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# Schedule 7

## DEED OF ENGAGEMENT OF PRINCIPAL CONTRACTOR

(Clause 5.19)

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# **M5 West Widening Deed of Engagement of Principal Contractor**

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## **Roads and Maritime Services**

ABN 76 236 371 088

## **Interlink Roads Pty Ltd**

ABN 53 003 845 430

## **Abigroup Contractors Pty Ltd**

ABN 40 000 201 516

# Deed of Engagement of Principal Contractor

## DATE

## PARTIES

**Roads and Maritime Services**  
ABN 76 236 371 088 (**RMS**)

**Interlink Roads Pty Ltd**  
ABN 53 003 845 430 (**Company**)

**Abigroup Contractors Pty Ltd**  
ABN 40 000 201 516 (**Contractor**)

## RECITALS

- A. RMS, the Minister for Roads and Ports and the Company have entered into a contract entitled "M5 West Widening Deed" under which the Company is responsible for certain work in relation to the Property (**Head Contract**).
- B. In order to carry out its obligations under the Head Contract, the Company has entered into a contract with the Contractor pursuant to which the Contractor is to perform certain work in relation to the Property (**Contract**).
- C. RMS has agreed to engage the Contractor as the principal contractor under clause 293 of the WHS Regulation for the Construction Project(s) carried out by the Contractor in relation to the Property under the Contract.
- D. The Contractor has agreed to carry out the obligations of a principal contractor under the WHS Regulation for all Construction Project(s).
- E. The parties have agreed to enter into this deed to give effect to the engagement of the Contractor as the principal contractor as set out in this deed.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS

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In this deed:

**Construction Project** has the same meaning as in the WHS Regulation.

**Contract** has the meaning given to it in recital B.

**D&C Terms** means the document titled "Annexure A - Design, Construction and Commissioning of the M5 West Widening" which is annexure A to the Head Contract.

**Head Contract** has the meaning given to it in recital A.

**Property** has the same meaning as the term "M5 West Widening Site" in the D&C Terms.

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

**Workplace** has the same meaning as in the *Work Health and Safety Act 2011* (NSW).

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## **2. PRINCIPAL CONTRACTOR ENGAGEMENT**

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### **2.1 Engagement of principal contractor under WHS Regulation**

- (a) For the purposes of Chapter 6 of the WHS Regulation RMS:
  - (i) engages the Contractor as the principal contractor under clause 293 of the WHS Regulation for the Construction Project(s) to be carried out under the Contract, and the Contractor accepts such engagement; and
  - (ii) authorises the Contractor to have management or control of those Workplaces necessary to discharge its duties as principal contractor, and to discharge the duties of principal contractor under Chapter 6 of the WHS Regulation.
- (b) The Contractor must carry out, and ensure compliance with, its obligations as principal contractor under the WHS Regulation in respect of the engagement referred to in clause 2.1(a).
- (c) If the Contractor fails to comply with any of its obligations in clause 2.1(b), RMS may have the Contractor's principal contractor obligations carried out by RMS, the Company or by others and the cost incurred by RMS in having those obligations carried out will be a debt due from the Contractor to RMS.

### **2.2 Owner and Company not liable**

The Contractor acknowledges and agrees that neither RMS nor the Company will be liable to the Contractor for any damage, expense, loss or liability suffered by it arising out of or in connection with the engagement of the Contractor as principal contractor, the performance by it of its obligations as principal contractor under the WHS Regulation or any breach thereof.

### **2.3 Indemnity**

- (a) To the full extent permitted by law, the Company and the Contractor jointly and severally indemnify RMS against any damage, expense, loss or liability suffered or incurred by RMS to the extent caused or contributed to by a breach by the Contractor of clauses 2.1, 2.4 or 2.5.
- (b) The indemnity in clause 2.3(a) survives termination, completion or expiration of this deed.

### **2.4 Manage risks**

Without limiting the Contractor's obligations elsewhere under the Contract, the Contractor must, so far as is reasonably practicable:

- (a) manage risks associated with the carrying out of the Construction Project(s); and
- (b) ensure that all Workplaces are secured from unauthorised access, and in doing so, have regard to all relevant matters including risks to health and safety arising from unauthorised access to the Workplace, the likelihood of unauthorised access occurring and to the extent that unauthorised access to the Workplace cannot be prevented, how to isolate hazards within the Workplace.

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## **2.5 Reporting**

Without limiting the Contractor's reporting or other obligations elsewhere under the Contract, upon request by either RMS or the Company from time to time, the Contractor must promptly provide that requesting party with a copy of:

- (a) the written WHS management plan for the Workplace, including any revisions that are made to the WHS management plan under clause 311 of the WHS Regulation;
- (b) the Contractor's records in relation to the steps the Contractor has taken to make persons carrying out work aware of the content of the WHS management plan in accordance with clause 310 of the WHS Regulation;
- (c) any safe work method statements which have been obtained under clause 312 of the WHS Regulation;
- (d) the Contractor's records in relation to the steps the Contractor has taken to comply with clause 314 of the WHS Regulation;
- (e) the Contractor's records in relation to the steps the Contractor has taken to comply with clause 315 of the WHS Regulation; and
- (f) any other registers, records and documents,

that the Contractor prepares, maintains, keeps or obtains in connection with its obligations as a principal contractor under the WHS Regulation.

## **3. SUBSTITUTION OF COMPANY AS PRINCIPAL CONTRACTOR**

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### **3.1 Automatic re-engagement**

If the Contract is terminated for whatever reason before all Construction Project(s) under the Contract is complete, clause 2 is deemed to be amended as from the date of such termination and apply as if:

- (a) a reference to the "Contractor" was a reference to the "Company"; and
- (b) any existing reference to the "Company" in clauses 2.2, 2.3 and 2.5 is removed.

## **4. GENERAL**

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### **4.1 Governing law and jurisdiction**

- (a) This document is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

### **4.2 Liability for expenses**

Each party must pay its own expenses incurred in negotiating and executing this deed.

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**4.3 Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this document.

**4.4 Goods and Services Tax**

- (a) A party must pay GST on a taxable supply made to it under this deed, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.
- (b) Terms used in this clause 4.4 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999*.

**EXECUTED** as a deed.

Each attorney executing this document states that he or she has no notice of the revocation or suspension of his or her power of attorney.

**The Seal of Roads and Maritime Services (ABN 76 236 371 088)** was hereunto affixed by its authorised signatory:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

**EXECUTED by Interlink Roads Pty Ltd (ABN 53 003 845 430)**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

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**Signed Sealed and Delivered for  
Abigroup Contractors Pty Ltd (ABN 40  
000 201 516) by its attorney in the presence  
of:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name