

# Gateway Project Deed

Sydney Airport Corporation Limited  
Sydney Airport

Roads and Maritime Services  
RMS

Transport for NSW  
TfNSW

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# Gateway Project Deed

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## Date

## Parties

**Sydney Airport Corporation Limited ABN 62 082 578 809** of Central Terrace Building, 10 Arrivals Court, Sydney International Airport, NSW 2020 (**Sydney Airport**)

**Roads and Maritime Services ABN 76 236 371 088** of 27-31 Argyle Street, Parramatta NSW 2150 (**RMS**)

**Transport for NSW ABN 18 804 239 602** of 18 Lee Street, Chippendale NSW 2008 (**TfNSW**)

## Background

- A. Sydney Airport is the Airport-Lessee Company for the Airport.
- B. The parties have agreed to develop the Gateway on the terms of this Deed.
- C. RMS and Sydney Airport have agreed to work together to obtain an Easement from the Commonwealth for the benefit of RMS in accordance with this Deed.
- D. Sydney Airport has responsibility for ensuring that tenants vacate the Licensed Areas required for the Gateway. RMS will assist Sydney Airport to secure Qantas' vacation of relevant areas in a timely manner.
- E. In consideration of Sydney Airport agreeing with each of TfNSW and RMS to the terms on which the Easement would affect the Airport, TfNSW and RMS have each agreed to comply with clause 16 in relation to the delivery of the Alternative Projects.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Agreement for Easement** means the binding agreement between RMS and the Commonwealth under which the Commonwealth will grant the Easement.

**Airport** means Sydney (Kingsford-Smith) Airport.

**Airport Building Controller** has the meaning set out in the Airports Act.

**Airport Environment Officer** means the Airport Environment Officer for the Airport appointed as contemplated under the *Airports (Environment Protection) Regulations 1997* (Cth).

**Airport-Lessee Company** has the meaning set out in the Airports Act.

**Airport Master Plan** means the final master plan for the Airport under Division 3 Part 5 of the Airports Act as at the date of this Deed.

**Airport Project Works** means each of the:

- (a) Stage 1 Works;
- (b) Stage 3A Works;
- (c) Stage 3B Viaduct Works;
- (d) Stage 3B Ramp Works;
- (e) Stage 3C Works; and
- (f) Stage 3D Works,

and including any Temporary Works associated with the works in paragraphs (a) to (f) above.

**Airports Act** means the *Airports Act 1996* (Cth) and any and all regulations under that Act (including the Building Regulations).

**Alternative Project** has the meaning contained in clause 16.1.

**Alternative Project Period** means the period commencing on the date of this Deed and ending three years later, unless extended in accordance with clause 7.6.

**Appeal** means any appeal pursuant to the Airports Act or any other administrative or planning appeal in relation to the Gateway Major Development Plan produced as contemplated under clause 3.5 or any Approval referred to in clause 3.6.

**Applicable Codes** means all relevant Australian standards, the Building Code of Australia and other applicable codes in relation to the Airport Project Works and which are normally applied by RMS in relation to its other road construction and development activities.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements which may be required by Law for the commencement and carrying out of the Airport Project Works and the Sydney Airport Works, and any variations or modifications to them, including the following approvals under the Airports Act:

- (a) any required Major Development Plan;
- (b) any variation to or replacement of the Airport Master Plan which is or may be necessary to permit the grant of other approvals under the Airports Act in relation to the Airport Project Works or the Sydney Airport Works;
- (c) Sydney Airport's approval as the Airport-Lessee Company pursuant to the Airports Act (including in its capacity as land, facilities and aerodrome operator and including any consent for the purposes of regulation 2.03 of the Building Regulations);
- (d) any approvals required to be issued by the Airport Environment Officer; and
- (e) building approval issued by the Airport Building Controller under the Building Regulations.

**Balance Land** has the meaning contained in clause 5.2(b)(iv).

**BBSW** for any period means the rate which is the average of the bid rates shown at or about 10:30 am (Sydney time) on page "BBSW" on the Reuters Monitor System on the first day of that period for a term equal to that period expressed as a yield percent per annum to maturity and if necessary will be rounded to the nearest fourth decimal place.

**Builder's Side Deed** means the side deed to be entered into by the Building Contractor in relation to the Stage 3 Works and the Remaining Stage 1 Works in the form as set out in Schedule 14.



**Building Contract** means each:

- (a) building contract(s) entered into by RMS and a Building Contractor in relation to the Airport Project Works;
- (b) building contract(s) entered into by Sydney Airport and a Building Contractor in relation to the Sydney Airport Works; and
- (c) where applicable and subject to clause 2.2, those building contract(s) entered into by Sydney Airport and a Building Contractor in relation to some or all of the T2/T3 Funded Works.

**Building Contractor** means each:

- (a) building contractor(s) as appointed by RMS to undertake the Airport Project Works; or
- (b) where applicable and subject to clause 2.2, each building contractor(s) appointed by Sydney Airport to undertake the Sydney Airport Works and some or all of the T2/T3 Funded Works.

**Building Regulations** means the *Airports (Building Control) Regulations 1996* (Cth).

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State of New South Wales.

**Claim** includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Deed, the Airport Project Works or the Sydney Airport Works; or
- (b) 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.

**Commonwealth** means the Commonwealth of Australia as represented by the Department of Infrastructure, Regional Development and Cities.

**Completion** means, in respect of the Airport Project Works and the Sydney Airport Works, the point in time when the works have been practically completed or installed in accordance with:

- (a) the Design Documentation;
  - (b) all Approvals and applicable Laws;
  - (c) all Applicable Codes; and
  - (d) the obligations of RMS or Sydney Airport under this Deed (as applicable),
- as certified in accordance with the requirements of the relevant Building Contracts.

**Concept Design** means the design, scope and principles as set out in Schedule 8.

**Consequential Loss** means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of any business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production, loss of value to land or any asset or business on land and/or loss of revenue (whether that loss is direct or indirect);
- (b) any loss, damage, cost, expense or Liability that:
  - (i) is not a loss, damage, cost, expense or Liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
  - (ii) could not have been fairly and reasonably contemplated by each of the parties at the date of this Deed as the probable result of the breach or relevant matter; and
- (c) failure to realise anticipated savings, reduced costs or other benefits,

in each case whether present or future, fixed or unascertained, actual or contingent.

**Constraints and Restrictions** means the document contained in Schedule 15.

**Construction Compound** means the Licensed Areas identified as such in Schedule 5 and referred to in Schedule 10, or as otherwise agreed to be provided pursuant to clause 10.1(b).

**Construction Licence** means the access and works licence granted by Sydney Airport to RMS on the terms and conditions set out in clause 10 and the Construction Licence Terms.

**Construction Licence Terms** means the document contained in Schedule 4.

**Date of Completion** means the date on which Completion of each stage of the Airport Project Works is achieved, as provided in any notice pursuant to clause 10 of Schedule 2.

**Deed** means this deed and any schedules, exhibits, attachments and annexures to it.

**[Not Disclosed]**

**Design Documentation** means all design documentation (including all draft and final design standards, design reports, drawings, specifications, manuals, designs, models and all other relevant data) which:

- (a) RMS or the relevant Building Contractor creates in relation to the development and undertaking of the Airport Project Works; and
- (b) Sydney Airport or the relevant Building Contractor creates in relation to the development and undertaking of the Sydney Airport Works.

**Due Diligence Materials** means:

- (a) all reports commissioned by Sydney Airport in the period from 1 September 2016 to the date of this Deed which relate to the site conditions of the Licensed Areas;
- (b) relevant excerpts of all Annual Reports provided in the last three years prior to the date of this Deed to the Department of Infrastructure, Regional Development and Cities in accordance with regulation 6.03 of the *Airports (Environment Protection) Regulations 1997* (Cth);
- (c) reports or materials provided by tenants of Sydney Airport (where applicable and as contemplated under clause 11.1(b)); and

- (d) relevant excerpts of the environment site register required to be kept under regulation 6.02 of the *Airports (Environment Protection) Regulations 1997* (Cth).

**D&C Activities** means all works relating to or associated with the development and construction of the Airport Project Works (in respect of RMS) and the Sydney Airport Works (in respect of Sydney Airport).

**D&C Program** means the respective program developed by each party for the purposes of finalising the design for, and undertaking construction of, the Airport Project Works and the Sydney Airport Works (respectively).

**Easement** means the easement contemplated by clause 5.

**Easement Site** has the meaning contained in clause 5.2(b)(i).

**Easement Terms** means the terms for an Easement as set out in Schedule 7.

**Employees and Agents** means, in relation to a party, each of the party's employees, officers, agents, contractors, service suppliers, licensees and invitees. In the case of RMS, RMS' Employees and Agents includes the Building Contractor.

**Environment Strategy** has the meaning set out in the Airports Act.

**Environmental Laws** means any and all Laws relating to the protection of the environment, and includes the *Airports (Environment Protection) Regulations 1997* (Cth).

**[Not Disclosed]**

**Ex-Gratia Payments** means any ex-gratia payments in lieu of rates and land tax which are payable by Sydney Airport in respect of the Licensed Areas under the Sydney Airport Lease.

**Gateway** means the Sydney Gateway project, a motorway-grade road project connecting the St Peters Interchange to the Airport via Airport Drive and Qantas Drive, as further detailed in the Concept Design.

**Gateway Major Development Plan** means the Major Development Plan approved under the Airports Act for the development of the Airport Project Works and the Sydney Airport Works.

**Governmental Authority** means a government or any government of any State or Territory of Australia, administrative body, governmental body, department or agency of any such government or local government authority including the Minister and the Airport Building Controller but excludes Sydney Airport in its capacity as Airport-Lessee Company pursuant to the Airports Act.

**Grant Time** means the date on which the Easement is granted by the Commonwealth to RMS.

**GST** includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).

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

**GST law** has the same meaning as in the GST Act.

**Handback Date** means, unless otherwise agreed by the parties, in respect of each Licensed Area, the date which is 14 days after the expiration of the Licence Period for that Licensed Area.

**Handback Condition** means, in relation to each Licensed Area identified in Schedule 10, the condition in which RMS must hand back that Licensed Area as set out in Schedule 10.

**Independent Verifier** means:

- (a) in relation to the Stage 1 Works:
  - (i) the independent certifier or verifier (however described) appointed by RMS in relation to a Building Contract; or
  - (ii) if no independent certifier or verifier is appointed by RMS in relation to the Building Contract, an entity which:
    - A. is retained by RMS for the functions required of it under this Deed; and
    - B. has at least 5 years' experience in providing certification services to projects in the nature of the Gateway; and
- (b) in relation to the Stage 3 Works, an entity which is approved and appointed by RMS and Sydney Airport pursuant to clause 6.4 and which has at least 5 years' experience in providing certification services to projects in the nature of the Gateway.

**Inner West Council Lands** means the areas coloured in green on the plan attached at Schedule 17.

**Insurances** means the insurances to be taken out in accordance with clause 12.1.

**Integration Deed** means the "Gateway Integration Deed" between the parties dated on or about the date of this Deed.

**[Not Disclosed]**

**Law** means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, standards or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

**Liability** includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);

- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

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

- (a) each area specified in Schedule 10 the relevant date set out as in the 'Licence Commencement Date' column of Schedule 10; and
- (b) the areas listed in clause 10.2(a), the dates specified in that clause.

**Licence Period** means, in relation to each Licensed Area, the period commencing on the date on which the relevant Licensed Area is made available by Sydney Airport to RMS for the purposes of constructing the Airport Project Works and ending:

- (a) in relation to those areas which form the Easement Site, the date that the Easement is granted to RMS; and
- (b) in relation to all other areas, on the date which is the earlier to occur of:
  - (i) the date which is 30 days after the Date of Completion of the relevant stage of works; and
  - (ii) the date that RMS hands back the relevant area to Sydney Airport consistent with the applicable Handback Condition.

**Licensed Area** means the parts of the Airport, shown as the "Proposed Licenced Areas" on the plans attached at Schedule 5, subject to the inclusion of additional areas under clause 10.1(b). A reference to a particular Licensed Area by number refers to the number of that Licensed Area in Schedule 5 and Schedule 10.

**Major Development Plan** has the meaning set out in the Airports Act.

**Master Plan Adjustment** has the meaning contained in clause 3.3.

**Minister** means the Commonwealth Minister for Infrastructure, Transport and Regional Development.

**[Not Disclosed]**

**Obstacle Limitation Surface or OLS** means the obstacle limitation surface applicable to the Sydney (Kingsford-Smith) Airport determined in accordance with CASA's *Manual of Standards Part 139 – Aerodromes*.

**PANS-OPS** means the surface defined as the Procedures for Air Navigation Services - Aircraft Operations Surface by the *Airports (Protection of Airspace) Regulations 1996 (Cth)* as applicable to the Sydney (Kingsford-Smith) Airport.

**Project Approvals** has the meaning contained in clause 3.1(b)(i).

**Project Document** means:

- (a) this Deed;
- (b) the Integration Deed;

- (c) the Agreement for Easement; and
- (d) the Easement.

**[Not Disclosed]**

**Remaining Stage 1 Works** means those Structures developed by RMS as part of the Stage 1 Works which are located outside the Easement Site.

**Representative** means RMS' and Sydney Airport's representatives as appointed in accordance with clause 2 of Schedule 2.

**Services** means building services, systems and conduits (including fire, water, gas, sewerage, stormwater, plumbing, electrical, communication, air conditioning and security services, substations and associated infrastructure) which:

- (a) were developed, installed or constructed for;
- (b) interconnect; or
- (c) directly provide services to or between,

the buildings located on the Airport and which are not Utilities.

**Stage 1 Works** means, subject to the requirements of this Deed, the physical works, including the Temporary Works, described as "Stage 1 Works" in the Concept Design.

**Stage 3 Works** means the Stage 3A Works, the Stage 3B Ramp Works, the Stage 3B Viaduct Works, the Stage 3C Works and the Stage 3D Works.

**Stage 3A Works** means, subject to the requirements of this Deed, the physical works, including the Temporary Works, described as "Stage 3A Works" in the Concept Design.

**Stage 3B Ramp Works** means, subject to the requirements of this Deed, the physical works, including the Temporary Works, described as "Stage 3B Ramp Works" in the Concept Design.

**Stage 3B Viaduct Works** means, subject to the requirements of this Deed, the physical works, including the Temporary Works, described as "Stage 3B Viaduct Works" in the Concept Design.

**Stage 3C Works** means, subject to the requirements of this Deed, the physical works, including the Temporary Works, described as "Stage 3C Works" in the Concept Design.

**Stage 3D Works** means, subject to the requirements of this Deed, the physical works, including the Temporary Works, described as "Stage 3D Works" in the Concept Design.

**Structures** means all fixtures (including buildings, roads, bridges, drains and other improvements of whatever nature) affixed to the Airport land, whether constructed before or at any time after the grant of the Easement and whether constructed by or on behalf of RMS or otherwise.

**Submission Program** means the program contained in Schedule 9.

**Subsidiary** has the meaning given in the *Corporations Act 2001* (Cth).

**Sunset Date** means the:

- (a) "Reference Sunset Date" listed in Item 2 of Schedule 1;
- (b) extended Sunset Date as extended in accordance with this Deed; or

(c) any other date agreed in writing between RMS and Sydney Airport.

**Suspension Notice** means a notice given by Sydney Airport to RMS in accordance with clause 3.7(c) that requires any or all the Airport Project Works to cease for a temporary period only.

**Sydney Airport Approvals** has the meaning contained in clause 3.1(b)(ii).

**Sydney Airport Lease** means each lease between Sydney Airport Corporation Limited and the Commonwealth of Australia pursuant to the Airports Act in respect of the Airport.

**Sydney Airport Works** means those works to the Airport and the improvements and infrastructure forming part of the Airport which are conducted by Sydney Airport and are required as a result of the development of the Gateway, including:

- (a) works on the Airport which are required to facilitate the undertaking of the Airport Project Works relating to:
  - (i) aviation and navigational aids and systems;
  - (ii) general and aviation lighting; and
  - (iii) security fencing;
- (b) subject to agreement being reached in accordance with clause 2.2, some or all of the T2/T3 Funded Works; and
- (c) other works as agreed between the parties as being within the scope of the works to be undertaken by Sydney Airport under this Deed,

and including any Temporary Works associated with the works in paragraphs (a) to (c) above.

**Sydney Airport's Requirements** means the requirements developed by Sydney Airport in accordance with clause 6.1(h).

**T2/T3 Funded Works** means the:

- (a) Stage 3B Ramp Works;
- (b) Stage 3B Viaduct Works; and
- (c) Stage 3C Works.

**Temporary Works** means works that are done for the purpose of constructing the Airport Project Works or the Sydney Airport Works but will not remain on or affixed to the Airport following the Gateway entering into operation.

**Third Party Interests** means:

- (a) any easements, covenants or affectations registered on the title of the Airport;
- (b) any statutory rights of utility providers or Governmental Authorities in relation to any Utilities; and
- (c) **[Not Disclosed]**

**Traffic Modelling Guidelines** means RMS' traffic modelling guidelines document as published and amended by RMS from time to time.

**Unusual Condition** means any condition imposed as part of the creation of the Gateway Major Development Plan produced as contemplated under clause 3.5 or any Approval referred to in clause 3.6, which condition, in the opinion of the party required to comply with the relevant condition (acting reasonably):

- (a) detrimentally affects the safe and effective aviation operations at the Airport over the term of each Sydney Airport Lease and any option;
- (b) significantly detrimentally affects Sydney Airport's effective operations at the Airport (other than aviation operations) over the term of each Sydney Airport Lease and any option;
- (c) requires Sydney Airport or RMS to expend a material additional amount of capital in relation to the Airport or the Gateway; or
- (d) materially alters, or requires the material alteration of (either expressly or as a consequence of the relevant condition), the Gateway from the Concept Design or from the design as submitted for the relevant Approval.

**Utilities** means:

- (a) utility infrastructure installed as contemplated under or in accordance with statute or similar rights for the purposes of providing water, gas, fuel, electricity, sewerage, telephone, drainage, stormwater, and communications services to other persons (including users of the Airport);
- (b) the Sydney Water desalination pipeline **[Not Disclosed]** to the extent it traverses the Licensed Areas; and
- (c) the pipeline infrastructure which supplies the joint user hydrant installation covered by the sublease between Sydney Airport and Viva Energy Aviation Pty Ltd in relation to the Joint User Hydrant Installation as contained in the materials listed in Schedule 11. Pipeline infrastructure of the joint user hydrant installation which is developed, installed or constructed for, interconnects or directly provides services to or between the facilities located on the Airport or any aircraft on the Airport is a Service for the purposes of this Deed.

**WHS Legislation** means any applicable legislation relating to work health and safety, including, as applicable:

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

**Work Methodology Statement** means a document which includes the following:

- (a) a copy of the D&C Program showing proposed dates which may affect airfield operations;
- (b) staging plans showing the location of all proposed D&C Activities; and
- (c) the timing and location of the proposed use of any vertical structures, cranes, piling equipment or other constructional plant which may penetrate the Obstacle Limitation Surface.

## 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 a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "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 a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency; and
- (l) a reference to an item is to an item in the reference schedule to this Deed.

### **1.3 Statutory roles**

Nothing in this Deed operates to restrict or otherwise affect or fetter a party's statutory discretion in exercising its powers pursuant to any Law or otherwise as a Governmental Authority.

### **1.4 No bias against drafting party**

In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted this Deed or any provision in it.

### **1.5 Provisions limiting or excluding Liability**

Any provision of this Deed which seeks to limit or exclude a Liability of a party is to be construed as doing so only to the extent permitted by Law.

### **1.6 Business Day**

If the day on or by which any thing is to be done under this Deed is not a Business Day, that thing must be done:

- (a) if it involves a payment other than a payment which is due on demand, on the preceding Business Day; and
- (b) in all other cases, no later than the next Business Day.

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## 2. Preliminary matters

### 2.1 Conditions Precedent

- (a) The parties agree that:
  - (i) clauses 1, 2, and 17 to 25 (inclusive) of this Deed take effect on the date of the execution of this Deed and continue until terminated under the terms of this Deed; and
  - (ii) the remainder of the clauses contained in this Deed are conditional on, and will be of no force or effect until and unless the following conditions have been achieved:

***[Not Disclosed]***

and will continue until terminated under the terms of this Deed.

- (b) RMS must provide written notice to Sydney Airport when the conditions precedent referred to above in clauses ***[Not Disclosed]*** to ***[Not Disclosed]*** inclusive have been satisfied. A party must provide written notice to the other when it is of the opinion that the condition precedent in clause ***[Not Disclosed]*** has been satisfied.
- (c) The parties acknowledge that:
  - (i) the conditions precedent referred to in clauses ***[Not Disclosed]*** to ***[Not Disclosed]*** inclusive are for the benefit of RMS and TfNSW and may be waived by written notice issued by RMS or TfNSW to Sydney Airport; and
  - (ii) the condition precedent referred to in clause ***[Not Disclosed]*** is for the benefit of RMS, TfNSW and Sydney Airport and may only be waived with the agreement of all parties.

### 2.2 Proposal for T2/T3 Funded Works

The parties agree that subject to this clause Sydney Airport may at any time prior to 1 January 2019 provide RMS and TfNSW with a proposal for Sydney Airport undertaking some or all of the T2/T3 Funded Works (**Elected Works**). Any such proposal will be developed at Sydney Airport's cost and for the avoidance of doubt, the costs of development of such proposal will not be a Net Cost for the purposes of Schedule 13. Any such proposal must detail:

- (a) the internal corporate approvals obtained for Sydney Airport to undertake the Elected Works;
- (b) the program and timing for such works;
- (c) the proposed design obligations in relation to the Elected Works;
- (d) the integration approach between the remaining Gateway works and the Elected Works;
- (e) any and all proposed amendments to the Project Documents;

- (f) whether any additional approvals are required if Sydney Airport were to undertake the Elected Works;
- (g) the structure to be adopted as between all relevant parties for the undertaking of the Elected Works; and
- (h) **[Not Disclosed]**,  
(the **Proposal**).

## **2.3 [Not Disclosed]**

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# **3. Required Approvals**

## **3.1 Acknowledgement**

RMS and Sydney Airport acknowledge and agree that:

- (a) based on the information available at the date of this Deed in relation to the Airport Project Works (including the Concept Design), the Airport Project Works are, in the opinion of RMS and Sydney Airport, consistent with the planning objectives and Environment Strategy for the Airport for the purposes of regulation 2.04 of the Building Regulations; and
- (b) subject to clause 3.6 and other express terms of this Deed:
  - (i) RMS will be responsible for obtaining, or facilitating the obtaining of, the Approvals in relation to the Airport Project Works (**Project Approvals**);
  - (ii) Sydney Airport will be responsible for obtaining, or facilitating the obtaining of, the Approvals in relation to the Sydney Airport Works (**Sydney Airport Approvals**); and
  - (iii) the Airport Master Plan will be managed in accordance with clauses 3.3 and 3.4 and the Major Development Plan in accordance with clause 3.5.

## **3.2 Assistance**

- (a) Notwithstanding clause 3.6, Sydney Airport:
  - (i) must do all things reasonably necessary to facilitate and assist in the obtaining of all the Project Approvals;
  - (ii) will consult with RMS concerning the obtaining of the Project Approvals; and
  - (iii) will comply with the reasonable directions of RMS in relation to the obtaining and enforcement of the Project Approvals.
- (b) Notwithstanding clause 3.6, RMS:
  - (i) must do all things reasonably necessary to facilitate and assist in the obtaining of all the Sydney Airport Approvals;
  - (ii) will consult with Sydney Airport concerning the obtaining of the Sydney Airport Approvals; and

- (iii) will comply with the reasonable directions of Sydney Airport in relation to the obtaining and enforcement of the Sydney Airport Approvals as those approvals relate to the Sydney Airport Works only.
- (c) Nothing in this clause 3 requires:
  - (i) Sydney Airport to commence any proceedings to obtain an Approval; or
  - (ii) RMS to commence any proceedings to obtain an Approval.

### 3.3 Airport Master Plan

The parties agree that in their opinion the Airport Project Works are consistent with:

- (a) the Airport Master Plan. Notwithstanding this, RMS and Sydney Airport agree that if the Commonwealth determines that a minor variation is required to the Airport Master Plan to permit the undertaking of the Airport Project Works and the Sydney Airport Works (**Master Plan Adjustment**) then, subject to clause 3.4, Sydney Airport must, at RMS' sole cost (and where Sydney Airport must provide RMS with reasonable evidence substantiating the relevant costs incurred for the development and approval of the Master Plan Adjustment), promptly do all things reasonably necessary to develop, facilitate and submit the Master Plan Adjustment for approval by the Commonwealth (including compliance with clause 3.4 of this Deed); and
- (b) the draft of the new airport master plan as released for public consultation by Sydney Airport on 27 August 2018. Notwithstanding this, RMS and Sydney Airport agree that:
  - (i) if the Commonwealth determines that a variation to the draft new airport master plan is required to permit the undertaking of the Airport Project Works, Sydney Airport must promptly (at the cost of RMS) do all things reasonably necessary to vary the draft new airport master plan so as to allow for the Airport Project Works to proceed; and
  - (ii) if Sydney Airport varies or changes the draft new airport master plan (whether before or after it becomes the final airport master plan) in a way that does not permit, or which is alleged by the Commonwealth or any other party to not permit, the undertaking of the Airport Project Works, Sydney Airport must promptly (at its cost) do all things reasonably necessary to vary the draft new airport master plan, or otherwise deal with the relevant matter, so as to allow for the Airport Project Works to proceed.

### 3.4 Airport Master Plan variation or replacement

If a Master Plan Adjustment is required as contemplated under clause 3.3, then RMS and Sydney Airport agree that:

- (a) subject to this clause 3.4, Sydney Airport will be responsible for the planning, organising and undertaking of activities required in relation to the development and approval of the Master Plan Adjustment;
- (b) without limitation Sydney Airport will be responsible for the production of all drafts of the Master Plan Adjustment (the **Master Plan Documentation**). RMS will provide reasonable assistance to Sydney Airport in relation to the development of the Master Plan Documentation, as required by Sydney Airport from time to time (acting reasonably);

- (c) RMS and Sydney Airport must work together in good faith to finalise all Master Plan Documentation and to otherwise obtain the approval of the Master Plan Adjustment in accordance with section 84 of the Airports Act;
- (d) RMS must provide reasonable assistance to Sydney Airport in relation to the Master Plan Documentation and the approval processes for the Master Plan Adjustment, as required by Sydney Airport from time to time (acting reasonably);
- (e) Sydney Airport must:
  - (i) keep RMS informed as to the progress of the Master Plan Documentation; and
  - (ii) provide RMS with such information with respect to the Master Plan Documentation as reasonably requested by RMS from time to time;
- (f) RMS and its planning, operational, legal and commercial advisers may review and comment on all drafts of the Master Plan Documentation, with RMS' comments to be considered in good faith by Sydney Airport in the production of any further drafts of the Master Plan Documentation;
- (g) prior to the provision of the Master Plan Documentation or any draft of the Master Plan Documentation to any Governmental Authority or the public under or as a result of any consultation process, Sydney Airport must obtain the prior written approval of RMS in relation to that Master Plan Documentation or draft Master Plan Documentation, with such approval not to be unreasonably withheld;
- (h) Sydney Airport will undertake consultations in relation to the Master Plan Documentation relating to the Master Plan Adjustment as required under section 84A of the Airports Act;
- (i) any and all correspondence, queries or notices received by Sydney Airport in relation to the Master Plan Documentation received from third parties must be promptly provided to RMS, and the parties will be jointly responsible for dealing with any such correspondence, query or notice (both acting reasonably);
- (j) any and all correspondence, queries or notices received by RMS in relation to the Master Plan Documentation received from third parties must be promptly provided to Sydney Airport, and the parties will be jointly responsible for dealing with any such correspondence, query or notice (both acting reasonably);
- (k) when requested to do so by RMS, for the purposes of section 84A(1A) of the Airports Act, Sydney Airport will formally advise relevant parties of the Master Plan Documentation and of its intention to provide that documentation to the Minister;
- (l) when requested to do so by RMS, Sydney Airport must submit the final draft Master Plan Documentation to the Minister for approval as contemplated under section 84(1) of the Airports Act;
- (m) Sydney Airport must promptly advise RMS:
  - (i) if after submission of the Master Plan Documentation there is any correspondence, query or other communication from any party with respect to the Master Plan Documentation and provide a copy of such correspondence, query or other communication to RMS as soon as reasonably practicable;
  - (ii) if after submission of the Master Plan Documentation there is any query from the Minister regarding the Master Plan Documentation, the response to such a query will be subject to the approval of RMS and

Sydney Airport and Sydney Airport must submit such approved response to the Minister; and

(iii) if the Master Plan Documentation is approved or rejected by the Minister, and:

A. if approved - the conditions that apply to any such approval; or

B. if rejected - the reasons for such rejection; and

(n) if:

(i) the Commonwealth is of the opinion that a Master Plan Adjustment will not facilitate the undertaking of the Airport Project Works and/or the Sydney Airport Works; or

(ii) the Master Plan Documentation is rejected by the Minister as contemplated under clause 3.4(m)(iii)B,

then RMS and Sydney Airport agree that:

(iii) they will:

A. discuss with the Commonwealth the reasons for any opinion of, or rejection by, the Commonwealth under clauses 3.4(n)(i) and 3.4(n)(ii) above to determine whether there are any other works, proposals or other measures in respect of the Master Plan Adjustment or the Master Plan Documentation (as applicable), or any replacement of those documents, that would be acceptable to the Commonwealth so as to allow for the approval of the relevant Master Plan Documentation or other relevant document so as to facilitate the undertaking of the Airport Project Works and the Sydney Airport Works (**Relevant Proposal**); and

B. use all reasonable endeavours to agree on the implementation of any such Relevant Proposal; and

(iv) the Sunset Date will be extended to a date determined by RMS (acting reasonably), provided that any extension must not be beyond **[Not Disclosed]**.

### 3.5 Major Development Plan

(a) RMS and Sydney Airport acknowledge that:

(i) a Major Development Plan is required for the development, construction and operation of the Airport Project Works and the Sydney Airport Works. Sydney Airport agrees that RMS will undertake, and will be responsible for the production of and consultation on, the Major Development Plan for the development, construction and operation of the Airport Project Works and the Sydney Airport Works and other associated works; and

(ii) (other than in relation to site investigation or preliminary site works) the undertaking of the Airport Project Works and the Sydney Airport Works is conditional on the approval of a Major Development Plan for the undertaking of those works.

- (b) RMS and Sydney Airport agree that:
- (i) RMS will be responsible for the planning, organising and undertaking of activities required in relation to the development and approval of the Major Development Plan at its cost;
  - (ii) without limitation, RMS will be responsible for:
    - A. the development of all Design Documentation, economic reports, construction plans, environmental assessments and reports and other associated documentation required for the production of the Major Development Plan; and
    - B. the production of all drafts of the Major Development Plan, (the **Documentation**);
  - (iii) the production of the Documentation will be undertaken in accordance with clause 6 (for applicable design documentation) and the Submission Program;
  - (iv) the Documentation must be consistent with the Concept Design, unless otherwise agreed by the parties;
  - (v) RMS and Sydney Airport will work together in good faith to finalise the Documentation;
  - (vi) Sydney Airport will provide reasonable assistance to RMS in relation to the Documentation and the approval processes for the Airport Project Works, as required by RMS from time to time (acting reasonably). Without limitation, Sydney Airport must promptly advise RMS of any aviation operations or aviation safety concerns with respect to any and all draft Documentation (acting reasonably at all times);
  - (vii) RMS must:
    - A. keep Sydney Airport informed as to the progress of the Documentation; and
    - B. provide Sydney Airport with such information with respect to the Documentation as reasonably requested by Sydney Airport from time to time;
  - (viii) without limiting Sydney Airport's approval rights under clause 3.5(b)(xiv), Sydney Airport and its planning, operational, legal and commercial advisers may review and comment on all drafts of the Major Development Plan with Sydney Airport's comments to be considered by RMS in the production of any further drafts of the Major Development Plan;
  - (ix) RMS will be responsible for producing all material for consultations in relation to any and all drafts of the Major Development Plan, where that material is subject to Sydney Airport's approval before being used in any Major Development Plan consultations (such approval not being unreasonably withheld);
  - (x) RMS will undertake consultations in relation to the Documentation as required under the Airports Act jointly with Sydney Airport. RMS will develop a plan for such consultations consistent with the requirements of

the Airports Act and will provide that plan to Sydney Airport for approval (acting reasonably);

- (xi) any and all correspondence, queries or notices received by a party in relation to the Documentation from third parties must be promptly provided to the other parties, and the parties will be jointly responsible for dealing with any such correspondence, query or notice (both acting reasonably);
- (xii) Sydney Airport agrees to, and will do all things reasonably necessary to facilitate, third party experts appointed and organised by RMS entering the Airport for the purposes of planning, undertaking studies, and otherwise developing the Documentation;
- (xiii) when requested to do so by RMS, Sydney Airport will formally advise relevant parties of the draft Major Development Plan and of its intention to provide the draft Major Development Plan to the Minister, as required by the Airports Act and otherwise in accordance with the Submission Program;
- (xiv) where RMS notifies Sydney Airport that a final draft of the Major Development Plan has been produced, and provided that Sydney Airport has approved that final draft Major Development Plan (such approval not being unreasonably withheld), Sydney Airport must submit the final draft Major Development Plan to the Minister for approval as contemplated under Part 5 Division 4 Subdivision C of the Airports Act. Without limitation, Sydney Airport will not be unreasonably withholding its approval of the final draft Major Development Plan where it determines (acting reasonably) that:
  - A. the draft Major Development Plan does not propose a solution in relation to the Airport Project Works and the Sydney Airport Works consistent with the Concept Design; or
  - B. an aviation operations or aviation safety concern arising as a result of the undertaking of the relevant Major Development Plan and raised as contemplated under clause 3.5(b)(vi) has not been satisfactorily dealt with or otherwise mitigated;
- (xv) Sydney Airport must promptly advise RMS if:
  - A. after submission of the draft Major Development Plan there is any correspondence, query or other communication from any party with respect to the draft Major Development Plan;
  - B. the Minister "stops the clock" under section 93A(3) of the Airports Act. In this circumstance, RMS and Sydney Airport will work together to deal with any matters raised by the Minister and resolve the final response to the Minister (acting reasonably and in good faith); and
  - C. the draft Major Development Plan is approved or rejected by the Minister, and:
    - 1) if approved - the conditions that apply to any such approval; or
    - 2) if rejected - the reasons for such rejection;



- (xvi) if the draft Major Development Plan is rejected, Sydney Airport and RMS agree to meet as soon as possible to discuss in good faith what amendments to the draft Major Development Plan are required for the Minister to approve the draft Major Development Plan; and
- (xvii) if RMS and Sydney Airport agree to the amendments to the draft Major Development Plan, RMS and Sydney Airport will undertake the process detailed at clauses 3.5(b)(i) to 3.5(b)(xvi) to develop the draft Major Development Plan (as amended) and submit the amended draft Major Development Plan to the Minister for consideration in accordance with the Airports Act.

### 3.6 Other Approvals

- (a) Without affecting clauses 3.2 to 3.5 (inclusive), but subject to clauses 3.6(b) and 3.10:
  - (i) RMS must, at its cost, obtain all other Project Approvals; and
  - (ii) Sydney Airport must promptly, at RMS' cost (subject to the limit set out in clause 3.10), obtain all other Sydney Airport Approvals.
- (b) Notwithstanding clause 3.6(a), RMS and Sydney Airport acknowledge and agree that:
  - (i) in carrying out the Airport Project Works there may be circumstances in which it is necessary for RMS (acting reasonably) to penetrate any relevant navigation surfaces including but not limited to the Obstacle Limitation Surface and PANS-OPS; and
  - (ii) to the extent of any such penetration:
    - A. approval from the Civil Aviation Safety Authority (**CASA**) and/or the Department of Infrastructure, Regional Development and Cities (**DIRDC**) will be required and for this purpose and if required by or for CASA and/or DIRDC, RMS will procure and prepare an aeronautical study / risk assessment from a suitably qualified aviation professional (at the cost of RMS); and
    - B. RMS and Sydney Airport will jointly develop the relevant application to CASA and/or DIRDC and when finalised Sydney Airport must promptly make the application for the Approval referred to in clause 3.6(b)(ii)A, and promptly notify RMS of the making of such application and keep RMS informed of the progress of such application.
- (c) Without limiting clauses 3.1 or 3.5, RMS and Sydney Airport otherwise agree to work together in relation to the obtaining of any and all required Approvals from the Airport Building Controller, CASA, DIRDC and Airservices Australia in relation to the undertaking of the Airport Project Works, the Sydney Airport Works and any associated works.

### 3.7 Safe and effective operations

- (a) RMS acknowledges that:
  - (i) it is important for the safe and effective operation of the Airport that any impact of the Airport Project Works on the operation of aircraft, runways or aviation infrastructure and airspace on or about the Airport is

minimised to the extent reasonably practicable having regard to the scope and timing of the Airport Project Works; and

- (ii) despite the grant of any Approval by Sydney Airport, Sydney Airport retains the right to temporarily suspend the conduct of the Airport Project Works in accordance with this clause 3.7 if such action is in the reasonable opinion of Sydney Airport required:
  - A. to preserve the safe operation of aircraft, runways or aviation infrastructure from an immediate and significant risk of damage or harm; or
  - B. as a result of a breach of the Constraints and Restrictions by RMS or its Employees and Agents.
- (b) In the circumstances set out in clause 3.7(a):
  - (i) Sydney Airport may issue a Suspension Notice on RMS;
  - (ii) Sydney Airport must use reasonable endeavours to mitigate the time, effect and scope of any such suspension and promptly advise RMS of the relevant mitigation measures; and
  - (iii) RMS and Sydney Airport must notify both of their respective Chief Executive Officers as soon as possible after the issuing of the relevant Suspension Notice.
- (c) Suspension Notices must contain details of:
  - (i) the component of the Airport Project Works affected by the relevant suspension;
  - (ii) the reasons for the suspension;
  - (iii) the D&C Activities which are to be suspended;
  - (iv) the period of such suspension (which must be a reasonable period having regard to the reasons for the relevant suspension); and
  - (v) the mitigation measures that Sydney Airport will adopt to minimise the period of the suspension.
- (d) While a Suspension Notice is in force, RMS must ensure that no work is carried out in connection with the part of the Airport Project Works to which the Suspension Notice applies.
- (e) As soon as possible after Sydney Airport issues a Suspension Notice (and in any event within 1 Business Day), RMS and Sydney Airport must meet to determine, in good faith, whether or not the circumstances which gave rise to the issue of the Suspension Notice have ceased and the suspension can be lifted, whether there are any mitigating or remedial measures that can be implemented by RMS to allow those works affected by suspension to continue, and how to avoid such suspensions in the future.
- (f) If the circumstances which gave rise to the issue of the Suspension Notice have ceased Sydney Airport must immediately lift the suspension.

### 3.8 State Approvals

- (a) RMS and Sydney Airport acknowledge that parts of the Gateway will be subject to approval pursuant to state Law, including the *Environmental Planning and Assessment Act 1979* (NSW) (**State Approvals**).
- (b) RMS must:
  - (i) keep Sydney Airport informed as to the progress of its applications for the State Approvals; and
  - (ii) provide Sydney Airport with such information with respect to the applications for the State Approvals as reasonably requested by Sydney Airport from time to time.

### 3.9 Conditional Approval

- (a) If any Approval in relation to the Airport Project Works is provided on a conditional basis, then each party must, within 30 Business Days of the date of the grant of the relevant Approval, notify the other party whether, acting reasonably, it considers that any such condition is an Unusual Condition.
- (b) If a party issues a notice stating that a condition is an Unusual Condition pursuant to clause 3.9(a) then it must include with its notice:
  - (i) reasonable details to support its opinion; and
  - (ii) indicate its proposed course of action with respect to the Unusual Condition.
- (c) If a party issues a notice pursuant to clause 3.9(a) then:
  - (i) RMS and Sydney Airport must promptly meet to discuss the relevant Unusual Condition and determine:
    - A. whether RMS and Sydney Airport (both acting reasonably) are willing to proceed with the works on the basis of such an Unusual Condition; or
    - B. if RMS and Sydney Airport are not willing to proceed with the works on the basis that the relevant Approval contains the Unusual Condition, whether:
      - 1) a party will commence an Appeal in relation to the Unusual Condition; or
      - 2) there are any additional mitigation or other proposals that may be implemented to allow the Gateway to proceed despite the existence of the Unusual Condition; and
  - (ii) where a party has determined that it is not willing to proceed on the basis of an Unusual Condition contained in the Major Development Plan, and where no agreement between RMS and Sydney Airport has been reached under clause 3.9(c)(i)B within 180 Business Days of the granting of the Major Development Plan (as applicable), then either party may terminate this Deed by notice to the other.
- (d) Upon termination pursuant to clause 3.9(c)(ii), neither party will be liable to the other party except to the extent that such Liability arose prior to the date of termination.

- (e) If a party commences an Appeal in relation to an Unusual Condition, then:
- (i) that party will conduct such Appeal;
  - (ii) the other party must do all things necessary to allow the first party to deal with the Appeal proceedings (including, where applicable, by Sydney Airport appointing RMS as the nominee of Sydney Airport for the purposes of any Appeal in relation to the Gateway Major Development Plan); and
  - (iii) that party must:
    - A. not agree to any settlement or proposal in respect of the Appeal proceedings except with the consent of the other party (acting reasonably);
    - B. keep the other party regularly informed as to the progress of the Appeal proceedings; and
    - C. indemnify the other party in relation to any costs incurred as a result of the conduct of such Appeal proceedings, including any Liability under any costs orders arising from the conduct of such proceedings.

### 3.10 Sydney Airport costs reimbursement

- (a) RMS will reimburse Sydney Airport for the reasonable costs incurred by Sydney Airport (excluding, subject to clause 3.10(c), internal management and employee costs) in relation to:
- (i) the obtaining of Approvals (including those Approvals as contemplated under clause 3.6) for the Stage 1 Works, the Stage 3A Works and the Stage 3D Works;
  - (ii) the review of Design Documentation in relation to the Stage 1 Works, the Stage 3A Works and the Stage 3D Works by Sydney Airport, as contemplated under clause 6;
  - (iii) project facilitation and administration costs in relation to the Stage 1 Works, the Stage 3A Works and the Stage 3D Works; and
  - (iv) external consultants and contractors fees in relation to the Stage 1 Works, the Stage 3A Works and the Stage 3D Works,
- up to a maximum aggregate amount of **[Not Disclosed]** (Approval Cap).
- (b) The reimbursement contemplated in clause 3.10(a) will be paid by RMS to Sydney Airport within 30 days of receipt of a valid tax invoice for the relevant amount claimed subject to Sydney Airport providing RMS with reasonable evidence of the expenses and costs claimed for reimbursement. All costs incurred by Sydney Airport in respect of the matters referred to in clause 3.10(a) in excess of the Approval Cap will be the sole responsibility of Sydney Airport.
- (c) For the avoidance of doubt, the parties acknowledge that:
- (i) Sydney Airport may charge RMS and any relevant Building Contractor in relation to any application by RMS or the Building Contractor (as applicable) for airport lessee consent for the Airport Project Works in accordance with regulation 2.04 of the Building Regulations;

- (ii) Sydney Airport will be entitled to reimbursement of any direct charges paid to CASA or Airservices Australia in relation to any application for an Approval in respect of the Airport Project Works;
- (iii) the works referred to in paragraph (a) of the definition of “Sydney Airport Works” are to be conducted by Sydney Airport at the cost of RMS;
- (iv) costs associated with the T2/T3 Funded Works are to be dealt with under the regime in Schedule 13;
- (v) the costs referred to in clause 3.3(a) are the responsibility of RMS; and
- (vi) the costs referred to in clause 3.6(a)(ii) are the responsibility of RMS,

and those costs or amounts will not form part of the cost reimbursement under this clause 3.10 or the Approval Cap.

- (d) If this Deed is terminated in accordance with clauses 3.9(c)(ii) or 21, then RMS must, subject to the Approval Cap, pay Sydney Airport the costs referred to in clause 3.10(a) incurred up to the date of termination.

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#### 4. Specific project works requirements

- (a) ***[Not Disclosed]***
- (b) ***[Not Disclosed]***
- (c) ***[Not Disclosed]***
- (d) ***[Not Disclosed]***
- (e) RMS must, at its cost and subject to clause 4(f), procure the creation of the following easements by the relevant Date of Completion of each element of the Airport Project Works accommodated by the relevant easement:
  - (i) an easement over the Alexandra Canal in the location of the “**West Bridge**” as shown on Annexure A of the Concept Design. The easement must have the following features:
    - A. the easement must benefit Sydney Airport or Airport land;
    - B. the easement must permit the construction, maintenance and operation of the West Bridge and must permit use of the bridge for pedestrian and vehicular access; and
    - C. the easement site must include all structures comprising the West Bridge and adequate maintenance access to the elements of the West Bridge;
  - (ii) an easement over the Alexandra Canal to allow future road access to the area known as “**North East Precinct**” along a route east of the Port Botany Rail Line as shown on Annexure A of the Concept Design. The easement must have the following features:
    - A. the easement must benefit Sydney Airport or Airport land;
    - B. the easement must permit the construction, maintenance and operation of the access way and must permit use of the access way for vehicular access; and

- C. the easement site must include all structures comprising the access way and adequate maintenance access to the elements of the access way;
- (iii) an easement allowing access from the airside area of the Airport near Qantas Drive across the new T2/T3 Gateway link and Inter-terminal link and across the Port Botany Railway as shown on Annexure A of the Concept Design. The easement must have the following features:
    - A. the easement must benefit Sydney Airport or Airport land;
    - B. the easement must permit the construction, maintenance and operation of the access way and must permit use of the access way for vehicular access; and
    - C. the easement site must include all structures comprising the access way and adequate maintenance access to the elements of the access way; and
  - (iv) an easement for access over the Port Botany Rail Line for the Supplementary Northern Access as shown on Annexure A of the Concept Design. The easement must have the following features:
    - A. the easement must benefit Sydney Airport or Airport land;
    - B. the easement must permit the construction, maintenance and operation of the access way and must permit use of the access way for vehicular access; and
    - C. the easement site must include all structures comprising the access way and adequate maintenance access to the elements of the access way.
  - (f) Where RMS has used all reasonable endeavours to procure the easements referred to in clause 4(e), but has been unable to procure any or all of the easements, the parties must promptly meet and negotiate:
    - (i) alternative land access rights acceptable to Sydney Airport, where such rights must allow for the construction and long term use and development of the infrastructure as contemplated in the Concept Design, and which was to be covered by the relevant easement(s), by Sydney Airport; or
    - (ii) if applicable, alternative infrastructure arrangements to achieve the functionality of the Stage 1 Works as contemplated in the Concept Design.

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## **5. Grant of Easement**

### **5.1 Easement Terms**

- (a) Without limiting any other clause in this Deed, including any matter where either party has an absolute discretion, RMS and Sydney Airport must each:
  - (i) not do anything to frustrate the operation of the Agreement for Easement; and
  - (ii) where it becomes aware that a matter may materially affect an Easement as contemplated in this clause 5.1 being obtained, inform the other party of such matters.

- (b) The final form of the Easement must be either materially consistent with the Easement Terms (being where there are no significant changes to the rights and obligations of RMS and Sydney Airport under the Easement), or otherwise on terms acceptable to both RMS and Sydney Airport (acting reasonably). For the purposes of this clause, the parties will be acting reasonably in rejecting the final form of the Easement, where the relevant final form:
- (i) has a term (being the period of time for which the Easement will be effective) which is less than that set out in the Easement Terms;
  - (ii) is for an area which is materially different from that contemplated in Schedule 6;
  - (iii) prohibits development around the relevant Easement in a manner that is more restrictive than that set out in this Deed or the Integration Deed;
  - (iv) would result in an increase in the development or operational costs of the Gateway, or otherwise materially changes the business case for the development of the Gateway (as determined by RMS, acting reasonably);
  - (v) does not include reasonable maintenance access points and areas; or
  - (vi) is inconsistent in any way with the approval or decision from NSW Cabinet for the Gateway, as referred to in clause **[Not Disclosed]** (as determined by RMS, but where RMS must provide to Sydney Airport reasonable details of the relevant inconsistency).
- (c) The parties acknowledge and agree that maintenance access ways will be created as licences from Sydney Airport to RMS, rather than by easement, and that such licences will be created pursuant to the Integration Deed. Such maintenance areas are to be created over similar areas as are indicatively shown as "Indicative Maintenance Licence Sites" in the maps in Schedule 6 and, where possible, consistent with the diagram in Schedule 6. The parties agree that they will use all reasonable endeavours to prepare more detailed plans for such "Indicative Maintenance Licence Sites" within 6 months of the completion of detailed design for the Stage 1 Works.
- (d) RMS and Sydney Airport agree that if, by the Date of Completion of the Stage 1 Works, the Commonwealth:
- (i) has granted the Easement as contemplated under clause 5.1(b), then, RMS and Sydney Airport must do all things necessary to finalise that Easement and arrange for its registration in accordance with the *Real Property Act 1900* (NSW), including the steps to be undertaken in accordance with clause 5.2; or
  - (ii) has not granted the Easement as contemplated under clause 5.1(b), to use their respective best endeavours to reach agreement on an alternative structure for RMS to maintain and develop the Gateway on similar terms to this Deed, which may involve the grant of a sub-lease or licences from Sydney Airport to RMS:
    - A. containing rights substantially the same as those contained in Schedule 7; and
    - B. over those areas of land of the Airport which were to be subject to the Easement.

## 5.2 Preparation of plans

- (a) The parties agree that RMS will prepare a plan of subdivision of the relevant land of the Airport which comprises the expected location and physical extent of the Stage 1 Works (excluding any Temporary Works and the Remaining Stage 1 Works) and which complies with the requirements of the *Conveyancing Act 1919* (NSW) (a **Subdivision Plan**) in accordance with the requirements of clause 5.2(b) and the requirements of the Agreement for Easement.
- (b) RMS and Sydney Airport acknowledge and agree that the subdivision of the relevant land proposed by the draft Subdivision Plan must conform with the following principles:
- (i) the “Easement Site” referred to in the Easement Terms will be a lot in the Subdivision Plan, materially consistent with the area set out in Schedule 6 (**Easement Site**);
  - (ii) relevant Structures created as part of the Stage 1 Works are where possible to be accommodated within the Easement Site (subject to clause 5.2(b)(v));
  - (iii) any area which has been the subject of Temporary Works and which is not occupied by completed Structures must be excluded from the Easement Site;
  - (iv) subject to clause 5.2(b)(vii), all parts of the relevant land not included in the Easement Site must be included in a separate lot or lots (where such lots are to be contiguous) which will not be subject to the Easement (**Balance Land**);
  - (v) the total area of the Easement Site is to be no more than 9.8 hectares calculated on the basis of total ground area only and as indicatively shown in Schedule 6;
  - (vi) the Easement Site must include areas for drainage infrastructure immediately adjacent to the road infrastructure (such areas to be agreed between the parties, acting reasonably and consistent with the Concept Design and the plans as set out in Schedule 5 and Schedule 6); and
  - (vii) Sydney Airport may, acting reasonably, require any part of the Balance Land to be included in the Easement Site if the subdivision created by the Subdivision Plan would have the effect of subdividing that area into a parcel which would be limited in size or have an unsuitable configuration, noting that such Balance Land will not be included in calculations of the 9.8 hectare area of the Easement Site.
- (c) When the Subdivision Plan has been prepared in accordance with this clause:
- (i) RMS must take reasonable steps to obtain the approval of the Commonwealth to the registration of the Subdivision Plan;
  - (ii) Sydney Airport (as head lessee) must:
    - A. provide all reasonable assistance to RMS as required to obtain the approval of the Commonwealth; and
    - B. provide all authorisations necessary for the registration of the Subdivision Plan including any documents forming part of the Subdivision Plan by New South Wales Land Registry Services; and



- (iii) RMS must otherwise take reasonable steps at its cost to obtain any Approval from any Governmental Authority otherwise required to achieve the registration of the Subdivision Plan and Easement Terms pursuant to the *Real Property Act 1900* (NSW).
- (d) The parties acknowledge that to the extent practicable in the circumstances, the subdivision plans for those easements referred to in clause 4(e) may be developed at the same time as the Subdivision Plan in this clause 5.2.

**5.3** *[Not Disclosed]*

**5.4** *[Not Disclosed]*

**5.5** *[Not Disclosed]*

**5.6** *[Not Disclosed]*

### **5.7** **Amendment of Easement**

RMS must not, following the registration of the Easement, seek the variation or amendment of the Easement as registered without the prior written approval of Sydney Airport (in its absolute discretion).

### **5.8** **Survival of rights and obligations**

Rights and obligations under this Deed that are outstanding at the Grant Time are not affected by any Easement or the Agreement for Easement.

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## **6. Works Design**

### **6.1** **Airport Project Works Design**

For the purposes of designing the Airport Project Works (**Works**), RMS and Sydney Airport agree that:

- (a) **(Design):** RMS must design the Works and prepare Design Documentation:
  - (i) for completion of the Works;
  - (ii) consistent with the Concept Design for the Works and so as to meet the functional requirements and specifications contained in the Concept Design, unless otherwise agreed by Sydney Airport;
  - (iii) in a manner so as to try to minimise the capital cost of the Works, while still complying with 6.1(a)(ii) above;
  - (iv) consistent with any approved Major Development Plan for the Works (noting that certain Design Documentation will be completed under clause 6.1(b) prior to any Major Development Plan being approved for the Works, where such Design Documentation will inform the development of the Major Development Plan for the Works);
  - (v) in accordance with RMS' requirements, standards and processes as applied to other RMS developments (as varied from time to time); and
  - (vi) consistent with Sydney Airport's Requirements (where those Sydney Airport's Requirements are developed in accordance with this Deed);

- (b) **(Design elements)**: the development of the Design Documentation in accordance with clause 6.1(a) must be undertaken by RMS in a number of stages as follows:
- (i) development of a **reference design** for the Works which will be based on the Concept Design as updated for traffic modelling, site investigations, utilities investigations and further engineering design but which must not be inconsistent with the Concept Design in a material respect. The reference design:
    - A. will be the basis for the development of the Documentation (as referred to in clause 3.5), for discussions with other stakeholders and as the basis for construction procurement;
    - B. will be developed on an iterative basis, with regular interactions between RMS and Sydney Airport;
    - C. in respect of the T2/T3 Funded Works only, is to be agreed between RMS and Sydney Airport prior to the issuing of any request for tender documentation for the T2/T3 Funded Works as contemplated under Schedule 13, where each party will act reasonably having regard to the Concept Design, the Project Program and the other requirements of this Deed; and
    - D. in respect of the new West Bridge to be developed as part of the Stage 1 Works, will be agreed between the parties, where each party will act reasonably having regard to the Concept Design, the Project Program, the availability of land, RMS bridge design standards and the other requirements of this Deed;
  - (ii) subject to clauses 6.1(b)(i)C and 6.1(b)(i)D, RMS must submit to Sydney Airport for consideration at least two copies of reference design Design Documentation for the Works (or any part thereof), not less than 20 Business Days before the issuing of the tender for the Works (or any part thereof) to which the relevant Design Documentation relates, and will as part of the Design Documentation process, keep Sydney Airport informed of changes to the reference design; and
  - (iii) development of a **detailed design**, which must be consistent with the reference design and which will be used as the basis for construction of the Works. RMS must divide the detailed design for the Works into discrete packages of Design Documentation in relation to parts of the works (each a **Design Package**). Each relevant Design Package will be submitted to Sydney Airport for review at the following stages of resolution:
    - A. 20%;
    - B. 80%; and
    - C. 100%;
- (c) Sydney Airport:
- (i) must notify RMS within 10 Business Days of receipt of Design Documentation under clause 6.1(b) of any comments on the Design Documentation and as to whether Sydney Airport considers that the relevant Design Documentation complies with clause 6.1(a). If Sydney Airport considers that the relevant Design Documentation does not comply with clause 6.1(a), Sydney Airport must so advise RMS and give reasons; and

- (ii) acknowledges that in agreeing the reference design for the T2/T3 Funded Works as contemplated under this clause 6.1, it will comply with the program as set out in the D&C Procurement Plan as contemplated in Schedule 13;
- (d) RMS must:
  - (i) consider any and all comments of Sydney Airport in relation to the Design Documentation in good faith in the production of further, or the finalisation of, such Design Documentation;
  - (ii) where Sydney Airport advises that in its opinion the relevant Design Documentation for the detailed design is not in accordance with clause 6.1(a), submit Sydney Airport's reasons for such opinions to an Independent Verifier in respect of the Works and require the Independent Verifier to consider Sydney Airport's comments for the purposes of the Independent Verifier advising RMS regarding the relevant comments, where the Independent Verifier may then either:
    - A. determine that the relevant Design Documentation has been produced in accordance with clause 6.1(a), in which case RMS may adopt that Design Documentation for the purposes of the Works; or
    - B. determine that the relevant Design Documentation has not been produced in accordance with clause 6.1(a), in which case RMS must update the relevant Design Documentation so as to comply with this Deed and re-submit the relevant Design Documentation for review in accordance with this clause 6.1; and
  - (iii) provide Sydney Airport with copies of the issued for construction drawings for the Works (or parts thereof) and promptly advise Sydney Airport of any and all deviations from these drawings during the term of relevant Building Contracts;
- (e) where any Design Documentation in respect of the detailed design is amended or updated after being submitted to Sydney Airport under clause 6.1(b) (**Amended Design Documents**), RMS must submit a copy of the Amended Design Documents to Sydney Airport for review and consideration at least 20 Business Days (or such other time as RMS and Sydney Airport may agree) prior to the date that RMS proposes that the Works, or any part of the Works to which the relevant Amended Design Documents relate, be commenced;
- (f) following resubmission of any Amended Design Documents by RMS to Sydney Airport, the provisions of clause 6.1(c) will re-apply;
- (g) the preparation of the Design Documentation (and any and all Amended Design Documents) must ensure that:
  - (i) each discreet package of the Design Documentation is consistent with each other Design Package; and
  - (ii) the Design Documentation submitted at a particular design development level is consistent with the Design Documentation for the preceding design development level;
- (h) Sydney Airport may, within 3 months after the date of this Deed, provide RMS with a list of Sydney Airport's Requirements, provided that such Sydney Airport's Requirements must, in RMS' opinion (acting reasonably):

- (i) be consistent with and not substantially different from the Concept Design; and
  - (ii) not add additional design criteria, approval rights or discretions for Sydney Airport;
- (i) if required by Sydney Airport or the Commonwealth, RMS must make available RMS' design personnel to:
- (i) explain any Design Documentation; and
  - (ii) provide such information regarding any Design Documentation as Sydney Airport or the Commonwealth reasonably requests; and
- (j) in preparing the Design Documentation RMS will use all reasonable endeavours to take into account the high intensity approach lighting requirement and infrastructure at the Airport.

## 6.2 No obligation to review

- (a) **(No duty of care):** Sydney Airport and RMS do not assume or owe any duty of care to each other to review, or in reviewing, any Design Documentation submitted by RMS or Sydney Airport for any errors, omissions or compliance with this Deed.
- (b) **(No relief):** No review of, consultations or conferring in relation to, comments upon, or failure to review, consult, confer or comment upon, any Design Documentation submitted by RMS or Sydney Airport, will:
- (i) relieve RMS or Sydney Airport (as applicable) from, or alter or affect, RMS' or Sydney Airport's liabilities (as applicable), obligations or responsibilities with respect to the Design Documentation; or
  - (ii) prejudice RMS' or Sydney Airport's rights (as applicable) against RMS or Sydney Airport (as applicable) whether under the Easement or otherwise according to Law.

## 6.3 Sydney Airport Works Design

For the purposes of designing the Sydney Airport Works, RMS and Sydney Airport agree that:

- (a) **(Design):** Sydney Airport must, at the cost of RMS, design the Sydney Airport Works and prepare the detailed Design Documentation for the Sydney Airport Works:
- (i) for completion of the Sydney Airport Works;
  - (ii) consistent with the Concept Design for the Sydney Airport Works and so as to facilitate the Airport Project Works achieving the functional requirements and specifications contained in the Concept Design, unless otherwise agreed by RMS (acting reasonably);
  - (iii) in a manner so as to try to minimise the capital cost of the Sydney Airport Works, while still complying with 6.3(a)(ii) above;
  - (iv) where Sydney Airport will provide RMS with an irrevocable licence to use the relevant Design Documentation for the Sydney Airport Works in relation to the Airport Project Works;
  - (v) consistent with any approved Major Development Plan for or in relation to the Sydney Airport Works;

- (vi) having regard to RMS' requirements, standards and processes as applied to other RMS developments (as varied from time to time), to the extent only that those requirements, standards and processes relate to the interface between any Sydney Airport Works and the Airport Project Works; and
  - (vii) consistent with Sydney Airport's Requirements (from when those Sydney Airport's Requirements are developed in accordance with this Deed);
- (b) **(Design elements):** the development of the Design Documentation in accordance with clause 6.3(a) must be undertaken by Sydney Airport in a number of stages as follows:
- (i) development of a **reference design** which will be based on the Concept Design and the requirements of clause 6.3(a). The reference design will be developed on an iterative basis, with regular interactions between RMS and Sydney Airport;
  - (ii) Sydney Airport must submit to RMS for consideration at least two copies of reference design Design Documentation for the Sydney Airport Works (or any part thereof), not less than 20 Business Days before the issuing of the tender for the Sydney Airport Works (or any part thereof) to which the relevant Design Documentation relates, and will as part of the Design Documentation process, keep RMS informed of changes to the reference design; and
  - (iii) development of a **detailed design** which must be consistent with the reference design and which will be used as the basis for construction of the Sydney Airport Works. Sydney Airport must divide the detailed design for the Sydney Airport Works into discrete packages of Design Documentation in relation to parts of the works (each a **Design Package**). Each relevant Design Package will be submitted to RMS for review at the following stages of resolution:
    - A. 20%;
    - B. 80%; and
    - C. 100%;
- (c) RMS must notify Sydney Airport within 10 Business Days of receipt of Design Documentation under clause 6.3(b) of any comments on the Design Documentation and as to whether RMS considers that the relevant Design Documentation complies with clause 6.3(a). If RMS considers that the relevant Design Documentation does not comply with clause 6.3(a), RMS must so advise Sydney Airport and give reasons;
- (d) Sydney Airport must:
- (i) in relation to the Design Documentation in relation to the Sydney Airport Works, consider any and all comments of RMS in relation to the Design Documentation in good faith in the production of further, or the finalisation of, such Design Documentation;
  - (ii) where RMS advises that in its opinion the relevant Design Documentation for the reference design is not in accordance with clause 6.3(a), review RMS' reasons for such opinion and (acting reasonably) either agree to vary the relevant Design Documentation to be consistent with clause 6.3(a), or notify RMS as to the reasons why Sydney Airport is of the opinion that the relevant Design Documentation complies with clause 6.3(a);

- (iii) where RMS advises that in its opinion the relevant Design Documentation for the detailed design is not in accordance with clause 6.3(a), submit RMS' reasons for such opinions to an Independent Verifier in respect of the Sydney Airport Works and require the Independent Verifier to consider RMS' comments for the purposes of the Independent Verifier advising Sydney Airport regarding the relevant comments, where the Independent Verifier may then either:
  - A. determine that the relevant Design Documentation has been produced in accordance with clause 6.3(a), in which case Sydney Airport may adopt that Design Documentation for the purposes of the Sydney Airport Works; or
  - B. determine that the relevant Design Documentation has not been produced in accordance with clause 6.3(a), in which case Sydney Airport must update the relevant Design Documentation so as to comply with this Deed and re-submit the relevant Design Documentation for review in accordance with this clause 6.3; and
- (iv) provide RMS with copies of the issued for construction drawings for the Sydney Airport Works (or parts thereof) and promptly advise RMS of any and all deviations from these drawings during the term of relevant Building Contracts;
- (e) where any Design Documentation in respect of the detailed design is amended or updated after being submitted to RMS under clause 6.3(b) (**Amended Design Documents**), Sydney Airport must submit a copy of the Amended Design Documents to RMS for review and consideration at least 20 Business Days (or such other time as RMS and Sydney Airport may agree) prior to the date that Sydney Airport proposes that the Sydney Airport Works, or any part of the Sydney Airport Works to which the relevant Amended Design Documents relate, be commenced;
- (f) following resubmission of any Amended Design Documents by Sydney Airport to RMS, the provisions of clause 6.3(c) will re-apply;
- (g) the preparation of the Design Documentation (and any and all Amended Design Documents) must ensure that:
  - (i) each discreet package of the Design Documentation is consistent with each other Design Package; and
  - (ii) the Design Documentation submitted at a particular design development level is consistent with the Design Documentation for the preceding design development level; and
- (h) if required by RMS or the Commonwealth, Sydney Airport must make available Sydney Airport's design personnel to:
  - (i) explain any Design Documentation; and
  - (ii) provide such information regarding any Design Documentation as RMS or the Commonwealth reasonably requests.

## 6.4 Independent Verifier

- (a) RMS and Sydney Airport acknowledge and agree that the appointment of the Independent Verifier in relation to the Stage 3 Works must be effected as a single joint appointment in relation to those works for the purposes of:

- (i) this Deed; and
  - (ii) each Building Contract in relation to those works.
- (b) The form of agreement between RMS, Sydney Airport and the Independent Verifier for the purposes of the appointment referred to in clause 6.4(a) must ensure that the Independent Verifier:
- (i) acknowledges its functions under this Deed;
  - (ii) performs its services independently;
  - (iii) determines any matters required pursuant to this Deed; and
  - (iv) provides any certifications or determinations pursuant to this Deed in favour of both Sydney Airport and RMS, and
- otherwise be in the form as agreed between RMS and Sydney Airport (each acting reasonably).
- (c) RMS must ensure that, in its appointment of any Independent Verifier in relation to the Stage 1 Works, that the Independent Verifier:
- (i) acknowledges its functions under this Deed; and
  - (ii) provides a Deed poll in favour of Sydney Airport pursuant to which the Independent Verifier covenants to:
    - A. perform its services independently;
    - B. determine any matters required under this clause 6 in accordance with the requirements of this Deed; and
    - C. provide any certifications or determinations under this clause 6 in favour of both Sydney Airport and RMS.
- (d) ***[Not Disclosed]***

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## 7. Legal challenge to approved Plan

### 7.1 Parties performance

If there is a legal challenge brought about by way of commencement of court proceedings in relation to any Master Plan Adjustment, the Major Development Plan or any other Approval required for the Airport Project Works or the Sydney Airport Works, then:

- (a) where the challenge or proceedings relate to the Airport Project Works:
  - (i) Sydney Airport (where it is aware) must promptly notify RMS of the details of the relevant proceedings relating to the Airport Project Works, and provide RMS with copies of any and all documentation relating to the proceedings; and
  - (ii) RMS may continue to carry out any works or other activities in accordance with this Deed unless, as a result of such legal challenge, RMS is otherwise ordered or directed by a Governmental Authority or the court; and
- (b) where the challenge or proceedings relate to the Sydney Airport Works:

- (i) Sydney Airport must promptly notify RMS of the details of the relevant proceedings relating to the Sydney Airport Works, and provide RMS with copies of any and all documentation relating to the proceedings; and
- (ii) unless otherwise agreed by the parties, Sydney Airport will continue to carry out any works or other activities in accordance with this Deed unless, as a result of such legal challenge, Sydney Airport is otherwise ordered or directed by a Governmental Authority or the court.

## **7.2 Challenge in relation to Airport Project Works**

- (a) In respect of any challenge or proceedings in relation to the Airport Project Works, as between RMS and Sydney Airport, within 20 Business Days of being notified of the details of relevant proceedings under clause 7.1, RMS may by giving notice to Sydney Airport elect to be responsible for dealing with and defending those proceedings in any manner it sees fit (but having reasonable regard to the legitimate business interests of RMS) and at its cost.
- (b) Without limiting clause 7.4, where RMS:
  - (i) elects to be responsible for proceedings referred to in this clause 7, then:
    - A. Sydney Airport must do all things necessary to allow RMS to deal with such proceedings, including by appointing RMS as the nominee of Sydney Airport; and
    - B. RMS must:
      - 1) not agree to any settlement or proposal in respect of the proceedings which would derogate from any right of Sydney Airport under this Deed, the Integration Deed or the Sydney Airport Lease;
      - 2) keep Sydney Airport regularly informed as to the progress of the relevant proceedings; and
      - 3) indemnify Sydney Airport in relation to any costs incurred as a result of the conduct of such Appeal proceedings, including any Liability arising under any costs orders arising from the conduct of such proceedings; or
  - (ii) does not elect to be responsible for proceedings referred to in this clause 7, then Sydney Airport may deal with the proceedings as it sees fit, except that Sydney Airport must:
    - A. not agree to any settlement or proposal in respect of the proceedings which would derogate from any right of RMS under this Deed, the Integration Deed or the Easement; and
    - B. keep RMS regularly informed as to the progress of the relevant proceedings.

## **7.3 Challenge in relation to Sydney Airport Works**

- (a) In respect of any challenge or proceedings in relation to the Sydney Airport Works, as between RMS and Sydney Airport, Sydney Airport will be responsible for dealing with and defending those proceedings in any manner it sees fit (but having reasonable regard to the legitimate business interests of Sydney Airport and at its cost, but subject to clause 7.3(b)).



- (b) Sydney Airport must:
  - (i) not agree to any settlement or proposal in respect of the proceedings which would derogate from any right of RMS under this Deed, the Integration Deed or the Easement; and
  - (ii) keep RMS regularly informed as to the progress of the relevant proceedings.

#### **7.4 Reasonable assistance**

In relation to any proceedings referred to in this clause 7:

- (a) the party which does not have conduct of the proceedings (**Passive Party**) must provide the party having conduct of the proceedings (**Active Party**) and its professional advisers with reasonable access to the Passive Party's Employees and Agents and records as the Active Party may reasonably require for the relevant proceedings only and, subject to providing at least 5 Business Days' notice of such requirement, permit the Active Party to take copies of those records;
- (b) the Passive Party must use all reasonable endeavours to procure that the Passive Party's Employees and Agents provide all witness statements and other evidence as the Active Party may reasonably require to deal with the relevant proceedings;
- (c) the Passive Party must take all other action that the Active Party may reasonably request to deal with the legal challenge; and
- (d) the Passive Party must not make any submission, agreement, compromise or settlement in relation to the legal challenge without the prior written consent of the Active Party.

#### **7.5 Acknowledgement**

To the extent that any costs referred to in this clause 7 are Net Costs, those costs will be dealt with in accordance with clause 3.4 of Schedule 13.

#### **7.6 Extension of Sunset Date and Alternative Projects Period**

The parties agree that if RMS receives notice of an Appeal, application to the Administrative Appeals Tribunal or any other legal or administrative challenge (**Legal Challenge**), which in RMS' opinion, acting reasonably, may cause delay to the design, procurement and/or construction of the Airport Project Works, the Sunset Date and Alternative Projects Period will be extended by a period sufficient to reflect the effect of the delay, based on the following considerations:

- (a) the period of time calculated from the receipt of notice of a Legal Challenge to the date of the determination, decision, judgement or award or settlement of such Legal Challenge;
- (b) any required programming changes to the Airport Project Works arising out of or in connection with the Legal Challenge; and
- (c) the period required to undertake any works or modifications arising out of or in connection with the Legal Challenge,

each determined by RMS acting reasonably.

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## 8. T2/T3 Funded Works

The parties agree that the procurement process for, and the funding arrangements in relation to, the T2/T3 Funded Works is as set out in Schedule 13.

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## 9. Airport Drive acknowledgements

- (a) RMS and Sydney Airport acknowledge and agree that as a result of undertaking the Airport Project Works:
- (i) Airport Drive on the Airport will be closed to public use as shown in Item 5 of the Concept Design (the **Road Closure Area**), with the functionality of the Road Closure Area being provided by the replacement road as contemplated in clause 9(a)(ii). The parties agree that the closure referred to in this clause will not occur until and unless the New Airport Drive (as defined in clause 9(a)(ii)) is opened for public use, noting that staged closure of Airport Drive and staged opening of the New Airport Drive may be required;
  - (ii) a public road will be developed to facilitate a link between the Domestic Terminal of the Airport and the International Terminal of the Airport (both as in existence as of the date of this Deed), where such road will be as contemplated in the Concept Design (the **New Airport Drive**). RMS and Sydney Airport agree that:
    - A. no toll or other charge will be introduced so that a member of the public would need to pay to use the New Airport Drive for the purposes of travelling between the International Terminal and the Domestic Terminal of the Airport only;
    - B. for the avoidance of doubt, nothing in this clause restricts RMS or any concessionaire or contractor appointed by RMS from imposing a toll or charge over or in relation to a road of which the New Airport Drive forms a part (including for the avoidance of doubt, the Gateway, but excluding that road which is constructed as a result of the Stage 3C Works) (subject to paragraph 9(a)(ii)A); and
    - C. such toll must not use the word "Airport" in its name or in connection with its use or imposition;
  - (iii) the Road Closure Area may be used by Sydney Airport for other purposes relating to the Airport, subject to Schedule 10, the Airports Act and the Sydney Airport Lease; and
  - (iv) for the avoidance of doubt:
    - A. Sydney Airport must not impose any toll or other charge in relation to the use of any replacement road for the Road Closure Area; and
    - B. nothing in this clause 9 is intended to limit the ability of Sydney Airport to enter into arrangements with its commercial tenants at the Airport.

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## 10. RMS construction access rights

### 10.1 Grant of Construction Licences

- (a) Sydney Airport must grant to RMS licences (as specified in Schedule 10) to use and occupy, and permit RMS' contractors and agents to use and occupy the Licensed Areas:
- (i) for the purpose of undertaking the D&C Activities and, in the event that the Easement is not granted by the time the Airport Project Works are completed, operating the Gateway;
  - (ii) in accordance with Schedule 10 (but RMS and Sydney Airport acknowledge that notwithstanding Schedule 10 access will not be provided in respect of a site until relevant Approvals have been provided by the Commonwealth (if applicable));
  - (iii) on the terms set out in this clause 10;
  - (iv) in accordance with the Construction Licence Terms which will apply to RMS and Sydney Airport in respect of a Licensed Area on and from the Licence Commencement Date for that Licensed Area;
  - (v) where such Licensed Areas are to be in the condition specified in the column titled 'Handover condition of Licensed Area' in Schedule 10; and
  - (vi) otherwise in accordance with the provisions of this Deed.
- (b) Subject to clause 10.1(e) and any necessary Commonwealth Approval referred to in clause 10.1(a)(ii), if:
- (i) RMS requests that any additional area within the Airport be made available by Sydney Airport as either:
    - A. a new Construction Compound; or
    - B. a variation to a Licensed Area which is not a Construction Compound; and
  - (ii) Sydney Airport agrees in writing to provide such new Licensed Area or Construction Compound (where such agreement must not be unreasonably withheld) and the parties agree upon the terms of the handback of the additional area,
- then such additional area will be incorporated into the Licensed Area under this clause 10.1 and the licence will be on the terms described in clause 10.1(a).
- (c) RMS must pay Sydney Airport a licence fee for:
- (i) each Construction Compound; and
  - (ii) each additional new Construction Compound provided under clause 10.1(b),

calculated in accordance with Item 4 of Schedule 1 (**Licence Fee**). Where Sydney Airport grants RMS one or more additional Licensed Areas which are not Construction Compounds in accordance with clause 10.1(b), and such new Licensed Areas constitute in aggregate an increase of **[Not Disclosed]** or more than the existing Licensed Areas, then RMS and Sydney Airport may negotiate commercial terms in relation to payment of any fee for that new Licensed Area.

- (d) RMS is not required to pay any outgoings or Ex-Gratia Payments in relation to any Construction Compound. In relation to the Licensed Areas which are not Construction Compounds, RMS must pay any Ex-Gratia Payments referred to in Item 5 of Schedule 1.
- (e) RMS must hand back each Licensed Area (other than those areas which form the Easement Site) to Sydney Airport in the Handback Condition for that Licensed Area and on the Handback Date for that Licensed Area. RMS will provide Sydney Airport with at least 7 days' notice of its intention to Handback a Licensed Area.
- (f) Without limiting and subject to the Easement and clauses 11 and 13.1(b), on or before the Handback Date, RMS must:
  - (i) vacate the Licensed Area (other than those areas which form the Easement Site) and remove from the Licensed Area all its possessions, plant and equipment, scaffolding, loose materials, waste and rubbish (excluding, for the avoidance of doubt, any Structures comprising the Stage 1 Works or the Stage 3 Works); and
  - (ii) ensure that any damage caused to the Licensed Area (other than those areas which form the Easement Site) by the carrying out of the D&C Activities is repaired consistent with the Handback Condition.
- (g) Sydney Airport acknowledges and agrees that the rights of access, use and occupation by RMS under this clause 10 may, subject to clauses 14.2(a) and 18, be exercised on behalf of RMS by its Employees and Agents (including the Building Contractor). RMS must ensure that its Employees and Agents (including the Building Contractor) accessing the Licensed Areas comply with this Deed.
- (h) Without limiting Schedule 13, RMS must ensure that, as part of its procurement process in relation to the Airport Project Works:
  - (i) its tenderers or respondents for the role of Building Contractor are informed that specific Licensed Areas are available under this Deed and that additional areas for the purposes of construction remain subject to Sydney Airport's approval under this Deed;
  - (ii) its tenderers or respondents for the role of Building Contractor are provided with a copy of the Constraints and Restrictions;
  - (iii) its tenderers or respondents for the role of Building Contractor provide a returnable schedule setting out the area the Building Contractor requires to be a Licensed Area if in addition to those areas listed in Schedule 10;
  - (iv) its tenderers or respondents for the role of Building Contractor provide a returnable schedule containing a draft Work Methodology Statement (noting that the Work Methodology Statement will be updated by RMS and the Building Contractor from time to time);
  - (v) the Building Contractor is required to comply with the obligations of RMS under this clause 10.1; and
  - (vi) Sydney Airport is provided with an opportunity to participate in a workshop attended by representatives of Sydney Airport, RMS and the Building Contractor designed to provide interaction as to the operation and objectives of this Deed.

**10.2 [Not Disclosed]**

**10.3 [Not Disclosed]**

**10.4 Access to the balance of the Airport**

- (a) Sydney Airport will, subject to clause 10.4(c), permit RMS to have access to areas within the Airport for the purposes of site investigations (including geotechnical investigations) or preliminary site works as detailed in the column titled 'Nature of Preliminary Works', and on and from the relevant early access dates specified in Schedule 10 and pursuant to this Deed (where such permission must not be unreasonably withheld). For the avoidance of doubt, where RMS requires access to non-airside areas within the Airport occupied by a tenant of Sydney Airport, RMS must request such access through Sydney Airport, where, subject to clause 11.2, such early access is subject to those relevant tenancy arrangements. In relation to access to areas which are not referred to in Schedule 10, RMS must provide at least 10 Business Days' notice prior to exercising such access right. On receipt of this notice, Sydney Airport must seek to arrange the period of access as requested by RMS or an acceptable alternate time and date.
- (b) If RMS enters the Airport as contemplated under this clause 10.4:
- (i) RMS does so pursuant to the Construction Licence Terms;
  - (ii) RMS must not interfere with Sydney Airport or Sydney Airport's Employees and Agents carrying out the operation, maintenance or development of the Airport;
  - (iii) without limiting clause 10.5, RMS must use all reasonable endeavours to co-operate with Sydney Airport, Sydney Airport's tenants and Sydney Airport's Employees and Agents within the Airport;
  - (iv) any such access is at RMS' risk and cost;
  - (v) RMS is liable for any act or omission of RMS' Employees and Agents;
  - (vi) other than as a consequence of undertaking the activities for which the access was sought and permitted, RMS must not damage the Airport and must take all precautions to protect the Airport from damage by RMS' Employees and Agents;
  - (vii) subject to clause 10.4(b)(viii), RMS must comply with all reasonable directions of Sydney Airport and Sydney Airport's Employees and Agents, including in relation to site induction, work health and safety procedures, working hours, Sydney Airport's tenants, industrial relations and all other access requirements, in accessing the Airport;
  - (viii) RMS must comply with the safety, security and operational directions of Sydney Airport when accessing the airside areas of the Airport; and
  - (ix) if required by Sydney Airport, RMS must be accompanied by a representative of Sydney Airport at all times.
- (c) RMS and Sydney Airport acknowledge that the provision of access by Sydney Airport to RMS under this clause 10 may require the approval of the Commonwealth pursuant to the Airports Act and that such access will be subject to any Commonwealth requirements.

- (d) Subject to clause 13.1, RMS must reimburse Sydney Airport for all reasonable costs of repairing any damage to the Airport to the extent caused by RMS or RMS' Employees and Agents in exercising its rights under this clause 10.

## 10.5 Co-operation with tenants

RMS must as reasonably required by Sydney Airport, meet with Sydney Airport and any tenants or sub-tenants of Sydney Airport (**Tenants**) that will be affected by the Airport Project Works in order to explain the timing and nature of the Airport Project Works and any impacts on the relevant Tenants.

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## 11. Site Matters

### 11.1 Due Diligence

- (a) Sydney Airport undertakes that:
- (i) Sydney Airport's General Counsel will send (within one week after the date of this Deed) a request to the management team members of the following Sydney Airport teams:
    - A. Legal;
    - B. Planning and Development;
    - C. Environment;
    - D. Property; and
    - E. Construction and Facilities Management,requesting that they identify and locate all reports commissioned by Sydney Airport on or after 1 September 2016 which relate to the site conditions of the Licensed Areas;
  - (ii) it will disclose to RMS on or before 1 October 2018 all reports obtained as a result of the request referred to in clause 11.1(a)(i); and
- (b) **[Not Disclosed]**
- (c) RMS acknowledges that:
- (i) **[Not Disclosed];**
  - (ii) **[Not Disclosed];**
  - (iii) subject to clause 11.1(a) Sydney Airport makes no warranty, guarantee or representation and owes no duty of care as to the completeness, accuracy, adequacy, correctness or fitness for purpose of the Due Diligence Materials provided as contemplated under this clause; and
  - (iv) other than as contemplated in this Deed, it has no recourse against Sydney Airport as to the:
    - A. features and physical condition of the land for the Airport Project Works and the Sydney Airport Works (including the geotechnical, environmental, natural, heritage, archaeological and contamination features of the relevant land);

- B. conditions existing on and around the Airport, including conditions which may affect the timing, costs and conduct of the Airport Project Works and the Sydney Airport Works;
  - C. risks of obtaining and complying with all Approvals for the Airport Project Works; and
  - D. risks associated with compliance with the requirements of all Governmental Authorities and all Laws.
- (d) Sydney Airport confirms that:
- (i) subject to clause 11.1, it will provide the Due Diligence Materials, including the materials listed in Schedule 11, to RMS on or before 1 October 2018;
  - (ii) it will provide all reasonable assistance to RMS in relation to RMS' inquiries of property and other interests on or in relation to Licensed Areas as part of due diligence activities undertaken by RMS; and
  - (iii) ***[Not Disclosed]***
- (e) At any time within 20 Business Days of the date of this Deed RMS may request that Sydney Airport provide reports and other specified documentary information in relation to Pollution on the Licensed Areas for the purposes of RMS' due diligence activities. Where such a request is received, Sydney Airport must ensure that the following people provide any and all such reports and documents of which they have actual knowledge:
- (i) General Manager Property;
  - (ii) Head of Environment;
  - (iii) General Counsel;
  - (iv) General Manager Landside Operations and Transport;
  - (v) Head of Transport Strategy and Planning; and
  - (vi) Senior Planning Manager, Aviation Services.
- (f) Sydney Airport will use all reasonable endeavours to respond to any such request received under clause 11.1(e) within 20 Business Days of receiving such request. If Sydney Airport would be in breach of an obligation of confidentiality to a third party by disclosing any reports or documents requested, Sydney Airport must inform RMS of that fact and identify the Licensed Areas to which the reports or documents relate.
- (g) If any of the people referred to in clause 11.1(e), deliberately or as a result of gross negligence fail to provide such requested reports or documents, and the content of those reports or documents if known to RMS before 31 December 2019 would have resulted in RMS, acting reasonably, determining that one or more conditions precedent in clause 2.1(a)(ii) had not been met, then neither RMS or TfNSW will be responsible for the Pollution described in the relevant reports or documents that were not provided in accordance with clause 11.1(e).
- (h) Nothing in these clauses 11.1(e) to 11.1(h) requires Sydney Airport to commission any reports, or to provide any reports to RMS after the date specified in 11.1(f). Nothing in this clause constitutes a warranty or representation by Sydney Airport as

to the site condition of any Licensed Areas, or the presence or absence of any Pollution or other contamination on or in any Licensed Areas.

## 11.2 Vacant Possession and Costs

- (a) Subject to clause 11.2(b), Sydney Airport must ensure that when providing access to a Licensed Area to RMS, the relevant Licensed Area is free of all tenancies.
- (b) **[Not Disclosed]**
- (c) In this clause 11.2, the word "treatment" means, as appropriate, relocation, decommissioning, protection, adjustment or modification of the subject utility or service.

## 11.3 Utilities

Without limiting clause 11.2:

- (a) RMS must consult with Utility owners and any other persons having an interest in land included in the Licensed Areas or otherwise affected by the undertaking of the Airport Project Works (other than the Commonwealth), obtain all necessary consents from those persons as required to undertake the Airport Project Works, and must use reasonable endeavours to minimise any disruption to such persons as a result of the undertaking of the D&C Activities;
- (b) Sydney Airport will be responsible for all dealings with, and obtaining necessary consents from Services and Utilities providers and other persons with any interests in land used in relation to the works described in paragraph (a) of the definition of Sydney Airport Works, as required for the undertaking of those works and Sydney Airport must in dealing with these utilities, services and other persons use reasonable endeavours to minimise any disruption to RMS' D&C Activities under the Building Contract(s);
- (c) Sydney Airport must provide reasonable assistance and work with RMS in good faith in relation to any transactions or arrangements arising out of compliance with this clause and clause 11.2 in respect of the Airport Project Works;
- (d) each party must obtain and pay for any Utilities and all connections for all Utilities it needs to perform its D&C Activities; and
- (e) each party must contract for, acquire or otherwise procure or provide for the provision of, all fuel, energy and other materials required for the performance of its obligations under this Deed.

## 11.4 **[Not Disclosed]**

## 11.5 Regulatory Framework

RMS must, in relation to the Licensed Areas:

- (a) comply (and must ensure that RMS' Employees and Agents comply) with:
  - (i) the Environment Strategy;
  - (ii) all Environmental Laws;
  - (iii) all obligations, standards and requirements on RMS, whether as an Operator of an Undertaking (as defined in the *Airports (Environment Protection) Regulations 1997* (Cth)) or otherwise, imposed by the Airports Act; and



- (iv) all directions of the Airport Environment Officer under the Airports Act;
- (b) do (and must ensure that its Employees and Agents do) all things necessary to prevent a breach of Environmental Laws; and
- (c) promptly notify Sydney Airport of any breach of any Environmental Law of which RMS becomes aware and of details of notices received by or proceedings commenced under an Environmental Law of which RMS becomes aware relating to a breach or alleged breach of an Environmental Law.

## 11.6 Advise Airport Environment Officer

If Sydney Airport considers that there has been or may have been a breach by RMS of its obligations under clause 11.5, Sydney Airport must notify RMS and the Airport Environment Officer of the alleged breach as soon as possible, and RMS must co-operate with the Airport Environment Officer in any investigation or assessment of that alleged breach and must comply with any environmental remedial order made by the Airport Environment Officer.

## 11.7 Meaning of environment of the Licensed Area

For the purposes of clause 11.8, the expression "**the environment of the Licensed Area**" includes, without limitation, the water, ground water, soil, subsoils, air, biota or habitat and sites of heritage value or of significance to Aboriginal or Torres Strait Islander people on, above or below the Licensed Areas and Structures on, above or below the relevant Licensed Area.

## 11.8 Maintenance of environment of the Licensed Area

Throughout the term(s) of the Construction Licence but subject to clauses 11.1(g), 13.1(b), 13.1(c) and 13.4, RMS must maintain the environment of the relevant Licensed Area in accordance with any obligation imposed on it by Environmental Laws which from time to time applies to the environment of the Licensed Area.

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# 12. Insurances

## 12.1 Insurances

- (a) Subject to clause 12.2, RMS must take out, or ensure that one of its Building Contractor(s) takes out, all Insurances in connection with the Airport Project Works to the extent set out in Schedule 3.
- (b) Subject to clause 12.2, RMS must ensure the:
  - (i) public liability insurance, contract works insurance, workers compensation insurance and plant and equipment insurance remains in place until the Completion of the Airport Project Works;
  - (ii) professional liability insurance remains in place until the date which is 7 years after the Date of Completion of the Airport Project Works; and
  - (iii) placed Insurances are not amended in any manner which would prejudice the position of Sydney Airport in light of its interest contemplated in clause 12.1(c).
- (c) RMS must ensure that the contract works insurance is in the joint names of RMS, Sydney Airport and the Commonwealth.
- (d) RMS must ensure that the public liability insurance is in the joint names of RMS, and Sydney Airport.

- (e) If any Insurance is unable to be obtained on commercially reasonable terms, the parties will meet to discuss what alternative or additional types of Insurances may be obtained.

## **12.2 Terms of Insurances**

- (a) The Insurances must be effected and maintained with either:
  - (i) the NSW Self Insurance Corporation (ABN 97 369 689 650); or
  - (ii) an insurance company with a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, or an equivalent rating with another reputable rating agency.
- (b) All Insurances required to be effected by RMS in compliance with this clause 12 which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
  - (i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
  - (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
  - (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance.
- (c) RMS must procure payment of all premiums and other amounts payable in respect of the Insurances.

## **12.3 Evidence of Insurances**

Prior to commencement of the Airport Project Works and during the term of operation of this Deed, RMS must provide evidence to Sydney Airport in the form of copies of policy and certificates of currency that the Insurances are in full force and effect and in accordance with the requirements in Schedule 3.

## **12.4 Insurances generally**

- (a) RMS must:
  - (i) not knowingly do or permit, or omit to do, anything which prejudices any of the Insurances;
  - (ii) rectify anything which might prejudice any Insurance; and
  - (iii) comply at all times with the terms of each Insurance.
- (b) RMS acknowledges and agrees that if RMS fails to effect and maintain the Insurances, Sydney Airport may affect the relevant Insurance on behalf of RMS and the premiums paid by Sydney Airport will be a debt due to Sydney Airport from RMS.

## **12.5 Notification of Claims**

RMS must inform Sydney Airport in writing of any material Claim or incident arising out of or in connection with the Airport Project Works which may have an actual or perceived impact on

Sydney Airport, and must keep Sydney Airport informed of subsequent developments regarding that Claim.

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## 13. Responsibilities

### 13.1 Construction

- (a) RMS indemnifies Sydney Airport against all Liabilities arising and Claims brought against, suffered or incurred by Sydney Airport to the extent arising directly or indirectly out of the construction of:
  - (i) the Stage 1 Works by RMS or its Employees and Agents; and
  - (ii) the Stage 3 Works by RMS or its Employees and Agents, but only to the extent that such Liabilities or Claims do not constitute a Net Cost under Schedule 13.
- (b) Where there is Pollution (as that term is defined in the Airports Act):
  - (i) on that area shown at Schedule 6 as being the area expected to be the Easement Site (**Expected Easement Area**), then:
    - A. RMS accepts the risk for such Pollution; and
    - B. to the extent that a Governmental Authority requires the Pollution on that area of land to be remediated for the construction of the Stage 1 Works to proceed, RMS will be responsible for undertaking such remediation and for all costs incurred in relation to such remediation; and
  - (ii) **[Not Disclosed]**
- (c) For the avoidance of doubt, except to the extent that Pollution is caused or contributed to by RMS, RMS has no obligation to remediate Pollution outside of the Easement Site other than as set out in clause 13.1(b).

### 13.2 Release

Other than in respect of a claim that RMS or TfNSW has breached this Deed, Sydney Airport's sole remedy for any claim in respect of the design, fitness for purpose (in respect of both construction and design) and defects of the Stage 3 Works and the Remaining Stage 1 Works, will be through the enforcement of the Builder's Side Deed against the Building Contractor, and Sydney Airport may not make any such claim against either RMS or TfNSW.

RMS and TfNSW may plead this Deed as a complete defence to any proceedings arising from or in connection with the matters the subject of the release.

### 13.3 Third Party Notice

If a matter or circumstance that may give rise to a Claim by Sydney Airport against RMS under or in relation to or arising out of this Deed is a result of or in connection with a Claim against Sydney Airport (whether negligent or otherwise) by or a Liability of Sydney Airport to a third party (**Third Party Claim**) then, Sydney Airport must:

- (a) promptly give notice to RMS of the Third Party Claim and offer RMS the option to assume defence at the expense of RMS for costs and the amount of any judgment awarded against Sydney Airport in relation to the Third Party Claim; and

- (b) until such time as RMS has received notice and had a reasonable opportunity to assume the defence of any Third Party Claim and during any period which RMS has elected to assume the defence of any Third Party Claim, not settle, make any admission of Liability or compromise any Third Party Claim, without the prior written consent of RMS (which must not be unreasonably withheld or delayed).

### **13.4 Acts or omissions**

The parties agree that notwithstanding clause 11 or clause 13:

- (a) any amount claimed by a party pursuant to any indemnity in this clause 13, and any obligations of a party under this clause 13, will be reduced proportionally to the extent the relevant Liabilities or Claims arise from, or are caused or contributed to by, an act or omission (whether negligent or otherwise) of the other party or one of its Employees or Agents or a breach of any Project Document by the other party; and
- (b) neither RMS nor TfNSW will be responsible for any Pollution to the extent it is caused or contributed to by Sydney Airport after the date of this Deed. Sydney Airport will be responsible for the proportion relevant to that extent of any costs associated with remediation of any such Pollution as and when required.

### **13.5 Mitigation of loss**

Each party must take all reasonable steps to mitigate any Claim, Liability, loss or damage that it suffers arising out of or in connection with the matters referred to in this clause 13.

### **13.6 Consequential Loss**

- (a) Subject to clause 13.6(b) and without limiting the payments to be made under clause 10, none of the parties are liable to any other party for any Consequential Loss arising out of or in connection with the Airport Project Works or this Deed.
- (b) Clause 13.6(a) will not apply to limit or exclude a party's Liability (including its Liability under clause 13.1):
  - (i) in relation to any claim made under or in respect of any insurance policy required to be taken out under this Deed, but only to the extent the relevant insurance policy responds to the relevant claim; or
  - (ii) in respect of events or circumstances in respect of which insurance would respond to the relevant Liability or in respect of which insurance proceeds would have been recovered but for a failure by the relevant party to effect and maintain the Insurances (for which it is responsible) under this Deed and to comply with clause 12.

### **13.7 Application and Survival**

This clause 13 shall survive the termination or expiry of this Deed for any reason.

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## **14. Works construction**

### **14.1 Gateway development**

RMS and Sydney Airport agree that subject to clause 14.2:

- (a) RMS (or RMS' Employees and Agents) may only undertake the:
  - (i) D&C Activities for the Airport Project Works;

- (ii) development of the Gateway (including the Airport Project Works); and
- (iii) operation of the Gateway (other than the Remaining Stage 1 Works and the Stage 3 Works),

in accordance with (as applicable):

- (iv) the relevant Design Documentation produced in accordance with this Deed for the purposes of the Airport Project Works;
- (v) the requirements of Schedule 2;
- (vi) the relevant Major Development Plan;
- (vii) all relevant Laws, the requirements of all relevant Governmental Authorities and all Approvals; and
- (viii) any and all Approvals under the Airports Act (as obtained from time to time),

and so as to meet the functional requirements and specifications contained in the Concept Design;

- (b) the Stage 1 Works (other than those Stage 1 Works described in items 3c, 4, and 7 of the Concept Design as being owned by Sydney Airport, the Remaining Stage 1 Works and the Sydney Airport Works) are and will remain at all times owned by RMS;
- (c) the Stage 3A Works, the Stage 3B Ramp Works, the Stage 3B Viaduct Works, the Stage 3C Works, the Stage 3D Works, the Remaining Stage 1 Works and those Stage 1 Works described in items 3c, 4, and 7 of the Concept Design as being owned by Sydney Airport, will be owned by Sydney Airport;
- (d) the ongoing maintenance of the Airport Project Works and the Sydney Airport Works will be as set out in the Integration Deed;
- (e) **[Not Disclosed]**
- (f) Sydney Airport will undertake the activities listed as "Sydney Airport Ancillary Activities" in the Concept Design; and
- (g) **[Not Disclosed]**

## 14.2 Works Acknowledgements

Without limiting clause 14.1, RMS and Sydney Airport agree that:

- (a) the:
  - (i) construction, development, operation, maintenance and upgrading of the Stage 1 Works; and
  - (ii) construction and development of the Stage 3A Works, the Stage 3B Viaduct Works, the Stage 3B Ramp Works, Stage 3C Works and the Stage 3D Works,

and any and all associated infrastructure may be undertaken by RMS using a public private partnership, concession arrangement or other procurement or delivery model as advised by RMS from time to time. For the avoidance of doubt, RMS remains responsible for compliance with this Deed notwithstanding the use of any

public private partnership, concession arrangement or other procurement or delivery model or the acts of any partner, contractor or investor with or of RMS;

- (b) in undertaking and operating the Gateway (including the Airport Project Works), RMS must comply with applicable safety and security procedures of Sydney Airport that apply in relation to the Airport, but only where such safety and security procedures apply generally at the Airport and do not derogate from RMS' rights under the Easement or this Deed; and
- (c) in undertaking the construction of the Gateway (including the Airport Project Works) RMS must use all reasonable endeavours to minimise the effects of the works on Airport operations. Notwithstanding this, RMS and Sydney Airport agree that given the scope of the Gateway there are likely to be temporary impacts on Airport operations (where such impacts are expected to be discussed at the Project Operations Group as established in accordance with Schedule 2).

### **14.3 Completion of Stage 1 Works and Stage 3 Works**

- (a) Subject to Sydney Airport complying with its obligations under this Deed including the provision of all relevant Licensed Areas, RMS will use all reasonable endeavours to deliver both the Stage 1 Works and the Stage 3 Works in accordance with this Deed (and if practicable, at a similar time).
- (b) Without limiting clause 14.3(a), if it is not practicable to deliver the Stage 1 Works and the Stage 3 Works at a similar time, it is the intent of RMS to deliver the Stage 3 Works as soon as reasonably practicable after the delivery of the Stage 1 Works.

### **14.4 Construction based on Airport Building Controller approval**

- (a) The parties acknowledge that the Airport Project Works may only be undertaken where a building approval or approvals have been obtained for the relevant works from the Airport Building Controller under the Building Regulations.
- (b) Sydney Airport agrees not to reject any application by RMS for airport lessee consent for the Airport Project Works which is consistent with the requirements of this Deed for the purposes of regulation 2.03 of the Building Regulations in accordance with regulation 2.04 of the Building Regulations.
- (c) Nothing in this clause 14.4 prevents Sydney Airport (acting reasonably) from including reasonable conditions in any relevant airport lessee consent:
  - (i) consistent with its standard conditions imposed generally at the Airport in respect of other building activity;
  - (ii) provided such conditions are not discriminatory against RMS, as compared to other applications for airport lessee consents;
  - (iii) so as to ensure the continuation of safe aviation operations at the Airport during the period of the undertaking of the works;
  - (iv) so as to ensure compliance with any and all relevant Laws; and
  - (v) so as to ensure compliance with the Sydney Airport Lease,

so long as any such condition is, in RMS' opinion, consistent with the Constraints and Restrictions, and provides for the development, construction and operation of the Gateway in accordance with this Deed.

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## 15. Building Contracts

### 15.1 Form

Without limiting Schedule 13, the parties acknowledge and agree that any Building Contract entered into by a party in relation to the Airport Project Works or the Sydney Airport Works (as applicable) must include provisions requiring the Building Contractor to comply with each party's obligations under this Deed (as applicable), including:

- (a) clauses 6 and 14;
- (b) the development of a Work Methodology Statement;
- (c) a clause which contemplates suspension of works as set out in clause 3.7; and
- (d) the Constraints and Restrictions.

### 15.2 Builder's Side Deed

RMS and Sydney Airport agree that before executing a Building Contract for the development of the Remaining Stage 1 Works, the Stage 3A Works, the Stage 3B Viaduct Works, the Stage 3B Ramp Works, the Stage 3C Works or the Stage 3D Works, they will execute a side deed with the relevant Building Contractor in the form set out in Schedule 14.

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## 16. Alternative Projects

### 16.1 Alternative Project identification

- (a) **[Not Disclosed]**.
- (b) TfNSW and Sydney Airport must work together in good faith during the Alternative Project Period to identify potential projects (**Alternative Projects**) which will deliver value to the Airport, including:
  - (i) projects designed to improve airport connectivity (including rail connectivity);
  - (ii) incorporation of new land into the Airport; or
  - (iii) projects which facilitate the more efficient use of aviation infrastructure and facilities.
- (c) TfNSW and Sydney Airport both acknowledge and agree that any Alternative Project will only proceed if they reach agreement in writing (**Alternative Project Agreement**) on all terms necessary for the delivery of the Alternative Project, including:
  - (i) design, construction, operation and maintenance of the Alternative Project;
  - (ii) the total cost of delivery of the Alternative Project;
  - (iii) funding of the Alternative Project (including the proportion of funding by each of TfNSW and Sydney Airport in accordance with the principles contained in clause 16.2); and
  - (iv) terms and conditions between TfNSW and Sydney Airport for delivery of the Alternative Project.

(d) For the avoidance of doubt, any such Alternative Project Agreement should contain a level of detail comparable to that contained in this Deed in relation to the Airport Project Works.

(e) ***[Not Disclosed]***

## **16.2 Delivery of an Alternative Project**

***[Not Disclosed]***

## **16.3 Withdrawal from the Alternative Project process**

(a) Either TfNSW or Sydney Airport may at any time prior to the execution of the Alternative Project Agreement, withdraw from the process contemplated by this clause 16 in accordance with clauses 16.3(b) or 16.3(c), in which case:

(i) neither TfNSW nor Sydney Airport will be required by this Deed to further investigate or deliver any Alternative Project; and

(ii) ***[Not Disclosed]***

(b) If either TfNSW or Sydney Airport wishes to withdraw from the process contemplated by this clause 16, it must:

(i) provide to the other party notice in writing that it intends to withdraw on the date which is not less than 40 Business Days after the date of the notice; and

(ii) provide a further notice withdrawing at any time after the expiry of the period referred to in clause 16.3(b)(i).

(c) Where the Alternative Project Period is extended as a result of clause 7.6, then Sydney Airport may at any time after the expiration of the period commencing on the date of this Deed and ending three years later withdraw from the process contemplated by this clause 16 by:

(i) providing to TfNSW notice in writing that it intends to withdraw on the date which is not less than 40 Business Days after the date of the notice; and

(ii) providing a further notice to TfNSW withdrawing at any time after the expiry of the period referred to in clause 16.3(c)(i).

## **16.4 *[Not Disclosed]***

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## **17. Representations and warranties**

Each party represents and warrants that in connection with this Deed that:

(a) it has power to enter into and comply with its obligations;

(b) it will not hold its interest as a trustee; and

(c) in entering into this Deed it relies on its own enquiries and not on any representation, warranty or other inducement by or on behalf of the other party except as expressly set out in this Deed.



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## **18. Assignment**

### **18.1 No assignment**

Neither party can assign, novate or otherwise transfer any of its rights or obligations under this Deed without the other parties' prior written consent.

### **18.2 Sydney Airport may not deal with Licensed Areas**

Sydney Airport may not, subject to clause 5.1, subdivide the Licensed Areas (including by strata or stratum subdivision) or grant any rights over it, declare a trust over or attempt to dispose of the Licensed Areas in any way that would prevent, restrict or alter any right of RMS under this Deed or the Easement.

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## **19. Publicity and disclosure**

### **19.1 Publicity**

- (a) Sydney Airport and RMS agree to consult with each other where reasonably practicable prior to issuing any information, publication, document or article for publication concerning the Gateway, Airport Project Works and Sydney Airport Works in any media.
- (b) If either party receives a direct request from the media for comment in respect of any aspect of the Gateway, Airport Project Works and Sydney Airport Works, that party must, where reasonably practicable, promptly provide details of such request to the other party.
- (c) RMS may provide information to the public in relation to lane closures in connection with the Gateway, Airport Project Works and Sydney Airport Works, other traffic adjustments or the impact of the Airport Project Works on the local traffic network by such methods as it considers appropriate and Sydney Airport must not provide any such information to the public without prior consultation with RMS.
- (d) Sydney Airport and RMS may each issue any information, publication, document or article for publication concerning the Gateway, Airport Project Works and Sydney Airport Works to the extent each is required to do so to comply with Law.

### **19.2 Confidentiality**

All information provided by one party to another party under or in relation to the Gateway and the matters contemplated under this Deed and which is identified as confidential at the time it is provided, or which by its nature is confidential (including the Due Diligence Materials), must not be disclosed to any person, except:

- (a) in the case of information provided by RMS:
  - (i) to any Minister, Commonwealth, agency or officer of the State of New South Wales; or
  - (ii) to a House or Committee of the Parliament of New South Wales in response to a request by such House or Committee;
- (b) with the consent of the disclosing party;
- (c) if allowed or required by Law or required by the rules of any stock exchange;
- (d) in connection with legal proceedings relating to the Gateway;

- (e) if the information is generally and publicly available; or
- (f) to Employees and Agents, Airport stakeholders, Airport tenants, legal advisers, auditors and other consultants to whom it needs to be disclosed.

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

### **19.3 Disclosure and release**

- (a) Sydney Airport acknowledges that RMS may be required by Law to disclose the contents of, or certain information concerning, this Deed, the Easement and the Integration Deed (including in accordance with section 9 or sections 27 to 35 of the *Government Information (Public Access) Act 2009* (NSW)) and, subject to clause 19.3(b), consents to such disclosure.
- (b) If RMS is required to make a disclosure the subject of clause 19.3(a), prior to any such disclosure RMS is required to:
  - (i) provide to Sydney Airport written notice of any such requirement; and
  - (ii) provide Sydney Airport with the opportunity to make submissions regarding the disclosure including any submissions as to the redaction of this Deed or information concerning this Deed.

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## **20. Payment Instructions**

- (a) Any amount payable by Sydney Airport to RMS under the terms of this Deed must be paid:
  - (i) without set-off, counter claim, withholding or deduction; and
  - (ii) to RMS or as RMS directs.
- (b) Subject to clause 10.3(d), any amount payable by RMS to Sydney Airport under the terms of this Deed must be paid:
  - (i) without set-off, counter claim, withholding or deduction; and
  - (ii) to Sydney Airport or as Sydney Airport directs.

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## **21. Termination**

- (a) The parties agree that if a:
  - (i) condition precedents set out in clause 2.1(a)(ii) has not been waived or satisfied (as applicable) by the relevant date specified for that condition precedent as listed in clause 2.1(a)(ii) (if applicable); or
  - (ii) construction of the Airport Project Works has not commenced on the Licensed Areas for any reason on or before the Sunset Date,then either party may terminate this Deed.
- (b) If either party terminates this Deed under clause 21(a) and the Easement has been granted by the Commonwealth, RMS will use all reasonable endeavours to ensure that the Easement is terminated as soon as practicable after this Deed is terminated.

- (c) If either party terminates this Deed under clause 21(a), then clause 3.10 will survive such termination.
- (d) Neither party may take action against, or Claim damages or compensation from, the other party because this Deed is terminated under this clause 21.

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## **22. Notices**

### **22.1 How notice is to be given**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

- (a) may be given by personal service, post or email;
- (b) must be in writing and in English (or accompanied by a certified translation into English);
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
  - (i) if to RMS:  
***[Not Disclosed]***
  - (ii) if to Sydney Airport:  
***[Not Disclosed]***
  - (iii) if to TfNSW:  
***[Not Disclosed]***
- (d) (in the case of personal service, post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this Deed; and
- (f) must be delivered by hand or posted by prepaid post to the address to the number, or sent by email to the email address, of the addressee, in accordance with clause 22.1(c).

### **22.2 When notice is taken to be received**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and

- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 22, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00pm, it is taken to be received at 9.00am on the next working day ("**working day**" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

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## **23. Miscellaneous**

### **23.1 Governing Law**

This Deed is governed by and must be construed according to the law applying in New South Wales.

### **23.2 Jurisdiction**

Each party irrevocably:

- (a) 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 to this Deed; and
- (b) 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, if that venue falls within clause 23.2(a).

### **23.3 Interest**

If a party does not pay an amount when it is due, it must pay interest on that amount on demand for the period from when the amount becomes due until it is paid in full. Interest is calculated on daily balances at the rate per annum in Item 3 of Schedule 1 and is capitalised on the last day of each month if unpaid.

### **23.4 Amendments**

This Deed may only be varied by a Deed executed by or on behalf of each party.

### **23.5 Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

### **23.6 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the 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) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### **23.7 Further acts and documents**

Each party must promptly do 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 another party to give effect to this Deed.

### **23.8 Consents**

A consent required under this Deed from a 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.

### **23.9 Prior breaches**

Rights in connection with a breach of this Deed are not affected by termination or expiry of this Deed.

### **23.10 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 provision 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.

### **23.11 Mandatory Terms**

The parties agree that this Deed includes any term described as a mandatory term under the Airports Act, and the parties must include such mandatory terms in any sublicense contemplated by or assignment of this Deed

### **23.12 Sydney Airport Lease**

RMS must exercise its rights under this Deed in delivering the Airport Project Works so as to not cause Sydney Airport to breach any of its obligations under the Sydney Airport Lease.

### **23.13 Entire agreement**

Except for the Integration Deed, and the Easement and any other separate contract entered into between Sydney Airport, TfNSW and RMS in relation to the undertaking of the Gateway or other related matters, this Deed represents the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.

### **23.14 RMS's rights and Sydney Airport's obligations and liabilities not affected and time not at large**

No:

- (a) breach of this Deed or any other Project Document by RMS, TfNSW or any of their Employees or Agents; or
- (b) other act or omission of RMS, TfNSW or any of their Employees or Agents,

will set any date or any other time by when Sydney Airport is required to comply with an obligation under this Deed at large.

### **23.15 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) clauses 1 to 26; then
  - (ii) the Schedules.
- (b) The parties agree that in the event of any inconsistency, ambiguity or discrepancy between this Deed and the Integration Deed, this Deed will prevail.

### **23.16 No Caveat**

RMS must not place, or seek to place, any caveat on the title on the Easement Site without the prior consent of Sydney Airport.

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## **24. GST**

### **24.1 Definitions and interpretation**

In this clause 24:

- (a) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise;
- (b) a reference to a supply is to a supply under this Deed;
- (c) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member;
- (d) a reference to input tax credits includes input tax credits to which an entity is notionally entitled under Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled; and
- (e) words and phrases that are defined in the GST Act have the same meaning as in that Act except that:
  - (i) **"GST"** has the meaning given in clause 1.1;
  - (ii) **"Recipient"** means a party who provides or is liable to provide consideration under this Deed for a supply; and
  - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause 24.

### **24.2 Consideration exclusive of GST**

Unless stated to the contrary, and as otherwise provided in this clause, any consideration or amount payable under this Deed shall be exclusive of GST.

### **24.3 GST payable**

If GST becomes payable by a Supplier in respect of any supply made under or in connection with this Deed:

- (a) the Recipient must pay to the Supplier an amount equal to the amount of that GST in addition to the GST-exclusive consideration otherwise payable or to be provided in respect of the supply; and
- (b) the additional amount payable under clause 24.3(a) must be paid at the same time and in the same manner as the GST-exclusive consideration.

### **24.4 Tax invoice**

A party need not make a payment for a taxable supply made pursuant to this Deed until it receives a tax invoice for the supply to which the payment relates.

### **24.5 Reimbursements**

Any payment or reimbursement required to be made under this Deed that is calculated by reference to an amount paid or incurred is limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates, and then increased in accordance with clause 24.3 where applicable.

### **24.6 Adjustments**

If an adjustment of GST is required as a result of an adjustment event in respect of a supply made pursuant to this Agreement, then:

- (a) a corresponding adjustment of GST payable under this Agreement must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable; and
- (b) the supplier, if obligated to do so under the GST law, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable.

### **24.7 Non-monetary consideration**

To the extent that consideration for any supply by, under or in connection with this Deed includes non-monetary consideration:

- (a) the parties agree to act in good faith in determining the GST-exclusive market value of the non-monetary consideration provided for the supply;
- (b) the valuation of the non-monetary consideration will be confirmed by way of a joint indirect tax private ruling sought in accordance with clause 24.8;
- (c) the tax invoice for the supply must state the GST-inclusive market value of the non-monetary consideration provided for the supply; and
- (d) subject to the parties exchanging tax invoices:
  - (i) the respective obligation of each of the parties to pay an amount on account of GST under clause 24.3 will be off-set against each other; and
  - (ii) to the extent the respective obligation of each of the parties to pay an amount on account of GST under clause 24.3 is not equal, the party with the obligation to pay the greater amount must pay the amount of the difference as a monetary payment, in addition to and at the same time that the GST-exclusive consideration for the supply is payable or to be

provided under this Deed (unless otherwise agreed by the parties in writing and acting reasonably).

## 24.8 Cooperation

- (a) The parties will cooperate and will work together in good faith to resolve any issues arising under this Deed that relate to GST, and will consider appropriate amendments to this Deed to resolve any such issues.
- (b) Sydney Airport will prepare a joint indirect tax private ruling application on behalf of all the parties to this Deed to confirm the GST implications of the supplies and acquisitions arising in respect of this Deed (**PBR Application**). The PBR Application will seek to confirm the GST treatment of the supplies made, the amount of GST payable, the attribution of GST payable and the parties entitlements to input tax credits with respect to any GST incurred. The parties will work together to agree the scope of the PBR Application. TfNSW and RMS, acting reasonably, will provide any proposed amendments and their approval for Sydney Airport to lodge the application to the Commissioner on behalf of all the parties to this Deed as soon as practicable. Each party will bear their own costs in relation to the PBR Application. Sydney Airport agrees that:
  - (i) Sydney Airport must make full and prompt disclosure to TfNSW and RMS of all communications with the Commissioner relating to the PBR Application;
  - (ii) any and all correspondence to be sent by Sydney Airports to the Commissioner relating to the PBR Application is subject to the prior approval of TfNSW and RMS; and
  - (iii) a representative of TfNSW and RMS must be in attendance at any meeting(s) with the Commissioner relating to the PBR Application.
- (c) If a party is dissatisfied as to the private indirect tax ruling issued by the Commissioner as a result of the PBR Application referred to in clause 24.8(b), that party may, at its own cost, make an objection to the Commissioner against that private indirect tax ruling.
- (d) Clause 24.8(b) is subject to TfNSW and/or RMS (as applicable) first obtaining any departmental or other approvals or authorisations required for TfNSW and/or RMS (as applicable) to become an applicant to the PBR Application.

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## 25. Dispute resolution

### 25.1 Application

Any dispute or difference between the parties arising under or in connection with this Deed, including any dispute or difference as to the undertaking of the Airport Project Works, (**Dispute**) must be resolved as set out in this clause 25.

### 25.2 Notice of dispute or difference

- (a) If a Dispute arises, a party must commence the process contained in this clause 25.2 for its resolution by giving notice (**Dispute Notice**) to the other party. The party sending the Dispute Notice is the "**Referring Party**".
- (b) The Dispute Notice must:
  - (i) be in writing;



- (ii) state that it is given pursuant to this clause 25.2;
- (iii) include or be accompanied by reasonable particulars of the Dispute including:
  - A. a brief description of the circumstances in which the Disputes arose;
  - B. references to any provisions of this Deed relevant to the Dispute; and
  - C. the amount in dispute (whether monetary or any other commodity) and if not known, the best estimate available; and
- (iv) be given within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

### **25.3 Referral to Project Control Group**

Where a Dispute Notice is issued under clause 25.2 and without limiting the remainder of this clause 25.3, the relevant Dispute will be referred to the Project Control Group (as established in clause 3.2 of Schedule 2) for initial consideration, discussion and review. The Project Control Group may provide recommendations and other information relating to the Dispute to Senior Executives referred to in clause 25.4.

### **25.4 Negotiation by Senior Executives**

- (a) If the Dispute is not resolved within 10 Business Days (or such longer period as may be agreed in writing between the relevant parties) under the procedure in clause 25.3, then the Dispute must be referred to the chief executive of RMS and the chief executive officer of Sydney Airport, who must use reasonable endeavours to resolve the Dispute within a further 10 Business Days or such other period as is agreed by the relevant parties.
- (b) If the Dispute is not resolved within 30 Business Days (or such longer period as may be agreed in writing between the parties) of the Referring Party giving a Dispute Notice, either party may commence court proceedings in respect of the Dispute.

### **25.5 Continuance of performance**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Deed.

### **25.6 Summary or urgent relief**

Nothing in this clause 25 will prevent either party from instituting proceedings to seek enforcement of any payment due under this Deed or to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

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## **26. Undertakings for roads**

- (a) Without limiting the obligations of RMS or Sydney Airport under this Deed, but subject always to the obtaining of all relevant Approvals:

***[Not Disclosed]***

- (b) Where either RMS or Sydney Airport fail to comply with the undertakings referred to above, those parties agree that damages may not be a sufficient remedy and that

the other parties may seek a mandatory injunction to require RMS or Sydney Airport (as applicable) to comply with the undertakings in this clause 26.



**Signed** for and on behalf of **TRANSPORT FOR NSW ABN 18 804 239 602** by its authorised signatory in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised signatory

**Schedule 1 - Reference schedule**

**Item 1                    Not Used**

**Item 2                    Reference Sunset Date**

*[Not Disclosed]*

**Item 3                    Interest rate**

*[Not Disclosed]*

**Item 4                    Licence Fee**

- The Licence Fee in respect of each Construction Compound will be calculated on the basis of *[Not Disclosed]* per annum.

- Within 30 days of the date a Construction Compound is licensed by Sydney Airport to RMS in accordance with this Deed (including Schedule 10), RMS will pay to Sydney Airport a lump sum payment on account of the Licence Fee for the relevant Construction Compound which is equal to:

*[Not Disclosed]*

That is, RMS will pay *[Not Disclosed]* of the Licence Fee for a Construction Compound to Sydney Airport.

- If a Construction Compound is handed back by RMS to Sydney Airport before *[Not Disclosed]* from the date the relevant Construction Compound was licensed to RMS in accordance with this Deed, then Sydney Airport must repay to RMS on demand an amount calculated as follows:

Repayment amount in dollars = *[Not Disclosed]*

- If RMS does not hand back a Construction Compound to Sydney Airport within the *[Not Disclosed]* referred to above, then for each month that RMS continues to occupy the relevant Construction Compound beyond *[Not Disclosed]* RMS will pay to Sydney Airport an amount equal to:

*[Not Disclosed]*

This additional Licence Fee will payable by RMS to Sydney Airport within 30 days of receipt of a tax invoice for the relevant amount.

- If a significant part of a Construction Compound is handed back to Sydney Airport by RMS in accordance with this Deed before the expiry of *[Not Disclosed]* from the date the relevant Construction Compound was licensed to RMS in accordance with this Deed, then Sydney Airport must repay to RMS on demand an amount calculated as follows:

Repayment amount in dollars = *[Not Disclosed]*

- *[Not Disclosed]*.

- If RMS requests that an additional area within the Airport be made available as a new Construction Compound pursuant to clause 10.1(b) and Sydney Airport agrees to provide such additional area, then the Licence Fee in respect of such additional area will be calculated on the basis of *[Not Disclosed]* per annum, and will be payable in advance in one lump sum covering the period that RMS has advised Sydney Airport that it requires the additional area. If the relevant area is handed back by RMS to Sydney Airport earlier than the expiration of the

period notified by RMS, Sydney Airport must promptly refund the Licence Fee that relates to the unexpired period.

- The handback of a significant part of a Construction Compound referred to in this Schedule 1 requires the following:
  - RMS must satisfy all make good and handback provisions in this Deed in relation to the area handed back;
  - the area handed back must be and must remain accessible for any incoming tenants (access/egress to the site); and
  - any incoming tenant or future user of the area must not be significantly adversely impacted by the works continuing in adjacent areas of the Construction Compound which are not handed back.

**Item 5 Ex-Gratia Payments**

- (a) RMS acknowledges that the Sydney Airport Lease provides that Sydney Airport must pay "Ex-Gratia Payments" on account of rates and taxes.
- (b) If any Relevant Authority and Sydney Airport enter into any arrangements with respect to Sydney Airport making payments of Ex-Gratia Payments then:
  - (i) subject to Sydney Airport acting in a non-discriminatory manner and providing RMS with evidence to the satisfaction of RMS (acting reasonably) of the Ex-Gratia Payments and the obligation of Sydney Airport to pay those amounts under the Sydney Airport Lease, RMS must pay to Sydney Airport on a pass through basis, the amount of Ex-Gratia Payments paid which are directly attributable to a Licensed Area which is not a Construction Compound (in this Item 5 only "**the Land**") within 30 days of receipt of a validly issued invoice from Sydney Airport;
  - (ii) if Sydney Airport defaults in making the Ex-Gratia Payments to the Relevant Authority as a result of RMS failing to comply with Item 5(b)(i) above, then the amount payable by RMS under Item 5(b)(i), may be recovered by Sydney Airport as a debt due by RMS to Sydney Airport;
  - (iii) without limiting any right or option of Sydney Airport, RMS may approach the Relevant Authorities to apply for RMS to be exempted from the requirement to pay Ex-Gratia Payments in respect of the Land and Sydney Airport will provide reasonable assistance to RMS in this regard; and
  - (iv) if a Relevant Authority approves RMS' application and exempts Sydney Airport from the requirement to pay an Ex-Gratia Payment in respect of the Land, Sydney Airport is not entitled to recover the relevant Ex-Gratia Payment from RMS on and from the date that the exemption becomes effective.
- (c) For the avoidance of any doubt, should an application for exemption from the requirement to make an Ex-Gratia Payment be unsuccessful, RMS must continue to reimburse the relevant Ex-Gratia Payment to Sydney Airport under this Item 5.
- (d) Sydney Airport agrees that RMS will not be responsible for any payments in relation to any outgoings, rates, land tax or other tax, other than as provided by this clause.
- (e) For the purposes of this Item 5, **Relevant Authority** means any municipal or other rating authority, including Bayside Council and the Secretary to the Department of Infrastructure, Regional Development and Cities with respect to land tax.

## Schedule 2 - Works Schedule

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### 1. General

- (a) Without limiting any provision of this Deed, the parties must carry out the D&C Activities subject to and in accordance with this Schedule 2.
- (b) Except as otherwise expressly provided in this Deed, a party accepts all risks associated with carrying out their D&C Activities including:
  - (i) **(Cost)**: the actual cost of the activities being greater than the cost estimated;
  - (ii) **(Time)**: the time or period of performance of the activities being greater than estimated;
  - (iii) **(Site conditions)**: site conditions, subject to this Deed;
  - (iv) **(Fit for purpose)**: the relevant works being fit for purpose;
  - (v) **(Contractors)**: the performance and cost of all contractors;
  - (vi) **(Laws)**: any Law or change in Law affecting the rights, duties, obligations or liabilities of the party;
  - (vii) **(Industrial action)**: industrial action including a strike, lockout, blockade or picketing action affecting the activities;
  - (viii) **(Weather)**: inclement weather affecting the activities;
  - (ix) **(Legal challenge)**: any legal challenge to an approval;
  - (x) **(Safety)**: any work health, safety and rehabilitation matters;
  - (xi) **(Damage)**: any damage caused to the relevant works;
  - (xii) **(Utilities)**: approvals from relevant Utility providers; and
  - (xiii) **(Changes in activities)**: any changes in the activities causing delay, increased cost or decreased revenue.

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### 2. Role of parties

#### 2.1 Sydney Airport Representatives

- (a) **(Acknowledgement of appointment)**: The parties acknowledge and agree that a person notified to RMS by Sydney Airport as a Sydney Airport Representative from time to time is appointed by Sydney Airport as a Sydney Airport Representative for the purposes of this Deed.
- (b) **(Natural person)**: Each Sydney Airport Representative must be a natural person.
- (c) **(Representative)**: A direction, instruction or other notice given or purported to be given under this Deed by a Sydney Airport Representative is taken to be a direction, instruction or notice given by Sydney Airport.

- (d) **(Representative not obliged)**: a Sydney Airport Representative is not obliged to review, or comment upon, any documentation or information which RMS gives to Sydney Airport in respect of the Airport Project Works.
- (e) **(Appointees)**: a Sydney Airport Representative may:
  - (i) by written notice to RMS appoint persons to exercise any of the functions of a Sydney Airport Representative under this Deed;
  - (ii) not appoint more than one person to exercise a specific function at any one time;
  - (iii) revoke any appointment under clause 2.1(e)(i) of this Schedule 2 by written notice to RMS; and
  - (iv) continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 2.1(e)(i) of this Schedule 2 (provided that any directions of a Sydney Airport Representative made prior take precedence over those of any appointees to the extent of any inconsistency).
- (f) All references in this Deed to a Sydney Airport Representative include a reference to an appointee under clause 2.1(e) of this Schedule 2.

## 2.2 RMS Representatives

- (a) **(Acknowledgement of appointment)**: The parties acknowledge and agree that the person notified to Sydney Airport by RMS as a RMS Representative from time to time is appointed by RMS as a RMS Representative for the purposes of this Deed.
- (b) **(Natural person)**: Each RMS Representative must be a natural person.
- (c) **(Representative)**: A direction, instruction or other notice given or purported to be given under this Deed by a RMS Representative is taken to be a direction, instruction or notice given by RMS.
- (d) **(Representative not obliged)**: a RMS Representative is not obliged to review, or comment upon, any documentation or information which Sydney Airport gives to RMS in respect of the Sydney Airport Works.
- (e) **(Appointees)**: A RMS Representative may:
  - (i) by written notice to Sydney Airport appoint persons to exercise any of the functions of a RMS Representative under this Deed;
  - (ii) not appoint more than one person to exercise a specific function at any one time;
  - (iii) revoke any appointment under clause 2.2(e)(i) of this Schedule 2 by written notice to Sydney Airport; and
  - (iv) continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 2.2(e)(i) of this Schedule 2 (provided that any directions of a RMS Representative made prior take precedence over those of any appointees to the extent of any inconsistency).
- (f) All references in this Deed to a RMS Representative include a reference to an appointee under clause 2.2(e) of this Schedule 2.



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### 3. Liaison Groups

#### 3.1 Project Operations Group

- (a) **(Composition):** The Project Operations Group will be established for the period from the date of this Deed (**Commencement Date**) until Completion of the Airport Project Works and will comprise:
- (i) up to 5 operational representative members of RMS;
  - (ii) up to 5 operational representative members of Sydney Airport; and
  - (iii) such other persons as the parties may agree from time to time.
- (b) **(Replacement):** A party may at any time replace any person it has appointed as a representative member on the Project Operations Group with another representative member by written notice to the other party.
- (c) **(First meeting):** The first meeting of the Project Operations Group will be convened by RMS to occur no later than 15 Business Days after the execution of this Deed.
- (d) **(Delegates, alternates and invitees):** The persons referred to in clause 3.1(a) of this Schedule 2 and any replacement under clause 3.1(b) of this Schedule 2 may appoint delegates or alternates to attend Project Operations Group meetings in their absence.
- (e) **(Objectives):** The objectives of the Project Operations Group are to:
- (i) facilitate the day to day development of the Airport Project Works and the Sydney Airport Works;
  - (ii) implement the procurement process in respect of the T2/T3 Funded Works as contemplated in Schedule 13;
  - (iii) discuss and consider design issues in relation to the Airport Project Works and the Sydney Airport Works;
  - (iv) review, update, consider and determine programming and integration issues in relation to the Airport Project Works and the Sydney Airport Works;
  - (v) review progress reports provided by parties and identify any material issues arising from the reviews;
  - (vi) report on a monthly basis to the Project Control Group of the matters determined by the Project Control Group it wishes to have reported relating to the Airport Project Works and the Sydney Airport Works;
  - (vii) review and consider such other matters relating to the works as are agreed between the parties from time to time (but without the ability to vary any contractual arrangements between the parties);
  - (viii) in the event of failure to agree any matters, refer them for resolution by the Project Control Group; and
  - (ix) implement decisions or answer requests of the Project Control Group.
- (f) **(Frequency and location for meetings of the Project Operations Group):** The Project Operations Group will, unless otherwise agreed by the parties meet weekly

up until Completion of the Airport Project Works at locations in Sydney as agreed by the parties.

- (g) **(Administration):** RMS will convene and chair meetings of the Project Operations Group and will take the minutes of all meetings.

### 3.2 Project Control Group

- (a) **(Composition):** The Project Control Group will be established for the period from the Commencement Date until Completion of the Airport Project Works and will comprise:
  - (i) up to 3 senior representative members of RMS; and
  - (ii) up to 3 senior representative members of Sydney Airport.
- (b) **(Replacement):** A party may at any time replace any person it has appointed as a representative member on the Project Control Group with another representative member by written notice to the other party on the basis that the replacement person is themselves a senior representative of the party appointing them.
- (c) **(First meeting):** The first meeting of the Project Control Group will be convened by RMS to occur no later than 15 Business Days after the first meeting of the Project Operations Group.
- (d) **(Objectives):** The objectives of the Project Control Group are to:
  - (i) facilitate the development of a long term, collaborative working relationship between RMS and Sydney Airport;
  - (ii) monitor and ensure the overall progress of the Airport Project Works and the Sydney Airport Works;
  - (iii) monitor the procurement process in respect of the T2/T3 Funded Works as contemplated in Schedule 13;
  - (iv) assist with the resolution of any matters that cannot be agreed which are referred to the Project Control Group by the Project Operations Group;
  - (v) make recommendations to vary any contractual arrangements between RMS and Sydney Airport (which would need to be implemented legally); and
  - (vi) review reports provided by the Project Operations Group and raise issues to be resolved or managed by the Project Operations Group.
- (e) **(Frequency and location for meetings of the Project Control Group):** The Project Control Group will, unless otherwise agreed by RMS and Sydney Airport meet monthly up until Completion of the Airport Project Works at locations in Sydney as agreed by RMS and Sydney Airport.
- (f) **(Administration):** RMS will convene and chair meetings of the Project Control Group and will take the minutes of all meetings.

### 3.3 No partnership, joint venture or other fiduciary relationship

Unless otherwise expressly provided, nothing in this Deed creates a partnership, joint venture, fiduciary, employment or agency relationship between Sydney Airport and RMS.

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## 4. Laws and Approvals

### 4.1 Compliance with Laws

Each party must in relation to the undertaking of its D&C Activities, carry out the activities for which each party is responsible in compliance with all applicable Laws.

### 4.2 Approvals

Without limiting any term of this Deed, in relation to the undertaking of the D&C Activities, each party must:

- (a) **(obtain Approvals)**: ensure that they (or as applicable or required, their Employees and Agents) have, maintain and comply with all relevant Approvals required to lawfully undertake the relevant activities; and
- (b) **(pay all fees etc.)**: pay all fees, effect all Insurances, provide any bonds and execute any undertakings or agreements required by any relevant Governmental Authority in respect of all approvals.

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## 5. Project Plans

NOT USED

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## 6. Pre-construction Report

Prior to the Licence Commencement Date in respect of each Licensed Area, the parties will develop a project site condition report (**Pre-construction Report**) concerning the existing condition of the relevant Licensed Area (including contamination) and all Services including all adjoining public and private properties and public infrastructure (including roads, gutters, footpaths, etc.) as identified from within the relevant Licensed Area.

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## 7. General obligations applying to the D&C Activities

### 7.1 Notification of material issues

Each party must notify the other:

- (a) as soon as reasonably practicable after they become aware, each party must notify the other of any matter which materially affects, or may materially affect:
  - (i) the carrying out of the D&C Activities in accordance with this Deed; and
  - (ii) the Licensed Areas,including any issues in relation to industrial relations, work health and safety, and the environment; and
- (b) of the progress or resolution of such matters.

### 7.2 Work health and safety management

- (a) **(Duty)**: Each party acknowledges that it has a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
  - (i) its personnel;

- (ii) contractor personnel and subcontractor personnel; and
- (iii) other persons,

in connection with the Airport Project Works and the Sydney Airport Works (as applicable).

(b) **(Obligations):** Each party must ensure that in carrying out relevant D&C Activities:

- (i) it complies with all Laws and other requirements of this Deed for work health and safety management;
- (ii) it uses reasonable endeavours to ensure that all subcontractors comply with the requirements referred to in this clause 7.2 of this Schedule 2;
- (iii) it complies with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and
- (iv) it does not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the person holds any necessary authorisation, licensing, prescribed qualifications or experience required by any Law are met.

(c) Each party acknowledges that at all times it:

- (i) must discharge all obligations under the WHS Legislation of a person (including a person conducting a business or undertaking) which has management or control of:
  - A. a workplace; or (if applicable)
  - B. any plant, other construction equipment or Temporary Works on the Licensed Area;
- (ii) will comply with obligations under the WHS Legislation of a person (including a person conducting a business or undertaking):
  - A. who directs the carrying out of work; or
  - B. which relate to:
    - 1) the carrying out of any part of the D&C Activities under this Deed;
    - 2) any of the other activities on the Licensed Area or otherwise; or
    - 3) the Licensed Area itself; and
- (iii) will prepare and provide to the other party a copy of before commencing any construction on the Licensed Areas, work health and safety management plans which that party is required to prepare or maintain under the WHS Legislation.

(d) Each party must at all times comply with its work health and safety management plans and its statutory duties under the WHS Legislation.

(e) In the event that any principal contractor obligation is triggered under the WHS Legislation, the relevant party must:

- (i) procure a valid nomination and engagement of a principal contractor under the WHS Legislation;
- (ii) notify the other party in writing of such engagement and provide details of the principal contractor; and
- (iii) ensure that the principal contractor fulfils its functions and obligations under the WHS Legislation.

### 7.3 Complaints and proceedings

Each party must:

- (a) deal proactively with any:
  - (i) proceedings instituted or threatened;
  - (ii) letter of demand issued; or
  - (iii) order or direction made,

by anyone (including any Governmental Authority or any landowner, RMS or licensee near the Licensed Areas) against that party or its associates in respect of any aspect of the carrying out of the D&C Activities; and
- (b) immediately notify the other in writing of any proceedings or order or direction referred to in clause 7.3(a) of this Schedule 2.

### 7.4 Industrial issues

The parties must, in carrying out the D&C Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations; and
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Laws, for all employees engaged by any person, are always observed in full.

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## 8. D&C Activities

### 8.1 Project Program

- (a) **(Preparation):** Within 60 Business Days of the date of execution of this Deed, RMS must provide to Sydney Airport its high level "Project Program" for all activities associated with the Airport Project Works and the Sydney Airport Works, where such program will detail:
  - (i) relevant milestones for the undertaking of such activities;
  - (ii) key dependencies and interfaces between the activities for the Airport Project Works and the Sydney Airport Works, including the obtaining of any relevant Approvals and relevant procurement process;
  - (iii) key procurement milestones; and
  - (iv) the requirements that parties must have regard to in the development of their respective D&C Programs.

- (b) **(Consistency of programs)** Each party must develop their D&C Program consistent with the Project Program, submit such D&C Program to the other party at least 60 Business Days before the issuing of the tender for its D&C Activities (or any part thereof), keep their D&C Program updated during the undertaking of the D&C Activities (including so as to remain consistent with the Project Program), and provide such updates to the other party.
- (c) **(RMS to Update):** RMS must update the Project Program and advise Sydney Airport of such update whenever there is a:
  - (i) significant change in the timing of any approved penetrations of the Obstacle Limitation Surface;
  - (ii) a significant change in any D&C Activities that may impact the safe and effective operation of the Airport; or
  - (iii) matter which may significantly impact the Sydney Airport's D&C Activities.
- (d) **(Sydney Airport to Update):** Where Sydney Airport becomes aware of a matter that may impact RMS' D&C Activities, Sydney Airport must promptly advise RMS of such matter.
- (e) **(Project Program not part of Deed):** The Project Program does not form part of this Deed.
- (f) **(Rail Development)** The parties acknowledge that works in relation to the Port Botany Rail Line will be occurring concurrently with the Airport Project Works, and as such the D&C Programs must be developed having regard to the limitations such works will have on the undertaking of the Airport Project Works.

## 8.2 Construction of works

The parties must use reasonable endeavours to ensure that the Airport Project Works and Sydney Airport Works (as applicable) are constructed:

- (a) in accordance with:
  - (i) this Deed;
  - (ii) the relevant Design Documentation as developed under clause 6 of this Deed;
  - (iii) all Approvals and the requirements of all Laws and all Governmental Authorities; and
  - (iv) the Project Program; and
- (b) with good workmanship and materials.

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## 9. Variations

### 9.1 No Sydney Airport Variations

Sydney Airport will not be entitled to request or initiate Variations to the Airport Project Works (**Variations**), except in accordance with this clause.

## 9.2 Sydney Airport initiated Variations

- (a) Sydney Airport may give RMS notice of a proposed Variation of the T2/T3 Funded Works.
- (b) RMS must, within 20 Business Days after receiving a notice from Sydney Airport of a proposed Variation under clause 9.2(a) of this Schedule 2, give Sydney Airport a "**Variation Proposal**" including details of:
  - (i) the price of the proposed Variation (supported by reasonable measurements or other evidence of cost) detailing the cost (including time-related costs, if any) of the proposed Variation;
  - (ii) any adverse impact the proposed Variation will have on the performance of the Airport Project Works, the Sydney Airport Works or RMS' ability to comply with this Deed;
  - (iii) any impact the Variation will have on Completion for any of the Airport Project Works or Sydney Airport Works; and
  - (iv) an appropriate payment methodology and program (which may include progress payments, payments linked to payment under the relevant Building Contract or other staged payments) for payment by Sydney Airport of the costs of the Variation.
- (c) Sydney Airport may, within 10 Business Days after receipt of a Variation Proposal pursuant to clause 9.2(b) of this Schedule 2:
  - (i) give RMS a "**Variation Order**" to carry out the Variation in accordance with the Variation Proposal or as otherwise agreed by RMS and Sydney Airport; or
  - (ii) provide RMS with a notice that it does not accept the amount of the quotation referred to in clause 9.2(b)(i) of this Schedule 2.
- (d) If Sydney Airport does not give RMS a Variation Order, within 10 Business Days after receipt of a Variation Proposal (or, where applicable, a notice under clause 9.2(c)(ii) of this Schedule 2, Sydney Airport will be deemed to have withdrawn its requirement of the Variation.
- (e) Subject to clause 9.4 of this Schedule 2, RMS must, on receipt of a Variation Order under clause 9.2(c) of this Schedule 2, procure that the relevant works are performed as varied by the Variation Order.

## 9.3 Sydney Airport payments for Variations

- (a) The costs which result from a Variation referred to in clause 9.1 of this Schedule 2 will be the costs specified by RMS in the relevant Variation Proposal.
- (b) Sydney Airport must pay the costs referred to in clause 9.3(a) of this Schedule 2 in accordance with clause 20 of this Deed.

## 9.4 No change to Stage 1 Works

For the avoidance of doubt, notwithstanding the issuing of any Variation Order under this clause 9 of this Schedule 2, RMS is not obligated to undertake any Variation or any other change to the Stage 1 Works. Whether any change or Variation to the Stage 1 Works is adopted or implemented will be determined by RMS in its absolute discretion.

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## **10. Completion**

### **10.1 Notice of Completion**

Each party must provide the other with notice at least 90 Business Days prior to the dates upon which it reasonably expects to achieve Completion:

- (a) **for RMS** - in respect of each of the Airport Project Works; and
- (b) **for Sydney Airport** - in respect of each of the Sydney Airport Works.

### **10.2 Revised Date**

If, after a party gives the other a notice in accordance with clause 10.1 of this Schedule 2, the expected Date of Completion changes, the party must promptly notify the other party of the revised date.

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## **11. Constraints and Restrictions**

RMS must, in conducting the Airport Project Works, comply with the Constraints and Restrictions.



**Schedule 3 - Insurances**

**Insurances to be effected and maintained**

<b>Insurance Type</b>	<b>Limit of Indemnity</b>
<b>Public liability insurance</b>	An amount of at least \$500,000,000 (five hundred million dollars) for each and every occurrence.
<b>Contract works insurance</b>	An amount equal to the contract sum contained in the Building Contract for the Airport Project Works, in respect of the loss or destruction of or damage to the Airport Projects Works executed or in the course of construction including all materials supplies and equipment (other than contractor’s constructional plant, equipment and supplies).
<b>Workers' compensation insurance</b>	As required by Law
<b>Plant and equipment insurance</b>	Market value
<b>Motor vehicle insurance</b>	<p>Motor vehicle compulsory third party insurance and motor vehicle third party property damage insurance or similar cover (however described):</p> <p>A. covering all motor vehicles owned, leased or hired and used by anyone in connection with the performance of the Airport Project Works; and</p> <p>B. covering legal liability:</p> <p>1. For personal injury to, illness or death of, any person; and</p> <p>2. For damage to any real or personal property including the property of Sydney Airport,</p> <p>arising out of the use by RMS or its Building Contractor of any registered motor vehicle in connection with the performance of the Airport Project Works, in accordance with all relevant Laws, and for not less than \$30,000,000.00 (thirty million dollars) in respect of each and every occurrence.</p>
<b>Professional indemnity insurance</b>	not less than \$20,000,000 (twenty million dollars)
<b>Environmental/pollution legal liability insurance</b>	not less than \$20,000,000 (twenty million dollars)

***[Not Disclosed]***

## Schedule 4 - Construction Licence Terms

Project Deed	The Project Deed between Sydney Airport and the Licensee dated [#].
Permitted Purpose	To develop and construct the Gateway and associated uses
Term Start Date	The same date as the Licence Commencement Date as defined in the Project Deed.
Licensee	RMS

### 1. General conditions of access

- (a) The Licensee, together with its authorised contractors, agents, consultants, invitees and employees (**Authorised Users**), is entitled use the Licensed Area:
- (i) solely for the Permitted Purpose; and
  - (ii) via the access points determined by the parties (acting reasonably, having regard to the Concept Design and Schedule 10).
- (b) The Licensee must ensure that it and its Authorised Users comply with all requirements of the Project Deed and the Integration Deed (to the extent that the Integration Deed has commenced and to the extent applicable).
- (c) The Licensee and its Authorised Users must comply with all reasonable directions of Sydney Airport or its employees or authorised representatives in relation to the Licensed Area from time to time subject to those directions being consistent with Sydney Airport's rights under the Project Deed and the Integration Deed (to the extent that the Integration Deed has commenced).
- (d) The Licensee must keep the Licensed Area in a safe condition and must dispose of rubbish, waste and debris from the Licensed Area and must ensure that such rubbish, waste and debris do not migrate off the Licensed Area.
- (e) Sydney Airport may appoint one of its employees to attend and inspect at times agreed with the Licensee, the Licensee's access to and use of the Licensed Area. Sydney Airport will promptly notify the Licensee of the details of the relevant employee (**Project Manager**). If the Project Manager considers, acting reasonably, that the actions of the Licensee or its employees, contractors, consultants, agents or invitees may cause:
- (i) damage to an area which is adjacent to the Licensed Area (including but not limited to environmental damage);
  - (ii) damage to Sydney Airport's property on the Licensed Area or in the vicinity of the Licensed Area;
  - (iii) may detrimentally affect the safety or security of the Licensed Area;
  - (iv) harm or inconvenience to Sydney Airport's employees or authorised users; or
  - (v) any obstruction of, interference with or inconvenience to, Sydney Airport's operations, including the operations of the Airport,

then the Project Manager may direct the Licensee in writing to modify its activities on the Licensed Area so as to reduce, change or eliminate the relevant impact or cause.

- (f) The Licensee must not cause or permit any air, water or soil pollution (including any "Pollutant" as defined in the *Airports (Environment Protection) Regulation 1997* (Cth)); any substance, including without limitation asbestos, that causes or is likely to cause harm to the environment of the health or safety of any person; or anything that gives or may give rise to environmental hazard to be brought onto each Licensed Area or to migrate from each Licensed Area onto any land or environment adjoining the relevant Licensed Area.
- (g) The grant of access to the Licensee to the Licensed Area does not create:
  - (i) any estate or interest in land or any relationship of landlord and tenant between Sydney Airport and the Licensee; or
  - (ii) a joint venture, a relationship of agency or any other relationship, except as set out in this document.
- (h) The Licensee must inform each of its Authorised Users of the obligations contained in this document prior to entry of the relevant Authorised User onto the Licensed Area.
- (i) If the Licensee is required to do anything or comply with any obligation under this document, it must also procure that its Authorised Users do that thing or comply with that obligation.

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## **2. Licence Fee**

Where the Licensed Area is a Construction Compound, the Licensee must pay to Sydney Airport a licence fee equal to the Licence Fee calculated in accordance with Item 4 of Schedule 1 of the Project Deed, and subject to any refund or variation in accordance with Item 4 of Schedule 1 of the Project Deed.

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## **3. Mandatory Terms**

The parties agree that this Deed includes any term described as a mandatory term under the Airports Act, and the Licensee must include such mandatory terms in any sublicense or assignment of this Deed.

The Licensee notes that the Airport Building Controller and the Airport Environment Officer may have access to the Licensed Area in accordance with the Airports Act.

**Schedule 5 - Licensed Area**

*[Not disclosed]*

**Schedule 6 – Easement Area**

*[Not Disclosed]*

## Schedule 7 - Easement Terms

### Easements Terms

#### Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1.	Easement in gross to conduct Gateway created pursuant to Section 88A of the <i>Conveyancing Act 1919</i> (NSW) and easement to conduct Gateway created under Section 88B of the <i>Conveyancing Act 1919</i> (NSW)	<b>[Note: Lots and DP references to be included based on the areas identified in the Concept Design]</b>	<b>[Note: Lots and DP references to be included for the RMS benefitted lot]</b>  Transport for New South Wales and Roads and Maritime Services
2.	Positive Covenant created pursuant to Section 88BA of the <i>Conveyancing Act 1919</i> (NSW)	<b>[Note: Lots and DP references to be included based on the areas identified in the Concept Design]</b>	Commonwealth

**[Completion Note: The details of the Lot Burdened will be determined by registration of the plan of subdivision referred to in clause 5.2 of the Gateway Project Deed.]**

#### Part 2 (Terms)

### 1. Terms of easement for Gateway

#### 1.1 Easement description

This Instrument provides full free and unimpeded rights in favour of the Grantee to:

- (a) construct, develop, operate, conduct upgrades to, replacements of and maintenance and repairs to the Gateway and allow other parties to construct, develop, operate, conduct upgrades to, replacements of and maintenance and repairs to the Gateway on the Easement Site; and
- (b) permit members of the public to use the Gateway on whatever terms may be imposed by the Grantee (or any person authorised by the Grantee) from time to time.

The Easement under this clause 1 covers the Easement Site, being the corridor shown on the Plan.

## 1.2 Terms of easement

Subject to compliance with all applicable Laws, including Laws in relation to the Gateway (whether entered into before or after the date of this Instrument including, but not limited to, any requirement for the Grantee to comply with airport security or emergency requirements) the Grantor grants the Grantee full, free and unimpeded right for the Grantee and Gateway Parties to at all times use the Easement Site for the development and subsequent operation of a road for use by members of the public, where such rights include but are not limited to:

- (a) undertake the development of the Gateway and other associated works;
- (b) construct the Gateway;
- (c) operate and maintain the Gateway and associated roads infrastructure;
- (d) conduct upgrades, replacements and maintenance and repairs necessary to operate the Gateway;
- (e) allow members of the public to use the Gateway on terms imposed by the Grantee (or any person authorised by the Grantee) from time to time, including terms allowing 24 hour a day use of the Gateway and relating to payments for use of Gateway infrastructure (provided that collection of payments does not occur on the Lot Burdened);
- (f) manage the Gateway in accordance with its usual processes, standards and procedures for the management of its road assets;
- (g) construct, develop and operate Improvements within the Easement Site;
- (h) upgrade, redevelop or refurbish, or further develop the Gateway and any Improvements within the Easement Site;
- (i) the planning, investigation, design, construction, installation, commissioning, testing and maintenance of the Gateway and any Improvement within the Easement Site;
- (j) in common with others, access (with or without Equipment) to the Gateway or to any Improvement, including access (with or without Equipment) across the Easement Site, over such access ways constructed for that purpose;
- (k) the connection of Utilities located within or adjacent to the Easement Site to other Utilities (at the cost of the Grantee or any such person authorised by the Grantee from time to time subject to any agreement to the contrary) and to receive, collect and transport water, sewage, gas, electricity and other substances over or through those Utilities;
- (l) the operation, functioning, Repair, maintenance, service, redevelopment and refurbishment of the Gateway and any Improvements within the Easement Site;
- (m) the conduct by the Grantee or the Gateway Parties within the Easement Site of its responsibilities and functions under the Transport Administration Act and any other lawful activities as permitted under the Airport Lease or, if there is no Airport Lease, consistent with the operation and development of an airport; and
- (n) make noise, vibration, create dust and cause disturbance to the Grantor and any occupier of the Lot Burdened (provided that the Grantee's activities comply with the requirements of all Government Authorities, all Laws and all relevant Approvals) for the purposes set out in this clause.

### 1.3 Concession

The Grantor agrees that:

- (a) the development, operation, maintenance and upgrading of the Gateway and any and all associated infrastructure and other Works may be undertaken by the Grantee using a public private partnership, concession arrangement or other procurement or delivery model as advised by the Grantee from time to time. For the avoidance of doubt, the Grantee remains responsible for compliance with this Instrument notwithstanding the use of any public private partnership, concession arrangement or other procurement or delivery model or the acts of any partner, contractor or investor with or of the Grantee; and
- (b) when operating the Gateway and other works, the Grantee will comply with applicable safety and security procedures of the Airport Lessee Company that apply in relation to the Airport, but only where such safety and security procedures apply generally at the Airport and do not derogate from the Grantee's rights under the Easement.

### 1.4 Compliance with Law

Despite any other provision in this Instrument, the Grantee must, in exercising its rights under this Instrument:

- (a) comply with all applicable Laws (including, without limitation, the Airports Act, regulations made under that Act and the *Aviation Transport Security Act 2004*) and the requirements of all Authorities; and
- (b) obtain and comply with all relevant Approvals.

### 1.5 No advertising or toll points

- (a) Despite clause 1.2, the Grantee is not entitled (either itself or through its Contractors) to:
  - (i) erect or display any advertising signs, electronic advertising displays or otherwise conduct any advertising activities on the Easement Site at any time; or
  - (ii) erect, install, or maintain any equipment for collecting tolls or other charges from road users on the Easement Site at any time.
- (b) Nothing in clause 1.5(a) prevents the Grantee from erecting or operating traffic or road signs not associated with collection of tolls or other charges consistent with its functions and powers under the Transport Administration Act or the Roads Act.

### 1.6 Easement term

- (a) The Easement granted by this Instrument will commence on the date of this Instrument and will remain in effect until the earlier to occur of:
  - (i) the surrender of the Easement by the Grantee in accordance with clause 7(b); and
  - (ii) the extinguishment of the Easement by the Grantor in accordance with its rights under clause 1.6(b) of this Instrument.
- (b) The Grantor is permitted to extinguish the Easement granted in this Instrument, in its sole discretion:



- (i) if the Grantee displays an intention to permanently abandon, or permanently abandons, the Gateway; and
  - (ii) without cause, any time after [the 80th anniversary of the date of this Instrument] upon provision of [10 years] written notice to the Grantee.  
**[Note: drafting note, to be confirmed]**
- (c) If the Easement is extinguished in accordance with clause 1.6(b), the Grantor will not be required to pay any compensation to the Grantee in connection with the extinguishment.
- (d) The Grantor and the Grantee agree to do all things and execute all documents necessary to effect the removal of the Easement and positive covenant upon the surrender or extinguishment of the Easement referred to in clause 1.6(b).

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## 2. Positive covenant

### 2.1 Positive covenant and restriction on the use of land

If the Grantee:

- (a) is entitled to exercise any Easement Right; and
- (b) exercises that Easement Right,

then the Grantee must comply with the Easement Obligations associated with that Easement Right.

### 2.2 Positive covenants and maintenance requirements

A requirement in this Instrument which requires the Grantee to Repair the Easement Site or anything in the Easement Site is a positive covenant according to Sections 88BA and 88B of the *Conveyancing Act 1919* (NSW).

### 2.3 Compliance

The Grantee must take all action which is necessary to procure compliance with this Instrument by any Gateway Party.

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## 3. Planning

The Grantor acknowledges that:

- (a) from the date of this Instrument, Airport Master Plans prepared by the Airport Lessee Company are expected to:
  - (i) refer to the Gateway and its continued operation as a major road for the State of New South Wales; and
  - (ii) be drafted to include a land use for the Easement Site that allows for the continued operation, development and upgrading of the Gateway as a major road for the State of New South Wales;
- (b) the Airport Lessee Company has agreed with the Grantee:
  - (i) not to propose, permit or approve any development or works that would prevent the development, operation or maintenance of the Gateway or any other associated roads (as determined by the Grantee acting reasonably), or which would materially limit or restrict the development,

operation or maintenance of the Gateway or any other associated roads on a permanent basis. For the purposes of this clause "materially limit" includes:

- A. preventing traffic from entering or exiting the Gateway;
  - B. preventing the Grantee from operating or developing the Gateway as contemplated in the Operations Plan to be developed between the Airport Lessee Company and Grantee; and
  - C. preventing the Grantee from being able to exercise its rights under the any agreement with the Airport Lessee Company or this Instrument;
- (ii) not otherwise unreasonably hinder, restrict, vary or prevent the Grantee's development, operation, upgrade or maintenance of the Gateway or any other associated road works or connections.

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## **4. General covenants**

### **4.1 Application**

The provisions of this clause 4 apply to each of the easements and positive covenants contained in this Instrument, as if repeated in the individual terms of those easements and positive covenants.

### **4.2 Grantee to Repair**

The Grantee must maintain and Repair the Gateway and any Improvements on the Easement Site in accordance with the Grantee's processes, standards and procedures for the management of such Grantee road assets, as varied by the Grantee from time to time.

### **4.3 Grantee to rectify damage**

- (a) Except to the extent otherwise expressly permitted by this Instrument, the Grantee must not cause any damage to the Lot Burdened.
- (b) The Grantee must, acting reasonably, promptly rectify any damage to the Lot Burdened caused by any Gateway Party as a result of any of the Activities.

### **4.4 Indemnity for breach**

The Grantee indemnifies the Grantor against any Loss or Claim brought against, suffered or incurred by the Grantor caused by, arising out of, or in any way in connection with, any breach by the Grantee of any provision of this Instrument.

### **4.5 General indemnity**

The Grantee indemnifies the Grantor against any Loss or Claim brought against, incurred or suffered by the Grantor in respect of:

- (a) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property;
- (b) any injury to, disease or death of, persons; or

- (c) Loss suffered or Claims brought by third parties (including any and all Loss and Claims arising out of or in connection with negligence, statute and breach of contract),

caused by, arising out of, or in any way in connection with:

- (d) the development and operation of the Gateway;
- (e) the use or occupation of the Lot Burdened by the Grantee, or any other Gateway Party or any of their invitees; or
- (f) the exercise of any right under this Instrument.

#### **4.6 Obligations not affected**

Clauses 4.2 and 4.5 do not lessen or otherwise affect the Grantee's other obligations under this Instrument or any agreement entered into between the Grantor and the Grantee (and any other party) in relation to the Gateway.

#### **4.7 Severance**

If at any time any provision of this Instrument 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 Instrument; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this Instrument.

#### **4.8 Governing Law**

The laws which apply in New South Wales govern this Instrument.

#### **4.9 Easements are covenants and agreements between Grantee and Grantor**

- (a) Subject to clause 4.9(b), the conditions, covenants and agreements in each of the easements and positive covenants in this Instrument, including in this clause 4, are conditions, covenants and agreements between:
  - (i) the Grantee for itself and its successors, assigns and transferees (including as described in clause 4.10); and
  - (ii) the Grantor for itself, its successors and, subject to clause 4.9(c), every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment.
- (b) The Grantee may assign any of its rights under this Instrument to any person or persons as appointed or engaged by the Grantee from time to time (and for any period) to construct, develop, operate or maintain the Gateway and any or all Improvements (including for the purposes of any public private partnership subject to clause 4.9(c)) or other delivery model used by the Grantee from time to time).
- (c) The conditions, covenants and agreements in each of the easements and positive covenants in this Instrument that are stated to be for the benefit of the Grantor (including any approval rights) are solely for the benefit of the Grantor, and may only be exercised by or on behalf of the Grantor or, if authorised by the Grantor, the Airport Lessee Company.

#### **4.10 Covenants benefit whole and each part of Lot Burdened**

Each positive covenant in this Instrument benefits the whole and each part of the Lot Burdened.

#### **4.11 Deed**

This Instrument is executed as a deed.

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### **5. GST**

#### **5.1 Definitions**

In this clause:

- (a) **GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) terms used in this clause which are not defined in this clause, but which are defined in the GST Law, have the meanings given in the GST Law; and
- (c) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause.

#### **5.2 Consideration GST exclusive**

Unless otherwise stated in this Instrument, amounts payable, and consideration to be provided, under any other provision of this Instrument exclude GST.

#### **5.3 Payment of GST**

If GST is payable on a supply made in connection with this Instrument, the recipient must pay the party making the supply (supplier) an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.

#### **5.4 Tax invoice**

The supplier must give a tax invoice to the recipient no later than the time when the recipient is required to pay or provide any part of the consideration for the supply.

#### **5.5 Adjustment event**

If an adjustment event arises in connection with a supply made in connection with this Instrument:

- (a) the supplier must recalculate the GST payable to reflect the adjustment event;
- (b) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
- (c) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.

#### **5.6 Reimbursements**

Where a party (first party) must pay to another party (other party) an outgoing of the other party, the amount payable is the sum of:

- (a) the amount of the outgoing less any input tax credit in respect of it to which the other party, or its GST group representative member, is entitled; and
- (b) if the amount payable is subject to GST, an amount equal to that GST.

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## 6. Definitions and interpretation

### 6.1 Definitions

In this Instrument, unless a contrary intention appears:

**Activities** means all work, services, activities, functions, things and tasks which the Grantee or an Authorised User is, or may be, required to carry out or do to plan, investigate, design, construct, install, commission, test, accept, complete, maintain, operate and repair the Gateway and any Improvements within the Easement Site and any lands adjacent to the Easement Site.

**Airport Lease** means any "airport-lease" (as that term is defined in the Airports Act) from time to time in respect of any part of the Lot Burdened.

**Airport Lessee Company** means the airport-lessee company (as that term is defined in the Airports Act) for Sydney (Kingsford-Smith) Airport.

**Airports Act** means the *Airports Act 1996* (Cth).

**Approval** means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by any Law for the commencement, execution, completion, operation, or Repair of the Gateway (as applicable).

**Authorised User** means every person authorised by the Grantor or the Grantee for the purposes of an Easement created by this Instrument. Subject to the terms of an Easement, an Authorised User includes:

- (a) the tenants, lessees, sub-lessees, employees, agents, Contractors, licensees and invitees of the Grantor or the Grantee including, in the case of the Grantor, the Airport Lessee; and
- (b) where the Grantor or the Grantee is an Authority Benefitted, the officers, servants, agents and workmen of the Authority Benefitted to exercise its rights or comply with its obligations under this Instrument;

**Authorities** means the Commonwealth, the State of New South Wales, or any federal, state or local government administrative body, government body, department or agency or any body exercising any regulatory powers.

**Authority Benefitted** means the Authority having the benefit of an Easement under this Instrument set out in Part 1.

**Claim** includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Instrument;
- (b) arising out of, or in any way in connection with, the Gateway; or
- (c) otherwise arising 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.

**Commonwealth** means the Commonwealth of Australia.

**Contractor** means any employee, contractor, sub-contractor, sub-consultant or agent of the Grantee (including any employee or agent of the relevant contractor, sub-contractor, consultant or agent) who is engaged to perform the Activities, including through a public private partnership, licence, concession arrangement or other procurement or delivery model as advised by the Grantee from time to time.

**Easement** means the easements granted under this Instrument subject to the rights and obligation in this Instrument.

**Easement Obligation** means the provisions referred to in clauses [1.4, 1.5, and 2.] [Note: to be confirmed]

**Easement Right** means any easement or covenant right created under this Instrument.

**Easement Site** means the entire Lot Burdened.

**Equipment** includes tools, equipment, plant, implements, materials, machinery and vehicles.

**Gateway** means the Sydney Gateway project, a motorway-grade road connecting the St Peters Interchange via Sydney Airport to Airport Drive and Qantas Drive, developed as a result of the Activities.

**Gateway Party** means

(d) the Grantee; and

(e) each Contractor,

and (for the avoidance of doubt) does not include the Airport Lessee Company.

**Grantee** means Roads and Maritime Services (ABN 76 236 371 088) [and Transport for New South Wales, as applicable in Part 1].

**Grantor** means the owner of the Lot Burdened.

**Improvements** means all structures, erections, improvements, apparatus and fixtures constructed, erected or installed from time to time on, over, under or through the Easement Site necessary or appropriate for the Gateway.

**Instrument** means this instrument under section 88B of the *Conveyancing Act 1919* (NSW) and includes the Plan.

**Law** means:

(a) any statute, regulation, rule, proclamation, order, ordinance or by-laws whether present or future and whether Commonwealth, State, territorial or local; and

(b) the common law.

**Loss** includes:

(a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and

- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

**Lot Burdened** means the lot(s) burdened by the Easement or positive covenant in this Instrument.

**Plan** means deposited plan [##]

**[Completion Note: this Section 88B Instrument will be registered along with the plan of subdivision referred to in clause 5 of the Gateway Project Deed.]**

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Repairs** means repair, rectify, maintain, renovate, alter, renew, reinstate, replace test, examine, cleanse and relay (including preventative repair and maintenance).

**Roads Act** means the *Roads Act 1993* (NSW).

**Telco Cabling** means all structures, erections, improvements, apparatus, fixtures and Equipment necessary or appropriate for a telecommunications network including fibre optic cabling, broadband cabling and any other form of cabling or appropriate technology required for telecommunications transmission.

**Transport Administration Act** means the *Transport Administration Act 1988* (NSW).

**Utilities** means all services involving the transmission of water, gas, electricity, telephone, sewerage, drainage, security, monitoring, lighting, closed circuit television video and audio services, all services involving communications, Telco Cabling, air-conditioning, exhaust air, stormwater, mechanical ventilation, fire and emergency services, garbage removal and all other services of whatever kind as are or may be reasonably necessary from time to time.

## 6.2 General rules of interpretation

In this Instrument:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a body politic, a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes:
- (i) all ordinances, by-laws, rules, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) consolidations, amendments, re-enactments and replacements;

- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Instrument, and a reference to this Instrument includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) a reference to **time** is a reference to time in Sydney, Australia;
- (l) a reference to **information** includes 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; and
- (m) an obligation or a liability assumed by 2 or more persons binds them jointly and severally and a right conferred on 2 or more persons benefits them jointly and severally.

### **6.3 No *contra proferentem***

No rule of construction applies to the disadvantage of a party just because that party prepared this Instrument (or any part of this Instrument) or caused it to be prepared.

### **6.4 Provisions limiting or excluding liability**

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

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## **7. Release, variation and modification**

- (a) The Grantor and the Grantee may, by written agreement, release, vary or modify this Instrument.
- (b) The Grantee may not surrender the easement in clause 1, except to the extent otherwise agreed in writing by the Grantor and the Grantee.



## Schedule 8 - Concept Design

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### 1. Interpretation

#### 1.1 Definitions

The definitions contained in clause 1.1 of this Deed apply to this Schedule. In addition, in this Schedule:

**Airside Security Fencing** means fencing of a type specified by Sydney Airport, established to control access to an airside area, being an operational area of a security controlled airport.

**East Limit of Works - Stage 1** means the eastern limit of the Stage 1 Works as identified on Map 21.

**Enclosed Strip** means the area between the Gateway and to the northeast of the existing PBRL, as identified on Map 21.

**Enclosed Triangle** means the areas of land completely enclosed by Gateway, as identified on Map 21.

**HIAL** means high intensity approach lights.

**GTI** means the proposed Ground Transport Interchange to be developed by Sydney Airport in the areas shown on Map 21.

**JUHI** means the joint user hydrant installation.

**Map 21** means the map annexed at Annexure A to this Schedule 8. The parties agree that:

- (a) the numbered Items of Schedule 8 correspond to the items as numbered on Map 21;
- (b) Map 21 is not a detailed design or construction document; and
- (c) Map 21 is only to be used for the purpose of assisting in understanding this Schedule 8.

**New Airport Drive** means the inter-terminal link joining Terminal T1 and Terminal T2/T3 from just west of Link Road through to just east of Lancastrian Road, as identified on Map 21.

**North East Precinct** means the land to the south and east of Gateway and northeast of Boral Limited batch plant accessed from Burrows Road, as identified on Map 21.

**Northern Precinct** means the area of land enclosed by the Gateway and Alexandra Canal and to the south-west of the existing PBRL, as identified on Map 21.

**Northern Ponds Outlet** means the detention basin between Airport Drive and Alexandra Canal acting as a collection for surface water runoff prior to its release into the Alexandra Canal.

**Northern Ponds Outfall** means the location where surface water is released from Northern Ponds Outlet into Alexandra Canal.

**PBRL** means the Port Botany Rail Line.

**Primary Northern Access** means the primary approach from Terminal 1 Access through to Airport Drive allowing access to the Northern Precinct including towards northern Sydney Airport Land and West Bridge.

**Restricted Access Fencing** means fencing of a type specified by Sydney Airport, established to control the movement of people, vehicles and goods, to areas which adjoin an airside area.

**SPI** means the St Peters Interchange.

**Supergate** means the infrastructure which Sydney Airport may develop to serve as a security triage facility, suitable for semi-trailer and B-Double vehicles, for controlling movements between landside and airside.

**Supplementary Northern Access** means a secondary access from the non-motorway road network allowing access to the Northern Precinct from the North East Precinct, as identified on Map 21.

**Sydney Airport Land** means the land held by Sydney Airport under lease from the Commonwealth or as freehold land.

**Terminal 1 Access** means the road from SPI to Terminal T1 as far as just west of Link Road on Airport Drive as identified on Map 21.

**Terminal 2/3 Access** means the road from SPI to Terminal T2/T3 as far as just east of Lancastrian Road on Qantas Drive as identified on Map 21.

**West Bridge** means the crossing over Alexandra Canal which connects the Roundabout to existing Airport Drive and onwards to Link Road as identified on Map 21.

**West Limit of Works - Stage 1** means the western limit of the Airport Project Works as identified on Map 21.

**West Limit of Works - Stage 3** means the western limit of the Stage 3 Works as identified on Map 21 as Item 23 being East Limit of Works - Stage 1.

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## 2. General principles

The following general principles apply to all works:

- (a) Sydney Airport Ancillary Activities are to be designed, planned and delivered in conjunction with Airport Project Works design, Approvals and programme;
- (b) the design and construction of the Airport Project Works in respect of the road functionality of Sydney Airport's interior road network and the existing active transport routes within the Airport (**Existing Functions**) must minimise the impact on the Existing Functions, to the extent reasonably practicable, having regard to the purpose, scope and timing of the Airport Project Works;
- (c) subject to the relevant Licensed Areas for the Stage 1 Works being made available in accordance with Schedule 10 and traffic modelling conducted by RMS to determine suitable road configurations and throughput requirements for Stage 1 Works in accordance with RMS standards, the Stage 1 Works will include at a minimum:
  - (i) two lanes in each direction between:
    - A. SPI and the West Limit of Works - Stage 1;
    - B. SPI and the East Limit of Works - Stage 1; and
    - C. the West Limit of Works - Stage 1 and the point where New Airport Drive connects with Airport Drive/Qantas Drive; and
  - (ii) one lane in each direction between:

- A. the point where New Airport Drive connects with Airport Drive/Qantas Drive and the East Limit of Works - Stage 1; and
- (d) subject to the Licensed Areas being made available in accordance with Schedule 10, roads will be designed to RMS standards with the following posted speeds as a minimum:
  - (i) Terminal 1 Access - 70km/h;
  - (ii) Terminal 2/3 Access - 70km/h;
  - (iii) New Airport Drive - 60km/h;
  - (iv) the Stage 3A Works and the Stage 3D Works - 60km/h;
  - (v) Stage 3B ramp and Stage 3B viaduct - 60km/h; and
  - (vi) Stage 3C - 40km/h.

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### **3. Core Elements - Airport Project Works**

This clause 3 outlines the core elements of each of the Airport Project Works. The parties acknowledge and agree that further details of scope and design standards for the Airport Project Works are provided in clause 5.

#### **3.1 Stage 1 Works**

The scope of the Stage 1 Works comprises the following core elements:

- (a) Terminal 1 Access;
- (b) Terminal 2/3 Access;
- (c) New Airport Drive;
- (d) Primary Northern Access including West Bridge; and
- (e) Supplementary Northern Access.

#### **3.2 Stage 3A Works**

Stage 3A Works comprises the widening of Qantas Drive and Joyce Drive from just east of building 217 (as identified in Schedule 16) to just east of O'Riordan Street on Joyce Drive.

#### **3.3 Stage 3B Ramp Works**

Stage 3B Ramp Works comprises the up-ramp section of the eastbound elevated road from Qantas Drive towards Robey Street.

#### **3.4 Stage 3B Viaduct Works**

Stage 3B Viaduct Works comprises an eastbound viaduct section from the bridge abutment at the east end of the up-ramp through to where Sir Reginald Ansett Drive meets Qantas Drive and Joyce Drive.

#### **3.5 Stage 3C Works**

Stage 3C Works comprises:

- (a) any viaduct and ramp sections south of where Sir Reginald Ansett Drive meets Qantas Drive and Joyce Drive;
- (b) interface of the viaduct and ramp sections with the Terminal T2/T3 ground road network; and
- (c) the connection to the proposed GTI.

### **3.6 Stage 3D Works**

Stage 3D Works comprises the works required to link the Stage 3A Works to the Stage 1 Works being the widening of Qantas Drive from just east of Lancastrian Road to just east of building 217 (as identified in Schedule 16).

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## **4. Sydney Airport Ancillary Activities**

The Sydney Airport Ancillary Activities comprise those works described in the column entitled "Sydney Airport Ancillary Activities", together with any associated or incidental works necessary to facilitate the Airport Project Works and which are agreed in writing from time to time between Sydney Airport and RMS.

## 5. Key Principles

The parties agree that the following table details the functional requirements and specifications which are to be included in the design (including the reference design) of the Airport Project Works and Sydney Airport Ancillary Activities.

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p>1. West Limit of Works - Stage 1</p>	<p>Tie Terminal 1 Access into existing Airport Drive west of existing Link Road.</p>	<p>Any works required by Sydney Airport to the west of the West Limit of Works - Stage 1, including any works to extend or provide additional lanes on Cooks River Drive.</p>	<p>Scope includes:</p> <ul style="list-style-type: none"> <li>• four lanes each way on the main line Gateway approaches through to limit of Gateway works near the JUHI fuel tanks;</li> <li>• eastbound connecting from the existing three lanes, with a four lane configuration to accept the existing two lanes from Marsh Street and two lanes from Cooks River Drive;</li> <li>• westbound connecting to the existing four lanes; and</li> <li>• West Limit of Works - Stage 1 on Airport Drive is aligned with just west of footbridge over Alexandra Canal.</li> </ul> <p>The design or construction of Gateway will not include:</p> <ul style="list-style-type: none"> <li>• any works on T1 access ramps; or</li> <li>• any works on Giovanni Brunetti Bridge.</li> </ul>
<p>2. De-signalise Link Rd intersection in end state</p>	<p>De-signalise, in accordance with RMS processes, standards and procedures, the intersection of existing Link Road and Airport Drive.</p>	<p>All other reconfiguration as required by Sydney Airport to accommodate the Terminal T1 landside network.</p>	<p>Collaborate and cooperate, in accordance with this Deed, to develop construction staging arrangements to maintain existing functionality as a minimum (where practicable).</p>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>3.</b> Primary Northern Access</p> <p><b>3a.</b> Provide Primary Northern Access from Terminal 1 Access towards Sydney Airport Land.</p> <p><b>3b.</b> Connect Primary Northern Access through to northern Sydney Airport Land</p> <p><b>3c.</b> Connect Primary Northern Access through to existing Sydney Airport 'landside' operations</p>	<p>Signalise the intersection on Terminal 1 Access (all movements permitted).</p> <p>Provide connection including:</p> <ul style="list-style-type: none"> <li>• the roundabout as shown on Map 21 (<b>Roundabout</b>); and</li> <li>• approaches allowing access to northern Sydney Airport Land as shown on Map 21.</li> </ul> <p>If required by RMS, RMS may construct an access road suitable for construction purposes linking Primary Northern Access to Nigel Love Bridge, as shown on Map 21.</p> <p>Provide the West Bridge.</p> <p>Provide a clear crossing of desalination pipeline.</p> <p>Provide the road connecting the Roundabout to West Bridge.</p> <p>Tie into Airport Drive.</p> <p>Undertake any necessary temporary works to ensure simultaneous access into and out of Link Road is maintained at all times during</p>	<p>Nil.</p> <p>Additional works, if any, within northern Sydney Airport Land</p> <p>Provide any works on existing Airport Drive except as associated with West Bridge.</p>	<p>A minimum infrastructure of:</p> <ul style="list-style-type: none"> <li>• dual signalised right turn in and out;</li> <li>• dual signalised left out; and</li> <li>• single left turn in with deceleration.</li> </ul> <p>The design of the intersection to demonstrate, via modelling that each traffic signal cycle balances the full demand to the extent reasonably possible for each movement.</p> <p>Suitable for use by semi-trailer and B-Double.</p> <p>Roundabout configured for:</p> <ul style="list-style-type: none"> <li>• two-lane circulation;</li> <li>• 50km/h approach speed; and</li> <li>• suitable for use by semi-trailer and B-Double.</li> </ul> <p>Two lanes each way to and from new West Bridge and the northern Sydney Airport Land.</p> <p>Lane configuration to be two lanes each way.</p> <p>West Bridge to include on one side only a 3.0m shared path for pedestrian/cyclist use accessible from either canal-side or roundabout.</p> <p>Subject to clause 6.1(b)(i)(D) of the Deed.</p> <p>West Bridge and connections to Airport Drive to be configured for:</p> <ul style="list-style-type: none"> <li>• shortest span possible;</li> <li>• two lanes in each direction;</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
	construction, except as otherwise agreed.		<ul style="list-style-type: none"> <li>• use of Sydney Airport Land to the south of existing Airport Drive where necessary, subject to future discussion and agreement;</li> <li>• 30 km/h design speed; and</li> <li>• suitable for use by semi-trailer and B-Double.</li> </ul> <p>Subject to clause 6.1(b)(i)(D) of the Deed, clearance to any structures and prescribed airspace as defined in the <i>Airports (Protection of Airspace) Regulations 1996</i> (Cth) subject to available geometry shall be:</p> <ul style="list-style-type: none"> <li>• target 4.8m</li> <li>• minimum 4.6m</li> </ul> <p>West Bridge to be suitable for supporting both road and future utility infrastructure (where such utilities will be Sydney Airport's responsibility) comprising:</p> <ul style="list-style-type: none"> <li>• gas;</li> <li>• water;</li> <li>• communications;</li> <li>• sewerage pipes (to a maximum pipe diameter of 300 mm);</li> <li>• recycled water (to a maximum pipe diameter of 100 mm);</li> <li>• electricity (high voltage and low voltage); and</li> <li>• fuel (to a maximum pipe diameter of 300 mm).</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p>4. Primary Northern Access - property rights and obligations post-construction</p>	<p>RMS will be responsible for new assets being:</p> <ul style="list-style-type: none"> <li>• a signalised intersection connecting Terminal 1 Access with access road to the Roundabout;</li> <li>• the Roundabout;</li> <li>• access road towards the boundary of Sydney Airport Land; and</li> <li>• access road towards West Bridge to a point 10m from the perimeter of Roundabout.</li> </ul> <p>RMS' responsibility in respect of the new assets described above includes to own, operate and maintain.</p> <p>Operation and maintenance will be in accordance with the Integration Deed.</p> <p>Subject to any maintenance requirements, RMS will keep open the road into Sydney Airport Land at all reasonable times for vehicle access.</p>	<p>Sydney Airport will be responsible for new assets being:</p> <ul style="list-style-type: none"> <li>• access road towards West Bridge from an interface point 10m from the perimeter of the Roundabout;</li> <li>• the West Bridge;</li> <li>• the tie in to existing Airport Drive.</li> </ul> <p>Sydney Airport's responsibility in respect of the new assets described above includes to own (subject to any easement arrangements), operate and maintain such assets.</p> <p>Operation and maintenance will be in accordance with the Integration Deed.</p> <p>Sydney Airport will keep open the shared path on West Bridge to the extent that it forms a part of a public active transport network referred to in Item 22 of this Schedule 8.</p>	
<p>5. Road Closure Area</p>	<p>Nil.</p>	<p>Nil.</p>	<p>Airport Drive will be closed to public traffic as acknowledged in clause 9(a)(i) of this Deed. Extents of the closure:</p> <ul style="list-style-type: none"> <li>• to the west, to the West Limit of Works - Stage 1; and</li> <li>• to the east, to the eastern limit of the Easement Site.</li> </ul>



Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p>6. Constructi on access from Bellevue Street</p>	<p>Carry out any works required to make suitable for construction access.</p>	<p>Provide support to statutory planning proposal to enable access under conditions acceptable to RMS.</p>	<p>The purpose of item 6 is to allow for construction phase access from the public road network through to construction areas within Sydney Airport Land.</p> <p>No allowance for any long-term use by Sydney Airport.</p>
<p>7. Provide Suppleme ntary Northern Access allowing a link from Burrows Road precinct to Northern Precinct</p>	<p>Design and construct a road connection between three parcels of Sydney Airport Land being the:</p> <ul style="list-style-type: none"> <li>• North East Precinct;</li> <li>• Enclosed Strip; and</li> <li>• Northern Precinct.</li> </ul> <p>Scope to include provision of throw screens on relevant elevated structures.</p> <p>Design is not to preclude later addition of airside security fencing by Sydney Airport.</p>	<p>Provide any additional works necessary to connect to private road network within Sydney Airport Land.</p> <p>Own (subject to any easement arrangements), maintain and operate the Supplementary Northern Access link road.</p> <p>Operation and maintenance will be in accordance with the Integration Deed.</p>	<p>Suitable for semi-trailer and B-Double with clearance to structures, and prescribed airspace as defined in the <i>Airports (Protection of Airspace) Regulations 1996 (Cth)</i> subject to available geometry:</p> <ul style="list-style-type: none"> <li>• target 4.6m</li> <li>• minimum 4.3m</li> </ul> <p>Single lane each way including safe pedestrian access.</p> <p>Configured as a road over rail without adjustment to the PBRL vertical or horizontal alignment.</p> <p>For use as a private road.</p> <p>Extents of the Supplementary Northern Access are:</p> <ul style="list-style-type: none"> <li>• to the east, to match existing levels at first feasible landfall within Sydney Airport Land; and</li> <li>• to the west, to first feasible landfall within Sydney Airport Land as distinct from public land.</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>8.</b> Remnant Land</p> <p><b>8a.</b> For Sydney Airport</p> <p><b>8b.</b> For RMS</p>	<p>Subject to this Deed, RMS retains Enclosed Triangle.</p>	<p>Subject to this Deed, Sydney Airport retains North East Precinct and Enclosed Strip.</p>	<p>Subject to additional requirements for drainage, other ancillary design elements and utility services. Refer to Item 15.</p> <p>During the design process, RMS to explore further boundary adjustments to allow for additional commercial development by Sydney Airport, without detriment to the primary purpose of ensuring high-quality urban design outcomes and functionality of road operations including drainage.</p>
<p><b>9.</b> Supergate enablement on Northern Precinct</p>	<p>Nil temporary or permanent works.</p>	<p>Secure all approvals and carry out all Supergate physical works including design.</p>	<p>Refer to Item 3(c).</p>
<p><b>10.</b> Maximise usable area of North East Precinct and Enclosed Strip</p>	<p>Where reasonable to do so and subject to design, construction, and maintenance requirements, vertical walls or structures will be used so as to maximise residual land areas.</p>	<p>Nil.</p>	
<p><b>11.</b> Access to Ausgrid substation</p>	<p>Provide driveway access to match existing functionality by Ausgrid to the zone substation (<b>AZS</b>) adjacent to the Northern Ponds Outlet for maintenance and potential future upgrade having regard to the scope and timing of the Airport Project Works.</p>	<p>Nil</p>	

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>12.</b> Access from the southeast into Enclosed Strip</p>	<p>Accommodate in the design and construction of the Terminal 2/3 Access a configuration of sub-structure and any associated drainage works which allows future vehicular access by Sydney Airport from Sydney Airport Land south of Alexandra Canal into Enclosed Strip and to North East Precinct along the existing land alongside PBRL.</p> <p>No physical works.</p>	<p>Following completion of construction of the Gateway, Sydney Airport is responsible for any design and construction of vehicle access from the southeast into the Enclosed Strip including, to the extent, necessary re-configuration of as-built Gateway drainage works without loss of performance of drainage system.</p>	<p>Designs are to provide at least 4.3 m clearance to the extent reasonably possible from ground level or any drainage structure to the underside of the Gateway overbridge to allow, for the full extent, future vehicular access.</p>
<p><b>13.</b> Easements</p> <p><b>13a.</b> Easement over PBRL and Gateway connecting the airside area of the airport towards north of Alexandra Canal</p> <p><b>13b.</b> Easement over Alexandra Canal to allow future road access to North East Precinct</p> <p><b>13c.</b> Easement over PBRL for the Supplementary Northern Access</p>	<p>No physical works.</p> <p>No physical works.</p> <p>No physical works.</p>	<p>Nil.</p> <p>Nil.</p> <p>Nil.</p>	<p>Refer to clause 4(e) of this Deed for relevant easements and property rights.</p> <p>Refer to clause 4(e) of this Deed for relevant easements and property rights.</p> <p>Refer to clause 4(e) of this Deed for relevant easements and property rights.</p>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<b>13d.</b> Easement for West Bridge	No physical works.	Nil.	Refer to clause 4(e) of this Deed for relevant easements and property rights.
<b>14.</b> Not used	Not used.	Not used.	Not used.
<b>15.</b> Allow for drainage to Alexandra Canal	<p>Provide physical trunk infrastructure as required for drainage of Enclosed Triangle and North East Precinct and the Gateway through to Alexandra Canal.</p> <p>Provide gross pollutant traps.</p>	<p>Provide any development plans for North East Precinct to RMS for consideration.</p> <p>Such development plans must be provided to RMS allowing sufficient time to be assessed during the design development process.</p>	Develop drainage design and construction to permit foundation structures for future road access which shall be one lane each way to North East Precinct.

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p>16. Restricted Access Fencing and Airside Security Fencing</p>	<p>Nil.</p>	<p>Where necessary to ensure continuity of existing standards of security for Airport areas directly affected by the Gateway, in preparation for construction of the Gateway and by the Licence Commencement Date in respect of each Licensed Area as set out in Schedule 10 of this Deed, unless otherwise noted in Schedule 10, relocate the Restricted Access Fencing and Airside Security Fencing (including associated works) while maintaining existing functionality.</p> <p>After handback of each Licensed Area, relocate Airside Security Fencing, Restricted Access Fencing and any associated works, while maintaining existing functionality.</p>	<p>Fencing works can be carried out by RMS where requested by RMS and agreed by Sydney Airport.</p>
<p>17. <i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>
<p>17a. <i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>
<p>17b. <i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>
<p>17c. <i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>	<p><i>[Not Disclosed]</i></p>
<p>18. Utilities adjustments and relocation</p>	<p>Include in designs for the Airport Project Works a corridor (within the "Indicative Maintenance Licence Site"</p>	<p>Provide a corridor within the "Indicative Maintenance Licence Site" (where</p>	<p>The allocation of responsibilities under this Item 18 remains subject to clause 11 of this Deed.</p>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p>within Sydney Airport Land</p>	<p>consistent with, where possible, the diagram contained in Schedule 6 of this Deed) to be available under licence for immediate and future Utilities and Services by RMS and Sydney Airport or a third party.</p>	<p>such sites are to be licensed to RMS by Sydney Airport under the Integration Deed) as identified by RMS to be available for immediate and future Utilities and Services by RMS, Sydney Airport or a third party.</p> <p>Where Sydney Airport has plans for works within Sydney Airport Land on land required for the Gateway and where such works are planned for commencement prior to the completion of the Gateway, Sydney Airport will be responsible for Utilities and Services adjustment and protection associated with that work including costs.</p> <p>Sydney Airport may construct any additional required Utilities and Services within the corridor identified by RMS.</p>	<p>Refer to the Indicative Maintenance Licence Site.</p>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>19.</b> Ensure maintenance access</p>	<p>Identify temporary and permanent land access requirements for "Indicative Maintenance Licence Sites" as identified in Schedule 6 permitting future maintenance comprising:</p> <ul style="list-style-type: none"> <li>• 6m outside permanent works as right-of-way where adjacent to non-airside land;</li> <li>• 3m between permanent works and ultimate fenced perimeter to permanent works within road reserve where adjacent to airside land; and</li> <li>• right of way access for maintenance vehicles through to and underneath elevated structures.</li> </ul>	<p>Provide adequate long-term access to "Indicative Maintenance Licence Sites" as identified in Schedule 6 in accordance with the Integration Deed on agreed terms to allow maintenance access by RMS from within Sydney Airport Land - both airside and landside.</p> <p>Maintain land within "Indicative Maintenance Licence Sites".</p> <p>Maintain rights of way for access to "Indicative Maintenance Licence Sites".</p>	<p>Sydney Airport and RMS to jointly optimise, by minimising to the extent reasonably possible but without detriment to functionality, the land required for Indicative Maintenance Licence Sites.</p> <p>RMS and Sydney Airport to coordinate and cooperate in recognising needs for access to "Indicative Maintenance Licence Sites" and then documenting and managing those "Indicative Maintenance Licence Sites" and access points in accordance with the Integration Deed.</p>
<p><b>20.</b> Modify access to Lancasterian Road</p>	<p>Subject to the provision of access to the Licensed Areas 12A, 12B and 14, RMS will carry out any works on Lancasterian Road necessary to facilitate a safe left-in-left-out from the configuration of Qantas Drive required for the Gateway.</p>	<p>Develop any works beyond those necessary to facilitate the left-in-left-out configuration.</p>	
<p><b>21.</b> Ensure compliance with aviation safety systems</p>	<p>Develop a design for the Airport Project Works consistent with any required modification of the aviation systems affected by the Gateway (as notified to RMS by Sydney Airport under clause 6.1(h) of this Deed).</p>	<p>Carry out the design and construction work to re-configure aviation systems and associated structures as required under this Item 21.</p>	<p>In accordance with this Deed (including Schedule 15), RMS and Sydney Airport will cooperate to ensure that construction programs for the Gateway and aviation systems preserve operational safety at the Airport.</p> <p>Sydney Airport to coordinate and cooperate with RMS to schedule airport operations to the extent reasonably possible to permit efficient construction of the Gateway and aviation systems.</p>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>22.</b> Provide active transport route.</p>	<p>Re-route existing shared path from current alignment along the south side of Alexandra Canal.</p>	<p>Nil.</p>	<p>Subject to Approvals, provide an active transport route to match at least existing connectivity as at the date of this Deed.</p> <p>Use reasonable endeavours to ensure an active transport route is continuously available during construction.</p>
<p><b>23.</b> Limits of Stages 1 and 3</p> <p><b>23a.</b> East limit of works: Stage 1 Works</p> <p><b>23b.</b> West limit of Works - Stage 3</p>	<p>Tie in Stage 1 Works to the existing Qantas Drive up to and including the interface with and just east of Lancastrian Road auxiliary left-turn entry lane.</p> <p>The west limit of the Stage 3 Works will be east of the Lancastrian Road auxiliary left-turn entry lane.</p>	<p>Within 60 days of the date of this Deed, Sydney Airport is to provide available relevant details of future aviation plans in respect of jet base areas and areas adjacent to Airport Drive and Qantas Drive.</p> <p>Nil.</p>	<p>Design of Airport Project Works to minimise impact on Sydney Airport Land west of Lancastrian Road with regard to future aviation plans where such plans are notified to RMS by Sydney Airport within 60 days of the date of this Deed.</p> <p>All elements of the Lancastrian Road intersection will be contained in Stage 1 Works.</p>
<p><b>24.</b> Stage 3 Works</p> <p><b>24a.</b> Stage 3A Works</p>	<p>In accordance with clause 6 of this Deed, prepare a reference design for the entire Stage 3 Works including for all grade separated works, and including ramp and viaduct structures connecting Qantas Drive to interface points within the Terminal T2/T3 ground transportation network including the GTI.</p> <p>In accordance with clause 6 of this Deed and consistent with the reference design, carry out a detailed design of the</p>	<p>Prior to commencement by RMS of the reference design, provide all necessary details of interface points within the Terminal T2/T3 ground transportation network, GTI and jet base development plans to which the viaduct must integrate.</p>	<p>The reference design shall:</p> <ul style="list-style-type: none"> <li>• minimise to the extent reasonably possible, while remaining consistent with this Deed and while maintaining functionality, the land permanently required from Sydney Airport for Gateway;</li> <li>• avoid any alterations to the existing Qantas Catering Bridge;</li> <li>• maintain the southern kerb alignment of existing road between O’Riordan Street and Robey Street; and</li> </ul>



Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
	<p>following elements sufficient to allow the construction of the Stage 3 Works:</p> <ul style="list-style-type: none"> <li>Utilities re-location and/or protection including where necessary to support Stage 3B.</li> </ul> <p>Consistent with the reference design, carry out detailed design of the Stage 3A Works and Stage 3D Works along Qantas Drive from the interface with the Stage 1 Works just east of Lancastrian Road up to and including an interface point just east of the intersection of O’Riordan Street with Joyce Drive.</p> <p>Consistent with the detailed design of the Stage 3A Works and the Stage 3D Works, construct the Stage 3A Works between nominated extents.</p> <p>Scope of works to include:</p> <ul style="list-style-type: none"> <li>enabling and preliminary works as required by RMS;</li> <li>temporary road widening;</li> <li>sub-grade and earthworks suitable for the construction of the Stage 3B Ramp Works;</li> <li>all other works required for construction of the Stage 3A Works;</li> <li>temporary operational arrangements or works as required for a staged opening;</li> <li>make good the ground surface areas of the Stage 3 Works following the completion of the Stage 3B Viaduct Works including mill and re-sheet;</li> <li>appropriate protection of the Qantas Catering Bridge piers and bridge soffit;</li> <li>finishing works including landscaping; and</li> </ul>		<ul style="list-style-type: none"> <li>reflect the principles of the adopted urban design for Gateway.</li> </ul> <p>The reference design shall provide eastbound lane configuration to allow:</p> <ul style="list-style-type: none"> <li>three lanes just east of the Qantas Catering Bridge;</li> <li>left two lanes straight through to Joyce Dr at grade;</li> <li>right lane diverging to two lanes at-grade on approach to up-ramp to the elevated viaduct;</li> <li>either a free-flow left turn lane or a three-lane signalised left turn from Qantas Drive to Robey Street, subject to RMS’ standards and processes in respect to capacity, safety and design optimisation; and</li> <li>three through lanes between Robey Street and O’Riordan Street.</li> </ul> <p>The reference design shall provide a westbound lane configuration to allow:</p> <ul style="list-style-type: none"> <li>three through lanes at the intersection of O’Riordan Street and Qantas Drive;</li> <li>three through lanes on Qantas Drive between O’Riordan Street and Robey Street;</li> <li>merge three lanes to two lanes on Qantas Drive through movement from the Robey Street intersection;</li> <li>two free flow outward left turn lanes from Seventh Street merging into one added lane to join with the main westbound carriageway;</li> <li>three lanes just east of the Qantas Catering Bridge; and</li> <li>subject to the provision of access to the relevant Licensed Areas, outbound from Seventh Street, two lanes for each of the through movements to Robey Street and the right turn to the east.</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>24b. Stage 3B Ramp Works</b></p>	<ul style="list-style-type: none"> <li>• Service and Utilities diversions in accordance with the Deed.</li> </ul> <p>Scope of works to exclude:</p> <ul style="list-style-type: none"> <li>• any additional capacity improvement within Seventh Street.</li> </ul> <p>In accordance with clause 6 of this Deed and consistent with the reference design and the detailed design of the Stage 3A Works and Stage 3D Works, carry out a detailed design of the Stage 3B Ramp Works being the eastbound up-ramp section of the elevated road from Qantas Drive towards Sydney Airport up to the commencement of the Stage 3B Viaduct Works.</p> <p>Consistent with the Stage 3B Ramp Works detailed design, construct the Stage 3B Ramp Works between nominated extents.</p> <p>Scope of works to include:</p> <ul style="list-style-type: none"> <li>• enabling and preliminary works as required by RMS;</li> <li>• temporary road widening;</li> <li>• temporary operational arrangements and works as required for a staged opening;</li> <li>• retaining walls;</li> <li>• road sub-grade;</li> <li>• road barriers;</li> <li>• abutment bridge piles; and</li> <li>• any other works required to deliver Stage 3B Ramp scope which are agreed in</li> </ul>	<p>Nil</p>	<p>The reference design shall provide the functionality described under the Stage 3C Works, Stage 3B Viaduct Works and the Terminal T2/T3 pedestrian routes below.</p> <p>Extents of the Stage 3A Works:</p> <ul style="list-style-type: none"> <li>• to the west, to an interface point just east of building 217 (as identified in Schedule 16 of this Deed); and</li> <li>• to the east, to an interface point just east of the intersection of O’Riordan Street and Joy Drive.</li> </ul> <p>Extents of the Stage 3B Ramp Works:</p> <ul style="list-style-type: none"> <li>• to the west, rising from a suitable interface point on Qantas Drive, allowing for design grades, constructability requirements, land availability and traffic operations; and</li> <li>• to the east, ending in an abutment wall at a suitable interface point just west of Robey Street located so as to allow for flood management, constructability requirements and traffic operations.</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>24c. Stage 3B Viaduct Works</b></p>	<p>writing between Sydney Airport and RMS).</p> <p>Scope of works to exclude:</p> <ul style="list-style-type: none"> <li>• viaduct abutment sill beam;</li> <li>• elevated viaduct;</li> <li>• finishing pavement; and</li> <li>• road lighting.</li> </ul> <p>In accordance with clause 6 of this Deed, and consistent with the reference design, prepare a detailed design of the Stage 3B Viaduct Works and the Stage 3C Works being the grade separated elevated viaduct.</p> <p>Consistent with the 3B Viaduct Works detailed design, construct the elevated viaduct between the nominated extents.</p> <p>Scope of works to include:</p> <ul style="list-style-type: none"> <li>• enabling and preliminary works as required by RMS;</li> <li>• temporary road widening;</li> <li>• temporary operational arrangements and works as required for a staged opening;</li> <li>• sill beam at east end of up-ramp;</li> <li>• elevated bridge structure including foundations, piers and headstocks;</li> <li>• road and traffic crash barriers;</li> <li>• lighting for the Stage 3B Ramp Works, Stage 3B Viaduct Works and Stage 3C Works;</li> <li>• finishing pavement and line marking for the viaduct;</li> <li>• noise barriers in accordance with RMS standards</li> <li>• traffic signage and wayfinding;</li> <li>• architectural treatments as required to meet planning requirements;</li> </ul>	<p>Nil.</p>	<p>The reference design of the entire viaduct structure shall:</p> <ul style="list-style-type: none"> <li>• connect to the two lanes of the Stage 3B Ramp Works;</li> <li>• connect to existing ground level access to the Arrivals area of Terminal T2/T3;</li> <li>• connect to existing ground level access to the Departures area of Terminal T2/T3;</li> <li>• connect to proposed GTI;</li> <li>• accommodate semi-trailer and 14.5m bus vehicles with a height clearance of 4.8m;</li> <li>• minimise to the extent reasonably practicable the existing non-road land permanently required from Sydney Airport for the Gateway;</li> <li>• avoid any alterations to the area currently leased by AMG as notified to RMS within 30 days of the date of this Deed;</li> <li>• accommodate future two-lane vehicle movements on the GTI viaduct connection;</li> <li>• accommodate future two-lane vehicle movements on the Departures road ramp; and</li> <li>• accommodate changes in traffic lane marking to allow either: <ul style="list-style-type: none"> <li>○ through lane priority to the Arrivals and Departures areas of Terminal T2/T3 and diverge movement to the GTI; or</li> <li>○ through lane priority to the Departures area of the</li> </ul> </li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>24d. Stage 3C Works</b></p>	<ul style="list-style-type: none"> <li>• stormwater and services to bridge structure; and</li> <li>• any other works required to deliver Stage 3B Viaduct scope which are agreed between Sydney Airport and RMS.</li> </ul> <p>In accordance with clause 6 of this Deed and consistent with the Stage 3C Works detailed design, construct the elevated viaduct and ramps between the nominated extents.</p> <p>Scope of works to include:</p> <ul style="list-style-type: none"> <li>• temporary road widening;</li> <li>• enabling and preliminary works;</li> <li>• utilities re-location and/or protection.</li> <li>• elevated bridge structure including foundations and sub-structure;</li> <li>• retaining walls;</li> <li>• road sub-grade;</li> <li>• connection to GTI;</li> <li>• road and traffic crash barriers;</li> <li>• signage;</li> <li>• road pavement and line marking;</li> <li>• road lighting;</li> <li>• noise barriers in accordance with RMS standards;</li> <li>• any other works required to deliver Stage 3C scope;</li> <li>• traffic signage and wayfinding;</li> <li>• architectural treatments as required to meet planning requirements; and</li> <li>• stormwater and services to bridge structure.</li> </ul>	<p>Nil.</p>	<p>Terminal T2/T3 and GTI, with diverge to the Arrivals areas of Terminal T2/T3.</p> <p>Extents of the Stage 3B Viaduct Works:</p> <ul style="list-style-type: none"> <li>• to the west, ending in a sill beam integrated into the abutment wall at a suitable interface point just west of Robey Street; and</li> <li>• to the east, to a limit of works where Sir Reginald Ansett Drive meets Qantas Drive / Joyce Drive.</li> </ul> <p>Extents of the Stage 3C Works:</p> <ul style="list-style-type: none"> <li>• to the northwest to a limit of works where Sir Reginald Ansett Drive meets Qantas Drive / Joyce Drive; and</li> <li>• to the south to connect to existing Arrivals and Departures approaches and to the future GTI.</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
24e. Stage 3D Works	In accordance with clause 6 of this Deed and consistent with the Stage 3A Works and Stage 3D Works detailed designs construct the Stage 3D Works along Qantas Drive between nominated extents.	Nil	<p>Extents of the Stage 3D Works:</p> <ul style="list-style-type: none"> <li>• to the west, to link to the Stage 1 Works at an interface point just east of Lancastrian Road; and</li> <li>• to the east, to link with the Stage 3A Works at an interface point just east of building 217 (as identified in Schedule 16 of this Deed).</li> </ul>
25. T2/T3 pedestrian routes	<p>Connect the following two intersections to existing shared path routes to a limit of works just north of PBRL:</p> <ul style="list-style-type: none"> <li>• O’Riordan Street, Qantas Drive and Sir Reginald Ansett Drive; and</li> <li>• Seventh Street, Qantas Drive and Robey Street.</li> </ul>	Provide pedestrian routes or shared path on the southern side of Qantas Drive between Robey Street and O’Riordan Street.	<p>Develop the reference design to:</p> <ul style="list-style-type: none"> <li>• except as noted below, maintain existing shared path movements at the intersections of: <ul style="list-style-type: none"> <li>○ O’Riordan Street, Qantas Drive, Sir Reginald Ansett Drive and;</li> <li>○ Seventh Street, Qantas Drive and Robey Street; and</li> </ul> </li> <li>• maintain shared path access on the eastern side of Sir Reginald Ansett Drive or as otherwise required to meet statutory planning consent conditions.</li> </ul>

Item and Description	Airport Project Works	Sydney Airport Ancillary Activities	Comments and Standards
<p><b>26.</b> Preserve stormwater retention systems</p>	<p>Construct works to ensure no net increase in afflux levels within Northern Ponds Outfall.</p>	<p>Within 60 days of the date of this Deed, provide to RMS flood modelling data associated and operational agreements associated with the existing stormwater retention system and the Northern Ponds Outfall to Alexandra Canal and the Northern Ponds Outlet.</p>	<p>Sydney Airport may provide to RMS plans, concept designs or details of arrangements regarding physical or operational modifications to the Northern Ponds Outfall and Northern Ponds Outlet within 60 days after the date of this Deed.</p> <p>Where Sydney Airport provides the plans, concept designs or details of arrangements within 60 days after the date of this Deed, RMS will use reasonable endeavours to design the Airport Project Works consistent with those plans, concept designs or details of arrangements.</p> <p>The parties acknowledge that conditions may be imposed on RMS regarding water quality and water quality measures in respect of run-off entering Sydney Airport Land.</p>

**Annexure A - Map 21**

*[Not Disclosed]*

**Schedule 9 - Submission Program**

*[Not Disclosed]*



**Schedule 10 - Licensed Area Access and Tenure Schedule**

*[Not Disclosed]*

**Schedule 11 - Due Diligence Materials Index**

*[Not Disclosed]*

**Schedule 12 - Not Used**

## Schedule 13 – T2/T3 Funded Works

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### 1. Background

The parties agree:

- (a) that the T2/T3 Funded Works are intended to satisfy, at a minimum, the traffic demand forecasts for Sydney Airport for 2029, as forecast by the Traffic Modelling Guidelines effective at the date of this Deed;
- (b) that given the joint approach to funding the works as set out in this Schedule 13, the parties will undertake a joint procurement process for the purposes of determining a fixed price or guaranteed maximum price for the undertaking of the each stage of works of the T2/T3 Funded Works in accordance with clause 2 of this Schedule 13; and
- (c) to fund the delivery of the T2/T3 Funded Works in accordance with clause 3 of this Schedule 13.

### 1.2 Definitions

Subject to definitions under clause 1.1 of this Deed, definitions in this Schedule 13 will apply unless a contrary intention appears:

**Benchmark Solution** means a preferred tender:

- (a) which provides for completion of relevant works so as to allow for Completion of the T2/T3 Funded Works to be achieved in accordance with the Project Program (as defined in Schedule 2) and the relevant D&C Program and in accordance with clause 14.3 of this Deed; and
- (b) containing a fixed price or guaranteed maximum price for the undertaking of a relevant stage of the T2/T3 Funded Works, or any stage of works comprising part of the T2/T3 Funded Works.

**D&C Procurement Objectives** means the objectives set out in clause 2.1(b)(i) of this Schedule 13.

**D&C Procurement Plan** has the meaning given in clause 2.1(b)(ii) of this Schedule 13.

**D&C Procurement Process** means the process for the obtaining a Benchmark Solution as contemplated under clause 2 of this Schedule 13.

**Net Costs** has the meaning contained in clause 3.4 of this Schedule 13.

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## 2. D&C Procurement Process

### 2.1 D&C Procurement Plan

- (a) RMS and Sydney Airport agree that given the funding model proposed for the T2/T3 Funded Works, each party has an interest in how each Building Contract for the T2/T3 Funded Works will be procured. For the avoidance of doubt, this clause 2 of Schedule 13 only applies to the undertaking of the T2/T3 Funded Works.
- (b) The parties agree that:

- (i) the D&C Procurement Process for the stages of the T2/T3 Funded Works must be conducted in accordance with the following objectives (**D&C Procurement Objectives**):
- A. to achieve value for money outcomes;
  - B. to ensure competition between tenderers; and
  - C. to:
    - 1) identify a Benchmark Solution; and
    - 2) enable the delivery of the T2/T3 Funded Works in accordance with this Deed;
- (ii) within 120 Business Days of the date of this Deed, RMS will prepare a plan (**D&C Procurement Plan**) which:
- A. sets out the procurement processes to obtain a Benchmark Solution for each stage of the T2/T3 Funded Works;
  - B. details a communication process so as to allow for RMS and Sydney Airport to have:
    - 1) full visibility of the D&C Procurement Process; and
    - 2) input into, and participate in, the D&C Procurement Process,
 for each stage of the T2/T3 Funded Works;
  - C. sets out a timetable for the conduct of the D&C Procurement Process (**D&C Procurement Timetable**);
  - D. sets out the processes and milestones for the development of tender documentation, including for the review, consideration and finalisation of the contracts for the undertaking of the T2/T3 Funded Works;
  - E. without limiting clause 6.1(b)(i) of this Deed, details the relevant Design Documentation that will be utilised for the purposes of the procurement of any and all Building Contractors for the T2/T3 Funded Works; and
  - F. contains details of the evaluation processes for tenders to be undertaken (including the approach to be taken in relation to assess cost, risk allocation and technical ability).
- (iii) within 20 Business Days of receiving the draft D&C Procurement Plan, Sydney Airport must issue a notice to RMS:
- A. approving the D&C Procurement Plan if Sydney Airport considers (acting reasonably) the D&C Procurement Plan is in accordance with the D&C Procurement Objectives; or
  - B. identifying the reasons for not providing approval of the D&C Procurement Plan.

If Sydney Airport does not approve the D&C Procurement Plan under this clause 2.1(b)(iii) of this Schedule 13, then RMS will use reasonable

endeavours to amend the draft D&C Procurement Plan within 15 Business Days of such rejection to address the reasons referred to in clause 2.1(b)(iii)B of this Schedule 13 and will then resubmit the D&C Procurement Plan to Sydney Airport, and this clause 2.1(b)(iii) of this Schedule 13 will apply;

- (iv) where a D&C Procurement Plan submitted to Sydney Airport under clause 2.1(b)(iii) of this Schedule 13 is rejected by Sydney Airport for a second time, then:
  - A. either party may refer the matter for dispute resolution under clause 25 of this Deed; but
  - B. the D&C Procurement Process will be undertaken in accordance with the D&C Procurement Plan resubmitted under clause 2.1(b)(iii) of this Schedule 13 until such time as the plan is changed as a result of the resolution of the dispute under clause 25 of this Deed; and
- (v) they will comply with the D&C Procurement Plan approved under clause 2.1(b)(iii) of this Schedule 13 or applied under clause 2.1(b)(iv)B of this Schedule 13 and neither party may materially amend or depart from that D&C Procurement Plan without the prior consent of the other party.

## **2.2 Timing of procurement**

The parties agree that they must use all reasonable endeavours to ensure that this D&C Procurement will be undertaken so that tender processes for the T2/T3 Funded Works and the remaining Airport Project Works are to the extent practicable undertaken at or about the same time and to the same delivery program.

## **2.3 Sydney Airport participation**

- (a) RMS must:
  - (i) keep Sydney Airport fully informed in relation to the development of the Building Contracts through the Project Control Group for the purposes of ensuring that those Building Contracts are consistent with clause 14.3 of this Deed; and
  - (ii) for the purposes of ensuring that the Building Contract for the T2/T3 Funded Works is consistent with the requirements of this Schedule 13, permit a representative of Sydney Airport to attend all RMS assessment meetings and contractor workshops in relation to the procurement of the Building Contract for the T2/T3 Funded Works.
- (b) RMS must provide copies of the following documents to Sydney Airport for the purposes described in clause 2.4(b) of this Schedule 13:
  - (i) the tender version of the Building Contracts for the T2/T3 Funded Works at least 20 Business Days prior to the issue of those documents to tenderers; and
  - (ii) the execution version of the Building Contracts for the T2/T3 Funded Works at least 10 Business Days prior to the execution of those documents by the relevant Building Contract.
- (c) RMS must obtain the approval of Sydney Airport (acting reasonably) in relation to the requirement for the Building Contractor in relation to the T2/T3 Funded Works to provide the Builder's Side Deed, where such Side Deed will include an obligation

that the Building Contractor comply with its obligations under the Building Contracts for the T2/T3 Funded Works.

## 2.4 Building Contract for the T2/T3 Funded Works

- (a) The parties agree that the Building Contract for the T2/T3 Funded Works must include the following:
- (i) the issue of a termination notice by the principal will require the approval of both Sydney Airport and RMS (each acting reasonably);
  - (ii) any proposed variations to Design Documentation which has been produced for the T2/T3 Funded Works will require both RMS and Sydney Airport to agree on such variations and where RMS and Sydney Airport cannot agree, referral of the matter in accordance with the dispute resolution procedure set out in clause 25 of this Deed;
  - (iii) the Independent Verifier will be appointed for the purposes of determining progress payment claims, claims for extensions of time, completion and other usual matters under the Building Contract;
  - (iv) RMS and Sydney Airport will both receive an irrevocable licence to use intellectual property created by the Building Contractor; and
  - (v) insurance provisions which are not inconsistent with clause 12 of this Deed.
- (b) RMS must not:
- (i) amend or agree any variations under the Building Contract for the T2/T3 Funded Works in respect of the requirement to undertake works consistent with the reference design for the T2/T3 Funded Works as contained in the Building Contract as at the date of its execution;
  - (ii) waive its rights under the Building Contract:
    - A. in respect of compliance with the reference design for the T2/T3 Funded Works; or
    - B. in respect of the requirement for the Building Contractor to execute the Builder's Side Deed; or
  - (iii) permit the Building Contractor to assign or novate the Building Contract, in a manner which materially affects the rights of Sydney Airport under this Deed without the prior written consent of Sydney Airport (acting reasonably).
- (c) RMS agrees that it will comply with its obligations in the relevant Building Contract in respect of those obligations that reflect the principles set out in this clause 2.4 of this Schedule 13.

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## 3. *[Not Disclosed]*

**Attachment 1 - *[Not Disclosed]***



## Schedule 14 – Form of Builder’s Side Deed

### Date

### Parties

[##] (Contractor)

**Roads and Maritime Services ABN 76 236 371 088** of 27-31 Argyle Street,  
Parramatta NSW 2150 (Principal)

**Sydney Airport Corporation Limited ABN 62 082 578 809** of Central Terrace  
Building, 10 Arrivals Court, Sydney International Airport, Mascot NSW 2020  
(Beneficiary)

### Background

- A. The Contractor is responsible for the design and construction of the [Works] on behalf of the Principal.
- B. The Principal and the Contractor have entered into a contract (**Main Contract**) for the design, construction, commissioning and completion of the Works.
- C. The Beneficiary is relying on the Principal to procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- D. The Beneficiary will suffer loss if the Principal does not procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- E. It is a condition of the Main Contract that the Contractor executes this Deed.

THIS DEED POLL WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES:

- (a) The Contractor covenants, warrants and agrees with and for the benefit of the Beneficiary as follows:
  - (i) it will comply with its obligations under the Main Contract, including with respect to achieving Completion of the Works by the relevant Date for Completion (defined in the Main Contract);
  - (ii) upon Completion of the Works, the Works will:
    - A. satisfy the requirements of the Main Contract;
    - B. have been completed with materials of a merchantable quality;
    - C. be fit for their intended purposes; and
    - D. have been completed in a proper and tradesmanlike manner.
- (b) The Contractor represents and warrants to the Beneficiary that the Contractor:
  - (i) ensured that the Works are fit and suitable for their intended purpose and complies with the performance and quality specifications set out in the Main Contract; and
  - (ii) complied with, and carried out the Works so that they complied with, all legislative requirements and the requirements of any authority having

jurisdiction over or in respect of the Works, all relevant Australian standards and took all reasonable steps to seek to obtain all necessary approvals and certificates.

- (c) The aggregate of the Contractor's liability to the Beneficiary under this deed and the Contractor's liability to the Principal under the Main Contract:
  - (i) will not exceed the liability which the Contractor would have had under the Main Contract if the Main Contract had named, as principal, the Beneficiary and the Principal jointly and severally; and
  - (ii) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Contract.
- (d) This deed is governed by the laws of the State of New South Wales.
- (e) Where terms used in this deed are defined in the Main Contract, those terms have the meaning given to them in the Main Contract.

**Executed** as a deed

## Schedule 15 – Constraints and Restrictions

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### 1. Acknowledgements

- (a) Sydney Airport has statutory obligations as the airport operator company including pursuant to the Airports Act, the Building Regulations, the *Airports (Environment Protection) Regulations 1997 (Cth)* and the *Airports (Protection of Airspace) Regulations 1996 (Cth)*.
- (b) RMS acknowledges and agrees that, in carrying out the Airport Project Works in prescribed airspace for the Airport (as defined under the Airports Act and including the airspace as shown in the link in Attachment 1 to this Schedule 15) and in the vicinity of the runways and aircraft approach/departure paths it must:
  - (i) cooperate and coordinate the undertaking of Airport Project Works with any other works being undertaken by Sydney Airport;
  - (ii) undertake the Airport Project Works in a manner which minimises any operational disruption to the Airport;
  - (iii) undertake the Airport Project Works in a manner that does not place Sydney Airport in breach of its obligations under the Sydney Airport Lease or any aviation regulatory requirement under legislation;
  - (iv) comply with all Approvals (including any conditions on those Approvals) applicable to the Airport Project Works;
  - (v) as applicable, comply with relevant operational procedures for the Airport, as identified in the final Method Of Works Plan (**MOWP**) and notified by Governmental Authorities from time to time; and
  - (vi) use all reasonable endeavours to not interfere with, or materially adversely affect, Sydney Airport's aviation operations or the operations of airlines and their providers.
- (c) RMS acknowledges that:
  - (i) Sydney Airport's operations and the operations of third parties (especially commercial airlines), are being conducted at the same time as the Airport Project Works; and
  - (ii) the main runway is under continuing development and that there may be works on or adjacent or proximate to the main runway by other contractors.
- (d) Sydney Airport will consult with RMS through the Project Operations Group as established under clause 3.1 of Schedule 2 concerning the scheduling of works and routine maintenance as contemplated under clause 1(c) of Schedule 15 so as to attempt to ensure that the Airport Project Works may proceed in accordance with the D&C Program with minimal interruption.

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### 2. Airspace and Regulatory Requirements

In undertaking any and all Airport Project Works, RMS:

- (a) must comply with, as applicable for the undertaking of the Airport Project Works, *Airports (Protection of Airspace) Regulation 1996 (Cth)*, CASA's *Civil Aviation Safety Regulations 1998 (Cth)* Part 139, CASA's Manual of Standards Part 139 - Aerodromes, National Airports Safeguarding Framework and all Civil Aviation

Orders issued from time to time by CASA pursuant to the provisions of the *Civil Aviation Act 1988* (Cth);

- (b) must not penetrate the OLS for the Airport other than in accordance with all relevant approvals as issued by DIRDC. Without limitation, RMS acknowledges that crane operations and other construction activities in the vicinity of an airport are required to be assessed and approved under the *Airports (Protection of Airspace) Regulations 1996* (Cth) before such operations or activities are undertaken. The parties agree that where the Airport Project Works require penetration of prescribed airspace, they will comply with clause 3.6(b) of this Deed;
- (c) must comply with any and all low visibility operational requirements as notified by Governmental Authorities from time to time, including so as to ensure that airspace around the runways are clear from obstacles in low visibility conditions;
- (d) must ensure that in carrying out the Airport Project Works, that it does not use any lights, light reflecting equipment, or other systems that may interfere with the operations of the high intensity approach lights, glare or the signals from air navigation equipment for the Airport. Without limitation:
  - (i) RMS must provide details of all proposed lighting to Sydney Airport for review prior to installing the lighting. If any light operated by RMS is considered to be a nuisance or hazard to aircraft operations, Sydney Airport may direct the light to be turned off or modified, and RMS must immediately comply with that direction;
  - (ii) RMS must ensure that portable floodlights are shielded so that no direct light is projected above the horizontal plane;
  - (iii) all portable floodlights must be projected away from an active runway and adjacent taxiways and RMS must:
    - A. not install lights that could reasonably be expected to cause confusion, distraction or glare to aircraft pilots by reason of their colour, position, direction, pattern or intensity;
    - B. comply with the requirements and restrictions set out in *CASA's Manual of Standards Part 139 - Aerodromes*, Chapter 9, Section 9.2.1 and in Regulation 94 of the *Civil Aviation Regulations 1998* (Cth);
    - C. if so directed by Sydney Airport, fit suitable obstruction lights to isolated items of plant, equipment and structures; and
    - D. ensure that vehicles and plant operating at night on the Airport operate with dipped headlights only;
- (e) must manage stockpile and dust works so as to minimise the potential for sand or dust from earthworks affecting aircraft operations. If any sand or dust is affecting aircraft operations, RMS must remedy such effects as soon as possible; and
- (f) acknowledges and agrees that:
  - (i) the undertaking of the Airport Project Works may be delayed at particular times to allow for the arrival or departure of late passenger aircraft caused by emergency events or adverse weather events. Upon receipt of a notification of a dispensation of a late arriving or late departing aircraft, Sydney Airport will promptly advise RMS of any such delay and RMS must ensure that the Airport Project Works are undertaken having regard to the operations of the relevant late aircraft; and

- (ii) where the late departing or late arriving aircraft means it is not possible for RMS or the Building Contractor (as applicable) to penetrate relevant airspace with any equipment, Sydney Airport's senior operations and work safety officer (Car 10) will, as soon as possible, advise the Building Contractor to suspend the affected Airport Project Works for such a period as necessary to facilitate safe movement of the late arriving or late departing aircraft.

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### 3. Method of Works Plans (MOWP)

- (a) RMS and Sydney Airport will develop a MOWP for the undertaking of the Airport Project Works, where such plan will be based on the draft template MOWP in Attachment 2 to this Schedule 15 and will form part of the D&C Program.
- (b) The MOWP is a document which must be complied with, and in addition, will be used to inform the aviation industry and other relevant parties of the arrangements for the undertaking of the Airport Project Works, including in relation to any restrictions (such as delays or temporary works suspensions due to operational necessities) placed on aircraft and airport operations as a consequence of the Airport Project Works. RMS and Sydney Airport will comply with the terms of the MOWP developed for the Airport Project Works. The MOWP must be published at least 28 days prior to the commencement of the Airport Project Works.
- (c) The parties agree that a draft MOWP will be further developed in coordination with RMS and the Building Contractor in order to prepare the final MOWP, and that Sydney Airport will not unreasonably withhold its approval for the issue of the final MOWP.
- (d) Sydney Airport acknowledges that RMS may use the draft MOWP as a 'reference document' in any procurement processes undertaken in respect of the Airport Project Works.

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### 4. Airport Works Plan (AWP)

- (a) The Airport Works Plan (**AWP**) is a detailed document developed for the undertaking of discrete portions of the Airport Project Works. AWP's will be developed by RMS in conjunction with the Building Contractor and submitted to Sydney Airport for issuing (where Sydney Airport's approval for such issuing will not be unreasonably withheld) in relation to the following portions of the Airport Project Works:
  - (i) Stage 1 Works;
  - (ii) Stage 3A Works;
  - (iii) Stage 3B Ramp Works;
  - (iv) Stage 3B Viaduct Works;
  - (v) Stage 3C Works; and
  - (vi) Stage 3D Works,as further specified by RMS.
- (b) In respect of each portion of the Airport Project Works as further specified by RMS in accordance with clause 4(a) of this Schedule 15, the relevant AWP for the respective portion will outline:

- (i) any additional Approvals obtained or to be obtained for the relevant portion;
  - (ii) the conditions imposed by any Approvals obtained for the relevant portion;
  - (iii) the compliance arrangements for any other regulatory requirements for the relevant portion;
  - (iv) whether or not there is expected to be any impact on the aviation operations of the Airport;
  - (v) any other conditions imposed by Sydney Airport in relation to the undertaking of the relevant portion; and
  - (vi) details of the indicative construction schedule for the relevant portion including commencement date and times of works, number of on-site staff, material deliveries, shutdown of active fire systems and other isolation requirements.
- (c) RMS must ensure that the AWP's are complied with in relation to the undertaking of the Airport Project Works. If there is a breach of an AWP, RMS must use all reasonable endeavours to remedy such a breach as soon as practicable in the circumstances.

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## 5. Controlled Activities

- (a) For the purposes of the Airport Project Works, the MOWP is divided into 6 areas of operation (a **Stage**).
- (b) Subject to compliance with relevant regulatory requirement and any additional conditions in the MOWP or the relevant AWP, the conditions for controlled activities (being activities that penetrate the prescribed airspace for Sydney Airport) for Stages 1 to 6 are as follows: [These stages utilise diagrams produced and issued by Sydney Airport's Airfield Design Manager and is subject to CASA approval.]
  - (i) **Stage 1** – works undertaken under the OLS that may generally be undertaken during curfew and non-curfew hours;
  - (ii) **Stage 2** North of Taxiway G closure: works may be undertaken seven nights a week during curfew hours – 2300hrs – 0500hrs EST or 2300hrs – 0600hrs ESST;
  - (iii) **Stage 3** North of Taxiway B8 closure: works may be undertaken seven nights a week during curfew hours – 2300hrs – 0500hrs EST or 2300hrs – 0600hrs ESST;
  - (iv) **Stage 4** North of Taxiway B10 closure: works are only permitted on Friday, Saturday and Sunday nights during curfew hours – 2300hrs – 0500hrs EST or 2300hrs – 0600hrs ESST;
  - (v) **Stage 5** South of Taxiway Bravo 8 closure: works are only permitted on Friday, Saturday and Sunday nights during curfew hours – 2300hrs – 0500hrs EST or 2300hrs – 0600hrs ESST; and
  - (vi) **Stage 6** South of Taxiway Bravo 10 closure: works may be undertaken seven nights a week during curfew hours – 2300hrs – 0500hrs EST or 2300hrs – 0600hrs ESST.

- (c) Without limiting the parties obligations under the D&C Program, RMS must provide notification of the commencement of works in a Stage to Sydney Airport at least 7 Business Days prior to the proposed date when RMS intends to commence the relevant works.
- (d) In the event that RMS requires any works to be undertaken in Stages 2-6, Sydney Airport will raise a Notice To Airmen (**NOTAM**) at least 48 hours before the closure is required.

## 6. Emergency Event

In a declared emergency during any stage of the Airport Project Works, Sydney Airport may direct RMS to immediately remove all obstacles infringing the OLS and RMS must immediately comply with any such direction.

## 7. Efficient Aviation Operations

- (a) From time to time, Sydney Airport may require partial closure of the main runway due to the following requirements:
  - (i) Planned major projects (indicative) (Table 1);
  - (ii) Planned maintenance activities (indicative) (Table 2); and
  - (iii) Reactive / emergency maintenance activities (indicative) (Table 3).
- (b) Given the above, the tables below set out when relevant Sydney Airport works are contemplated, noting that such works will change the airspace requirements for the undertaking of relevant Airport Project Works and the availability of certain Stages.
- (c) In all cases, RMS and Sydney Airport agree to keep the other regularly informed through the Project Operations Group of all planned works especially where the works require the establishment of a crane or a temporary structure, where all parties must use all reasonable endeavours to comply with the Project Program.

**Table 1 – Sydney Airport planned project works requiring runway southern closure**

ITEM	PROJECT	TARGETED SCHEDULE	Syd Work Times (During Curfew)	INDICATIVE DURATION
1	Runway 16R/34L (Central Section) Asphalt Resheet	CY2020	Thursday, Friday, Saturday & Sunday Works	36 weeks
2	Runway 16R/34L (southern end) Asphalt Resheet	CY2021	Sunday to Thursday Works	14 weeks, 6 weeks gap then 6 weeks
3	Taxiway A6 reconstruction/resheet	TBA	Sunday to Thursday Works	8 weeks

During the above periods, Stages 2 to 4 will be unavailable for the undertaking of works.

**Table 2 – Sydney Airport planned maintenance works requiring runway southern closure**

ITEM	PROJECT	Frequency	Syd Works Times (During Curfew)	Notice Period	DURATION
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1	Runway and Taxiway line marking	weekly	Sunday to Thursday Works	1 week	1 night per week 5 min recall
2	Runway & Taxiway AGL maintenance activities	TBA	Sunday to Thursday Works	1 week	4-5 Shifts per month
3	Air Services Australia equipment maintenance activities	TBA	7 days per week	1 week	TBA
4	Runway lighting MALMS Testing	TBA	Saturday or Sunday	1 week	1 night fortnightly 5 min recall
5	Runway / Taxiway Technical Inspections	Two (2) inspection per annum	7 days per week	1 week	5 shifts per inspection 5 min recall
6	Runway / taxiway / runway flank inspections	varies	7 days	1 week	TBA
7	Runway and Taxiway pavement repairs	varies	7 days per week	1 week	Shift/shifts varies
8	Runway Rubber Removal	4-6 times per annum	Sunday to Thursday Works	1 week	Two (2) shifts per visit

During the above periods, Stages 2 to 4 will be unavailable for the undertaking of works.

**Table 3 – Sydney Airport reactive maintenance/emergency works requiring runway southern closure**

ITEM	PROJECT	Notice Period	Syd Work Times (During Curfew)	DURATION
1	Runway & Taxiway AGL maintenance activities	4 hrs	7 days per week	Shift/shifts
2	Runway and Taxiway pavement repairs	4 hrs	7 days per week	Shift/shifts
3	Air Services Australia equipment maintenance activities	4 hrs	7 days per week	Shift/shifts
4	Runway and Taxiway Fuel spills	4 hrs	7 days per week	Shift/shifts
5	Runway Flank blowouts	4 hrs	7 days per week	Shift/shifts
6	Runway and Taxiway Line Marking repairs	4 hrs	7 days per week	Shift/shifts
7	Utilities repairs within the runway strip	4 hrs	7 days per week	Shift/shifts
8	Any other unforeseen repairs affecting airfield operations	4 hrs	7 days per week	Shift/shifts

During the above periods, Stages 2 to 4 will be unavailable for the undertaking of works.



## **Attachment 1 - Airspace Link**

[https://downloads.ctfassets.net/v228i5y5k0x4/6JWpACoKGcAIMIC6lyU8cu/3f34754c959903badb21f360d4f6cdeb/s6934001\\_OLS.pdf](https://downloads.ctfassets.net/v228i5y5k0x4/6JWpACoKGcAIMIC6lyU8cu/3f34754c959903badb21f360d4f6cdeb/s6934001_OLS.pdf)

## Attachment 2 - Draft Template MOWP

**Schedule 16 - *[Not Disclosed]***

**Schedule 17 - [Not Disclosed]**