



Design and Construct Project Deed

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

- Schedules**

IMPORTANT NOTE

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The Northern Road Upgrade Stage 3 North Glenmore Parkway to Jamison Road

Deed made at _____ on _____

Parties **Roads and Maritime Services (ABN 76 236 371 088)** of 20-44 Ennis Road, Milsons Point, NSW 2061 (RMS)
Lendlease Engineering Pty Ltd (ABN 40 000 201 516) of Level 14 Tower Three International Towers Sydney, Exchange Place 300 Barangaroo Avenue, Barangaroo NSW 2000 (**Contractor**)

This deed provides

1A. Initial Works

- (a) The parties agree that the Project Works are to be undertaken in stages, in accordance with this deed.
- (b) From the date of this deed (subject to clause 2.12 in respect of any Early Works) until the earlier of the Staged Commencement Date or termination of this deed:
 - (i) the Contractor may perform the Initial Works, subject to clauses 1A(b)(ii) and 1A(c), in accordance with this deed;
 - (ii) all references to:
 - A. Project Works, Works, Service Works, Property Works and Local Road Works are to apply only to the extent of the Initial Project Works;
 - B. Temporary Works are to apply only to the extent of the Initial Temporary Works;
 - C. Contractor's Work are to exclude Landscaping Maintenance; and
 - D. Project Contract Sum are to read as the Initial Design Contract Sum and Initial Contract Sum; and
 - (iii) without limiting clause 12, the Contractor may develop and prepare the Design Documentation, subject to clauses 1A(d)(i)A. and 1A(d)(iii)A.
- (c) From the Early Works Date or, if none, from the date of this deed until the earlier of the Staged Commencement Date or termination of this deed, all obligations that are performed by the Contractor under clause 1A(b) are to be performed only to the extent relevant to performing the Initial Works, other than in relation to clauses 5.1(b), 9.5, 10.1(b), 10.1(c), 12, 13.2(g), 13.6, 15.1, 15.3(c), 15.3(d), 16.7(f), 16.8(b), 17.5, 22.6(a) or 22.7(c) (the **Unrestricted Provisions**). Despite clauses 1A(b)(ii)A. and 1A(b)(ii)B., to the extent that the Contractor performs any obligations under the Unrestricted Provisions prior to the Staged Commencement Date, those obligations are to be performed having regard to the whole of the Project Works and Temporary Works, and are not limited to the Initial Works.
- (d) The Contractor:
 - (i) must not, and is not permitted to, proceed with any:
 - A. preparation of Design Documentation such that the value of work performed and payable under the Design Payment Schedule exceeds the Initial Design Contract Sum; or
 - B. Project Works, Temporary Works and Landscaping Maintenance, other than the Initial Works,until the Staged Commencement Date;
 - (ii) will not be entitled to payment for any Project Works, Temporary Works or Landscaping Maintenance, other than the Initial Works, until receipt of a Notice to Proceed; and
 - (iii) subject to clause 1A(e)(ii)C., prior to the Staged Commencement Date, is not entitled to claim any amount for performance of the Contractor's Work (including

the Initial Works) in respect of:

- A. preparation of Design Documentation, in excess of the Initial Design Contract Sum; and
 - B. any of the Contractor's Work excluding preparation of Design Documentation, in excess of the Initial Contract Sum,
- and RMS will not be liable to the Contractor for any amount for performance of the Contractor's Work (including the Initial Works), in total in excess of the Initial Limit.
- (e) RMS makes no representations as to if and when it will issue a Notice to Proceed, with any such decision at its sole and absolute discretion. For the avoidance of doubt:
- (i) without limiting RMS' right to issue a Notice to Proceed at any time, RMS does not intend to issue a Notice to Proceed unless RMS obtains the REF Determination, and:
 - A. the conditions attached to the REF Determination are acceptable to RMS, in its sole and absolute discretion:
 - B. the parties have agreed on any change to the Contractor's Work required in relation to such conditions to the extent those conditions are different from the Baseline Environmental Assessment Requirements, including the time and cost impacts of any such change to the Contractor's Work, provided that if they fail to agree on the time and cost impacts within such time as RMS decides (in its sole and absolute discretion) is appropriate in the circumstances, such adjustments will be determined by RMS Representative in accordance with:
 - 1) in respect of costs, clause 15.4; and/or
 - 2) in respect of time, clauses 17.5(c)(iii), 17.5(c)(iv), 17.5(d)(ii) and 17.5(e),as if the change to the Contractor's Work necessitated a Variation (despite the definition of Variation); and
 - C. RMS is satisfied, in its sole and absolute discretion, that there is appropriate availability of funding, including for any change to the Contractor's Work contemplated under clause 1A(e)(i)B.;
 - (ii) if RMS does not issue a Notice to Proceed by 3 April 2017, without limiting RMS' right to terminate this deed under clause 21.6 at any other time for any reason and subject to any written agreement by the parties to do otherwise, RMS will terminate this deed in accordance with clause 21.6, and:
 - A. subject to clause 1A(e)(ii)C., on receipt of a notice under clause 21.6, the Contractor must:
 - 1) at the direction of RMS Representative, acting reasonably, complete or make safe uncompleted parts of the Contractor's Work; and
 - 2) comply with the reasonable directions of RMS Representative, including in relation to handover of information, documents and Records, removal of materials, plant, equipment and Initial Temporary Works and cleaning up and rehabilitation of any areas affected by the Contractor's Work; and
 - B. the termination will be effective once the matters referred to in clause 1A(e)(ii)A. have been completed to the satisfaction of RMS Representative, acting reasonably, and RMS Representative has issued a notice to this effect, which notice must be issued promptly; and
 - C. the Contractor will be entitled to be paid for all work performed under clause 1A(e)(ii)A. as part of the termination for convenience payments in clause 21.7 or, alternatively, if RMS requires the Contractor to perform works for which the Contractor is not otherwise entitled to be paid under clause 21.7, RMS must direct a Variation under clause 15 prior to terminating the deed.
- (f) If the Staged Commencement Date is:

- (i) on or before the Date for Staged Commencement, or less than 31 days after the Date for Staged Commencement:
 - A. the Construction Contract Sum will not be adjusted; and
 - B. the Date for Construction Completion will not be extended;
- (ii) between 31 and 60 days after the Date for Staged Commencement:
 - A. the Construction Contract Sum will not be adjusted; and
 - B. the Date for Interface Milestone Completion and the Date for Construction Completion are to be extended by the number of Business Days from the 31st day after the Date for Staged Commencement to and including the Staged Commencement Date;
- (iii) between 61 and 90 days after the Date for Staged Commencement:
 - A. the Construction Contract Sum will not be adjusted; and
 - B. the Date for Interface Milestone Completion and the Date for Construction Completion are to be extended by the number of Business Days from the 31st day after the Date for Staged Commencement to and including the Staged Commencement Date;
- (iv) more than 90 days after the Date for Staged Commencement:
 - A. the Construction Contract Sum will not be adjusted for each day from the Date for Staged Commencement to and including the 90th day after the Date for Staged Commencement;
 - B. the Construction Contract Sum is to be escalated by [REDACTED] (excluding GST) for each Business Day on and from the 91st day after the Date for Staged Commencement to and including the Staged Commencement Date; and
 - C. the Date for Interface Milestone Completion and the Date for Construction Completion are to be extended by the number of Business Days from the 31st day after the Date for Staged Commencement to and including the Staged Commencement Date.
- (g) Any payment of the Initial Contract Sum made to the Contractor is a pre-payment on account of the Construction Contract Sum, where a Notice to Proceed is issued.

1. General obligations

1.1 General obligations (RMS and Contractor)

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

1.2 Start and progress

The Contractor must:

- (a) subject to clause 1A, start to perform its obligations under this deed in relation to the Initial Works and the Unrestricted Provisions from the date of this deed and perform all of its obligations under this deed from the Staged Commencement Date; and
- (b) regularly and diligently progress the Contractor's Work in accordance with this deed and ensure, subject to clause 1A, that Interface Milestone Completion is achieved by the Date for Interface Milestone Completion and Construction Completion is achieved by the Date for Construction Completion.

1.3 Co-operation

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

2. Roles and relationships

2.1 Role of RMS Representative and RMS Surveillance Officers

- (a) RMS:
 - (i) must appoint a person to be RMS Representative for the purposes of this deed;
 - (ii) may at any time replace RMS Representative, in which event RMS must appoint another person as RMS Representative; and
 - (iii) must give written notice to the Contractor of all appointments under clauses 2.1(a)(i) and 2.1(a)(ii).
- (b) RMS Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of RMS Representative's functions under this deed (each a **RMS Assistant Representative**) and the notice must specify:
 - A. the functions which the RMS Assistant Representative may perform; and
 - B. whether the RMS Assistant Representative can give any Direction to the Contractor pursuant to this deed;
 - (ii) revoke or vary any appointment under clause 2.1(b)(i) by written notice to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing one or more RMS Assistant Representatives to exercise the function under clause 2.1(b)(i), provided that only one person may exercise the same function in relation to the same issue at any one time.
- (c) RMS Representative may:
 - (i) by written notice to the Contractor appoint one or a number of officers to perform the functions identified in clause 2.1(d) (each a **RMS Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 2.1(c)(i) by notice in writing to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a RMS Surveillance Officer to exercise the function under clause 2.1(c)(i).
- (d) The functions of a RMS Surveillance Officer may be all or any of the following:
 - (i) monitoring the Contractor's Work, including:
 - A. product quality;
 - B. quality management and verification;

- C. environmental management;
 - D. work health and safety;
 - E. Chain of Responsibility Provisions compliance;
 - F. control of traffic; and
 - G. community relations;
- (ii) monitoring the Project Verifier's surveillance of the Contractor's activities; and
 - (iii) reporting the findings of its monitoring activities under clauses 2.1(d)(i) and 2.1(d)(ii) from time to time to RMS Representative.
- (e) RMS and the Contractor acknowledge and agree that:
 - (i) RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers act at all times as the servants or agents of RMS and are subject to the directions of RMS and will act solely in the interests of RMS;
 - (ii) subject to clause 2.1(e)(iii), a RMS Surveillance Officer is not entitled to issue a Direction to the Contractor, and if a RMS Surveillance Officer purports to do so:
 - A. the Contractor must not comply with and RMS is not bound by the purported Direction; and
 - B. RMS will not be liable for any Claim arising out of or in connection with any such purported Direction; and
 - (iii) a RMS Surveillance Officer is entitled to issue a Direction to the Contractor under clause 5.7(f) and the Contractor must comply with any Direction by a RMS Surveillance Officer given or purported to be given under clause 5.7(f).
 - (f) The Contractor must comply with any Direction by RMS Representative given or purported to be given under a provision of this deed. Only RMS Representative and, subject to the terms of any notice under clause 2.1(b)(i), RMS Assistant Representatives are authorised to give any Direction to the Contractor pursuant to this deed. The Contractor must not comply with, and RMS is not bound by, any Direction purporting to be made or given by any person on behalf of RMS, other than RMS Representative or a RMS Assistant Representative with relevant authority, or an RMS Surveillance Officer in the circumstances described in clause 2.1(e)(iii).

2.2 The Contractor's personnel

- (a) The Contractor must:
 - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
 - (ii) ensure that its personnel (including those referred to in clause 2.2(b)) as a team carry out the Contractor's Work in a manner that is courteous and co-operative and recognises the interests and needs of all stakeholders, including the local community.
- (b) The Contractor must:
 - (i) ensure those personnel, including personnel of the Subcontractors, specified in Schedule 19 perform the roles specified in Schedule 19;
 - (ii) subject to clause 2.2(b)(iii), not replace the personnel referred to in clause 2.2(b)(i) (or where the personnel are employees of a Subcontractor, ensure they are not replaced) without RMS Representative's prior written approval; and
 - (iii) if any of the personnel referred to in clause 2.2(b)(i):
 - A. die;
 - B. become seriously ill;
 - C. resign from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
 - D. become the subject of a direction under clause 2.2(d),
 replace them (or where they are personnel of a Subcontractor, ensure they are

replaced) with personnel of at least equivalent experience, ability and expertise (including the experience, ability and expertise required by Schedule 19) approved by RMS Representative.

- (c) The personnel referred to in clause 2.2(b) (including any replacements) must:
 - (i) carry out the functions specified for them in this deed; and
 - (ii) otherwise be available for consultation with RMS Representative when RMS Representative reasonably requires.
- (d) RMS Representative may, if he or she considers it reasonable to do so, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 2.2(b), the Project Verifier and the Proof Engineer) from the Site, the Local Road Works Areas, the Temporary Works Areas, the Works and the Contractor's Work.
- (e) The Contractor must ensure that any person the subject of a direction under clause 2.2(d) is not again employed in the Contractor's Work or on the Site, the Local Road Works Areas, the Temporary Works Areas or the Works.
- (f) The Contractor must ensure that the Project Verifier, the Quality Manager and each of the Contractor's Subcontractors:
 - (i) do all they reasonably can to co-operate with RMS Assistant Representatives and RMS Surveillance Officers;
 - (ii) do all they reasonably can to avoid hindering RMS Assistant Representatives and RMS Surveillance Officers; and
 - (iii) provide, upon request, such information as a RMS Assistant Representative or a RMS Surveillance Officer reasonably requires.
- (g) Where the Contractor requests RMS Representative's approval of a replacement pursuant to clauses 2.2(b)(iii)A, 2.2(b)(iii)B or 2.2(b)(iii)C of any of the personnel referred to in clause 2.2(b)(i), RMS Representative must provide a response to the Contractor within 10 Business Days from the date the Contractor's request and any other information required by RMS Representative is submitted to RMS Representative.

2.3 Authorities

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

2.4 Project Verifier

- (a) The Project Verifier is to be engaged at the Contractor's cost on the terms of the Deed of Appointment of Project Verifier.
The Project Verifier's role is to:
 - (i) independently verify in accordance with the Deed of Appointment of Project Verifier that:
 - A. the Project Works; and

- B. the relevant elements identified in Item 13B of Schedule 1 of the Temporary Works,
 - comply with the requirements of this deed;
 - (ii) make determinations on matters that this deed expressly requires be determined by the Project Verifier; and
 - (iii) otherwise perform the functions and activities identified in the Deed of Appointment of Project Verifier.
- (b) The parties acknowledge and agree that the Project Verifier is obliged to act independently of the Contractor, RMS and any of their Subcontractors.
- (c) The Contractor must provide the Project Verifier with all information and documents and allow the Project Verifier:
 - (i) to attend design meetings, including the Project Design Group meetings;
 - (ii) access to the Construction Site (to the extent possible having regard to clause 9.1A(a)) and all places at which the Contractor's activities are being undertaken, provided that the Project Verifier must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor; and
 - (iii) to insert Hold Points or Witness Points in the Project Plans and designate the Nominated Authority to release these and any other Hold Points,
 - all as may be:
 - (iv) necessary or reasonably required by the Project Verifier or RMS Representative, to allow the Project Verifier to perform its obligations under the Deed of Appointment of Project Verifier; or
 - (v) reasonably requested by the Project Verifier or reasonably directed by RMS Representative.
- (d) The Contractor must provide to RMS Representative a certificate or certificates (as the case may be) executed by the Project Verifier in the form of:
 - (i) Schedule 14 every 3 months from the date of this deed up to Construction Completion;
 - (ii) Schedule 16 as a condition precedent to Construction Completion;
 - (iii) Schedule 16A as a condition precedent to Interface Milestone Completion;
 - (iv) Schedule 17 on request in connection with the rectification of particular Defects nominated by RMS Representative; and
 - (v) Schedule 18 upon the expiry of the last Defects Correction Period as a condition precedent to Final Completion.
- (e) Nothing that the Project Verifier does or fails to do pursuant to the purported exercise of its functions and activities under the Deed of Appointment of Project Verifier will entitle the Contractor to make any Claim against RMS.

2.5 Proof Engineer

- (a) Any Proof Engineer is to be engaged by the Contractor, at the Contractor's cost.
- (b) The Contractor:
 - (i) must obtain RMS approval to the identity of any Proof Engineer and any replacement Proof Engineer, each of whom must have the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed; and
 - (ii) warrants to RMS that each Proof Engineer:
 - A. has at least the qualifications, experience and expertise described in Schedule 47; and
 - B. has the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed.
- (c) Where the Contractor requests RMS' approval to the identity of any Proof Engineer and any replacement Proof Engineer pursuant to clause 2.5(b)(i), RMS Representative must provide a response to the Contractor within 20 Business Days from the date the Contractor's request and any other information required by RMS Representative is submitted to RMS Representative.

- (d) A Proof Engineer's role is to:
 - (i) attend relevant Project Design Group meetings;
 - (ii) in respect of the relevant elements identified in Item 14 of Schedule 1 of each of the Project Works and the Temporary Works:
 - A. undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Project Works and associated Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;
 - B. provide to the Contractor, with copies to the RMS Representative and the Project Verifier, a comprehensive report on the assessment required under clause 2.5(d)(ii)A with conclusions and in accordance with the requirements of the section of the Scope of Works and Technical Criteria identified in Item 29(a) of Schedule 1; and
 - C. independently certify that those Project Works and any associated Temporary Works:
 - 1) are adequate and suitable for their intended purpose; and
 - 2) comply with the Scope of Works and Technical Criteria,
 and issue the certification document referred to in clause 12.2(h)(iv); and
 - (iii) make determinations on matters this deed expressly requires be determined by the Proof Engineer.
- (e) The parties acknowledge and agree that:
 - (i) the Proof Engineer is obliged to act independently of the Contractor, RMS and any of their Subcontractors;
 - (ii) the Proof Engineer must not be an employee of the Contractor, RMS, the Project Verifier or any of their Subcontractors; and
 - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to the Contractor must be in writing and must be made available to RMS Representative, upon request.
- (f) The Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
 - (i) to attend design meetings; and
 - (ii) access to the Construction Site (to the extent possible having regard to clause 9.1A(a)) and all places at which the Contractor's activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,
 all as may be:
 - (iii) necessary or reasonably required by the Proof Engineer or RMS Representative, to allow the Proof Engineer to perform its obligations under this deed; and
 - (iv) requested by the Proof Engineer or directed by RMS Representative.
- (g) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against RMS.

2.6 Not used

2.7 Environmental Manager

- (a) In accordance with clause 2.2(b), the Contractor must ensure that there is an Environmental Manager who performs the role referred to in Schedule 19.
- (b) The Contractor must provide to RMS Representative a certificate executed by the Environmental Manager in the form of Schedule 29 every 3 months from the Early Works Date or, if none, from the date of this deed until the Date of Construction Completion.

2.8 Subcontracts

- (a) Subject to clause 2.8(b), the Contractor may enter into Subcontracts for the performance of its obligations under this deed.
- (b) The Contractor must not enter into any Subcontract in respect of the categories of work set out in Schedule 24 (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under RMS pre-qualification and registration procedures or clause 2.8(c) applies.
- (c) Unless RMS Representative otherwise approves in writing (which must not be unreasonably withheld or delayed), the Contractor must enter into subcontracts with:
 - (i) the Subcontractors specified in Item 15 of Schedule 1 in respect of the relevant parts of the Contractor's Work specified in Item 15 of Schedule 1; and
 - (ii) the Proof Engineer specified in Item 11 of Schedule 1 in respect of the role of Proof Engineer under clause 2.5 of this deed.
- (d) The Contractor's obligations under this deed are not lessened or otherwise affected by entering into Subcontracts or by any approval by RMS or RMS Representative, and the Contractor is liable to RMS for the acts and omissions of Subcontractors as if they were acts and omissions of the Contractor.
- (e) The Contractor must give RMS Representative details of each Subcontract, including the name of the Subcontractor and the goods or services being provided under the Subcontract. The Contractor must satisfy itself and warrant to RMS that the proposed Subcontractor (whether a specified Subcontractor under Item 15 of Schedule 1 or otherwise) has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the work to be subcontracted.
- (f) Without limiting clause 22.7(c), but subject to clause 2.8(g)(ii), the Contractor must ensure that every Subcontract:
 - (i) which has a contract value of [REDACTED] or more includes the provisions set out in Schedule 25; and
 - (ii) regardless of the Subcontract value, includes provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions, and includes a clause to the same effect as this clause 2.8(f) which is binding on the Subcontractor, and provide evidence of this to RMS Representative when requested by RMS Representative.
- (g) Where a Subcontractor is to carry out design work:
 - (i) the Contractor must, within 7 days of the engagement of the Subcontractor provide RMS with a deed of covenant (duly stamped) executed by the Subcontractor in the form of Schedule 33; and
 - (ii) the Subcontract is not required to contain parts A and B of Schedule 25.
- (h) The Contractor must ensure that where a rate is charged for design personnel based on a level of hierarchy of 'Principal', 'Senior', 'Experienced', 'Designer/Engineer/Scientist' or 'Graduate/Qualified' that the personnel in respect of which that rate or those rates are charged satisfy the minimum skills, expertise and experience set out in Payment Constraint 3 of Schedule 2, and RMS is only required to pay the rate for any design personnel which corresponds to their relevant level of skill, expertise and experience as set out in Payment Constraint 3 of Schedule 2.
- (i) Any Subcontract entered into prior to issue of the Notice to Proceed must either:
 - (i) only be in respect of part of the Initial Project Works and/or Initial Temporary Works; or
 - (ii) if clause 2.8(i)(i) does not apply, be consistent with, and facilitate the Contractor complying with, the Contractor's obligations under clause 1A, and if RMS terminates this deed under clause 21.6, must allow the Contractor to:
 - A. terminate the Subcontract on terms that are no more favourable than those under clause 21.7, in that they do not require the Contractor to pay the Subcontractor any greater amount in respect of costs incurred than those referred to under clauses 21.7(a) to 21.7(d), and provided that RMS is not required to pay pursuant to clauses 21.7(a) to 21.7(d) any amount

calculated by reference to, or in connection with, the unearned balance of any Subcontract; and

- B. comply with its obligations under clause 1A(e)(ii) with the assistance of the Subcontractor, where necessary.

2.9 Dispute Avoidance Board

- (a) The Dispute Avoidance Board is constituted upon the initial member of the Dispute Avoidance Board, RMS and the Contractor signing the DAB Agreement.
- (b) It is intended that the DAB Agreement will be signed on or before the date of execution of this deed if the parties have agreed prior to the date of this deed on the member of the Dispute Avoidance Board.
- (c) If the DAB Agreement is not signed on or before the date of execution of this deed, the Contractor agrees to sign the DAB Agreement with RMS and the Dispute Avoidance Board member previously agreed by the parties, or determined under clauses 2.9(f) or 2.9(g), when required by RMS.
- (d) If the parties have not agreed prior to the date of this deed on the member of the Dispute Avoidance Board, the Contractor must within 10 Business Days of the date of this deed, nominate two candidates, who satisfy the criteria set out in Schedule 39, for appointment as the Dispute Avoidance Board member.
- (e) If RMS determines that neither of the candidates proposed under clause 2.9(d) are suitable for appointment as the Dispute Avoidance Board member, RMS may reject the nominated candidates and require the Contractor, within 10 Business Days of the notification of the rejection, to nominate two alternative candidates, who satisfy the criteria set out in Schedule 39, for appointment as the Dispute Avoidance Board member.
- (f) RMS may reject the alternative candidates nominated under clause 2.9(e) and the Contractor must continue to nominate two candidates, who satisfy the criteria as set out in Schedule 39, for appointment as the Dispute Avoidance Board member within 10 Business Days of RMS' rejection until RMS agrees to the appointment of one of the candidates as the Dispute Avoidance Board member.
- (g) If the Contractor does not nominate two candidates, who satisfy the criteria set out in Schedule 39, for appointment as the Dispute Avoidance Board member within 10 Business Days of RMS' rejection in accordance with clauses 2.9(d) to 2.9(f), RMS may nominate the Dispute Avoidance Board member. This nomination will be final and conclusive.
- (h) The role of the Dispute Avoidance Board is to:
 - (i) perform the functions and activities identified in Appendix 1 of the DAB Agreement;
 - (ii) make decisions on matters that this deed expressly requires be decided by the Dispute Avoidance Board; and
 - (iii) otherwise perform the functions and activities identified in the DAB Agreement.
- (i) The parties acknowledge and agree that the Dispute Avoidance Board is obliged to act honestly, impartially, without bias and independently of the Contractor, RMS and any of their Subcontractors.
- (j) Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against RMS.

2.10 Replacement of Dispute Avoidance Board member

- (a) If the Dispute Avoidance Board member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Contractor must, within 10 Business Days, nominate two candidates, who satisfy the criteria set out in Schedule 39, to RMS to be the replacement member of the Dispute Avoidance Board.
- (b) If RMS determines that neither of the candidates proposed under clause 2.10(a) are suitable for appointment as the Dispute Avoidance Board member, the parties must comply with clauses 2.9(e), 2.9(f) and 2.9(g) until a replacement Dispute Avoidance Board member is appointed.

- (c) Any appointment or nomination made under clause 2.10(a) or 2.10(b) must be made in accordance with the criteria set out in Schedule 39 and the Dispute Avoidance Board re-constituted by the replacement member of the Dispute Avoidance Board, RMS and the Contractor signing a replacement DAB Agreement as provided under clause 14.3 of the DAB Agreement.

2.11 Termination of Dispute Avoidance Board

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

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

2.12 Early Works and application of this deed

- (a) The parties agree that this deed applies retrospectively to all Early Works performed before the date of this deed.
- (b) Any payment made to the Contractor under or in respect of an Early Works Agreement is a pre-payment on account of the relevant component(s) of the Project Contract Sum.
- (c) Subject to clause 2.12(d), the Contractor acknowledges that it is not entitled to make any Claim arising out of or in connection with any act, matter or thing which has occurred or should have occurred prior to the date of this deed.
- (d) Nothing in clause 2.12(c) affects the right of the Contractor to make a claim for:
 - (i) payment in accordance with clause 18;
 - (ii) any Claim notified under the agreement referred to in paragraph (a) of the definition of Early Works Agreement before the date of this deed and not resolved prior to the date of this deed, and it is agreed that any such Claim will then operate as a Claim under this deed and not as a Claim under that Early Works Agreement;
 - (iii) any Claim which arises prior to the date of this deed but the time period for notification of the Claim under the agreement referred to in paragraph (a) of the definition of Early Works Agreement has not yet expired, provided that the Claim is subsequently notified in accordance with this deed and on the basis that the time period for making the Claim commenced to run in accordance with that Early Works Agreement; and
 - (iv) any Claim which by Law cannot be excluded.

3. Management and administration

3.1 Start-up workshops

- (a) Within 28 days after the date of this deed (or such other time as the parties agree), RMS may convene a preliminary start-up workshop.
- (b) Within 28 days before the date indicated in the Contract Program as the date for commencement by the Contractor of the Project Works at the Construction Site (or such other time as the parties agree), RMS may convene a construction start-up workshop.
- (c) The workshops are intended to promote positive building of relationships and a culture of co-operation between the participants, through discussion and sharing of ideas but neither participation in the workshops nor anything concerning or arising out of or in connection with the workshops changes any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.
- (d) The workshops will be attended by:
 - (i) the Contractor's most senior manager or director with direct responsibility for civil works in New South Wales;

- (ii) a senior manager or director of RMS with direct responsibility for the Works;
- (iii) the Project Director (or his or her delegate);
- (iv) RMS Representative (or his or her delegate);
- (v) the Design Manager (or his or her delegate); and
- (vi) the Project Verifier (or his or her delegate),

and may be attended by any other person (including any other personnel of the Contractor or RMS, a Subcontractor and representatives of Authorities, end users and the local community) that the Project Director and RMS Representative agree to invite to either or both workshops.

- (e) Schedule 40 contains a guide for participants in the workshops, which may be used as the basis for an agenda.
- (f) RMS and the Contractor and any others who attend the workshops must meet their own costs of attendance at the workshops. Third party facilitation, venue and catering costs, if any, will be shared equally by RMS and the Contractor.

3.2 Site meetings

- (a) From establishment on the Construction Site to the Date of Construction Completion, the Contractor must convene meetings on the Construction Site at weekly intervals, or such other regular period as agreed by RMS Representative and the Project Director in writing.
- (b) The meetings referred to in clause 3.2(a) will be attended by:
 - (i) the Project Director (or his or her delegate);
 - (ii) RMS Representative (or his or her delegate); and
 - (iii) any other person (including any Subcontractor) required by RMS Representative.
- (c) Unless otherwise agreed by RMS Representative in writing, the Contractor must provide RMS Representative with an agenda prepared in consultation with RMS Representative for each meeting under clause 3.2(a) no less than 2 Business Days prior to each meeting.
- (d) The role of chairperson for meetings under clause 3.2(a) will be held by RMS Representative (or his or her delegate).
- (e) The chairperson of a meeting under clause 3.2(a) must give all persons who attended the meeting (and any other person nominated by RMS Representative) minutes of the meeting within 2 Business Days after the meeting.
- (f) The purpose of the meetings under clause 3.2(a) includes the review of (at least) the matters set out in the reports referred to in clause 3.7.
- (g) The meetings under clause 3.2(a) are in addition to such other meetings and discussions as may be necessary for the proper administration of this deed.

3.3 Evaluation and monitoring

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

3.4 Project Control Group

- (a) The Project Control Group comprises:
 - (i) RMS Representative;
 - (ii) any person RMS Representative reasonably requires from time to time;
 - (iii) the Project Director;
 - (iv) the Construction Manager(s);
 - (v) the Design Manager;
 - (vi) the Quality Manager;
 - (vii) the Environmental Manager;
 - (viii) the Community Relations Manager;
 - (ix) the Contractor's work health and safety management representative;
 - (x) representatives of any of the Contractor's Subcontractors which RMS Representative reasonably requires; and
 - (xi) the Project Verifier.
- (b) Project Control Group functions include:
 - (i) reviewing:
 - A. conformity with the Quality Plan;
 - B. the progress of the Contractor's Work in relation to the Contract Program and the Subsidiary Contract Programs and the performance of the Contractor prior to Construction Completion;
 - C. issues arising out of community relations and community concerns;
 - D. issues arising out of the quality of the Contractor's Work;
 - E. matters arising from the Design Documentation, including any proposed design changes;
 - F. value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
 - G. environmental issues;
 - H. safety issues; and
 - I. issues in connection with the Chain of Responsibility Provisions; and
 - (ii) where there are unresolved matters, referring such matters to the Management Review Group for consideration and assistance in resolution.
- (c) The Project Control Group must meet:
 - (i) on a regular monthly basis prior to Construction Completion or such other regular period as RMS and the Contractor agree in writing;
 - (ii) in accordance with this clause 3.4; and
 - (iii) at other times which RMS Representative or the Contractor requires.
- (d) The Contractor must provide RMS Representative with an agenda prepared in consultation with RMS Representative for each meeting of the Project Control Group no less than 2 Business Days prior to each meeting.
- (e) The role of chairperson for meetings of the Project Control Group will alternate between the Project Director and RMS Representative with RMS Representative to chair the first such meeting.
- (f) The chairperson of a meeting of the Project Control Group must give all members of the Project Control Group (and any other person nominated by RMS Representative) minutes of the meeting within 2 Business Days after the meeting.

3.5 Management Review Group

- (a) The Management Review Group comprises:
 - (i) RMS Representative;
 - (ii) the Project Director;
 - (iii) a senior representative of RMS as notified by RMS to the Contractor from time

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

3.6 Project Design Group

- (a) The Project Design Group must meet on a regular weekly basis, or such other regular period as RMS and the Contractor agree in writing.
- (b) The purpose of the meetings under clause 3.6(a) is:
 - (i) to consider:
 - A. the status of the Design Documentation;
 - B. the quality of the Design Documentation and the physical works the subject of the Design Documentation; and
 - C. any other matters required by RMS; and
 - (ii) to undertake the function under clause 3.6(b)(i):
 - A. in a co-operative manner which fosters open communication; and
 - B. with the objective of facilitating the development of the Design Documentation and resolving issues arising out of or in connection with or identified in the Design Documentation.
- (c) The Project Design Group comprises:
 - (i) at least one representative of the Contractor, including a senior construction representative of the Contractor, as notified by the Contractor to RMS from time to time;
 - (ii) the Contractor's Design Manager;
 - (iii) at least one representative of RMS, as notified by RMS to the Contractor from

- time to time; and
 - (iv) the Project Verifier,
- and the Contractor must ensure attendance at the relevant Project Design Group meeting of:
- (v) representatives of the Contractor's design consultants;
 - (vi) the Proof Engineer; and
 - (vii) other persons, as any member of the Project Design Group reasonably requires from time to time, having regard to the elements of the Design Documentation being considered at the Project Design Group meeting.
- (d) The Contractor must provide the Project Design Group with an agenda prepared in consultation with RMS Representative for each meeting under clause 3.6(a) no less than 2 Business Days prior to each meeting.
 - (e) The role of chairperson for Project Design Group meetings will be held by the Project Director.
 - (f) The chairperson of a meeting under clause 3.6(a) must give RMS Representative and all other persons who attended the meeting (and any other person nominated by RMS Representative) minutes of the Project Design Group meeting within 2 Business Days after the Project Design Group meeting.

3.7 The Contractor's reporting obligations

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

3.8 Project Plans

- (a) The Contractor must prepare the Project Plans specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(b) of Schedule 1.
- (b) Each Project Plan must:
 - (i) where an initial plan exists and is contained in the Appendices to the Scope of Works and Technical Criteria identified in Item 29(c) of Schedule 1, be based upon that initial plan; and
 - (ii) whether or not an initial plan exists, be prepared and further developed in accordance with this clause 3.8 and the section of the Scope of Works and Technical Criteria identified in Item 29(d) of Schedule 1.
- (c) Each Project Plan must be initially submitted to the Project Verifier and RMS Representative within the time period specified in and containing the contents specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(e) of Schedule 1, for the initial submission.
- (d) RMS Representative may:
 - (i) review any Project Plan submitted under this clause 3.8; and
 - (ii) if he or she considers, acting reasonably, the Project Plan submitted does not comply with this deed, notify the Contractor of that within 21 days of the submission of the Project Plan giving reasons as to why the Project Plan submitted does not comply with this deed.
- (e) If the Contractor receives a notice under clause 3.8(d)(ii), the Contractor must promptly submit an amended Project Plan to the Project Verifier and RMS Representative.
- (f) In respect of any Project Plan submitted by the Contractor, including whether or not RMS Representative reviews it for errors, omissions or compliance with this deed and whether or not RMS Representative comments on it or engages in any act or omission in respect of it:
 - (i) RMS Representative owes no duty to the Contractor; and
 - (ii) the Contractor's liabilities or responsibilities and RMS rights under this deed or otherwise will not be changed from what they otherwise would be.
- (g) The Contractor acknowledges and agrees that:
 - (i) an intended purpose of each Project Plan is for the Contractor to provide a detailed description of how the Contractor intends to carry out the Contractor's

Work in accordance with the requirements of this deed (and in relation to the Maintenance Plan, how the Works should be maintained following Construction Completion) with respect to the subject matter of each Project Plan; and

- (ii) it must undertake ongoing development, amendment and updating of the Project Plans throughout the duration of the Contractor's Work to take into account:
 - A. Variations;
 - B. Change in Law;
 - C. the commencement of new phases or stages of design and construction;
 - D. those events or circumstances expressly identified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(f) of Schedule 1, for each Project Plan;
 - E. any other events or circumstances which may have any effect on the manner in which the Contractor carries out the Contractor's Work;
 - F. any breach or potential breach of the warranty in clause 3.8(h); and
 - G. requirements specified in the Scope of Works and Technical Criteria, including the Appendix to the Scope of Works and Technical Criteria identified in Item 29(g) of Schedule 1,

and promptly submit each further Project Plan to the Project Verifier and RMS Representative as it is further developed, amended or updated.

- (h) The Contractor warrants that each Project Plan will be fit for its intended purpose.
- (i) Without limiting clause 16, if RMS Representative believes, acting reasonably, that any Project Plan does not comply with this deed, he or she may by written notice direct the Contractor to further develop, update or amend the Project Plan specifying the reasons and the time within which a compliant Project Plan must be re-submitted. The Contractor must comply with that direction and submit a compliant Project Plan to the Project Verifier and RMS Representative within the time specified.
- (j) The Contractor must comply with each compliant Project Plan (other than the Maintenance Plan) but compliance will not in any way lessen or affect its liabilities or responsibilities or RMS rights whether under this deed or otherwise according to Law.
- (k) The Contractor must comply with the restrictions upon the carrying out of the Contractor's Work specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(h) of Schedule 1.
- (l) To the extent they are relevant to maintenance of the Works after Construction Completion, all Project Plans must be incorporated into the Maintenance Plan.

3.9 Maintenance Plan

- (a) As a condition precedent to Construction Completion, the Contractor must develop a Maintenance Plan, in accordance with the requirements of this deed.
- (b) Without limiting clause 3.8, the Maintenance Plan must contain the contents required by the Scope of Works and Technical Criteria.
- (c) The Contractor must submit to RMS Representative an initial draft of the Maintenance Plan to a standard and detail no different in substance from the final draft (excluding the incorporation of the Project Plans required by clause 3.8(l)) but for minor details:
 - (i) no less than 180 days prior to the Date for Construction Completion; or
 - (ii) if either:
 - A. RMS Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 180 days prior to RMS Representative's reasonably anticipated Date of Construction Completion provided that RMS Representative gives the Contractor 35 days notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion will be earlier than the Date for Construction Completion, no less than 180 days prior to the reasonably anticipated Date of Construction Completion.

- (d) The Contractor must submit to RMS Representative a final draft of the Maintenance Plan (including incorporation of the Project Plans required by clause 3.8(1)):
 - (i) no less than 90 days prior to the Date for Construction Completion; or
 - (ii) if either:
 - A. RMS Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 90 days prior to RMS Representative's reasonably anticipated Date of Construction Completion provided that RMS Representative gives the Contractor 35 days notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion will be earlier than the Date for Construction Completion, no less than 90 days prior to the reasonably anticipated Date of Construction Completion.
- (e) The Contractor must submit to RMS Representative the final Maintenance Plan (including incorporation of the Project Plans required by clause 3.8(1)):
 - (i) no less than 30 days prior to the Date for Construction Completion; or
 - (ii) if RMS Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 30 days prior to RMS Representative's reasonably anticipated Date of Construction Completion provided that RMS Representative gives the Contractor 35 days notice of the required date for submission.
- (f) RMS Representative may:
 - (i) review the Maintenance Plan or any draft of it submitted under clause 3.9(d), 3.9(e), 3.9(g) or 3.9(l); and
 - (ii) within 21 days of the submission, acting reasonably, reject the Maintenance Plan or the draft specifying the reasons for rejection.
- (g) If the Maintenance Plan or any draft is rejected, the Contractor must promptly submit an amended Maintenance Plan to RMS Representative that addresses the reasons for rejection.
- (h) RMS Representative owes no duty to the Contractor to review the Maintenance Plan or any draft submitted by the Contractor for errors, omissions or compliance with this deed.
- (i) No review of, comments upon, rejection of or failure to reject the Maintenance Plan or any draft of it or any other Direction by RMS Representative (including a direction under clause 3.9(l)) in respect of the Maintenance Plan or any draft of it will lessen or otherwise affect:
 - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) RMS rights against the Contractor, whether under this deed or otherwise according to Law.
- (j) The Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Maintenance Plan under clause 3.8(1), the purposes of the Maintenance Plan include:
 - (i) for the Contractor to provide a detailed description of how the Works should be maintained after the Date of Construction Completion; and
 - (ii) to incorporate the Landscaping Maintenance Plan which provides a detailed description of how the landscaping is to be maintained.
- (k) The Contractor warrants that the Maintenance Plan will be fit for its intended purpose.
- (l) Without limiting clause 16, if RMS Representative believes, acting reasonably, that the Maintenance Plan does not comply with the requirements of this deed, RMS Representative may by written notice direct the Contractor to amend the Maintenance Plan specifying:
 - (i) the reasons why such amendment is required; and
 - (ii) the time within which such amendment must occur,
 and the Contractor must:

- (iii) further amend the Maintenance Plan as directed by RMS Representative; and
- (iv) submit the further amended Maintenance Plan to RMS Representative within the time specified under clause 3.9(1)(ii).

3.10 Control of traffic

The Contractor:

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

3.11 Community relations

The Contractor:

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

3.12 Aboriginal participation

- (a) The Contractor must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the APIC Policy.
- (b) Where applicable, as indicated in Item 16 of Schedule 1, the Contractor must provide:
 - (i) to RMS Representative and the NSW Procurement Board (nswbuy@finance.nsw.gov.au):
 - A. within 60 days of the date of this deed, its Aboriginal Participation Plan, showing how the Contractor intends to direct the Targeted Project Spend (TPS) to appropriate Aboriginal education and employment opportunities; and
 - B. when the project reaches 90% of the Construction Completion and as a condition precedent to Construction Completion, its Aboriginal Participation Report which explains how the Aboriginal Participation Plan has been implemented and what outcomes have been achieved; and
 - (ii) to RMS Representative only:
 - A. if requested, a draft of the Aboriginal Participation Plan referred to in clause 3.12(b)(i)A, within 20 days of the date of this deed;
 - B. quarterly, its Aboriginal Participation Report in the form set out in Schedule 52 providing details of the implementation of the APIC Policy and achievement of targets; and
 - C. at the end of 12 months period after the Date of Construction Completion and as a condition precedent to Final Completion, its final Aboriginal Participation Report which includes the details of actual expenses incurred from the date of this deed to (up to) 12 months after the Date of Construction Completion. Details included in the final Aboriginal

Participation Report must explain how the Aboriginal Participation Plan has been implemented within the specified period and what actual outcomes have been achieved.

- (c) The Aboriginal Participation Plan and the Aboriginal Participation Reports (except the reports referred to in clause 3.12(b)(ii)B must be prepared in accordance with the APIC Policy and in the format prescribed by the NSW Procurement Board. Templates are available at: (<https://www.procurepoint.nsw.gov.au/aboriginal-participation-construction-information-contractors>).
- (d) The Contractor must demonstrate to RMS, whenever requested, that it has met and is meeting at all times its obligations under clauses 3.12(a) to 3.12(c).

3.13 Not Used

3.14 Not Used

3.15 Complaints and notifications

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

3.16 Media publications

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

3.17 Notices

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

3.18 Interface with the Interface Contractor

- (a) The Contractor acknowledges that:
 - (i) the Interface Works form part of the Project Works;
 - (ii) the Interface Works may interface with the Interface Contractor's Work; and

- (iii) it is not entitled to make any Claim arising out of or in connection with any:
 - A. issues with the Interface Contractor that result in either the Contractor incurring additional cost or suffering delay; or
 - B. direction or determination made by RMS Representative as contemplated by this clause 3.18, except a direction under clause 3.18(b)(i)A.2).
- (b) The Contractor must:
 - (i) cooperate and liaise with the Interface Contractor for the co-ordination of the Interface Contractor's Work with the Contractor's Work, including:
 - A. allowing the Interface Contractor to enter the Site after the Date of Interface Milestone Completion:
 - 1) at the times agreed with the Interface Contractor; or
 - 2) failing agreement, as directed by RMS Representative,
 to carry out the Interface Contractor's Work;
 - B. providing to the Interface Contractor, on its reasonable request, within a reasonable period of the request, the Contractor's design and work methodology information for the purpose of co-ordinating the design of the Interface Works with the Interface Contractor's Work;
 - C. avoiding hindering or impeding the execution of the Interface Contractor's Work;
 - D. co-ordinating the work staging, construction methods and safety matters in respect of the Contractor's Work and the Interface Contractor's Work; and
 - E. co-ordinating traffic management;
 - (ii) not cause any damage to the Interface Contractor's Work;
 - (iii) fully comply with all directions issued by RMS Representative regarding cooperation by the Contractor with the Interface Contractor and co-ordination of the Contractor's Work with the Interface Contractor's Work;
 - (iv) make proper and adequate allowance in its program for the Interface Works and the Interface Contractor's Work, and compliance with this clause;
 - (v) immediately notify RMS Representative of any issues with the Interface Works or the Interface Contractor which may impact Construction Completion or the Date for Construction Completion;
 - (vi) comply with the provisions of any relevant environmental protection licence (if any and applicable) and use its best endeavours to ensure that the Interface Contractor complies with such environmental protection licence while on Site; and
 - (vii) attend interface co-ordination meetings (if any) as directed by RMS Representative.
- (c) RMS must procure that if the Interface Contractor has access to the Site, the Interface Contractor must comply with the reasonable requirements of the Contractor in relation to Site safety.

4. This deed

4.1 Law of this deed

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

4.2 Order of precedence

- (a) The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this deed:
 - (i) the deed excluding the schedules and exhibits; and
 - (ii) the schedules and exhibits.
- (b) If there is any inconsistency, ambiguity or discrepancies between the documents which make up the Environmental Documents the order of precedence in Schedule 28 will

apply.

- (c) The Scope of Works and Technical Criteria and the Environmental Documents are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in both.
- (d) If there is an ambiguity, discrepancy or inconsistency within the Scope of Works and Technical Criteria or the Environmental Documents or between the Scope of Works and Technical Criteria and the Environmental Documents, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence.

4.3 Ambiguous terms

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

4.4 No assignment

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

5. Legal and other requirements

5.1 Compliance with Law and other requirements

- (a) Subject to clause 5.1(b)(ii), the Contractor must in carrying out the Contractor's Work:
 - (i) comply with all applicable Law;
 - (ii) comply with, and provide RMS Representative with copies of, any requirement, notice, order or direction received from or given by any Authority, including any infringement notice, fine or penalty;
 - (iii) give all notices and pay all fees and other amounts which are required to be paid for or in respect of the performance of its obligations;
 - (iv) give RMS Representative copies of all notices, reports and submissions it gives to Authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, Authorities; and
 - (v) give RMS Representative copies of all documents (including Approvals and other notices) that Authorities issue to it.
- (b) The Contractor must:
 - (i) obtain all Approvals except for those specified in Schedule 41 which either:
 - A. were obtained by RMS prior to the date of this deed; or
 - B. will be obtained by RMS after the date of this deed if required;
 - (ii) unless otherwise expressly specified in Schedule 28, comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or RMS) including those conditions and requirements which RMS is expressly or impliedly required under the terms of the Approvals specified in Schedule 41 to comply with, carry out and fulfil; and

- (iii) as a condition precedent to Interface Milestone Completion and Construction Completion, ensure that it has:
 - A. obtained all Approvals it is required to obtain under this deed;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out and fulfil under this deed; and
 - C. without limiting clauses 5.1(b)(iii)A and 5.1(b)(iii)B, complied with, carried out and fulfilled all conditions and requirements of the REF Determination which it is required to comply with, carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary,

including those Approvals which are required or must be satisfied for the purposes set out in paragraph (c) of the definition of "Approval" in clause 23.2.
- (c) Without limiting the Contractor's obligations under clause 5.1(b), before any documentation is submitted to an Authority for the purposes of seeking or otherwise in connection with any Approval which the Contractor is responsible for obtaining under this deed (**Approval Related Documentation**), the Contractor must:
 - (i) throughout the preparation of the Approval Related Documentation, give RMS Representative, the Project Verifier and all relevant Authorities the opportunity to monitor the preparation of, and to review and comment on, the Approval Related Documentation as contemplated in this clause 5.1(c);
 - (ii) progressively develop and prepare the Approval Related Documentation and, at regular and frequent intervals, give RMS Representative, the Project Verifier and all relevant Authorities drafts of the Approval Related Documentation as it is being prepared;
 - (iii) allow RMS Representative, the Project Verifier and all relevant Authorities (if any of them elect to do so) to consult with the Contractor and to comment on the Approval Related Documentation submitted under clause 5.1(c)(ii);
 - (iv) consider and, to the extent the Contractor considers necessary, address any comments made by RMS Representative, the Project Verifier and all relevant Authorities under clause 5.1(c)(iii) in the Contractor's further preparation of the Approval Related Documentation;
 - (v) give RMS Representative, the Project Verifier and all relevant Authorities any information which any of RMS Representative, the Project Verifier and all relevant Authorities may reasonably request in order for any of them to review and consider the Approval Related Documentation;
 - (vi) submit to RMS Representative a draft of the final version of the applicable Approval Related Documentation which the Contractor proposes be submitted to an Authority for approval, together with a schedule detailing all the comments received from RMS Representative, the Project Verifier and all relevant Authorities under clause 5.1(c)(iii) and the actions (if any) taken by the Contractor to address those comments;
 - (vii) allow 5 Business Days from the date the final version of the applicable Approval Related Documentation is submitted to RMS Representative under clause 5.1(c)(vi) for RMS Representative (if it elects to do so) to consult with the Contractor and/or:
 - A. comment on that documentation to the extent to which RMS Representative considers that it is not of a suitable standard or content having regard to the nature of the relevant Approval (which comments the Contractor may address to the extent the Contractor considers necessary); or
 - B. reject that documentation if it does not comply with the requirements of this deed; and
 - (viii) if any Approval Related Documentation is rejected by RMS Representative under clause 5.1(c)(vii)B, promptly amend the Approval Related Documentation to comply with the requirements of this deed, submit the amended documentation to RMS Representative and the process in clause

5.1(c)(vii) and this clause 5.1(c)(viii) will re-apply to the amended documentation.

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

5.2 Environmental requirements

- (a) The Contractor must carry out the Contractor's Work:
- (i) in an environmentally responsible manner so as to protect the Environment; and
 - (ii) subject to clause 5.1(b)(ii) and clause 5.2(b), in accordance with the Environmental Documents, the Environmental Management Plans and all relevant Law.
- (b) Except as specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(j) of Schedule 1, or Schedule 28, and without limiting the Contractor's other obligations under this deed, the Contractor must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which RMS is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works or Contractor's Work.
- (c) The Contractor must immediately notify RMS in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents or any Law regarding the Environment in the carrying out of the Contractor's Work.
- (d) If there is a legal challenge in relation to the assessment or determination of the Works under the:
- (i) *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
 - (iii) any other Law,
- the Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:
- (iv) ordered by a court; or
 - (v) directed by RMS.
- (e) Subject to clause 5.2(g), where the Contractor is granted an extension of time due to a court order referred to in clause 5.2(d)(iv), RMS must pay the Contractor the reasonable net extra Direct Costs incurred by the Contractor arising directly as a result

of a court order referred to in clause 5.2(d)(iv) (provided the Contractor has incurred them reasonably and has taken all possible steps to minimise them) as stated by RMS Representative.

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

5.3 Crown building work

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

5.4 Skills Development and Training

- (a) The Contractor must comply with the NSW Government Procurement Guideline *Skills and Training in the Construction Industry* and the requirements of the section of the Scope of Works and Technical Criteria identified in Item 29(k) of Schedule 1.

The Guideline is attached to NSW Procurement Board Direction PBD 2016-02 - *Construction apprenticeships*, which is available for download from: <http://arp.nsw.gov.au/pbd-2016-02-construction-apprenticeships>
- (b) The Contractor is required to meet the commitments made in the accepted Tender concerning Skills Development and Training.
- (c) From the date of this deed until the Date of Construction Completion, at intervals no greater than three months, the Contractor must provide reports to RMS Representative in the form set out in Schedule 51, giving details of the apprentices and trainees engaged in the carrying out of the Contractor's Work and demonstrating that the Contractor is meeting (or will meet at Construction Completion) the commitments made in this deed.

5.5 Industrial relations

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

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

5.6 Site induction

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

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

5.7 Work health and safety

- (a) In this clause 5.7, "place of work", "workplace", "construction project", "construction

work" and "person conducting a business or undertaking" ('PCBU') have the same meanings assigned to those terms in the WHS Laws.

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

- agents, employees or contractors (other than the Contractor);
- (x) must itself comply, and ensure that all Subcontractors engaged by the Contractor in connection with the Contractor's Work comply with their respective obligations under the WHS Laws;
 - (xi) must ensure that it carries out the Contractor's Work in a manner which ensures that RMS satisfies its obligations under the WHS Laws; and
 - (xii) must display signs that are clearly visible from outside the place of work identifying the Contractor as the Principal Contractor and stating the contact telephone numbers of the Contractor (including an after hours emergency telephone number) and the location of the Contractor's main site administration facilities for the construction project.
- (d) RMS may, at its sole discretion, notify the Contractor that it has terminated the Contractor's engagement as Principal Contractor and advise the Contractor of the new Principal Contractor for the Contractor's Work. If the Contractor's appointment and engagement as Principal Contractor is terminated, then the Contractor must comply with all requirements of the new Principal Contractor in executing the Contractor's Work and its other obligations under this deed so as to enable the new Principal Contractor to meet its obligations under the WHS Laws.
- (e) Without limiting any other provision of this deed, the Contractor must:
- (i) carry out the Contractor's Work safely so as to protect persons and property and the Environment;
 - (ii) have a corporate work health and safety management system which complies with the WHS Laws and is otherwise in accordance with the NSW Government Work Health and Safety Management Systems and Auditing Guidelines; and
 - (iii) at all times comply with its Project WHS Management Plan.
- (f) If any of RMS Representative, RMS Assistant Representative or a RMS Surveillance Officer considers there is a risk of injury to people or damage to property or the Environment arising from the Contractor's Work:
- (i) RMS Representative, RMS Assistant Representative or the RMS Surveillance Officer (as the case may be) may direct the Contractor to change its manner of working or to cease working; and
 - (ii) the Contractor must, at its cost, comply with any direction given under clause 5.7(f)(i).
- (g) Safety audit and general obligations:
- (i) RMS may itself, have a third party, or require the Contractor to, conduct audits from time to time of the Contractor's compliance with its health and safety obligations under:
 - A. this deed; and
 - B. all WHS Laws,
(WHS Obligations).
 - (ii) The Contractor must comply with all requirements of a party undertaking an audit under this clause, including giving reasonable access to all documents necessary to conduct the audit, and access to the Construction Site.
 - (iii) If the Contractor is required to conduct an audit under this clause, it must do so within the time reasonably required by RMS and promptly report to RMS in writing on the outcome of the audit.
 - (iv) Any corrective work or action which the audit identifies as necessary to rectify any departure from the WHS Obligations must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the departure.
- (h) If the Contractor's Work will be partially or fully funded by the Commonwealth, as identified in Item 20 of Schedule 1, the Contractor must:
- (i) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* (Cth), maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme (**Scheme**) established by the *Fair Work (Building Industry) Act 2012* (Cth)

(FWBI Act) while building work (as defined in section 5 of the FWBI Act) is carried out; and

- (ii) comply with all conditions of Scheme accreditation.
- (i) Regulation 24(h) of the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* outlines provisions applying to joint venture/alliance arrangements that include accredited and unaccredited members.

5.8 Collusive arrangements

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

5.9 Long service leave levy

The Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) (in this clause 5.9 the **Long Service Payment Act**), at the times and in the amounts as are due and payable under the Long Service Payments Act, including:
 - (i) before commencing any construction work under this deed: and
 - (ii) if the Long Service Corporation serves a notice under section 41 of the Long Service Payments Act requiring payment of an additional amount of long service levy, within the time specified in the notice; and
- (b) produce to RMS Representative the documents evidencing payment of the amounts referred to in clause 5.9(a).

5.10 Building Code

- (a) This clause 5.10 only applies if the Contractor's Work will be partially or fully funded by the Commonwealth, as identified in Item 20 of Schedule 1, or if the Contractor's Work is otherwise subject to the *Building Code 2013* dated 25 January 2013 (**Building Code**), issued under the *Fair Work (Building Industry) Act 2012* (Cth).
- (b) The Contractor must comply, in the performance of this deed, with the Building Code. Copies of the Building Code are available at www.employment.gov.au/building-code.
- (c) Compliance with the Building Code shall not relieve the Contractor from responsibility to perform this deed, or from liability for any Defect in the Project Works, Temporary Works or the Landscaping Maintenance arising from compliance with the Building Code.
- (d) Where a change in this deed is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Building Code will be affected.
- (e) The Contractor must maintain adequate records of the compliance with the Building Code by:
 - (i) the Contractor;
 - (ii) its Subcontractors; and
 - (iii) its related entities (as defined in Section 3(2) of the Building Code and referred to in Section 8 of the Building Code).
- (f) If the Contractor does not comply with the requirements of the Building Code in the performance of this deed such that sanction is applied by the Minister for Employment, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.
- (g) While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders, the Contractor may give preference to Subcontractors that have a demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous population exist.
- (h) The Contractor must not appoint a Subcontractor in relation to the Contractor's Work where:
 - (i) the appointment would breach a sanction imposed by the Minister for Employment; or
 - (ii) the Subcontractor has had an adverse court or tribunal decision (not including decisions under appeal), for a breach of workplace relations law, work health and safety law, or workers' compensation law and the Subcontractor has not fully complied, or is not fully complying, with the order.
- (i) The Contractor agrees to require that it and its Subcontractors and its related entities (as defined in Section 3(2) of the Building Code) provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Contractor's Work; and
 - (iii) interview any person,as is necessary to demonstrate its compliance with the Building Code.
- (j) Additionally, the Contractor agrees that the Contractor and its related entities (as defined in Section 3(2) of the Building Code) will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a

specified document within a specified period, in person, by fax or by post.

- (k) The Contractor must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the obligations under this clause 5.10.

5.11 NSW Government Code of Practice for Procurement and Implementation Guidelines

- (a) The NSW Code and the NSW Guidelines apply to this Project. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
- (b) In addition to terms defined in this deed, terms used in this clause 5.11 have the same meaning as is attributed to them in the NSW Guidelines.
- (c) The Contractor must at all times comply with and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (d) The Contractor must notify the Construction Compliance Unit (CCU) and RMS of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (e) Where the Contractor engages a Subcontractor, the Contractor must ensure that the Subcontract imposes on the Subcontractor equivalent obligations to those in clause 5.11, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Contractor's Work where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (g) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (h) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (i) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Construction Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Contractor's Work;
 - (v) have access to personnel; and
 - (vi) interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors and its related entities.
- (i) The Contractor agrees to comply, and will require its related entities to comply, with a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (j) The Contractor warrants that at the time of entering into this deed, neither it, nor any of its related entities, is subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (k) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (l) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related

entities, in respect of work to which the NSW Code and NSW Guidelines apply.

- (m) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from RMS or the State of NSW for such costs.
- (n) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Work and any other obligation under the contract, or from liability for any Defect in the Project Works, Temporary Works or the Landscaping Maintenance or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (o) Where a change in this deed or the Contractor's Work is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines:
 - (i) the Contractor must immediately notify RMS (or the RMS Representative) of the change, or likely change and specify:
 - A. the circumstances of the proposed change;
 - B. the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - C. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan); and
 - (ii) RMS will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice from the Contractor.

5.12 RMS business ethics

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

5.13 Incident control by the New South Wales Police Force

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

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

5.14 Road occupancy

- (a) Where any Contractor's Work will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Existing Highway or the Works, the Contractor must lodge with the Road Occupancy Authority:
 - (i) an application in the form set out in Schedule 42 for a Road Occupancy Licence, providing all relevant details of the proposed Contractor's Work; and
 - (ii) a traffic control plan as required by the section of the Scope of Works and Technical Criteria identified in Item 29(l) of Schedule 1.
- (b) An application and traffic control plan under clause 5.14(a) must be lodged as early as possible prior to the date when the Contractor intends to undertake the Contractor's

Work (and in any event no less than 10 days prior to that date), so as to allow the Road Occupancy Authority to review the application and traffic control plan, determine whether or not to approve the application and any conditions that are to apply and, where appropriate, make arrangements for implementation of the Road Occupancy Licence.

- (c) In considering whether to issue a Road Occupancy Licence, the Road Occupancy Authority may consider the following factors:
 - (i) the expected traffic flow at the time of the proposed Contractor's Work;
 - (ii) the relative importance and urgency of the proposed Contractor's Work; and
 - (iii) any other factor which the Road Occupancy Authority believes to be relevant.
- (d) A Road Occupancy Licence will not be issued where the Road Occupancy Authority considers that traffic volumes are likely to exceed the capacity of the subject road. This will occur during holiday periods, and may also occur during a special event or during other periods of, or other circumstances which give rise to, increased traffic volumes, reduced traffic speeds or lowered capacity of the road. For this purpose a special event is a local or regional event which generates increased traffic volumes, reduces traffic speed or lowers the capacity of the existing road. The Contractor must comply with the Road Occupancy Licence conditions as required by the section of the Scope of Works and Technical Criteria identified in Item 29(m) of Schedule 1.
- (e) Not used.
- (f) A Road Occupancy Licence may contain such terms and conditions as the Road Occupancy Authority sees fit, including:
 - (i) a limitation on the hours during which the proposed Contractor's Work may be carried out; and
 - (ii) specific traffic control measures that must be taken.
- (g) The Contractor must liaise with RMS personnel to facilitate processing of applications for a Road Occupancy Licence as efficiently as possible.
- (h) The Contractor must not undertake any Contractor's Work, which has the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Existing Highway, the Works or a Local Road:
 - (i) without a Road Occupancy Licence;
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of a Road Occupancy Licence.
- (i) A breach of a term or condition of a Road Occupancy Licence shall constitute a breach of this deed.

5.15 RMS Representative's directions

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

5.16 Heavy Vehicle Law – Chain of Responsibility Provisions

Without limiting any other provision of this deed, the Contractor must comply with the Chain of Responsibility Provisions.

5.17 Australian Industry Participation Plan (AIP Plan)

If required by Item 20A of Schedule 1, the Contractor must comply with and implement the Certified AIP Plan.

6. Care of people, property and the Environment

6.1A Risk and indemnity – Initial Works

Until the earlier of the Staged Commencement Date or termination of this deed, the Contractor is responsible for the care of, bears the risk of, and indemnifies RMS against, loss

or damage to the Initial Works, to the extent carried out.

6.1 Risk and indemnity

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

6.2 Reduction of Contractor's liability

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

6.3 Responsibility for care

- (a) The Contractor is responsible for:
- (i) preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Works, the Landscaping Maintenance, the Construction Site or any other areas affected by the Contractor's Work, including personal injury or death, or loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site of items that require

- transport services;
 - (ii) preventing loss or damage to adjoining and other properties and the Environment;
 - (iii) repairing or making good loss or damage to the Project Works, the Temporary Works, the Landscaping Maintenance, the Environment and the Construction Site or any other areas affected by the Contractor's Work; and
 - (iv) except as provided under clause 6.3(b), bearing the cost of repairing, or making good, loss or damage referred to in clause 6.3(a)(iii) or to adjoining and other properties,
 - arising out of, or in connection with, carrying out the Contractor's Work.
- (b) Where loss or damage referred to in clause 6.3(a)(iii) or clause 6.3(a)(iv) is caused or contributed to by an Excepted Risk, the Contractor must, if and to the extent directed by RMS Representative, repair or make good the loss or damage caused or contributed to by the Excepted Risk, which repair or making good will, to the extent caused by the Excepted Risk, be deemed to be a Variation under clause 15 and valued in accordance with clause 15.4.

6.4 RMS action

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

6.5 Limitation of liability

- (a) Subject to clauses 6.5(b) and 6.6, the Contractor's total aggregate liability to RMS arising out of or in connection with the Contractor's Work and this deed whether in contract, tort (including negligence) or otherwise at law or in equity is limited to an amount which is equal to:
 - (i) up to the Staged Commencement Date, the Initial Limit; and
 - (ii) on and from the Staged Commencement Date, the Project Contract Sum and clause 6.5(a)(i) ceases to apply, even in respect of the Initial Works.
- (b) Clauses 6.5(a) and 6.6 do not limit the Contractor's liability:
 - (i) to the extent that it:
 - A. cannot be limited at law;
 - B. arises out of or in connection with the Contractor's wilful or reckless act or omission, gross negligence, fraud or criminal conduct; or
 - C. arises out of or in connection with the Contractor's abandonment of its obligations under this deed;
 - (ii) to the extent that the Contractor is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for:
 - A. any act or omission of the Contractor; or
 - B. a reduction in the amount payable under a policy of insurance required to be effected by the Contractor under this deed because the insurer makes a successful Derogation Assertion (where Derogation Assertion means any:
 - 1) denial of liability; or
 - 2) reduction of liability,
 by the insurer by reason of inclusion in this deed of any provision); or
 - (iii) under clause 6.1(c) in respect of personal injury (including death) or illness of

- any person or for loss of, loss of use of or destruction of or damage to any third party property; or
 - (iv) for breach of confidence or privacy or misuse of Personal Information, or
 - (v) which arises under clauses 12.3, 17.9(d) or 17.9(j),
- and amounts of any liability referred to in clauses 6.5(b)(i) to 6.5(b)(v) will not be included in any calculation of the limit of the Contractor's total aggregate liability under clause 6.5(a).

(c) This clause 6.5 will survive termination of this deed.

6.6 Exclusion of indirect loss

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

7. Insurance

7.1 Principal arranged insurance

- (a) RMS has effected an insurance policy or policies as referred to in Items 1 and 2 of Schedule 36, to cover RMS, the Contractor and all Subcontractors employed from time to time in relation to the Project Works, the Temporary Works and the Landscaping Maintenance for their respective rights, interests and liabilities with respect to:
- (i) **(contract works - material damage)** - liability for loss or damage referred to in clause 6.1(a)(i), subject to the exclusions as contemplated by clause 7.3, and
 - (ii) **(third party liability)** - liabilities to third parties of the type set out in clause 6 and subject to the maximum limits of liability set out in Schedule 37.
- (b) **(professional indemnity)** RMS has effected a professional indemnity policy of insurance for its own benefit, as referred to in Item 3 of Schedule 36.
- (c) RMS may in its discretion have other insureds named or included in the policy or policies referred to in clause 7.1(a), including any other Authority with an interest in the Project Works, the Temporary Works, the Landscaping Maintenance or the Construction Site or any other areas affected by the Contractor's Work.
- (d) The policy or policies referred to in clause 7.1(a) will be maintained by RMS until the Date of Final Completion.
- (e) Before the earlier of:

- (i) 10 Business Days after the Early Works Date or, if none, 10 Business Days after the date of this deed; or
- (ii) the Contractor commencing to carry out any part of the Project Works or Temporary Works,

the Contractor must contact the insurance broker nominated in writing to the Contractor as RMS insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clauses 7.1(a) and 7.1(b).

- (f) Full copies of the policy terms of the insurances effected under clause 7.1(a) will be provided by RMS.
- (g) If at any time the Project Contract Sum exceeds 125% of the Limit of Liability for Contract Works (as referred to in the principal arranged contract works insurance in Schedule 37), RMS will effect an increase in the Limit of Liability for Contract Works insurance to the full value of the Project Contract Sum.

7.2 Contractor's acknowledgement and obligations

The Contractor:

- (a) acknowledges and agrees that:
 - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Schedule 37 and the actual insurance policies effected by RMS pursuant to clause 7.1(a) and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in clauses 6.1A, 6.1 and 6.3 and is aware that those insurance policies will not provide cover to the Contractor against all the risks assumed by the Contractor under clauses 6.1A, 6.1 and 6.3;
 - (ii) in respect of the insurance referred to in clause 7.1(b):
 - A. RMS is the only beneficiary under that insurance; and
 - B. the insurer will not waive any rights of subrogation or action against the Contractor or any of the Contractor's Subcontractors;
 - (iii) the obtaining of insurance by RMS in accordance with clause 7.1 does not limit or otherwise affect the Contractor's obligations under this deed, including those under clauses 6.1A, 6.1 and 6.3; and
 - (iv) the policies of insurance referred to in clauses 7.1(a) and 7.1(b) have been obtained at RMS cost;
- (b) is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a); and
- (c) may effect its own insurance to cover the amount of any excess.

7.3 Exclusions to RMS insurance

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

7.4 Reinstatement

- (a) If there is a claim for damage or destruction under the policy of insurance referred to in clause 7.1(a)(i) (as determined by RMS, acting reasonably):
 - (i) all settlement amounts must be paid by the insurer directly to RMS;
 - (ii) RMS may decide to have the Project Works reinstated, or may decide not to proceed with the Project Works, without creating any default by RMS under this deed; and
 - (iii) the Contractor must reinstate the Project Works if instructed to by RMS or RMS Representative and except as otherwise provided in this deed may only make a Claim for payment for reinstatement of the Project Works progressively as and when the Contractor reinstates, in accordance with this deed, the Project Works and only up to the amount of any insurance settlement.
- (b) If, prior to the Date of Construction Completion, the Project Works or the Temporary Works are damaged or destroyed, the Contractor must:
 - (i) make secure the Project Works, the Temporary Works and the parts of:

- A. the Site;
 - B. (to the extent appropriate) the Local Road Works Areas; and
 - C. the Temporary Works Areas,
- which are still under the control of the Contractor in accordance with clauses 9.1A, 9.1 and 9.4;
- (ii) notify:
 - A. appropriate Authorities, emergency services and the like; and
 - B. the insurers for assessment,
 and comply with their instructions; and
 - (iii) promptly consult with RMS Representative to agree on steps to be taken to ensure that, to the greatest extent possible, the Contractor continues to comply with its obligations under this deed.

7.5 Contractor's insurance

- (a) Before starting any work for or in connection with this deed, the Contractor must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in Items 21 and 22 of Schedule 1, and pay all premiums for:
 - (i) **(workers compensation)** - workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW), as specified in Item 21 of Schedule 1 and Item 5 of Schedule 36; and
 - (ii) **(motor vehicle/mobile plant/third party property)** - either comprehensive motor vehicle/mobile plant insurance or third party property damage insurance, as specified in Item 22 of Schedule 1 and Item 4 of Schedule 36.
- (b) The Contractor must ensure that every Subcontractor is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW).

7.6 Asbestos and waterborne craft

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

7.7 Contractor's insurance requirements

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

7.8 Period of insurance

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

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

7.9 Evidence of policies

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

7.10 RMS may effect necessary insurance

- (a) If the Contractor fails to comply with clauses 7.5, 7.6 and 7.9, RMS may effect and maintain that insurance and pay the necessary premiums.
- (b) RMS may recover from the Contractor the cost of the premiums and RMS reasonable costs of effecting and maintaining the insurance, as a debt due and payable by the Contractor to RMS upon demand.
- (c) The Contractor must provide all reasonable assistance to RMS to allow it to exercise its rights under this clause 7.10, including by providing to RMS Insurance Broker information required by insurers for the purposes of underwriting the relevant insurance.

7.11 Obligation to inform RMS

The Contractor must:

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

7.12 Obligations not affected

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

7.13 Insurance claims procedure

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

8. Security

8.1 Unconditional undertakings

- (a) The Contractor must give RMS within 10 days of the date of this deed three unconditional undertakings as follows:
 - (i) one for 2.5% of the Project Contract Sum;
 - (ii) one for 1.5% of the Project Contract Sum; and
 - (iii) one for 1% of the Project Contract Sum,each in the form of Schedule 6 and in favour of RMS and which are, where required, duly stamped.
- (b) Subject to its rights to have recourse to the unconditional undertakings, RMS must:
 - (i) within 28 days after the Date of Construction Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(i);
 - (ii) within 28 days after the first anniversary of the Date of Construction Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(ii); and
 - (iii) within 28 days after the Date of Final Completion, release the remaining unconditional undertaking provided by the Contractor under clause 8.1(a)(iii).
- (c) RMS:
 - (i) may have recourse to any unconditional undertaking provided under this clause 8.1 at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - A. any unconditional undertaking; or
 - B. the proceeds of any unconditional undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in clause 8.1(c)(ii) on trust for the Contractor.
- (d) Any unconditional undertaking provided under this clause 8.1 must be issued by a financial institution approved by RMS.
- (e) The Contractor must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any unconditional undertaking provided under this clause 8.1 from paying RMS pursuant to the unconditional undertaking;
 - (ii) RMS from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 8.1 or receiving payment under any such unconditional undertaking; or
 - (iii) RMS using the money received under any unconditional undertaking provided under this clause 8.1.

8.2 Parent company guarantee

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

8.3 PPS Law

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

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

9. Access

9.1A Access for Initial Works

- (a) Until the earlier of the Staged Commencement Date or termination of this deed, and subject to clause 9.1(b) and any other provision of this deed and any provision of any Approval affecting access, RMS must give, or ensure the Contractor has, sufficient access, from the dates set out in the Site Access Schedule, to allow the Contractor to carry out the Initial Works and, to the extent required for the purposes of the Unrestricted Provisions, the Contractor's Work.
- (b) During any period in which the Contractor is given access under clause 9.1A(a), the Contractor must:
 - (i) control access to, and ensure public safety on, the relevant land to which the Contractor is given access under clause 9.1A(a);
 - (ii) provide for the continuous safe passage of the public, Service providers and road users on existing roads and access ways affected by the Contractor's Work in accordance with this deed, which passage must, unless otherwise consented to in writing by RMS Representative, be provided at a standard not less than that provided to the public, Service providers and road users prior to the commencement of the Contractor's Work; and
 - (iii) subject to clauses 2.4(c)(ii), 2.5(f)(ii), 9.1(b) and 9.2, and any relevant Law, limit access to the land to which the Contractor is given access under clause 9.1A(a) to its employees and Subcontractors.

9.1 Access

- (a) From the Staged Commencement Date, subject to clause 9.1(b), any other provision of this deed affecting access (including the Scope of Works and Technical Criteria) and any provision of the REF Determination or other Approval affecting access, RMS must:
 - (i) give, or ensure the Contractor has, sufficient access to the Site, the Local Road Works Areas and the Temporary Works Areas, by the dates set out in the Site Access Schedule; and

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

9.2 RMS access

- (a) The Contractor must ensure that at all times RMS Representative, RMS Assistant Representatives, RMS Surveillance Officers and any person authorised by RMS (including visitors invited by RMS) have safe and convenient access to:
 - (i) the Construction Site (to the extent possible having regard to clause 9.1A(a));
 - (ii) any other place where any part of the Contractor's Work is being carried out;
 - (iii) the Contractor's Work;
 - (iv) the Design Documentation; and
 - (v) any other documentation created for the purposes of the Contractor's Work.
- (b) RMS Representative, RMS Assistant Representatives, RMS Surveillance Officers and any other person authorised by RMS that is given access pursuant to this clause must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor.

9.3 RMS right to inspect

- (a) RMS, RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers may at any time inspect the Contractor's Work.
- (b) Neither RMS, RMS Representative, RMS Assistant Representatives nor RMS

Surveillance Officers owe any duty to the Contractor to:

- (i) inspect or otherwise review or monitor the Contractor's Work or other actions or activities or lack of action; or
 - (ii) review, consider, identify or notify about any aspect of the Contractor's Work or errors, omissions, compliance or non-compliance with the requirements of this deed (whether or not it does so).
- (c) No inspection, review or monitoring of the Contractor's Work or of any construction by RMS, RMS Representative, RMS Assistant Representatives or RMS Surveillance Officers will in any way lessen or otherwise affect:
- (i) the Contractor's obligations under this deed (including its obligations under clause 13.1(a)) or otherwise according to Law; or
 - (ii) RMS rights against the Contractor whether under this deed or otherwise according to Law.

9.4 Controlling access

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

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

9.5 Extra Land

- (a) The Contractor must:
 - (i) at its own cost:
 - A. identify any land in addition to the Site, the Local Road Works Areas and the Temporary Works Areas, which is necessary or which it may deem requisite or necessary for the execution of the Contractor's Work including land required for the Local Road Works, Property Works and Service Works (**Extra Land**); and
 - B. procure for itself the occupation or use of or relevant rights over any Extra Land;
 - (ii) prior to the occupation or use of, or exercise of relevant rights over, any Extra Land, give to RMS Representative a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the Extra Land; and
 - (iii) as a condition precedent to Interface Milestone Completion and Construction Completion, provide RMS Representative:
 - A. a properly executed release on terms satisfactory to RMS Representative from all claims or demands (whether for damages or otherwise howsoever

arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the Extra Land that includes confirmation that the Extra Land has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the Extra Land; or

- B. if the Contractor demonstrates to the satisfaction of RMS Representative, acting reasonably, that the Contractor is unable to obtain a release under clause 9.5(a)(iii)A despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the Extra Land has failed or refused to execute such a release within 21 days of it being provided by the Contractor to the owner, occupier or other person having an interest in the Extra Land following the proper completion of the work on that Extra Land.

- (b) The Contractor must ensure that:
 - (i) subject to clause 13.2(d)(ii), the use; and
 - (ii) subject to clause 13.2(e), the rehabilitation,of Extra Land is to the satisfaction of the owner of the Extra Land, the lessee of the Extra Land, RMS and all relevant Authorities.

9.6 Risk of obtaining access to Extra Land

The Contractor acknowledges that:

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

9.7 Access for Early Works

- (a) RMS will use reasonable endeavours to obtain a right of access to the Oval Land to facilitate the Contractor performing the Early Works.
- (b) Where RMS obtains a right of access to the Oval Land or any part of the Oval Land, then despite clauses 9.5, 9.6 and 13.2(b), but subject to this clause 9.7 and without limiting any other provision of this deed affecting access (including the provisions of clause 13.2, other than clause 13.2(b)), RMS will authorise the Contractor to access the Oval Land or that part of the Oval Land from the later of the date that the Contractor complies with clause 9.7(c)(i) and the date that RMS obtains access to the relevant part of the Oval Land until the earliest of:
 - (i) completion of the Early Works;
 - (ii) the date that access to the relevant part of the Oval Land is revoked by the owner or occupier of that part of the Oval Land; and
 - (iii) termination of this deed.
- (c) The Contractor acknowledges and agrees that:
 - (i) RMS will not authorise the Contractor to access any part of the Oval Land until the Contractor has:
 - A. effected the insurances required under clauses 7.5(a)(i), 7.5(a)(ii) and 7.6; and
 - B. complied with clause 7.9 with respect to each insurance;
 - (ii) it may not be given exclusive access to the Oval Land or any part of the Oval Land;
 - (iii) RMS may engage other contractors or consultants to perform work on the Oval Land or any part of the Oval Land, provided that RMS will require such persons to comply with the reasonable directions of the Contractor given in its

- capacity as Principal Contractor;
- (iv) an Authority may perform work on the Oval Land or any part of the Oval Land; and
 - (v) it must ensure that there is no undue interference to:
 - A. the operations of:
 - 1) RMS' other contractors and consultants, or
 - 2) Authorities; or
 - B. the owners or occupiers of the Oval Land.
 - (d) The Contractor acknowledges and agrees that where RMS is able to procure access to the Oval Land or a part of the Oval Land, such access may be pursuant to one or more leases or licences granted to RMS by the relevant owner or occupier of the relevant part of Oval Land (**Oval Land Documents**).
 - (e) Without limiting any other part of this deed:
 - (i) the Contractor must comply with, carry out and fulfil each condition, requirement and obligation of RMS under the Oval Land Documents as part of the Contractor's Work, to the extent that those conditions, requirements and obligations relate to the Contractor's Work, so as to ensure that RMS is able to fully meet its obligations under the Oval Land Documents or otherwise at Law, except:
 - A. for any obligation which, by its nature, can only be performed solely by RMS;
 - B. for any obligation to pay rent, licence fees, fees in relation to any option term and any costs of negotiating, preparing and executing any of the Oval Land Documents (including any GST on any such payments); and
 - C. to the extent that RMS notifies the Contractor that RMS has already performed, or will be responsible for performing, an obligation, in which case the Contractor must cooperate in obtaining, producing and providing all necessary information and assistance to enable RMS to perform the relevant obligation;
 - (ii) in complying with clause 9.7(e)(i), the Contractor must take all actions necessary to ensure RMS complies with its obligations under Oval Land Documents within the time required by the Oval Land Documents (if any);
 - (iii) the Contractor must, in carrying out the Contractor's Work:
 - A. comply with any directions of RMS Representative in relation to compliance with the conditions and requirements of Oval Land Documents;
 - B. if required by RMS or otherwise under this deed, for the purposes of the Oval Land Documents, accept appointment as Principal Contractor (within the meaning of the WHS Laws), and perform as, and comply with the obligations of, the Principal Contractor;
 - C. ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by RMS of its obligations under Oval Land Documents or otherwise at Law; and
 - D. otherwise act consistently with the terms of Oval Land Documents;
 - (iv) whenever pursuant to the terms of the Oval Land Documents RMS makes an acknowledgment or gives a release or warranty, then, subject to the other terms of this deed, the Contractor is deemed to make the same acknowledgement or give the same release or warranty to RMS on the same terms and conditions as the acknowledgement, release or warranty made or given by RMS under Oval Land Documents in the same way as if the relevant terms of the acknowledgement, release or warranty were set out in full in this deed with the appropriate changes to the parties;
 - (v) the Contractor acknowledges that the Oval Land Documents may contain provisions pursuant to which the counterparty to the Oval Land Document is stated to make no representation, give no warranties, assume no duty of care or incur no obligation in respect of a state of affairs, and agrees that RMS

- similarly makes no representation, gives no warranties, assumes no duty of care and incurs no obligation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Oval Land Documents were set out fully in this deed with the appropriate changes to the parties;
- (vi) the Contractor acknowledges and agrees that RMS will not be liable upon any Claim by the Contractor arising out of or in connection with any act or omission by any counterparty to the Oval Land Documents arising out of or in any way in connection with the Oval Land Documents; and
 - (vii) nothing in this deed authorises the Contractor, and the Contractor must not under any circumstances purport, to exercise any right of RMS under, or to be RMS' agent for the purposes of, the Oval Land Documents.
- (f) Without limiting any clause of this deed, the Contractor indemnifies RMS against any claim against RMS by any counterparty to the Oval Land Documents or any liability RMS may incur to any counterparty to the Oval Land Documents arising out of or in any way in connection with:
- (i) an act, omission or neglect of the Contractor or any of the Contractor's employees, contractors or agents in undertaking the Contractor's Work;
 - (ii) a breach by the Contractor of this deed, whether deliberate, unintentional, negligent or otherwise; or
 - (iii) occupation of the Oval Land by the Contractor or any of the Contractor's employees, contractors or agents including, but not limited to any claim or liability arising out of or in connection with:
 - A. loss of or damage to property;
 - B. damage, expense, loss or liability in respect of loss or damage to any other property belonging to any third party; and
 - C. damage, expense, loss or liability in respect of personal injury to or death of any person.
- (g) The Contractor's liability to indemnify RMS under clause 9.7(f) and clause 9.7(h) will be reduced proportionally to the extent that such liability was attributable to the wrongful, negligent or unlawful acts or omissions or wilful misconduct of, or a breach of this deed by, any of RMS or RMS' employees or agents.
- (h) The Contractor is responsible for paying, is liable for and must pay all amounts that RMS is or would otherwise be liable to pay to a counterparty to the Oval Land Documents under each and every indemnity provision of the Oval Land Documents where the event triggering the indemnity:
- (i) arises before the Date of Final Completion; or
 - (ii) arises out of or in connection with any event or circumstance referred to in clauses 9.7(f)(i) to 9.7(f)(iii).
- (i) If the Contractor fails to make a payment referred to in clause 9.7(h) to a counterparty to the Oval Land Documents and RMS makes the payment instead, including where the Contractor fails to make a payment within any time specified by RMS, the amount of the payment will be a debt due from the Contractor to RMS.
- (j) If RMS, despite using its reasonable endeavours, is not able to obtain a right of access for the Contractor to the Oval Land or any part of the Oval Land by 2 May 2017, then:
- (i) subject to clause 9, RMS will give, or ensure the Contractor has, access to that part of the Oval Land which is specified in the Site Access Schedule as forming part of the Site;
 - (ii) clauses 9.5, 9.6 and 13.2 will apply (and this clause 9.7 will no longer apply) in respect of access to that part of the Oval Land which is not specified in the Site Access Schedule as forming part of the Site.
- (k) RMS will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
- (i) delay in providing, or inability of RMS to provide, access to the Oval Land before 2 May 2017; or
 - (ii) any delay, additional costs or other effects on the Contractor's Work related to delay in providing, or inability of RMS to provide, access to the Oval Land

before 2 May 2017.

10. The Site and Services

10.1 Services

The Contractor:

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

10.2 Physical conditions

- (a) Without limiting clauses 10.2(d) or 22.10, the Contractor warrants that, prior to the Early Works Date or, if none, the date of this deed, the Contractor:
 - (i) examined this deed, the Site and its surroundings, the Local Road Works Areas, the Temporary Works Areas and any other information that was made available in writing by RMS, or any other person on RMS behalf, to the Contractor for the purpose of tendering;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all the obligations of this deed and of all matters and things necessary for the due and proper performance and completion of the Contractor's Work;
 - (iv) informed itself of:
 - A. all matters relevant to the employment of labour at the Site, the Local Road Works Areas and the Temporary Works Areas; and
 - B. all industrial matters relevant to the Site, the Local Road Works Areas, the Temporary Works Areas and the Contractor's Work;
 - (v) had sufficient opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of Information Documents; and
 - B. for design purposes and otherwise;
 - (vi) had sufficient opportunity to review and obtain, and obtained, all necessary legal, geotechnical and other technical advice in relation to this deed, the Deed of Disclaimer, the Information Documents (including the RMS Data), the physical conditions and characteristics of the Construction Site, the Environment and their surroundings, as well as the risks, contingencies and other circumstances having an effect on its Tender, the cost of performing its obligations and its potential liabilities under this deed; and
 - (vii) had sufficient access to the Site, the Local Road Works Areas and the Temporary Works Areas, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) The Contractor is responsible for, and assumes the risk of all increased costs and any damage, expense, loss, liability, disruption or delay it suffers or incurs arising out of or

in connection with the physical conditions and characteristics of the Construction Site, the Environment or their surroundings including:

- (i) the existence of any Contamination;
- (ii) the suitability or otherwise of any material on the Site, the Local Road Works Areas or the Temporary Works Areas, for use in the Contractor's Work; and
- (iii) water, atmospheric and sub-surface conditions or characteristics including heritage and archaeological issues,

except to the extent that those physical conditions and characteristics are a Site Condition and, in respect of that Site Condition, the Contractor has complied with clause 10.6.

- (c) Prior to the date of this deed the Contractor signed the Deed of Disclaimer and provided this to RMS after which RMS provided the Information Documents to the Contractor.

Without limiting clause 10.2(d) or the warranties or acknowledgements in the Deed of Disclaimer:

- (i) RMS does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents (other than the RMS Data to the extent contemplated by clause 10.2(f));
- (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the Contractor acknowledges that:
 - A. the Information Document or part thereof does not form part of this deed and that clause 10.2(d) applies to the Information Document or part thereof; and
 - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and
- (iii) RMS will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
 - A. the Information Documents (other than the RMS Data to the extent contemplated by clause 10.2(f)); or
 - B. a failure by RMS to provide any information to the Contractor.

- (d) The Contractor:

- (i) warrants that, subject to clause 10.2(f), it did not in any way rely upon:
 - A. any information, data, representation, statement or document made by, or provided to the Contractor, by RMS or anyone on behalf of RMS or any other information, data, representation, statement or document for which RMS is responsible or may be responsible whether or not obtained from RMS or anyone on behalf of RMS; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,for the purposes of entering into this deed;
- (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that RMS has entered into this deed relying upon the warranties, acknowledgements and agreements in clauses 10.2(d)(i) and 10.2(d)(ii) and in the Deed of Disclaimer and the tender form submitted by the Contractor as part of its Tender.

- (e) The Contractor releases and indemnifies RMS from and against:

- (i) any Claim against RMS by, or liability of RMS to, any person; or
- (ii) (without being limited by clause 10.2(e)(i)) any costs, losses, damages, expenses or liability suffered or incurred by RMS,

arising out of or in any way in connection with:

- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents (excluding the RMS Data to the extent contemplated by clause

- 10.2(f)) by the Contractor or any other person to whom the Information Documents are disclosed by or on behalf of the Contractor;
- (iv) a failure by RMS to provide any information to the Contractor; or
 - (v) the Information Documents (excluding the RMS Data to the extent contemplated by clause 10.2(f)) being relied upon or otherwise used in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms under the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation).
- (f) Subject to clause 10.2(g), RMS acknowledges that the Contractor may rely on the RMS Data but only for the purposes of claiming:
- (i) Variations under and in accordance with clause 15.3(c); and
 - (ii) extensions of time, if any, under and in accordance with clause 17.5 arising from a Variation (if any) the subject of a Variation Order issued by the RMS Representative under and in accordance with clause 15.3(e).
- (g) The Contractor acknowledges that:
- (i) the Contractor cannot rely on the RMS Data to the extent that:
 - A. the Contractor's review, tests, enquiries, investigations and advice indicate; or
 - B. a prudent and competent contractor in the position of the Contractor, who had examined:
 - 1) all information made available in writing by RMS or anyone on behalf of RMS to the Contractor for the purpose of tendering and up to the date of this deed;
 - 2) all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries; and
 - 3) the Construction Site, the Environment and their surroundings, would have known or determined,
 - (ii) the acknowledgement of RMS under clause 10.2(f) does not extend to any interpretation, extrapolation, conclusion, assumption, projection or analysis of the RMS Data, whether it is contained or stated in the Information Documents, or made, drawn or undertaken by the Contractor.

10.3 Conditions of Construction Site and structures

- (a) Subject to clause 10.2(f), RMS makes no representation and gives no warranty to the Contractor in respect of:
- (i) the condition of:
 - A. the Construction Site, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings;
 - (ii) the existence, location, condition or availability of Services in respect of the Construction Site; or
 - (iii) the feasibility or fitness for purpose of the Concept Design including, in respect of the constructability of the Concept Design having regard to the physical conditions and characteristics of the Site, the Local Road Works Areas and the Temporary Works Areas.
- (b) The Contractor must accept:
- (i) the Construction Site; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site,
- in their present condition subject to all defects including all sub-surface conditions.
- (c) The Contractor must investigate, design and construct the Project Works and

Temporary Works in accordance with this deed, whatever may be the condition or characteristics (including all sub-surface conditions) of:

- (i) the Construction Site, the Environment or their surroundings; or
- (ii) any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the characteristics of any of the matters referred to in clauses 10.3(c)(i) or 10.3(c)(ii) above.

10.4 Things of value found

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

The Contractor must:

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

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

10.5 Contamination

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

10.6 Site Conditions

- (a) Site Conditions are physical conditions (or characteristics) of the Site, the Local Road Works Areas and the Temporary Works Areas at the date of this deed:
 - (i) which consist of one or more objects or substances that:
 - A. it is reasonable to conclude were introduced and positioned by deliberate human intervention to the Site, the Local Road Works Areas or the Temporary Works Areas; and
 - B. are specified in Item 25 of Schedule 1 as constituting a Site Condition, subject to satisfaction of the other requirements of this clause 10.6(a); and
 - (ii) which were in existence on the Site, the Local Road Works Areas or the

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

11. Quality

11.1 Quality system

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

11.2 Quality management and verification

- (a) RMS and the Contractor acknowledge that the design and construct project delivery method chosen for the Contractor's Work:
 - (i) requires the Contractor to assume responsibility for all aspects of quality for the Contractor's Work and for the durability of the Project Works;
 - (ii) allows the Project Verifier to observe, monitor, audit and test all aspects of quality in the Contractor's Work and the durability of the Project Works to verify compliance with the requirements of this deed;
 - (iii) requires the Project Verifier by reviewing and assessing quality in the Contractor's Work and the durability of the Project Works, to verify the Contractor's compliance with the requirements of this deed; and
 - (iv) allows RMS Representative, RMS Assistant Representatives and RMS Surveillance Officers to monitor compliance of the Contractor's Work with the requirements of this deed.
- (b) The Contractor must ensure a Quality Manager is engaged who must:
 - (i) independently certify the effectiveness and integrity of the Contractor's quality system in achieving conformity with the requirements of this deed;
 - (ii) report to RMS Representative, relevant RMS Assistant Representatives, the relevant RMS Surveillance Officers and the Project Verifier on quality issues in accordance with the requirements of this deed; and
 - (iii) have the requisite experience and ability described for the Quality Manager in Schedule 19.
- (c) The Contractor must provide to RMS Representative a certificate executed by the Quality Manager in the form of:
 - (i) Schedule 9:
 - A. every 3 months from the Early Works Date or, if none, from the date of this deed up to the end of the Landscaping Maintenance Period; and
 - B. at the end of the Landscaping Maintenance Period as a condition precedent to RMS Representative issuing a notice to the Contractor under clause 14.5(b)(i);
 - (ii) Schedule 10 as a condition precedent to Construction Completion and as a condition precedent to Final Completion;
 - (iii) Schedule 10A as a condition precedent to Interface Milestone Completion; and
 - (iv) Schedule 11 upon the expiry of the last Defects Correction Period and as a condition precedent to Final Completion.
- (d) The Project Verifier must audit and review each revision of the Quality Plan within 14 days of submission of that plan to RMS Representative.

11.3 Hold Points and Witness Points

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

- (a) procedures set out in the Scope of Works and Technical Criteria and the Quality Plan;

and

- (b) requirements inserted in the Project Plans by the Project Verifier.

11.4 Project quality non-conformity

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

11.5 Monitoring and audits by RMS Representative

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

11.6 Testing

- (a) The Contractor must carry out all tests required:
 - (i) by this deed; or
 - (ii) otherwise directed by RMS Representative.
- (b) The costs of a test directed by RMS Representative and not otherwise required by this deed will be borne by RMS unless the test detects a Defect or is upon a Defect.
- (c) Where any test that is not otherwise required by this deed is directed by RMS Representative under clause 11.6(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify RMS Representative if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Interface Milestone Completion and/or Construction Completion, giving details of the estimated delay and how Interface Milestone Completion and/or Construction Completion and Date of Interface Milestone Completion and/or the Date of Construction Completion are likely to be affected (if at all).
- (d) Despite clause 17.4(b), the requirement to notify RMS Representative in accordance

with clause 11.6(c) is a condition precedent to the Contractor's entitlement to any extension of time in connection with a test directed by RMS Representative under clause 11.6(a)(ii).

11.7 No relief from obligations

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

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

12. Design development and documentation

12.1 The Contractor's design obligations

The Contractor:

- (a) warrants to RMS that:
 - (i) the Contractor has checked and carefully considered the Scope of Works and Technical Criteria and Environmental Documents and that:
 - A. the Concept Design has been prepared by the Contractor and will be fit for its intended purpose;
 - B. it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the Scope of Works and Technical Criteria and Environmental Documents;
 - C. it has satisfied itself that the Scope of Works and Technical Criteria is proper, adequate and fit for its intended purpose, including for the purpose of enabling the Contractor to carry out the Contractor's Work in accordance with this deed and including so as to satisfy the other requirements of this clause 12.1(a); and
 - D. it has taken into consideration and made due allowance for the risks and costs associated with carrying out the Contractor's Work and with assuming the obligations and potential liabilities imposed on it under this deed;
 - (ii) the Design Documentation will:
 - A. satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of this deed;
 - B. be as shown in, and in accordance with, the Concept Design, subject to such changes as may be necessary to ensure compliance with this deed or may be necessitated by any of the factors referred to in clauses 12.1(d)(ii)A and 12.1(d)(ii)B;
 - C. be fit for its intended purpose;
 - D. be completed in accordance with the requirements of this deed; and
 - E. integrate all the discrete design elements;
 - (iii) construction will be in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 12.2(k) and construction in accordance with the Design Documentation will satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of this deed;

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

12.2 Preparation of Design Documentation

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

- (d) Subject to clause 12.2(kb), the Contractor must progressively develop and prepare the Design Documentation, and at each of the Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation stages of each discrete design element in the Contractor's Work (including in respect of correction of any Defects) give RMS Representative, the Project Verifier, the Proof Engineer (where relevant) and all relevant Authorities:
- (i) for RMS, up to four sets of all Design Documentation as required by RMS Representative, and for the Project Verifier, the Proof Engineer (where relevant) and all relevant Authorities, up to two sets of all Design Documentation; and
 - (ii) any other information which RMS Representative may reasonably request in order for RMS Representative to review and consider the Design Documentation.

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

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

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

- (e) The:
- (i) Design Documentation for the Developed Concept Design completion stage of each discrete design element must, subject to changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a logical development of the Concept Design;
 - (ii) Design Documentation for the Substantial Detailed Design completion stage of each discrete design element must, subject to clause 12.2(kb) and changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a logical development of the relevant Design Documentation provided at the Developed Concept Design completion stage; and
 - (iii) Final Design Documentation of each discrete design element must, subject to changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, and be a logical development of the relevant Design Documentation provided to RMS Representative at the:
 - A. Substantial Detailed Design completion stage, for those design elements that require Design Documentation for the Substantial Detailed Design; or
 - B. Developed Concept Design completion stage for those design elements that do not require Design Documentation for the Substantial Detailed Design in accordance with clause 12.2(kb); and
 - (iv) IFC Design Documentation of each discrete design element must, subject to changes in accordance with clause 12.1(a)(ii)B and this deed, be as shown in, and in accordance with, be a finalisation of the relevant Design Documentation provided to RMS Representative at the Final Design Documentation completion stage, and address any comments or conditions noted in the Project Verifier's signed document in the form of Schedule 15.
- (f) Subject to clause 12.2(g), RMS may require the Contractor to amend and resubmit any Design Documentation and/or information where that Design Documentation or other

relevant information does not comply with the requirements of clauses 12.1 and 12.2 and the process in clauses 12.2(d) to 12.2(j), as relevant, will re-apply to the amended Design Documentation.

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

accordance with clauses 12.2(a) to 12.2(j).

- (kb) The Design Documentation for the Substantial Detailed Design stage is not required to include the design of:
 - (i) those elements of the Works set out in Item 25B of Schedule 1; or
 - (ii) any design element which RMS' Representative, in his or her absolute discretion, nominates as not requiring submission as part of the Substantial Detailed Design stage.
- (l) If the Contractor considers that a rejection of:
 - (i) Design Documentation by RMS Representative under clause 12.2(i); or
 - (ii) a Design Documentation Minor Amendment Schedule under clause 12.2(m),constitutes or involves a Variation, the Contractor must give notice and submit a claim in accordance with, and otherwise comply with clause 15.3.
- (m) If the Contractor wishes to amend Design Documentation that has been prepared in accordance with clauses 12.2(a) to 12.2(k) and:
 - (i) the Contractor certifies that the proposed amendment is of minor or no consequence; and
 - (ii) the proposed amendment:
 - A. will not cause a non-compliance with this deed, then in that case the Contractor may submit to RMS Representative prior to construction, a Design Documentation Minor Amendment Schedule (in the form of Schedule 46) in respect of the proposed amendment, together with the verifications and certifications required under clause 12.2(h); or
 - B. may or will cause a non-compliance with this deed and is a Minor Variation, then in that case the Contractor must follow the process in clause 15.7,

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

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

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

- (n) The Contractor acknowledges and agrees that:
 - (i) the Contractor is responsible for carrying out the design obligations under the WHS Laws;
 - (ii) neither RMS nor RMS Representative has any design obligations in respect of the Project Works, the Temporary Works or the Design Documentation;
 - (iii) neither RMS nor RMS Representative owes any duty to the Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation (within any time frames contemplated in this deed or otherwise); and
 - (iv) neither RMS participation in the Project Design Group, nor any review or rejection of, nor consultation or comments by, nor any approval (including any approval of any non-compliance or approval subject to conditions) by, RMS or RMS Representative, nor any failure by RMS or RMS Representative regarding any Design Documentation or any other Direction by RMS Representative in respect of any Design Documentation will lessen or otherwise affect:
 - A. the Contractor's warranties under clause 12.1 or any other of its liabilities or responsibilities under this deed or otherwise according to Law; or

- B. RMS rights against the Contractor, whether under this deed or otherwise according to Law.
- (o) The Contractor must give RMS Representative four sets and one copy in electronic format of surveys of work as executed and work as executed Design Documentation in accordance with the requirements of the Scope of Works and Technical Criteria.
- (p) In considering any Design Documentation submitted under this clause 12.2 RMS Representative is entitled to consult with and take into account any views and requirements of any relevant Authority.
- (q) In this clause 12.2, the terms:
 - (i) Developed Concept Design, Substantial Detailed Design, Final Design Documentation and IFC Design Documentation; and
 - (ii) discrete design element,
 have the meaning set out in the Contractor Documentation Schedule.

12.3 Ownership of Design Documentation

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

This licence:

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

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

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

12.4 Delivery up of Design Documentation

- (a) If this deed is terminated by RMS, the Contractor must immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not) then in existence to RMS.
- (b) The Contractor must, if requested, provide evidence acceptable to RMS Representative that the Contractor is at all times able to comply with clause 12.4(a) in respect of any Foreign Sourced Design.

13. Construction

13.1 Construction

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

13.2 Property Works

- (a) Where any Property Works are required to be carried out on a Parcel, the Contractor must give a written notice to the owner or owners of the property (with a copy to RMS Representative) which:
 - (i) describes the Property Works to be carried out;
 - (ii) requests access for the purpose of carrying out the Property Works; and

- (iii) specifies the intended date for commencement of the Property Works, not less than 10 days prior to the day which the Contractor intends to commence the Property Works.
- (b) If the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works from either:
 - (i) the date notified in the notice under clause 13.2(a); or
 - (ii) such other date as may be agreed between the Contractor and the owner or owners,
 the Contractor must:
 - (iii) give RMS Representative a notice stating this; and
 - (iv) at RMS' election, either:
 - A. not carry out the Property Works until RMS Representative gives the Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 13.2(a) will reapply and RMS Representative must either, in his or her absolute discretion:
 - 1) waive the requirement for the relevant Property Works to be completed for Interface Milestone Completion and/or Construction Completion to be achieved, in which case those Property Works must otherwise be completed in accordance with this deed and within a reasonable time, and in any event, prior to the expiry of the relevant Defects Correction Period; or
 - 2) use RMS Representative's discretion under clause 17.5(f) to extend the Date for Interface Milestone Completion and/or Date for Construction Completion to address any delay to Interface Milestone Completion and/or Construction Completion caused by the owner or owners of a property failing to provide the Contractor with sufficient access; or
 - B. if the Contractor demonstrates to the satisfaction of RMS Representative that:
 - 1) the Contractor has used its best endeavours to obtain sufficient access to carry out the Property Works; and
 - 2) the Contractor will be delayed in achieving Interface Milestone Completion and/or Construction Completion by the owner or owners of a property failing to provide access,
 not carry out the relevant Property Works at all, in which case RMS Representative must give a notice to the Contractor directing a Variation under clause 15.2(a) deleting the relevant Property Works, following which relevant adjustments must be made under clause 15.4.
- (c) Upon being given access to any property for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (d) The Contractor must:
 - (i) carry out the Property Works with respect to each Parcel:
 - A. in accordance with the Scope of Works and Technical Criteria;
 - B. so that they are fit for their purpose; and
 - C. in accordance with local government planning policies; and
 - (ii) in carrying out the Property Works, use reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or upon which, Property Works are being undertaken.
- (e) The Contractor must:
 - (i) rehabilitate any part of a Parcel to the state it was in immediately prior to the Contractor obtaining access to the Parcel; and
 - (ii) otherwise repair any damage or degradation to any part of a Parcel arising out of or in any way in connection with the performance of its obligations under

this clause 13.2,

including using all reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or upon which, the Property Works were undertaken.

- (f) The completion of all Property Works under this clause 13.2 including all work under clause 13.2(e) is a condition precedent to Construction Completion.
- (g) The Contractor must, after completion of the Property Works with respect to a Parcel, including the work described in clause 13.2(e), and as a condition precedent to Construction Completion, provide to RMS Representative:
 - (i) a deed in the form of Schedule 35, duly executed by the owner or owners of any part of the Parcel; or
 - (ii) if the Contractor demonstrates to the satisfaction of RMS Representative, acting reasonably, that the Contractor is unable to obtain a deed under clause 13.2(g)(i) despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner or owners have failed or refused to execute a deed in the form of Schedule 35 within 21 days of it being provided by the Contractor to the owner or owners following the proper completion of the Property Works including the work described in clause 13.2(e).
- (h) The acceptance of a deed or statement provided by the Contractor under clause 13.2(g) by RMS Representative is not approval by RMS or RMS Representative of the Contractor's performance of its obligations under this clause 13.2.
- (i) The Contractor must indemnify RMS against any liability to or claim by the owner or owners of any part of a Parcel where:
 - (i) such owner or owners have not duly signed a deed in the form of Schedule 35; and
 - (ii) the liability or claim arises out of or in connection with the Property Works, but the Contractor's liability shall be reduced proportionally to the extent that the liability to, or claim by, the owner or owners of any part of a Parcel arises out of an act or omission of RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier).
- (j) The section of the Scope of Works and Technical Criteria identified in Item 29(r) of Schedule 1:
 - (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of "Property Works" in clause 23.2; and
 - (ii) does not limit or otherwise affect the Contractor's obligations under this deed in relation to the Property Works.

13.3 Notice of accidents and incidents

Where the Contractor becomes aware of:

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

13.4 Cleaning up

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

- (a) keep the Construction Site and any other areas affected by the Contractor's Work clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Construction Site

and any other areas affected by the Contractor's Work; and

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

13.5 Work method

If:

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

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

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

13.6 Temporary Works Areas

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

- (a) rehabilitate all Temporary Works Areas to the state they were in immediately prior to the Contractor obtaining access to them; and
- (b) otherwise repair any damage or degradation to any part of a Temporary Works Areas arising out of or in any way in connection with the performance of its obligations under this deed.

14. Landscaping Maintenance

14.1 Landscaping Maintenance

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

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

14.2 Access during Landscaping Maintenance Period

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

14.3 Ensure performance of RMS statutory functions

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

14.4 Performance of Landscaping Maintenance

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

14.5 Completion of Landscaping Maintenance

- (a) When the Contractor considers the Landscaping Maintenance has been completed, the Contractor must notify RMS Representative in writing. Thereafter RMS Representative and the Project Director must, within 7 days of receipt of a notice under this clause 14.5(a), jointly inspect the areas where the Landscaping Maintenance has been performed, at a mutually convenient time.
- (b) Following the joint inspection under clause 14.5(a) and in any event within 14 days of receipt of a notice under clause 14.5(a), RMS Representative must notify the Contractor whether, in the opinion of RMS Representative:
 - (i) the Landscaping Maintenance has been completed in accordance with this deed

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

15. Variations

15.1 Proposed Variations

- (a) Within 14 days of receipt of a notice in writing from RMS Representative titled "Variation Proposal Request" notifying the Contractor of a proposed Variation, the Contractor must, at its cost, provide RMS Representative with a written notice containing the following details:
 - (i) the effect which the Contractor anticipates the Variation will have on:
 - A. the Design Contract Sum and the Design Payment Schedule;
 - B. the Initial Contract Sum, the Construction Contract Sum and the Construction Payment Schedule;
 - C. the Contract Program, the Subsidiary Contract Programs, Date for Interface Milestone Completion and Date for Construction Completion;
 - D. the performance of the Landscaping Maintenance; and
 - E. the functionality or integrity of any of the elements of the Contractor's Work or the quality or performance standards required by this deed including specific details of:
 - 1) the elements of the Contractor's Work that will be affected;
 - 2) how and to what extent the functionality, integrity or aesthetics of those elements will be affected;
 - 3) the quality or performance standards affected and how and to what extent they will be affected; and
 - 4) any adverse effect which the Variation will have on the Contractor's ability to satisfy its obligations under this deed; and
 - (ii) any other information concerning the proposed Variation which RMS Representative requires including:
 - A. sufficient details to allow RMS to reconsider the need for the Variation; and
 - B. the net extra Direct Costs that the Contractor anticipates would be incurred by it if a direction was given under clause 17.7 to compress the performance of the Contractor's Work to overcome:
 - 1) any delay in achieving Interface Milestone Completion and/or Construction Completion caused by the Variation; or
 - 2) part of any delay in achieving Interface Milestone Completion and/or Construction Completion caused by the Variation as specified in the Variation Proposal Request.

- (b) RMS will:
 - (i) consider the details provided under clause 15.1(a)(i) and the information provided under clause 15.1(a)(ii); and
 - (ii) not be obliged to proceed with any proposed Variation the subject of a Variation Proposal Request.
- (c) RMS Representative may issue a Variation Proposal Request under clause 15.1(a) at any time up to Final Completion.

15.2 Variation Orders

- (a) Whether or not RMS Representative has issued a Variation Proposal Request under clause 15.1(a), RMS Representative may, by a written document titled "Variation Order", direct the Contractor to implement a Variation as specified in the Variation Order.
- (b) Where the Contractor has provided a notice under clause 15.1(a) with respect to the Variation Proposal Request, the Variation Order issued by RMS Representative will state whether any one or more of the following will be adjusted as set out in the Contractor's notice under clause 15.1(a):
 - (i) the Design Contract Sum and the Design Payment Schedule;
 - (ii) the Initial Contract Sum, the Construction Contract Sum and the Construction Payment Schedule;
 - (iii) the Date for Interface Milestone Completion; and
 - (iv) the Date for Construction Completion.
- (c) Where the Contractor receives a Variation Order, it must perform its obligations under this deed in accordance with the Variation specified in the Variation Order.
- (d) RMS Representative may issue a Variation Order under this clause 15.2 at any time up to Final Completion.

15.3 Notice of Variation

- (a) If the Contractor believes any Direction of RMS Representative, other than the issuing of a Variation Order under clause 15.2, constitutes or involves a Variation it must:
 - (i) without delay and before complying with the Direction, and in any event within 5 days of the Direction, give notice to RMS Representative:
 - A. that it considers the Direction constitutes or involves a Variation; and
 - B. which notice must state that it is a notice under this clause 15.3(a)(i); and
 - (ii) within 14 days of giving the notice under clause 15.3(a)(i), submit a written claim to RMS Representative which includes detailed particulars of why the Contractor believes the Direction constitutes or involves a Variation and all other details required by clause 19.2(b).
- (b) Despite the fact that the Contractor considers that a Direction by RMS Representative constitutes or involves a Variation, the Contractor must continue to perform its work in accordance with this deed including, unless otherwise directed, any work connected with the Direction of RMS Representative in respect of which notice has been given under clause 15.3(a).
- (c) If the RMS Data is not correct and the Contractor seeks to assert that reliance on the incorrect RMS Data unavoidably necessitates a Variation, the Contractor must:
 - (i) promptly, and in any event within 5 days of becoming aware that the RMS Data is not correct, give notice to RMS Representative:
 - A. that the RMS Data is not correct, including details; and
 - B. which notice must state it is a notice under this clause 15.3(c)(i); and
 - (ii) within 14 days of giving the notice under clause 15.3(c)(i), submit a written claim to RMS Representative which includes:
 - A. detailed particulars of the RMS Data that is not correct;
 - B. particulars of the proposed Variation which the Contractor believes is necessary to deal with the incorrect RMS Data; and
 - C. the information specified in clause 15.1(a)(i) in respect of the proposed

Variation referred to in clause 15.3(c)(ii)B. (notwithstanding that the claim under this clause 15.3(c)(ii) is not a notice in response to a Variation Proposal Request).

- (d) Within 28 days of receipt of a notice under clause 15.3(c)(ii), RMS Representative must state whether it believes the RMS Data referred to in the notice under clause 15.3(c)(ii) is not correct and that the Contractor's reliance on that incorrect RMS Data unavoidably necessitates a Variation, and notify the Contractor accordingly.
- (e) If the RMS Data referred to in the notice under clause 15.3(c)(ii) is not correct and the Contractor's reliance on the incorrect RMS Data unavoidably necessitates a Variation, the RMS Representative must issue a Variation Order under clause 15.2(a).

15.4 Valuation

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

- (a) the Design Contract Sum and the Design Payment Schedule; and
- (b) the Initial Contract Sum, the Construction Contract Sum and the Construction Payment Schedule,

according to:

- (c) where a Variation Order under clause 15.2 specifies any adjustments under clause 15.2(b), those adjustments as specified in the Variation Order;
- (d) where a Variation Order under clause 15.2 specifies any adjustments and conditions of adjustment that have been agreed in writing between RMS and the Contractor in respect of the Variation specified in the Variation Order, those adjustments and conditions of adjustment as specified in the Variation Order; or
- (e) otherwise for the Initial Contract Sum, the Design Contract Sum and the Construction Contract Sum and the Design Payment Schedule and the Construction Payment Schedule by the cost of the work and materials to be added or omitted as a result of the Variation, valued under clause 15.4(e)(i), clause 15.4(e)(ii) or clause 15.4(e)(iii), or a combination of them, as determined by RMS Representative (including as specified in a Variation Order):
 - (i) on the basis of the schedules of Contractor's rates and/or prices (if any) set out in the Design Payment Schedule;
 - (ii) where the Variation Order specifies that the Variation is to be carried out as Daywork, on the basis of the procedure set out in the Construction Payment Schedule, Cost Centre 8; or
 - (iii) on the basis of a reasonable amount, such value to be as stated by RMS Representative, including in each case the relevant margin stipulated in the Design Payment Schedule and/or the Construction Payment Schedule. No other amounts are to be included in the RMS Representative's valuation of the Variation.

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

15.5 Omissions

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

- (a) RMS may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;
- (b) RMS will not be liable for any Claim by the Contractor as a result of any work being omitted or deleted from the Contractor's Work whether or not RMS thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and

- (c) except for work omitted or deleted by a direction by RMS Representative of a Pre-Agreed Variation made under clause 15.8(a) by the relevant date set out in section 1 of Schedule 44, the work which has been omitted or deleted shall be valued in accordance with clause 15.4.

15.6 The Contractor may propose Variation

- (a) RMS and the Contractor acknowledge that:
 - (i) the design and construct project delivery method chosen is intended, among other things, to allow the Contractor to identify project cost savings while maintaining or enhancing the quality of the Contractor's Work; and
 - (ii) it is their intention that any cost savings should benefit RMS and the Contractor equally.
- (b) The Contractor may propose a Variation by giving written notice to RMS Representative:
 - (i) with details of the proposed Variation; and
 - (ii) which notice must state that it is a notice under this clause 15.6(b).
- (c) On receiving a notice under clause 15.6(b), RMS Representative may give written notice to the Contractor requiring it to give RMS Representative:
 - (i) written details of:
 - A. the proposed Variation in addition to those details provided in accordance with clause 15.6(b);
 - B. the reason for the proposed Variation;
 - C. the effect of the proposed Variation on the Contractor's Work;
 - D. the effect of the proposed Variation on the Contract Program, the Subsidiary Contract Programs, the Date for Interface Milestone Completion and the Date for Construction Completion; and
 - E. the cost effect of the proposed Variation including proposals for any cost savings arising from the Variation;
 - (ii) a written statement stating that the proposed Variation:
 - A. will not adversely affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Work or the performance standards required by this deed; and
 - B. will not adversely affect the quality standards required under this deed; and
 - (iii) any other information and supporting documentation RMS Representative requires.
- (d) RMS Representative:
 - (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Variation the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor.

Prior to giving any direction under this clause 15.6(d):

 - (iii) RMS Representative may seek to negotiate with the Contractor over the level of cost savings arising from the proposed Variation. If the parties agree in writing upon a different level of cost savings the Contractor's notice will be deemed to be amended by the inclusion of this different level of cost savings in place of the original cost savings notified by the Contractor; and
 - (iv) the Contractor must proceed with the Contractor's Work.
- (e) If RMS Representative gives a direction under clause 15.6(d) approving the Variation, the Contractor must perform its obligations under this deed in accordance with the approved Variation.
- (f) With respect to any Variation the subject of a direction under clause 15.6(d), one or more of the following will be adjusted:
 - (i) the Design Contract Sum and the Design Payment Schedule; and

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

15.7 Minor Variations

- (a) RMS may at any time direct a Minor Variation by giving written notice to the Contractor.
- (b) The Contractor may propose a Minor Variation by giving written notice to RMS Representative:
 - (i) with details of the proposed Minor Variation; and
 - (ii) which notice must state that it is a notice under this clause 15.7(b).
- (c) On receiving a notice under clause 15.7(b), RMS Representative may give written notice to the Contractor requiring it to give RMS Representative:
 - (i) written details of the:
 - A. proposed Minor Variation in addition to those details provided in accordance with clause 15.7(b);
 - B. reason for the proposed Minor Variation; and
 - C. effect of the proposed Minor Variation on the Contractor's Work;
 - (ii) a written statement certifying that the proposed Minor Variation:
 - A. will not adversely affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Work or the performance standards required by this deed; and
 - B. will not adversely affect the quality standards required under this deed; and
 - (iii) any other information and supporting documentation RMS Representative requires.
- (d) Within 7 days of the later of receipt of a notice under clause 15.7(b) and any other information to be provided under clause 15.7(c), RMS Representative:
 - (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Minor Variation the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Minor Variation for the convenience of, or to assist, the Contractor.
- (e) If RMS Representative gives a direction under clause 15.7(d) approving the Minor Variation, the Contractor must perform its obligations under this deed in accordance with the approved Minor Variation.
- (f) The Contractor will:
 - (i) bear all costs:
 - A. associated with proposing a Minor Variation under clause 15.7(b);
 - B. associated with providing any details, information, statements or

- documents under clause 15.7(c);
- C. reasonably incurred by RMS (or RMS Representative) in assessing the proposed Minor Variation (such costs to be a debt due and payable from the Contractor to RMS upon demand); and
- D. associated with carrying out the proposed Minor Variation where it is approved by RMS Representative; and
- (ii) not be entitled to make any Claim against RMS arising out of or in connection with the Minor Variation.

15.8 Pre-Agreed Variations

- (a) RMS Representative may, in his or her absolute discretion and without being under any obligation to do so, direct by way of Variation any Pre-Agreed Variation by giving written notice to the Contractor.
- (b) RMS and the Contractor agree that if a notice pursuant to clause 15.8(a) is given in respect of a Pre-Agreed Variation by the relevant date specified in the table in section 1 of Schedule 44, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in section 2 of Schedule 44 from the date the Contractor receives such notice.
- (c) Where RMS Representative directs a Pre-Agreed Variation by giving written notice to the Contractor by the relevant date referred to in clause 15.8(b), the Contractor, in respect of that Pre-Agreed Variation:
 - (i) must carry out its obligations under this deed as amended by clause 15.8(b); and
 - (ii) acknowledges and agrees that:
 - A. any adjustment of the components of the Project Contract Sum made pursuant to clause 15.8(b) will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Project Contract Sum under clause 15.4; and
 - B. the Contractor is not entitled to make any Claim for:
 - 1) any acceleration to the carrying out of the Contractor's Work which the Contractor must perform at any time in order to achieve Interface Milestone Completion by the Date for Interface Milestone Completion and Construction Completion by the Date for Construction Completion; or
 - 2) any extension of time for any delay to the carrying out of the Contractor's Work,
 in connection with the issue of such a notice or the amendment of this deed pursuant to clause 15.8(b).
- (d) Nothing in this clause 15.8 prevents RMS Representative from:
 - (i) issuing a Variation Proposal Request as referred to in clause 15.1(a); or
 - (ii) directing a Variation by issue of a Variation Order under clause 15.2(a), that involves the same (or similar) changes to the Project Works or the Landscaping Maintenance as a Pre-Agreed Variation after the relevant date for giving notice of the Pre-Agreed Variation specified in section 1 of Schedule 44.
- (e) If RMS Representative:
 - (i) issues a Variation Proposal Request as referred to in clause 15.1(a); or
 - (ii) directs a Variation by issue of a Variation Order under clause 15.2(a), which involves the same or similar changes to the Project Works or the Landscaping Maintenance as are required by a Pre-Agreed Variation and which is issued or directed (as relevant) after the relevant date in section 1 of Schedule 44 for that Pre-Agreed Variation, RMS and the Contractor agree that the Variation will be valued in accordance with clause 15.4.

15.9 Change in Law

- (a) Where there is a Change in Law:
- (i) if either RMS or the Contractor wishes clause 15.9(a)(ii) to apply, then that party must within 14 days of the Change in Law, give a written notice to the other party and RMS Representative stating that clause 15.9(a)(ii) applies and containing:
 - A. details of the Change in Law; and
 - B. that party's estimate of the increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law including sufficient information to support the estimate;
 - (ii) RMS and the Contractor will meet within 28 days of a notice being given under clause 15.9(a)(i) and will negotiate and endeavour to agree any increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law and where agreement is reached as to the amount of the increase or decrease in costs:
 - A. in the case of a decrease, the relevant component or components of the Project Contract Sum will be decreased and if either:
 - 1) the Project Contract Sum has been paid in full; or
 - 2) the Project Contract Sum has not been paid in full but the amount of payment due from the Contractor to RMS exceeds the Project Contract Sum less amounts paid under clause 18.4 on account of the Project Contract Sum,then the amount will be a debt due and payable from the Contractor to RMS upon demand; and
 - B. in the case of an increase, the relevant component or components of the Project Contract Sum will be increased;
 - (iii) if no agreement is reached within 28 days (or such other period that RMS and the Contractor agree upon) of a notice being given under clause 15.9(a)(i):
 - A. in the case of a decrease in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law, the amount of the decrease in the Contractor's costs will be a debt due and payable from the Contractor to RMS upon demand, such amount to be as stated by RMS Representative; and
 - B. in the case of an increase in the Contractor's costs of carrying out the Contractor's Work in compliance with the Change in Law, the amount of the increased costs actually incurred will, subject to the Contractor having taken all reasonable steps to mitigate those increased costs, increase the relevant component or components of the Project Contract Sum, such amount to be as stated by RMS Representative; and
 - (iv) the Contractor must comply with the Change in Law.
- (b) Subject to clause 15.9(c), the Contractor will have no Claim against RMS arising out of or in any way in connection with:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed.
- (c) If a requirement, which the Contractor could not reasonably have anticipated, of:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed,
- necessitates a Variation, the Contractor must within 14 days of the new Approval or change taking effect notify RMS Representative in writing with detailed particulars of the reason why the new Approval or change necessitates a Variation. If the Contractor gives such a notice and the new Approval or change does necessitate a Variation, RMS Representative will direct a Variation under clause 15.2(a) after which, subject to clause

15.9(d), relevant adjustments will be made under clause 15.4.

- (d) If a requirement necessitating a Variation referred to in clause 15.9(c):
- (i) could reasonably have been anticipated by a prudent, competent and experienced contractor in the position of the Contractor, irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in its Tender; or
 - (ii) arises out of or in connection with an act or omission of the Contractor, including any design development by the Contractor, or any change in the Contractor's construction methodology,

no adjustments will be made under clause 15.4 and the Contractor will have no entitlement to, and RMS will not be liable for, any Claim arising out of or in connection with that Variation.

16. Defects

16.1 Defects

- (a) The Contractor must promptly give RMS Representative a detailed written report of:
- (i) any Defect it detects; and
 - (ii) all action proposed to correct that Defect, including the estimated time required.
- (b) Subject to any direction under clause 16.2(c) and to clause 16.4, the Contractor must correct all Defects whether or not RMS Representative notifies it of them and, in the case of Defects detected:
- (i) prior to Construction Completion, those Defects must be corrected prior to and as a condition precedent to achieving Construction Completion; and
 - (ii) after Construction Completion, those Defects must, subject to any direction under clause 16.3(a), be corrected as soon as practicable after detection.

16.2 RMS Representative's direction

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

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

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

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

16.3 Correction of Defect or Variation

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

- (a) within any time period specified in RMS Representative's direction, which time must be reasonable; and
- (b) if during the Defects Correction Period applicable to the relevant part of the Project

Works, or in the case of a Defect in the Landscaping Maintenance, the Landscaping Maintenance Period:

- (i) at times and in the manner agreed with RMS Representative;
- (ii) in accordance with the requirements of any relevant Authority;
- (iii) so as to minimise the impact on the use of the relevant part of the Project Works or the Works;
- (iv) in a manner which causes as little inconvenience as possible to users of the Works, a Local Road, a Service or any access and the adjacent community; and
- (v) where the Contractor proposes to perform any work which will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Works or a Local Road the Contractor must apply for a Road Occupancy Licence under clause 5.14.

16.4 RMS correction of Defects

- (a) If RMS Representative discovers or believes there is a Defect or is given notice of a Defect under clause 16.1(a) which RMS Representative reasonably believes:
 - (i) involves an event serious enough to cause significant inconvenience and disruption to users of the Works, a Local Road, a Service or any access or to the adjacent community; and
 - (ii) the Contractor will be unable to remedy the relevant Defect in the time required by RMS Representative to prevent the event, inconvenience or disruption described in clause 16.4(a)(i) occurring,
then, without prejudice to any other rights which RMS may have under this deed or otherwise at Law:
 - (iii) RMS may correct the Defect at the risk and cost of the Contractor; and
 - (iv) the Contractor must pay to RMS the costs of the correction work incurred by RMS.
- (b) Nothing in this clause 16.4 requires RMS to inspect any part of the Project Works or the Landscaping Maintenance for Defects or to correct any Defect and the Contractor is not relieved from, and remains fully responsible for, its obligations under this deed.

16.5 Acceptance of work

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

16.6 Works

The Works have:

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

16.7 Local Road Works

- (a) Each discrete part of the Local Road Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date notified under clause 16.7(e)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Local Road Works) during the Defects Correction Period, which begins on the date of the correction of the Defect or completion of the Variation.
- (b) The completion of the Local Road Works will be assessed on a road by road basis.

- (c) When the Contractor considers that each discrete part of the Local Road Works is complete, subject to clause 16.7(d), it must notify RMS Representative in writing and RMS Representative, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Road Works at a mutually convenient time.
- (d) In the case of any Local Road Works in respect of the roads referred to in the sections of the Scope of Works and Technical Criteria identified in Item 29(s) of Schedule 1, the Contractor must not give notice under clause 16.7(c) prior to the date which is 14 days before the earlier of the anticipated Date of Opening Completion and the anticipated Date of Construction Completion.
- (e) Following the joint inspection under clause 16.7(c), RMS Representative must notify the Contractor in writing:
 - (i) if the discrete part is complete, of the date on which the Contractor has completed the discrete part of the Local Road Works in accordance with this deed, which subject to clause 16.7(f)(i), will be the relevant date for the purposes of clause 16.7(a)(i); or
 - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 16.7(c) will reapply).
- (f) Subject to clause 16.7(g), it is a condition precedent to:
 - (i) the commencement of the Defects Correction Period for a discrete part of the Local Road Works that the Contractor provide RMS Representative with a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; and
 - (ii) Construction Completion that the written notices required under clause 16.7(f)(i) have been provided to RMS Representative for all discrete parts of the Local Road Works.
- (g) If the Contractor demonstrates to the satisfaction of RMS Representative that an Authority has failed to provide a written notice required under clause 16.7(f), despite the Contractor using its best endeavours to obtain the written notice, and that failure has prevented:
 - (i) the commencement of the Defects Correction Period applicable to a discrete part of the Local Road Works; or
 - (ii) the Contractor achieving Construction Completion,
 RMS Representative may, in his or her absolute discretion, waive the requirement for the Contractor to obtain the written notice as a condition precedent to the commencement of the relevant Defects Correction Period or Construction Completion (as the case may be).

16.8 Service Works

- (a) Each discrete part of the Service Works has:
 - (i) a Defects Correction Period of 12 months, which begins when:
 - A. the relevant Authority which has jurisdiction in respect of the Service gives written notice that the work is complete; and
 - B. RMS Representative has been provided with a copy of the notice; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Service Works) during the Defects Correction Period, which begins when:
 - A. the relevant Authority gives written notice that the Defect has been corrected or the Variation completed; and
 - B. RMS Representative has been provided with a copy of the notice.
- (b) Subject to clause 16.8(c), it is a condition precedent to Construction Completion, that:
 - (i) a written notice of the kind referred to in clause 16.8(a)(i) has been given for each discrete part of the Service Works; and
 - (ii) RMS Representative has been provided with a copy of each such notice.

- (c) If the Contractor demonstrates to the satisfaction of RMS Representative that an Authority has failed to provide a written notice required under clauses 16.8(a)(i)A, 16.8(a)(ii)A or 16.8(b), despite the Contractor using its best endeavours to obtain the written notice, and that failure has prevented:
- (i) the commencement of the relevant Defects Correction Period applicable to a discrete part of the Service Works; or
 - (ii) the Contractor achieving Construction Completion,
- RMS Representative may, in his or her absolute discretion, waive the requirement for the Contractor to obtain the written notice required for commencement of the relevant Defects Correction Period or as a condition precedent to Construction Completion (as the case may be).

16.9 Property Works

Each discrete part of the Property Works has:

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

16.10 Failure by the Contractor to comply with direction

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

16.11 Rights not affected

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

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

16.12 Use of defective facilities

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

17. Time and Completion

17.1 The Contractor's programming obligations

- (a) Within 28 days of the:
 - (i) date of this deed, the Contractor must prepare and submit to the Project Verifier and RMS Representative Subsidiary Contract Programs for all activities to be undertaken in carrying out the Contractor's Work (including

procurement of goods and materials) based on the Staged Commencement Date being the Date for Staged Commencement; and

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

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

- (d) The Contract Program and all Subsidiary Contract Programs must be reviewed and updated as reasonably required by RMS Representative and in any event at least:
 - (i) on a monthly basis and at the same time as the Contractor submits a progress claim under clause 18.2; and
 - (ii) within 14 days of the granting of each extension of time under clause 17.5(d) and of each direction to compress the Contractor's Work under clause 17.7, to take into account the actual progress of the Contractor's Work and the impact of each extension of time and direction to compress and must disclose the Contractor's proposed changes to activities, sub-activities and events from the previously provided Contract Program or Subsidiary Contract Program. These updated programs must be given to the Project Verifier and RMS Representative with the reports required by the section of the Contractor Documentation Schedule identified in Item 30(b) of Schedule 1.
- (e) RMS Representative may reject a program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program within 14 days of that program being given to the RMS Representative if it does not comply with the requirements of clauses 17.1(b), 17.1(c) or 17.1(d). If RMS Representative rejects a program submitted by the Contractor as a Contract Program or a Subsidiary Contract Program the Contractor must submit a corrected program within 7 days. If the RMS Representative raises no objection and the program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program complies with clauses 17.1(b), 17.1(c) and 17.1(d) (as relevant), it becomes the Contract Program or Subsidiary Contract Program, as applicable.
- (f) A program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program that is rejected by RMS Representative is not a Contract Program or a Subsidiary Contract Program for the purposes of this deed.
- (g) Neither a Direction relating to, nor review of nor comment upon, a program (including the Contract Program and any Subsidiary Contract Program) by RMS or RMS Representative, nor the inclusion of the Contract Program as an exhibit to this deed, will:
 - (i) relieve the Contractor from or reduce its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 17.2;
 - (ii) evidence or constitute an extension of time by RMS Representative or a Direction by RMS Representative to compress, accelerate, disrupt, prolong or vary any, or all, of the Contractor's Work; or
 - (iii) reduce the time for carrying out of RMS or RMS Representative's obligations under this deed, including by obliging RMS or RMS Representative to perform an obligation earlier than it was required to do so at the date of this deed.

- (h) Whether or not the Contractor chooses to compress or accelerate the carrying out of the Contractor's Work:
 - (i) neither RMS nor RMS Representative will be obliged to take or avoid taking any action to assist or enable the Contractor to achieve Interface Milestone Completion by or before the Date for Interface Milestone Completion or Construction Completion by or before the Date for Construction Completion; and
 - (ii) the time for the carrying out of RMS' or RMS Representative's obligations will not be affected.
- (i) Where the Contractor chooses to compress or accelerate the carrying out of the Contractor's Work:
 - (i) neither RMS nor RMS Representative will be obliged to avoid inhibiting the Contractor from achieving Interface Milestone Completion by or before the Date of Interface Milestone Completion or Construction Completion by or before the Date for Construction Completion; and
 - (ii) the time for the carrying out of RMS' or RMS Representative's obligations will not be affected.

17.2 Date for Interface Milestone Completion and Date for Construction Completion

Subject to clause 1A, the Contractor must achieve:

- (a) Interface Milestone Completion by the Date for Interface Milestone Completion; and
- (b) Construction Completion by the Date for Construction Completion.

17.3 Importance of Interface Milestone and Construction Completion on time

The Contractor acknowledges the:

- (a) importance of complying with its obligations under clause 17.2; and
- (b) Date for Interface Milestone Completion and the Date for Construction Completion will only be extended as set out in clause 17.5.

17.4 Risk and notice of delay

- (a) Except as expressly provided for in clause 17.5, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Work (which, for the avoidance of doubt, includes the Contractor accepting the risk of all delays in, and disruption to, the carrying out of the Provisional Sum Work) and the performance of its obligations under this deed.
- (b) Except as provided under clause 11.6(d), within 5 days of when the Contractor first became aware, or should reasonably have first become aware, that an event has caused or will or is likely to cause any delay, the Contractor must give RMS Representative written notice of the event and estimated delay, with details of the event and how Interface Milestone Completion and the Date of Interface Milestone Completion or Construction Completion and the Date of Construction Completion are likely to be affected (if at all).

17.5 Extension of time for Interface Milestone Completion and Construction Completion

- (a) If the Contractor has been or will be delayed in achieving Interface Milestone Completion or Construction Completion by an Excusable Cause of Delay, the Contractor may submit a claim for an extension to the Date for Interface Milestone Completion and/or the Date for Construction Completion.
- (b) To claim an extension of time the Contractor must:
 - (i) within 14 days of the earlier of when the Contractor:
 - A. became aware; or
 - B. should reasonably have become aware,

of the Excusable Cause of Delay that has or will cause delay to achieving Interface Milestone Completion and/or Construction Completion, submit a written claim to RMS Representative for an extension to the Date for Interface Milestone Completion and/or the Date for Construction Completion, which:

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

in either case having regard to any reduction in accordance with clauses 17.5(e) or 17.7(b).

RMS Representative must notify RMS and the Contractor of the extension of time that has been granted:

- (iii) in respect of any claim made prior to the Staged Commencement Date, within 28 days after the Staged Commencement Date; and
- (iv) otherwise, within 28 days after the Contractor's last claim under clause 17.5(b), including in respect of claims for continuing delay where the delay is first claimed before and continues after the Staged Commencement Date.

The Contractor acknowledges and agrees that the extension of time under clause 17.5(d)(iii) will be determined following determination of, and having regard to, the

Date for Interface Milestone Completion and Date for Construction Completion determined under clause 1A(f).

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

The power to extend the Date for Interface Milestone Completion and/or the Date for Construction Completion under this clause 17.5(f):

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

17.6 Agreed costs

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

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

where:

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

the date of this deed and the Date of Construction Completion, provided no days are counted beyond the Date for Construction Completion as at Construction Completion;

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

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

- (b) Despite clause 15.9, the Contractor will not be entitled to delay costs under clause 17.6(a) arising out of or in any way in connection with a Change in Law or:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed,
- regardless of whether a Change in Law, new Approval or change in an Approval necessitates a Variation.
- (c) The delay costs that the Contractor is entitled to under clause 17.6(a):
- (i) are the agreed damages which will be payable by RMS where the Date for Construction Completion is extended due to a breach of this deed by RMS; and
 - (ii) will be a limitation upon RMS liability to the Contractor for any delay, disruption or interference which arises out of or in connection with any breach of this deed by RMS.
- (ca) If RMS Representative has unilaterally extended the Date for Construction Completion under clause 17.5(f), RMS Representative may in his or her absolute discretion decide to pay delay costs to the Contractor for such amount as RMS Representative in his or her absolute discretion sees fit.

The power to pay delay costs to the Contractor under this clause 17.6(ca):

- (i) may only be exercised by RMS Representative and RMS Representative is not required to exercise his or her discretion under this clause 17.6(ca) for the benefit of the Contractor; and
 - (ii) is not a Direction which can be the subject of a dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).
- (d) The Contractor will not be entitled to make, nor will RMS be liable upon any Claim including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the Contractor's Work, other than for any amount which is paid or payable by RMS under this clause 17.6.
- (e) The Contractor's entitlement to delay costs under clause 17.6(a)(i) will be reduced to the extent of any concurrency, for any period when the Contractor is delayed by multiple causes, where at least one of those causes is not listed in clause 17.6(a)(i) (regardless of which delay event commenced first or the time of commencement of the respective delay events).
- (f) The Contractor will not be entitled to claim or be paid delay costs under clause 17.6(a)(i), to the extent that the Date for Construction Completion is extended due to a delay that is concurrent with a day in respect of which the Date for Construction Completion is extended due to the cause of delay described in paragraph (e) of the definition of "Excusable Cause of Delay" (inclement weather).
- This clause 17.6(f) does not affect the Contractor's entitlement under clause 17.6(a)(iA).
- (g) For the avoidance of doubt, the Contractor is not entitled to delay costs under clause 17.6(a) as a result of any delay to the Date for Interface Milestone Completion.

17.7 Compression

- (a) Subject to clause 17.7(b), RMS Representative may direct the Contractor to compress the Contractor's Work by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of any delay, which may include taking those measures necessary to achieve Interface Milestone Completion by the Date for

Interface Milestone Completion and/or Construction Completion by the Date for Construction Completion, whether or not the cause of any delay entitles the Contractor to an extension of time to the Date for Interface Milestone Completion and/or the Date for Construction Completion.

RMS Representative may not give a direction under this clause 17.7(a) which requires the Contractor to compress the Contractor's Work so as to achieve Interface Milestone Completion earlier than the Date for Interface Milestone Completion and/or Construction Completion earlier than the Date for Construction Completion.

- (b) RMS Representative may only direct the Contractor to compress the Contractor's Work under clause 17.7(a) to the extent that the compression is reasonably capable of being achieved or would be reasonably capable of being achieved by a prudent and competent contractor in the position of the Contractor.
- (c) If, following receipt of a claim under clause 17.5(b), RMS Representative gives the Contractor a direction to compress under clause 17.7(a):
 - (i) and the direction to compress only applies to part of the delay, the Contractor's entitlement to any extension of time to which it may otherwise have been entitled will be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome or minimise the delay, as stated by RMS Representative; and
 - (ii) RMS Representative may at any time by notice in writing withdraw the direction after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled to in respect of the claim, such entitlement to an extension of time to be reduced to the extent that any compression of the Contractor's Work pursuant to the direction undertaken by the Contractor prior to the withdrawal of the direction has overcome or minimised the delay the subject of that claim, as stated by RMS Representative.
- (d) If RMS Representative gives a direction to the Contractor under clause 17.7(a):
 - (i) the Contractor must compress the performance of the Contractor's Work to overcome and minimise the delay to the extent to which the direction requires the Contractor to overcome and minimise the delay;
 - (ii) to the extent that the Contractor would, but for the direction, have been entitled to an extension of time to the Date for Interface Milestone Completion and/or the Date for Construction Completion for the cause of delay in respect of which the Contractor made a claim under clause 17.5(b), the Contractor will be entitled to be paid:
 - A. if the direction relates to:
 - 1) all of the delay caused by a Variation; or
 - 2) part of any delay caused by a Variation as specified in the relevant Variation Proposal Request under clause 15.1,
any amount notified by the Contractor under clause 15.1(a)(ii)B and approved by RMS Representative; or
 - B. otherwise, the reasonable net extra Direct Costs incurred by the Contractor (which if RMS Representative gives a notice to withdraw the direction under clause 17.7(a), will be those reasonable net extra Direct Costs incurred prior to the giving of such notice) and directly attributable to compressing the performance of the Contractor's Work as required by RMS Representative's direction under clause 17.7(a) (provided it has incurred them reasonably and has taken all steps reasonably practicable to minimise them) as stated by RMS Representative; and
 - (iii) the Contractor will have no Claim arising out of or in connection with the cause of delay or the delay or any direction under clause 17.7(a) (whether for an extension of time to the Date for Interface Milestone Completion and/or the Date for Construction Completion which the Contractor might have had but for the direction or otherwise) except for its entitlements under clause 17.7(b) and clause 17.7(d)(ii).
- (e) RMS rights to liquidated damages under clause 17.9 for a failure by the Contractor to

achieve Construction Completion by the Date for Construction Completion are not affected by RMS Representative giving the Contractor a Direction to compress under this clause 17.7.

17.8 Suspension

- (a) RMS Representative may direct the Contractor to suspend and subsequently to recommence performance of all or any of the Contractor's obligations under this deed.
- (b) If the suspension arises as a result of:
 - (i) the Contractor's failure to carry out its obligations under this deed, the Contractor will not be entitled to make any Claim against RMS arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to perform its obligations under this deed:
 - A. a direction to suspend under this clause 17.8 will entitle the Contractor to:
 - 1) be paid by RMS the reasonable net extra Direct Costs incurred by it as a result of the suspension as stated by RMS Representative; and
 - 2) an extension of time to the Date for Interface Milestone Completion and/or the Date for Construction Completion where it is otherwise so entitled under clause 17.5;
 - B. the Contractor must take all steps reasonably practicable to mitigate the net extra Direct Costs incurred by it as a result of the suspension; and
 - C. the Contractor will not be entitled to make any Claim against RMS arising out of, or in any way in connection with, the suspension other than under this clause 17.8(b)(ii).

17.9 Liquidated damages for delay in reaching Construction Completion

- (a) RMS and the Contractor agree and acknowledge that RMS as a statutory body representing the Crown, is pursuing a policy of upgrading the main roads of New South Wales for the purpose of:
 - (i) improving the efficiency of the New South Wales road network so that the costs of travelling (both in time and money) on New South Wales roads are reduced as well as the cost of freight transport in New South Wales; and
 - (ii) eliminating dangerous stretches of road in order to reduce damage to property and the number of fatalities and injuries caused by motor accidents.
- (b) The Contractor and RMS acknowledge and agree that the Contractor's Work represents a most important element of implementing the policy outlined in clause 17.9(a) and will generally improve travel times, reduce freight costs and improve the local environment whilst reducing accidents and accident costs.
- (c) The Contractor acknowledges and agrees that its failure to achieve Construction Completion by the Date for Construction Completion in accordance with this deed, will not only result in direct losses to RMS, but will also lead to the failure of RMS to achieve its policy objectives on behalf of the Crown to the immediate detriment of RMS and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of RMS to achieve its policy objectives is not capable of easy or precise calculation.
- (d) Therefore, the Contractor agrees that if it does not achieve Construction Completion by the Date for Construction Completion, it will pay RMS:
 - (i) the amount specified in Item 27 of Schedule 1 (which is exclusive of GST) for every day after the Date for Construction Completion up to and including:
 - A. the Date of Opening Completion (if any);
 - B. the Date of Construction Completion; or
 - C. the date that this deed is validly terminated,whichever first occurs; and
 - (ii) where Opening Completion has been achieved but Construction Completion has not, and RMS Representative issues a notice under clause 17.12, the

amount specified in Item 28 of Schedule 1 (which is exclusive of GST), for every day after the Date of Opening Completion (if any) up to and including:

- A. the Date of Construction Completion; or
- B. the date that this deed is validly terminated,

whichever first occurs.

- (e) The liquidated damages provided by clause 17.9(d) are a genuine pre-estimate of RMS damages if Construction Completion occurs after the Date for Construction Completion and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by RMS for both its own loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of the Contractor to achieve Construction Completion by the Date for Construction Completion.
- (f) RMS and the Contractor acknowledge and agree that they are both parties contracting at arms length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (g) The Contractor agrees to pay the liquidated damages under clause 17.9(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of RMS.
- (h) The Contractor entered into the obligation to pay the amounts specified in clause 17.9(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.
- (i) The Contractor agrees to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts.
- (j) The Contractor agrees that if clause 17.9(d) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle RMS from recovering liquidated damages, RMS will be entitled to recover common law damages as a result of the Contractor failing to achieve Construction Completion by the Date for Construction Completion, but the Contractor's liability for such damages (whether per day or in the aggregate) will not be any greater than the liability which it would have had if clause 17.9(d) had not been void, invalid or otherwise inoperative.

17.10 Construction Completion

- (a) The Contractor must give RMS Representative:
 - (i) 3 months; and
 - (ii) 1 month,written notice of the estimated Date of Construction Completion.
- (b) RMS Representative and the Project Director must, within 7 days of receipt of the notice referred to in clause 17.10(a)(ii), jointly inspect the Contractor's Work at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.10(b), RMS Representative must give the Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before Construction Completion is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Construction Completion that it is not practicable to issue a list as contemplated in clause 17.10(c)(i).
- (d) When the Contractor considers it has achieved Construction Completion, the Contractor must notify RMS Representative in writing.
- (e) RMS Representative and the Project Director must, within 7 days of receipt of the Contractor's notice referred to in clause 17.10(d), jointly inspect the Contractor's Work at a mutually convenient time.

- (f) Following the joint inspection under clause 17.10(e) and in any event within 14 days of receipt of a notice under clause 17.10(d), RMS Representative must state and notify the Contractor of:
 - (i) if Construction Completion has been achieved, the date on which the Contractor achieved Construction Completion; and
 - (ii) if Construction Completion has not been achieved:
 - A. the items, including any Defects, which remain to be completed before Construction Completion is achieved; or
 - B. that the Contractor is so far from achieving Construction Completion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.10(f)(ii)A.
- (g) If RMS Representative issues a notice under clause 17.10(f)(ii) the Contractor must proceed with the Contractor's Work and thereafter when it considers it has achieved Construction Completion it must give RMS Representative a further written notice to that effect under clause 17.10(d) after which clauses 17.10(e) and 17.10(f) will reapply.
- (h) The Contractor:
 - (i) acknowledges that, at the date of this deed, it is anticipated that Construction Completion before the Date for Construction Completion will be of benefit to RMS; and
 - (ii) must co-operate to ensure that any potential for early Construction Completion is maximised in light of RMS total requirements for the development of the Existing Highway.

17.10A Interface Milestone Completion

- (a) The Contractor shall give RMS Representative 28 days written notice of the estimated Date of Interface Milestone Completion.
- (b) When the Contractor considers it has achieved Interface Milestone Completion, the Contractor must notify RMS Representative in writing.
- (c) RMS Representative and the Project Director must, within 7 days of receipt of the Contractor's notice referred to in clause 17.10A(b), jointly inspect the Interface Works at a mutually convenient time.
- (d) Following the joint inspection under clause 17.10A(c), RMS Representative must state and notify the Contractor of:
 - (i) if Interface Milestone Completion has been achieved, the date on which the Contractor achieved Interface Milestone Completion; and
 - (ii) if Interface Milestone Completion has not been achieved:
 - A. the items, including any Defects, which remain to be completed before Interface Milestone Completion is achieved; or
 - B. that the Contractor is so far from achieving Interface Milestone Completion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.10A(d)(ii)(A).
- (e) If RMS Representative issues a notice under clause 17.10A(d)(ii) the Contractor must proceed with the Interface Works and thereafter when it considers it has achieved Interface Milestone Completion it must give RMS Representative a further written notice to that effect under clause 17.10A(b) after which clauses 17.10A(c) and 17.10A(d) will reapply.
- (f) The Contractor:
 - (i) acknowledges that, at the date of this deed, it is anticipated that achieving Interface Milestone Completion before the Date for Interface Milestone Completion will be of benefit to RMS; and
 - (ii) must co-operate to ensure that any potential for early Interface Milestone Completion is maximised in light of RMS' total requirements for the development of the Northern Road.

17.11 Part of the works or section

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

17.12 Opening Completion

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

17.13 Opening of the Works following Construction Completion

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

17.14 Warranties by others

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

17.15 Final Completion

- (a) The Contractor must give RMS Representative two month's written notice of the estimated Date of Final Completion.
- (b) RMS Representative and the Project Director must, within 21 days of the notice referred to in clause 17.15(a), jointly inspect the Works at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.15(b), RMS Representative must give the Contractor a list of items which must be completed before Final Completion is achieved.
- (d) When the Contractor considers it has achieved Final Completion, the Contractor must notify RMS Representative in writing and RMS Representative and the Project Director must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 17.15(d) and in any event within 28 days of receipt of a notice under clause 17.15(d), RMS Representative must state and notify the Contractor:
 - (i) if Final Completion has been achieved, of the date on which the Contractor achieved Final Completion; or
 - (ii) if Final Completion has not been achieved:
 - A. of the items which remain to be completed before Final Completion is achieved; or
 - B. that the Contractor is so far away from achieving Final Completion, it is not practicable to specify the items referred to in clause 17.15(e)(ii)A.

- (f) If RMS Representative issues a notice under clause 17.15(e)(ii)B, the Contractor must proceed with the Contractor's Work and thereafter when it considers it has achieved Final Completion it must give RMS Representative further written notice to that effect under clause 17.15(d) after which clauses 17.15(e) and 17.15(f) will reapply.

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

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

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

18. Payment

18.1 RMS payment obligation for design and construction

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

18.2 Payment claims

- (a) The Contractor is entitled to give RMS Representative a progress claim, with respect to the Project Contract Sum, on each Reference Date. For the purposes of this clause 18.2(a), a Reference Date is the later to occur of:
 - (i) the twenty-fifth day of each month; and
 - (ii) the date on which the last of the following occurs:
 - A. the Contractor demonstrates to RMS Representative that it has complied with clauses 2.8(g), 8.1(a) and 8.2;
 - B. the Contractor demonstrates to RMS Representative that it has effected and is maintaining all insurances required to be effected by the Contractor under clause 7 and has complied with clause 7.9; and
 - C. the Contractor provides to RMS Representative a contractor statement and a supporting statement in the form of Schedule 5;
 - 1) which is executed on or after the twenty-fifth day of the relevant month; and
 - 2) which has been duly executed by a representative of the Contractor who is in a position to know the facts declared.

- (b) The Contractor agrees with RMS that the Reference Date prescribed by clause 18.2(a) is, for the purposes of section 8 of the SOP Act, the "reference date" under this clause 18.
- (ba) Without limiting clause 18.2(e), the Contractor agrees that the amount of a progress payment (for the purposes of section 9 of the SOP Act and this clause 18) will be calculated by reference to:
 - (i) any relevant statement or certificate in relation to the Contractor's Work by:
 - A. the Quality Manager in the form of Schedule 8; and
 - B. the Project Verifier in the form of Schedule 13; and
 - (ii) the Contractor's Work that has been completed up to and including the date on which the contractor statement and supporting statement in the form of Schedule 5 was executed.
- (c) For each claim made under clause 18.2(a) the Contractor must give RMS Representative (at the same time as the claim is made):
 - (i) a statement in a format required by RMS Representative (including electronic format) showing the amount the Contractor claims, including rise and fall calculations;
 - (ii) a statement by the Quality Manager in the form of Schedule 8 that the parts of the Contractor's Work claimed for payment comply with the requirements of this deed;
 - (iii) verification by the Project Verifier in the form of Schedule 13 that the parts of the Contractor's Work claimed for payment comply with the requirements of this deed; and
 - (iv) evidence of the Contractor's compliance with any outstanding obligations under clause 2.5(a) and clause 5.3.
- (d) RMS Representative must, on behalf of RMS, within 10 Business Days of receipt of the Contractor's claim under clause 18.2(a), issue to the Contractor and RMS, a payment schedule:
 - (i) identifying the payment claim to which it relates;
 - (ii) stating the amount of the payment that RMS proposes to make to the Contractor or that is due from the Contractor to RMS (**Progress Payment**), including details of the calculation of the Progress Payment, noting that if the Contractor has not provided the monthly Contract Program and all Subsidiary Contract Programs as required by clause 17.1(d)(i) the calculation of the Progress Payment may include a retention of 0.5%. This retention amount may be claimed in a subsequent progress claim once the Contractor has provided the documentation required by clause 17.1(d)(i) for the relevant month; and
 - (iii) if the Progress Payment is less than the amount claimed by the Contractor, setting out why the Progress Payment is less and, if the reason for the difference is that RMS has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (e) In issuing a payment schedule RMS Representative may deduct from the amount which would otherwise be payable to the Contractor, any amount which RMS is entitled to retain, deduct, withhold or set-off under this deed, including any amount which RMS is entitled to set-off or withhold under clause 22.8.
 Failure by RMS Representative to set out in a payment schedule an amount which RMS is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by RMS will not prejudice RMS right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
- (f) RMS Representative may at any time (but is not obliged to) issue a payment schedule to the Contractor as if a progress claim was made on the twenty-fifth day of a month.
- (g) The Contractor agrees with RMS that a progress claim submitted to RMS Representative under this clause 18.2 is received by RMS Representative as agent for RMS and that a payment schedule issued by RMS Representative under this clause 18.2 is issued by RMS Representative as agent for RMS.

18.3 Payment on account

A payment schedule issued under clause 18.2 is not:

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

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

18.4 Due date for payment

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

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

- (b) By the due date for payment of a Progress Payment payable to RMS, the Contractor shall pay the Progress Payment to RMS.

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

18.5 Payment of Subcontractors, workers compensation and payroll tax

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

- (b) After the:

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

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

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

18.6 Unfixed goods and materials

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

- (i) the Contractor:

- A. has provided to RMS at the same time as its progress claim under clause 18.2(a) an unconditional undertaking in the form of Schedule 6 in favour of RMS and issued by a financial institution approved by RMS equal to the payment claimed for the goods and materials; and
- B. gives RMS Representative such evidence as may be required by RMS

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

18.7 Incentive Amount

- (Aa) The provisions of this clause 18.7 and any references in this deed to this clause 18.7 will only operate where:
 - (i) RMS has determined (in its absolute discretion) an amount for the Incentive Amount Pool that is not 'Nil'; and
 - (ii) the parties have agreed in writing all details required to be entered in Schedule 31.
- (a) In addition to the Project Contract Sum, the Contractor may be entitled to be paid the Incentive Amount, up to an amount no more, in aggregate, than the Incentive Amount Pool.
- (b) From the Staged Commencement Date, within 5 days of the end of every month, until the Date of Construction Completion, the Contractor must provide RMS Representative with:
 - (i) a written statement detailing the level of achievement of the Key Result Areas against the relevant Key Performance Indicators for the previous month;
 - (ii) the Contractor's proposed calculation of the Incentive Amount for the preceding month (**Monthly Incentive Estimate**), having regard to:
 - A. the information set out at clauses 18.7(b)(i) and 18.7(b)(iii); and
 - B. Schedule 31; and
 - (iii) all relevant supporting information including:
 - A. all data relied on to calculate the Contractor's performance in relation to the Key Result Areas against each of the relevant Key Performance Indicators; and
 - B. all worksheets, spreadsheets, tables and calculations relied upon by the Contractor to substantiate its proposed calculation of the Monthly Incentive Estimate.
- (c) RMS Representative and the Project Director will meet on a monthly basis following the Staged Commencement Date to review the Contractor's achievement of the Key Result Areas against each of the relevant Key Performance Indicators for the month ending immediately prior to their meeting having regard to:
 - (i) the Incentive Data;
 - (ii) other relevant information available to RMS Representative; and
 - (iii) Schedule 31.
- (d) Following the meeting under clause 18.7(c), RMS Representative must within 5 days:
 - (i) assess the level of achievement; and

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

18.8 GST

- (a) Words or expressions used in this clause 18.8 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

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

18.9 Security of Payment Act

- (a) The Contractor must not at any time, without the written consent of RMS, divulge or

suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by RMS or any details thereof in respect of an adjudication application made under Part 3 Division 2 of the SOP Act (in this paragraph, the **Information**). For the avoidance of doubt:

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

18.10 Price adjustment for Provisional Sum Work

- (a) To the extent to which Provisional Sum Work is specified in the Scope of Works and Technical Criteria as only to be carried out if instructed by RMS or the RMS Representative:
- (i) the Contractor must not carry out any of the relevant Provisional Sum Work unless instructed to by RMS or the RMS Representative;
 - (ii) if and to the extent that RMS or the RMS Representative does not instruct the Contractor to carry out the relevant Provisional Sum Work, to the extent to which an amount is allowed for the relevant Provisional Sum Work in the Design Payment Schedule and/or the Construction Payment Schedule (as the case may be), the Design Contract Sum and/or the Construction Contract Sum (as the case may be) must be adjusted to deduct the applicable amount allowed for the relevant Provisional Sum Work; and
 - (iii) if and to the extent that RMS or the RMS Representative instructs the Contractor to carry out the relevant Provisional Sum Work:

- A. the Contractor must comply with the instruction; and
 - B. the Design Contract Sum and/or the Construction Contract Sum (as the case may be) must be adjusted as allowed for in clause 18.10(b).
- (b) To the extent to which:
- (i) Provisional Sum Work is included in the Design Contract Sum and/or the Construction Contract Sum and the Scope of Works and Technical Criteria does not specify that it is only to be carried out if instructed by RMS or the RMS Representative, the Contractor must carry out the relevant Provisional Sum Work; or
 - (ii) clause 18.10(a)(iii)B applies to Provisional Sum Work instructed by RMS or the RMS Representative,
the Design Contract Sum and/or the Construction Contract Sum (as the case may be) will be adjusted for the item(s) of Provisional Sum Work by the difference between:
 - (iii) the applicable amount allowed for the item(s) of Provisional Sum Work in the Design Payment Schedule and/or the Construction Payment Schedule (as the case may be); and
 - (iv) either:
 - A. an amount agreed between the Contractor and RMS Representative; or
 - B. if they fail to agree, an amount determined by RMS Representative for the actual, necessary and reasonable costs to be incurred by the Contractor in carrying out the Provisional Sum Work by reference to the Payment Constraints applicable to the Provisional Sum Work in the Design Payment Schedule and/or the Construction Payment Schedule (as the case may be).
- (c) Except as allowed for in clause 18.10(b), any Service Works which are not Provisional Sum Work are deemed to be covered by the lump sum portions of the Project Contract Sum.

19. Notification of claims

19.1 Notice of Claims

Except for Claims:

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

19.2 Prescribed notices

The notices referred to in clause 19.1 are:

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

19.3 Continuing events

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

19.4 Bar

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

19.5 Other provisions unaffected

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

19.6 RMS Representative's Statements

- (a) Without limiting the rights of RMS Representative under clause 18.3, either party may seek to have any RMS Representative's Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 20 by giving a Notice of Dispute to the other party in accordance with clause 20.2. If either party wishes to have a RMS Representative's Statement opened up, reviewed, decided and substituted it must give the Notice of Dispute required under clause 20.2 within 21 days of the date of receipt of the RMS Representative's Statement.
- (b) Subject to clause 19.6(c) but without limiting the rights of RMS Representative under clause 18.3, each party acknowledges and agrees that its sole means of altering, redressing, replacing or overturning any RMS Representative's Statement (except for typographical errors and errors of mathematical calculation) is by giving a Notice of Dispute in accordance with clause 20.2.
- (c) Where the Contractor incurs additional cost arising out of a RMS Representative's Statement and that RMS Representative's Statement is subsequently altered, redressed, replaced or overturned pursuant to clause 20, the Contractor will be entitled to be paid:
 - (i) where the RMS Representative Statement is one described in paragraphs (c), (d), (e), (i), (j), (k), (n) or (o) of the definition of RMS Representative's Statement the Contractor's reasonable net extra Direct Costs incurred in complying with the relevant RMS Representative's Statement (provided it has incurred them reasonably and has taken all possible steps to minimise them) as

- stated by RMS Representative; and
- (ii) interest calculated in accordance with clause 22.5(a),
- by RMS, but that entitlement will be the Contractor's sole remedy, and the Contractor will have no entitlement to, and RMS will not be liable for, any Claim for any cost, loss, damage, expense, fine, penalty or liability suffered or incurred by the Contractor arising out of or in connection with that RMS Representative's Statement or any action in response to it.
- (d) If neither party gives a Notice of Dispute in accordance with clause 20.2 within 21 days of the date of receipt of a RMS Representative's Statement, then, subject to clause 18.3:
 - (i) the RMS Representative's Statement will be binding upon the parties and will not thereafter be capable of being opened up or reviewed by any person, including any expert, arbitrator, court or tribunal, at the request of or upon any application by either party; and
 - (ii) neither party will be liable for any Claim by the other party arising out of or in any way in connection with the relevant RMS Representative's Statement (other than in accordance with the RMS Representative's Statement).

20. Dispute resolution

20.1 Dispute

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

20.2 Notice of Dispute

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

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

20.3 Executive negotiations

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

20.4 Referral to Dispute Avoidance Board

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

case may be.

20.5 Obtaining Dispute Avoidance Board's Decision

- (a) If a Dispute is referred to the Dispute Avoidance Board under clause 20.4, the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral to DAB is received by the Dispute Avoidance Board member. The decision of a Dispute by the Dispute Avoidance Board under this clause 20.5 must be made in accordance with the rules in Appendix 2 of the DAB Agreement, or such other rules as are agreed between the parties and the Dispute Avoidance Board.
- (b) Both parties must promptly make available to the Dispute Avoidance Board:
 - (i) all such additional information;
 - (ii) access to the Construction Site and all places at which the Contractor's activities are being undertaken, provided that the Dispute Avoidance Board member complies with the reasonable directions of the Contractor given in its capacity as Principal Contractor; and
 - (iii) appropriate facilities,as the Dispute Avoidance Board may require for the purposes of making a decision on the Dispute.
- (c) The function of the Dispute Avoidance Board is not arbitration and the Dispute Avoidance Board member does not act as an arbitrator.
- (d) Despite anything else, to the extent permitted by Law, the Dispute Avoidance Board will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (e) Within 21 days after the later of close of submissions or conclusion of any conference in relation to a Dispute referred to a Dispute Avoidance Board under clause 20.4, or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must give its decision. The decision of the Dispute Avoidance Board:
 - (i) must, without limiting the operation of Appendix 2 to the DAB Agreement, be in writing, must state that it is given under this clause 20.5(e) and must set out reasons for the decision;
 - (ii) will be:
 - A. to the extent that it decides the subject of an RMS Representative's Statement, substituted for the RMS Representative's Statement 28 days after receipt by RMS of the decision; and
 - B. final and binding,unless a party gives a notice of its dissatisfaction to the other party in accordance with clause 20.5(f) ; and
 - (iii) subject to clause 20.5(i) and clause 20.10, is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.
- (f) If the Dispute Avoidance Board gives a decision that either party is dissatisfied with, then, subject to clause 20.5(i), the dissatisfied party may give a notice to the other party of its dissatisfaction within 56 days after receipt of the decision.
- (g) If the Dispute Avoidance Board fails to give its decision within the period of 21 days (or such other period as is approved by both parties) after the later of close of submissions or conclusion of any conference in relation to a Dispute referred to a Dispute Avoidance Board under clause 20.4, then either party may give notice to the other party of its dissatisfaction.
- (h) If a notice of dissatisfaction is given in accordance with either clause 20.5(f) or clause 20.5(g), the notice of dissatisfaction must state that it is given under clause 20.5(f) or clause 20.5(g) (as the case may be), and must set out the matter in dispute and the reason(s) for dissatisfaction. Except as provided under clause 20.7 and clause 20.8, neither party will be entitled to commence arbitration of a Dispute, and a decision (if any) of the Dispute Avoidance Board will be final and binding, unless a notice of dissatisfaction has been given in accordance with clause 20.5(f) or clause 20.5(g).

- (i) Where the decision of the Dispute Avoidance Board requires that one party (**first party**) owes the other (**second party**) money, the first party must pay the second party the money within 28 days of receipt of the decision, provided that:
 - (i) if either party has given a notice of dissatisfaction to the other party under clause 20.5(f) within 28 days of receipt of the decision, the first party is not required to pay the money within 28 days of receipt of the decision; and
 - (ii) neither payment of the money, nor a failure by the first party to give a notice of dissatisfaction, within 28 days of receipt of the decision prejudices the rights of the first party under clause 20.5(f).
- (j) Once a decision of the Dispute Avoidance Board has become final and binding under clause 20.5(e), clause 20.5(h) or clause 20.6(b) as the case may be, neither party will be entitled to challenge the decision on the basis that a member of the Dispute Avoidance Board did not, at the time of making the decision, meet the criteria set out in Schedule 39.

20.6 Amicable Settlement

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

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

20.7 Failure to Comply with Dispute Avoidance Board's Decision

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

20.8 No Dispute Avoidance Board in place

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

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

20.9 Arbitration

- (a) Any Dispute which is referred to arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 21 days after the Dispute has been referred to arbitration, appointed by the President for the time being of The Resolution Institute.
- (b) To the extent that they are not inconsistent with this deed, The Resolution Institute – Arbitration Rules will apply to the arbitration.
- (c) The seat of the arbitration will be Sydney, Australia.
- (d) The arbitrator will have power to grant all legal, equitable and statutory remedies and, subject to clause 20.7, to open up, review and substitute any decision of the Dispute Avoidance Board under clause 20.5 that is not final and binding on the parties pursuant to clause 20.5(e).

- (e) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (f) All aspects of the arbitration, including:
 - (i) any proceedings or hearings;
 - (ii) any meetings;
 - (iii) any submissions;
 - (iv) any materials in the proceedings created for the purpose of the arbitration; and
 - (v) documents produced in the proceedings which are not otherwise in the public domain,
 - must be kept private and confidential except:
 - (vi) where the parties expressly agree in writing to the contrary;
 - (vii) as required by Law; or
 - (viii) as required in order to enforce an arbitration award.

20.10 Payments

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

20.11 Contractor to Continue Performing Obligations

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

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

20.12 Urgent Relief

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

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

20.13 Disputes under Third Party Agreements

- (a) A Dispute under this deed may be concerned with matters that also arise in respect of the respective rights and obligations of RMS and a Third Party (a **Common Dispute**), including where:
 - (i) RMS is in breach of a provision of this deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;
 - (ii) RMS is entitled to obtain remedies or benefits under a Third Party Agreement referenced to a Claim by the Contractor under this deed;
 - (iii) the Contractor has rights against RMS under a warranty or indemnity or specific right of reimbursement or recovery in this deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or
 - (iv) the Contractor has a Claim against RMS and RMS has a Claim against a Third Party based on the same or similar events or circumstances.
- (b) In the event that there is a Common Dispute then:
 - (i) clauses 20.1 to 20.9 will not apply to the resolution of that Common Dispute; and
 - (ii) the Contractor acknowledges and agrees that the purpose of this clause 20.13 is:
 - A. to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against RMS in respect of Common Disputes by reference to RMS rights and

- entitlements under or in connection with Third Party Agreements; and
- B. not to reduce or disentitle or otherwise affect the validity of any Claim by RMS against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.
- (c) In respect of all Common Disputes:
- (i) the Contractor's entitlement to receive compensation from RMS, and RMS liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;
 - (ii) if any compensation is payable by RMS to the Contractor under this deed in respect of a Common Dispute, the Contractor will have the same entitlement to recover compensation under this deed as RMS has to recover that compensation from a Third Party under the respective Third Party Agreement;
 - (iii) any rights the Contractor has against RMS will not exceed the equivalent relief, benefit or payment to which RMS is entitled under the relevant Third Party Agreement; and
 - (iv) RMS will pass through to the Contractor the proportion of the damages or other form or relief to which RMS is entitled:
 - A. to the extent referable to the Contractor, including any liability, Claim or loss of the Contractor; and
 - B. determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.
- (d) RMS agrees to:
- (i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;
 - (ii) if it is unable to obtain the Third Party's consent as contemplated under clause 20.13(d)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and
 - (iii) provide:
 - A. regular updates to the Contractor; and
 - B. whatever information and documents the Contractor reasonably requests, as to the progress of the Common Dispute.
- (e) RMS' liability to pay the Contractor:
- (i) is satisfied by payment to the Contractor in accordance with this clause 20.13; or
 - (ii) if the Third Party is not liable to RMS, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:
 - A. RMS has complied with its obligations under this clause 20.13 with respect to recovery of RMS and the Contractor's entitlements from the Third Party; and
 - B. all appeals from such determination have been exhausted.
- (f) The Contractor agrees:
- (i) to provide all documents, assistance, and co-operation reasonably requested by RMS (and in the time requested by RMS) in connection with the Common Dispute;
 - (ii) that where a Third Party Agreement contemplates:
 - A. alternative dispute resolution (including arbitration and expert determination):
 - 1) a like process will apply to the Common Dispute between the parties; and
 - 2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process; and
 - B. litigation, the Contractor consents to the Common Dispute being

- consolidated with (or heard together with) that litigation; and
- (iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this deed.
 - (g) The Contractor's entitlement to a remedy will not be reduced to the extent to which RMS' entitlements under a Third Party Agreement are reduced or extinguished due to RMS' breach or failure to comply with the Third Party Agreement or other wrongful, negligent or unlawful act or omission (to the extent not caused by the Contractor).
 - (h) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this deed, then the Contractor is not entitled to the same compensation under this clause 20.13.
 - (i) Any payment to which the Contractor is entitled under this clause 20.13 shall be paid by RMS to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

20.14 Survive Termination

This clause 20 will survive the termination of this deed.

21. Termination

21.1 Notice of default

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

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

21.2 Contents of notice

The notice under clause 21.1 must state:

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

21.3 Termination for insolvency or breach

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

- (a) an Insolvency Event occurs to:

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

21.4 RMS entitlements after termination

After termination under clause 21.3:

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

21.5 Repudiation by RMS

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

21.6 Termination for convenience

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

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

21.7 Consequences of termination for convenience

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

- (a) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the Contractor submitted a payment claim under clause 18.2 for work carried out to the date of termination;

- (b) the cost of goods or materials or other items reasonably ordered by the Contractor for the Contractor's Work and for which it is legally bound to pay provided that:
 - (i) the value of the goods, materials and other items have not been previously paid or included in the amount payable under clause 21.7(a); and
 - (ii) title in the goods or materials will vest in RMS upon payment;
- (c) the reasonable cost of removing from the Site, the Local Road Works Areas and the Temporary Works Areas and the Works all plant and equipment and other things used in the performance of the Contractor's obligations;
- (d) costs reasonably incurred by the Contractor in the expectation of completing the Contractor's Work and not included in any other payment by RMS;
- (e) where termination occurs prior to Construction Completion, 2% of the unearned balance (if any) of:
 - (i) if termination occurs prior to the Staged Commencement Date, the Initial Contract Sum as that balance stands after payment of the amounts payable under clauses 21.7(a) to 21.7(d); or
 - (ii) if termination occurs after the Staged Commencement Date, the Construction Contract Sum as that balance stands after payment of the amounts payable under clauses 21.7(a) to 21.7(d); and
- (f) the unearned balance (if any) of the Incentive Amount, except where termination occurs prior to the issuing of a Notice to Proceed, in which event none of the Incentive Amount will be payable,

such amounts to be as stated by RMS Representative.

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

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

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

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

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

21.8 Preservation of rights

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

22. General

22.1 Cost

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

22.2 Taxes

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

22.3 Indemnities to survive

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

22.4 Variations

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

22.5 Interest

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

22.6 Confidentiality

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

This clause 22.6 will survive the termination of this deed.

22.7 Civil Liability Act

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

exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise; and

- (iii) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of the Contractor's Work, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

22.8 Right of set-off

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

22.9 RMS may act

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

22.10 Non-reliance

Without limiting clauses 10.2 or 10.3, the Contractor:

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

22.11 Entire agreement

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

22.12 All work included

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

22.13 Unlimited discretion

- (a) Except as expressly provided in this deed (including in clause 22.13(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by law) is intended to be imposed upon the manner in which RMS or RMS Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 22.13(a):
 - (i) except as expressly provided in this deed (including in clause 22.13(c)), neither RMS nor RMS Representative will be:
 - A. constrained in the manner in which it exercises; or
 - B. under any obligation to exercise,any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement; and
 - (ii) any approval or consent referred to in, or required under, this deed from RMS or RMS Representative may be given or withheld, or may be given subject to any conditions, as RMS or RMS Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise.
- (c) Nothing in this clause 22.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

22.14 Indemnity

The Contractor must indemnify RMS against:

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

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

22.15 No partnership, joint venture or other fiduciary relationship

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

22.16 Waivers and Minor Concessions

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by RMS will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by RMS under this deed will only be effective and binding on RMS if it is given or confirmed in writing by RMS.
- (c) No waiver by RMS of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) If the waiver or consent is a Minor Concession proposed by the Contractor, it will only be effective and binding on RMS if:
 - (i) the Contractor provides RMS Representative with:
 - A. a written notice in the form set out in Schedule 50 setting out the details prescribed by the form; and
 - B. any other information and supporting documentation RMS Representative

- requires; and
- (ii) RMS Representative approves (in his or her absolute discretion) the Minor Concession.
- (e) Where the Contractor proposes a Minor Concession, within 7 days of the later of receipt of a notice under clause 22.16(d)(i)(d)(i)A and any other information to be provided under clause 22.16(d)(i)(d)(i)B, RMS Representative:
- (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Minor Concession the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Minor Concession for the convenience of, or to assist, the Contractor.
- (f) If RMS Representative approves the Minor Concession under clause 22.16(d)(ii), the Contractor must perform its obligations under this deed in accordance with the approved Minor Concession.
- (g) The Contractor will:
- (i) bear all costs:
 - A. associated with proposing a Minor Concession under clause 22.16(d);
 - B. associated with providing any details, information, statements or documents under clause 22.16(d)(i)B;
 - C. reasonably incurred by RMS (or RMS Representative) in assessing the proposed Minor Concession (such costs to be a debt due and payable from the Contractor to RMS upon demand); and
 - D. associated with carrying out the proposed Minor Concession where it is approved by RMS Representative; and
 - (ii) not be entitled to make any Claim against RMS arising out of or in connection with the Minor Concession.
- (h) RMS Representative may at any time direct a Minor Concession by giving written notice to the Contractor.

22.17 Provisions limiting or excluding liability

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

22.18 Survivorship

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

22.19 Joint and several liability

The obligations of the Contractor, if more than one person, under this deed, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own.

22.20 Severability

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

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

22.21 Privacy

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

must:

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

22.22 Language is English

- (a) It is agreed that the language of this deed is English and that:
 - (i) any document provided by the Contractor to the Principal under this deed, including the Design Documentation, is to be in English; and
 - (ii) any spoken communication (including any meeting) is to be in English.
- (b) If any document to be provided by the Contractor to the Principal is initially produced in a language other than English, the Contractor must ensure that:
 - (i) the document is translated by a National Accreditation Authority for Translators and Interpreters (NAATI) accredited translator;
 - (ii) the translated document is an accurate representation of the original source document, including ensuring that no information is lost or altered during the translation; and
 - (iii) evidence acceptable to RMS Representative that the requirements under clauses 22.22(b)(i) and 22.22(b)(ii) have been satisfied is provided with the document at the same time that the document is required to be provided.

23. Definitions and interpretation

23.1 Interpretation and contra proferentum

- (a) In this deed unless the context otherwise requires:
 - (i) the expression "person" includes an individual, body politic, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
 - (ii) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
 - (iii) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
 - (iv) a reference to any Authority, institute, association or body is:
 - A. if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - B. if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
 - (v) a reference to this deed or to any other deed, agreement, document, instrument, guideline or code of practice includes, respectively, this deed or such other deed, agreement, document, instrument, guideline or code of practice as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, by-laws, regulations of and other statutory

- instruments (however described) issued under it;
- (vii) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (viii) headings are for convenience only and do not affect the interpretation of this deed;
- (ix) a reference to a clause, schedule or exhibit is a reference to a clause, schedule or exhibit of or to this deed;
- (x) a reference to:
 - A. this deed includes all schedules and the Exhibits referred to in Item 31(a) of Schedule 1 and, subject to clause 17.1(e), the Contract Program; and
 - B. a reference to the Scope of Works and Technical Criteria includes all Appendices to the Scope of Works and Technical Criteria;
- (xi) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (xii) where under this deed:
 - A. a notice, certificate or direction is required to be given;
 - B. payment of money must be made;
 - C. an unconditional undertaking must be released; or
 - D. a default must be remedied,

within a stated number of days (not being stated as Business Days), then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;

- (xiii) for the purposes of:
 - A. clause 12.2, any reference to "day"; and
 - B. clauses 17.5 and 17.6:
 - 1) any extension of time stated in days; or
 - 2) any reference to "day",

will exclude public holidays and include only those days which are stated in the most recent Subsidiary Contract Program submitted under clause 17.1(d) as working days;

- (xiv) for all purposes other than as set out in clauses 23.1(a)(xii) and 23.1(a)(xiii), "day" means calendar day;
- (xv) a reference to a "month" is a reference to a calendar month;
- (xvi) a reference to "\$" is to Australian currency;
- (xvii) any reference in this deed or in the Environmental Documents (or in any documents referred to in the Environmental Documents) to:
 - A. the "Project Environmental Plan", or "PEMP";
 - B. the "Construction Environmental Plan", or "CEMP";
 - C. the "Environmental Management Plan (Construction Stage)", or "EMP (Construction Stage)";
 - D. the "environmental management plan", "EMP" or "EMP(s)"; and
 - E. any other form of letters or words indicating an intention to refer to a plan relating to environmental management,

will be read as a reference to the Environmental Management Plan; and

- (xviii) a reference to 'fit for purpose', 'fit for the purpose', 'fit for its purpose', 'fit for their purpose', 'fitness for purpose', 'fit for the intended purpose', 'fit for its intended purpose', 'fit for their intended purpose', 'adequate and suitable for their intended purpose', 'effective and durable for its intended purpose' and 'used for their intended purpose' means the purpose or purposes as stated in, implied from or contemplated by, this deed.

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

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

23.2 Definitions

In this deed, unless the context otherwise indicates:

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

Aboriginal Participation Report means any report referred to in the *NSW Government Policy on Aboriginal Participation in Construction* (1 May 2015 or any later update) as a Participation Report or a Progress Report, prepared in a format prescribed by the NSW Procurement Board from time to time.

Act of Prevention means:

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

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

APIC Policy means the NSW Government *Policy on Aboriginal Participation in Construction* (1 May 2015 updated 1 August 2016 or any later update).

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

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

but does not include:

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

Authority means:

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

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

Bank Bill Rate is, for the relevant period:

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

Baseline Environmental Assessment Requirements has the meaning in

Item 10 of Schedule 1;

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

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

Certified AIP Plan means the Australian Industry Participation Plan drafted by RMS, updated with the Contractor's details (where relevant) and certified by the relevant Authority.

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

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle Law under which the Contractor is a 'party in the chain of responsibility' (within the meaning given to that term under the Heavy Vehicle Law).

Chainage has the meaning given in the section of the Scope of Works and Technical Criteria identified in Item 29(ss) of Schedule 1.

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

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

compliance with which:

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

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

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

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

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

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

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

Commonwealth means the Commonwealth of Australia.

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

Community Relations Manager means the person appointed to that position under clause 2.2(b) as at the Early Works Date or, if none, the date of this deed or any person appointed as a replacement under clause 2.2(b).

Complaint includes, in addition to any meaning at Law, an expression of dissatisfaction, discontent, regret, pain, censure, resentment, grief, lament or faultfinding made by a

complainant or their representative, either explicit or implied, verbally or in writing, which relates to:

- (a) a specific episode, occurrence or failure that has, or repeated episodes, occurrences or failures that have, resulted in an impact on any individual or group; or
- (b) the complaints handling process itself,

whether or not a response or resolution is explicitly or implicitly expected.

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

Construction Completion means the stage when:

- (a) the Project Works are complete in accordance with this deed, except for Defects not known;
- (b) without limiting paragraph (a), the Project Works are capable of being opened to the public for the continuous safe passage of vehicles;
- (c) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Construction Completion; or
 - B. must necessarily be carried out and passed before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles;
 - (ii) obtained all Approvals that it is required under this deed to obtain before Construction Completion and provided such Approvals to RMS Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Construction Completion;
 - (iv) given to RMS Representative all documents or other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the Project Works which:
 - A. are required to be given to RMS Representative before Construction Completion; or
 - B. must necessarily be handed over before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles; and
 - (v) executed a certificate in the form of Schedule 21 and provided it to RMS Representative;
- (d) the Project Verifier has executed a certificate in the form of Schedule 16 and provided it to RMS Representative;
- (e) the Quality Manager has executed a certificate in the form of Schedule 10 and provided it to RMS Representative;
- (f) the Contractor has provided the final Maintenance Plan in accordance with clauses 3.8 and 3.9; and
- (g) the Contractor has done everything else which it is required to do before Construction Completion.

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

Construction Manager means the person appointed to that position under clause 2.2(b) as at the Early Works Date or, if none, the date of this deed or any person appointed as a replacement under clause 2.2(b).

Construction Payment Schedule means Schedule 3.

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

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

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

Contamination:

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

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

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

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

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

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

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

Date for Construction Completion means:

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

Date for Interface Milestone Completion means:

- (a) as at the date of this deed, the date specified in Item 3B of Schedule 1;
- (b) from the Staged Commencement Date, the date determined under clause 1A; or
- (c) where an extension of time for Interface Milestone Completion is granted by RMS Representative or allowed in any decision of the Dispute Avoidance Board, arbitration or litigation proceedings, the date resulting therefrom.

Date for Staged Commencement means the date specified in Item 3A of Schedule 1.

Date of Construction Completion means:

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

Date of Final Completion means:

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

Date of Interface Milestone Completion means:

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

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

Daywork means a Variation carried out by the Contractor which is valued on the basis of daily job time and cost records for workmen, constructional plant, materials, services and other costs as provided in the Construction Payment Schedule, Cost Centre 9.

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

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

Defect means any:

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

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

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

Design Documentation means all:

- (a) design documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations, drawings, shop drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Work, or which the Contractor or any other person creates in performing the Contractor's Work (including the design of Temporary Works); and
- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Work.

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

Design Manager means the person appointed to that position under clause 2.2(b) as at the Early Works Date or, if none, the date of this deed or any person appointed as a replacement under clause 2.2(b).

Design Payment Schedule means Schedule 2.

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

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

Direct Cost means:

- (a) the amount of wages and allowances paid or payable by the Contractor at rates as agreed by the Contractor and RMS Representative or, if no agreement, at reasonable rates as stated by RMS Representative;
- (b) the labour on-costs paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the wages paid or payable;
- (c) the amount of hire charges in respect of constructional plant used on the work in accordance with such hiring rates and conditions as may be agreed by RMS Representative and the Contractor or, if no agreement, in accordance with reasonable

- rates and conditions as stated by RMS Representative;
- (d) the reasonable amounts paid by the Contractor for services, Subcontracts and professional fees;
 - (e) the reasonable actual cost to the Contractor at the Site, the Local Road Works Areas and the Temporary Works Areas of all materials supplied and required for the work;
 - (f) a margin to cover on-site overheads, site supervision, establishment costs and attendance; and
 - (g) a margin to cover off-site overheads and profit, which margin is to be determined by reference to the margin in the Design Payment Schedule and/or the Construction Payment Schedule.

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

Dispute has the meaning given in clause 20.1.

Dispute Avoidance Board means the member nominated in accordance with clause 2.9 or his or her replacement referred to in clause 2.10.

Early Works means:

- (a) the works (forming part of the Initial Works) that are identified in Schedule 49 (Initial Works) as '*Scope of works under the Early Works Agreement*'; and
- (b) any act which has or should have been performed by or on behalf of the Contractor, or matter or thing that occurred or should have occurred, under an Early Works Agreement (if any) prior to the date of this deed and which this deed contemplates as constituting part of the Initial Works and/or the Contractor's Work in connection with the adjustment or relocation of the Penrith Christian School sporting oval and any associated scope specified in Schedule 4 to the Early Works Agreement referred to in paragraph (a) of the definition of Early Works Agreement or in Appendix 3 to the Scope of Works and Technical Criteria.

Early Works Agreement means:

- (a) the agreement (if any) entered into between RMS and the Contractor in respect of any Early Works; and
- (b) the agreement (if any) entered into between RMS, the Contractor and the Project Verifier for the Project Verifier to perform the role of Project Verifier in respect of the Contractor's activities under the agreement referred to in paragraph (a).

Early Works Date means the date of the agreement referred to in paragraph (a) of the definition of Early Works Agreement.

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

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

Environmental Documents means the REF Determination and the Appendix to the Scope of Works and Technical Criteria identified in Item 29(bb) of Schedule 1.

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

Environmental Manager means the person appointed to that position under clause 2.2(b) as at the Early Works Date or, if none, the date of this deed or any person appointed as a replacement under clause 2.2(b).

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

Excepted Risks means:

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

Excusable Cause of Delay means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event;
- (c) a Change in Law;
- (d) a Site Condition;
- (e) inclement weather; or
- (f) a court order referred to in clause 5.2(d)(iv).

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

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

Final Completion means the stage when:

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

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

Force Majeure Event means:

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

but excludes any act of vandalism.

Foreign Sourced Design means any part of the Design Documentation that is prepared or developed at or from a location that is outside of Australia.

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

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

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

Heavy Vehicle Law means the:

- (a) Heavy Vehicle National Law (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); and
- (b) regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time.

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

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

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

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

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

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

Information has the meaning in clause 18.9(a).

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

- (a) the documents specified in Schedule 45;
- (b) all other information or documents provided to the Contractor prior to, on or after the date of this deed and which were expressly stated to be Information Documents; and
- (c) any other information or document which is referred to or incorporated by reference in information or a document referred to in paragraphs (a) or (b), unless such information or document is otherwise expressly stated to form part of this deed.

Initial Contract Sum means the sum specified in Item 7A of Schedule 1, as adjusted in accordance with this deed.

Initial Design Contract Sum means the sum specified in Item 7B of Schedule 1, as adjusted in accordance with this deed.

Initial Limit means the Initial Design Contract Sum and the Initial Contract Sum.

Initial Project Works means those parts of the Project Works referred to in Schedule 49.

Initial Temporary Works means those parts of the Temporary Works referred to in Schedule 49.

Initial Works means the Initial Project Works and the Initial Temporary Works and includes the Early Works.

Insolvency Event means:

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

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

Interface Contractor means the contractor engaged to undertake the Interface Contractor's Work, as notified to the Contractor by RMS.

Interface Contractor's Work means the works to be carried out on the Western Sydney Infrastructure Plan – The Northern Road Upgrade - Stage 3 South Project, which will interface with the Contractor's Work.

Interface Milestone Completion means when:

- (a) the Interface Works are complete in accordance with this deed, except for Defects not known;
- (b) without limiting paragraph (a), the Interface Works are capable of being used by the Interface Contractor;
- (c) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Interface Milestone Completion; or
 - B. must necessarily be carried out and passed before the Interface Works are capable of being used by the Interface Contractor;
 - (ii) obtained all Approvals that it is required under this deed to obtain before Interface Milestone Completion and provided such Approvals to RMS Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Interface Milestone Completion;
 - (iv) given to RMS Representative all documents or other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the Interface Works which:
 - A. are required to be given to RMS Representative before Interface

- Milestone Completion; or
- B. must necessarily be handed over before the Interface Works are opened to the public for the safe, efficient and continuous passage of vehicles; and
- (v) executed a certificate in the form of Schedule 21A and provided it to RMS Representative;
- (d) the Project Verifier has executed a certificate in the form of Schedule 16A and provided it to RMS Representative;
- (e) the Quality Manager has executed a certificate in the form of Schedule 10A and provided it to RMS Representative; and
- (f) the Contractor has done everything else which it is required to do before Interface Milestone Completion.

Interface Works means the work to be carried out by the Contractor which will interface with the Interface Contractor's Work, being the Works from the southern extent of the Site to Chainage 150.

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

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

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

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

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

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

Law means:

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

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

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

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

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

Local Road Works means the construction, modification, reinstatement and improvement of Local Roads which the Contractor must design and construct and hand over to RMS or the relevant Authority in accordance with this deed and as specified in the sections of the Scope of Works and Technical Criteria identified in Item 29(gg) of Schedule 1.

Local Road Works Areas means those areas indicated in the Appendix to the Scope of

Works and Technical Criteria identified in Item 29(hh) of Schedule 1, which are to be provided for Local Road Works.

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

Long Service Corporation means the corporation established under the *Long Service Corporation Act 2010* (NSW).

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

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

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

Minor Concession means a:

- (a) minor change to the Scope of the Works and Technical Criteria or a Project Plan that:
 - (i) does not have any time or cost implications;
 - (ii) will not give rise to any Claim;
 - (iii) does not affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Work;
 - (iv) does not adversely affect the performance standards required by this deed; and
 - (v) does not adversely affect the quality standards required under this deed;
- (b) waiver of a payment constraint prescribed by this deed; or
- (c) waiver of a timing requirement prescribed by this deed.

Minor Variation means a Variation that:

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

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

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

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

Notice of Dispute has the meaning given in clause 20.2.

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

Notice to Proceed means a notice from RMS Representative to the Contractor in the form of Schedule 48 and stating the:

- (a) Staged Commencement Date;
- (b) Construction Contract Sum, determined in accordance with clause 1A(f);
- (c) Date for Interface Milestone Completion, determined in accordance with clause 1A(f); and
- (d) Date for Construction Completion, determined in accordance with clause 1A(f).

Notifiable Incident has the meaning given under the WHS Laws.

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

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction dated July 2013 and any Practice Direction current at the date of this deed.

Opening Completion means the stage when:

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

Oval Land means land required to undertake the Early Works, which land does not (as at the date contemplated for the commencement of the Early Works) form part of the Site, the Local Road Works Areas or the Temporary Works Areas.

Oval Land Documents has the meaning given in clause 9.7(d).

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

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

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

Personal Information has the meaning given to that term in:

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

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

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

PPS Law means:

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

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

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

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

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

Privacy Acts means:

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

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

Project Contract Sum means the sum of the following components:

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

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

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

Project Director means the person appointed to that position under clause 2.2(b) as at the Early Works Date or, if none, the date of this deed or any person appointed as a replacement under clause 2.2(b).

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

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

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

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

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

Property Works means:

- (a) those works described or specified in the sections of the Scope of Works and Technical Criteria identified in Item 29(ll) of Schedule 1; and
- (b) all other works necessary to ensure that:
 - (i) the amenity of;
 - (ii) access to and egress from; or
 - (iii) the functionality of,
any property (including any structure thereon) including such property located outside of the Site, the Local Road Works Areas and the Temporary Works Areas which is affected by the Contractor's Work, is maintained to at least the standard that it was in immediately prior to the Early Works Date or, if none, the date of this deed including:
 - (iv) fencing work to separate the property located outside the Site from the property located within the Site, the Local Road Works Areas and the Temporary Works Areas;
 - (v) construction of access;
 - (vi) construction of drainage; and
 - (vii) reinstatement and landscaping.

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

Provisional Sum Work means that part of the Project Works and Temporary Works specified as Provisional Sum Work in the sections of the Scope of Works and Technical Criteria identified in Item 29 (mm) of Schedule 1, and for which payment will be made under Cost Centre 6 in Schedule 3.

Quality Manager means the person appointed to that position under clause 2.2(b) as at the Early Works Date or, if none, the date of this deed and any person appointed as a replacement under clause 2.2(b).

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

RCTI has the meaning in clause 18.8(f).

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

Records include both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans,

drawings, invoices, dockets, receipts, vouchers and computer programs.

REF means the review of environmental factors specified in Item 10 of Schedule 1;

REF Determination means:

- (a) the determination of the REF and, if applicable, the determination of any other review of environmental factors in connection with the Contractor's Work;
- (b) all conditions to the determination referred to in paragraph (a) above and the REF and includes all documents incorporated by reference, as those determinations and conditions may be modified from time to time; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

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

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

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

RMS means Roads and Maritime Services.

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

RMS Data means RMS Geotechnical Data and RMS Flood Data.

RMS Flood Data means raw factual data:

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

RMS Geotechnical Data means raw factual data:

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

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

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

RMS Insurance Co-ordinator
Roads and Maritime Services
20-44 Ennis Road
MILSONS POINT NSW 2061.

RMS Representative means:

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

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

- (a) pursuant to clause 5.2(e), the reasonable net extra Direct Costs incurred by the Contractor arising directly as a result of a court order referred to in clause 5.2(d)(iv);
- (b) pursuant to clause 10.4, the reasonable net extra Direct Costs incurred by the Contractor in complying with clauses 10.4(a)(ii) and 10.4(b);
- (c) pursuant to clause 10.6(g), whether a condition referred to in a Site Condition Notice constitutes or involves a Site Condition;
- (d) pursuant to clause 14.5(b):
 - (i) whether the Landscaping Maintenance has been completed; or
 - (ii) if the Landscaping Maintenance has not been completed, the services to be completed before the Landscaping Maintenance can be considered to be completed;
- (e) pursuant to clause 15.3(d), whether the RMS Data referred to in a notice issued under clause 15.3(c)(ii) is not correct and whether reliance on this unavoidably necessitates a Variation;
- (f) pursuant to clause 15.4(e), a valuation pursuant to clause 15.4(e);
- (g) pursuant to clause 15.9(a)(iii), the amount of the decreased or increased costs of carrying out the Contractor's Work;
- (h) pursuant to clause 16.4, the amount which represents the cost of correcting the Defect;
- (i) pursuant to clause 16.7(e):
 - (i) whether the discrete part of the Local Roads Works is complete in accordance with this deed, and if so, the date on which the Contractor completed this discrete part; or
 - (ii) if the discrete part of the Local Road Works is not complete, the items which remain to be completed;
- (j) pursuant to clause 17.5(d), the reasonable period for the extension to the Date for Interface Milestone Completion and/or the Date for Construction Completion;
- (k) pursuant to clause 17.7(b), the reduction in an extension of time in relation to compression of the Contractor's Work;
- (l) pursuant to clause 17.7(d), the reasonable net extra Direct Costs incurred by the Contractor and directly attributable to compressing the performance of the Contractor's Work as required by RMS Representative's direction under clause 17.7(a);

- (m) pursuant to clause 17.8(b)(ii)A.1), the reasonable net extra Direct Costs incurred by the Contractor as a result of the suspension;
- (n) pursuant to clause 17.10(f):
 - (i) whether Construction Completion has been achieved, and if so, the date on which Construction Completion was achieved; or
 - (ii) if Construction Completion has not been achieved:
 - A. the items which remain to be completed before Construction Completion is achieved; or
 - B. whether the Contractor is so far from achieving Construction Completion that it is not practicable to notify the Contractor of the items which remain to be completed;
- (o) pursuant to clause 17.10A(d):
 - (i) whether Interface Milestone Completion has been achieved, and if so, the date on which Interface Milestone Completion was achieved; or
 - (ii) if Interface Milestone Completion has not been achieved:
 - A. the items which remain to be completed before Interface Milestone Completion is achieved; or
 - B. whether the Contractor is so far from achieving Interface Milestone Completion that it is not practicable to notify the Contractor of the items which remain to be completed;
- (p) pursuant to clause 17.15(e):
 - (i) whether Final Completion has been achieved, and if so, the date on which Final Completion was achieved; or
 - (ii) if Final Completion has not been achieved:
 - A. the items which remain to be completed before Final Completion is achieved; or
 - B. whether the Contractor is so far from achieving Final Completion that it is not practicable to notify the Contractor of the items which remain to be completed;
- (q) pursuant to clauses 18.2(d) and 18.2(f), the Progress Payment due to the Contractor;
- (r) pursuant to clause 18.7(h), the Incentive Amount due to the Contractor;
- (s) pursuant to clause 19.6(c)(i), the reasonable net extra Direct Costs incurred in complying with a RMS Representative Statement;
- (t) pursuant to clause 21.7, the amounts stated in respect of clauses 21.7(a) to 21.7(e); and
- (u) pursuant to the definition of "Direct Costs" in clause 23.2, the reasonable rates in paragraph (a) and the reasonable rates and conditions in paragraph (c).

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

Road Occupancy Authority means the body responsible for issuing a Road Occupancy Licence for any lane or shoulder of the Existing Highway or the Works pursuant to clause 5.14, as specified in Item 13A of Schedule 1 or as otherwise directed by RMS Representative.

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

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

Scheduled Progress means the rate of progress to be achieved by the Contractor in designing and constructing the Contractor's Work, such that the Contractor is proceeding with due expedition and without undue delay (other than a delay for which the Date for Construction Completion is adjusted under this deed), so that it will (or is likely to) complete the Contractor's Work by the Date for Construction Completion.

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

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

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

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

Service Works means the construction, modification, or relocation of Services all of which are to be designed and constructed by the Contractor and handed over to RMS, an Authority or any other person in accordance with this deed.

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

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

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

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

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

Staged Commencement Date means the date stated by RMS Representative in the Notice to Proceed.

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

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

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

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

Supplier has the meaning in clause 18.8(c).

Targeted Project Spend means the amount identified in Item 16 of Schedule 1. It represents 1.5% of the Project Contract Sum at award (excl GST) less allowable exclusions, in line with the APIC Policy goals.

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

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

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

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

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

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

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

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

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

Unrestricted Provisions has the meaning given in clause 1A(c).

Variation means any change to the Landscaping Maintenance, the Project Works or the Temporary Works:

- (a) including additions, increases, decreases, omissions, deletions, demolition or removal to or from any of the Landscaping Maintenance, the Project Works or the Temporary Works; and
- (b) excluding Provisional Sum Work, irrespective of any assumptions, projections, estimates, contingencies or otherwise by any person about the character or extent of the Provisional Sum Work as at the date of the deed.

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

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

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

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

WorkCover means the WorkCover Authority of NSW.

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

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

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