habitat |
| 252 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 46- Draft |
| 253 (Information Document No.243 issued with Package 22 is superseded by this document) | Warrell Creek to Nambucca Heads Survey Data - updated survey data with Additional survey data for Temporary connection to bypass bat colony; and Updated survey data with updates to utility surveys at: - Browns Crossing Road - Telstra, Optus and Essential Energy infrastructure - Albert Road - Essential Energy poles - Scotts Head Road intersection - Essential energy poles and lights - Gumma Road - Telstra and water mains pits - Nursery Road - Telstra and water mains pits - Nursery Road intersection - Drainage pipe under highway - Old Coast Road - Telstra and Optus pits between Kempsey chn 58000 and 60000 Survey - Triangulation Survey - Ground model |
| 254 (Information Document No.242 issued with Package 22 is updated by this document) | Warrell Creek to Nambucca Heads Utility Relocation - Essential Energy Certified CAD plans Update to Information Document No 242 issued with Package 22 Replace Information Document "D11172 E01 RevG merged.dgn" (wrong drawing attached to electronic file name) issued as part of Info Doc No 242 with Package 22 with this document |
| 255 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 47- Draft |
| 256 | Warrell Creek to Nambucca Heads - Utility Relocation - Additional information to information document Nos. 112 and 165 issued with packages 3 and 11 respectively for Sewer relocation Sewer options study report - Final 23.12.2011 |

| Information Document No | Description of Information Document |
|--|---|
| 257 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 48- Draft |
| 258 | Warrell Creek to Nambucca Heads Utility - Survey information for the services inside the rail corridor at Upper Warrell Creek (completed under Geotech Investigation Stage 7 - Tenderer's Request; identified as Data Package Number 49) |
| 259 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 50- Draft |
| 260 (Information Document No.258 issued with Package 23 is updated by this document) | Warrell Creek to Nambucca Heads - Utility - Additional information to Info Doc No.258 issued with package 23 Co-ordinates of cable locations (Surveyed on 5th November 2013) ACAD drawing of pothole locations |
| 261 | Warrell Creek to Nambucca Heads Track changed versions of Addendum No 5 issued on 12 November 2013 ECI RFT SWTC Appendix 4 SWTC Appendix 5 SWTC Appendix 9 SWTC Appendix 13 SWTC Appendix 14 SWTC Appendix 15 Project Deed Schedules RMS D&C R44 Specification |
| 262 (Information Document No.253 issued with Package 23 is superseded by this document) | Warrell Creek to Nambucca Heads Survey Data - re issued for clarity (file name "RTA_QA_Surface_Checker_SURV EXTRA 131017.rep" included by mistake in the schedule of Package 23 deleted) Additional survey data for Temporary connection to bypass bat colony; and Updated survey data with updates to utility surveys at: - Browns Crossing Road - Telstra, Optus and Essential Energy infrastructure - Albert Road - Essential Energy poles - Scotts Head Road intersection - Essential energy poles and lights - Gumma Road - Telstra and water mains pits - Nursery Road - Telstra and water mains pits - Nursery Road intersection - Drainage pipe under highway - Old Coast Road - Telstra and Optus pits between Kempsey ch 58000 and 60000 Survey - Triangulation Survey - Ground model |

| Information Document No | Description of Information Document |
|---|---|
| 263 (Information Document No.260 issued with Package 24 is updated by this document) | Warrell Creek to Nambucca Heads Utility - Update to part of information document No.260 issued with package 23 (individual services shown in colour for clarity) ACAD drawing of pothole locations - replace "ACAD-LOCATION.dwg" issued as part of information document 260 with Package 24 with this document |
| 264 | Warrell Creek to Nambucca Heads - Advice to tenderers Contact information - Nextgen Group Holdings Pty Ltd |
| 265 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 51- Draft |
| 266 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 52- Draft |
| 267 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 53- Draft |
| 268 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 54- Draft |
| 269 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 55- Draft |
| 270 | Warrell Creek to Nambucca Heads - Environment - Innovation submission 2007-08 Access gates for fauna fence at bridges |
| 271 | Warrell Creek to Nambucca Heads - Environment - Demolition of houses List of Houses to be demolished Abstracts from valuation reports Abstracts from valuation reports |
| 272 | Warrell Creek to Nambucca Heads - Utility - additional survey information for the services (completed under Geotech Investigation Stage 7 - Tenderer's Request; identified as Data Package Number 57) |
| 273 | Warrell Creek to Nambucca Heads - Environment - Environment Awareness Notes Environment awareness note index Pacific Highway Environment Awareness Notes - combined |
| 274 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 56- Draft |
| 275 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 58- Draft |

| Information Document No | Description of Information Document |
|---|---|
| 276 (Information Document No.105 issued with Package 3 is updated by this document) | Warrell Creek to Nambucca Heads - Hydraulic Modelling - Nambucca River and Warrell Creek Flood Study This document supersedes the document "WC2NH_Hydraulic_Modelling_Report_Nambucca and Warrell Creek_130116.pdf" issued as part of Information document 105 with Package 3 Final Report - November 2013 (updated Tables 10, 12 and 14. No changes to the flood models) |
| 277 (Information Document No.112 issued with Package 3 is updated by this document) | Warrell Creek to Nambucca Heads Utility Relocation Water Relocations This document supersedes the documents "1904528 013D.pdf" and "1904528 014D.pdf" issued as part of Information document 112 with Package 3 NSC - Jacks Ridge Road (Only change is replacement of PVC encasing pipe with optional DICL or RCP) |
| 278 | Warrell Creek to Nambucca Heads - Track changed versions of Addendum No 6 issued on 26 November 2013 ECI RFT Project Deed Project Deed Schedules SWTC Appendix 4 |
| 279 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 59- Draft |
| 280 | Warrell Creek to Nambucca Heads - Geotech Investigation Stage 7 - Tenderer's Request Data Package Number 60- Draft |
| 281 (Information Document No.272 issued with Package 25 is updated by this document) | Warrell Creek to Nambucca Heads - Utility - additional survey information to the information Document No.272 issued with Package 25 CAD drawings showing locations summarised in the report |
| 282 | Warrell Creek to Nambucca Heads - Draft Conditions for Contractor occupation of RMS residue land Residual Land Waste Certificate |
| 283 | Warrell Creek to Nambucca Heads - Consolidated Instrument for Modification 5 |

| Information Document No | Description of Information Document |
|---|--|
| 284 (Note this Info Doc contains current drawings which superceed previously issued dwg's in Package 3 Info Doc 110, 111, 112 & 113; Package 11 Info Doc 165; Package 15 Info Doc 184; Package 17 Info Doc 211 & 212; Package 22 Info doc 242; Package 23 Info Doc 254 and Package 25 Info Doc 277) | Warrell Creek to Nambucca Heads Utilities Relocation Drawings Package includes Uncertified Utilities dwg's incorporating latest amendments to Electrical, Telstra, Water and Sewer and Optus utility services. Note that previously certified drawings are now required to be recertified prior to construction. |
| 285 | Warrell Creek to Nambucca Heads - Draft Environmental Assessment Report for Utilities Relocation work |
| 286 | Warrell Creek to Nambucca Heads - Draft Minor Environmental Assessment Property Reports |
| 287(Note this Info Doc contains current drawings which superceed previously issued dwg's in Package 3 Info Doc 110, 111, 112 & 113; Package 11 Info Doc 165; Package 15 Info Doc 184; Package 17 Info Doc 211 & 212; Package 22 Info doc 242; Package 23 Info Doc 254, Package 25 Info Doc 277; Package 29 Info Doc 284) | Warrell Creek to Nambucca Heads Utilities Relocation Drawings Package includes Uncertified Utilities dwg's incorporating latest amendments to Electrical, Telstra, Water and Sewer and Optus utility services. Note that previously certified drawings are now required to be recertified prior to construction. |

| Information Document No | Description of Information Document |
|--|--|
| 288 | Warrell Creek to Nambucca Heads Geotech Investigation Stage 7 - Tenderer's Request WC2NH Coffeys Tender Geotech Reports and ags database <i>This Information Document is a geotechnical report for the purposes of the definition of RMS Geotechnical Data in clause 23.2 of the Project Deed</i> |
| 289 (Information Document No.262 issued with Package 25 is superseded by this document) | Warrell Creek to Nambucca Heads Final Ground Survey incorporating the additional survey for two properties and Flyingfox area. Survey - Triangulation Survey - Ground model |
| 290 | Warrell Creek to Nambucca Heads Additional arsenic screening for Cuts 11 and 25 - 17 January 2014 Report for the contamination assessment at former oyster & boat shed(AEC1), Nursery Road, North Macksville - 28 January 2014 |
| 291 | ARTC track possession |
| 292 (This Document updates part of Info Doc No.284 issued with Package 29, and supersedes Info Doc Nos 113 and 212 issued with packages 3 and 17 respectively) | Warrell Creek to Nambucca Heads - Utilities Relocation Update to part of Info Doc 284 issued with Package 29: additional information Scope Update to part of Info Doc 284 issued with Package 29: update to Optus Service works plans Optus Uncertified Cad Plan "P1024151_PD2.dwg" replaces "P1024151_Nambucca.dwg" issued with package 29 as part of Info Doc 284 Optus Uncertified PDF Plans "Optus Design Drawing Nambucca Heads- Revised_1.pdf" replaces plans "Revised Nambucca Heads Drawing Pg3 P1024151.pdf" and "Optus Design Drawing Nambucca Heads- Revised.pdf" issued with package 29 as part of Info Doc 284 Note: This document is issued as per paragraph 2 of the covering letter for Info Doc Package 30 dated 24.01.2014 and email dated 29.01.2014. Schedule A for Package 30 dated 24.01.2014 also supersedes the Optus drawings issued as Info Doc Nos 113 and 212 with Packages 3 and 17 respectively |
| 293 (This Document updates part of Info Doc No.287 issued with Package 30) | Warrell Creek to Nambucca Heads Utilities Relocation Electrical plans Revised Electrical CAD drawings Revised Electrical pdf drawings Water Revised Water pdf drawings Additional information of dia 40mm PE water line to property - to be completed by RMS Info docs issued under Info Doc No 293 "1904528 013D.pdf" and "1904528 014D.pdf" with Package 30 are superseded by this document. This provide information of change to underboring enveloping pipe |
| 294 | Warrell Creek to Nambucca Heads - Surface water and Groundwater monitoring Program - Preconstruction First Data Report- 24 Mar 2014 Groundwater level data provided as a separate .CSV F |

| Information Document No | Description of Information Document |
|---|--|
| 295 (This Document modifies Info Doc No.283 issued with Package 28) | Warrell Creek to Nambucca Heads - Modification to instrument of approval: This is a modification to Info Doc No283 "Consolidated Instrument for Modification 5" issued with Package 28 which replaced Info Doc Nos 3, 10, 11 and 12 issued with Package 1 Consolidated Modification 6 - approved by Director, NSW Government Planning Infrastructure Modification 6 approval letter from Director, NSW Government Planning Infrastructure |
| 296 | Warrell Creek to Nambucca Heads - Surface water and Groundwater monitoring Program - Preconstruction Protocol- 31 Mar 2014 |
| 297 | Warrell Creek to Nambucca Heads - Contamination assessment Warrell Creek sediments, Farm Dam and Wetland soils near by Cut 12 14-Mar-14 |
| 298 (This Document updates Info Doc No15 issued with packages 1) | Warrell Creek to Nambucca Heads - WC2U Staging Report updated in relation to WC2NH staging WC2U Pacific Highway upgrade Staging Report update in relation to Stage 2 Warrell Creek to Nambucca Heads - Draft EPA comment sheet with RMS response |
| 299 | Warrell Creek to Nambucca Heads - Environment -Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) Referral EPBC Referral Docs |
| 300 | Warrell Creek to Nambucca Heads - Environment -Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) EPBC Additional information docs |
| 301 | Warrell Creek to Nambucca Heads - Environment - Fauna fence Figure 14.1 |
| 302 | Warrell Creek to Nambucca Heads ECI RFT Exhibit B |
| 303 | Warrell Creek to Nambucca Heads - Reference Documents Note: Electronic files has not been re-issued as they have previously been issued to AFJV with the RFT Exhibit F, App 8 |
| 304 | Warrell Creek to Nambucca Heads - Temporary construction access: Agreement for lease of land to Roads and Maritime Services Lot 81 DP740613 Lot 82 DP740613 |
| 305 (This Document supersedes Info Doc No.285 issued with Package 30) | Warrell Creek to Nambucca Heads - Utilities relocation - EA Environmental Assessment Warrell Creek to Nambucca Heads Utilities Relocation as Part of the WarrellCreek to Urunga Project- Jan 2014 - Draft V5 Appendix C - Archaeological and Cultural Heritage Assessment - V8 Jan 2014 |

| Information Document No | Description of Information Document |
|---|---|
| 306 (Part of this Document supersedes part of Info Doc No.286 issued with Package 30) | <p>Warrell Creek to Nambucca Heads - Utilities relocation - Woods Property DESIGN INFORMATION PACKAGE Asset Removal - Old Coast Rd, North Macksville - RMS-WC2U FOR Project: 106446 Design Information Issue Date: 2/01/2014.</p> <p>Info Doc 286 "2181-1048 RMS Woods Property Minor Consistency Review (Draft V1).pdf" is superseded by this document</p> <p>MINOR CONSISTENCY REVIEW Woods Property Adjustment Works Draft Version 1 Dec 2013</p> <p>Specification & Description of Works for Pacific Highway upgrade - Warrell Creek to Nambucca Heads Temporary Power Relocation Woods Property - Version B April 2014</p> |
| 307 (Part of this Document supersedes part of Info Doc No.286 issued with Package 30) | <p>Warrell Creek to Nambucca Heads - Utilities relocation - EA</p> <p>Info Doc 286 "2181-1052 RMS Sheather Property Minor Consistency Review (Draft V1).pdf" is superseded by this document</p> <p>MINOR CONSISTENCY REVIEW Sheather Property Adjustment Works V3 - Mar 2014</p> <p>ER Certification- signed</p> |
| 308 | <p>Warrell Creek to Nambucca Heads - Utilities relocation - EA</p> <p>MINOR CONSISTENCY REVIEW</p> <p>Clarke Property Adjustment Works</p> <p>V2 - Mar 2014</p> <p>ER Certification- signed</p> |
| 309 (This document supersedes Info Doc No.308 issued with package 33) | <p>Warrell Creek to Nambucca Heads</p> <p>Utilities relocation – EA</p> <p>MINOR CONSISTENCY REVIEW</p> <p>Clarke Property Adjustment Woks</p> <p>V2 – Mar 2014</p> <p>ER Certification – signed</p> |
| 310 | <p>Warrell Creek to Nambucca Heads</p> <p>Geotechnical Investigation – Contamination</p> <p>Contaminated Soil Investigation Summary</p> <p>Report</p> |
| 311 (This document supersedes Info Doc No.282 issued with Package 27) | <p>Warrell Creek to Nambucca Heads</p> <p>Conditions for Contractor occupation of RMS</p> <p>Residue lane</p> <p>Residual Land Waste Certificate</p> |
| 312 | <p>Warrell Creek to Nambucca Heads</p> <p>Letter from Ben Lewis 18 December 2012</p> <p>Threatened Raptor Survey Report</p> |

| Information Document No | Description of Information Document |
|---|---|
| 313 (This document updates Info Doc No. 223 and 224 issued with Package 18) | <p>Warrell Creek to Nambucca Heads</p> <p>Update and additional information to GIS Data</p> <p>Issued as Info Doc Nos.223 and 224 with Pckage 18</p> <p>Note: refer Appendix 1 – Fig 13 of Info Doc 21 issued with Package 1;</p> <p>RMS is resurveying threatened species in the area of the project as shown in the plan (Appendix 1 – Fig 13 within the Threatened Flora MP) and will provide details of any changes to the number of threatened species in the coming weeks.</p> |
| 314 (This document supersedes part of Info Doc NO.303 issued with Package 33) | <p>Warrell Creek to Nambucca Heads</p> <p>Environment – RMS Consistency assessment templates</p> <p>This document supersedes RD015 and RD016 issued under Info Doc No.303 with Info Doc Package 33</p> <p>Major Consistency Assessment Template</p> |
| | <p>Minor Consistency Review Template</p> |
| 315 | <p>Warrell Creek to Nambucca Heads</p> <p>Review of clearing and consistency assessment - AFJV Design Report – Draft Issued 15.5.2014</p> |
| 316 | <p>Warrell Creek to Nambucca Heads</p> <p>Environment - Water Quality Monitoring Program</p> <p>Approval letter from DP&E dated 23.05.2014 - Water quality monitoring Program, commencement of Construction and Pre construction baseline monitoring data</p> |
| 317 | <p>Warrell Creek to Nambucca Heads</p> <p>Environment - Staging Report</p> <p>Conditional Acceptance letter from DP&E dated 23.05.2014</p> |
| 318 | <p>Warrell Creek to Nambucca Heads</p> <p>Environment - Methodology for Aboriginal Heritage management for works outside project boundary</p> <p>Approval letter from DP&E dated 23.05.2014</p> <p>Approved Methodology (Aboriginal Heritage)</p> |
| 319 (This document supersedes Info Doc No.315 issued with Package 35) | <p>Warrell Creek to Nambucca Heads</p> <p>Review of clearing and consistency assessment - AFJV Design Report – Final Issue 23.05.2014</p> |

Design Documentation Minor Amendment

(clauses 12.2(m) and 23.2 (definition of "Design Documentation Minor Amendment"))

[Insert project description] ("Project")

To: RMS Representative
From: **[Insert Contractor's name]**
(ABN **[Insert Contractor's ABN]**)
("Contractor")

In accordance with the terms of clause 12.2(m) of the deed, amendment to design element
..... is proposed as follows:

Attached to this schedule is:

- (a) verification by the Project Verifier as required by clause 12.2(h)(i) of the deed;
- (b) certification by the Subcontractor as required by clause 12.2(h)(ii) of the deed;
- (c) certification by the Contractor as required by clause 12.2(h)(iii) of the deed; and
- (d) certification by the Proof Engineer as required by clause 12.2(h)(iv) of the deed.

The proposed amendment does comply with the deed.

.....
Signed for and on behalf of
[Insert Contractor's name]

Proof Engineer Requirements

(clauses 2.5 and 23.2 (definition of "Proof Engineer"))

Minimum Requirements

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) Demonstrated experience in the design of complex bridges and structures, which shall mean for the purposes of this Schedule, bridges or structures with any of the following features:
 - (i) bridge spans exceeding 35m;
 - (ii) retaining walls with effective retained height greater than 6m;
 - (iii) cable stayed or suspension bridges;
 - (iv) steel orthotropic decks;
 - (v) bascule span bridges;
 - (vi) post tensioned concrete structures;
 - (vii) bridge decks with skew exceeding 35 degrees;
 - (viii) railway bridges over roads and road bridges over railways;
 - (ix) structures under railways;
 - (x) precast arch structures; and
 - (xi) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure.
- (b) Proven ability in structural analysis and design of complex bridges and structures;
- (c) Quality Management System 3rd party certified to AS/NZS ISO 9001;
- (d) Range of suitable structural analysis, bridge design and CAD software;
- (e) Qualifications admitting to MIEAust and National Professional Engineers Register;
- (f) At least 5 years experience in complex structural analysis and design of complex bridges and structures;
- (g) Knowledge of Australian Standard AS 5100, RMS Bridge Technical Directions, RMS Standard Drawings;
- (h) Knowledge of RMS specifications for bridgeworks;
- (i) Knowledge of scientific investigation and testing and specialist knowledge of materials and products used in bridge construction; and
- (j) At least 5 years experience in undertaking the checking of structural design of complex bridges and structures as a proof engineer in the past 10 years.

Schedule 48

Rail Agreement

(clauses 5.16)
