



Delivery Partner Contract

Woolgoolga to Ballina Pacific Highway Upgrade Project

Form of Agreement

Roads and Maritime Services

ABN 76 236 371 088
RMS

Laing O'Rourke Australia Construction Pty Limited

ABN 39 112 099 000

Parsons Brinckerhoff Australia Pty Limited

ABN 80 078 004 798
Delivery Partner

Agreement made at Sydney on

2015

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Parties

Roads and Maritime Services (ABN 76 236 371 088) of Level 4, 101 Miller Street, North Sydney, New South Wales 2060

("RMS")

Laing O'Rourke Australia Construction Pty Limited (ABN 39 112 099 000) of Level 4, 100 Arthur Street, North Sydney, New South Wales 2060 and

Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) of Level 27, 680 George Street, Sydney, New South Wales 2000

(together the "**Delivery Partner**")

Recitals

- A. RMS requires the performance of planning, programming, design management, procurement and construction management services in accordance with the Contract.
- B. In reliance upon the representations, warranties and promises made by the Delivery Partner in the Contract, RMS engages the Delivery Partner to carry out and complete the Services and the Delivery Partner agrees to do so on the terms of and in accordance with the Contract.
- C. The Delivery Partner is committed to performing its role in relation to the Project in a spirit of collaboration and openness that drives innovation, efficiencies and outstanding performance to achieve the Project Objectives and to achieving Project Opening by the Date for Project Opening.

IT IS AGREED

PERFORMANCE

RMS and the Delivery Partner promise to carry out and complete their respective obligations in accordance with the Contract.

CONTRACT DOCUMENTS

The Contract comprises the following documents marked as follows:

Document Description	Where Found
This Form of Agreement	This Document
The General Conditions of Contract and Schedules 1 to 19 thereto	Attached to this Document
Exhibit A setting out the Services Brief	Attached to this Document
Exhibit B setting out the Works Brief	Attached to this Document
Exhibit C setting out the Initial DP Cost Plan	Attached to this Document
Exhibit D containing Electronic Files	Attached to this Document
Exhibit E containing Key Performance Indicators	Attached to this Document

Exhibit F containing Modifier Adjustments	Attached to this Document
Exhibit G containing the Insurance Policies referred to in Schedule 4	Attached to this Document

ORDER OF PRECEDENCE

Without limiting any part of the General Conditions of Contract, the following order of precedence applies if there is any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the Contract or between different parts of any documents comprising the Contract:

- (a) this Form of Agreement;
- (b) the General Conditions of Contract, the Schedules thereto and Exhibits E, F and G, provided that where there is an ambiguity, conflict, discrepancy or inconsistency between the Environmental Requirements the following order of precedence will apply:
 - (i) the Additional Environmental Requirements; and
 - (ii) the highest standard and/or greatest requirements arising from the Environmental Requirements, excluding the Additional Environmental Requirements;
- (c) Exhibit A;
- (d) Exhibit B;
- (e) Exhibit C; then
- (f) Exhibit D.

ENTIRE CONTRACT

To the extent permitted by Law, the parties agree that, in relation to its subject matter, this Contract constitutes the entire agreement and understanding between them and will take effect according to its tenor:

- (a) despite any prior written or other agreement or understanding of the parties in conflict or at variance with the Contract; and
- (b) despite any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.

The Contract may only be varied by a document signed by or on behalf of each party, but nothing in this clause 0 limits any right of the Authorised Representative under the Contract to instruct the Delivery Partner to carry out a Variation.

PRIOR WORK

The terms of the Contract also apply to any part of the Services undertaken or provided by the Delivery Partner in connection with the Project prior to the Award Date under the Early Services Agreement.

Any payments (if any) made to the Delivery Partner by RMS in connection with the Project prior to the Award Date under the Early Services Agreement will be treated as a payment under the Contract and will be in part discharge of RMS's obligation to pay the Contract Price.

Executed as a deed

Executed by Roads and Maritime Services
(ABN 76 236 371 088) by its authorised delegate in
the presence of:

Signature of Delegate

Signature of Witness

Name of Delegate in full

Name of Witness in full

**Executed by Laing O'Rourke Australia
Construction Pty Limited** (ABN 39 112 099 000)
in accordance with s 127 of the *Corporations Act
2001* (Cth):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

**Executed by Parsons Brinckerhoff Australia Pty
Limited** (ABN 80 078 004 798) in accordance with
s 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full



Delivery Partner Contract

Woolgoolga to Ballina Pacific Highway Upgrade Project

General Conditions of Contract

General Conditions of Contract

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Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Contract, unless the context indicates otherwise:

Additional DP Margin at Risk means [REDACTED] of the total amount by which the Delivery Partner Margin is adjusted pursuant to clause 15.3 in respect of all Variations.

Additional Environmental Requirements means the environmental requirements which appear in Appendix B5 to the Works Brief.

Approval means any licence (including an EPL), permit, registration, consent, approval, determination, certificate, administrative decisions, permission or other requirement of any Authority or under any other applicable Law, which must be obtained or satisfied to:

- (a) carry out the Services; or
- (b) occupy and use the Works,

and includes the RMS-Arranged Approvals.

Auditor means an independent auditor or RMS's internal auditor appointed for the purposes of clause 12.6.

Authorised Representative means the person appointed by RMS and named in the Contract Particulars or any other person nominated by RMS from time to time under clause 5.2 to replace that person.

Authority means:

- (a) any Government; or
- (b) any:
 - (i) administrative or judicial body; or
 - (ii) public tribunal, commission, authority, agency, instrumentality or organisation,

having jurisdiction or authority in respect of the Contract, the Works, the Project or the carrying out of the Services.

Award Date means the date on which the Form of Agreement, to which these General Conditions of Contract are attached, has been completed and signed by RMS and the Delivery Partner.

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

Certificate of Project Completion means a certificate in the form of certificate no. 15.9 which appears in Schedule 15.

Certificate of Section Opening means a certificate in the form of certificate no. 15.8 which appears in Schedule 15.

Claim includes any claim for an increase in the Contract Price and for payment of money (including damages, but excluding any claim for payment of money forming part of the Contract Price):

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Authorised Representative;
- (b) arising out of, or in any way in connection with, the Works, the Services or either party's conduct prior to the Commencement Date; 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.

Commencement Date means 28 April 2015, being the date of the Early Services Agreement.

Completion means in relation to a Milestone, the achievement of the Milestone Achievement Criteria set out in Schedule 12 for the relevant Milestone.

Confidential Information of a party ("**Discloser**") means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, provided to the other party ("**Recipient**") before, on or after the Commencement Date relating to the business, technology or other affairs of the Discloser, but excludes:

- (a) information which is in or becomes part of the public domain otherwise than through breach of this Contract;
- (b) information known to the Recipient on a non-confidential basis at the time of disclosure under this Contract; or
- (c) information developed by the Recipient independently of the Confidential Information.

Consultancy Cost means the sum of all amounts payable by RMS to Consultants for the performance of services under Professional Services Agreements and the Deed of Appointment of ER.

Consultant means:

- (a) a consultant (including the Environmental Representative or any consultant engaged in respect of a dispute under a Project Contract) engaged by RMS pursuant to a Professional Services Agreement or in the case of the Environmental Representative, the Deed of Appointment of ER pursuant to which the Environmental Representative will be appointed by RMS; and
- (b) a member of a Dispute Avoidance Board under a Project Contract.

Contract means the contractual relationship between the parties constituted by the documents referred to in the Form of Agreement as constituting the Contract.

Contract Particulars means the particulars contained in Schedule 1.

Contract Price means the amount set out or calculated in accordance with Schedule 7.

Contractor Statement and Supporting Statement means the document in the form set out in Schedule 9 (Contractor Statement and Supporting Statement) or such other form as RMS may approve in writing.

Corporations Act means *Corporations Act 2001 (Cth)*.

DAB means the Dispute Avoidance Board established in accordance with clause 19.3.

DAB Agreement means the agreement in Schedule 10.

DAB Member means the person referred to in the Contract Particulars.

Date for Project Completion means the date by which Project Completion must be achieved, being the date stated in the Contract Particulars.

Date for Project Opening is the date by which the Works must achieve Project Opening, being the date stated in the Contract Particulars, as adjusted in accordance with the Contract.

Date of Project Completion means the date set out in the Certificate of Project Completion as the date upon which Project Completion was achieved.

day means calendar day.

Deed of Appointment of ER means the deed that will be entered into between RMS and the Environmental Representative.

Defect means an element of the Works which does not conform with the requirements of the Contract.

Delay Float Allowance means the contingency of 186 working days (as set out in the DP Program) to provide a buffer to deal with delays in the carrying out of the Works which has been included in the DP Program, as that period is reduced in accordance with clause 14.7.

Deliverable means any Document or other material or item:

- (a) prepared, or procured from a Project Contractor, by the Delivery Partner and provided or required to be provided to RMS, or
- (b) otherwise produced by the Delivery Partner in connection with the Services or the Contract.

Delivery Partner means the person so named in the Contract Particulars.

Delivery Partner Margin means the fixed lump sum set out, and described as such, in section 7.1 of Schedule 7, as adjusted under clause 15.3.

Delivery Partner's Representative means the person named in the Contract Particulars or any other person from time to time appointed as the Delivery Partner's Representative in accordance with clause 5.5.

Design Documentation has the meaning given in the Services Brief.

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

Dispute has the meaning given in clause 19.1.

Documents means all documents, reports, plans, drawings, computer disks, specifications and all other materials in both hard and electronic formats.

DP Contingency is the amount of contingency that when added to the Estimated Total Project Cost equals the DP Project Budget as at the Commencement Date.

DP Cost Plan means the Project Plan of that name, the initial version of which appears as Exhibit C.

DP Program means the Project Plan of that name, the initial version of which appears in Appendix A8 to the Services Brief.

DP Project Budget means the amount specified in the Contract Particulars which may only be increased or decreased in accordance with clause 14.7(d), 15.3 or 15.4.

Early Services Agreement means the letter agreement between RMS and the Delivery Partner dated 28 April 2015 pursuant to which the Delivery Partner was engaged to carry out the part of the Services more particularly set out in that letter agreement.

Early Warning Notice has the meaning given in clause 3.7.

Environmental Law means any Law relating to environmental protection, including all:

- (a) environmental conditions or the requirements of any Approval;
- (b) Laws applicable to the actual or potential effect on the environment of the activities in, at or on the Site;
- (c) Laws applicable to the disposal of materials or the discharge of chemicals, gases, liquids or other substances or materials into the environment, or the presence of such chemicals, gases, liquids or other substances or materials in, at or on the Site (including Hazardous Materials); and
- (d) Laws applicable to the emanation of noise at or from the Site.

Environmental Representative means the person to be appointed by RMS pursuant to the Deed of Appointment of ER to discharge the functions of the Environmental Representative under the Planning Approval referred to in item 1(a) of Schedule 16.

Environmental Requirements include:

- (a) RMS's environmental requirements or plans for the Project, the Works, the Services and/or the Site;
- (b) the requirements of Environmental Law;
- (c) the Additional Environmental Requirements; and
- (d) the requirements of environmental authorities, licences (including the EPL for the Project), approvals, permits, decisions, requirements, conditions, notices and/or management plans for the Project, the Works, the Services and/or the Site issued under any Environmental Law or by the Environmental Representative or any Authority,

and excludes the RMS Retained Obligations.

EP Licensed Project Contractor means a Project Contractor that holds an EPL in respect of an area of the Site to which it has been provided access to carry out the Works and Temporary Works under its Project Contract.

EPL means an environmental protection licence issued by the Environmental Protection Authority pursuant to the *Protection of the Environment Operations Act 1997* (NSW).

Estimated Total Project Cost means the amount specified in the Contract Particulars being the sum of the:

- (a) Contract Price;
- (b) Works Cost;
- (c) Supply Cost;
- (d) Consultancy Cost; and
- (e) Other RMS Personnel Cost,

excluding the DP Contingency, estimated by the Delivery Partner at the Commencement Date and which may only be increased or decreased in accordance with clause 14.7(d), 15.3 or 15.4.

Final Landscape Area Completion has the meaning given in the Services Brief.

Form of Agreement means the document entitled "Form of Agreement" to which these General Conditions of Contract are attached.

Gainshare Amount means the Total Gainshare Payable (if any) as that term is defined in Schedule 6.

Gainshare Amount Pool means the amount specified in the Contract Particulars.

General Conditions of Contract means these General Conditions of Contract.

General Liability Cap means the amount of [REDACTED] as increased by the Additional DP Margin at Risk.

Good Industry Practice means the care, skill, diligence, prudence and foresight reasonably expected of a competent, qualified, skilled and experienced professional working in a firm providing similar services to an organisation like the Delivery Partner, seeking to comply with its contractual and legal obligations and having regard to the requirements of the Project and any other circumstances affecting the carrying out of the Services.

Government means any national, federal, state, provincial, territory or local government (and all agencies, authorities, departments, ministers, ministries or instrumentalities of any of them):

- (e) of any place in which any of the Services are performed; or
- (f) having jurisdiction or authority in respect of the Contract, the Project, the Works or the carrying out of the Services.

GST has the same meaning as in the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Materials means any hazardous materials, including any form of organic or chemical matter whether solid, liquid, gas, odour, heat, sand vibration, radiation, or substance which makes or has the capacity to 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.

Hold Point has the meaning given in the Services Brief.

Initial DP Cost Plan means the document which appears as Exhibit C.

Initial DP Program means the document which appears as Appendix A8 to the Services Brief.

Initial Project Plan means the initial version of each Project Plan which is included in the Contract in Exhibit C or in Appendix A8 to the Services Brief.

Insolvency Event means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any Law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable Law to be (for any purpose), insolvent or unable to pay its debts or is otherwise unable to proceed with the Contract for financial reasons.

Intellectual Property Rights means all present and future registered and unregistered rights conferred by statute, common law or equity in, or in relation to, copyright, trademarks, patents, designs, circuit layouts, trade secrets, know how, confidential information, inventions and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

IT Material means any software, hardware or telecommunications equipment:

- (a) produced; or
- (b) provided, or required to be provided, to RMS,

under, for the purposes of or in connection with the Contract, the Project, the Works or the Services by, for or on behalf of the Delivery Partner.

Key Performance Indicator or **KPI** means a key performance indicator set out in Schedule 6 or in the Services Brief that will be used to measure performance and delivery of individual Key Result Areas.

Key Result Areas or **KRA** means one or more key result areas:

- (a) in respect of the financial key result areas, identified in Schedule 6; and
- (b) in respect of the non-financial key result areas, set out in the Services Brief.

Known Defect means, at the time of an application for Section Completion, a Defect which is known to the Delivery Partner.

Landscape Area has the meaning given in the Services Brief.

Landscape Area Completion has the meaning given in the Services Brief.

Landscape Area Maintenance has the meaning given in the Services Brief.

Law means:

- (a) any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by any Government;
- (b) common law;
- (c) Approvals; and
- (d) any other relevant Authority requirements,

applicable to the Project, the Site, the Works or the Services.

Material Change Event means an event:

- (a) not caused by, and beyond the reasonable control of, the Delivery Partner;
- (b) which has had or will have a material adverse impact on the Total Project Cost or the achievement of Project Opening which cannot be avoided or substantially mitigated by the exercise of Good Industry Practice by the Delivery Partner; and
- (c) in respect of which, from the date that any relevant Project Contract for the Works affected by the event comes into effect, RMS would be obliged to (subject to the terms of the Project Contract):

- (i) pay the relevant Project Contractor under that Project Contract an additional amount on account of that event; or
- (ii) grant an extension of time to the relevant Project Contractor in respect of that event.

Milestone means a milestone described in Schedule 12, and includes each Project Milestone, Project Opening and Project Completion.

Milestone Date means each of the milestone dates set out in Schedule 12 as the dates by which Completion of each Milestone is to be achieved.

Nominated Key Personnel means the persons named in Schedule 13 and any other person that RMS consents to in writing.

Nominated RMS Personnel means one of the persons nominated by RMS and approved by the Delivery Partner in accordance with clause 5.8(a)(i).

NSW Code means the New South Wales Government Code of Practice for Procurement (January 2005).

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (as published by the NSW Treasury July 2013).

Omission means an element of the Works which is not complete.

Other Contractor means any contractor, supplier or other person engaged by RMS in relation to the Project or the Works other than:

- (a) the Delivery Partner; and
- (b) the Project Contractors.

Other RMS Personnel means any persons engaged by RMS and provided to the Delivery Partner for integration into the Delivery Partner's team that are not Nominated RMS Personnel.

Other RMS Personnel Cost means the salaries, statutory on-costs and overheads costs associated with the assignment of Other RMS Personnel to the Delivery Partner, as notified by RMS to the Delivery Partner.

Packaging and Procurement Plan means the Project Plan of that name.

Painshare Amount means the Painshare (if any) as that term is defined in Schedule 6.

Painshare Cap means the amount specified in the Contract Particulars as increased by the Additional DP Margin at Risk.

Parent Company Guarantor means the person or persons specified in the Contract Particulars.

Payment Claim means a claim for payment submitted in accordance with clause 16.2.

Payment Claim Date means the later of:

- (a) the date specified in the Contract Particulars; and
- (b) the date each condition precedent in clause 16.4 is satisfied.

Payment Schedule means a payment schedule under clause 16.3.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Personnel means the officers, employees, contractors, subcontractors and consultants of the Delivery Partner (and, if the Delivery Partner is a partnership, includes partners).

Predicted Painshare Amount has the meaning given in section 7.4 of Schedule 7.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), any applicable principles, codes of conduct or directions issued under those Acts and all other applicable Law relating to privacy or personal information.

Professional Services Agreement means a contract between RMS and a Consultant for the performance of professional services in relation to the Project or the Works, including any RMS Enabling Works Contract.

Project means the project described in the Contract Particulars.

Project Board means the Project Board referred to in clause 2.2.

Project Completion is the stage when:

- (a) Project Opening has occurred;
- (b) all the Works are complete including rectification of all Known Defects and completion of all Omissions;
- (c) all Deliverables have been provided to the Authorised Representative;
- (d) the Works comply with all applicable Law; and
- (e) everything which this Contract requires to be done as a condition precedent to Project Completion, including those things described in the Contract Particulars, has been done, including the provision to RMS of a certificate in the form of certificate No 15.7 which appears in Schedule 15.

Project Contractors means, collectively, the Works Contractors, the Supply Contractors and the Consultants (and each of them is a "Project Contractor"), but does not include an Other Contractor or any subcontractor to or consultant of the Delivery Partner.

Project Contracts means, collectively, the Works Contracts, the Supply Contracts and the Professional Services Agreements (and each of them is a "Project Contract"), but does not include any contract pursuant to which RMS engages an Other Contractor or any contract pursuant to which the Delivery Partner engages a subcontractor or consultant to the Delivery Partner.

Project Documents includes:

- (a) the Deliverables;
- (b) RMS's Documents;
- (c) Approvals;
- (d) IT Material;
- (e) without limiting paragraphs (a) to (d), any other material:
 - (i) produced; or

- (ii) provided, or required to be provided, to RMS or the Authorised Representative,

under, for the purposes of or in connection with the Contract, the Works, the Project or the Services by, for or on behalf of the Delivery Partner including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, databases or other information stored in any electronically-retrievable medium, technical information, plans, designs, drawings (including as-built drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third parties to the Delivery Partner), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents and any other material of a similar nature to those materials relating to or arising out of or in connection with the Contract, the Works, the Project or the Services; and

- (f) without limiting paragraphs (a) to (e), all material at any time derived from, or based on, the material described in paragraphs (a) to (e).

Project Milestone means a Milestone that is described in Schedule 12.

Project Objectives means the objectives set out in clause 2.1(b).

Project Opening means Section Opening has been achieved for all Sections of the Project.

Project Plan means any plan of the kind referred to in clause 7.5(a) as that plan may be updated, amended and further developed under clause 7.5 and the Services Brief.

Project Procedures Manual means the document or documents described in the Contract Particulars.

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.

RMS means Roads and Maritime Services.

RMS-Arranged Approvals means the approvals referred to in Schedule 16.

RMS's Documents means any Documents provided to the Delivery Partner by or on behalf of RMS, including any Documents provided to the Delivery Partner in accordance with clause 7.

RMS Enabling Works has the meaning given in the Works Brief.

RMS Enabling Works Contract means each Works Contract, Professional Services Agreement or Supply Contract which has been entered into by RMS prior to the Award Date in respect of the RMS Enabling Works, the details of which are set out in Appendix B10 to the Works Brief.

RMS IP means, in relation to the Documents provided to the Delivery Partner in connection with the Contract, any Intellectual Property Rights vested in, or otherwise owned by, RMS.

RMS Personnel means Nominated RMS Personnel and Other RMS Personnel.

RMS Retained Obligations are those obligations listed in Schedule 18 arising from the Approvals which will be undertaken by RMS.

Road Occupancy Licence has the meaning given in the Services Brief.

Section means the Milestones set out in items 1 to 7 of Schedule 12.

Section Completion is the stage when in respect of a Section:

- (a) Section Opening has occurred;
- (b) all the Works in that Section are complete including rectification of all Known Defects and completion of all Omissions (excluding any Section Interface Omissions);
- (c) all Deliverables for that Section have been provided to the Authorised Representative;
- (d) the Works for that Section comply with all applicable Law; and
- (e) everything which this Contract requires to be done as a condition precedent to Section Completion has been done in relation to that Section, including the provision to RMS of a certificate in the form of certificate No 15.6 of Schedule15.

Section Interface Omissions means that part of the Works in a Section which interface with an adjacent Section and which cannot (exercising Good Industry Practice) be completed until the Works in the adjacent Section have also been completed.

Section Opening is the stage when in respect of a Section:

- (a) a certificate in the form of certificate No 15.4 in Schedule15 has been provided to RMS;
- (b) the Section is open to the safe and continuous flow of traffic:
 - (i) at the design speed required by the Works Brief;
 - (ii) in the configuration and providing the functionality required by the Contract; and
 - (iii) without the requirement to obtain a Road Occupancy Licence to rectify Known Defects or to complete Omissions.

Services means all work, services, tasks and other things which the Delivery Partner is, or may be, required to do, provide, supply or perform to comply with its Contract obligations and includes:

- (a) the services described in the Services Brief;
- (b) any services incidental to, or reasonably inferred from, the Services Brief; and
- (c) any Variation to them directed by the Authorised Representative in accordance with the Contract.

Services Brief means the document which appears as Exhibit A.

Site has the meaning given in the Works Brief.

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

Supply Contract means a contract between RMS and a Supply Contractor for any of the following:

- (a) the supply or design and supply of a part of the Works or any plant, equipment, material or other items for incorporation into the Works or for use in connection with the construction, testing or commissioning of the Works;

- (b) the hire of any plant, equipment or other items in connection with the construction, testing or commissioning of the Works;
- (c) the provision of transportation services in connection with the Works or the Project; and
- (d) the provision of any other services (other than professional services and any services forming part of the Services) in connection with the construction, testing or commissioning of the Works,

including any RMS Enabling Works Contract.

Supply Contractor means a contractor or supplier engaged by RMS pursuant to a Supply Contract.

Supply Cost means the sum of all amounts payable by RMS to Supply Contractors for executing work, supplying items or performing services under the Supply Contracts.

Taxes means income, stamp, payroll, import, value added (including VAT), goods and/or services (including GST), indirect and other taxes, compulsory superannuation contributions, levies, excises, imposts, deductions, charges, duties (including import duty), 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) imposed by any Law, Government or taxing Authority, together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Temporary Works means work used in carrying out and completing the Works, but not forming part of the Works.

Third Party IP means, in relation to the Documents provided to the Delivery Partner in connection with the Contract, any Intellectual Property Rights which have been licensed to RMS and which RMS has a right to sub-license to the Delivery Partner to use, reproduce and modify to the extent required for the Services or other obligations under this Contract.

Total Project Budget means the amount specified in the Contract Particulars, being the fixed and total budget allocated to the Project.

Total Project Cost is the sum of:

- (a) the Contract Price;
- (b) the Works Cost;
- (c) the Supply Cost;
- (d) the Consultancy Cost; and
- (e) the Other RMS Personnel Cost,

calculated as at Project Completion.

Variation means, unless otherwise stated in the Contract, any change to the Services, including any addition, increase, decrease, omission or deletion to or from the Services.

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

WHS Legislation means the WHS Act and the WHS Regulation.

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

Works means the works and facilities to be handed over to RMS or where RMS is not the asset owner, the asset owner, as a result of the execution of:

- (a) the whole of the Services, including Variations; and
- (b) the work, services and supply of items under each of the Project Contracts,

the general scope of which is described in the Works Brief, and which includes the RMS Enabling Works.

Works Brief means the document which appears as Exhibit B.

Works Contract means a contract between RMS and a Works Contractor for the construction, design and construction, installation or erection of a part of the Works, including any RMS Enabling Works Contract.

Works Contractor means a contractor engaged by RMS pursuant to a Works Contract.

Works Contractor Seed Pool means the fixed amount of [REDACTED].

Works Cost means the sum of all amounts payable by RMS to Works Contractors for executing work under the Works Contracts, including any amount payable out of the Works Contractor Seed Pool.

1.2 Interpretation

In this Contract, unless the context indicates otherwise:

- (a) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (b) a reference to:
 - (i) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (ii) a person includes an individual, the estate of an individual, a corporation, a Government, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (iv) a statute, act, regulation, subordinate legislation, rule, by law, order, proclamation, decree, ordinance, code or other law or any convention includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments and replacements of any of them;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vii) provisions or terms of this Contract or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;

- (viii) a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
 - (x) "includes", "for example" and "such as", in any form, are not words of limitation; and
 - (xi) a "related body corporate" and "related entity" means, respectively, a "related body corporate" and "related entity" as defined under the Corporations Act or a similarly related or affiliated person as defined under any applicable Law analogous to that Act;
- (c) a requirement for something to be "agreed" requires the agreement to be recorded in writing;
 - (d) a reference to \$ will be taken to be a reference to the lawful currency of Australia;
 - (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract includes all schedules, exhibits, attachments and annexures to it;
 - (f) a reference in these General Conditions of Contract to a numbered clause is a reference to a clause in the General Conditions of Contract;
 - (g) a reference in these General Conditions of Contract to a numbered Schedule (for example, "Schedule 1") is a reference to a Schedule to the General Conditions of Contract; and
 - (h) a reference to a lettered Exhibit (for example, "Exhibit A") is a reference to an Exhibit forming part of the Contract as mentioned in the Form of Agreement.

1.3 Time

In this Contract, unless the context indicates otherwise:

- (a) references to time are to local time in the State of New South Wales;
- (b) where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded;
- (c) where time is to be counted in months and the period commences on the 29th, 30th or 31st day of a month and the month at the end of the period does not have a 29th, 30th or 31st day (as applicable), then the period will end on the last day of that month (so that, for example, a period of 2 months which begins on 31 July will end on 30 September, as will a period of 2 months which begins on 30 July); and
- (d) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day.

1.4 No bias against drafting party

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

1.5 Headings

Headings are for reference only and do not affect the interpretation of the Contract.

1.6 Provisions limiting or excluding liability

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

1.7 RMS's discretion

Subject to any express provision in the Contract to the contrary:

- (a) a provision of the Contract which says that RMS or the Authorised Representative "may" do or not do something is not to be construed as imposing an obligation on RMS or the Authorised Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which RMS or the Authorised Representative may exercise any discretion, power or entitlement conferred by this Contract.

Without limiting the previous paragraph, neither RMS nor the Authorised Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Delivery Partner or as required by any other legal doctrine which in any way limits the express words used in the provision of this Contract conferring the discretion, power or entitlement.

2. Objectives, governance and collaboration

2.1 Objectives of Delivery Partner model

- (a) The parties acknowledge and agree that the key purpose of the Contract is to achieve the Project Objectives set out in clause 2.1(b), and the parties commit themselves to meeting those objectives by working together in a collaborative and constructive manner.
- (b) The Project Objectives are:
 - (i) achieving Project Opening by the Date for Project Opening;
 - (ii) ensuring safety is paramount, both during and after the construction of the Project;
 - (iii) driving better value and efficiencies in the overall delivery of the Project;
 - (iv) meeting budgetary requirements and ensuring that Project Completion occurs within the DP Cost Plan;
 - (v) achieving the specified functional requirements of the Project and compliance with all Approvals;
 - (vi) making the best use of available resources from private and public sectors;
 - (vii) ensuring robust, accountable and transparent governance systems and structures; and
 - (viii) meeting the needs of stakeholders and providing controls to implement effective decision processes.
- (c) In order to meet the Project Objectives, the Delivery Partner must:
 - (i) implement innovation in its Project delivery strategy to achieve best value Project outcomes;
 - (ii) comply with all of its performance obligations and reporting requirements under the Contract, including all statutory obligations and requirements at Law; and
 - (iii) make the best use of all resources available to it for delivering the Project.
- (d) Consistent with clause 2.1(b), the parties must promptly meet after the Award Date to establish the principles for the collaborative implementation of the Project and the Contract in a manner consistent with the Services Brief.

2.2 Project Board

RMS has established a Project Board to oversee the implementation of the Project.

The members of the Project Board will be comprised of such persons as may be notified by RMS to the Delivery Partner.

RMS may, from time to time, make changes to the membership of the Project Board. If RMS makes any such changes, the Authorised Representative will notify the Delivery Partner of the changes to the members of the Project Board.

2.3 Functions of the Project Board

- (a) The primary purpose of the Project Board is to monitor the delivery of the Project, including the performance of the Delivery Partner in carrying out the Services, and advise RMS in relation to the Project.
- (b) The Project Board will act as a forum for the:
 - (i) continued review and refinement of Project requirements;
 - (ii) discussion and refinement of the methodology and procedures developed and utilised as part of the Services; and
 - (iii) Delivery Partner and RMS working together in a collaborative and constructive manner so as to best ensure the Delivery Partner discharges its obligations under the Contract.

2.4 Meetings of the Project Board

- (a) The Project Board will meet:
 - (i) every month; and
 - (ii) at other times which RMS requires.
- (b) The Delivery Partner must at the request of the Authorised Representative:
 - (i) ensure that it nominates a senior representative acceptable to RMS to attend any meetings of the Project Board which RMS requires it to attend; and
 - (ii) ensure the attendance at meetings of the Project Board of a representative of any subcontractor as requested by the Authorised Representative.

3. Role of the Delivery Partner

3.1 Engagement

The Delivery Partner must:

- (a) immediately commence to carry out and perform the Services; and
- (b) carry out the Services until Project Completion,

in accordance with this Contract.

3.2 Standard of care

The Delivery Partner:

- (a) must carry out the Services using Good Industry Practice to satisfy the Project Objectives;
- (b) must exercise the standard of skill, care and diligence in the performance of the Services and obligations that would be expected of experienced professional providers of services of the type comprising the Services;
- (c) must satisfy itself as to RMS's requirements for the Services and must comply with the policies, practices and procedures of RMS relating to the Services and the performance of the Services;
- (d) warrants that each of its subcontractors and consultants will exercise the standard of skill, care and diligence that would be expected of an experienced professional provider of the work and services being performed by the subcontractor or consultant;
- (e) must ensure that the Services, and any Deliverables, comply with the requirements of the Contract and will be fit for the purposes specified in the Contract;
- (f) without limiting clause 3.4(a)(ii), must ensure that the Services are provided economically and in accordance with any budgetary requirements of RMS including as reflected in the DP Cost Plan;
- (g) must exercise the utmost good faith in the best interests of RMS and keep RMS fully and regularly informed about all matters affecting or relating to the Works, the Project and/or the Services or otherwise; and
- (h) must ensure that, at Project Completion, the Works will be fit for their intended purpose provided that RMS must (if it wishes to make any Claim) have recourse to the relevant Project Contractor (and not the Delivery Partner) and enforce its rights under the relevant Project Contract for any failure to design or construct the Works or the Temporary Works (including any defect or unfitness for purpose) as required, and the Delivery Partner will not be liable for any costs or losses associated with the existence or rectification of any defect or unfitness for purpose of the Works, provided that all such costs and losses will be taken into account in calculating the Total Project Cost.

3.3 Authority to act

Other than as expressly authorised by RMS in accordance with Schedule 14, the Delivery Partner has no authority to, and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in

the name of, or on behalf of, RMS; or

- (b) take any act or step to bind or commit RMS in any manner, whether as a disclosed agent of RMS or otherwise.

Subject to Schedule 14, the Delivery Partner is an independent contractor and is not, and must not purport to be, a partner or joint venturer of RMS.

3.4 Delivery Partner's fundamental obligations

- (a) The Delivery Partner must:
 - (i) promptly perform the Services and use its best endeavours to ensure that the Works proceed at a rate of progress such that:
 - A. Completion of each Milestone is achieved by the applicable Milestone Date;
 - B. Section Opening is achieved for each Section at the earliest practicable date;
 - C. Project Opening is achieved by the Date for Project Opening; and
 - D. Project Completion is achieved by the Date for Project Completion.
 - (ii) use its best endeavours to ensure that Project Completion is achieved so that the Total Project Cost does not exceed the DP Project Budget;
 - (iii) before construction of any part of the Works is commenced, ensure that the methods of working proposed or specified by the Delivery Partner or any Project Contractor are in accordance with the requirements of the applicable Project Contract and are appropriate and satisfactory for their purpose;
 - (iv) subject to clauses 9.5(g) and 10.1(g), obtain and hold an EPL for the Project and accept and fulfil the role of principal contractor (as that term is defined in the WHS Legislation); and
 - (v) use its best endeavours to ensure that all work and methods of working under the Project Contracts are performed in accordance with the requirements of the applicable Project Contract.
- (b) The Delivery Partner:
 - (i) must inform itself of RMS's requirements as required by clause 3.6; and
 - (ii) must at all times perform the Services in accordance with RMS's requirements referred to in clause 3.4(b)(i) and any instructions given by the Authorised Representative.
- (c) Unless listed in Schedule 19 or otherwise approved by RMS, neither the Delivery Partner nor any related body corporate or related entity of any entity that forms a part of the Delivery Partner will:
 - (i) design or construct any part of the Works or the Temporary Works; or
 - (ii) have the design or the construction of any part of the Works or the Temporary Works undertaken by any Personnel.

3.5 Delivery Partner's reporting obligations

The Delivery Partner must:

- (a) within the time required by section A7.1.1 of Appendix 7 to the Services Brief give a written monthly progress report to the Authorised Representative. The written report must be in a form required by the Contract and as otherwise required by the Authorised Representative and must contain such information and supporting evidence in relation to:
 - (i) the status and progress of the Services and the Project;
 - (ii) the performance of the Works and the status of each Project Contract, including all reports, claims and certificates submitted by a Project Contractor under a Project Contract;
 - (iii) a detailed reconciliation of costs incurred against the DP Cost Plan and the Estimated Total Project Cost; and
 - (iv) any other matter or thing as is required by Appendix 7 to the Services Brief and the Authorised Representative;
- (b) give the Authorised Representative:
 - (i) any report on any specific issue in connection with the performance of the Services, the Works and the Project Contracts; and
 - (ii) any other periodic report,
 which the Authorised Representative reasonably requires;
- (c) promptly report all incidents, accidents, infringements and fines to the Authorised Representative;
- (d) advise the Authorised Representative (in writing if the Authorised Representative directs) of suitable courses of action in relation to any matters required by RMS; and
- (e) establish and maintain any records which the Authorised Representative reasonably requires.

3.6 Knowledge of RMS's requirements

The Delivery Partner must:

- (a) inform itself of RMS's requirements for the Services, the Works and the Project, as set out in the Services Brief and the Works Brief and as otherwise notified by the Authorised Representative to the Delivery Partner, including by the making of relevant enquiries of RMS;
- (b) refer to RMS's Documents; and
- (c) consult RMS throughout the carrying out of the Services.

3.7 Notice of matters impacting the Project

- (a) Without limiting clause 14.5 or clauses 20.1 to 20.4 (if applicable), if either party becomes aware of any matter which:

- (i) is likely to change or which has changed the scope, quality, timing or cost of the Services or the Works;
- (ii) affects or may affect the DP Program, the DP Project Budget, a KRA or a Project Objective; or
- (iii) involves any error, omission or defect in any continuing or completed aspect of the Services or the Works,

the Delivery Partner must, or (as applicable) RMS must, use reasonable endeavours to promptly give written notice of that matter to the Authorised Representative and the other party ("**Early Warning Notice**") containing, as far as practicable in the circumstances:

- (iv) particulars of the change, effect, error, omission or defect;
 - (v) its impact or likely impact, including on the probable Total Project Cost; and
 - (vi) in the case of the Delivery Partner, its recommendation as to how to minimise its impact or likely impact upon the scope, quality, timing and cost of the Services and the Works.
- (b) An Early Warning Notice is not required to be given for a Material Change Event which has previously been notified under clause 14.5.
- (c) Each Early Warning Notice will require the Authorised Representative and the Delivery Partner's Representative to attend a meeting to discuss the matters the subject of the Early Warning Notice ("**Risk Reduction Meeting**").

At the Risk Reduction Meeting, the Authorised Representative and the Delivery Partner's Representative must:

- (i) make and consider proposals for how the effect and impact of the risk can be avoided or reduced;
 - (ii) seek solutions that will eliminate or reduce any negative effect or impact of the risk on those who will be affected;
 - (iii) seek to agree upon the actions that will be taken and who, in accordance with this Contract, will take them; and
 - (iv) decide which risks have not been avoided or have passed and can be removed from the risk and issues management strategy forming part of the Project Management Plan.
- (d) Following the Risk Reduction Meeting and where (at that meeting) the parties jointly determine the course of action (if any) to be taken to address the matters the subject of the Early Warning Notice, the Delivery Partner must :
- (i) record that determination; and
 - (ii) provide that record to the Authorised Representative.

3.8 Coordination with Other Contractors

- (a) The Delivery Partner acknowledges that Other Contractors may be present on the Site during the performance of the Services by the Delivery Partner.

- (b) The Delivery Partner must (and must ensure that its subcontractors and consultants):
- (i) fully cooperate with each Other Contractor;
 - (ii) carefully coordinate and integrate the Services with the activities of each Other Contractor;
 - (iii) carry out the Services so as to avoid interfering with, disrupting or delaying, the activities of each Other Contractor;
 - (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the activities of each Other Contractor; and
 - (v) comply with all Directions from the Authorised Representative regarding Other Contractors and their work.
- (c) The Delivery Partner acknowledges that:
- (i) it is not entitled to make any Claim as a consequence of:
 - A. delays or disruption caused by Other Contractors; or
 - B. any Direction given by the Authorised Representative pursuant to clause 3.8(b)(v);
 - (ii) any delay or disruption caused by Other Contractors will not affect or limit the Delivery Partner's obligations or liabilities under this Contract;
 - (iii) any action of the Delivery Partner under clause 3.8(b)(v) does not lessen or otherwise affect the Delivery Partner's other obligations under this Contract; and
 - (iv) neither RMS nor the Authorised Representative assumes any responsibility or duty of care to the Delivery Partner in respect of its actions under clause 3.8(b)(v).

3.9 Access to Delivery Partner's premises

The Delivery Partner must at all reasonable times:

- (a) give to the Authorised Representative, and to any persons authorised in writing by the Authorised Representative, access to premises occupied by the Delivery Partner, or its subcontractors and consultants, where Services are being carried out; and
- (b) permit those persons referred to in clause 3.9(a) to inspect the carrying out of the Services and any Deliverables or other Project Documents.

3.10 Conflict of interest

- (a) The Delivery Partner warrants that as at the Award Date, no conflict of interest exists or it is not aware of any reason why the provision of the Services will, or may, place it in a position of conflict having regard to any other interest or duty of the Delivery Partner or any of its Personnel.
- (b) Upon becoming aware of any conflict or possible conflict of interest, the Delivery Partner must:

- (i) immediately and fully disclose to the Authorised Representative any such conflict of interest or possible conflict of interest; and
- (ii) take all steps required by the Authorised Representative to avoid or minimise the conflict of interest or risk of conflict of interest.

3.11 Subcontracting

The Delivery Partner:

- (a) must not, without the prior written approval of the Authorised Representative, subcontract any part of the Services;
- (b) must ensure that its subcontractors comply with all obligations imposed on the Delivery Partner in this Contract;
- (c) will be fully responsible for the Services despite subcontracting of any part of them; and
- (d) will be vicariously liable to RMS for all acts, omissions and defaults of its subcontractors (and those of the employees and agents of its subcontractors) relating to, or in any way connected with, this Contract or the Services.

3.12 Compliance with Law

In carrying out the Services, the Delivery Partner must:

- (a) comply with, and ensure the Services comply with, all applicable Law;
- (b) ensure that any plant, equipment and motor vehicles used in the performance of the Services are registered at all times where required by law in the State of New South Wales;
- (c) at all times comply with the NSW Code in connection with this Contract and the provision of the Services;
- (d) certify to the Authorised Representative that any documentation and Deliverables prepared by or on behalf of the Delivery Partner (including Documents prepared and supplied by the Delivery Partner for inclusion in the Works Contracts, the Supply Contracts and the Professional Services Agreements) complies with all applicable Law;
- (e) ensure that its Personnel are registered or licensed to perform the Services in accordance with the requirements of Law;
- (f) without limiting clause 3.12(a):
 - (i) apply for and obtain all Approvals, other than the RMS-Arranged Approvals; and
 - (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of the Services or any of its other Contract obligations; and
- (g) promptly give the Authorised Representative copies of all documents (including Approvals and other notices) that any Authority having jurisdiction over the Site, the Works, the Project or the Services issues to the Delivery Partner.

3.13 Marketing or promotion of the Project

The Delivery Partner must co-operate with RMS in connection with RMS's use of the Delivery Partner's name in any marketing or promotion associated with the Project to the extent RMS may reasonably require.

3.14 Compliance with RMS's policies

The Delivery Partner must comply with the ethical and other policy requirements of RMS relating to the provision of the Services or the Project including:

- (a) RMS's Statement of Business Ethics; and
- (a) RMS's Customer Charter which is available from RMS's website [<http://www.rms.nsw.gov.au/customercharter/index.html>].

RMS reserves the right to notify the Delivery Partner at any time of additional policies which must be complied with by the Delivery Partner in the performance of the Services.

4. Role of RMS

4.1 Information and Services

RMS has made available to the Delivery Partner all information, documents and particulars relating to RMS's requirements for the Works, which RMS considers relevant to the Delivery Partner's performance of the Services.

4.2 Additional information

If:

- (a) the Delivery Partner, in its reasonable opinion, considers that any additional information, Documents or particulars are needed to enable it to carry out the Services; and
- (b) the additional information, Documents or particulars is not something that:
 - (i) the Delivery Partner is required to obtain or provide as part of the Services; and
 - (ii) RMS is not otherwise required to provide under this Contract,

then:

- (c) the Delivery Partner must give notice in writing to the Authorised Representative of the details of the additional information, Documents or particulars and the reasons why they are required; and
- (d) RMS must, if the Authorised Representative believes that the additional information, Documents or particulars are needed by the Delivery Partner, use its best endeavours to arrange the provision of the additional information, Documents or particulars.

4.3 Making of decisions

If:

- (a) the Delivery Partner in a timely fashion requests RMS to consider the selection of alternative courses of action;
- (b) all information required to enable a decision to be made is provided by the Delivery Partner to the Authorised Representative; and
- (c) the matter is not one that can be determined in accordance with the authorities and approvals process set out in Schedule 14,

RMS must, in a reasonable time, give a decision on the required course of action (but in no case will RMS be required to give such a decision in less than the period stated in the Contract Particulars).

5. Personnel

5.1 Authorised Representative

The Authorised Representative has full authority to act on behalf of RMS in respect of the subject matter of this Contract.

An instruction or written Direction given by the Authorised Representative will be deemed to be an instruction or Direction given by RMS.

The Authorised Representative may give written Directions to the Delivery Partner with regard to the provision of the Services.

The Delivery Partner must:

- (a) comply with any Direction given or purported to be given under a provision of this Contract by the Authorised Representative, to the extent that such a Direction is not inconsistent with the terms of this Contract;
- (b) not comply with any direction by any other person given or purported to be given on behalf of RMS other than where expressly stated to the contrary in the Contract; and
- (c) give prior written notice to the Authorised Representative if a failure by the Authorised Representative to exercise any function under the Contract by a particular time could cause delay or disruption to the Services.

Except where the Contract otherwise provides, the Authorised Representative may give a Direction orally, but will as soon as practicable confirm it in writing.

5.2 Replacement of the Authorised Representative

RMS may at any time replace the Authorised Representative, in which event RMS will appoint another person as Authorised Representative and notify the Delivery Partner of that appointment.

Any substitute Authorised Representative appointed under this clause 5.2 will be bound by anything done by the former Authorised Representative to the same extent as the former Authorised Representative would have been bound.

5.3 Parties' conduct

Without limiting any of the rights or obligations of RMS and the Delivery Partner under the Contract, RMS and the Delivery Partner must co-operate with each other in carrying out their obligations under the Contract.

5.4 Authorised Representative's representative

The Authorised Representative may:

- (a) by written notice to the Delivery Partner appoint persons to exercise any of the Authorised Representative's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under clause 5.4(a) by notice in writing to the Delivery Partner.

As at the Award Date, the Authorised Representative has appointed the persons set out in the Contract Particulars to carry out the functions set out in the Contract Particulars.

All references in the Contract to the Authorised Representative include a reference to a representative appointed under this clause 5.4.

5.5 Delivery Partner's Nominated Key Personnel

The Delivery Partner must:

- (a) employ those people specified as Nominated Key Personnel, including the Delivery Partner's Representative, in the jobs specified in Schedule 13;
- (b) subject to clause 5.5(c), not remove or replace the Nominated Key Personnel without the prior written approval of the Authorised Representative;
- (c) if any of the Nominated Key Personnel die, become seriously ill or resign from the employment of the Delivery Partner, replace them with persons approved by the Authorised Representative of at least equivalent experience, ability and expertise; and
- (d) apart from the Nominated Key Personnel or any persons approved under clause 5.5(c), not employ any people at or above the level of lead discipline engineer/manager in connection with the performance of Services without the prior written approval of the Authorised Representative.

5.6 Removal of persons

The Authorised Representative may by notice in writing instruct the Delivery Partner to remove from the Services any person (including any Personnel and person referred to in or approved under clause 5.5):

- (a) who, in the reasonable opinion of the Authorised Representative, is guilty of misconduct or is incompetent or negligent; or
- (b) who RMS considers in its absolute discretion, and without any obligation to justify, should be removed for any reason,

and the Delivery Partner must ensure that any such person is not again employed in connection with the performance of the Services.

5.7 Privacy

- (a) The Delivery Partner must comply with all relevant Privacy Laws when providing the Services, including obtaining the consent of each individual where Personal Information of that individual is collected, used or disclosed.
- (b) Where the Delivery Partner is required to collect Personal Information on behalf of RMS, the Delivery Partner must comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as if it were RMS collecting the Personal Information.

5.8 RMS Personnel

- (a) RMS:
 - (i) will nominate up to a maximum of 22 persons that are approved by the Delivery Partner (such approval to not be unreasonably withheld) to form part of the Delivery Partner team and once these persons have been nominated and approved by the Delivery Partner, RMS will make them available to the Delivery Partner; and

- (ii) may make available to the Delivery Partner, Other RMS Personnel.
- (b) The RMS Personnel may be integrated into the Delivery Partner team until Project Completion to provide:
 - (i) Project and program knowledge, including in respect of environmental issues;
 - (ii) participation in design optimisation;
 - (iii) interface facilitation and issues resolution;
 - (iv) management, technical and engineering support;
 - (v) community and traffic management support; and
 - (vi) other project management roles suitable to the capabilities of the person.
- (c) The RMS Personnel will be temporarily assigned in accordance with the *Government Sector Employment Act 2013 (NSW)*. The Delivery Partner must treat each individual RMS Personnel as a member of the Delivery Partner team and allow that person access to the premises occupied by the Delivery Partner where the Services are being carried out.
- (d) Whilst assigned, RMS Personnel will be subject to the direction, control and supervision of the Delivery Partner on behalf of RMS on a day to day basis including as to management, development and performance, but will remain employees of RMS at all times and will not be employees of the Delivery Partner. Accordingly, the Delivery Partner agrees that:
 - (i) neither it nor any of its related bodies corporate or other associated entities will be entitled to make any Claim against RMS or the RMS Personnel arising out of or in connection with any individual RMS Personnel's advice, acts or omissions undertaken whilst assigned to the Delivery Partner, including where any RMS Personnel fails to act in accordance with the directions of the Delivery Partner;
 - (ii) save in the circumstances of fraud or wilful misconduct of the RMS Personnel, it will indemnify RMS and the RMS Personnel against any claim which may be made against the Delivery Partner or the RMS Personnel to the extent that such claim arises from advice, acts or omissions undertaken by RMS Personnel whilst assigned to the Delivery Partner; and
 - (iii) it will indemnify RMS against any claim which may be made against RMS by the RMS Personnel that may arise whilst the RMS Personnel are working under the direction, control and supervision of the Delivery Partner, to the extent that any claim arises out of or in connection with any act or omission of the Delivery Partner.
- (e) Whilst the RMS Personnel are under the direction, control and supervision of the Delivery Partner, the Delivery Partner:
 - (i) acknowledges that it will provide a safe and healthy working environment as required under relevant WHS Legislation;
 - (ii) agrees to provide the RMS Personnel with a workplace induction, which covers the Delivery Partner's workplace health and safety policies and procedures including those relating to evacuation and emergency management;

- (iii) agrees that it will not require or direct RMS Personnel to use any equipment or facilities that they are not adequately trained and appropriately qualified to use; and
 - (iv) agrees to provide RMS with information, including that reasonably requested by RMS, regarding any incidents affecting or involving the health or safety of the RMS Personnel that arise or occur whilst under the Delivery Partner's direction and control.
- (f) The terms and conditions of the employment of each individual RMS Personnel are set out in the relevant employment contract between that person and RMS.
- (g) The Delivery Partner must not make an offer of employment, or make an approach regarding future employment prospects, to any employee of RMS during the term of the Contract or for the period of 12 months following the Date of Project Completion unless agreed by RMS.
- (h) The Delivery Partner will not take any adverse action in relation to an individual RMS Personnel other than:
 - (i) action required or contemplated by clause 5.8(i); or
 - (ii) action required by Law.
- (i) The Delivery Partner may, by issuing a written notice to the Authorised Representative, request that an individual RMS Personnel be removed from the Delivery Partner's team if:
 - (i) in the reasonable opinion of the Delivery Partner, that person is guilty of misconduct or is incompetent or negligent; or
 - (ii) the Delivery Partner, acting reasonably, considers that person should be removed for any other reason,and the Authorised Representative must not unreasonably withhold its approval to such a request.
- (j) RMS may, by issuing a written notice to the Delivery Partner, remove any individual RMS Personnel from the Delivery Partner team at any time at its absolute discretion.
- (k) The Total Project Cost:
 - (i) will not include the costs of Nominated RMS Personnel; and
 - (ii) will include the Other RMS Personnel Cost.

6. Indemnity and insurance

6.1 Delivery Partner's indemnity

The Delivery Partner indemnifies RMS from and against all actions, claims, costs, losses, expenses and damages (including the costs of defending or settling any action or claim) in respect of:

- (a) any physical loss of, loss of use (consequent upon damage) of, or damage to any property of RMS; and
- (b) any liability to or claims by a third party (including Other Contractors) in respect of physical loss of, loss of use (consequent upon damage) of, or damage to any property, or injury to or death of any person, or any claim for breach of confidence or privacy or misuse of Personal Information,

to the extent caused by, or arising out of, or in any way in connection with, any act or omission of the Delivery Partner, Delivery Partner's Representative or its Personnel in the carrying out of the Services provided that the Delivery Partner's responsibility to indemnify RMS will be reduced proportionally to the extent that an act or omission of RMS, the Authorised Representative, a Project Contractor or an Other Contractor, or a breach of this Contract by RMS, has contributed to the loss, loss of use, damage, injury, death or claim.

6.2 RMS's insurance obligations

RMS must from the Award Date effect the insurance specified in Schedule 4 and provide the Delivery Partner with evidence of the relevant insurance ("**RMS-arranged insurance**"). RMS must maintain this RMS-arranged insurance for the period stated in Schedule 4.

RMS-arranged insurance is subject to the exclusions, conditions and deductibles noted on the policies and the Delivery Partner must:

- (a) satisfy itself of the nature and extent of RMS-arranged insurance;
- (b) take out at its own cost insurance to:
 - (i) insure any risks not insured by RMS-arranged insurance; or
 - (ii) cover any such exclusions, conditions, or deductibles in that insurance,which the Delivery Partner wants to insure against or cover; and
- (c) bear the cost of any deductibles in RMS-arranged insurance, including where it is required to indemnify RMS under clause 6.1.

6.3 Delivery Partner's insurance obligations

The Delivery Partner must:

- (a) within 14 days after the Award Date and before commencing any Services, effect and have in place the insurance specified in Schedule 5 on terms satisfactory to the Authorised Representative and with insurers satisfactory to the Authorised Representative which have a financial standing rated by Standard & Poor's of not less than A minus;
- (b) maintain any required insurance for the period stated in Schedule 5;
- (c) as required by the Authorised Representative from time to time, provide the Authorised Representative with a copy of any insurance policy required under this

clause 6.3 and evidence satisfactory to the Authorised Representative that the policy is current;

- (d) ensure that it:
- (i) does not do anything which prejudices any insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Authorised Representative;
 - (v) immediately notifies the Authorised Representative of any event which may result in an insurance policy lapsing or being cancelled, including whenever the insurer gives any insured a notice under or in connection with the policy, which in the case of a notice of cancellation, must be given to RMS 30 days' prior to the cancellation of the policy; and
 - (vi) 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.

6.4 Failure to insure

If the Delivery Partner fails to:

- (a) provide copies of any insurance policy together with evidence satisfactory to the Authorised Representative that the policy is current; or
- (b) effect insurance which is with insurers and on terms satisfactory to the Authorised Representative,

as required by clause 6.3, RMS may, without prejudice to any other rights it may have, take out the insurance and the cost will be a debt due from the Delivery Partner to RMS.

6.5 Notice of potential claim

The Delivery Partner must:

- (a) as soon as possible inform RMS in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract ("**Notification**");
- (b) keep RMS informed of subsequent developments concerning the Notification, including if it becomes a claim;
- (c) ensure that its subcontractors and consultants similarly inform the Delivery Partner and RMS in respect of occurrences which may give rise to a claim by them; and
- (d) do any further thing that may be required by RMS or the insurer of the relevant insurance policy in relation to any Notification or claim.

6.6 Cross liability

Where the Contract requires insurance to be effected in joint names, the Delivery Partner must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

6.7 Liabilities unaffected

The effecting of insurance and the approval of any insurance policy, terms of insurance or insurer by the Authorised Representative does not limit any obligations or liabilities of the Delivery Partner (including the obligation to effect the insurances required by the Contract).

6.8 Approval of insurers

The Authorised Representative is not required to approve an insurer which has a financial standing rated by Standard & Poor's of less than A minus, and if at any time the financial standing of an insurer under a policy of insurance effected by the Delivery Partner under clause 6.3 (including an insurer previously approved by the Authorised Representative) falls below that rating, the Delivery Partner must at its cost replace that insurer with another insurer which has the required Standard & Poor's rating and is approved by the Authorised Representative.

7. Information, Deliverables and Documentation

7.1 Delivery Partner to inform itself

The Delivery Partner warrants that it has, and it will be deemed to have, done everything that would be expected of prudent, competent and experienced providers of similar services in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that the amounts payable pursuant to, and set out in, Schedule 7 contain allowances to protect the Delivery Partner against any of these risks eventuating.

7.2 Non-reliance

The Delivery Partner:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or Document made by or provided to the Delivery Partner by RMS, the Authorised Representative or anyone else on behalf of RMS; or
 - (ii) the accuracy or adequacy of any such information, data, representation, statement or Document,for the purposes of entering into the Contract, except for any Contract Information;
- (b) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that RMS has entered into the Contract relying upon the warranties in clauses 7.2(a) and 7.2(b).

Where used in clause 7.2(a), "**Contract Information**":

- (d) subject to paragraph (e), means any information, data, representation, statement or Document that forms part of the Contract; and
- (e) does not include the Initial DP Cost Plan.

7.3 RMS's Documents

RMS must provide to the Delivery Partner the number of copies of RMS's Documents that are specified in the Contract Particulars.

7.4 Delivery Partner's Deliverables

The Delivery Partner must:

- (a) manage the planning, programming, procurement, design and construction of the Works in accordance with the Works Brief and for this purpose prepare all relevant Deliverables in accordance with the Contract;
- (b) develop and complete to the standard of Good Industry Practice all Deliverables required for the performance of the Services so that the Deliverables:
 - (i) meet the requirements of the Contract;
 - (ii) are accurate and complete in all respects; and

- (iii) are otherwise suitable in all respects for their intended purpose as specified in the Contract; and
- (c) review RMS's Documents for errors, contradictions or deficiency of information and promptly notify the Authorised Representative of any such errors, contradictions or deficiency of information of which the Delivery Partner becomes aware for the attention and action of the Authorised Representative.

7.5 Project Plans

- (a) The Delivery Partner must prepare the Project Plans specified in the Services Brief and identified in the Contract Particulars.
- (b) Each Project Plan must:
 - (i) where an Initial Project Plan exists and is contained in the Contract, be based upon that Initial Project Plan; and
 - (ii) whether or not an Initial Project Plan exists, be prepared and further developed in accordance with this clause 7.5 and the Services Brief.
- (c) Each Project Plan must be submitted to the Authorised Representative within the time period, and containing the contents, specified in the Services Brief, for the submission and then updated as required.
- (d) The Authorised Representative may:
 - (i) review any Project Plan submitted under this clause 7.5; and
 - (ii) if he or she considers, acting reasonably, the Project Plan submitted does not comply with this Contract, notify the Delivery Partner 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 Contract.
- (e) If the Delivery Partner receives a notice under clause 7.5(d)(ii), the Delivery Partner must promptly submit an amended Project Plan to the Authorised Representative.
- (f) In respect of any Project Plan submitted by the Delivery Partner, including whether or not the Authorised Representative reviews it for errors, omissions or compliance with this Contract and whether or not the Authorised Representative comments on it or engages in any act or omission in respect of it:
 - (i) the Authorised Representative owes no duty to the Delivery Partner; and
 - (ii) the Delivery Partner's liabilities or responsibilities and RMS's rights under this Contract or otherwise will not be changed from what they otherwise would be.
- (g) The Delivery Partner acknowledges and agrees that:
 - (i) an intended purpose of each Project Plan is for the Delivery Partner to provide a detailed description of how the Delivery Partner intends to carry out the Services in accordance with the requirements of this Contract 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 Services to take into account:
 - A. Variations;

- B. any change in Law;
- C. the commencement of new phases or stages of design and construction of the Project;
- D. any other events or circumstances which may have any effect on the manner in which the Delivery Partner carries out the Services;
- E. any breach or potential breach of the warranty in clause 7.5(h); and
- F. the requirements specified in the Services Brief,

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

- (h) The Delivery Partner warrants that each Project Plan will be fit for its intended purpose.
- (i) If the Authorised Representative believes, acting reasonably, that any Project Plan does not comply with this Contract, he or she may by written notice direct the Delivery Partner 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 Delivery Partner must comply with that direction and submit a compliant Project Plan to the Authorised Representative within the time specified.
- (j) The Delivery Partner must comply with each compliant Project Plan, but compliance will not in any way lessen or affect its liabilities or responsibilities or RMS's rights whether under this Contract or otherwise according to Law.
- (k) To the extent they are relevant to maintenance of the Works after Project Opening, all Project Plans must be incorporated into the Maintenance Plan which will be prepared as part of the Project Plans.

7.6 Deliver Documentation

The Delivery Partner must deliver to RMS upon request (including after termination of this Contract for any reason) all Documents:

- (a) provided by or on behalf of RMS in connection with the Delivery Partner' Services; or
- (b) prepared by the Delivery Partner, its Personnel or others as part of the Deliverables to be provided to RMS in connection with, or as part of, the Services,

but the Delivery Partner may retain one copy of its own working notes created in the course of providing the Services to the extent necessary to comply with any Law or to maintain compliance with the Delivery Partner's quality assurance system provided that the Delivery Partner securely and safely stores such working notes, marks them as confidential and complies with clause 8.7.

7.7 No obligation to review

The Authorised Representative does not assume or owe any duty of care to the Delivery Partner to review, or in reviewing, any of the Deliverables submitted by the Delivery Partner for errors, omissions or compliance with the Contract.

No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any of the Deliverables prepared by the Delivery Partner or any other

direction by the Authorised Representative about, or any other act or omission by the Authorised Representative or otherwise by or on behalf of RMS in relation to, any of the Deliverables will:

- (a) relieve the Delivery Partner from, or alter or affect, the Delivery Partner's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
- (b) prejudice RMS's rights against the Delivery Partner whether under the Contract or otherwise according to Law.

8. Intellectual Property Rights and Confidential Information

8.1 Ownership and licensing of Intellectual Property Rights

- (a) All Intellectual Property Rights which are created or developed by the Delivery Partner in connection with the provision of the Services will vest absolutely in and are assigned by the Delivery Partner to RMS from the earlier of the Commencement Date and the date of the creation, discovery or development of those rights. The Delivery Partner agrees to do all things necessary to give effect to this clause.
- (b) All Deliverables provided to RMS by the Delivery Partner in connection with the Services will become RMS's property when provided, and the Delivery Partner must not use them or any information (about or belonging to RMS) contained in them without RMS's written consent other than for the purposes of providing the Services to RMS.
- (c) RMS hereby grants to the Delivery Partner, and its subcontractors and consultants approved by RMS, a revocable, non-exclusive, non-transferrable, royalty-free licence during the term of this Contract to use, reproduce and modify the RMS IP and Third Party IP only to the extent required to provide the Services or to meet the Delivery Partner's other obligations under this Contract.
- (d) All Intellectual Property Rights in those aspects of the Services and the Deliverables which were created by the Delivery Partner before the Commencement Date or are developed independently of this Contract and the provision of the Services remain the property of the Delivery Partner.
- (e) The Delivery Partner grants RMS a perpetual, non-exclusive, transferable, irrevocable, royalty-free licence to:
 - (i) use, reproduce, add to, modify and communicate to the public all Intellectual Property Rights not assigned to RMS under clause 8.1(a) and which are incorporated in or necessary to use or enjoy the benefit of any Deliverable or the Services in any manner for any purpose;
 - (ii) permit any person to assist RMS to do any of the things referred to in clause 8.1(e)(i); and
 - (iii) sublicense any of the rights described in clause 8.1(e)(i) or clause 8.1(e)(ii) to any person,but only as part of the use or exploitation of the Deliverables or enjoying the benefit of the Services.

8.2 Intellectual property warranties

The Delivery Partner warrants to RMS that:

- (a) any Deliverables produced in connection with the Services will not infringe any Intellectual Property Rights of any third party;
- (b) if RMS informs the Delivery Partner of any RMS's Documents in which third parties hold any Intellectual Property Rights and of any conditions attaching to the use of those documents, the Delivery Partner will only use those documents in accordance with those conditions;
- (c) all individuals who may have moral rights (as that expression is defined in the *Copyright Act 1968* (Cth)) in any Deliverables provided as part of the Services have validly provided their written consent (pursuant to section 195AWA of that Act) to

RMS (or any other person) (with such consents to be procured by the Delivery Partner at its own expense); and

- (d) the consent referred to in clause 8.2(c) allows RMS (and others) to deal with that material or those works (including by way of destruction or alteration) and without attribution of authorship in any such manner as RMS may for its sole convenience and at its absolute discretion decide without being held to have infringed any moral right of the individual.

8.3 Existing moral rights

Where the Services relate to the use of any material in relation to which moral rights may exist, the Delivery Partner must, in providing the Services, consider the obligations imposed by the *Copyright Act 1968* (Cth) in relation to moral rights and ensure that nothing is done which may place RMS in breach of those obligations.

8.4 Delivery Partner's intellectual property indemnity

The Delivery Partner indemnifies RMS against any liability arising from others making any claims against RMS in respect of the ownership of, or rights to use, intellectual property the Delivery Partner uses, develops or creates in connection with the provision of the Services including Intellectual Property Rights vesting in RMS under clause 8.1(a) or licensed to RMS under clause 8.1(e) or arising out of RMS's use of the Deliverables in accordance with this Contract.

8.5 Ownership of RMS's Documents

(a) Subject to clause 8.1(c), as between RMS and the Delivery Partner, ownership of:

- (i) any design, process, method of working or document (including any RMS's Documents) provided to the Delivery Partner by or on behalf of RMS;
- (ii) any RMS IP or Third Party IP in any such design, process, method of working or document; and
- (iii) any Intellectual Property Rights in the Works or the Project or any part thereof to the extent it incorporates or is based upon any such design, process, method of working or document,

is and will remain vested in RMS or the person who has granted RMS a licence to use such design, process, method of working or document.

(b) The Delivery Partner is responsible for the protection, care and return of RMS's Documents to RMS.

8.6 IT Material

Without limiting any other provision of this Contract, the Delivery Partner:

- (a) must deliver to the Authorised Representative a copy of the installed version of each item of software comprising the IT Material incorporated in the Services or any Deliverable (if any), in a storage medium reasonably satisfactory to RMS, together with a copy of all Documents, including licence terms, warranty terms and operating manuals associated with each item of such software;
- (b) must ensure that its subcontractors and consultants (where applicable) comply with the requirements of clause 8.6(a) to the extent required by the Authorised Representative;

- (c) warrants that:
- (i) each item of IT Material:
 - A. is free of defects in materials and workmanship;
 - B. complies and operates in accordance with any technical or descriptive specifications of functional, operational, performance or other characteristics specified for that item of IT Material in the Contract or in any documentation accompanying that IT Material; and
 - C. correctly interprets dates and correctly performs calculations or functions using dates and its operation, including with related IT Material, will not be adversely affected by the date;
 - (ii) no virus will be introduced into RMS's systems as a result of the supply by the Delivery Partner of any IT Material or as a result of any other act or omission of the Delivery Partner in connection with carrying out the Services; and
- (d) must assign to RMS the benefits of warranties given by any supplier from whom the Delivery Partner sources any IT Material and for that purpose must execute any instrument necessary to give effect to the assignment within 7 days of the Delivery Partner becoming entitled to the benefit of such warranties.

The assignment of a warranty pursuant to clause 8.6(d) will not in any way relieve the Delivery Partner of the obligation to comply with any other warranties given by the Delivery Partner under this Contract.

8.7 Confidentiality of the Contract and Project

- (a) Each party acknowledges that the Confidential Information of the other party is valuable to that party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.
- The Delivery Partner must, within 7 days of being requested by RMS to do so, deliver to RMS a duly executed Confidentiality Deed in the form set out in Schedule 3. The execution of the Confidentiality Deed will not limit the Delivery Partner's obligations under this clause 8.7.
- (b) A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Contract.
- (c) A Recipient may not disclose Confidential Information of the Discloser to any person except:
- (i) to representatives, legal advisers, auditors and other consultants of the Recipient who require it for the purposes of this Contract;
 - (ii) with the prior written consent of the Discloser;
 - (iii) in the case of RMS, to any Government agency provided that the Government agency is made aware of the confidential nature of the information;
 - (iv) if the Recipient is required to do so by Law, requirements of any Government agency or a stock exchange; or

- (v) if the Recipient is required to do so in connection with legal proceedings relating to this Contract or to obtain professional advice in relation to this Contract.
- (d) On the earlier of the Discloser's request and termination or expiry of this Contract, the Recipient must immediately deliver to the Discloser or destroy all Documents in the Recipient's power or control containing or referring to the Discloser's Confidential Information except:
 - (i) if the Recipient is required to retain a copy of the Confidential Information for the purposes of legal proceedings relating to this Contract or to obtain professional advice in relation to this Contract;
 - (ii) to the extent the Recipient requires the Confidential Information to continue to perform this Contract;
 - (iii) the Recipient may retain a copy of the Confidential Information to the extent required by Law or by its reasonable archiving and risk management policies; and
 - (iv) RMS will not be required to return any of the Delivery Partner's Confidential Information incorporated in any Deliverables or which it requires to enjoy the benefit of the Services or Deliverables.

The term "Recipient" and "Discloser" in this clause 8.7 have the meanings given in the definition of Confidential Information set out in clause 1.1.

8.8 Media

The Delivery Partner must not disclose any information concerning the Contract, the Services, the Works or the Project for distribution through any communications media without RMS's prior written approval. The Delivery Partner must refer to RMS any enquiries from any media concerning the Contract, the Services, the Works or the Project.

8.9 Survival

This clause 8 and any licences granted to RMS hereunder will survive any termination of the Contract.

9. Site

9.1 Access for Delivery Partner

- (a) By the time stated in the Contract Particulars, RMS must give the Delivery Partner sufficient access to the Site to enable the Delivery Partner to commence the Services at the Site. If RMS does not give the Delivery Partner access to the whole Site, RMS must from time to time give the Delivery Partner access to such parts of the Site as may be necessary to enable the Delivery Partner to execute the Services at the Site in accordance with the requirements of the Contract. RMS must notify the Delivery Partner in writing of the date when possession will be available.
- (b) Access to the Site confers on the Delivery Partner a right to such use and control as is necessary to enable the Delivery Partner to execute the Services. RMS is not obliged to provide the Delivery Partner with sole, uninterrupted or continuous access to or possession of the Site.
- (c) If the Delivery Partner is in breach of clause 6.3, RMS may refuse to give the Delivery Partner access to the Site or any part of the Site until the Delivery Partner has complied with the requirements of clause 6.3.
- (d) Unless the Authorised Representative gives prior written approval, the Delivery Partner must not use the Site or allow it to be used for accommodation, camping, residential purposes or any purpose otherwise than in connection with the Services.

9.2 Access for RMS

The Delivery Partner must at all times:

- (a) give RMS, the Authorised Representative and their employees and agents and any other persons authorised by either RMS or the Authorised Representative access to the Site, the Services and any areas off-Site where Services are being performed or materials, plant or equipment are being stored; and
- (b) provide RMS, the Authorised Representative and their employees and agents with every reasonable facility necessary for the superintendence, examination and testing of the Services.

9.3 Delivery to and Services on Site before access

Until access to the Site or part of the Site is given to the Delivery Partner under clause 9.1, the Delivery Partner must not perform any of the Services on the Site or part of the Site without the prior written approval of the Authorised Representative.

9.4 Conditions of access

- (a) The Delivery Partner's access to any premises owned or occupied by RMS for the purposes of carrying out the Services is subject to the following conditions:
 - (i) the Delivery Partner must ensure that its Personnel complies with RMS's access, security and health and safety requirements when performing the Services;
 - (ii) if required by RMS, the Delivery Partner must give RMS accurate information about the identity and job history of its Personnel; and
 - (iii) RMS may for its sole convenience and at its absolute discretion deny or restrict access to the premises to any person who RMS considers does

not comply with RMS's access, security and health and safety requirements.

- (b) The Delivery Partner must:
 - (i) within a reasonable time of any request by RMS, give access to, and at RMS's request and cost, provide verified copies of, any Deliverable created or used in connection with the Services; and
 - (ii) upon reasonable notice, permit RMS access to the Delivery Partner's premises in order for RMS to inspect, discuss and assess any Deliverable created or used in connection with the Services.

9.5 Environment

- (a) The Delivery Partner must comply with, and ensure that all persons engaged in the performance of the Services or in the execution of the Works (including subcontractors) comply with:
 - (i) the Delivery Partner's approved environmental management plan; and
 - (ii) all Environmental Requirements.
- (aa) Without limiting clause 9.5(a), but subject to clause 9.5(g), the Delivery Partner must apply for, obtain and maintain (in its name) an EPL for the Project.
- (b) The Delivery Partner must:
 - (i) demonstrate to RMS whenever required that all requirements of the Contract for protection of the environment have been met;
 - (ii) manage the Project Contractors (other than an EP Licensed Project Contractor) in their dealing with and disposal of Hazardous Materials in accordance with the requirements of applicable Law; and
 - (iii) not pollute, contaminate or otherwise damage the environment, except to the extent that this is the inevitable consequence of the delivery of the Works or Temporary Works in accordance with the requirements of the Contract.
- (c) The Delivery Partner is responsible for and must at its own cost make good any pollution, contamination or damage to the environment caused by the performance of the Services, whether or not the Delivery Partner has complied with the requirements of the Contract for the protection of the environment.
- (d) Without limiting any other obligation or liability of, or indemnity by, the Delivery Partner under the Contract or under any Environmental Requirement as and from the Award Date:
 - (i) the Delivery Partner must notify the Authorised Representative in writing immediately upon the occurrence of any environmental incident (whether caused by the Delivery Partner, its Personnel, a Project Contractor, an Other Contractor or third party). The notice must include:
 - A. details of the environmental incident (including details of any harm or potential harm to the environment) and its cause; and
 - B. details of all remedial and/or corrective actions taken, or proposed to be taken, to rectify or avoid any harm to the

environment as a result of the incident and to prevent a re-occurrence of such an incident; and

- (ii) the Delivery Partner indemnifies RMS from and against any and all suits, actions, proceedings, claims, demands, losses, damages, liabilities, costs and expenses of whatsoever nature (including any compensation, investigation costs, remediation costs, Authority charges or imposts, legal costs and Other Contractor's costs) arising as a result of any of the following:
- A. any overflow, leakage, release, discharge or escape (whether direct or indirect) of water, fire, gas, electricity, Hazardous Materials or other harmful agent or contaminant in or from the Site or any other place where the Works or any Services are being performed (including while any material, plant, equipment or other items are in transit to the Site) caused or contributed to by any breach, act or omission of the Delivery Partner, any of its Personnel, any Project Contractor or any of their agents or employees;
 - B. any contamination of or environmental harm or nuisance to the Site or to any other land, air, water or place (whether direct or indirect) caused or contributed to by any breach, act or omission of the Delivery Partner, any of its Personnel, any Project Contractor or any of their agents or employees;
 - C. any notice, direction, order or proceeding issued or taken pursuant to any Environmental Law in respect of or relating to any breach, act or omission of the Delivery Partner, any of its Personnel, any Project Contractor or any of their agents or employees; and
 - D. any breach of any Environmental Requirement by the Delivery Partner, any of its Personnel, any Project Contractor or any of their agents or employees,

provided that the Delivery Partner's responsibility to indemnify RMS will be reduced proportionally to the extent that an act or omission of RMS, the Authorised Representative, an Other Contractor, or an EP Licensed Project Contractor has contributed to the suit, action, proceeding, claim, demand, loss, damage, liability, cost or expense.

- (e) The Delivery Partner must procure that each Project Contractor engaged to perform work or services on the Site executes a deed poll in favour of the Delivery Partner in the form set out in Schedule 17. When the EPL which has been granted to the Project Contractors engaged under the 'Wave 1 Contract' and the 'Wave 2 Contract' (as those terms are defined in the Contract Particulars) has been transferred by the relevant Authority to the Delivery Partner, RMS must use reasonable endeavours to have the Project Contractors engaged under those respective Project Contracts each execute a deed poll in favour of the Delivery Partner in the form of Schedule 17.
- (f) No comment upon nor any review, acceptance or approval of the Delivery Partner's environmental management plan by the Authorised Representative will affect any warranty, guarantee or indemnity given by the Delivery Partner or relieve the Delivery Partner of any of its obligations or liabilities under the Contract.
- (g) Clause 9.5(aa) does not apply to that part of the Works or Temporary Works described in the Contract Particulars. Furthermore, if the Delivery Partner is able to obtain approval from the relevant Authority to take this course of action, the Delivery Partner may make a recommendation to RMS that, in addition to that part of the

Works or Temporary Works described in the Contract Particulars, a Project Contractor be the holder of an EPL in respect of the delivery of another part of the Works or Temporary Works.

In respect of those parts of the Works or Temporary Works described in the Contract Particulars and any other part of the Works or Temporary Works in respect of which RMS, in its absolute discretion, approves the Delivery Partner's recommendation under the previous paragraph, the relevant Project Contract under which those parts of the Works or Temporary Works will be undertaken will provide that the Project Contractor will be the holder of the EPL in respect of those Works or Temporary Works.

9.6 Working hours and working days

Unless notified otherwise in writing by the Authorised Representative, the working hours and working days for work and services to be performed on the Site are those stated in the Contract Particulars.

9.7 Urgent protection or repair

If urgent action is necessary to protect or repair the Works, other property or people and a Project Contractor is unable to take that action, RMS may require the Delivery Partner to arrange or manage the necessary action to be taken.

10. Work health and safety and workplace relations

10.1 Work health and safety

- (a) In this clause 10, "**principal contractor**", "**construction project**" and "**construction work**" have the same meanings assigned to those terms in the WHS Legislation.
- (b) Subject to clause 10.1(g), RMS appoints the Delivery Partner as the principal contractor for delivery of the Works and Temporary Works, and authorises the Delivery Partner to have management or control of the Works and Temporary Works, and the Delivery Partner accepts such appointment.
- (c) The Delivery Partner's appointment as principal contractor under clause 10.1(b) will continue until handover of that part of the construction work to RMS, unless sooner revoked by RMS terminating the Contract pursuant to any provision of the Contract or according to Law.
- (d) Without limiting clause 10.1(b):
- (i) the Delivery Partner is authorised by RMS to exercise such authority as is necessary to enable the Delivery Partner to discharge the responsibilities imposed on the principal contractor under the WHS Legislation;
 - (ii) the Delivery Partner must procure that each Project Contractor engaged to perform that part of the construction work executes a deed poll in favour of the Delivery Partner in the form set out in Schedule 8;
 - (iii) the Delivery Partner must ensure that all persons for whom it is responsible, including those Project Contractors who execute a deed poll in favour of the Delivery Partner pursuant to clause 10.1(d)(ii), comply with their respective obligations under the WHS Legislation;
 - (iv) the Delivery Partner must ensure that it carries out the Services in a manner which ensures that RMS satisfies its obligations under the WHS Legislation; and
 - (v) to the extent not prohibited by Law, the Delivery Partner must indemnify RMS against any damage, expense, loss or liability suffered or incurred by RMS arising out of or in connection with the failure by the Delivery Partner to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation.
- (e) If the engagement of the Delivery Partner as principal contractor under clause 10.1(b) is not effective for any reason, the Delivery Partner agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged as principal contractor under clause 10.1(b).
- (f) The Delivery Partner must;
- (i) subject to the exclusions specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2005* (Cth), maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the "**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.

- (g) Clause 10.1(b) does not apply to that part of the Works or Temporary Works described in the Contract Particulars. Furthermore, the Delivery Partner may make a recommendation to RMS that in addition to that part of the Works or Temporary Works described in the Contract Particulars, a Project Contractor be appointed as the principal contractor for delivery of another part of the Works or Temporary Works.

In respect of those parts of the Works or Temporary Works described in the Contract Particulars and any other part of the Works or Temporary Works in respect of which RMS, in its absolute discretion, approves the Delivery Partner's recommendation under the previous paragraph:

- (i) the relevant Project Contract under which those parts of the Works or Temporary Works will be undertaken will provide that RMS appoints the Project Contractor as principal contractor for those Works or Temporary Works;
 - (ii) the relevant Project Contract under which those parts of the Works or Temporary Works will be undertaken will provide that the Project Contractor appointed as the principal contractor must:
 - A. enter into an interface deed on the terms of Schedule 2 with the Delivery Partner prior to the commencement of any Works or Temporary Works by the Project Contractor as principal contractor;
 - B. agree to coordinate, cooperate and consult with the Delivery Partner as required under WHS Legislation;
 - C. ensure that the relevant part is clearly defined as a separate and distinct workplace at all times, including by installing physical boundaries if reasonably practicable; and
 - D. not do anything that causes the Delivery Partner or RMS to breach WHS Legislation; and
 - (iii) the Project Contractor's appointment as principal contractor under clause 10.1(g)(i) will continue until handover of that part of the construction work to RMS, unless sooner revoked by RMS terminating the Project Contract.
- (h) If the engagement of the Project Contractor as principal contractor under clause 10.1(g)(i) is terminated by RMS pursuant to clause 10.1(g)(iii), the Delivery Partner is appointed as the principal contractor and clauses 10.1(c) to 10.1(e) will apply.
- (i) RMS must use reasonable endeavours to procure that the Project Contractors engaged under the 'Wave 1 Contract' and the 'Wave 2 Contract' (as those terms are defined in the Contract Particulars), where RMS terminates their appointment as principal contractor for construction works under their respective Project Contracts, execute a deed poll in favour of the Delivery Partner in the form set out in Schedule 8.
- (j) RMS must use reasonable endeavours to have the Project Contractors engaged as principal contractor under the 'Section 1 Contract' and the 'Section 2 Contract' (as those terms are defined in the Contract Particulars) and, where their appointment as principal contractor is not terminated by RMS, the Project Contractors engaged under the 'Wave 1 Contract' and the 'Wave 2 Contract' (as those terms are defined in the Contract Particulars), each execute a deed in the form of Schedule 2.

10.2 Workplace relations

The Delivery Partner:

- (a) is solely responsible for, and must manage all aspects of, workplace relations in relation to the Services;
- (b) must comply with, and ensure its Personnel and any personnel of its Personnel, comply with, all applicable Law, including any labour Law and Law relating to work health and safety (and without limiting this clause 10.2(b), the Delivery Partner is responsible for handling and complying with, all immigration and emigration procedures required to get personnel to and from the Site);
- (c) must keep the Authorised Representative fully and promptly informed of:
 - (i) any actual, anticipated or threatened workplace relations issues or problems (including grievances, refusals to work, disciplinary measures, disputes between employee unions regarding jurisdiction over work areas or work types, strikes, boycotts and other industrial disputes) which affect or are likely to affect the performance of the Services, the Works or other work on the Project (whether involving the Delivery Partner, subcontractors, Works Contractors, Supply Contractors or any other persons); and
 - (ii) the measures the Delivery Partner proposes to take with regard to any such workplace relations issues or problems; and
- (d) must provide the Authorised Representative with weekly reports of any actual, anticipated or threatened workplace relations issues or problems of the type mentioned in clause 10.2(c).

10.3 Building Code

- (a) The Delivery Partner must comply with the Building Code 2013 dated 25 January 2013 ("**Code**"), issued under the *Fair Work (Building Industry) Act 2012* (Cth), and the Building Code 2013 – Supporting Guidelines for Commonwealth Funding Entities ("**Guidelines**"). Copies of the Code and Guidelines are available at www.deewr.gov.au/BuildingCode.
- (b) Compliance with the Code and Guidelines shall not relieve the Delivery Partner from responsibility to perform this Contract, or from liability for any defect in the works arising from compliance with the Code and Guidelines.
- (c) Where a change in this Contract is proposed and that change would affect compliance with the Code and Guidelines, the Delivery Partner must submit a report to the Commonwealth specifying the extent to which the Delivery Partner's compliance with the Code and Guidelines will be affected.
- (d) The Delivery Partner must maintain adequate records of the compliance with the Code and Guidelines by:
 - (i) the Delivery Partner;
 - (ii) its subcontractors; and
 - (iii) its related entities (as defined in section 3(2) of the Code and referred to in section 8 of the Code).
- (e) If the Delivery Partner does not comply with the requirements of the Code or the Guidelines in the performance of this Contract such that a sanction is applied by the

Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Delivery Partner or a related entity in respect of work funded by the Commonwealth or its agencies.

- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Delivery Partner may give preference to subcontractors that have a demonstrated commitment to:
- (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- (g) The Delivery Partner must not appoint a subcontractor in relation to the Project where:
- (i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (ii) the subcontractor has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and has not fully complied, or is not fully complying, with the order.
- (h) The Delivery Partner agrees to require that it and its subcontractors and its related entities 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 Project and works the subject of this Contract; and
 - (iii) interview any person,
- as is necessary to demonstrate its compliance with the Code and Guidelines.
- (i) Additionally, the Delivery Partner agrees that it and its related entities 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.
- (j) The Delivery Partner must ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under this clause 10.3.

10.4 NSW Code

- (a) In addition to terms defined in this Contract, terms used in this clause 10.4 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

- (b) The Delivery Partner 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.
- (c) Where the Delivery Partner engages a subcontractor or consultant, the Delivery Partner must ensure that the contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 10.4, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

The Delivery Partner must not appoint or engage another party in relation to the Services where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

- (d) The Delivery Partner must, within 20 Business Days of the Award Date:
- (i) prepare a workplace relations management plan which addresses the matters set out in section 6 of the NSW Guidelines ("**Workplace Relations Management Plan**"); and
 - (ii) submit the Workplace Relations Management Plan to the Authorised Representative.
- (e) The Delivery Partner must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors and consultants.
- (f) The Delivery Partner 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 Delivery Partner, including the 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 Project;
 - (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 Delivery Partner, its subcontractors and consultants.

- (g) The Delivery Partner must agree to, and comply with, any 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.
- (h) The Delivery Partner warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are 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.
- (i) If the Delivery Partner 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.
- (j) 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 non-compliance 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 Delivery Partner, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- (k) The Delivery Partner 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 Guidelines. The Delivery Partner is not entitled to make, and RMS and the State of NSW will not be liable upon, any Claim against RMS or the State of NSW arising out of or in any way in connection with the Delivery Partner's compliance with the NSW Code and the NSW Guidelines.
- (l) Compliance with the NSW Code and NSW Guidelines does not relieve the Delivery Partner from responsibility to perform the Services or any other obligation under this Contract, or from liability which may arise under this Contract or otherwise, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (m) Where a Variation is proposed, and that Variation may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Delivery Partner must immediately notify RMS (or nominee) of the Variation, or likely Variation, and specify:
 - (i) the circumstances of the proposed Variation;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Variation; and
 - (iii) what steps the Delivery Partner proposes to take to mitigate any adverse impact of the Variation (including any amendments it proposes to a workplace relations management plan or work health and safety management plan).

RMS will direct the Delivery Partner as to the course it must adopt within 10 Business Days of receiving the notice.

11. Quality

11.1 Quality assurance

The Delivery Partner:

- (a) must implement a quality assurance system for the management of all aspects of the Delivery Partner's obligations under this Contract and in accordance with the requirements of the Services Brief;
- (b) must allow the Authorised Representative access to the quality system of the Delivery Partner and its subcontractors and consultants so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to Law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any direction by the Authorised Representative concerning the Delivery Partner's quality assurance system or its compliance or non-compliance with that system;
 - (iii) any audit or other monitoring by the Authorised Representative of the Delivery Partner's compliance with the quality assurance system; or
 - (iv) any failure by the Authorised Representative, or anyone else acting on behalf of RMS, to detect any Defect including where any such failure arises from any negligence on the part of the Authorised Representative or other person.

11.2 Non-complying Services

If the Authorised Representative discovers or believes that any Services have not been performed in accordance with the Contract, the Authorised Representative may give the Delivery Partner a direction specifying the non-complying Services and requiring the Delivery Partner to do the following:

- (a) re-perform the non-complying Services and specifying the time within which this must occur; and
- (b) take all such steps as are reasonably necessary to:
 - (i) mitigate the effect on RMS of the failure to carry out the Services in accordance with the Contract; and
 - (ii) put RMS (as closely as possible) in the position in which it would have been if the Delivery Partner had carried out the Services in accordance with the Contract.

11.3 Re-performance of non-complying Services

If a direction is given under clause 11.2, the Delivery Partner must re-perform the non-complying Services within the time specified in the Authorised Representative's instruction.

12. Procurement, completion and commissioning

12.1 Tenders for Project Contracts

- (a) The Delivery Partner must provide all services to procure the engagement of all Project Contractors based upon the delivery and packaging strategy in the Packaging and Procurement Plan and in accordance with Schedule 14.

Without limiting Schedule 14, in providing these procurement services the Delivery Partner must:

- (i) specify the scope of each Project Contract and the sequence of all the Project Contracts based upon the Packaging and Procurement Plan, the DP Program and the requirements of the Works Brief;
- (ii) make recommendations to RMS regarding the tender list for each Project Contract and finalise each tender list in consultation with the Authorised Representative in accordance with the relevant procedure in the Project Procedures Manual, so that it only includes tenderers approved by the Authorised Representative;
- (iii) prepare the tender documentation for each Project Contract (using the project-developed conditions of tender and contract prepared by RMS and included in Exhibit D), subject to any amendments agreed by RMS, and ensure that they comply with the Works Brief;
- (iv) submit the tender documentation it prepares to the Authorised Representative for review in a manner and at a rate which will give the Authorised Representative a reasonable opportunity (and in any event no fewer than 21 days) to review that tender documentation before it is issued to tenderers;
- (v) if any tender documentation is rejected by the Authorised Representative within the period stated in clause 12.1(a)(iv), submit amended tender documentation to the Authorised Representative, in which case clause 12.1(a)(iv) will reapply;
- (vi) not issue any tender documentation to the tenderers for each Project Contract unless the tender documentation has been submitted to the Authorised Representative and the Authorised Representative has had the period stated in clause 12.1(a)(iv) to review the tender documentation and has not rejected the tender documentation;
- (vii) prepare sufficient copies of the finalised tender documentation for each Project Contract for tendering; and
- (viii) issue the tender documentation in accordance with this clause 12.1(a) to all approved tenderers.

The obligations in this clause 12.1 that apply to the preparation and issue of tender documentation extend to any addendum to be issued in respect of any proposed Project Contract.

- (b) The Delivery Partner must:
- (i) keep the Authorised Representative informed of any pre-tender meetings;
 - (ii) provide to the Authorised Representative copies of all correspondence from and to tenderers for the Project Contracts; and

- (iii) have at least 2 representatives in attendance at the opening of all tenders for the Project Contracts.
- (c) Neither the Delivery Partner nor any related entity of the Delivery Partner is entitled to tender for any of the Project Contracts, or perform any work under the Project Contracts for the successful Project Contractors, unless the Delivery Partner has obtained the prior written approval of RMS.
- (d) The Delivery Partner must:
 - (i) analyse all tenders submitted by tenderers for the Project Contracts;
 - (ii) prepare a report recommending to RMS the most suitable tenderer for each Project Contract, including details of the proposed contract price and the proposed contingency for each Project Contract;
 - (iii) recommend, if necessary, that negotiations be entered into with any preferred tenderer;
 - (iv) provide the following details to RMS for its consideration:
 - A. actual tender prices and expected total outturn cost for all Project Contracts and how they compare with the DP Cost Plan; and
 - B. any adjustment to the DP Cost Plan as a result of the letting of the Project Contracts;
 - (v) prepare a letter of award for each Project Contract for RMS to issue to the successful tenderer; and
 - (vi) prepare, and submit, for execution by RMS and the relevant Project Contractor, a conformed copy of each Project Contract awarded in accordance with this clause 12.1.

12.2 Co-ordination, supervision and contract administration of the Project Contracts

The Delivery Partner must (and, where relevant, in accordance with Schedule 14):

- (a) provide all superintendence, co-ordination, design management and construction management of the Project Contracts and use its best endeavours to ensure that each Project Contract:
 - (i) achieves delivery, acceptance or practical completion (as applicable) by the applicable dates therefor under those contracts;
 - (ii) is completed by a date which is consistent with:
 - A. Completion of each Milestone being achieved by each applicable Milestone Date; and
 - B. Project Opening being achieved by the Date for Project Opening; and
 - (iii) is completed within its planned total outturn cost (as stated in the DP Cost Plan);
- (b) provide contract administration of the Project Contracts and perform the functions of RMS's representative under the Project Contracts (including administering all

progress claims, variations, extensions of time and all other claims and matters which the terms of the Project Contracts require the "RMS's Representative", as named in those contracts, to do);

- (c) monitor the performance of the Project Contractors under the Project Contracts to ensure all faults, omissions or other defects are rectified prior to delivery, acceptance or practical completion or during the defect liability periods (as the case may be) under the applicable Project Contracts;
- (d) provide advice and all assistance to RMS in negotiating and resolving any issues or disputes which may arise under the Project Contracts; and
- (e) not do or fail to do anything it is obliged to do which would cause RMS to be in breach of any Project Contract.

12.3 Delivery Partner's certification of Works

- (a) RMS and the Delivery Partner acknowledge that the project delivery method chosen for the Works:
 - (i) means that RMS will be relying upon the Delivery Partner to verify and certify to RMS as to the compliance of all aspects of the Works with the Project Contracts;
 - (ii) allows the Delivery Partner to observe, monitor, audit and require the testing of all aspects of quality in the Works and the durability of the Works to verify compliance with the requirements of the Project Contracts; and
 - (iii) requires the Delivery Partner by reviewing and assessing quality in the Works and the durability of the Works, to verify the Project Contractor's compliance with the requirements of the Project Contracts.
- (b) The Delivery Partner must ensure the person identified in Schedule 13 as the Quality & Verification Manager must:
 - (i) independently certify the effectiveness and integrity of the Project Contractor's quality system in achieving conformity with the requirements of the Project Contracts; and
 - (ii) report to the Authorised Representative on quality issues in accordance with the requirements of this Contract.
- (c) The Delivery Partner must provide to the Authorised Representative certificates executed by the person identified in the Schedule 13 as the Quality & Verification Manager in the form of certificate nos 15.1 to 15.7 which appear in Schedule 15 at the times set out in Schedule 15.

12.4 Delivery Partner's cost planning obligations

Without limiting the Delivery Partner's obligations in the Services Brief in respect of the DP Cost Plan, the Delivery Partner must:

- (a) regularly review the DP Cost Plan;
- (b) inform the Authorised Representative if it becomes aware of any likely or actual cost overruns or cost underruns for the Project Contracts;
- (c) identify and advise the Authorised Representative of any potential cost savings in any of the Project Contracts; and

- (d) identify and advise the Authorised Representative of the appropriate measures for ensuring that the Total Project Cost does not exceed the DP Project Budget.

12.5 Records open for inspection and audit

The Delivery Partner must:

- (a) develop, secure and maintain all necessary records and documentation relating to this Contract and the Services including:
 - (i) Project Documents; and
 - (ii) the records required to be maintained by the *State Records Act 1998* (NSW), as if the Delivery Partner was bound by that Act, and any other Law;
- (b) provide unfettered access for RMS or its representatives to inspect all records and documentation referred to in clause 12.5(a) at any time on reasonable notice to ensure compliance with the Delivery Partner's obligations under this Contract;
- (c) ensure that all material relating to the Services or the Works, the quality system and records required to be kept by this Contract and the records and documentation referred to in clause 12.5(a) are available to RMS (or persons nominated by RMS) at all times for examination, analysis, audit, inspection, transcription and copying; and
- (d) if this Contract is terminated, give RMS all records and documentation referred to in clause 12.5(a) which are necessary for the orderly continuance of the Services or the Works by another party or parties.

12.6 Auditing records

- (a) RMS may appoint an Auditor to conduct regular or one-off audits of the Delivery Partner's performance in providing the Services and complying with its other obligations under this Contract.
- (b) The Delivery Partner must make available for inspection for an audit all such records and other material referred to in clause 12.5(c) as the Auditor may reasonably require, regardless of where they are located or the manner in which they are stored, and the Auditor will be entitled to take copies of all such records and other material as may reasonably be required for the purposes of the audit.
- (c) The Delivery Partner must provide all appropriate resources and all reasonable assistance required by the Auditor and fully co-operate in good faith.
- (d) Each party will bear its own costs in respect of an audit carried out under this clause 12.6. RMS will bear the Auditor's costs except if the audit reveals a material non-compliance with this Contract in which case the Delivery Partner must pay the Auditor's costs.
- (e) If the audit reveals any non-compliance with this Contract then the Delivery Partner must remedy that non-compliance within such time as RMS reasonably requires and must advise RMS in writing what steps the Delivery Partner has taken to ensure that the identified non-compliance will not re-occur.

12.7 Commissioning and handover obligations

- (a) The Delivery Partner must:

- (i) within the time required by the Authorised Representative, prepare draft commissioning and handover guidelines and a draft handover and transition plan and submit the guidelines and the plan for approval to the Authorised Representative;
 - (ii) make such amendments required by the Authorised Representative to the draft commissioning and handover guidelines and draft handover and transition plan and resubmit the guidelines and plan for approval, within the time required by the Authorised Representative; and
 - (iii) without limiting its obligations under the Contract, comply with the approved commissioning and handover guidelines and approved handover and transition plan.
- (b) The Delivery Partner must ensure that all relevant Deliverables comply with the commissioning and handover guidelines and handover and transition plan prepared by the Delivery Partner and approved by the Authorised Representative.
- (c) The Delivery Partner must:
- (i) in consultation with the Authorised Representative, provide RMS with such manpower, resources and other specific assistance as may be required by the Authorised Representative:
 - A. to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to RMS; and
 - B. to ascertain whether the Works can attain the process performance levels required by RMS and by the Project Contracts; and
 - (ii) as and when reasonably required by the Authorised Representative, meet with the Authorised Representative and Other Contractors nominated by the Authorised Representative with a view to ensuring that RMS and the nominated Other Contractors have sufficient information to enable the nominated Other Contractors to:
 - A. operate the Works;
 - B. maintain the Works; and
 - C. perform such other activities as may be required by RMS in respect of the Works.

12.8 Completion

- (a) Before Completion of each Project Milestone and before Project Completion, the Delivery Partner must give the Authorised Representative 14 days' written notice of the date on which the Delivery Partner estimates that Completion of each Project Milestone or Project Completion (as the case may be) will be achieved.
- (b) No earlier than the date nominated by the Delivery Partner in its notice given under clause 12.8(a) or 12.8(e), the Authorised Representative and the Delivery Partner's Representative must jointly inspect the applicable Project Milestone, Section or the Works (as the case may be) at a mutually convenient time.
- (c) If the joint inspection reveals that Completion of the Project Milestone or Project Completion (as the case may be) has been achieved, the Authorised Representative must give the Delivery Partner:

- (i) where the Project Milestone does not involve Section Opening, written certification of that fact, within 14 days of the completion of the joint inspection;
 - (ii) where the Project Milestone does involve Section Opening, a Certificate of Section Opening; or
 - (iii) in the case of Project Completion, a Certificate of Project Completion.
- (d) If the joint inspection reveals that Completion of the Project Milestone or Project Completion (as the case may be) has not been achieved, the Authorised Representative must prepare and give to the Delivery Partner a list of items which require attention by the Delivery Partner or any Project Contractor in order for Completion of the Project Milestone or Project Completion (as the case may be) to be achieved, within 14 days of the completion of the joint inspection.
- (e) The Delivery Partner must advise the Authorised Representative in writing when it considers that the items in the Authorised Representative's list have been completed.
- (f) Clauses 12.8(b) to 12.8(e) will continue to apply until the Authorised Representative issues the applicable written certification under clause 12.8(c).
- (g) If at any time a notice required to be given by the Delivery Partner under clause 12.8(a) or 12.8(e) is not given by the Delivery Partner, yet the Authorised Representative is of the opinion that Completion of the Project Milestone or Project Completion (as the case may be) has been achieved, the Authorised Representative may issue a certificate under clause 12.8(c).

13. Security**13.1 Not Used****13.2 Parent company guarantee**

- (a) Subject to clause 13.2(b), the Delivery Partner must within 10 Business Days of the Award Date give RMS a guarantee duly executed by the Parent Company Guarantor in favour of RMS in the form of Schedule 11 and which is, where required, duly stamped.
- (b) If the Delivery Partner comprises more than one person, each person comprising the Delivery Partner must within 10 Business Days of the Award Date give RMS a separate guarantee duly executed by its Parent Company Guarantor in favour of RMS in the form of Schedule 11 and which is, where required, duly stamped.

14. Time

14.1 Progress

The Delivery Partner must:

- (a) immediately commence providing the Services; and
- (b) subject to clause 14.3, thereafter provide the Services diligently:
 - (i) in accordance with the Milestones and each applicable Milestone Date; and
 - (ii) to not depart (without reasonable cause) from the DP Program.

14.2 Delivery Partner's programming obligations

- (a) The Delivery Partner must submit to the Authorised Representative, within the time specified in the Contract Particulars, an update of the Initial DP Program (for the provision of the Services and delivery of the Works) in both hard and electronic format, in the format agreed with the Authorised Representative.
- (b) The updated Initial DP Program must be developed by the Delivery Partner in consultation with RMS, must be in a form acceptable to RMS, must comply with the program requirements in the Services Brief, and must:
 - (i) be consistent with Schedule 12;
 - (ii) be consistent with:
 - A. Completion of each Milestone being achieved by each applicable Milestone Date; and
 - B. Project Opening being achieved by the Date for Project Opening, including providing for the Delay Float Allowance;
 - (iii) include the planned major activities, durations and sequences to be undertaken by the Delivery Partner in providing the Services;
 - (iv) specify the date for delivery for any Deliverables required by the Services to be delivered to RMS;
 - (v) specify the resources the Delivery Partner will commit to the provision of the Services to achieve Completion of each Milestone by each applicable Milestone Date; and
 - (vi) include any other matter reasonably required by RMS.
- (c) Once the updated Initial DP Program has been approved by RMS, it will become the DP Program.
- (d) The Delivery Partner must promptly make any changes to the DP Program reasonably required by RMS.
- (e) The Delivery Partner must ensure that the DP Program is updated monthly, or whenever otherwise directed by the Authorised Representative, to show:
 - (i) progress achieved;

- (ii) the effect (if any) of any extensions of time granted under any Project Contract;
- (iii) the current status of the Delay Float Allowance and any impact caused by a Material Change Event; and
- (iv) where appropriate, changes to the sequence and duration of activities required to:
 - A. achieve Completion of each Milestone by each applicable Milestone Date; and
 - B. achieve Project Opening by the Date for Project Opening,
 and any corresponding changes to proposed manpower and shifts to be worked and resources to be utilised,

and that a copy of each update is promptly provided to the Authorised Representative.

- (f) The Authorised Representative may reject a program updated pursuant to clause 14.2(e) or require amendments to be made to it within 7 days of receiving a copy of the updated program.
- (g) Where a program is rejected by the Authorised Representative under clause 14.2(f), the Delivery Partner must submit a corrected and revised program within 7 days of being notified that the program is rejected.
- (h) The Delivery Partner acknowledges that the review of, comments on or approval or rejection of, or any failure to review or comment on, any program developed or updated by the Delivery Partner under this clause 14.2 by the Authorised Representative will not:
 - (i) relieve the Delivery Partner from or alter its liabilities or obligations under this Contract, including the obligation to use its best endeavours to ensure that:
 - A. Completion of each Milestone is achieved by each applicable Milestone Date; and
 - B. Project Opening is achieved by the Date for Project Opening;
 - (ii) evidence or constitute a direction by the Authorised Representative to disrupt, prolong, accelerate or vary the Services; or
 - (iii) affect the time for carrying out RMS's or the Authorised Representative's obligations under the Contract.

14.3 Suspension

- (a) The Authorised Representative:
 - (i) may instruct the Delivery Partner to suspend, and after a suspension has been instructed, to recommence, all or a part of the Services; and
 - (ii) is not required to exercise the Authorised Representative's power under clause 14.3(a)(i) for the benefit of the Delivery Partner.
- (b) If a suspension under this clause 14.3 arises as a result of the Delivery Partner's failure to carry out its obligations in accordance with the Contract, the Delivery

Partner will not be entitled to make any Claim against RMS arising out of, or in any way in connection with, the suspension.

- (c) If a suspension under this clause 14.3 arises as a result of a cause other than the Delivery Partner's failure to carry out its obligations in accordance with the Contract:
- (i) an instruction to suspend under this clause 14.3 will entitle the Delivery Partner to be paid by RMS the extra costs reasonably incurred by it as a result of the suspension as determined by the Authorised Representative and may, where it amounts to a Material Change Event, be entitled to an adjustment to the Date for Project Opening in accordance with clause 14.7;
 - (ii) the Delivery Partner must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (iii) the Delivery Partner 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 14.3(c).

14.4 Delays

- (a) If the Delivery Partner becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Project Opening, the Delivery Partner must give RMS an Early Warning Notice in accordance with clause 3.7.
- (b) The Delivery Partner must take all reasonable steps to:
 - (i) prevent the cause of any delay to the Works; and
 - (ii) avoid or minimise the consequences of any delay,
 including any delay arising from a Material Change Event.
- (c) If a Material Change Event occurs which will cause a delay in the achievement of Project Opening, the Delivery Partner must give the Authorised Representative the notices required by clause 14.5.

14.5 Notices of delay

The notices required under this clause are:

- (a) a notice to be given within 20 Business Days after the earlier of the date the Delivery Partner first became aware, or ought reasonably to have become aware, of a Material Change Event which will cause a delay in the achievement of Project Opening, which:
 - (i) contains detailed particulars of the Material Change Event causing the delay and the parts of the Works that have been delayed;
 - (ii) contains detailed particulars and evidence of the delay caused by the Material Change Event and the extent to which the delay is within the Delay Float Allowance;
 - (iii) states the number of days reduction in the Delay Float Allowance, or where the Delay Float Allowance has been exhausted, the proposed adjustment of time to the Date for Project Opening, together with the basis of calculating the total number of days, requested by the Delivery Partner; and

- (b) if the effects of the delay continue beyond the period of 20 Business Days after the commencement of the Material Change Event causing the delay, a further notice:
 - (i) every 20 Business Days after the first written notice until 10 Business Days after the Material Change Event ceases to cause the delay; and
 - (ii) containing the information required by clause 14.5(a).

The Authorised Representative may, within 20 Business Days of receiving the Delivery Partner's notice requesting a reduction in the Delay Float Allowance or an adjustment to the Date for Project Opening, by written notice to the Delivery Partner, request additional information in relation to the notice or further notice. The Delivery Partner must, within 20 Business Days of receiving such request, provide the Authorised Representative with the information requested.

14.6 Conditions precedent

It is a condition precedent to the Delivery Partner's entitlement to a reduction in the Delay Float Allowance or an adjustment to the Date for Project Opening that:

- (a) the Delivery Partner has submitted a written notice or notices as required by clause 14.5;
- (b) the Delivery Partner has taken all steps to mitigate the Material Change Event;
- (c) the achievement of Project Opening has been, or will be, delayed by the Material Change Event described in the notice or notices; and
- (d) where the notice submitted by the Delivery Partner pursuant to clause 14.5 requests an adjustment to the Date for Project Opening, the Delay Float Allowance has been reduced in accordance with clause 14.7(a) to the extent that there is no remaining Delay Float Allowance.

14.7 Adjustment to time

- (a) Subject to clause 14.7(c), if the conditions precedent set out in paragraphs (a)-(c) of clause 14.6 have been satisfied and the extent of the delay to the achievement of Project Opening is less than the remaining Delay Float Allowance, the Delay Float Allowance will be reduced by a reasonable period as agreed by the parties or, failing agreement, as determined by the Authorised Representative and notified to the Delivery Partner within 20 Business Days after the later of:
 - (i) receipt of the last written notice under clause 14.5; or
 - (ii) provision by the Delivery Partner of any additional information requested by the Authorised Representative under clause 14.5.
- (b) Subject to clause 14.7(c), if all of the conditions precedent in clause 14.6 have been satisfied, the Date for Project Opening will be adjusted by a reasonable period as agreed by the parties or, failing agreement, as determined by the Authorised Representative and notified to the Delivery Partner within 20 Business Days after the later of:
 - (iii) receipt of the last written notice under clause 14.5; or
 - (iv) provision by the Delivery Partner of any additional information requested by the Authorised Representative under clause 14.5.
- (c) The Authorised Representative will reduce any reduction to the Delay Float Allowance or modify any adjustment to the Date for Project Opening that it would have otherwise granted to the Delivery Partner under clause 14.7(a) or clause

14.7(b) to the extent that the Delivery Partner contributed to the delay or has not taken all proper and reasonable steps to preclude the cause of the delay and to minimise the duration of the delay.

- (d) Where the Date for Project Opening is adjusted pursuant to clause 14.7(b) and the relevant Material Change Event for which the adjustment was made will also have a material adverse impact upon the Total Project Cost, then the DP Project Budget, the Estimated Total Project Cost and the DP Cost Plan will be increased by an amount agreed between the parties, or failing agreement, by a reasonable amount determined by the Authorised Representative based on the rates, prices and amounts in the then current DP Cost Plan.

15. Variations and changes

15.1 Variation price request

The Authorised Representative may, at any time, issue a document titled "Variation Price Request" to the Delivery Partner which will set out details of a proposed Variation to the Services which RMS is considering.

Within 14 days of the receipt of a "Variation Price Request", the Delivery Partner must provide the Authorised Representative with a written notice in which the Delivery Partner sets out:

- (a) where the Variation involves additional Services, the estimated amount which will be payable to the Delivery Partner for the additional Services required to be performed by the Delivery Partner in order to carry out the proposed Variation;
- (b) the adjustment (if any) to the DP Project Budget, the Estimated Total Project Cost and the DP Cost Plan as a result of the Variation; and
- (c) the effect which the proposed Variation will have on the DP Program, including each applicable Milestone Date.

15.2 Variation order

Whether or not the Authorised Representative has issued a "Variation Price Request" under clause 15.1, the Authorised Representative may at any time instruct the Delivery Partner to carry out a Variation by a written document titled "Variation Order".

Where the Authorised Representative issues a direction under clause 15.4 directing a change to the Works, if this involves a Variation to the Services it will also issue a "Variation Order" under this clause 15.2 instructing the Delivery Partner to carry out that Variation.

15.3 Cost of Variation

Where a Variation is directed by the Authorised Representative under clause 15.2:

- (a) the Delivery Partner Margin, the DP Project Budget and the Estimated Total Project Cost will be adjusted as agreed between the parties; or
- (b) failing agreement:
 - (i) the Delivery Partner Margin will be adjusted on account of the Variation by the amount determined in accordance with section 7.5(a) of Schedule 7; and
 - (ii) the DP Project Budget and the Estimated Total Project Cost will be adjusted by the amount determined in accordance with section 7.5(b) of Schedule 7.

15.4 Changes to the Works

- (a) The Authorised Representative may, at any time, direct a change to the scope of the Works by issuing a written notice to the Delivery Partner, including:
 - (i) increasing or decreasing the quantities of the Works (or any part of it);
 - (ii) omitting any part of the Works;
 - (iii) changing the character, quality or performance requirements of the Works; or

(iv) changing the dimensions of the Works or any part of it.

The Authorised Representative may issue a direction under this clause whether or not a "Variation Order" is issued under clause 15.2 with respect to the Services.

(b) If a direction is issued by the Authorised Representative under this clause 15.4, the DP Project Budget and the Estimated Total Project Cost will be increased or decreased (as the case may be) by the amount determined in accordance with section 7.5(c) of Schedule 7.

15.5 Omissions

If a Variation under clause 15.2 or a direction issued under clause 15.4 omits any part of the Services or the Works, RMS may thereafter carry out the omitted Services or Works either itself or by engaging Other Contractors.

16. Payment

16.1 Payment obligation

Subject to clause 16.9 and to any other right to set-off which RMS may have, RMS must pay the Delivery Partner:

- (a) the Contract Price;
- (b) where applicable, the Gainshare Amount; and
- (c) any other amounts which are payable by RMS to the Delivery Partner under the Contract.

16.2 Payment Claims

- (a) Subject to clause 16.4, the Delivery Partner may provide to the Authorised Representative a Payment Claim on each Payment Claim Date setting out:
 - (i) details of the Services provided; and
 - (ii) the amount claimed in respect of those Services calculated in accordance with Schedule 7 or as otherwise specified in this Contract,in each case as supported by:
 - (iii) such information as RMS requires to substantiate the claim; and
 - (iv) a properly executed Contractor Statement and Supporting Statement in relation to the Payment Claim.
- (b) A Payment Claim does not create a tax liability under GST Law.

16.3 Payment Schedule

- (a) Within 10 Business Days after receiving a Payment Claim, the Authorised Representative will issue to the Delivery Partner a Payment Schedule evidencing the Authorised Representative's valuation of the money due from RMS to the Delivery Partner in relation to that Payment Claim and the reasons for any difference. In preparing the Payment Schedule, the Authorised Representative may include:
 - (i) any amount claimed by RMS from the Delivery Partner under this Contract; and
 - (ii) the value of any of the Services for which payment is claimed that RMS considers have not been performed in accordance with this Contract.
- (b) The Authorised Representative may correct any error in, or otherwise modify, any previous Payment Schedule and where, in doing this, the Authorised Representative assesses that a further amount is due from the Delivery Partner to RMS, the Delivery Partner must, within 10 Business Days of receiving the corrected or modified Payment Schedule, pay that amount to RMS.

16.4 Conditions precedent to Payment Claim

It is a condition precedent to the right of the Delivery Partner to make a Payment Claim that:

- (a) on the day prior to the relevant Payment Claim Date, the Delivery Partner submits to the Authorised Representative a properly executed Contractor Statement and Supporting Statement in relation to the Payment Claim;
- (b) the Delivery Partner has complied with clause 6.3(a); and
- (c) the Delivery Partner has provided RMS with the parent company guarantee as required by clause 13.2.

16.5 No other claims

To the extent permitted by Law, the Delivery Partner agrees that:

- (a) all claims for payment for any Services must be made in accordance with this Contract; and
- (b) if this Contract is terminated, the Delivery Partner will not be entitled to any payment other than as expressly provided for under this Contract.

16.6 Payment times

Subject to clauses 16.2 and 16.3, RMS must pay the Delivery Partner the amount set out in a Payment Schedule as payable by RMS within 15 Business Days of being served with the Payment Claim.

16.7 Effect of payment

- (a) Any payment by RMS for the Services is not:
 - (i) an approval by RMS or the Authorised Representative of the Delivery Partner's performance or compliance with this Contract,
 - (ii) evidence of the value of the Services; or
 - (iii) an admission of liability.
- (b) Any failure by the Authorised Representative to set out in a Payment Schedule an amount which RMS is entitled to retain, deduct, withhold or set-off (whether under this Contract or otherwise) will not prejudice RMS's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

16.8 Interest

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest is payable thereon at the rate stated in the Contract Particulars from, but excluding, the date upon which, or the expiration of the period within which, the moneys should have been paid to and including the date upon which the moneys are paid.

16.9 Right of set-off

RMS may deduct from moneys otherwise due to the Delivery Partner any debt or other moneys due from the Delivery Partner to RMS, whether under the Contract or otherwise at Law relating to the Contract or the Services.

The rights given to RMS under this clause 16.9 are in addition to and do not limit or affect any other rights of RMS under the Contract or at Law and nothing in the clause affects the right of RMS to recover from the Delivery Partner the whole of the debt or claim in question or any balance that remains owing.

Failure by RMS to deduct from an amount otherwise due to the Delivery Partner any amount which RMS is entitled to deduct under this clause 16.9 will not prejudice RMS's right to subsequently exercise its right of deduction under this clause 16.9.

This clause 16.9 will survive the termination of this Contract.

16.10 SOP Act

- (a) The Delivery Partner agrees with RMS that the Payment Claim Date is, for the purposes of section 8 of the SOP Act, the "reference date" (as defined in the SOP Act).
- (b) For the purposes of section 17(3) of the SOP Act, the Delivery Partner irrevocably chooses The Institute of Arbitrators & Mediators Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Contract.
- (c) When an adjudication occurs under the SOP Act, and RMS has paid an adjudicated amount to the Delivery Partner:
 - (i) that amount will be taken into account by the Authorised Representative in issuing a Payment Schedule under clause 16.3; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Delivery Partner 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 Delivery Partner to RMS which the Delivery Partner must pay to RMS upon demand and in respect of which the Delivery Partner is not entitled to Claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (d) Without limiting clause 16.9, RMS may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on RMS pursuant to Division 2A of the SOP Act.
- (e) If RMS withholds from money otherwise due to the Delivery Partner any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on RMS pursuant to Division 2A of the SOP Act, then:
 - (i) RMS may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Delivery Partner from RMS; and
 - (ii) the period during which RMS retains money due to the Delivery Partner pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the RMS to the Delivery Partner has been unpaid; and
 - B. the date by which payment of money owed by RMS to the Delivery Partner must be made.
- (f) The Delivery Partner agrees not to commence proceedings to recover any amount withheld by RMS pursuant to a payment withholding request served on RMS in accordance with Division 2A of the SOP Act.
- (g) Any amount paid by RMS pursuant to section 26C of the SOP Act will be a debt due from the Delivery Partner to RMS.

- (h) If RMS withholds money pursuant to a payment withholding request served on RMS pursuant to Division 2A of the SOP Act and the Delivery Partner:
- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding request relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding request relates has been withdrawn,

then the Delivery Partner must so notify RMS within 5 days of the occurrence of the event in clause 16.10(h)(i) or 16.10(h)(ii) (as applicable) by providing to RMS a statement in writing in the form of a statutory declaration together with such other evidence as RMS may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

16.11 GST

- (a) For the purposes of this clause 16.11, any terms used in this clause 16.11 which are not defined in this Contract, but which are defined in the GST Law, have the meanings given in the GST Law.
- (b) Unless otherwise stated in this Contract, amounts payable, and consideration to be provided, in connection with this Contract do not include GST.
- (c) If GST is payable on a supply made under this Contract, the recipient must pay the supplier an amount equal to the GST payable on that supply at the time the recipient pays or provides consideration for the supply.
- (d) Unless RMS notifies the Delivery Partner otherwise in relation to a particular supply:
 - (i) RMS will issue to the Delivery Partner a recipient created tax invoice for each taxable supply made by the Delivery Partner to RMS under this Contract; and
 - (ii) the Delivery Partner must not issue a tax invoice in respect of any supply it makes to RMS under this Contract.
- (e) Unless prior to the Award Date the Delivery Partner has notified RMS that it is not required to be registered for GST, the Delivery Partner must be registered for GST purposes.

Each party must notify the other party if it ceases to be registered for GST purposes or if it ceases to comply with any of the requirements of the GST Law in relation to issuing recipient created tax invoices (including any taxation ruling issued by a taxation Authority relating to tax invoices).

17. Termination

17.1 Preservation of rights

Nothing in this clause 17 or that a party does or fails to do pursuant to this clause 17 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

17.2 Termination for Delivery Partner breach

RMS may terminate this Contract or any part of the performance of the Services immediately by notice to the Delivery Partner if:

- (a) the Delivery Partner breaches:
 - (i) the conflict of interest requirements under clause 3.10;
 - (ii) the Nominated Key Personnel requirements under clause 5.5;
 - (iii) the privacy requirements under clause 5.7;
 - (iv) the confidentiality requirements under clause 8.7; or
 - (v) the restrictions on assignment under clause 22.5;
- (b) without limiting clause 17.2(a), the Delivery Partner breaches this Contract and:
 - (i) the breach is material and not capable of remedy or prevention from recurrence;
 - (ii) the breach is capable of remedy and the Delivery Partner fails to remedy the breach within 10 Business Days, or such longer time as RMS states, of receiving a notice from RMS requiring the breach to be remedied; or
 - (iii) the breach has been the subject of a notice under clause 17.2(b)(ii) and the Delivery Partner commits a similar breach;
- (c) the Delivery Partner:
 - (i) breaches this Contract on 3 separate occasions within a consecutive 3 month period;
 - (ii) RMS issues the Delivery Partner with a notice stating that any further material breach of this Contract will give RMS the right under this clause 17.2(c) to terminate this Contract; and
 - (iii) commits a further material breach of any provision of this Contract; or
- (d) an Insolvency Event occurs to the Delivery Partner, or where the Delivery Partner comprises an unincorporated joint venturer, an entity that forms part of the joint venture.

17.3 RMS's entitlements after termination

Subject to clause 17.1, if RMS terminates the Contract under clause 17.2 or if the Delivery Partner repudiates the Contract and RMS otherwise terminates the Contract:

- (a) RMS will:

- (i) not be obliged to make any further payments to the Delivery Partner, including any money the subject of a Payment Claim; and
 - (ii) be entitled to recover from the Delivery Partner any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Delivery Partner must immediately hand over to RMS:
- (i) all Deliverables, RMS's Documents and IT Material; and
 - (ii) all other Project Documents brought into existence by, or on behalf of, the Delivery Partner to the date of termination (whether complete or not),
- including, as applicable, all copies thereof.

This clause 17.3 will survive any termination of this Contract.

17.4 Termination for convenience

RMS may, for its sole convenience and in its absolute discretion, terminate this Contract or any part of the performance of the Services by providing a minimum of 30 days written notice to the Delivery Partner.

If RMS terminates the Contract under this clause 17.4, RMS may thereafter either itself, or by engaging an Other Contractor, complete the uncompleted part of the Services and the Works.

17.5 Consequences of termination for convenience

If RMS terminates the Contract under clause 17.4, the Delivery Partner:

- (a) will be entitled to payment of the following amounts as reasonably determined by the Authorised Representative:
 - (i) for Services carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Delivery Partner submitted a Payment Claim for Services carried out to the date of termination;
 - (ii) demobilisation costs, including costs for the transportation of Personnel, equipment, and supplies not required or included in the Contract from the Site and the disassembly, removal and clean-up of any facilities assembled on Site specifically for the performance of this Contract;
 - (iii) the cost of goods or materials (if any) reasonably ordered by the Delivery Partner for the Services for which the Delivery Partner is legally bound to pay, provided that:
 - A. the value of the goods or materials is not included in the amount payable under clause 17.5(a)(i); and
 - B. title in the goods and materials will vest in RMS upon payment; and
 - (iv) where termination occurs prior to Project Completion, ■ of the difference between:
 - A. the unearned balance (if any) of the estimated Contract Price as set out in the then current DP Cost Plan, and

- B. the amounts payable under clauses 17.5(a)(i)-(iii);
 - (b) will not be entitled to any part of the Contract Price set out in Schedule 7 which was not due and payable as at the date of termination; and
 - (c) must:
 - (i) take all steps possible to mitigate the costs referred to in clause 17.5(a)(ii); and
 - (ii) immediately hand over to RMS:
 - A. all Deliverables, RMS's Documents and IT Material; and
 - B. all other Project Documents brought into existence by, or on its behalf, the Delivery Partner to the date of termination (whether complete or not),
- including, as applicable, all copies thereof.

The amount to which the Delivery Partner is entitled under this clause 17.5 will be a limitation upon RMS's liability to the Delivery Partner arising out of, or in any way in connection with, the termination of the Contract under clause 17.4 and the Delivery Partner will not be entitled to make any Claim against RMS arising out of, or in any way in connection with, the termination of the Contract under clause 17.4 other than for the amount payable under this clause 17.5.

Termination of the Contract under clause 17.4 is without prejudice to any rights of RMS accrued as at the date of termination and any right of RMS to be indemnified by the Delivery Partner under any indemnity provision in the Contract with respect to any breach, act, omission or other event, fact, matter or thing occurring prior to the date of termination or during the Delivery Partner's demobilisation from the Project.

This clause 17.5 will survive the termination of the Contract by RMS under clause 17.4.

17.6 RMS's continuing rights

For the avoidance of doubt, termination of the Contract under this clause 17 will not affect any other right or remedy of RMS, including the right of RMS to engage Other Contractors to carry out or complete any part of the Services.

Termination of the Contract by RMS does not release the Delivery Partner from liability in respect of any breach of, or non-performance of any obligation pursuant to, this Contract.

18. Liabilities

18.1 Limitation of liability generally

- (a) Subject to clause 18.1(b), but despite any other provision in the Contract, the Delivery Partner's total aggregate liability to RMS arising out of or in connection with the Services and this Contract (including any Painshare Amount) whether in contract, tort (including negligence) or otherwise at Law or in equity is limited to an amount which is equal to the General Liability Cap.
- (b) Clauses 18.1(a) and 18.2(a) do not limit the Delivery Partner's liability:
- (i) to the extent that it:
 - A. cannot be limited at law;
 - B. arises out of or in connection with the Delivery Partner's wilful misconduct or reckless act or omission, fraud or criminal conduct; or
 - C. arises out of or in connection with the Delivery Partner's abandonment of its obligations under this Contract;
 - (ii) to the extent that the Delivery Partner is indemnified for that liability under a policy of insurance required to be effected and maintained under the Contract and pursuant to which the Delivery Partner has the benefit, or would have been indemnified for that liability but for:
 - A. any act or omission of the Delivery Partner; or
 - B. a reduction in the amount payable under a policy of insurance required to be effected by the Delivery Partner under this Contract because the insurer makes a successful Derogation Assertion, up to the minimum amount of cover specified in the Contract for the relevant insurance policy;
 - (iii) under clause 6.1 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;
 - (iv) for breach of confidence or privacy or misuse of Personal Information, or
 - (v) which arises under clauses 8.1 to 8.5 and 9.5(d)(ii),
- and amounts of any liability referred to in clauses 18.1(b)(i) to 18.1(b)(v) will not be included in any calculation of the limit of the Delivery Partner's total aggregate liability under clause 18.1(a).
- (c) In this clause 18.1, "**Derogation Assertion**" means any:
- (i) denial of liability; or
 - (ii) reduction of liability,
- by the insurer by reason of inclusion in this Contract of clause 18.1(b)(ii).
- (d) This clause 18.1 will survive the termination of this Contract.

18.2 Exclusion of certain kinds of loss

(a) Subject to clause 18.1(b), notwithstanding any other provision in the Contract, the Delivery Partner will not be liable to RMS, regardless of the cause of action, 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;
- (vii) the cost of capital or other financing costs,
- (viii) loss of production;
- (ix) loss of use;
- (x) loss of revenue; or
- (xi) loss of profit or expected profit,

incurred by RMS or any third party arising out of or in connection with the performance of the Services or this Contract.

(b) Notwithstanding any other provision in the Contract, RMS will not be liable to the Delivery Partner, regardless of the cause of action, 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;
- (vii) the cost of capital or other financing costs;
- (viii) loss of production;
- (ix) loss of use;
- (x) loss of revenue; or
- (xi) loss of profit or expected profit,

incurred by the Delivery Partner or any third party, arising out of or in connection with the performance of the Services or this Contract.

(c) This clause 18.2 will survive the termination of this Contract.

18.3 Exclusion of proportionate liability scheme

To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of RMS and the Delivery Partner under this Contract with respect to proportionate liability are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

18.4 Delivery Partner not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Delivery Partner must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by RMS against the Delivery Partner (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by RMS against the Delivery Partner (whether in contract, tort or otherwise), the Delivery Partner must indemnify RMS against any loss, damage, cost or expense which RMS is not able to recover from the Delivery Partner because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

18.5 Subcontracts

The Delivery Partner must:

- (a) in each subcontract or any other agreement into which it enters for the carrying out of the Services or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the Services, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

19. Dispute resolution

19.1 Disputes

If a party (the "**Claimant**") claims that a dispute or difference has arisen under this Contract in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services, the Works, the Contract, or the other party's conduct before the Contract (the "**Dispute**"), the Dispute must be determined in accordance with the procedure in this clause 19.

The Claimant must give a notice to the other party (the "**Respondent**") specifying the matters in Dispute and designating as its representative a person (other than the party's representative under this Contract) to negotiate the dispute (a "**Claim Notice**").

19.2 Negotiation

- (a) Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative (being a person other than the party's representative under this Contract) to negotiate the Dispute.
- (b) The nominated representatives must:
 - (i) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
 - (ii) use all reasonable endeavours to settle or resolve the Dispute within 15 Business Days after they have met.

19.3 DAB structure

- (a) RMS has established a one person DAB to assist the parties in resolving Disputes or differences which may arise between them arising out of or in connection with the Contract or the Services.
- (b) The DAB Member, RMS and the Delivery Partner have signed the DAB Agreement.
- (c) In performing its functions the DAB Member must comply with this Contract and the DAB Agreement.

19.4 Notice of referral to DAB

- (a) If, under the procedure set out in clause 19.2, the nominated representatives have not:
 - (i) resolved a Dispute; or
 - (ii) reached agreement upon a procedure to resolve a Dispute,after a period of 35 Business Days after receiving the Claim Notice, whether or not the nominated representatives have met and undertaken negotiations with a view to resolving the Dispute, either party may, by giving notice to the other party and the DAB in accordance with clause 19.4(b), require that those parts of the Dispute that remain unresolved be referred to the DAB ("**Notice of Referral to DAB**").
- (b) A Notice of Referral to DAB must:
 - (i) be given within 20 Business Days after the expiry of the 35 Business Day period referred to in clause 19.4(a);

- (ii) state that it is a Notice of Referral to DAB under this clause 19.4; and
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.
- (c) The Notice of Referral to DAB will be deemed as being received by the DAB on the date the Notice of Referral to DAB is received by the DAB Member.

19.5 Obtaining DAB's decision

- (a) The decision of a Dispute by the DAB under this clause 19.5 must be made in accordance with the rules in Appendix 2 to the DAB Agreement or such rules as may otherwise be agreed between the parties.
- (b) Both parties must promptly make available to the DAB all such additional information, access to the Site and appropriate facilities, as the DAB may require for the purposes of making a decision on the Dispute.
- (c) The DAB will be deemed to be not acting as an arbitrator.
- (d) Notwithstanding anything else, to the extent permitted by law, the DAB will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) or any other proportionate liability scheme.
- (e) Within 40 Business Days after receiving a Notice of Referral to DAB under clause 19.4, or within such other period as may be proposed by the DAB and approved by both parties, the DAB must give its decision in writing which must be reasoned and must state that it is given under this clause 19.5.

19.6 Notice of dissatisfaction

If:

- (i) either party is dissatisfied with the decision made by the DAB under clause 19.5, then either party may, within 20 Business Days after receiving the decision, give notice to the other party of its dissatisfaction; or
- (ii) the DAB fails to give a decision within the period of 40 Business Days (or as otherwise approved by the parties) after receiving a Notice of Referral to DAB, then either party may, within 20 Business Days after this period has expired, give a notice of dissatisfaction to the other party,

("Notice of Dissatisfaction").

- (b) A Notice of Dissatisfaction must:
 - (i) state that it is given under this clause 19.6; and
 - (ii) set out the matter in Dispute.
- (c) Neither party will be entitled to commence arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 19.6.

19.7 Final and binding decision of DAB

If the DAB has given its decision on a Dispute under clause 19.5, and no Notice of Dissatisfaction has been given by either party within the time stipulated in clause 19.6(a)(i),

then the decision will become final and binding upon both parties ("**Final and Binding Decision**").

19.8 Failure to comply with DAB's decision

If a party fails to comply with any Final and Binding Decision of the DAB, then the other party may, without prejudice to any other rights it may have, give a notice to the other party requiring the failure itself to be determined as a Dispute in accordance with clause 19.9.

19.9 Amicable settlement

- (a) Where a Notice of Dissatisfaction has been given, or where a notice has been given under clause 19.8, both parties must attempt to settle the Dispute amicably before the commencement of any further proceedings.
- (b) However, unless both parties agree otherwise, if no amicable settlement has been reached by the 15th Business Day after the day on which the Notice of Dissatisfaction or the notice under clause 19.8 was given, the Dispute will be determined by arbitration in accordance with clause 19.12.

19.10 Replacement of DAB Member

If the DAB member declines to act, or is unable to act as a result of death, disability or resignation, then RMS will immediately appoint a replacement DAB Member. This appointment will be final and conclusive.

19.11 Termination of DAB

Unless otherwise agreed by both parties, the DAB will terminate 6 months after the Date of Project Completion.

19.12 Arbitration

- (a) Where:
 - (i) a Notice of Dissatisfaction has been given, or where a notice has been given under clause 19.8; and
 - (ii) the parties (or one of them) wish to seek a determination or resolution of the Dispute,

either party may after the 15th Business Day after the day on which the Notice of Dissatisfaction or the notice under clause 19.8 was given, give notice to the other party requiring the Dispute to be referred to arbitration ("**Arbitration Notice**").
- (b) The Arbitration Notice must specify with detailed particulars the Dispute.
- (c) Upon issue of the Arbitration Notice, the Dispute will be determined by arbitration.
- (d) Arbitration will be effected:
 - (i) by an arbitrator agreed upon in writing by the parties within 20 Business Days after the issue of the Arbitration Notice; or
 - (ii) failing agreement within 20 Business Days after the issue of the Arbitration Notice, by an arbitrator appointed by the President for the time being of The Institute of Arbitrators & Mediators Australia.

- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any decision of the DAB under clause 19.5 that is not a Final and Binding Decision.
- (f) The parties are entitled to be represented in any arbitration by a duly qualified legal practitioner.
- (g) To the extent that they are not inconsistent with this Contract, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators & Mediators Australia will apply to the arbitration.
- (h) The seat of the arbitration will be Sydney, Australia.
- (i) 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).

19.13 Urgent relief

Nothing in this clause 19 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court in respect of a Dispute.

19.14 Survive termination

This clause 19 will survive the termination of the Contract.

19.15 Continuation of Services

Despite the existence of a Dispute or any difference between the parties, the Delivery Partner must:

- (a) continue to carry out the Services; and
- (b) otherwise comply with its obligations under the Contract.

20. Notices of Claims

20.1 Notice of Variation

If a Direction by the Authorised Representative, other than a "Variation Order" under clause 15.2, constitutes or involves a Variation, the Delivery Partner must within 15 Business Days of receipt of the Direction give the Authorised Representative a notice stating that the Delivery Partner considers that the Direction constitutes or involves a Variation and setting out:

- (a) the estimated amount which will be payable to the Delivery Partner for the services required to be performed by the Delivery Partner in order to carry out the Variation;
- (b) the adjustment to the DP Project Budget and the Estimated Total Project Cost associated with the Variation; and
- (c) the effect which the Variation will have on the DP Program, including each applicable Milestone Date.

The Delivery Partner must continue to carry out the Services in accordance with the Contract and all Directions of the Authorised Representative, including any Direction in respect of which notice has been given under this clause 20.1.

20.2 Notices of other Claims

Except for:

- (a) a claim for payment under clause 16 of the Contract Price;
- (b) a claim for a Variation instructed in accordance with clause 15.2 or to which clause 20.1 applies; or
- (c) a notice in respect of a Material Change Event pursuant to clause 14.5,

the Delivery Partner must give the Authorised Representative the notices required by clause 20.3 if it wishes to make a Claim against RMS in respect of any Direction by the Authorised Representative or any other fact, matter or thing (including a breach of the Contract by RMS) under, arising out of, or in any way in connection with, the Services, the Works, the Project or the Contract, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Price; or
 - (ii) the Contract Price will be otherwise increased or adjusted,
 as determined by the Authorised Representative.

20.3 Prescribed notices

The notices referred to in clause 20.2 are:

- (a) a written notice within 28 days of the Delivery Partner first becoming aware (or when it should reasonably have become aware in accordance with Good Industry Practice) of the occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Delivery Partner proposes to make a Claim; and

- (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 21 days of giving the written notice under clause 20.3(a), which must include:
 - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

20.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 20.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Delivery Partner must continue to give the information required by clause 20.3(b) every 28 days after the written Claim under 20.3(b) (as the case may be) was submitted or given to the Authorised Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

20.5 Time bar

If the Delivery Partner fails to comply with clauses 20.1, 20.2, 20.3 or 20.4:

- (a) RMS will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Delivery Partner; and
- (b) the Delivery Partner will be absolutely barred from making any Claim against RMS, arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 20.1 or 20.2 applies.

20.6 Other provisions unaffected

Nothing in clauses 20.1 to 20.4 will limit the operation or effect of any other provision of the Contract which requires the Delivery Partner to give notice to the Authorised Representative in order to preserve an entitlement to make a Claim against RMS.

21. Gainshare or Painshare Amount

21.1 Purpose of the KRAs and KPIs

The Delivery Partner acknowledges that the purpose of the KRAs and KPIs set out in Schedule 6 is to specify quantitative and qualitative assessment mechanisms to enable the parties to measure the performance of the Delivery Partner under the Contract against specified targets for the purpose of calculating the extent to which any Gainshare Amount is payable to the Delivery Partner or any Painshare Amount is payable by the Delivery Partner.

In addition to the KRAs and KPIs in Schedule 6, there are other KRAs and KPIs set out in the Contract with which the Delivery Partner's performance will be measured. These other KRAs and KPIs are not taken into account for determining whether any Gainshare Amount or Painshare Amount is payable pursuant to Schedule 6.

In addition to the amounts which may be payable to, or by, the Delivery Partner in accordance with Schedule 6, RMS will make available to the Delivery Partner the Works Contractor Seed Pool for use as an incentive payable to one or more Works Contractors under the Works Contracts.

The Delivery Partner must prepare a recommendation for the approval of RMS which details the method by which the Works Contractor Seed Pool will be split between the Works Contracts and the details of the key result areas and relevant key performance indicators that will be used to determine the entitlements of a Works Contractor to be paid an amount out of the Works Contractor Seed Pool.

21.2 Recording performance against KRAs and KPIs

The Delivery Partner:

- (a) must keep sufficient records of its performance as against the KRAs and KPIs to enable the Authorised Representative to evaluate the performance of the Delivery Partner under the Contract against the KRAs and KPIs, including for the purpose of determining the Delivery Partner's entitlement to payment of any Gainshare Amount or obligation to pay RMS any Painshare Amount (as the case may be) under clause 21.3; and
- (b) acknowledges that the records required to be kept under clause 21.2(a) will not limit the Authorised Representative's evaluation of the performance of the Delivery Partner under the Contract and the Authorised Representative may consider all such other matters as it considers (in its absolute discretion) to be relevant to the evaluation of the performance of the Delivery Partner under the Contract.

21.3 Gainshare or Painshare Amount

- (a) In respect of the KRAs and KPIs set out in Schedule 6, the assessment of the Delivery Partner's performance against those KRAs and KPIs under Schedule 6 will lead to either:
 - (i) the Delivery Partner being entitled to be paid a Gainshare Amount, up to an amount no more, in aggregate, than the Gainshare Amount Pool; or
 - (ii) the Delivery Partner being liable to pay RMS a Painshare Amount, up to an amount no more, in aggregate, than the Painshare Cap.
- (b) Subject to:
 - (i) RMS's rights to retain, deduct, withhold or set-off payment under any clause of the Contract, including set-off of any amount against the

Delivery Partner Margin on account of the Predicted Painshare Amount as contemplated by section 7.4 of Schedule 7; and

- (ii) the Delivery Partner or RMS (as the case may be) providing the other party with a tax invoice that complies with the GST Law,

RMS must pay the Delivery Partner or the Delivery Partner must pay RMS (as the case may be) the Gainshare Amount or the Painshare Amount (as the case may be) in accordance with Schedule 6.

- (c) To the extent that any portion of the Gainshare Amount Pool is not earned by the Delivery Partner in accordance with this clause 21.3 and Schedule 6, it will not be payable under this Contract and the Delivery Partner will have no Claim whatsoever to that portion of the Gainshare Amount Pool that is not payable in accordance with Schedule 6.

21.4 Rights and obligations not affected

The parties acknowledge that:

- (a) the purpose of the KRAs and KPIs is as set out in clause 21.1;
- (b) subject to clause 21.4(c), the parties' rights and obligations, whether under the Contract or otherwise at law or in equity, in relation to the Services, the Works or this Contract, will not be affected or limited by the provisions of this clause 21, anything done or omitted to be done under or purported to be done under this clause, the KRAs, the KPIs or the Delivery Partner's performance as against the KRAs and the KPIs; and
- (c) the Delivery Partner's liability to RMS for any Painshare Amount will be RMS's exclusive monetary remedy for any act, default or omission of the Delivery Partner resulting in a failure to achieve a Key Result Area or KPI, provided that this does not limit RMS's right to terminate this Contract under clause 17.2 or RMS's rights under the Contract to the extent the act, default or omission is in respect of a liability the subject of clause 18.1(b).

22. Miscellaneous

22.1 Notices

- (a) Any notices contemplated by this Contract must be in writing and delivered to the relevant address or sent to the facsimile number:
- (i) for RMS, specified in the Contract Particulars
 - (ii) for the Authorised Representative, specified in the Contract Particulars; and
 - (iii) for the Delivery Partner, specified in the Contract Particulars,
- 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 22.1(a).
- (d) Subject to clauses 22.1(e) and 22.1(f), either party may give any notice contemplated by this Contract to be given to the Authorised Representative or the Delivery Partner by email to the relevant email address:
- (i) for the Authorised Representative, specified in the Contract Particulars; and
 - (ii) for the Delivery Partner, specified in the Contract Particulars,
- or to a new email address which the Authorised Representative or the Delivery Partner notifies to the other in writing from time to time.
- (e) Any notice contemplated by this Contract to be given to RMS must be delivered to RMS address or sent by facsimile in accordance with clause 22.1(a).
- (f) Unless otherwise agreed by the parties, in relation to any notice, information or documentation under clauses 5.2, 5.4, 5.6, 5.8, 6.5, 9.5, 10.1, 10.3, 10.4, 11.2, 12.1, 12.3, 12.8, 14.3, 14.4, 14.5, 14.7, 15.1, 15.2, 15.4, 16.2, 16.10, 17.2, 17.4, 19, 20 and 21.1:
- (i) RMS, the Authorised Representative and the Delivery Partner 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 22.1(a); and
 - (ii) will be taken to have been received at the times set out in clause 22.1(b) for notices sent by post and clause 22.1(c) for notices given by facsimile.
- (g) Subject to clause 22.1(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.

22.2 Governing law

This Contract is governed by and must be construed according to the laws of the State of New South Wales.

22.3 Jurisdiction

In respect of any proceedings which may be instituted pursuant to clause 19.13, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any such proceedings;
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 22.3(a); and
- (c) agrees that by agreeing to, or by taking action under clause 19.13, the parties do not intend to relinquish or otherwise adversely affect their rights to have a dispute resolved by way of arbitration.

22.4 Waiver

Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this Contract.

A waiver or consent given by a party under this Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

No waiver of a breach of a term of this Contract operates as a waiver of any other breach of that term or of a breach of any other term of this Contract.

22.5 Assignment and change in control

- (a) The Delivery Partner must not assign, novate, encumber or otherwise transfer any of its rights or obligations under this Contract without the prior written consent of RMS.
- (b) The Delivery Partner will be deemed to have assigned its rights and obligations under this Contract if at any time the power (whether formal or informal, whether or not having legal or equitable force, and whether or not based on legal or equitable rights):
 - (i) to exercise or control the right to vote attached to ■■■ or more of the issued shares or stock in the Delivery Partner;
 - (ii) to dispose of or exercise a right of disposal in respect of ■■■ or more of the issued voting shares or stock in the Delivery Partner; or
 - (iii) to dominate or control the financial or operating policies of the Delivery Partner (whether alone or in concert with others, and whether by any act or omission or otherwise),

resides with any persons other than those holding that power on the Award Date.

- (c) RMS may, for its sole convenience and at its absolute discretion, assign, novate or otherwise transfer any of its rights and obligations to any Government department, agency, authority or state owned corporation without the Delivery Partner's consent and the Delivery Partner must promptly execute any document reasonably required by RMS to give effect to the assignment, novation or other dealing.

22.6 Consents

A consent required under this Contract from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this Contract expressly provides otherwise.

22.7 Counterparts

The Contract may consist of any number of counterparts and if so the counterparts taken together constitute one and the same instrument.

22.8 Expense

Except as otherwise provided in this Contract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Contract.

22.9 Severance

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

22.10 Indemnities

Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Contract.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.

A party must pay on demand any amount it must pay under an indemnity in this Contract (without any deduction, withholding, counter-claim or set-off).

22.11 Release from liability

The Delivery Partner releases RMS from and against any liability arising out of its provision of information under clauses 22.12, 22.13 and 22.14 or the use of such information by the NSW Government and its relevant departments, agencies, authorities and state owned corporations.

22.12 Government information disclosure

The Delivery Partner acknowledges that RMS may be required to publish certain information concerning this Contract in accordance with sections 27 – 35 of the *Government Information (Public Access) Act 2009* (NSW). If the Delivery Partner reasonably believes that any part of this Contract contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Delivery Partner should immediately advise

RMS in writing, identifying the provisions and providing reasons so that RMS may consider seeking to exempt those provisions from publication.

22.13 Other Government bodies

The Delivery Partner acknowledges that RMS may make information concerning the Delivery Partner (including any information provided by the Delivery Partner to RMS and any information relating to the Delivery Partner's performance under this Contract, but excluding any Confidential Information of the Delivery Partner) available to the NSW Government and its departments, agencies, authorities and state owned corporations.

22.14 Exchange of information

The Delivery Partner acknowledges that information about the Delivery Partner from any source, including substantiated reports of unsatisfactory performance, may be taken into account by RMS, Austroads and other road agencies, the NSW Government and its departments, agencies, authorities and state owned corporations in considering whether to offer the Delivery Partner future opportunities for work.

22.15 Defence to defamation

The Delivery Partner agrees that RMS will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW) in relation to the provision of information under clauses 22.13 and 22.14.

22.16 United Nations Convention not applicable

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

22.17 Taxes and charges

- (a) Unless otherwise stated in this Contract, amounts payable, and consideration to be provided, in connection with this Contract exclude GST.
- (b) Other than as provided by clause 16.11(b), the Delivery Partner is responsible for and must pay all Taxes and charges which may be payable in respect of the Services.
- (c) Despite any other provision of this Contract, if RMS is obliged to make any deduction or withholding on account of any Taxes however described in connection with this Contract for any reason, RMS may withhold the relevant amount from any payment due to the Delivery Partner and promptly pay that amount to the relevant Authority. RMS has no obligation to pay any additional amount to the Delivery Partner in connection with any withheld amount.

22.18 No partnership, joint venture or other fiduciary relationship

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

22.19 Language

Except where expressly stated otherwise, the language:

- (a) for communications for the purposes of this Contract (including in any arbitration or other dispute resolution process under clause 19); and

- (b) the language of any Deliverables provided by the Delivery Partner for the subsequent use or operation of the Works,

is English.

22.20 Units of measurement

Except where expressly stated otherwise, measurements of physical quantities must be in metric units and in accordance with the International System of Units (SI units).

22.21 Joint and several liability

If the Delivery Partner comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

- (a) the obligations and liabilities of the Delivery Partner under this Contract bind those persons jointly and severally;
- (b) those persons must notify RMS of their leader who must have authority to bind the Delivery Partner and each of those persons; and
- (c) the Delivery Partner must not alter its composition or legal status without the prior written consent of RMS.

Schedule 1 - Contract Particulars

CLAUSE 1 - DEFINITIONS AND INTERPRETATION	
Date for Project Completion: (Clause 1.1)	20 September 2020
Date for Project Opening: (Clause 1.1)	20 September 2019
DAB Member: (Clause 1.1)	Graham Easton of 73 Carlotta Street Greenwich NSW 2065
Delivery Partner, address, facsimile no. and email: (Clauses 1.1 and 22.1)	<p>Name: Laing O'Rourke Australia Construction Pty Limited (ABN 39 112 099 000) and Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798)</p> <p>Address: Level 4, 100 Arthur Street, North Sydney NSW 2060</p> <p>Facsimile: 02 9903 0641</p> <p>Attention: Neil Harding</p> <p>Email: nharding@laingorourke.com.au</p>
Delivery Partner's Representative, address, facsimile no. and email: (Clauses 1.1 and 22.1)	<p>Name: Chris Wilkinson</p> <p>Address: Level 4, 100 Arthur Street, North Sydney NSW 2060</p> <p>Facsimile: 02 9903 0641</p> <p>Attention: Chris Wilkinson</p> <p>Email: CWilkinson@laingorourke.com.au</p>
RMS's address and facsimile no.: (Clauses 1.1 and 22.1)	<p>Address: 101 Miller Street North Sydney NSW 2060 (for delivery by hand)</p> <p>Locked Bag 928 North Sydney NSW 2059 (for delivery by post)</p> <p>Facsimile: 02 8588 4171</p> <p>Attention: Director Infrastructure Development</p>

<p>Authorised Representative, address, facsimile no. and email: (Clauses 1.1, 22.1 and Schedule 14)</p>	<p>Name: Robert (Bob) Higgins</p> <p>Address: Level Ground 21 Prince Street Grafton NSW 2460</p> <p>Facsimile: 02 66401001</p> <p>Attention: Bob Higgins</p> <p>Email: Bob.HIGGINS@rms.nsw.gov.au</p>
<p>Estimated Total Project Cost: (Clause 1.1)</p>	<p>[REDACTED]</p>
<p>Gainshare Amount Pool: (Clause 1.1)</p>	<p>[REDACTED]</p>
<p>Painshare Cap: (Clause 1.1)</p>	<p>[REDACTED]</p>
<p>Parent Company Guarantor: (Clause 1.1)</p>	<p>In respect of Laing O'Rourke Australia Construction Pty Limited:</p> <p style="padding-left: 40px;">Laing O'Rourke Australia Pty Limited.</p> <p>In respect of Parsons Brinckerhoff Australia Pty Limited:</p> <p style="padding-left: 40px;">PB Australia Pty Limited.</p>
<p>Project: (Clause 1.1)</p>	<p>Woolgoolga to Ballina Pacific Highway Upgrade</p>
<p>Project Procedures Manual: (Clause 1.1)</p>	<p>Refer to Appendix A3.1 of the Services Brief.</p>
<p>Conditions Precedent to Project Completion: (Clause 1.1)</p>	<p>The matters which are stated to be a condition precedent in the following parts of the Contract:</p> <p>Section A4.1.6(f) in Appendix A4 to the Services Brief</p> <p>Section A4.1.17(c) in Appendix A4 to the Services Brief</p> <p>Section A4.2.3.1(d) in Appendix A4 to the Services Brief</p> <p>Section A4.2.3.2(d) in Appendix A4 to the Services Brief</p> <p>Section A4.5.5(a) in Appendix A4 to the Services Brief</p> <p>Section A6.1.3(b) in Appendix A6 to the Services Brief</p> <p>Section A6.1.4 in Appendix A6 to the Services Brief</p> <p>Sections A6.1.6(a) and A6.1.6(b) in Appendix A6 to the Services Brief</p>

	<p>Sections A6.1.7(a) and A6.1.7(b) in Appendix A6 to the Services Brief</p> <p>Section A6.1.8(a) in Appendix A6 to the Services Brief</p> <p>Section A6.1.11 in Appendix A6 to the Services Brief</p> <p>Sections A7.1.6.2(a) and A7.1.6.2(b) in Appendix A7 to the Services Brief</p>	
DP Project Budget: (Clause 1.1)	██████████	
Total Project Budget: (Clause 1.1)	██████████	
CLAUSE 4 - ROLE OF RMS		
Minimum period for RMS to give decisions: (Clause 4.3)	<p>Ten days after whichever is the later of:</p> <p>(a) the date of the Delivery Partner's request under clause 4.3(a); or</p> <p>(b) the date on which all required information has been provided under clause 4.3(b).</p>	
CLAUSE 5 - PERSONNEL		
Authorised Representative's representatives and their functions: (Clause 5.4)	Name Nil	Function Nil
CLAUSE 7 - INFORMATION, DELIVERABLES AND DOCUMENTATION		
Number of copies of RMS Documents to be provided by RMS to the Delivery Partner: (Clause 7.3)	Copies 2 No.	

<p>Project Plans: (Clause 7.5(a))</p>	<p>Project Management Plan;</p> <p>DP Cost Plan;</p> <p>DP Program;</p> <p>Packaging and Procurement Plan;</p> <p>Quality and Verification Plan;</p> <p>WHS Management Plan;</p> <p>Workplace Relations Management Plan;</p> <p>Mobilisation and Transition-in Plan;</p> <p>RMS Integration Plan;</p> <p>Design Management and Optimisation Plan;</p> <p>Construction Plan;</p> <p>Earthworks Plan;</p> <p>Construction Environmental Management Plan;</p> <p>Stakeholder and Community Liaison Plan;</p> <p>Traffic Management and Safety Plan;</p> <p>Project Training Plan;</p> <p>Handover and Transition Plan;</p> <p>Maintenance Plan; and</p> <p>Australian Industry Participation Plan.</p>
<p>CLAUSE 9 - SITE</p>	
<p>Time for access to the Site: (Clause 9.1(a))</p>	<p>As shown on the DP Program.</p>

<p>Parts of the Works or Temporary Works for which a Project Contractor will hold an EPL: (Clause 9.5(g))</p>	<p>The Works that form part of:</p> <ul style="list-style-type: none"> (a) the Section 1 Contract; (b) the Section 2 Contract; and (c) subject to the next paragraph, the Wave 1 Contract and the Wave 2 Contract. <p>The Works the subject of the Wave 1 Contract and the Wave 2 Contract will be deleted from this item when the EPL which has been granted to the Project Contractors under those Project Contracts has been transferred by the EPA to the Delivery Partner.</p> <p>Where used above:</p> <ul style="list-style-type: none"> (a) "Section 1 Contract" means the RMS Enabling Works Contract referred to in item 2 of Table 1 in section B10.2 of Appendix B10 to the Works Brief; (b) "Section 2 Contract" means the RMS Enabling Works Contract referred to in item 3 of Table 1 in section B10.2 of Appendix B10 to the Works Brief; (c) "Wave 1 Contract" means the RMS Enabling Works Contract referred to in item 11 of Table 1 in section B10.2 of Appendix B10 to the Works Brief; and (d) "Wave 2 Contract" means the RMS Enabling Works Contract referred to in item 12 of Table 1 in section B10.2 of Appendix B10 to the Works Brief.
<p>Working hours and working days: (Clause 9.6)</p>	<p>As contained in Environmental Requirements.</p>

CLAUSE 10 - WORK HEALTH AND SAFETY AND WORKPLACE RELATIONS

<p>Parts of the Works or Temporary Works for which a Project Contractor will be appointed principal contractor: (Clause 10.1(g))</p>	<p>The Works that form part of:</p> <ul style="list-style-type: none"> (a) the Section 1 Contract; (b) the Section 2 Contract; and (c) subject to the next paragraph, the Wave 1 Contract and the Wave 2 Contract. <p>The Works the subject of the Wave 1 Contract and the Wave 2 Contract will be deleted from this item upon RMS giving notice in writing to the Delivery Partner stating that the Project Contractors under those Project Contracts are no longer the principal contractor for the construction works under those Project Contracts, after which the Delivery Partner will be the principal contractor for that part of the Works.</p> <p>Where used above:</p> <ul style="list-style-type: none"> (a) "Section 1 Contract" means the RMS Enabling Works Contract referred to in item 2 of Table 1 in section B10.2 of Appendix B10 to the Works Brief; (b) "Section 2 Contract" means the RMS Enabling Works Contract referred to in item 3 of Table 1 in section B10.2 of Appendix B10 to the Works Brief; (c) "Wave 1 Contract" means the RMS Enabling Works Contract referred to in item 11 of Table 1 in section B10.2 of Appendix B10 to the Works Brief; and (d) "Wave 2 Contract" means the RMS Enabling Works Contract referred to in item 12 of Table 1 in section B10.2 of Appendix B10 to the Works Brief.
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CLAUSE 14 - TIME

<p>Time for submission of updated Initial DP Program: (Clause 14.2(a))</p>	<p>As required in section 2.5 of the Services Brief (Exhibit A to the Contract).</p>
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CLAUSE 16 - PAYMENT

<p>Payment Claim Date: (Clauses 1.1)</p>	<p>Monthly on the 10th day of each month.</p>
<p>Interest rate: (Clause 16.8)</p>	<p>█ per annum</p>

Schedule 2 - Interface Deed

(Clause 10.1(g)(ii))

Interface Deed

DATE [INSERT]

PARTIES

Roads and Maritime Services

ABN 76 236 371 088 of 101 Miller Street, North Sydney, New South Wales 2060

(RMS)

Laing O'Rourke Australia Construction Pty Limited (ABN 39 112 099 000) of Level 4, 100 Arthur Street, North Sydney, New South Wales 2060 and

Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) of Level 27, 680 George Sydney, New South Wales 2000

(together the **Delivery Partner**)

[Insert full name of Project Contractor]

[ABN/ACN/ARBN] [number]

(Contractor)

RECITALS

- A. RMS is proposing to upgrade the remaining single carriageway sections of the Pacific Highway between Woolgoolga and Ballina in the State of New South Wales to complete the efficient and safe road transport link between Australia's four east coast capital cities (the **Project**).
- B. RMS has entered into an agreement with the Delivery Partner under which the Delivery Partner will administer and manage the delivery of the Project on behalf of RMS (**Delivery Partner Contract**).
- C. RMS has entered into an agreement with the Contractor for the construction/design and construction (as applicable) of the Contractor Works (**Project Contract**).
- D. A number of physical interfaces have been identified by the parties where separate and distinct "construction projects" (within the meaning of the WHS Legislation) abut or adjoin each other. The parties wish to set out the basis upon which they will cooperate, coordinate and interface with each other with respect to the management of work health and safety risks at the interface points.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this deed.

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

Contractor Works means all of the works required to be performed and delivered by the Contractor in accordance with the Project Contract.

Delivery Partner Contract means the contract referred to in Recital B entered into between RMS and the Delivery Partner dated [INSERT].

Project has the meaning given in Recital A.

Project Contract means the contract referred to in Recital C entered into between RMS and the Contractor dated [INSERT].

Site means the land in respect of which RMS has granted access to or possession of for the purposes of the Project.

Temporary Works mean the temporary works necessary for the construction of the Works, located on that part of the Site described in Schedule 1.

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

WHS Legislation means the WHS Act and the WHS Regulation.

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

Works means those parts of the physical works for the Project located on that part of the Site described in Schedule 1.

1.2 Rules for interpreting this deed

In this deed:

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

and unless the context indicates a contrary intention:

(b) a reference to RMS includes any person appointed by RMS to act as its authorised representative from time to time;

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

- (e) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to this deed;
- (h) if a word or phrase is given a defined meanings, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

2. CONSULTATION, COORDINATION AND COOPERATION

Each of the Delivery Partner and the Contractor agree to:

- (a) consult, cooperate and coordinate with each other and any other duty holders identified in the WHS Legislation who have a duty in relation to a shared safety matter, and as required to comply with their respective obligations under WHS Legislation;
- (b) achieve a high level of consultation, cooperation, coordination and collaboration between them to ensure that:
 - (i) each of them complies with their respective obligations to RMS; and
 - (ii) where it is not possible or practicable to physically separate or visually demarcate a boundary between each "construction project" (within the meaning of the WHS Legislation):
 - A. risks associated with workers or others crossing the boundary between the two "construction projects" are identified and managed; and
 - B. the duty to ensure that the "workplace" (as defined in the WHS Legislation) is secured against unauthorised access is met; and
- (c) use its best endeavours to resolve any problems, and work closely and iteratively to resolve any problems, including by attending any meetings called by RMS for the purpose of resolving such problems.

3. WORK HEALTH AND SAFETY

3.1 Appointment of "principal contractor"

In this clause 3 "**construction project**", "**principal contractor**", "**workplace**" and "**construction work**" have the same meanings assigned to those terms in the WHS Legislation.

The parties acknowledge and agree that:

- (a) the Delivery Partner is appointed by RMS (or otherwise has all responsibilities as if it were appointed by RMS) as the "principal contractor" for any "workplace" at which "construction work" forming part of the Works or Temporary Works is to be undertaken, until handover of that part of the construction work to RMS, unless sooner revoked by RMS terminating the Delivery Partner Contract pursuant to any provision of that contract or according to law;
- (b) the Contractor is appointed by RMS (or otherwise has all responsibilities as if it were appointed by RMS) as the "principal contractor" for any "workplace" at which "construction work" forming part of the Contractor Works is to be undertaken, until handover of that part of the construction work to RMS, unless sooner revoked by RMS terminating the Project Contract pursuant to any provision of that contract or according to law,

and that nothing in this deed affects or otherwise releases the Delivery Partner or the Contractor from those appointments or their obligations arising therefrom.

3.2 Access

- (a) To the extent that the Delivery Partner (or any other contractor working under the Delivery Partner) requires access to a part of the Site for which the Contractor has management and control necessary to discharge the responsibilities imposed on the Contractor as "principal contractor" by the WHS Legislation, the Delivery Partner agrees that:
 - (i) the Delivery Partner will comply and ensure that any other contractor working under the Delivery Partner complies with safety regulations, any rules or regulations and with all directions of the Contractor with respect to work health and safety;
 - (ii) the Delivery Partner will comply and ensure that any other contractor working under the Delivery Partner complies in a timely manner with directions of the Contractor so that the Contractor discharges its obligations as "principal contractor";
 - (iii) the Delivery Partner will consult, cooperate and coordinate activities with the Contractor, RMS and all other persons who have a work health and safety duty in relation to a shared safety matter, and as required to comply with its obligations under the WHS Legislation, and will ensure that any other contractor working under it does the same;
 - (iv) the Contractor may exclude the Delivery Partner, any other contractor working under the Delivery Partner, or any of their respective personnel from the relevant part of the Site for work health and safety reasons; and
 - (v) the Contractor may direct the Delivery Partner, any other contractor working under the Delivery Partner or any of their respective personnel to perform or not perform certain acts for work health and safety reasons and the Delivery Partner must comply with any such direction.
- (b) To the extent that the Contractor requires access to a part of the Site for which the Delivery Partner has management and control necessary to discharge the responsibilities imposed on the Delivery Partner as "principal contractor" by the WHS Legislation, the Contractor agrees that:
 - (i) the Contractor will comply and ensure that its subcontractors comply with safety regulations, any rules or regulations and with all directions of the Delivery Partner with respect to work health and safety;

- (ii) the Contractor will comply and ensure that its subcontractors comply in a timely manner with directions of the Delivery Partner so that the Delivery Partner discharges its obligations as "principal contractor";
- (iii) the Contractor will consult, cooperate and coordinate activities with the Delivery Partner, RMS and all other persons who have a work health and safety duty in relation to a shared safety matter, and as required to comply with its obligations under the WHS Legislation, and will ensure that its subcontractors do the same;
- (iv) the Delivery Partner may exclude the Contractor, its subcontractors or any of their respective personnel from the relevant part of the Site for work health and safety reasons; and
- (v) the Delivery Partner may direct the Contractor or any of its personnel to perform or not perform certain acts for work health and safety reasons and the Contractor must comply with any such direction.

3.3 Representative nomination

The Delivery Partner and the Contractor must:

- (a) each nominate a representative who will have overall responsibility for that party's work health and safety issues and the Delivery Partner and the Contractor must each provide RMS (and each other) with contact details for that representative;
- (b) acknowledge that when a party is acting as principal contractor that party may (without limiting clause 3.2):
 - (i) request (and the party not in possession must provide) evidence of induction in respect of any of its personnel or subcontractors; and
 - (ii) provide the protocols to traverse the "workplace" in a safe manner which, where provided, must be adhered to by both parties.

4. LIABILITY

4.1 Liability of RMS

To the extent permitted by law:

- (a) the Delivery Partner acknowledges that this deed does not create any liability of RMS to the Delivery Partner other than as set out in the Delivery Partner Contract; and
- (b) the Contractor acknowledges that this deed does not create any liability of RMS to the Contractor other than as set out in the Project Contract.

4.2 Liability of Delivery Partner and Contractor

Notwithstanding any other provision of this deed, but without limiting the operation of clause 4.1, no party will be liable to any other party for a breach of clause 2.

5. GENERAL

5.1 Notices

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

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

RMS

Address: [address]
Email Address: [email address]
Fax number: [fax number]
Attention: [name]

Delivery Partner

Address: [address]
Email Address: [email address]
Fax number: [fax number]
Attention: [name]

Contractor

Address: [address]
Email Address: [email address]
Fax number: [fax number]
Attention: [name]

- (c) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 5.1(b); and
- (d) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

5.2 Governing law

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

5.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 5.3(a).

5.4 RMS as an Authority

- (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) Both the Delivery Partner and the Contractor acknowledge and agree that, without limiting clause 5.4(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 either the Delivery Partner or the Contractor to make any claim against RMS.

5.5 Amendments

This deed may only be varied by a deed executed by or on behalf of each of the parties.

5.6 Waiver

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

5.7 Assignment

- (a) Neither the Delivery Partner nor the Contractor are permitted to assign, novate, encumber or otherwise transfer any of their rights or obligations under this deed without the prior written consent of RMS (which must not be unreasonably withheld or delayed).
- (b) RMS may, for its sole convenience and at its absolute discretion, assign, novate or otherwise transfer any of its rights and obligations under this deed to any Government department, agency, authority or state owned corporation without requiring the consent of the other parties to this deed, and each other party must promptly execute any document reasonably required by RMS to give effect to the assignment, novation or other dealing.

5.8 Representations and reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

5.9 Entire agreement

To the extent permitted by law and without limiting the operation of the Delivery Partner Contract and the Project Contract, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

5.10 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

5.11 Severance

If at any time a provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then 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.

5.12 Termination of this deed

This deed will terminate automatically upon termination of the:

- (a) Delivery Partner Contract; or
- (b) Project Contract.

Schedule 1 - Works and Temporary Works

EXECUTED as a deed.

SIGNED, SEALED AND DELIVERED by
Roads and Maritime Services (ABN 76
236 371 088) in the presence of:

Signature of witness

Signature

Name

EXECUTED by **Laing O'Rourke
Australia Construction Pty Limited**
(ABN 39 112 099 000) in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **Parsons Brinckerhoff Australia Pty Limited** (ABN 80 078 004 798) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **[INSERT DETAILS FOR PROJECT CONTRACTOR]** (ABN **[INSERT]**) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

Schedule 3 - Confidentiality Deed

(Clause 8.7(a))

CONFIDENTIALITY DEED POLL

CONTRACT DETAILS

PARTIES

- 1. **ROADS AND MARITIME SERVICES (ABN 76 236 371 088)**, of 101 Miller Street, North Sydney, New South Wales 2060 (**RMS**); and

[INSERT LEGAL NAME OF RECIPIENT] ACN [insert ACN] of [insert address]
(Recipient).

RMS has agreed to disclose information to the Recipient on the terms of this deed poll.

COMMENCEMENT DATE:

[Insert date this agreement starts]

APPROVED PURPOSE:

[RMS to insert approved purpose eg "preparation of a tender for xxx"]

NOTICES:

- 1. **If to RMS:**

Attention: _____

Office held: _____

Address: _____

2. If to the Recipient

Attention: _____

Office held: _____

Address: _____

EXECUTION

Signed, sealed and delivered as a deed poll.

[Note: elect A, B, C or D depending on the status of the other party]

A. Where the Recipient is a company:

Executed as a deed poll by Recipient in accordance with section 127 of the Corporations Act 2001 (Cth):

Director

Co Secretary (or 2nd Director)

Name printed

Name printed

Date Signed

B. Where the Recipient is a sole trader:

Executed as a deed poll by Recipient in the presence of:

Signature

Signature of witness

Name printed

Name printed

Date Signed

C. Where the Recipient is a partnership:

Executed as a deed poll by Recipient by each of its partners:

<hr/> <hr/> <hr/> <hr/>	<hr/> Signature of partner <hr/> Name printed <hr/> Date Signed
<hr/> Signature of partner	
<hr/> Name printed	

D. Where the Recipient is a “sole director” company:

Executed as a deed poll by Recipient in accordance with section 127 of the *Corporations Act 2001* (Cth):

<hr/> <hr/> <hr/> <hr/>	<hr/> Signature of Sole Director and sole Company Secretary <hr/> Name printed <hr/> Date Signed
<hr/> Signature of witness	
<hr/> Name printed	

TERMS AND CONDITIONS

1. Dictionary and interpretation

1.1 Definitions

The following words have these meanings in this deed poll unless the contrary intention appears:

Approved Purpose means the Approved Purpose as set out in the Contract Details.

Authorised Officer means a person appointed by a party to act as an Authorised Officer for the purposes of this deed poll.

Confidential Information means all Information obtained by the Recipient from RMS or disclosed to the Recipient by RMS, any Representative of RMS, or any person acting on RMS's behalf, for or in connection with the Approved Purpose and all Information created by the Recipient in the course of carrying out the Approved Purpose, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of RMS, or a third party to whom RMS owes an obligation of confidentiality;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

whether the information:

- (d) was disclosed orally, in writing or in electronic or machine readable form;
- (e) was disclosed or created before, on or after the date of this deed poll;
- (f) was disclosed as a result of discussions between the parties concerning or arising out of the Approved Purpose; or
- (g) was disclosed by RMS, any of its Representatives or by a person acting on RMS's behalf.

Contract Details means the section of this deed poll headed Contract Details.

Corporations Act means the *Corporations Act 2001* (Cth).

Excluded Information means Confidential Information:

- (h) which is in or becomes part of the public domain otherwise than through breach of this deed poll or an obligation of confidence owed to RMS;

- (i) which the Recipient can prove by contemporaneous written documentation was already known to it at the time of disclosure by RMS, its Representative or a person acting on RMS's behalf, unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality; or
- (j) which the Recipient acquires from a source other than RMS, a Representative of RMS or a person acting on RMS's behalf where such source is entitled to disclose it.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Information means all information regardless of its Material Form, relating to or developed in connection with:

- (k) the business, technology or other affairs of RMS or any other Government Agency;
- (l) the Approved Purpose; or
- (m) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs, (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information, owned or used by, or licensed to RMS or any other Government Agency.

Material Form in relation to Information, includes any form (whether visible or not) of storage from which the Information can be reproduced and any form in which the Information is embodied or encoded.

Personal Information has the meaning it has in the *Privacy and Personal Information Protection Act 1998* (NSW).

Related Entity has the meaning it has in the Corporations Act.

Representative of a party includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer, contractor or sub-contractor of that party or of a Related Entity of that party.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed poll to:

- (a) **(variations or replacement)** a document (including this deed poll) includes any variation or replacement of it;
- (b) **(clauses, attachments and schedules)** a clause, attachment or schedule is a reference to a clause in or attachment or schedule to this deed poll;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (k) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience and do not affect the interpretation of this deed poll.

1.4 Confidential Information not in public domain

The parties acknowledge that Confidential Information will not be regarded as being in the public domain by reason only of the fact that some portion of it is public or that information is publicly available which, together with other information, could be used to produce any Confidential Information.

2. Term

This deed poll commences on the Commencement Date. The obligations of the Recipient survive termination or expiry of this deed poll.

3. Consideration

The Recipient gives the undertakings in this deed poll in consideration of RMS agreeing to disclose and disclosing the Confidential Information or parts of the Confidential Information in accordance with this deed poll.

4. Disclosure

4.1 No obligation to disclose information

Nothing in this deed poll obliges RMS, its Representatives or any person acting on RMS's behalf to disclose any particular information to the Recipient or its Representatives. RMS has an absolute discretion as to the information, which it chooses to disclose.

4.2 No representations or warranties given

The Recipient acknowledges that neither RMS, nor any of its Representatives, nor any person acting on RMS's behalf:

- (a) has made nor makes any representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information;
- (b) is under any obligation to notify the Recipient or provide any further information to the Recipient if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; or
- (c) has made nor makes any representation or warranty, express or implied, that the Confidential Information does not infringe the intellectual property rights or any other right of any person.

4.3 Recipient to make its own assessment

The Recipient agrees and acknowledges that:

- (a) it will rely solely on its own investigations and analysis in evaluating the Information disclosed by RMS or its Representatives or any person acting on RMS's behalf; and
- (b) any forecasts or estimates in the Information disclosed by RMS or its Representatives or any person acting on RMS's behalf may not prove correct or be achieved.

4.4 Disclaimer by RMS

Subject to any law to the contrary, and to the maximum extent permitted by law, RMS, its Representatives and all persons acting on RMS's behalf disclaim all liability for any loss or damage (whether foreseeable or not) suffered by any person using, disclosing or acting on any information disclosed by RMS or any of its Representatives or any person acting on RMS's behalf, whether the loss or damage arises in connection with any negligence, default or lack of care on the part of RMS or any of its Representatives, or any person acting on RMS's behalf, or any misrepresentation or any other cause.

5. Obligation of confidence

5.1 Confidential discussions

The Recipient undertakes not to disclose to any person without the prior written consent of RMS or except as it may be required to disclose by any law or order of any Government Agency or the rules of any stock exchange:

- (a) the existence of and contents of this deed poll and any other instruments entered into or to be entered into in connection with this deed poll;
- (b) the contents of any discussions between the parties relating to the Approved Purpose; or
- (c) the fact that any discussions between the parties relating to the Approved Purpose have taken place or will or may take place.

5.2 Recipient to maintain confidence

The Recipient must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) not, without the prior written consent of RMS, disclose any of the Confidential Information to any person other than those of its Representatives who need it for the Approved Purpose;
- (c) not use or disclose or reproduce any of the Confidential Information for any purpose other than the Approved Purpose;
- (d) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure and use the same degree of care a prudent person would use to protect that person's confidential information; and
- (e) immediately notify RMS of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

5.3 Recipient to inform RMS before disclosure

Before disclosing any of the Confidential Information to any of its Representatives for the Approved Purpose, the Recipient must:

- (a) inform RMS of the name and title of the Representatives to whom it is to be disclosed;
- (b) ensure that each Representative is made fully aware of the confidential nature of all Confidential Information prior to obtaining access to it;
- (c) cause each Representative to sign an undertaking in the form set out in Attachment A; and
- (d) deliver the signed undertaking to RMS.

5.4 Recipient's Representatives leaving its employ

The Recipient agrees to notify RMS promptly if any of its Representatives who have had access to the Confidential Information leave the employ or engagement of the Recipient.

5.5 Recipient's control of Confidential Information

The Recipient's obligation of non-disclosure under this deed poll includes keeping the Confidential Information out of any computer, database, or other electronic means of data or information storage except for a computer, database, or other electronic means of data or electronic storage exclusively controlled by the Recipient.

6. Recipient's Representatives

6.1 Recipient's responsibility for Representatives' conduct

The Recipient must procure that its Representatives (whether or not still employed or engaged by the Recipient) do not do or omit to do anything, which if done or omitted to be done by the Recipient, would be a breach of the Recipient's obligations under this deed poll.

6.2 Recipient to assist in RMS's action

The Recipient must give RMS all assistance it requires to take any action or bring any proceedings for breach of the undertaking delivered under clause 5.3 ("Recipient to inform RMS before disclosure").

7. Acknowledgements

7.1 Confidential Information belongs to RMS

The Recipient acknowledges that:

- (a) the Confidential Information constitutes valuable and proprietary information of RMS or its Representatives; and
- (b) this deed poll does not grant to the Recipient any licence or other right in relation to the Confidential Information except as expressly provided in this deed poll.

7.2 Injunctive relief

The Recipient acknowledges that damages are not a sufficient remedy for RMS and its Representatives for any breach of this deed poll and RMS is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient, in addition to any other remedies available to it at law or in equity.

8. Indemnity

8.1 Recipient indemnifies RMS

The Recipient undertakes to indemnify RMS and its Representatives and all persons acting on RMS’s behalf, against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any breach by the Recipient of this deed poll; or
- (b) any act or omission by any of its Representatives which, if done or omitted to be done by the Recipient, would be a breach of the Recipient’s obligations under this deed poll.

8.2 No set-off

The Recipient undertakes to pay to RMS and its Representatives and all persons acting on RMS’s behalf any sum due under clause 8.1 (“Recipient indemnifies RMS”) without any deduction or set-off (and irrespective of any counterclaim) whatsoever.

9. Exclusions

9.1 Excluded Information

Clauses 5.2 (“Recipient to maintain confidence”), 5.3 (“Recipient to inform RMS before disclosure”), 5.4 (“Recipient’s Representatives leaving its employ”) and 5.5 (“Recipient’s control of Confidential Information”) do not apply to the Excluded Information.

9.2 Disclosure required by law

Subject to compliance with clause 9.3 (“Limitation of disclosure”), this deed poll does not apply to the disclosure of any Confidential Information to the extent that it is required to be disclosed by the Recipient under any law.

9.3 Limitation of disclosure

Before the Recipient discloses any Confidential Information under any law, order or rule of the kind referred to in clause 9.2 (“Disclosure required by law”), the Recipient must provide RMS with:

- (a) sufficient notice to enable it to seek a protective order or other remedy; and
- (b) all assistance and co-operation which RMS considers necessary to prevent or minimise that disclosure of the Confidential Information.

10. Return of Confidential Information

10.1 Return of Confidential Information

The Recipient must (at its own expense):

- (a) return to RMS or at the option and direction of RMS destroy all documents and other materials in any medium in the possession, power or control of the Recipient or any of its Representatives which contain or refer to any Confidential Information (whether or not those documents and other materials were created by RMS or its Representatives or any person acting on RMS's behalf); and
- (b) delete any Confidential Information that has been entered into a computer, database or other electronic means of data or information storage,

on the earlier of:

- (c) demand by RMS; or
- (d) the time the documents and other materials are no longer required for the Approved Purpose.

10.2 No release from obligations

The return, destruction or deletion of the documents and other materials referred to in clause 10.1 ("Return of Confidential Information") does not release the Recipient or its Representatives from their obligations under this deed poll.

11. Privacy

The Confidential Information may include Personal Information. In addition to any other obligations it may have under any law or under this deed poll, the Recipient agrees to:

- (a) take all necessary measures to ensure that Personal Information in its possession or control in connection with this deed poll is protected against loss and unauthorised access, use, modification or disclosure; and
- (b) comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as though the Recipient were a public sector agency as defined in that Act.

12. Notices

12.1 Form

Unless expressly stated otherwise in this deed poll, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed poll ("notices") must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Contract Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

12.2 Delivery

Notices must be:

- (a) left at the address set out or referred to in the Contract Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Contract Details; or

(c) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address then the communication must be to that address.

12.3 When effective

Notices take effect from the time they are received unless a later time is specified in the notice.

12.4 Receipt - post

If sent by post, notices are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

13. General

13.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed poll expressly states otherwise.

13.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

13.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed poll.

13.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

13.5 Remedies cumulative

The rights and remedies provided in this deed poll are in addition to other rights and remedies given by law independently of this deed poll.

13.6 Variation and waiver

A provision of this deed poll or a right created under it may not be waived or varied except in writing, signed by the party or parties to be bound.

13.7 Indemnities

The indemnities in this deed poll are continuing obligations, independent from the other obligations of the Recipient under this deed poll and continue after this deed poll ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this deed poll.

13.8 Governing law

This deed poll is governed by the law in force in the State of New South Wales. The Recipient submits to the exclusive jurisdiction of the courts of the State of New South Wales.

ATTACHMENT A – (CLAUSE 5.3)

CONFIDENTIALITY UNDERTAKING

Recipient: #insert full name#

In favour of: **Laing O'Rourke Australia Construction Pty Limited ABN 39 112 099 000** of Level 4, 100 Arthur Street, North Sydney 2060; and

Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798 of Level 27, 680 George Street, Sydney, NSW 2000,

(together the **Delivery Partner**); and

Roads and Maritime Services ABN 76 236 371 088 of 101 Miller Street, North Sydney, New South Wales 2060 ("**RMS**"),

each a **Provider**, and together the **Providers**

I, agree for the benefit of the Providers:

- (a) that the Confidential Information made available to me is confidential to the Providers;
- (b) to keep the Confidential Information confidential;
- (c) only to use it for the Approved Purpose;
- (d) not to disclose any of the Confidential Information to any person other than:
 - (i) to those who have signed an undertaking in this form; and
 - (ii) who require it for the Approved Purpose,
 unless I have the prior written consent of the relevant Provider; and
- (e) that I am aware that damages are not a sufficient remedy for the Providers for any breach of this undertaking and each Provider is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by me of this undertaking, in addition to any other remedies available to a Provider at law or in equity; and
- (f) to comply with the confidentiality, conflict of interest and probity protocols, as provided by the Delivery Partner from time to time, in relation to this Project.

The Delivery Partner has informed me of the confidentiality obligations under the Confidentiality Deed Poll provided to RMS and of my obligations to maintain confidence.

This undertaking is governed by the law in force in New South Wales.

Approved Purpose means all tasks associated with the performance of the planning, programming, design management, procurement and construction management services to be provided by the Delivery Partner in accordance with the Delivery Partner Contract between the Delivery Partner and RMS.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, provided to the Recipient relating to the Project or the business, technology or other affairs of the Providers, but excludes:

- (a) information which is in or becomes part of the public domain otherwise than through breach of this undertaking;
- (b) information known to the Recipient on a non-confidential basis at the time of disclosure under this undertaking; or
- (c) information developed by the Recipient independently of the Confidential Information.

EXECUTED

.....
Signed

.....
Date

.....
Print name

Schedule 4 - RMS-Arranged Insurance

(Clause 6.2)

ITEM	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
<p>RMS-Arranged Insurance Copies of the insurance policies that are to be effected by RMS appear in Exhibit G. Capitalised terms used in this Schedule 4 which are not defined in the General Conditions of Contract are defined in the policies in Exhibit G.</p>				
1	Contract Works	Contract Works – as per Declared Value	Duration of the Works – covering RMS, Delivery Partner, Project Contractors and subcontractors and other parties as specified in the contract	RMS has arranged policies of insurance for contract works insurance
Excess for Contract Works	<p>The Delivery Partner is responsible for meeting the amount of any excess payable under the RMS-arranged insurance. The excess amounts current at the Commencement Date are:</p> <ul style="list-style-type: none"> ○ Water damage – excess is [REDACTED] per Event ○ Any other claim - excess is [REDACTED] per Event ○ Tunnelling contracts - excess is [REDACTED] per Event (where applicable) <p>The Delivery Partner may effect insurance to cover the amount of that excess at its own cost.</p>			
2	Public and Products Liability	Public and Products Liability [REDACTED]	Maintained until Project Completion – covering RMS, Delivery Partner, Project Contractors and subcontractors and other parties as specified in the contract	RMS has arranged policies of third party liability insurance

ITEM	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Excess for Public and Product Liability				<p>The Delivery Partner is responsible for meeting the amount of any excess payable under the RMS-arranged insurance. The excess amounts current at the date of the contract are:</p> <ul style="list-style-type: none"> • Injury to Contractors – excess is [REDACTED] per Occurrence • Products Liability – excess is [REDACTED] per Occurrence • Underground Services – excess is [REDACTED] per Occurrence • Any other claim – excess is [REDACTED] per Occurrence <p>The Delivery Partner may effect insurance to cover the amount of that excess at its own cost.</p>
3	Professional Indemnity			<p>RMS has effected a Principal Professional Indemnity insurance policy for its benefit and a separate policy for the benefit of the Delivery Partner (the latter referred to as the "DP PI Policy"). The DP PI Policy has a "Policy Period" which ends 10 years after the Commencement Date (the "Policy Expiry Date")</p> <p>The Delivery Partner acknowledges that RMS will use its best endeavours and subject to market availability:</p> <ol style="list-style-type: none"> i. to extend the period during which the DP PI Policy is maintained for a further period of two and a half (2.5) years following the Policy Expiry Date; and ii. where RMS extends the DP PI Policy, to maintain the total aggregate cover of the DP PI Policy on the same terms as at the Commencement Date, <p>provided that RMS is only obliged to effect any such extension if the premium for any such extension is commercially viable.</p> <p>If RMS does not effect any extension of the Policy Expiry Date of the DP PI Policy, RMS will not be entitled to make a claim against the Delivery Partner after the Policy Expiry Date in respect of any event, circumstance, fact, matter or thing for which the Delivery Partner would have been entitled to have been indemnified for "Loss" or "civil legal liability" (within the meaning of those terms in clause 2.1 and clause 2.2 (respectively) of the DP PI Policy) under the DP PI Policy.</p> <p>For the avoidance of doubt, this will not prevent RMS from making or proceeding with any claim against the Delivery Partner in respect of any event, circumstance, fact, matter or thing, notice of which was given to the Delivery Partner prior to the Policy Expiry Date.</p>

Schedule 5 - Delivery Partner Insurance

(Clause 6.3)

The Delivery Partner must effect and maintain the insurances set out below and pay all associated premiums for such insurances.

Item	Type of insurance	Insureds	Scope of cover to include	Amount of cover	Maximum deductible	Period cover to be maintained
1	Workers' compensation insurance effected with an "approved insurer" as defined in Definitions and Notes clause 1 below.	The Delivery Partner / RMS (in relation to its statutory liability to the Delivery Partner's employees).	<p>Covering against liability for death of or injury to persons employed by the Delivery Partner, including liability by statute and otherwise under applicable Law.</p> <p>Where permitted by applicable Law, the policy must also extend to provide indemnity to RMS for its statutory liability to the Delivery Partner's employees.</p> <p>The Delivery Partner must also ensure that each of its subcontractors and invitees has similar workers' compensation insurance covering the subcontractors' and invitees' employees.</p> <p>The insurance cover must comply with all relevant State Workers Compensation legislation that applies to the persons covered by the insurance.</p>	As required by applicable Law.	As allowed by applicable Law.	Until the Date of Project Completion.

Item	Type of insurance	Insureds	Scope of cover to include	Amount of cover	Maximum deductible	Period cover to be maintained
2	Employer's liability insurance effected with an "approved insurer" as defined in Definitions and Notes clause 1 below.	The Delivery Partner.	<p>In addition to workers' compensation insurance, coverage against liability for death of or injury to persons employed by the Delivery Partner, including liability by statute and otherwise under applicable Law.</p> <p>The Delivery Partner must also ensure that each of its subcontractors and invitees has similar employer's liability insurance covering the subcontractors' and invitees' employees.</p>	As required by applicable Law in respect of any one occurrence and unlimited in the number of occurrences.	As may be required by applicable Law.	Until the Date of Project Completion.
3	(If applicable to the Contract) Motor Vehicle Comprehensive or Third Party Property Damage effected with an "approved insurer" as defined in Definitions and Notes clause 1 below.	The Delivery Partner.	<p>(a) Motor vehicles owned or used by the Delivery Partner in performance of the Services. The Delivery Partner must also ensure that each of its subcontractors has similar motor vehicle insurance.</p> <p>The interest of RMS in respect of Third Party Property Damage cover for registered vehicles used onsite.</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</p> <p>(c) If applicable to the Contract – all plant and equipment owned or used by the Delivery Partner directly or indirectly in the performance of the Services.</p> <p>The Delivery Partner must also ensure</p>	█ for any single occurrence.		Until the Date of Project Completion.

Item	Type of insurance	Insureds	Scope of cover to include	Amount of cover	Maximum deductible	Period cover to be maintained
			that each of its subcontractors has similar plant and equipment insurance.			
4	Any other insurance which the Delivery Partner is required by Law to effect.	As required by Law.	As required by Law.	As required by Law.	As required by Law.	As required by Law.

Definitions and Notes

1. "Approved insurer" means:

(a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or

(b) Lloyds Underwriters; or

(c) a Treasury Managed Fund insurance scheme with the NSW State Government; or

(d) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).

2. Insurance policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.

3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit of the policy.

4. All Delivery Partner insurances are to be primary coverage.

Schedule 6 - Gainshare and Painshare Regime

(Clause 21)

1. Gainshare and Painshare Regime

In this Schedule:

Cost Gainshare means the amount (if any) payable by RMS to the Delivery Partner calculated in accordance with paragraph 1.1(b).

Interim Gainshare Payment means the portion (if any) of Total Gainshare payable to the Delivery Partner at Project Opening in accordance with paragraph 2.1(c)(iii).

Interim Painshare Payment means the portion (if any) of Painshare payable by the Delivery Partner at Project Opening in accordance with paragraph 2.1(c)(iv).

KRA Performance Framework has the meaning given in paragraph 1.2(b).

KRA Performance Pool means the lesser of:

- (a) the fixed amount of [REDACTED]; or
- (b) the amount by which the Total Project Budget exceeds the Total Project Cost,

provided that if this is less than zero there will be no KRA Performance Pool.

KRA Reward means the maximum amount of Performance Gainshare payable by RMS to the Delivery Partner in respect of a KRA under the Performance Regime, as shown in Table 1.

Modifier means a modifier listed in Table 2 of paragraph 1.4 and more fully described in Exhibit F.

Modifier Adjustments means any reductions to the Total Gainshare payable to the Delivery Partner as a result of the occurrence of a Modifier, as calculated in accordance with paragraph 1.4.

Painshare means the amount (if any) payable by the Delivery Partner to RMS calculated in accordance with paragraph 1.1(a).

Performance Gainshare means the amount (if any) payable by RMS to the Delivery Partner under the Performance Regime, calculated in accordance with this Schedule.

Performance Regime means the regime relating to the performance of the Delivery Partner against the KRAs, as described in paragraph 1.2.

Total Gainshare is the sum of the Cost Gainshare and Performance Gainshare payable to the Delivery Partner before taking into account any Modifier Adjustments, as further described in paragraph 1.4(b).

Total Gainshare Payable is the lesser of:

- (a) the Total Gainshare amount payable to the Delivery Partner (taking into account any Modifier Adjustments), calculated in accordance with paragraph 1.4(c); or
- (b) the Gainshare Amount Pool.

Any other defined terms have the meaning given in the General Conditions of Contract.

1.1 Cost Gainshare or Painshare Regime

- (a) If the Total Project Cost is greater than the DP Project Budget, Painshare will be calculated as follows:

Where the Total Project Cost is greater than the DP Project Budget and the difference is less than [REDACTED], Painshare will be [REDACTED].

Where the Total Project Cost is greater than the DP Project Budget and the difference between the Total Project Cost and the DP Project Budget is in the range of [REDACTED] to [REDACTED], Painshare will be:

[REDACTED] of the amount by which the Total Project Cost exceeds the DP Project Budget by more than [REDACTED].

Where the Total Project Cost is greater than the DP Project Budget and the difference between the Total Project Cost and the DP Project Budget is greater than [REDACTED], Painshare will be:

[REDACTED] plus [REDACTED] of the amount by which the Total Project Cost exceeds the DP Project Budget by more than [REDACTED] up to a maximum of [REDACTED].

- (b) If the Total Project Cost is less than the DP Project Budget, Cost Gainshare will be calculated as follows:

Where the Total Project Cost is less than the DP Project Budget and the difference between the Total Project Cost and the DP Project Budget is less than [REDACTED], Cost Gainshare will be:

[REDACTED] x (DP Project Budget – Total Project Cost).

Where the Total Project Cost is less than the Estimated Total Project Cost, Cost Gainshare will be:

[REDACTED] plus [REDACTED] of the amount by which the Total Project Cost is less than the Estimated Total Project Cost up to a maximum of [REDACTED].

- (c) The liability of the Delivery Partner to pay Painshare to RMS in accordance with this Schedule 6 will be capped at, and will not exceed, the Painshare Cap.

1.2 Performance Regime

- (a) The Performance Regime will measure the performance of the Delivery Partner in the performance of the Services against Key Performance Indicators ("KPIs") based on a set of Key Result Areas ("KRAs") that align with the Project Objectives. A summary of the KPIs and an indication where the Performance Regime will apply is shown in Table 1.

Table 1

KRA		KPI description		KRA Reward from KRA Performance Pool
KRA-1	Schedule	KPI-1.1	Opening to traffic	[REDACTED]
KRA-2	Quality	KPI-2.1	Rideability of final surface	[REDACTED]

KRA-3	Environment	KPI-3.1	Extent of clearing under Planning Approval	██████████
KRA-4	Travel Time	KPI-5.1	Travel time for road users during construction	██████████
KRA-5	Nominated Key Personnel and Delivery Partner Performance	KPI-7.1	Nominated Key Personnel availability, stability and performance	██████████
		Maximum amount of Performance Gainshare		██████████ (subject to the definition of the KRA Performance Pool)

- (b) The methodology to measure the Delivery Partner's performance against the KPIs, and the KPI weightings for each KRA, are set out in Exhibit E *Key Performance Indicators* ("KRA Performance Framework").
- (c) The Performance Framework and KRA Performance Framework referred to in this Schedule 6 only deals with financial KRAs and KPIs that will be taken into account in determining the Delivery Partner's entitlement to Performance Gainshare.

In addition to these financial KRAs and KPIs there are other KRAs and KPIs which will not be taken into account in the Performance Regime.

1.3 KRA Performance Pool

- (a) RMS has established a KRA Performance Pool of ██████████ to fund the Delivery Partner's entitlement to Performance Gainshare payments.

If as a result of the application of paragraph (b) of the definition of KRA Performance Pool, the KRA Performance Pool is less than ██████████, then the amounts in Table 1 relating to the Performance Regime will be reduced so that they bear the same proportion to the final KRA Performance Pool amount as the amounts in Table 1 bear to ██████████.

- (b) The Delivery Partner's entitlement under the Performance Regime is to be calculated in accordance with the KRA Performance Framework.

1.4 Modifier Adjustments

- (a) The Delivery Partner's entitlement to Total Gainshare, if any, under this Contract will be reduced by the occurrence of a Modifier which arises out of or in connection with the Services or the Works.

The Delivery Partner acknowledges and agrees that any Modifier Adjustment by a Modifier is cumulative and irreversible such that it will result in an irreversible diminution of the Delivery Partner's entitlement to Total Gainshare.

- (b) The Delivery Partner's entitlement to Total Gainshare, before accounting for Modifier Adjustments, is equal to the sum of Cost Gainshare plus Performance Gainshare.
- (c) Modifier Adjustments will be applied to the Total Gainshare to determine the "Total Gainshare Payable", calculated in accordance with the following:

$$\text{Total Gainshare Payable} = \text{Total Gainshare} \times (1 - (\text{Total Modifier Adjustment}))$$

where:

- (i) Total Modifier Adjustment is the sum of each Modifier Adjustment expressed in decimal form;
 - (ii) Modifier Adjustment is the % reduction for each Modifier as set out in Exhibit F; and
 - (iii) the Total Modifier Adjustment from paragraph 1.4, expressed in decimal form, cannot exceed 1.
- (d) Table 2 summarises the Modifiers together with the maximum Modifier Adjustment which may be made to Total Gainshare in respect of each Modifier.

Detailed descriptions of the Modifiers and the methodology by which Modifier Adjustments will be determined and applied are set out in the document which appears in Exhibit F entitled "*Modifier Adjustments*".

Table 2

Modifier	Maximum Modifier Adjustment to Total Gainshare
Workmanship	█
Work Health and Safety	█
Environment	█
Traffic	█
Total	100% of Total Gainshare

2. Entitlement and liability

2.1 Calculation of Interim Gainshare Payment or Interim Painshare Payment at Project Opening

- (a) Prior to the date of Project Opening the Delivery Partner will have no entitlement to Cost Gainshare or Performance Gainshare.
- (b) Within 40 Business Days after Project Opening, RMS must determine the:
 - (i) DP Project Budget as at the date of Project Opening;
 - (ii) Total Project Cost as at the date of Project Opening;
 - (iii) Delivery Partner's forecast of the predicted Total Project Cost (as set out in the then current DP Cost Plan) to Project Completion;
 - (iv) Delivery Partner's performance against the KPIs up to Project Opening; and
 - (v) effect of any Modifier Adjustments on the Total Gainshare to Project Opening.
- (c) Within 60 Business Days after Project Opening RMS must calculate any:

- (i) Total Gainshare Payable to the Delivery Partner; or
- (ii) Painshare payable by the Delivery Partner,

as at the date of Project Opening, and:

- (iii) [REDACTED] of any Total Gainshare Payable as at the date of Project Opening will be paid by RMS to the Delivery Partner as an Interim Gainshare Payment; or
 - (iv) [REDACTED] of any Painshare payable by the Delivery Partner as at the date of Project Opening must be paid by the Delivery Partner to RMS, as an Interim Painshare Payment.
- (d) The parties agree that any Interim Painshare Payment payable in accordance with paragraph 2.1(c) will be recoverable from the Delivery Partner as a debt due and payable by RMS, which must be paid within 20 Business Days of RMS's determination under paragraph 2.1(c).
- (e) Any determination by RMS under paragraph 2.1(c)(i) and subsequent payment:
- (i) are payments on account only and are not evidence that the whole or any part of the Works have been performed in accordance with this Contract;
 - (ii) are subject to audit in accordance with the procedure set out in this Contract;
 - (iii) are at risk against the Delivery Partner's performance until Project Completion and will be subject to recalculation and adjustment; and
 - (iv) if, as a result of any determination by RMS in paragraph 2.3(b) or paragraph 2.3(c) or any audit in accordance with this Contract, an amount paid or payable by RMS is to be returned or repaid to RMS, that part of any such payment will, in those circumstances, be deemed to be held on trust by the Delivery Partner for RMS.

2.2 Calculation and payment of Gainshare or Painshare at Project Completion

- (a) Within 40 Business Days after the issue of the Certificate of Project Completion, RMS must determine the:
- (i) DP Project Budget as at the Date of Project Completion;
 - (ii) Total Project Cost as at the Date of Project Completion;
 - (iii) Delivery Partners' performance against the KPIs from the date of this Contract to the Date of Project Completion; and
 - (iv) effect of any Modifier Adjustments on the Total Gainshare to the Date of Project Completion.
- (b) Within 60 Business Days after the issue of the Certificate of Project Completion, RMS must re-calculate:
- (i) any Total Gainshare Payable, if any, to the Delivery Partner;

- (ii) any Painshare, if any, payable by the Delivery Partner,
- (iii) the Delivery Partner' entitlement, if any, to Total Gainshare Payable; and
- (iv) the Delivery Partner' obligation, if any, to pay Painshare,

as at the Date of Project Completion and after taking into account any Interim Gainshare Payment paid or Interim Painshare Payment received by RMS:

- (v) RMS must pay the Delivery Partner any remaining Total Gainshare Payable; and
 - (vi) the Delivery Partner must pay RMS any remaining Painshare.
- (c) The Delivery Partner agrees that payment of any amounts under this paragraph 2.2 by RMS or the Delivery Partner (as the case may be) will be made in accordance with clause 16 of the Contract.

2.3 Trend Analysis and Suspension of Fee

- (a) The Delivery Partner must put in place appropriate procedures to allow appropriate trending analysis of performance against each element of the Gainshare and Painshare Regime set out in this Schedule 6 to be completed and reported to RMS.
- (b) If, at any time during the performance of the Services, RMS determines that the Delivery Partner's performance in any element of the Gainshare and Painshare Regime is expected to result in a Painshare payment being payable by the Delivery Partner:
 - (i) the Delivery Partner must take whatever reasonable steps are available to remedy the situation and improve the Delivery Partner's performance; and
 - (ii) RMS may suspend the payment of (but not the entitlement to) the Delivery Partner's Margin to the Delivery Partner to the extent necessary to cover the Delivery Partner' liability to pay a Painshare payment, which suspension of payment will be effective for the period commencing on the date determined by RMS and ending on the Date of Project Completion or such earlier date determined by RMS.
- (c) If, following receipt of a report from the Delivery Partner or otherwise, RMS forms the view that the Total Project Cost will or is likely to be equal to or greater than the DP Project Budget, then RMS may immediately suspend the payment of (but not the entitlement to) the Delivery Partner Margin to the Delivery Partner, to the extent necessary to cover the Delivery Partner's liability to a Painshare payment which suspension of payment will be effective for the period commencing on the date specified by RMS and ending on the Date of Project Completion or such earlier date determined by RMS.

2.4 Payment adjustments

- (a) RMS may review all payments of the Contract Price, the Total Project Cost and any payment under this Schedule 6 for any adjustment at the:
 - (i) time of any audit, inspection or investigation carried out in accordance with this Contract;
 - (ii) date of Project Opening; and

- (iii) issue of the Certificate of Project Completion.
- (b) The Delivery Partner acknowledges and accepts that all entitlements and liabilities under this Schedule 6 and under Schedule 7 are subject to audit, inspection, investigation and adjustment in accordance with this Contract.

Schedule 7 - Contract Price and Payment

(Clause 16.1)

7.1 Contract Price

The Contract Price comprises:

- (a) the Direct Costs (consisting of the ABP, the Employment On-Costs and the Employment Overheads), and
- (b) subject to Schedule 6, the Delivery Partner Margin,

as set out in the table below.

Direct Costs	<p>Aggregate Basic Pay ("ABP") - The Delivery Partner is to be paid the aggregate basic pay, being the actual base salary payment (including superannuation, personal allowances and leave entitlements as described in section 7.2) made to each of the personnel to be provided by the Delivery Partner to perform the Services as set out in the Table in section 7.2 below or as otherwise approved by RMS ("Approved Personnel").</p> <p>The ABP will be calculated as set out in section 7.2.</p>
	<p>Employment On-Costs - The Delivery Partner is to be paid [REDACTED] of the ABP payable to the Delivery Partner.</p> <p>This will cover the statutory on costs that are payable in respect of the employment of the Approved Personnel provided by the Delivery Partner as part of its Project team and include:</p> <ul style="list-style-type: none"> • workers' compensation; • payroll tax; and • redundancy provision.
	<p>Employment Overheads - The Delivery Partner is to be paid on a reimbursable basis all direct project overhead costs associated with the employment of the Approved Personnel engaged on performance of the Services ("Reimbursable EO Costs").</p> <p>The Reimbursable EO Costs will be calculated as set out in section 7.3.</p>
Delivery Partner Margin	<p>Margin - The Delivery Partner is to be paid [REDACTED] on account of profit and head office overheads, as adjusted under clause 15.3.</p>

7.2 Estimated Contract Price

At the date of the Contract, the estimated Contract Price included in the Estimated Total Project Cost is [REDACTED] and includes the estimated total Direct Costs (consisting of the estimated total ABP, the estimated total Employment On-Costs, the estimated total Employment Overheads and the estimated escalation provision) and the total Delivery Partner Margin, as calculated below.

Role	Approved Personnel	Estimated Monthly ABP (\$, excl GST)	Estimated Duration on Project (months)	Estimated Total ABP (\$, excl GST)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Role	Approved Personnel	Estimated Monthly ABP (\$, excl GST)	Estimated Duration on Project (months)	Estimated Total ABP (\$, excl GST)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Role	Approved Personnel	Estimated Monthly ABP (\$, excl GST)	Estimated Duration on Project (months)	Estimated Total ABP (\$, excl GST)
[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Role	Approved Personnel	Estimated Monthly ABP (\$, excl GST)	Estimated Duration on Project (months)	Estimated Total ABP (\$, excl GST)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

A	Estimated Total ABP (excl GST)	[REDACTED]
B = (Ax%)	Estimated Total Employment On-Costs (Ax%)	[REDACTED]
C	Estimated Total Employment Overheads	[REDACTED]
D	Estimated Escalation Provision	[REDACTED]
E = A+B+C+D	Estimated Total Direct Costs	[REDACTED]
F	Corporate Overhead	[REDACTED]
G	Profit	[REDACTED]
H = F+G	Delivery Partner Margin	[REDACTED]
I = E+H	Estimated Contract Price	[REDACTED]
M	Painshare Cap	[REDACTED]
N	Delivery Partner Margin Not at Risk	[REDACTED]

The actual ABP to be paid by RMS in respect of Approved Personnel will be for the time spent actually providing the Services and based on the amounts as evidenced by the actual amounts shown on primary payroll records for each of the Approved Personnel to be provided by the Delivery Partner to perform the Services, expressed as a daily rate for a working week calendar adjusted to include accruals for leave entitlements ("**Adjusted Daily Rate**").

These actual amounts must include all:

- superannuation payments;
- leave entitlements accrued by the Approved Personnel for the actual days/hours worked on the Project; and
- personal allowances forming part of the salary package of each Approved Personnel (e.g. site allowances and car allowances),

but exclude any bonus payments, contestable portions of the salary package measured on performance outcomes, living away from home allowances and any other allowances and entitlements described in section 7.3 below.

The Adjusted Daily Rates are the actual amounts calculated as set out above divided by the number of days per annum available to provide the Services, where the number of days is calculated as the total number of annual working days less 33 days, being the sum of annual leave entitlements, public holiday entitlements and the historical company averages for leave taken by each of the entities that comprise the Delivery Partner for sick leave, personal and carer's leave, compassionate leave and community service leave.

Primary payroll records are the source records of the employing entity for the employee.

Where the Approved Personnel to be provided by the Delivery Partner to perform the Services are contractors or subcontractors the Delivery Partner will be paid the actual invoice cost of the contractors or subcontractors.

7.3 Employment Overheads

- (a) Reimbursable EO Costs will be limited to the items described in the table below but will not include the items listed in paragraph (b).

Category of Employment Overheads	Principles for determining Reimbursable EO Costs
Site, Facilities and Employee Equipment	<p>Establishment, maintenance and operation of the Site, any Project specific offices, site accommodation, warehousing, site compounds or other facilities (including all site transportation facilities (such as motor vehicles), utilities, consumables and dedicated telecommunications and information technology services and the like) and any employee equipment (such as mobile phones), necessary to perform the Services.</p> <p>All cash, trade and/or industry discounts and rebates obtained by the Delivery Partner will be credited against its Reimbursable EO Costs including any annual or company discounts from subcontractors, suppliers, vendors, bulk discounts and company/inter-company discounts and/or rebates.</p>
Personal Allowances and Fringe Benefits	<p>All personal allowances additional to those described in section 7.2, allowed and recoverable in accordance with RMS's Statement of Business Ethics.</p>
Travel	<p>All Project specific travel expenses including any living away from home allowance, relocation costs, transfers, accommodation, meals and/or per diem expenses incurred in accordance with RMS's respective travel policies.</p>
Recruitment, Training and Inductions	<p>All Project specific personnel recruitment, training costs and/or site inductions (including work health and safety inductions) agreed or recommended by RMS.</p>
Marketing	<p>All Project related marketing costs as agreed by RMS, including the costs of advertising the Project and attending awards presentations.</p>
Severance Costs	<p>All Project specific severance costs agreed by RMS.</p>
Safety	<p>All personal protective or site safety equipment work health and safety requirements and the cost or expenses to provide and maintain a safe working environment and to take all practicable steps to ensure the safety of all persons performing or affected by any aspect of the Services.</p>

Category of Employment Overheads	Principles for determining Reimbursable EO Costs
Motor Vehicle and Fuel Tax Credits	The costs of motor vehicles which do not ordinarily form part of an employee's salary package will form part of the Reimbursable EO Costs. All fuel tax credits obtained by the Delivery Partner will be credited against its Reimbursable EO Costs.
Insurances	Premiums for Project specific insurance policies which the Delivery Partner is required by the Contract to take out and maintain.
Legal Costs in successful defence of Prosecutions	Reasonable legal costs incurred in defending any action or proceeding where the Delivery Partner is being prosecuted by an Authority in respect of the breach or contravention of an WHS or Environmental Law and where the action or proceeding does not result in a successful prosecution.

- (b) For the avoidance of doubt, the following items, costs and/or expenses are not Reimbursable EO Costs:
- (i) any costs incurred by the Delivery Partner prior to the Commencement Date;
 - (ii) any off site administrative or support function which is not directly involved in performing the Services;
 - (iii) any cost that is included in the ABP and Employment On-Costs;
 - (iv) any employee incentive payments, bonus payments or other contestable portions of a salary package measured on performance outcomes;
 - (v) non Project-related marketing and advertising costs;
 - (vi) the costs of non-Project specific head office personnel management in any attendance, support and participation in the Project and the Services;
 - (vii) all sums paid defending or prosecuting civil lawsuits or claims, arising out of the Contract, or any legal service otherwise necessary or expedient for the performance of the Contract, including any sums paid or payable after Project Completion arising from any act or omission of the Delivery Partner;
 - (viii) any fine, penalty or sanction imposed by a court or other statutory authority upon the Delivery Partner or any Approved Personnel or any legal costs incurred by the Delivery partner in defending any proceedings where such a fine, penalty or sanction is imposed;
 - (ix) any taxes, duties, excises, levies or similar charges excluded by operation of this Contract;
 - (x) any item, cost and/or expense excluded by any clause in this Contract; and

- (xi) any contribution to the Delivery Partner's corporate overhead costs or expenses or any contribution to the Delivery Partner's divisional, departmental or corporate profit expectations.

7.4 Payment of Margin

- (a) The Delivery Partner Margin will be paid in monthly instalments in accordance with the table below. If Project Completion occurs after the payment of the instalment (set out below) which is due to be made in Month 58, the Delivery Partner will not be entitled to any further payment of Delivery Partner Margin until Project Completion.

RMS may (in its absolute discretion) pay the Delivery Partner an amount on account of the [REDACTED] of the Delivery Partner Margin that is to be paid upon Project Completion at a point in time earlier than Project Completion.

Month	Portion of Delivery Partner Margin payable
1	the lesser of [REDACTED] and X
2	the lesser of [REDACTED] and X
3	the lesser of [REDACTED] and X
4	the lesser of [REDACTED] and X
5	the lesser of [REDACTED] and X
6	the lesser of [REDACTED] and X
7	the lesser of [REDACTED] and X
8	the lesser of [REDACTED] and X
9	the lesser of [REDACTED] and X
10	the lesser of [REDACTED] and X
11	the lesser of [REDACTED] and X
12	the lesser of [REDACTED] and X
13	the lesser of [REDACTED] and X
14	the lesser of [REDACTED] and X
15	the lesser of [REDACTED] and X
16	the lesser of [REDACTED] and X
17	the lesser of [REDACTED] and X
18	the lesser of [REDACTED] and X
19	the lesser of [REDACTED] and X

Month	Portion of Delivery Partner Margin payable
20	the lesser of [REDACTED] and X
21	the lesser of [REDACTED] and X
22	the lesser of [REDACTED] and X
23	the lesser of [REDACTED] and X
24	the lesser of [REDACTED] and X
25	the lesser of [REDACTED] and X
26	the lesser of [REDACTED] and X
27	the lesser of [REDACTED] and X
28	the lesser of [REDACTED] and X
29	the lesser of [REDACTED] and X
30	the lesser of [REDACTED] and X
31	the lesser of [REDACTED] and X
32	the lesser of [REDACTED] and X
33	the lesser of [REDACTED] and X
34	the lesser of [REDACTED] and X
35	the lesser of [REDACTED] and X
36	the lesser of [REDACTED] and X
37	the lesser of [REDACTED] and X
38	the lesser of [REDACTED] and X
39	the lesser of [REDACTED] and X
40	the lesser of [REDACTED] and X
41	the lesser of [REDACTED] and X
42	the lesser of [REDACTED] and X
43	the lesser of [REDACTED] and X
44	the lesser of [REDACTED] and X
45	the lesser of [REDACTED] and X
46	the lesser of [REDACTED] and X

Month	Portion of Delivery Partner Margin payable
47	the lesser of [REDACTED] and X
48	the lesser of [REDACTED] and X
49	the lesser of [REDACTED] and X
50	the lesser of [REDACTED] and X
51	the lesser of [REDACTED] and X
52	the lesser of [REDACTED] and X
53	the lesser of [REDACTED] and X
54	the lesser of [REDACTED] and X
55	the lesser of [REDACTED] and X
56	the lesser of [REDACTED] and X
57	the lesser of [REDACTED] and X
58	the lesser of [REDACTED] and X
Project Completion	[REDACTED] of the Delivery Partner Margin plus any balance of the Delivery Partner Margin that has not yet been paid.

Where X = [REDACTED] of the Direct Costs payable in that month to the Delivery Partner.

- (b) Without limiting Schedule 6, if at any time during the term of the Contract the Predicted Final Total Project Cost exceeds the DP Project Budget, RMS may in its absolute discretion deduct an amount from the Delivery Partner Margin on account of any Predicted Painshare Amount.

Where the Delivery Partner Margin which remains payable to the Delivery Partner at that time is less than the Predicted Painshare Amount, RMS may exercise its right of set off under clause 16.9 of the Contract to recover the difference from any other amount that is or becomes payable to the Delivery Partner.

If RMS deducts an amount or amounts from the Delivery Partner Margin on account of any Predicted Painshare Amount ("**Deducted Margin**") and at any future point after it has made that deduction the amount by which the Predicted Final Total Project Cost exceeds the DP Project Budget is less than the Deducted Margin, RMS will repay the Delivery Partner an amount equal to the difference between the Predicted Painshare Amount and the Deducted Margin.

"Predicted Final Total Project Cost" means:

- (i) the Delivery Partner's estimate of the final Total Project Cost at any given point in time, as forecast and recorded by the Delivery Partner in the then current DP Cost Plan; or

- (ii) if RMS (acting reasonably) believes that the likely final Total Project Cost will be greater than the amount in paragraph (i), RMS's estimate of the final Total Project Cost.

"Predicted Painshare Amount" means the amount by which the Predicted Final Total Project Cost exceeds the DP Project Budget.

7.5 Principles for Valuing Variations and changes to the Works

- (a) Where a Variation to the Services is directed under clause 15.2 of the Contract for the purpose of clause 15.3(b)(i) of the Contract, the Delivery Partner Margin is to be adjusted as follows:

$$\text{ADPM} = [(\text{ABP}+) + (\text{EOC}) + (\text{EO})] \times \text{DP Margin}\%$$

Where:

ADPM = the amount to be added to or deducted from the Delivery Partner Margin on account of the Variation;

ABP+ = the additional or reduced Aggregate Basic Pay payable as a result of the additional or reduced Services required to be carried out by the Variation;

EOC = ████████ of ABP+;

EO = additional or reduced Employment Overheads payable as a result of the additional or reduced Services required to be carried out by the Variation; and

DP Margin% = the percentage to be agreed between the parties in respect of the Variation or, failing agreement, the percentage determined by the Authorised Representative.

- (b) Where a Variation to the Services is directed under clause 15.2 of the Contract, for the purpose of clause 15.3(b)(ii) of the Contract, the Estimated Total Project Cost and DP Project Budget are to be adjusted as follows:

$$\text{AETDP} = (\text{ABP}+) + (\text{EOC}) + (\text{EO}) + \text{ADPM}$$

Where

AETDP = the amount to be added to or deducted from the Estimated Total Project Cost and the DP Project Budget on account of the Variation; and

ABP+, **EOC**, **EO** and **ADPM** have the meaning given in paragraph (a) in respect of that Variation.

- (c) Where a direction is issued by the Authorised Representative pursuant to clause 15.4, the Estimated Total Project Cost and DP Project Budget will be adjusted by the amount representing the reasonable cost of the additional or reduced Works to be undertaken as a result of the direction, such amount to be:
- (i) as agreed between the parties; or
 - (ii) failing agreement, determined by the Authorised Representative who shall where it is appropriate to do so use the rates and prices in the then current DP Cost Plan for valuing this amount.

Schedule 8 - Work Health and Safety Deed Poll

(Clause 10.1(d)(ii))

DEED POLL

This Deed Poll is made at _____ on the _____ day of _____ 20##

In favour of: **Laing O'Rourke Australia Construction Pty Limited** (ABN 39 112 099 000) of Level 4, 100 Arthur Street, North Sydney, New South Wales 2060 and
Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) of Level 27, 680 George Street, Sydney, New South Wales 2000

(together the "Delivery Partner")

Roads and Maritime Services (ABN 76 236 371 088) of 101 Miller Street, North Sydney, New South Wales 2060 ("**RMS**")

Given by: **[#insert details#] ABN [#insert details#] of [#insert details#] ("Contractor")**

Recitals

- E. By a contract dated [#insert date#] between the Contractor and RMS ("**Project Contract**"), the Contractor has been engaged to undertake certain works ("**Project Contractor Works**") on the land more particularly described in the Project Contract ("**Site**").
- F. For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW) (together, the "**WHS Legislation**"), the Project Contractor Works form part of a "construction project" within the meaning of the WHS Legislation comprising **[#insert description of sections forming part of the work#]** ("**Construction Project**").
- G. Pursuant to clause 10.1(b) of a contract dated [#insert date#] between RMS and the Delivery Partner ("**Delivery Partner Contract**"), RMS has appointed the Delivery Partner as principal contractor for the Construction Project and authorised the Delivery Partner to have management and control of the relevant workplace for the purpose of discharging the duties imposed on a principal contractor for the Construction Project.
- H. Under clause 10.1(d)(ii) of the Delivery Partner Contract, the Delivery Partner is required to procure the provision of this Deed Poll from the Contractor.

This Deed Poll provides

- 1. In consideration of the Delivery Partner accepting this Deed Poll, the Contractor agrees that:
 - (a) the Contractor, its sub-contractors and their respective personnel while they are engaged on the Construction Project, will comply with safety regulations, any rules or regulations and with all directions of the Delivery Partner with respect to work health and safety;
 - (b) the Contractor, its sub-contractors and their respective personnel will comply in a timely manner with directions of the Delivery Partner so that the Delivery Partner discharges its obligations as principal contractor;

- (c) the Contractor, its sub-contractors and their respective personnel will consult, cooperate and coordinate activities with the Delivery Partner, RMS and all other persons who have a work health and safety duty in relation to the same matter;
 - (d) the Contractor, its sub-contractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Delivery Partner while engaged on the Construction Project;
 - (e) the Delivery Partner may exclude the Contractor, any of its sub-contractors and their respective personnel from the Construction Project for work health and safety reasons;
 - (f) the Delivery Partner may direct the Contractor, any of its sub-contractors and their respective personnel to perform or not perform certain acts for work health and safety reasons and the Contractor must comply with any such direction;
 - (g) where high risk construction work is to be carried out in the performance of the Project Contractor Works, the Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to RMS and the Delivery Partner prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Delivery Partner, suspend the performance of any high risk construction work;
 - (h) the Contractor shall in carrying out the work under the Project Contract, comply with, and ensure that all subcontractors and personnel comply with, the WHS Legislation; and
 - (i) in its contracts with subcontractors, the Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Contractor under this Deed Poll.
2. The Contractor indemnifies the Delivery Partner against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Delivery Partner as a result of:
- (a) any failure by the Contractor to comply with any direction given by the Delivery Partner in accordance with this Deed Poll; or
 - (b) any breach by the Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this Deed Poll.
3. This Deed Poll will be governed by and construed in accordance with the law for the time being of the State of New South Wales.

Executed as a Deed Poll.

Executed by **[Contractor]** by or in the presence of:



Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 9 - Contractor Statement and Supporting Statement

(Clauses 1.1 and 16.4(a))

Contractor Statement

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



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

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



Details

Contractor's Legal Name

Contractor's Trading / Business Name

Contractor's ABN Contractor's ACN

Contractor's Address

Name or description of Contract or Works

Period of Work this Statement applies to (*see Note 3*) From To

Invoice or Payment Claim Numbers this applies to

Invoice or Payment Claim Dates this Statement applies to

Statement Validity Period

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

Declaration

Tick one in each row

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

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

Signature of Authorised Person

Date

Name of Signatory (*print*)

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

(*see Notes on page 2*)

Notes for Contractor Statement

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of RMS. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "RMS" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow RMS to withhold payment from a Contractor without any penalty unless and until the Contractor provides to RMS a Statement declaring that:
 - a. All workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid; and
 - b. all remuneration payable to relevant employees for work under the contract has been paid; and
 - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
5. A Statement is not required where RMS is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

Generic Version of Statement

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

http://www.industrialrelations.nsw.gov.au/pdfs/subcontractor_statement_form.pdf; or
<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>.

Record Retention

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

Offences for False Statement

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

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rrpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Supporting Statement

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

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

The Contractor is a “head contractor” in terms of the *Building and Construction Industry Security of Payment Act 1999*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, to sign the statement by the Contractor).

Relevant legislation includes *Building and Construction Industry Security of Payment Regulation 2008* cl 4A

Main Contract

Head contractor: _____
(Business name of the head contractor)

ABN _____ **ACN** _____

Of _____
(Address of Contractor)

has entered into a contract with **Roads and Maritime Services**

Contract description _____

Contract number/identifier _____

Subcontracts

The head contractor has entered into a contract with the subcontractors listed in the attachment to this Statement.

Period

This Statement applies for work _____ and _____
between: _____ inclusive

subject of the payment claim date: _____

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

Signature: _____

Date: _____

Full Name: _____

Position / Title: _____

Attachment to the Supporting Statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Notes for Supporting Statement

Offences for False Statement

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

Further Information

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

Schedule 10 - DAB Agreement

(Clauses 1.1 and 19)

Dispute Avoidance Board Agreement

This Agreement is made on the _____ day of _____ 2015 between the following parties:

1. **Roads and Maritime Services** (ABN 76 236 371 088) of 101 Miller Street, North Sydney, New South Wales 2060 (**RMS**)
and
2. **Laing O'Rourke Australia Construction Pty Limited** (ABN 39 112 099 000) of Level 4, 100 Arthur Street, North Sydney, New South Wales 2060 **and**
Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) of Level 27, 680 George Street, Sydney, New South Wales 2000
(together the **Delivery Partner**)
and
3. **Member of the Dispute Avoidance Board (Member)**, namely: **Graham Easton** of 73 Carlotta Street, Greenwich, New South Wales 2065

RECITALS:

- A. RMS is responsible for procuring the execution and completion of the Woolgoolga to Ballina Pacific Highway Upgrade Project (**Project**). It has entered into a deed (**Delivery Partner Contract**) with the Delivery Partner to provide services in respect of the Project.
- B. Clause 19 of the Delivery Partner Contract provides for a dispute resolution process through the establishment and the operation of a dispute avoidance board to assist in resolving Disputes under the Delivery Partner Contract.
- C. This agreement sets out the rights, obligations and duties of the Member, RMS and the Delivery Partner in relation to the Dispute Avoidance Board (**DAB**) (the **Agreement**).

THIS AGREEMENT PROVIDES

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

Member means the individual appointed to the Dispute Avoidance Board in accordance with this Agreement.

Rules has the meaning in clause 4(b) of this Agreement.

1.2 Terms defined in the Delivery Partner Contract

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Delivery Partner Contract.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Agreement; and

- (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. Agreement to prevail

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the Delivery Partner Contract the terms of the Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 19 of the Delivery Partner Contract.

3. Formation of the DAB

The Parties acknowledge that the DAB:

- (a) has been formed;
- (b) is constituted by the Member; and
- (c) must perform its obligations and functions under the Delivery Partner Contract and this Agreement.

4. Establishment of procedures

- (a) During the first meeting at the Site, the DAB will establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the DAB determination of a Dispute referred to it pursuant to clause 19 of the Delivery Partner Contract) in accordance with the procedures included in Appendix 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the rules for the DAB decision process (**Rules**) set out in Appendix 2 to this Agreement in respect of any Dispute referred to the DAB pursuant to clause 19 of the Delivery Partner Contract.

5. DAB Member's obligations

5.1 Dispute Prevention

The Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the parties in preventing Disputes from arising under the Delivery Partner Contract and if a Dispute cannot be prevented, determined in accordance with clause 19 of the Delivery Partner Contract.

5.2 Impartiality

The Member agrees to consider fairly and impartially the Disputes and other matters referred to the DAB.

5.3 Independence

The Member agrees to act honestly and independently in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 5 of this Agreement.

5.4 General duties

The Member agrees to carry out his or her obligations as a Member of the DAB:

- (a) with due care and diligence;
- (b) in compliance with the Delivery Partner Contract and this Agreement; and
- (c) in compliance with all applicable Laws.

6. Costs and fees

- (a) RMS and the Delivery Partner are jointly and severally liable for the payment of the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3.
- (b) RMS and the Delivery Partner agree as between themselves that:
 - (i) they will each pay one half of:
 - A. the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Appendix 3;
 - B. any third party costs incurred in holding the conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any decision process of the DAB.

7. RMS's commitment and responsibilities

RMS acknowledges and agrees that it must:

- (a) act in good faith towards the Member and the DAB;
- (b) comply with the reasonable requests and directions of the DAB; and
- (c) except for its participation in the DAB's activities as provided in the Delivery Partner Contract and this Agreement, not solicit advice or consultation from the DAB or the Member on matters dealing with the resolution of Disputes which may compromise the DAB's integrity or compliance with this Agreement.

8. Delivery Partner's commitments and responsibilities

The Delivery Partner acknowledges and agrees that it must:

- (a) act in good faith towards the Member and the DAB;
- (b) comply with the reasonable requests and directions of the DAB; and
- (c) except for its participation in the DAB's activities as provided in the Delivery Partner Contract and this Agreement, not solicit advice or consultation from the DAB or the Member on matters dealing with the resolution of Disputes which may compromise the DAB's integrity or compliance with this Agreement.

9. Confidentiality

In relation to all confidential information disclosed to the DAB at any time the Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. Conflict of interest

- (a) If the Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform RMS and the Delivery Partner.
- (b) RMS and the Delivery Partner will within five Business Days of notification under clause 10(a) confer and inform the Member whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of RMS or the Delivery Partner believe that the Member should be replaced, the Member will immediately resign from the DAB and a reappointment will occur pursuant to clause 13.3.

11. Liability

11.1 Liability

The Member is not liable to either RMS or the Delivery Partner for any act or omission done in good faith and with due care and diligence.

11.2 Due care and diligence

For the purpose of clause 11.1, the parties agree that the Member's act or omission will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

12. Indemnity

12.1 Indemnity

RMS and the Delivery Partner each indemnify the Member against all claims from a person not a party to this Agreement for any act or omission done in good faith and with due care and diligence.

12.2 Due care and diligence

For the purpose of clause 12.1, the parties agree that the Member's act or omission will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

13. Termination Otherwise

13.1 Resignation

The Member may resign from the DAB by providing 30 Business Days' written notice to RMS and the Delivery Partner.

13.2 Termination

The Member may be terminated at any time if RMS and the Delivery Partner agree to do so.

13.3 Re-appointment

The parties acknowledge and agree that if:

- (a) the Member resigns under clause 10(b) or 13.1; or
- (b) the appointment of the Member is terminated by RMS and the Delivery Partner under clause 13.2;

then

- (c) a replacement Member may be appointed in accordance with clause 19.10 of the Delivery Partner Contract; and

- (d) the parties and any new Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment under the terms of the Delivery Partner Contract.

14. Governing law

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

15. Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between RMS, the Delivery Partner and the Member as that of partners, joint venturers or any other fiduciary relationship.

16. Notices

- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):
 - (i) to RMS:

101 Miller Street North Sydney NSW 2060

Fax: 02 8588 4171

Attention: Director Infrastructure Development
 - (ii) to the Delivery Partner:

Level 4 100 Arthur Street North Sydney NSW 2060

Fax: 02 9903 0641

Attention: Neil Harding
 - (iii) to the Member:

Address 73 Carlotta Street Greenwich NSW 2065

Fax: (02) 9906 5124.
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the

person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

17. Giving effect to this Agreement

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

18. Survival of terms

The parties agree that clauses 6 and 11 and this clause 18 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

19. Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

20. Operation of this Agreement

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

21. Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

22. Counterparts

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

23. Attorneys

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

EXECUTED as an agreement

SIGNED FOR AND ON BEHALF OF ROADS AND MARITIME SERVICES by its duly authorised representative in the presence of:

Representative

Name of Representative (Please Print)

Witness

Name of Witness (Please Print)

Executed by Laing O'Rourke Australia Construction Pty Limited (ABN 39 112 099 000) in accordance with s 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Name of Director in full

Executed by Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) in accordance with s 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

SIGNED by **Graham Easton** in the presence of:



Member

Witness

Name of Witness (Please Print)

APPENDIX 1

DAB general operating procedures

1. General

- 1.1 The role of the DAB is to provide specialised expertise in technical and administration aspects of the Delivery Partner Contract in order to assist the parties to the Delivery Partner Contract in firstly attempting to prevent and, if unable to prevent, in determining Disputes under clause 19 of the Delivery Partner Contract in a timely manner.
- 1.2 Except when participating in the DAB's activities as contemplated by the Delivery Partner Contract, the parties to the Delivery Partner Contract shall not communicate with the DAB or the Member on matters dealing with the conduct of the work or resolution of problems.
- 1.3 The Delivery Partner and RMS (where required) will furnish to the Member all documents necessary for the DAB to perform its functions, including copies of all Delivery Partner Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the DAB of Disputes and other matters.
- 1.4 The Member is not the representative of either party. The DAB must function as an objective, impartial and independent body at all times.
- 1.5 There must be no communication between the Member and employees of the parties to the Delivery Partner Contract during the life of the DAB without the Member informing the parties to the Delivery Partner Contract.
- 1.6 The Member shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.7 Communications between the parties and the DAB for the purpose of attempting to prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 19 of the Delivery Partner Contract.

2. Frequency of Regular Meetings and Site Visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the DAB properly informed of the project circumstances will generally be agreed between the DAB and the parties to the Delivery Partner Contract.
- 2.2 In the case of a failure to agree between the DAB and the parties to the Delivery Partner Contract, the DAB will schedule the meetings and visits as it sees fit.
- 2.3 The frequency of meetings of the DAB should generally be two monthly but this may be influenced by work progress, unusual events and the number and complexity of potential Disputes.
- 2.4 The first DAB meeting should be held within one month of the date of this Agreement.

3. Agenda for Regular Meetings

- 3.1 The Member will develop an agenda for each regular meeting in accordance with the requirements of the Delivery Partner Contract and this Agreement.
- 3.2 DAB meetings held for the purposes of briefing and updating the Member on performance and progress of the work under the Delivery Partner Contract and issues or potential issues between the parties shall be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- 3.3 The provisions of clause 3.2 shall not apply to any inspection or conference convened in accordance with Appendix 2 – Rules for DAB Decisions in relation to a Dispute referred to the DAB for determination.
- 3.4 At the conclusion of the meeting, the DAB will generally inspect the Works and the Site in the company of representatives of both parties to the Delivery Partner Contract. Any areas of the Works or Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the Delivery Partner Contract.

4. Minutes of Meetings

- 4.1 The Member will prepare minutes of the regular meetings of the DAB and these draft minutes will be circulated to the parties for comments, additions and corrections.
- 4.2 In accordance with clause 3.2 above, the minutes of DAB meetings held, other than in accordance with Appendix 2 – Rules for DAB Decisions, shall be marked "in-confidence, without prejudice".
- 4.3 Minutes as amended will be adopted by the DAB at the next meeting.

5. Communications

All communications by the Member to the parties should be addressed to the Authorised Representative and the Delivery Partner's Representative.

6. Representation

The parties shall each ensure they are represented at DAB meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

APPENDIX 2

Rules for DAB decisions

1. Written Submissions

- 1.1 Within 7 days after the referral of a Dispute to the DAB under clause 19 of the Delivery Partner Contract, or such other time as the DAB may consider reasonable in the circumstances, Party A (i.e. the party who gave the Notice of Referral to DAB under clause 19 of the Delivery Partner Contract) must, in addition to any particulars provided by Party A in the relevant Notice of Referral to DAB, give the other party and the DAB a written statement of the Dispute referred to the DAB, any agreed statement of facts, and a written submission (which may include witness statements) on the Dispute in support of Party A's contentions.
- 1.2 Within 14 days after the statement in clause 1.1 is served, or such other time as the DAB may consider reasonable in the circumstances, the other party must give Party A and the DAB a written response to Party A's submissions.
- 1.3 If the DAB considers it appropriate, Party A may reply in writing to the other party's response in clause 1.2 within the time allowed by the DAB.
- 1.4 If the DAB decides further information or documentation is required for the determination of the Dispute, the DAB may direct one or more parties to provide such further submissions, information or documents as the DAB may require.
- 1.5 The DAB must disclose to both parties all submissions, further submissions, information and documents received.
- 1.6 Any failure by a party to make a written submission will not terminate or discontinue the decision making process.

2. Conference

- 2.1 Either party may, in writing, request the DAB to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- 2.2 If neither party requests the DAB to call a conference, the Member may nevertheless call a conference if it thinks it appropriate.
- 2.3 Unless the parties agree otherwise, the conference will be held at the Site.
- 2.4 At least five days before the conference, the DAB must inform the parties in writing of the date, venue and agenda for the conference.
- 2.5 The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.4, the DAB and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.
- 2.6 The parties:
 - (a) may be accompanied at a conference by legal or other advisers; and

(b) will be bound by any procedural directions as may be given by the DAB in relation to the conference both before and during the course of the conference.

2.7 The conference must be held in private.

2.5 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the DAB and the parties.

3. The Decision

3.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 28 days after the later of the date of the last conference or last submission received by the DAB (or such other period as the parties may agree), the DAB must:

- (a) determine the Dispute between the parties; and
- (b) notify the parties of that decision.

3.2 The decision of the DAB must:

- (a) be in writing stating the DAB's decision and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any), and the DAB's own expertise; and
- (c) meet the requirements of the Delivery Partner Contract.

3.3 If the DAB's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the DAB must correct the decision.

4. Modification

These rules may be modified only by agreement of RMS and the Delivery Partner.

APPENDIX 3

Schedule of Fees and Disbursements

(a) **Monthly Retainer**

██████████ per month (excluding GST) for months when there is no DAB meeting.

██████████ per month (excluding GST) for months which include a DAB meeting.

This monthly retainer includes for attendance at regular DAB meetings, together with routine monitoring of project correspondence, minutes of meetings, reports and other documents and attendance at briefings outside of DAB meetings. The fixed fee also covers all disbursements except as specified in paragraph (c) below.

(b) **Hourly Rate**

██████████ per hour (excluding GST) capped at ██████████ (excluding GST) per day.

This fee covers all other services provided pursuant to the DAB Agreement which are not included in the monthly retainer in paragraph (a).

(c) **Travel Expenses**

Reimbursement at cost for all travel, accommodation and related expenses incurred outside of Sydney.

(d) **Fee Escalation**

██████ per annum, after the first 12 months, on the amounts set out in paragraphs (a) and (b) above.

Schedule 11 - Parent Company Guarantee

(Clause 13.2(a))

Deed of Guarantee and Indemnity

made at _____ on _____ 20____
 between **ROADS AND MARITIME SERVICES**, ABN 76 236 371 088 of Level 9, 101 Miller Street
 North Sydney 2010
(Beneficiary)
 and **[insert Guarantor's name]** (ABN **[insert Guarantor's ABN]**) of **[insert Guarantor's
 address]** (Guarantor)

Recitals

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

This Deed witnesses

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Contract means the deed dated on or about the date of this Deed between the Beneficiary and the Delivery Partner for the delivery of the remaining single carriageway sections of the Pacific Highway between Woolgoolga and Ballina in the state of New South Wales. .

Delivery Partner means Laing O'Rourke Australia Construction Pty Limited (ABN 39 112 099 000) of Level 4, 100 Arthur Street, North Sydney, New South Wales 2060 and Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) of Level 27, 680 George Street, Sydney, New South Wales 2000.

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

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

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

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

under or in relation to, or as a consequence of any breach or default of, the Contract or any other Transaction Document.

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

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

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

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

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

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

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

Transaction Document means each of:

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

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

1.2 The Contract

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

1.3 Interpretation

In this Deed unless the context indicates a contrary intention:

- (a) if the "Delivery Partner" is more than one person, "Delivery Partner" means each of them severally and every two or more of them jointly;

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

1.4 No contra proferentem

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

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Beneficiary:

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

2.2 Payment of Guaranteed Money

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

2.3 Perform obligations

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

3. Indemnity

Subject to clause 3A, as a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiary and

at all times to keep the Beneficiary indemnified against any loss or damage suffered by the Beneficiary arising out of or in connection with:

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

3A. Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Delivery Partner under the Contract;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Delivery Partner shall not be greater than the liability of the Delivery Partner under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Delivery Partner and the Guarantor liable for the same loss twice for the one breach of the Contract by the Delivery Partner; and
 - (iv) payment by one of the Delivery Partner or the Guarantor to or in favour of the Beneficiary shall be deemed to be good discharge against the Beneficiary in respect of that payment.
- (b) The limitation of liability under this clause 3A does not apply to liability to pay any GST in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Delivery Partner's Obligations which arise from or would have arisen from unenforceable Delivery Partner's Obligations referred to in clause 3(c) of this Deed (if those Delivery Partner's Obligations had not been voided, avoided or unenforceable), subject to such liability not exceeding the liability that the Delivery Partner would have had if the Delivery Partner's Obligations had not been unenforceable Delivery Partner's Obligations.

4. Nature and preservation of liability

4.1 Absolute liability

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

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

4.2 Unconditional liability

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

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

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

4.3 No marshalling

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

4.4 Void or voidable transactions

If:

- (a) the Beneficiary has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed or any Security executed by the Guarantor; or

(ii) any assets of the Guarantor from a Security,

in either case in reliance on a payment, receipt or other transaction to or in favour of the Beneficiary;

- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under a law relating to bankruptcy, insolvency or liquidation; and
- (c) that claim is upheld, conceded or compromised,

then:

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

4.5 No double proof

This Deed constitutes a guarantee of the whole of the Guaranteed Obligations, even if (subject to clause 3A) the Beneficiary and the Guarantor have agreed or agree at any time that the Guarantor's liability under this Deed will be limited to a maximum amount. Accordingly, the Guarantor is not entitled to:

- (a) lodge any proof of debt in the winding up of the Delivery Partner;
- (b) exercise any right of subrogation; or
- (c) otherwise be entitled to the benefit of any Security held by the Beneficiary,

with respect to any claim arising as a result of the Guarantor making a payment under this Deed, unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

4.6 Suspense account

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

4.7 Proof of debt in competition with Beneficiary

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

4.8 Claim on the Guarantor

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

4.9 No representation by Beneficiary

The Guarantor acknowledges that in entering into this Deed it has not relied on any representation, warranty or statement by the Beneficiary.

4.10 No contribution

The Guarantor must not make a claim under or enforce any right of contribution it may have against any other Relevant Person unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

5. Corporate representations and warranties

5.1 Representations and warranties

If the Guarantor is a body corporate, it represents and warrants to the Beneficiary that:

- (a) **(Constitution)**: the execution, delivery and performance of this Deed does not violate its constitution or any other document, agreement, law or rules by which it is bound;
- (b) **(Corporate power)**: it has taken all action required to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed;
- (c) **(Filings)**: it has filed all notices and effected all registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law, and those filings and registrations are current, complete and accurate;
- (d) **(Corporate benefit)**: the execution of this Deed is in the best commercial interests of the Guarantor;
- (e) **(Consideration)**: this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (f) **(Status)**: it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth) ('**ASC Law**'), or the subject of an investigation under, or taken to be under, the ASC Law;
- (g) **(Ownership of property)**: it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (h) **(Ranking of obligations)**: this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law and that the Guarantor has taken all action

required to ensure that its obligations under this Deed so rank and will continue to so rank;

- (i) **(No litigation)**: no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, would be likely to have either separately or in aggregate a Material Adverse Effect on it or any of its subsidiaries;
- (j) **(Financial statements)**: its financial statements current as at the date of this Deed have been prepared in accordance with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a Material Adverse Effect on it, or on it and its subsidiaries on a consolidated basis;
- (k) **(Other information)**: the written information and reports (if any) which it has given to the Beneficiary in connection with the negotiation and preparation of this Deed:
 - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
 - (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed; and
- (l) **(No filings or Taxes)**: it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Deed that this Deed or any other instrument be filed or registered with any Government Agency or that any Taxes be paid.

5.2 Reliance on representations and warranties

The Guarantor acknowledges that the Beneficiary entered into the Contract in reliance on the representations and warranties in this clause 5.

5.3 No representations to Guarantor

The Guarantor confirms that it has not executed this Deed as a result of or in reliance upon any promise, representation, statement or information of any kind or nature whatever given or offered to it by or on behalf of the Beneficiary whether in answer to any inquiry by or on behalf of the Guarantor or not.

6. Payments

6.1 On demand

All money payable by the Guarantor under this Deed must be paid on demand by the Beneficiary in immediately available funds to the account and in the manner notified from time to time by the Beneficiary to the Guarantor.

6.2 Payment in gross

All money received or recovered by the Beneficiary on account of the Guaranteed Money will be treated as payments in gross.

6.3 Appropriation of payments

The Beneficiary may appropriate any money received by it under or in respect of this Deed, any Transaction Document or any Security in the manner and order and at all times as the Beneficiary in its absolute discretion determines.

6.4 Interest

The Guarantor must on demand by the Beneficiary from time to time pay interest on all Unpaid Amounts. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment at the Specified Rate and, if not paid when due, will itself bear interest in accordance with this clause 6.4. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

6.5 Merger

If the liability of the Guarantor to pay to the Beneficiary any money under this Deed becomes merged in any judgment or order, then as an independent obligation the Guarantor must pay interest on the amount of that money at the rate which is the higher of that payable under clause 6.4 and that fixed by or payable under the judgment or order.

6.6 Withholding for Taxes

All payments by the Guarantor under this Deed will be without deduction or withholding for any present or future Taxes unless the Guarantor is compelled by law to make any deduction or withholding and if this is the case, the Guarantor must pay to the Beneficiary any additional amounts as are necessary to enable the Beneficiary to receive, after all those deductions and withholdings, a net amount equal to the full amount which would otherwise have been payable had no deduction or withholding been required to be made.

7. Expenses, stamp duty and GST

7.1 Expenses

The Guarantor must on demand indemnify and keep indemnified the Beneficiary against all reasonable expenses, including legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Beneficiary in connection with the successful enforcement, attempted enforcement or preservation of any rights under this Deed.

7.2 Stamp duties

The Guarantor must:

- (a) **(Payment of all duties):** pay all stamp duties, registration and similar Taxes, including fines and penalties, financial institutions duty (if any) and debits tax (if any) in connection with the execution, delivery, performance, enforcement or attempted enforcement of this Deed or any payment or other transaction under or contemplated in this Deed; and
- (b) **(Indemnity):** indemnify and keep indemnified the Beneficiary against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

7.3 Goods and Services Tax

- (a) Capitalised expressions which are not defined in this clause 7.3 but which have a defined meaning in the GST Law have the same meaning in this clause 7.3.

In this clause 7.3 and elsewhere in this Deed where relevant:

- (i) **GST** means the goods and services tax imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed;
- (ii) **GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;
- (iii) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (iv) **Payment** means:
 - A. the amount of any monetary consideration (other than a GST Amount payable under this clause 7.3); and
 - B. the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by the Guarantor for any Supply made under or in connection with this Deed or the Contract and includes an amount payable by way of indemnity, reimbursement, compensation or damages.

- (b) The parties agree that:
- (i) all Payments have been set or determined at an amount which is net of GST;
 - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Beneficiary, the GST Amount in respect of the Payment must be paid by, or on behalf of, the Guarantor to the Beneficiary as any additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
 - (iii) the Beneficiary will provide a Tax Invoice, before any GST Amount is payable under this clause 7.3(b).
- (c) If a payment (including a Payment as defined in this clause 7.3) to the Beneficiary by the Guarantor under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Beneficiary, then the payment will be reduced by the amount of any input tax credit to which the Beneficiary is entitled for that loss, cost or expense.

8. Assignments

The Beneficiary may at any time assign or otherwise transfer all or any part of its rights under this Deed to any party to whom it validly assigns the benefit of the Contract and may disclose to a proposed assignee or transferee any information in the possession of the Beneficiary relating to the Guarantor.

9. Governing law and jurisdiction

9.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 9.3 of Schedule 11A, is governed by and will be construed in accordance with the laws of the State or Territory which govern the Contract.

9.2 Jurisdiction

- (a) **(Acceptance of jurisdiction):** The Guarantor irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State or Territory whose laws govern this Deed with respect to any legal action or proceedings which may be brought at any time relating in any way to this Deed.
- (b) **(No objection to inconvenient forum):** The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

10. Miscellaneous

10.1 Certificate of Beneficiary

A certificate in writing of the Beneficiary certifying the amount payable by the Delivery Partner or the Guarantor to the Beneficiary or stating any other act, matter or thing relating to this Deed, any Transaction Document or any Security will be prima facie evidence of the contents of the certificate.

10.2 Notices

Every notice or other communication to be given or made under or arising from this Deed:

- (a) must be in writing;
- (b) must be signed by a person duly authorised to do so by the sender;
- (c) will be deemed to have been duly given or made to a person if delivered or posted by prepaid post to the address, or sent by fax to the fax number of that person set out in clause 10.3 (or any other address or fax number as is notified in writing by that person to the other parties from time to time); and
- (d) will be deemed to be given or made:
 - (i) (in the case of prepaid post) on the fifth day after the date of posting;
 - (ii) (in the case of delivery by hand) on delivery; and

- (iii) (in the case of fax) on receipt of a transmission report confirming successful transmission.

10.3 Address for notices

The addresses and fax numbers of the parties for the purposes of clause 10.2 are:

The Guarantor

Address: [insert Guarantor's address]
 Fax No.: [insert Guarantor's facsimile]
 Attention: [insert]

The Beneficiary

Address: [insert Beneficiary's address]
 Fax No.: [insert Beneficiary's facsimile]
 Attention: [insert]

10.4 Continuing obligation

This Deed will be a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, a disclaimer of any contract (including any Transaction Document) or property made by a liquidator of the Delivery Partner pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws, express or implied revocation or any other matter or thing, and continues to entitle the Beneficiary to the due and punctual payment of any of the Guaranteed Money which becomes due or owing or is incurred after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantor.

10.5 Further assurance

The Guarantor will immediately on demand by the Beneficiary, and at the entire cost and expense of the Guarantor, perform all things and execute all agreements, assurances and other documents as the Beneficiary reasonably requires, to perfect or give effect to the rights and powers of the Beneficiary created, or intended to be created, by this Deed.

10.6 Form of demand

A demand on the Guarantor for performance under this Deed may be in the form and contain any information as the Beneficiary determines. Where the demand relates to the payment of Guaranteed Money it shall specify the amount demanded and the basis of the calculation.

10.7 Severability of provisions

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

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

10.8 Remedies cumulative

The rights and remedies conferred by this Deed on the Beneficiary are cumulative and in addition to all other rights or remedies available to the Beneficiary by law or by virtue of any Transaction Document or any Security.

10.9 Waiver

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

10.10 Consents and approvals

Where under this Deed the consent or approval of the Beneficiary is required to any act or thing then, unless expressly provided otherwise in this Deed, that consent or approval may be given or withheld in the absolute and unfettered discretion of the Beneficiary.

10.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all legislation whether existing now or in the future, operating directly or indirectly:

- (a) to lessen or otherwise to vary or affect in favour of the Guarantor any obligation under this Deed; or
- (b) to delay or otherwise prevent or prejudicially affect the exercise of any rights or remedies conferred on the Beneficiary under this Deed,

are expressly waived and excluded.

10.12 Debit accounts and set-off

The Beneficiary may without prior notice to the Guarantor set-off any amount which is owing on any account whatsoever by the Beneficiary to the Guarantor against any liability of the Guarantor to the Beneficiary under this Deed. The rights of the Beneficiary under this clause 10.12 are without prejudice and in addition to any other right or remedy to which it is at any time entitled.

10.13 Counterparts

This Deed may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed, and all of which together constitute one and the same instrument.

10.14 Execution by less than all parties

This Deed binds each of the persons executing it notwithstanding:

- (a) that one or more of the persons named in this Deed as a Guarantor may not execute or may not become or may cease to be bound by this Deed; or
- (b) that the Beneficiary may not execute or may only subsequently execute this Deed.

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Delivery Partner's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on the Guarantor and the Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

10.16 No right to be heard

To the fullest extent permitted by law, the Guarantor waives and expressly disclaims any right to be heard at or appear in any proceedings (whether judicial, arbitral, administrative or of any other nature including but not limited to any alternative dispute resolution) conducted for the purpose of settling or resolving or attempting to settle or resolve any dispute referred to in clause 10.15 or otherwise to be involved in the settlement or resolution of any such dispute.

10.17 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 10.17(a), it is further agreed that the rights, obligations and liabilities of the Beneficiary and the Guarantor (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

Executed as a deed.

Executed by **[insert Guarantor's name and ABN]** by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Signed Sealed and Delivered by

as an authorised delegate of **Roads and Maritime Services (ABN 76 236 371 088)** in the presence of:

Signature

Signature of Witness

Name of Witness in full

Schedule 11A - Dispute provisions for certain foreign Guarantors

(Clause 9)

Explanatory Note: Where the Guarantor is a foreign entity and resident in a jurisdiction with reciprocity of treatment in relation to the enforcement of judgments for the purposes of the *Foreign Judgments Act 1991* (Cth), clause 9.2 of the Deed will apply. If, however, the Guarantor is a foreign entity and resident in a jurisdiction where there is no reciprocity, clause 9.1 of the Deed and clauses 9.3 to 9.8 of this Schedule will apply.

9.3 Reference to arbitration

- (a) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (b) The seat of the arbitration will be Sydney.
- (c) The number of arbitrators will be three.
- (d) The language of the arbitration will be English.

9.4 General principles

The parties further agree to the following general principles relating to the procedure of the arbitration:

- (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause 9 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
- (c) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (i) how many written submissions will be allowed;
 - (ii) where appropriate, the length of written submissions;
 - (iii) the extent of document discovery permitted, if any;
 - (iv) the consolidation of arbitration proceedings, when requested;
 - (v) the joinder of parties or the consolidation of proceedings, when requested;
 - (vi) the length of any hearing; and
 - (vii) the number of experts, if any, each party is allowed to appoint; and
- (d) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

9.5 Expedited proceedings

- (a) The parties agree that the arbitral tribunal will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (b) All evidence in chief will be in writing, unless otherwise ordered by the arbitral tribunal.
- (c) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (d) After consultation with the parties the arbitral tribunal will determine whether to conduct the proceedings on the basis of documents and other materials only or whether an oral hearing will be held. In doing so the arbitral tribunal shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.

- (e) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
- (i) the duration of the oral hearings shall be fixed by the arbitral tribunal;
 - (ii) unless otherwise ordered by the arbitral tribunal, the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;
 - (iii) oral evidence in chief at the hearing shall be permitted only with the permission of the arbitral tribunal for good cause;
 - (iv) not less than 14 days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitral tribunal, each party shall give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination; and
 - (v) in exceptional circumstances the arbitral tribunal may extend the time for the oral hearing set pursuant to clause 9.5(e)(i) above.

9.6 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

9.7 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

9.8 Award final and binding

Any award will be final and binding upon the parties.

Schedule 11B - Joint Venture provisions

Explanatory Note: If the Delivery Partner is a Joint Venture, the following amendments to the Deed apply:

- (a) the definition of 'Relevant Person' is amended to read:
Relevant Person means the Delivery Partner, each Parent Company Guarantor and any person who has executed a Security in favour of the Beneficiary.
- (b) clause 2.2 is amended to read:

2.2 Payment of Guaranteed Money

- (a) Subject to clause 2.2(b), if the Delivery Partner does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Beneficiary the Guaranteed Money which is then due and payable.
- (b) The Guarantor shall not be liable to pay to the Beneficiary any part or parts of the Guaranteed Money which have been paid to the Beneficiary by another Parent Company Guarantor.
- (c) clause 2.3 is amended to read:

2.3 Perform obligations

- (a) Subject to 2.3(b), if the Delivery Partner defaults in the performance or observance of any of the Delivery Partner's Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Beneficiary, immediately perform (or procure the performance of) any of the Delivery Partner's Obligations then required to be performed by the Delivery Partner in the same manner and on the same terms as the Delivery Partner is required to perform the Delivery Partner's Obligations.
- (b) The Guarantor shall not be responsible for performing the Delivery Partner's Obligations to the extent the relevant Delivery Partner's Obligations have been performed by another Parent Company Guarantor.
- (d) the first paragraph of clause 4.2 is amended to read:

4.2 Unconditional liability

Except to the extent of a reduction in the Guarantor's liability expressly provided for in clauses 2.2(b) or 2.3(b), the liability of the Guarantor under this Deed will not be affected by any thing which, but for this clause 4.2, would release the Guarantor from or reduce that liability, including but not limited to:

- (e) clause 4.2(o) is amended to read:
 - (o) **(Administration):** the provisions of section 440J of the *Corporations Act 2001* (Cth) so operating as to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; and/or
 - (ii) any claim for contribution against any Guarantor; or

- (f) clause 4.3 is amended to read:

4.3 No marshalling

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

- (g) clause 10.15 is amended to read:

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in

connection with the Contract, including any dispute as to the Delivery Partner's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on each of the Guarantors and a Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

Schedule 12 - Milestone Dates and Achievement Criteria

No	Milestone	Milestone Date	Milestone Achievement Criteria
1.	Portion A comprising Sections 3 and 4 achieves Section Opening	20/09/2019	Section Opening has occurred
2.	Portion B comprising Sections 5 and 6 achieves Section Opening	20/09/2019	Section Opening has occurred
3.	Portion C comprising Sections 7, 8 and 9 achieves Section Opening	20/09/2019	Section Opening has occurred
4.	Portion D comprising Sections 10 and 11 achieves Section Opening	20/09/2019	Section Opening has occurred
5.	Portion E comprising the Clarence River bridge achieves Section Opening	23/07/2019	Section Opening has occurred
6.	Portion F comprising the Richmond River bridge achieves Section Opening	15/05/2019	Section Opening has occurred
7.	Portion G comprising the Pimlico to Teven Stage 3 works achieves Section Opening	02/02/2019	Section Opening has occurred
8.	Project Opening	20/09/2019	Project Opening has occurred
9.	Project Completion	20/09/2020	Project Completion has occurred

Schedule 13 - Delivery Partner Organisation Structure

The table below details the Nominated Key Personnel, their position, position description, proposed location, commitment level and duration of commitment for the Woolgoolga to Ballina Pacific Highway Upgrade Project.

The Delivery Partner organisation structure is shown in Figure 1.

Nominated Key Personnel	Position	Position Description
Christopher Wilkinson	Project Director	<p>The Project Director provides efficient leadership and overall accountability for the successful completion of the Woolgoolga to Ballina Pacific Highway Upgrade Project (Project) in line with Project Objectives and the Contract. With oversight of all functions, he is responsible for the Project's safety, environment, quality, programme, cost and commercial performance and assurance. He will promote a collaborative framework with RMS, the supply chain and all stakeholders and communities.</p> <p>The position requires a proven international business leader experienced in the program management of global projects within the construction and infrastructure sectors, having delivered certainty of outcome for clients in the past.</p> <p>The Project Director will coordinate and manage the resources and projects that form the Project to drive success in all aspects of delivery. Key to the role is the development and maintenance of a positive and effective relationship with RMS through effective communication and collaboration. He will, in collaboration with the Delivery Partner (DP) Leadership Team (DPLT) and RMS, develop the Delivery Partner's governance systems at both a client and project level. In delivery the Project Director will have overarching accountability for the sustainability of these systems.</p> <p>The Project Director will report to both RMS and the Delivery Partner's Joint Venture Steering Committee and directly manages the Deputy Project Director, Quality Manager, Safety Manager, Stakeholder & Community Leader, Technical (Assurance) Leader and Organisational Development Leader.</p> <p>A. Location Based in Grafton</p> <p>B. Commitment Level Available Full time</p> <p>C. Duration of Commitment From Commencement Date until completion of the Services</p>
Peter Wellings	Deputy Project Director	<p>The Deputy Project Director primarily supports the Project Director in the successful attainment of all Project requirements while ensuring safety, environment, quality, program and commercial performance.</p> <p>The position requires a proven business leader experienced in the program management of major infrastructure works, having delivered certainty of outcome in the past.</p> <p>Where the Project Director is strongly focused on holistic delivery and maintaining relationships with the client and the wider stakeholders and community, the Deputy Project Director will focus on planning the delivery of the works, forming strong relationships with the delivery functions and key members of the supply chain to optimise and manage all phases of the planning process. He will facilitate the translation of strategies from planning into delivery across the program and ensure decision-making is cascaded effectively through the organisation.</p>

Nominated Key Personnel	Position	Position Description
	Challenge & Innovation Leader	<p>Reporting to the Project Director, the Deputy Project Director will oversee all functions directly involved in Project delivery through direct management of the Strategy & Transition Leader, Planning & Approvals Leader, Engineering & Design Leader, Construction Leaders and Commercial Leader. As part of his duties, he will undertake the role of Challenge & Innovation Leader .</p> <p>The Challenge & Innovation Leader will be responsible for driving project optimisation throughout the planning, design, delivery and operation phases to ensure best value for project and Project Objectives are achieved.</p> <p>This role requires extensive experience in highway road design and construction within Australia from a government or specialist advisory perspective.</p> <p>He will provide advice, guidance and review on a range of issues including supply chain engagement, commercial frameworks, risk mitigation and construction methodologies. With an involvement in all aspects of the Project, the position will challenge and promote others to challenge current practices on all aspects of design, delivery, specifications, stakeholders, processes, construction and methods. He encourages and nurtures high levels of innovation through the proactive engagement and empowerment challenging the wider team to meet and exceed project objectives.</p> <p>Recognising the seniority and the global nature of his role, the Challenge & Innovation Leader will report directly to the Project Director. He will oversee the Challenge, Innovation & Value Management team who will bring a diverse range of knowledge to support optimisation and innovation throughout the Project.</p> <p>A. Location</p> <p>Based in Sydney, but must be available as required for meetings in Grafton.</p> <p>B. Commitment Level</p> <p>Available Full Time</p> <p>C. Duration of Commitment</p> <p>Two years from the Commencement Date.</p>
Keith Maskey	WHS Leader	<p>The WHS Leader drives the establishment, implementation and ongoing management of the Project-specific Safety Management System and Work Health and Safety (WHS) Management Plan to ensure exceptional Safety performance in line with Project objectives and our fundamental belief that everyone is entitled to go home safely at the end of each and every day.</p> <p>The WHS Leader must have a long-standing history in WHS, specifically within infrastructure construction, and will act as an expert advisory on WHS issues including Fatal and Severe Risks and incident investigations that may throughout the course design, construction and, where applicable, operation of the Project.</p> <p>The WHS Leader will promote Project safety and support a strong safety legacy within construction and the community through the implementation and management of a project-wide cultural and behaviour change programme - Mission Zero. He will compile detailed reports and conduct audits on Project safety performance as required under the WHS Management Plan.</p> <p>The WHS Leader will report directly to the Project Director and work collaboratively with a dedicated safety team including a coordinator, WHS Assurance (Technical) and advisors in conjunction with the Technical (Assurance) Leader and Construction Leaders.</p>

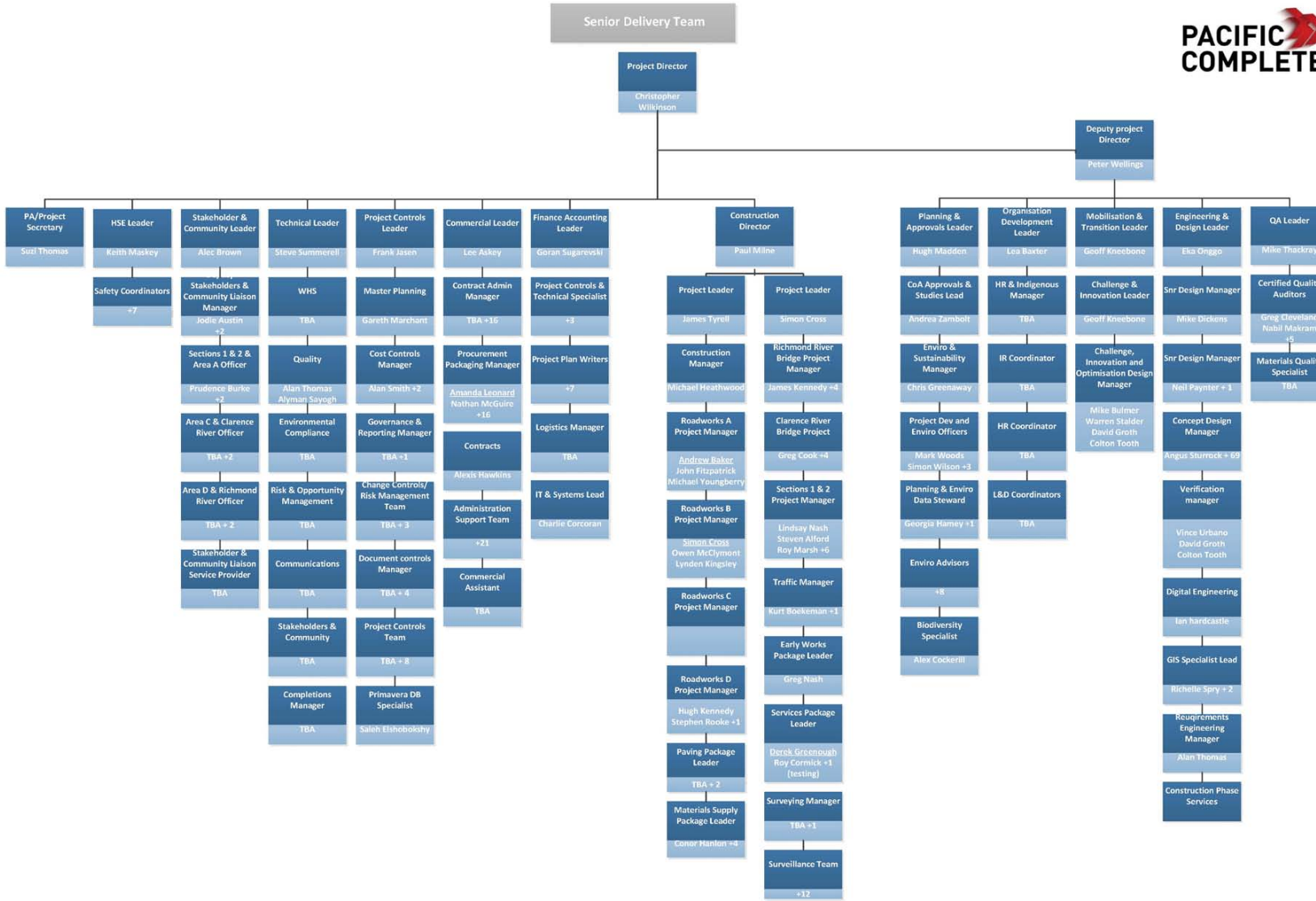
Nominated Key Personnel	Position	Position Description
		<p>A. Location Based in Grafton</p> <p>B. Commitment Level Available Full Time</p> <p>C. Duration of Commitment From Commencement Date until completion of the Services</p>
Frank Jasen	Project Controls Leader	<p>The Project Controls Leader will be responsible for the establishment of a robust project baseline, in terms of time and cost, to measure performance against the Project Objectives. During delivery, the Project Controls Leader will lead a dedicated team to measure ongoing performance and analyse trends to mitigate emerging issues. He will provide strategic advice on to address performance concerns early and ensure project baselines are achieved.</p> <p>The Project Controls Leader will have substantial knowledge of Project Controls on multi- billion dollar construction programs. He will possess exceptional People Management Skills to support recruitment, staff development and provide coaching and mentoring to the Delivery Team.</p> <p>The Project Controls Leader will define tailored and optimised data structures, processes, tools and systems at the onset of the Project in collaboration with the Senior Leadership Team, RMS and the dedicated Project Controls team. With an appreciation for the importance of innovation and value engineering workshops will be led by the Project Controls Leader to ensure best value for project is realised.</p> <p>The Project Controls Leader will report to the Deputy Project Director and lead a dedicated team of reporting and governance managers, expert planners, cost controllers, document controllers and risk and value specialists.</p> <p>A. Location Based in Sydney initially then Grafton</p> <p>B. Commitment Level Available Full Time</p> <p>C. Duration of Commitment From Commencement Date until completion of the Services</p>
Hugh Madden	Planning & Approvals Leader	<p>The Planning & Approvals Leader will be responsible for ensuring the timely management of planning, approvals and environmental requirements to ensure the Project is delivered in accordance with government's Condition of Approvals.</p> <p>The Planning & Approvals Leader will have proficiencies in the Environmental Management Systems (EMS), management of design and environmental interfaces and support the Environmental and Sustainability Leader in the development of the Construction Environmental Management Plan (CEMP).</p> <p>The Planning & Approvals Leader will develop and support the implementation of project- wide initiatives to improve standards and work towards the Project's planning and approvals and environmental objectives. He will support a culture and language that underlines the criticality of the planning and approvals function and set clear standards for delivery. He will coach, motivate and engage functional and operational teams to ensure project-wide ownership of the delivery of the Planning and Approvals requirements, while also representing the Project during agency engagement and stakeholder consultation. He will provide the functional leadership for resourcing of the Planning and Approvals team, facilitate their professional development and ensure that their roles, skills and behaviours are aligned to project objectives.</p> <p>The Planning & Approvals Leader will report directly to the Deputy Project Director and provide functional leadership the Planning and Approvals team which incorporates experts in Condition of Approvals, Environment and</p>

Nominated Key Personnel	Position	Position Description
		<p>Sustainability, Flora and Fauna Studies and GIS.</p> <p>A. Location Grafton</p> <p>B. Commitment Level Available Full Time</p> <p>C. Duration of Commitment From Commencement Date until completion of the Services</p>
Eka Onggo	Engineering & Design Leader	<p>The Engineering & Design Leader will have accountability for the delivery of optimised concept design, procurement/selection of detailed designers as well as the management, delivery and verification of all design tasks that meet budget, program, safety, quality and environment requirements with minimal residual risk at completion.</p> <p>As Engineering & Design Leader, the position will require extensive design experience in all facets of major highway road design within the Australian environment combined with leadership and management skills to manage, control and coordinate all design activities, functional interfaces and resources and act as the main contact for the function. This knowledge will allow the Engineering & Design Leader to play a key role in developing a culture of collaboration, innovation, “smart”, value for money designs that ensure certainty of delivery and achieve project objectives.</p> <p>The Engineering & Design Leader will be required to develop and maintain key design related stakeholder relationships and work in close collaboration with the Senior leadership team and discipline leaders to ensure seamless integration of the design and construction process.</p> <p>The Engineering & Design Leader will report directly to the Deputy Project Director and the resourcing and day-to-day management of the Engineering and Design Team inclusive of concept designers, design managers, digital engineering (GIS and BIM) and technical specialist.</p> <p>A. Location Based in Sydney, but must be available as required for meetings in Grafton</p> <p>B. Commitment Level Available Full Time</p> <p>C. Duration of Commitment Throughout the design review and development period</p>

Nominated Key Personnel	Position	Position Description
Paul Milne	Construction Leader	<p>The Construction Leaders will work in collaboration to assume the primary responsibilities for leading and managing the construction function across the full life cycle of the Project to achieve construction and safety, quality and environment milestones and targets.</p> <p>The Construction Leader must have in-depth knowledge and proven success delivering major road infrastructure projects within similar environments in a senior construction managerial role. Within this, he must have experience leading projects which possess significant environmental, technical and logistics challenges. This experience and knowledge provide the necessary skills to enable the Construction Leader to lead the development, optimisation and delivery of the construction approach.</p> <p>During the planning phase the position will provide construction input to the</p>

Nominated Key Personnel	Position	Position Description
		<p>strategic development and overall planning of the Project, and in conjunction with the procurement team, developing the scope and format of work packages and constructability into the design process. During construction, the Construction Leader will manage and coordinate the respective work packages (including contractual and commercial administration) and ensure that each package is constructed in accordance with RMS and legislative requirements. At Project Completion, Construction Leader will prepare the closeout and handover of all required documentation, confirm product compliance and commence final negotiation and sign off with Project Contractors and relevant stakeholders as necessary.</p> <p>The Construction Leader will work heavily with other functional leads to ensure full integration of systems, innovations, constraints and information into a cohesive construction approach. The Construction Leader will report directly to the Deputy Project Director and manage the senior construction management team inclusive of Project, Package, Logistics, Traffic and Services areas.</p> <p>A. Location Based in Grafton</p> <p>B. Commitment Level Available Full Time</p> <p>C. Duration of Commitment From the Commencement Date until completion of the Services</p>
Lee Askey	Commercial Leader	<p>The Commercial Leader will be accountable for the successful completion of the full scope of works within agreed baseline budget maintaining sustainable high commercial performance throughout transition, design, procurement, construction and handover. The position will provide commercial leadership on all matters relating to finance and accounting governance, commercial frameworks, legal and contractual support, cost strategy, procurement strategy and establishment/maintenance of office administration and information technology.</p> <p>The Commercial Leader must have technical proficiencies and experience in two stage and target cost contracts and collaborative contracts allowing him to facilitate an honest and open environment with RMS and the supply chain and promote a strong, unified delivery team.</p> <p>The Commercial Leader will act as the Delivery Partner's contact with RMS regarding commercial agreement and performance review of KPIs, procurement and contracts, cashflow, commercial frameworks and governance. During transition, he will lead the completion of risk and opportunity workshops with RMS, key stakeholders and communities and members of the supply chain gain a holistic understanding of commercial risk to enable the development of accuracy baseline budgets and establish contingencies.</p> <p>The Commercial Leader will report directly to the Deputy Project Director and manage an experienced team of contract administrators, procurement/packaging managers financing and accounting experts and information technical resources.</p> <p>A. Location Based in Grafton</p> <p>B. Commitment Level Available Full Time</p> <p>C. Duration of Commitment From Commencement Date until completion of the Services</p>

Figure 1



LOR-QA-CHT-0001 Rev1

Schedule 14 - Limits of Authority

The Delivery Partner is authorised to represent RMS for the purposes of providing the Services, but subject at all times to the Contract (including this Schedule) and the limitations of the *Public Finance and Audit Act 1983* (NSW).

14.1 Principles

Without limiting any provision of the Contract, the following overriding principles apply to activities carried out by Delivery Partner Personnel (“**DP Personnel**”) when acting as agents or representatives of RMS:

- (a) DP Personnel act as an agent and not as a delegate of RMS.
- (b) DP Personnel must act within the limits of authority set out in this schedule.
- (c) DP Personnel can only exercise their authority for the purpose of carrying out the Services, and not for any other purpose.
- (d) DP Personnel must exercise their authority responsibly, lawfully, honestly and ethically to the standards required by the Contract and in the best interests of RMS.
- (e) DP Personnel must not exercise an authority in circumstances where there is an actual or potential conflict of interest between their own interests (or those of family members or other affiliates) and their duties to RMS.
- (f) DP Personnel are expected to know and comply with all of the following when carrying out functions on behalf of RMS:
 - (i) relevant Laws and standards;
 - (ii) relevant policies, including the Code of Conduct and Ethics, the NSW Government Code of Tendering, the Statement of Business Ethics and the Engineering Contracts Manual;
 - (iii) the applicable terms of the Contract; and
 - (iv) the terms of any relevant Project Contract.

Regardless of the scope of any authority, DP Personnel are expected to work collaboratively, consult with senior and specialist colleagues, and ensure that their managers are kept informed of all decisions and activities that may be significant or have material consequences.

14.2 Scope of authority

This clause sets out the limits that apply to the Delivery Partner’s scope of authority (and the scope of authority of any DP Personnel appointed as an agent or representative of RMS). These limits are in addition to any other requirements of the Contract.

Due to the provisions of the *Public Finance and Audit Act 1983* (NSW), the Delivery Partner's authority is limited by two distinct categories, as set out in the table below.

For each Project Contract, the Authorised Representative will issue a specific delegation to the Delivery Partner for that Project Contract which will be generally in accordance with the table below. RMS may give the Delivery Partner a general approval for each Project Contract pursuant to which it provides the Delivery Partner with approval to do any one or more of the matters in item 2 generally in relation to a Project Contract where the Delivery Partner is acting within the limits established by the Project Plans, including the DP Cost Plan and the DP Program.

1. Roles reserved to RMS	
A.	Approve or authorise an account for payment on behalf of RMS.
B.	Issue a letter of intent or letter of acceptance for any Project Contract.
C.	Execute a Project Contract.
D.	Settle any Claim.
E.	Issue Road Occupancy Licences.
F.	Issue media releases, seek publicity or undertake any other external communications. Note: RMS will work with the Delivery Partner to develop a streamlined process for these approvals. For routine matters, RMS may reduce this to a notification obligation only.
G.	Appoint and replace a RMS Representative under a Project Contract.
2. Decisions and roles that can be undertaken by the Delivery Partner with prior approval of RMS	
A.	<p>Depart from or change or make a decision that involves a departure from or change to the current version of the key Project Plans and the scope of works and technical criteria as described in the Works Brief and any other changes to the Environmental Requirements. The key Project Plans are the:</p> <ul style="list-style-type: none"> • Packaging and Procurement Plan; • DP Cost Plan; • Project Management Plan; • Design Management and Optimisation Plan; and • DP Program. <p>Note: RMS wishes to encourage innovation, so if there are sound reasons for departing from any approved plan, the Delivery Partner should develop a recommendation for consideration by RMS.</p>
B.	<p>Depart from any standard RMS procedure or policy concerning tendering, contract management or dealings affecting third parties.</p> <p>Note: RMS wishes to encourage innovation, so if there are sound reasons for departing from any standard policy or procedure, the Delivery Partner should develop a recommendation for consideration by RMS. (Noting that there are often legal and probity reasons for these standard approaches).</p>
C.	<p>Change the terms of any RMS standard form tender document, contract or specification.</p> <p>Note: RMS wishes to encourage innovation, so if there are sound reasons for departing from any standard policy or procedure, the Delivery Partner should develop a recommendation for consideration by RMS.</p>
D.	Approve the issue of tender documents for any Project Contract.
E.	Determine the assessment criteria and weightings and the composition of any tender assessment committee for any Project Contract.

F.	Determine any pre-estimate of liquidated damages.
G.	Consent to any assignment, novation or change of control by a Project Contractor.
H.	Issue a variation direction reducing the scope of works under a Project Contract.
I.	Issue a variation direction that increases the contract sum under a Project Contract.
J.	Grant an extension of time.
K.	Instruct a Project Contractor to accelerate or request an acceleration proposal.
L.	Negotiate any claim.
M.	Instruct a Project Contractor to suspend work.
N.	Determine any claim for delay costs.
O.	Issue a show cause notice, terminate a Project Contract or threaten to do so.
P.	Issue a notice of dispute or initiate any dispute process of any kind under a Project Contract.
Q.	<p>Accept any material non-conforming work under a Project Contract</p> <p>Note: RMS will work with the Delivery Partner to develop a definition about minor and material non-conforming work where the DP can accept minor non-conforming work and material non-conforming work has to be referred to RMS. The process will be set out in the Project Management Plan.</p>
R.	Represent RMS in any dispute.
S.	Release security under a Project Contract.
T.	<p>Place an advertisement related to the Project (except for an advertisement on e-tendering for an approved procurement).</p> <p>Note: RMS will work with the Delivery Partner to develop a streamlined process for these approvals.</p>
U.	Waive or compromise any right of RMS under a Project Contract (including any entitlement to liquidated damages, set-off or security).

Schedule 15 - Form of Certificates

Certificate No	Name of Certificate	When Required and Frequency
15.1	Certificate - Payment Claim	To be provided monthly after the submission of each and every progress claim which is submitted by the Project Contractors
15.2	Certificate - Landscape Area Completion and Final Landscape Area Completion	To be provided as a condition precedent to achieving Landscape Area Completion or Final Landscape Area Completion
15.3	Certificate - Design Documentation	To be provided prior to the commencement of construction of any element of the Works, Temporary Works or Landscape Area Maintenance that is the subject of the Design Documentation being certified
15.4	Certificate - Section Opening	To be provided as a condition precedent to achieving Section Opening of a Section
15.5	Certificate - Nominated Defects	To be provided upon the request of the Authorised Representative in connection with the rectification of particular Defects nominated by the Authorised Representative
15.6	Delivery Partner's Certificate - Section Completion	To be provided as a condition precedent to achieving Section Completion of a Section
15.7	Delivery Partner's Certificate - Project Completion	To be provided as a condition precedent to achieving Project Completion

Certificate No	Name of Certificate	When Required and Frequency
15.8	Authorised Representative's Certificate - Section Opening	To be provided upon Section Opening of a Section
15.9	Authorised Representative's Certificate - Project Completion	To be provided upon Project Completion

15.1 Certificate – Payment Claim

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
From: **[Insert Delivery Partner's name]**
(ABN **[Insert Delivery Partner's ABN]**)
("**Delivery Partner**")

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Project, we hereby certify that all work the subject of the attached form of progress claims which is intended to be submitted by the Project Contractors named in the schedule for [month][year] has been executed and is in accordance with the requirements of the Project Contracts specified in the Schedule, subject to the following:

[If applicable, insert details of any exceptions].

.....
Signed for and on behalf of
[Insert Delivery Partner's name] by
[Insert name of Quality & Verification Manager]

SCHEDULE

Attachment to the Certificate - Payment Claim

Project Contractor	ABN	Project Contract number/identifier	Date of works (period)	Payment claim date

15.2 Certificate – Landscape Area Completion and Final Landscape Area Completion

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
From: **[Insert Delivery Partner's name]** ABN **[Insert Delivery Partner's ABN]**
 ("**Delivery Partner**")

Area Description: **[Insert Details]** ("**Area**")

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Area described above (the "**Contract**"), we hereby certify that to the extent any of the activities referred to below occurred in respect of the Project Contracts referred to in the Schedule, on the following date [*insert date*]:

- (a) the Project Contractor's quality system under clause 11.1 of the deed was in accordance with RMS D&C Q6 and AS/NZS ISO 9001:2008 Quality management systems - Requirements;
- (b) the Project Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (c) any Project Contractor's subcontractor's quality systems which form a part of the Contractor's quality system have been in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points has been undertaken in accordance with the Contract;
- (e) the design, construction, inspection, repairs and monitoring by the Project Contractor has been undertaken in accordance with the Project Contract;
- (f) the landscaping is complete and Landscape Area Maintenance by the Project Contractor has commenced in accordance with the Project Contract (Landscape Area Completion);
- (g) (*strike out if not applicable*) the Landscape Area Maintenance has been undertaken and completed in accordance with the Project Contract, and the areas where the Landscape Area Maintenance has been performed are ready to be handed over to RMS (Final Landscape Area Completion); and
- (h) documentation has been recorded and submitted to the Authorised Representative in accordance with the Project Contract.

.....
Signed for and on behalf of
[Insert Delivery Partner's name] by
[Insert name of Quality & Verification Manager]

SCHEDULE

Attachment to the Certificate – Landscape Area Completion and Final Landscape Area Completion

Project Contractor	ABN	Project Contract number/identifier	Date of Landscape Area Completion	Date of Final Landscape Area Completion

15.3 Certificate – Design Documentation

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
 From: **[Insert Delivery Partner's name]**
 (ABN **[Insert Delivery Partner's ABN]**)
 ("**Delivery Partner**")

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Project (the "**Contract**"), we hereby certify that the attached Design Documentation which was prepared by the Project Contractor(s) referred to in the Schedule:

- (a) complies with all the requirements of the Contract, and in particular, the durability requirements and the design life requirements set out in the Contract;
- (b) has been certified by the relevant Project Contractor to comply with the requirements of the Contract; and
- (c) is documented to enable construction in compliance with the Contract (including, to the extent applicable, in respect of correction of Defects).

[subject to the satisfaction of following comments or conditions:

- **insert comments or conditions]**
-

.....
 Signed for and on behalf of
[Insert Delivery Partner's name] by
 [Insert name of Quality & Verification Manager]

SCHEDULE

Attachment to the Certificate - Design Documentation

Project Contractor	ABN	Project Contract number/identifier	Description	Design Lot	Status

Attachment to the Certificate - Design Certification by Project Contractors

15.4 Certificate – Section Opening

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
From: **[Insert Delivery Partner's name]**
(ABN **[Insert Delivery Partner's ABN]**)
("**Delivery Partner**")

Section Location: **[Insert Details]**

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner (the "**Contract**") with respect to the Works in the Section described above, we hereby certify that in respect of the Project Contracts and Project Contractors referred to in the Schedule:

- (a) the Works are suitable for Section Opening;
- (b) the Project Contractors have complied with and satisfied the requirements of RMS D&C Q6;
- (c) the Project Contractors have completed construction of the Works in accordance with the Design Documentation they were entitled to use for construction purposes under the Project Contracts and have provided the Delivery Partner with certification to confirm such compliance (copies attached);
- (d) the design used by the Project Contractors for construction purposes is in accordance with the requirements of the Contract;
- (e) the construction complies with the requirements of the Contract;
- (f) each of the following designs:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and

- (xiii) all other elements of the Works and Temporary Works carried out by the Project Contractors,

is in accordance with the requirements of the Contract; and

- (g) the Known Defects at the date of this certificate (as listed in the Schedule) can be rectified safely without adversely impacting the safe and continuous use of the Section by traffic.

.....
 Signed for and on behalf of
[Insert Delivery Partner's name] by
 [Insert name of Quality & Verification Manager]

SCHEDULE

Attachment to the Certificate – Project Contract Completion Schedule

Project Contractor	ABN	Project Contract number/identifier	Date of Construction Completion of Project Contract

Attachment to the Certificate – Project Contract Known Defects

Project Contractor	Number identifier	Defect identifier	Description	Location	Planned Rectification	Date for Rectification

15.5 Certificate – Nominated Defects

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
 From: **[Insert Delivery Partner's name]** (ABN **[Insert Delivery Partner's ABN]**)
 ("**Delivery Partner**")

Location: **[Insert Details]**

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Works at the above location (the "**Contract**"), we hereby certify that between the following dates *[insert dates]*, the rectification of all Defects referred to in the Schedule, including all design, construction, inspection, repairs and monitoring has been undertaken in accordance with the requirements of the Contract.

.....
 Signed for and on behalf of
[Insert Delivery Partner's name] by
 [Insert name of Quality & Verification Manager]

SCHEDULE

Attachment to the Certificate - Nominated Defect Rectification

Project Contractor	Number identifier	Defect identifier	Description	Rectification Undertaken	Date of Rectification

15.6 Delivery Partner's Certificate – Section Completion

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
From: **[Insert Delivery Partner's name]** (ABN **[Insert Delivery Partner's ABN]**)
 ("**Delivery Partner**")

Section Location: **[Insert Details]**

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner (the "**Contract**") with respect to the Works in the Section described above, we certify that:

- (a) the Works are complete and all Omissions have been completed and Defects rectified;
- (b) the release of all Hold Points has been undertaken in accordance with the Contract;
- (c) the Project Contractors have complied with and satisfied the requirements of RMS D&C Q6;
- (d) all design, construction, inspection, repairs and monitoring comply with the Contract;
- (e) the Delivery Partner has documentation from each Project Contractor to demonstrate compliance of the Works with the Contract;
- (f) all documentation, reports, submissions, notices, approvals and the like have been submitted to RMS in accordance with the Contract;
- (g) each of the following designs:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and

(xiii) all other elements of the Works and Temporary Works carried out by the Project Contractors,

is in accordance with the requirements of the Contract;

(h) at the date of this certificate, there are no Known Defects which have not been rectified; and

(i) compliance certificates have been received from all relevant Project Contractors (copies attached).

.....
Signed for and on behalf of
[Insert Delivery Partner's name] by
[Insert name of Quality & Verification Manager]

Attachment to Certificate – Project Contractors' certificates of compliance

15.7 Delivery Partner's Certificate – Project Completion

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: RMS Authorised Representative
From: **[Insert Delivery Partner's name]** (ABN **[Insert Delivery Partner's ABN]**)
 ("**Delivery Partner**")

In accordance with the terms of clause 12.3 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Project (the "**Contract**"), we hereby certify that in respect of the Works:

- (j) the Project Completion requirements in clause 1.1 of the Contract are satisfied;
- (k) the release of all Hold Points has been undertaken in accordance with the Contract;
- (l) each Project Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (m) all design, construction, inspection, repairs and monitoring have been undertaken in accordance with the Contract;
- (n) all documentation, reports, submissions, notices, approvals and the like have been submitted to RMS in accordance with the Contract;
- (o) each of the following designs:
 - (i) structural design;
 - (ii) pavement design;
 - (iii) geometric road design;
 - (iv) environmental works design;
 - (v) urban and landscape design;
 - (vi) geotechnical design;
 - (vii) services design;
 - (viii) stormwater and drainage design (both permanent and temporary);
 - (ix) safety design;
 - (x) durability design;
 - (xi) operation and maintenance design;
 - (xii) signage, furniture and roadside furniture design; and
 - (xiii) all other elements of the Works and Temporary Works,is in accordance with the requirements of the Contract;
- (p) all Environment Requirements have been complied with prior to the date of this certificate; and

- (q) details of Project Contractor ongoing obligations in relation to the Defects Correction Periods or Defects Liability Periods (within the meaning of those terms in the Project Contracts) and Landscape Area Maintenance requirements (if any) or otherwise relating to the correction of Defects pursuant to the Project Contracts are set out in the attached Schedule.

.....
 Signed for and on behalf of
[Insert Delivery Partner's name] by
 [Insert name of Quality & Verification Manager]

SCHEDULE

Attachment to the Delivery Partner's Certificate of Project Completion

Project Contractor	ABN	Project Contract number/identifier	Obligations beyond Project Completion

15.8 Authorised Representative's Certificate – Section Opening

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: **[Insert Delivery Partner's name]** (ABN **[Insert Delivery Partner's ABN]**)
 ("**Delivery Partner**")

From: RMS Authorised Representative

Section Location: **[Insert Details]**

In accordance with the terms of clause 12.8 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Project, I hereby advise that Section Opening of the Section described above occurred on **[Insert date]**.

.....

Signed by

[Insert Authorised Representative's name]

Authorised Representative

15.9 Authorised Representative's Certificate – Project Completion

Woolgoolga to Ballina Pacific Highway Upgrade Project ("**Project**")

To: **[Insert Delivery Partner's name]** (ABN **[Insert Delivery Partner's ABN]**)
 ("**Delivery Partner**")

From: RMS Authorised Representative

In accordance with the terms of clause 12.8 of the deed between Roads and Maritime Services and the Delivery Partner with respect to the Project, I hereby advise that Project Completion was achieved on **[Insert date]**.

.....

Signed by

[Insert Authorised Representative's name]

Authorised Representative

Schedule 16 - RMS-Arranged Approvals

(Clause 3.12)

Reference to Section 1 in this Schedule 16 refers to the RMS Enabling Works Package No 2. Reference to Section 2 in this Schedule 16 refers to RMS Enabling Works Package No 3. Reference to Waves 1, 2 & 3 in this Schedule 16 refers to the RMS Enabling Works Package No 5.

Existing Approvals

1. Pacific Highway Upgrade – Woolgoolga to Ballina

- (a) The approval under section 115ZB of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the Minister for Planning dated 24 June 2014 in respect of Application No. SSI-4963 for the construction and operation of a four-lane motorway standard highway (two lanes in each direction) approximately 155 kilometres in length between Woolgoolga and Ballina, known as the Pacific Highway Upgrade – Woolgoolga to Ballina Project.
- (b) The approval under sections 130(1) and 133 of the *Environmental Protection and Biodiversity Conservation Act 1999* issued by the Minister for the Environment dated 14 August 2014 to upgrade approximately 155 km of the Pacific Highway from Woolgoolga to Ballina, NSW [See EPBC Act referral 2012/6394].
- (c) The Secretary of the Department of Planning and Environment's condition A7 and the Minister for the Environment's approval condition 1 in respect of a Staging Report for Sections 1 and 2 and Wave 1, 2 & 3 only, noting that the Staging Report is titled Woolgoolga to Ballina Staging Report and it's submission to the Secretary of the Department of Planning and Environment's and the Minister for the Environments.
- (d) The Secretary of the Department of Planning and Environment's approval required by condition D1 of the Planning Minister's Approval in respect of a Mitigation Framework, noting that the Mitigation Framework is titled Woolgoolga to Ballina: Biodiversity Mitigation Framework and the Secretary of the Department of Planning and Environment's approval refers to this Biodiversity Mitigation Framework.
- (e) The Secretary of the Department of Planning and Environment's approval required by condition D2 of the Planning Minister's Approval in respect of a Connectivity Strategy for Sections 1 and 2 only, noting that the Connectivity Strategy is titled Woolgoolga to Ballina Fauna Connectivity Strategy Woolgoolga to Glenugie (Sections 1 and 2) and the Secretary of the Department of Planning and Environment's approval refers to this Connectivity Strategy.
- (f) The Secretary of the Department of Planning and Environment's approval required by condition D6 of the Planning Minister's Approval in respect of a Nest Box Plan, noting that there are separate Nest Box Plans:
 - Nest Box Management Plan, Woolgoolga to Ballina Pacific Highway Upgrade Section 1 – Woolgoolga to Halfway Creek;

- Habitat Tree Assessment and Nest Box Management Plan for Section 2 Halfway Creek to Glenugie;
- Nest Box Management Plan Woolgoolga to Ballina Pacific Highway Upgrade (Section 3);
- Nest Box Management Plan Woolgoolga to Ballina Pacific Highway Upgrade (Sections 4 and 5);
- Woolgoolga to Ballina Pacific Highway Upgrade Section 6 – Nest Box Management Plan;
- Nest Box Management Plan, Woolgoolga to Ballina Pacific Highway Upgrade Section 7 – Devils Pulpit Upgrade to Trustums Hill;
- Habitat Tree Survey and Nest Box Management Plan for the Construction Corridor Sections 8 and 9 of the Woolgoolga to Ballina Pacific Highway Upgrade; and
- Habitat Tree Survey and Nest Box Management Plan for Section 10 & 11 of the Woolgoolga to Ballina Pacific Highway Upgrade.

The Secretary of the Department of Planning and Environment's approval refers to these Nest Box Plans.

- (g) The Secretary of the Department of Planning and Environment's approval required by condition D7 of the Planning Minister's Approval in respect of a Flora Translocation Strategy for Sections 1 and 2 and Wave 1,2 & 3 only, noting that the Flora Translocation Strategy is titled "Flora Translocation Strategy Section 1 and 2 Woolgoolga to Ballina Pacific Highway Upgrade" and the Secretary of the Department of Planning and Environment's approval refers to this Flora Translocation Strategy.
- (h) The Secretary of the Department of Planning and Environment's approval required by conditions D8 and D9 of the Planning Minister's Approval and condition 7 of the Minister for the Environment's Approval in respect of a Koala Management Plan, noting that the Koala Management Plan is titled Woolgoolga to Ballina Pacific Highway Upgrade: Koala Management Plan Section 1 - Section 2 and the Secretary of the Department of Planning and Environment's and the Minister for the Environment's approvals refer to this plan of management.
- (i) The Secretary of the Department of Planning and Environment's approval required by condition D9 of the Planning Minister's Approval in respect of a Koala Management Plan which includes a Revegetation Strategy required by condition D9(g), noting that the Revegetation Strategy is included in the Koala Management Plan titled Woolgoolga to Ballina: Koala Management Plan and the Secretary of the Department of Planning and Environment's approval refers to this Koala Management Plan.
- (j) The Secretary of the Department of Planning and Environment's approval required by condition D8 of the Planning Minister's Approval and condition 14 of the Minister for the Environment's Approval in respect of Threatened Species Management Plan, noting that the Management Plan is titled Woolgoolga to Ballina: Threatened Invertebrate Management Plan and the Secretary of the Department of

Planning and Environment's approvals refer to this plan of management.

- (k) The Secretary of the Department of Planning and Environment's approval required by condition D8 of the Planning Minister's Approval in respect of Threatened Species Management Plan, noting that the Management Plan is titled Woolgoolga to Ballina: Threatened Fish Management Plan and the Secretary of the Department of Planning and Environment's approval refers to this plan of management.
- (l) The Secretary of the Department of Planning and Environment's approval required by condition D20 of the Planning Minister's Approval in respect of an Urban Design and Landscape Plan for Sections 1 and 2 only, noting that the Urban Design and Landscape Plan is titled Woolgoolga to Ballina Upgrade Sections 1 and 2: Urban Design and Landscape Plan and the Secretary of the Department of Planning and Environment's approval refers to this Urban Design and Landscape Plan.
- (m) The Minister for the Environment's approval required by condition 7 of the Minister for the Environment's Approval in respect of a Ballina Koala Management Plan, noting that the management plan is titled Pacific Highway Upgrade: Woolgoolga to Ballina - Ballina Koala Management Plan and the Minister's approval refers to this Ballina Koala Management Plan.
- (n) The Secretary of the Department of Planning and Environment's approval required by condition D8 and the Minister for the Environment's approval required by condition 11 of the Minister for the Environment's Approval in respect of Threatened Mammal Management Plan(s), noting that the management plan is titled Pacific Highway Upgrade: Woolgoolga to Ballina - Threatened Mammal Management Plan and the Secretary of the Department of Planning and Environment's approval and the Minister for the Environment's approval refers to this Threatened Mammal Management Plan.
- (o) The Secretary of the Department of Planning and Environment's approval required by condition D8 and the Minister for the Environment's approval required by condition 11 of the Minister for the Environment's Approval in respect of Threatened Mammal Management Plan(s), noting that the management plan is titled Pacific Highway Upgrade: Woolgoolga to Ballina - Threatened Bat Management Plan and the Secretary of the Department of Planning and Environment's approval refers to this Threatened Bat Management Plan.
- (p) The Secretary of the Department of Planning and Environment's approval required by condition D8 and the Minister for the Environment's approval required by condition 11 of the Minister for the Environment's Approval in respect of Threatened Mammal Management Plan(s), noting that the management plan is titled Pacific Highway Upgrade: Woolgoolga to Ballina - Threatened Glider Management Plan and the Secretary of the Department of Planning and Environment's approval refers to this Threatened Glider Management Plan.
- (q) The Secretary of the Department of Planning and Environment's approval required by condition D8 and the Minister for the Environment's approval required by condition 14 of the Minister for the Environment's Approval in respect of Threatened Species Management Plan(s), noting that the management plan is titled Pacific

Highway Upgrade: Woolgoolga to Ballina - Threatened Frog Management Plan and the Secretary of the Department of Planning and Environment's approval refers to this Threatened Frog Management Plan.

- (r) The Secretary of the Department of Planning and Environment's approval required by condition D8 and the Threatened Species Management Plan(s), noting that the management plan is titled Pacific Highway Upgrade: Woolgoolga to Ballina - Coastal Emu Management Plan and the Secretary of the Department of Planning and Environment's approval refers to this Coastal Emu Management Plan.
- (s) The Secretary of the Department of Planning and Environment's approval required by condition D8 and the Minister for the Environment's approval required by condition 12 of the Minister for the Environment's Approval in respect of Threatened Flora Management Plan(s), noting that the management plan is titled Pacific Highway Upgrade: Woolgoolga to Ballina - Threatened Flora Management Plan, Sections 1 and 2 and Wave 1,2 & 3 and the Secretary of the Department of Planning and Environment's approval and Minister's approval refers to this Threatened Flora Management Plan.

2. Ballina Bypass Project

- (a) The approval under section 115B of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the Minister for Planning dated 22 May 2003 for the upgrade of a 12.5 kilometre section of the Pacific Highway to a four-lane dual carriageway, between approximately 600 metres south of the Bruxner Highway and 400 metres north of Ross Lane, bypassing the township of Ballina, in the Ballina Shire local government area, as modified by;
 - (i) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 5 February 2008;
 - (ii) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 12 February 2009;
 - (iii) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 20 March 2009;
 - (iv) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 13 July 2010;
 - (v) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 29 October 2010; and
 - (vi) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 1 March 2012.

3. Coffs Harbour Highway Planning - Sapphire to Woolgoolga

- (a) The approval under section 75J of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the Minister for Planning dated 13 January 2009 in respect of application no 06_0293 for the construction and operation of an approximately 25 kilometre dual carriageway upgrade of the Pacific Highway comprising duplication of the existing highway from Korora to South Woolgoolga and the Option E bypass of Woolgoolga, comprising five grade separated interchanges and referred to as the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project, as modified by:
- (i) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 14 November 2009 in respect of the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project (06_0293 MOD 1);
 - (ii) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 22 February 2010 in respect of the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project (06_0293 MOD 2);
 - (iii) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 9 September 2010 in respect of the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project (06_0293 MOD 3);
 - (iv) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 29 October 2010 in respect of the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project (06_0293 MOD 4);
 - (v) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 25 February 2011 in respect of the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project (06_0293 MOD 5);
 - (vi) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 19 October 2012 in respect of the “Coffs Harbour Highway Planning – Sapphire to Woolgoolga” Project (06_0293 MOD 6); and
 - (vii) Modification of Minister's approval under s75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the delegate of the Minister for Planning dated 5 June 2013 in respect of the “Coffs Harbour Highway

4. Pacific Highway Upgrade – Glenugie

- (a) The approval under section 75W of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the Minister for Planning dated 17 December 2009 in respect of application no 09_0073 for the construction and operation of an approximately 7 kilometre four lane divided carriageway upgrade of the Pacific Highway and referred to as the “Pacific Highway Upgrade: Wells Crossing to Iluka Road – Glenugie Upgrade” Project.
- (b) The approval under sections 130(1) and 133 of the *Environmental Protection and Biodiversity Conservation Act 1999* issued by the Department of the Environment, Water, Heritage and the Arts dated 13 January 2010 to upgrade approximately 7 km of the Pacific Highway between Franklins Road at Eight Mile Lane at Glenugie, including the construction of a four lane motorway, an overpass and a new access road. [See EPBC Act referral 2009/5002].

5. Pacific Highway Upgrade – Devils Pulpit

- (a) The approval under section 75J of the *Environmental Planning and Assessment Act 1979* (NSW) issued by the Minister for Planning dated 1 February 2011 in respect of application no MP09_0179 for the construction and operation of an approximately 6.4 kilometres of two lane divided carriageways and referred to as the “Pacific Highway Upgrade – Devils Pulpit” Project.
- (b) The approval under sections 130(1) and 133 of the *Environmental Protection and Biodiversity Conservation Act 1999* issued by the Department of Sustainability, Environment, Water, Population and Communities dated 14 February 2010 to upgrade approximately 7.36 km of the Pacific Highway at Devils Pulpit between approximately 65.64km and 73km north of Grafton from single carriageway to dual carriageway in each direction. [See EPBC Act referral 2010/5586].

Future Approvals to be obtained by RMS

- (c) The Secretary of the Department of Planning and Environment’s approval required by condition D3 of the Planning Minister’s Approval in respect of a Biodiversity Offset Strategy.
- (d) The Secretary of the Department of Planning and Environment’s approval required by condition D5 of the Planning Minister’s Approval in respect of a Biodiversity Offset Package.

Schedule 17 - EPL Deed Poll

(Clause 9.5(e))

DEED POLL

This Deed Poll is made at _____ on the _____ day of
20##

In favour of: **Laing O'Rourke Australia Construction Pty Limited** (ABN 39 112 099 000) of Level 4, 100 Arthur Street, North Sydney, New South Wales 2060 and

Parsons Brinckerhoff Australia Pty Limited (ABN 80 078 004 798) of Level 27, 680 George Street, Sydney, New South Wales 2000

(together the "**Delivery Partner**") and

Roads and Maritime Services (ABN 76 236 371 088) of 101 Miller Street, North Sydney, New South Wales 2060 ("**RMS**")

Given by: **[#insert details#]** ABN **[#insert details#]** of **[#insert details#]** ("**Contractor**")

Recitals

- A. By a contract dated **[#insert date#]** between the Contractor and RMS ("**Project Contract**"), the Contractor has been engaged to undertake certain works ("**Project Contractor Works**") on the land more particularly described in the Project Contract ("**Site**").
- B. Pursuant to a contract dated **[#insert date#]** between RMS and the Delivery Partner ("**Delivery Partner Contract**"), RMS has appointed the Delivery Partner to manage the delivery of the Woolgoolga to Ballina Pacific Highway Upgrade Project of which the Project Contractor Works form part.
- C. Pursuant to clause 9.5(aa) of the Delivery Partner Contract, the Delivery Partner has or will procure an environmental protection licence ("**EPL**") issued under Part 3 of the *Protection of the Environment Operations Act 1997* (NSW) which covers the Project Contractor Works.
- D. Under clause 9.5(e) of the Delivery Partner Contract, the Delivery Partner is required to procure the provision of this Deed Poll from the Contractor.

This Deed Poll provides

1. Where used in this Deed Poll:
- (a) "**Approval**" means any licence (including an EPL), permit, registration, consent, approval, determination, certificate, administrative decisions, permission or other requirement of any authority or under any other applicable law, which applies to, and must be satisfied in carrying out, the Project Contractor Works; and
- (b) "**Environmental Law**" means any law relating to environmental protection including all:
- (i) environmental conditions or the requirements of any Approval;

- (ii) laws applicable to the actual or potential effect on the environment of the activities in, at or on the Site;
- (iii) laws applicable to the disposal of materials or the discharge of chemicals, gases, liquids or other substances or materials into the environment, or the presence of such chemicals, gases, liquids or other substances or materials in, at or on the Site (including hazardous materials); and
- (iv) laws applicable to the emanation of noise at or from the Site.

2. In consideration of the Delivery Partner accepting this Deed Poll, the Contractor agrees that:

- (a) the Contractor, its sub-contractors and their respective personnel while they are on the Site will comply with the Delivery Partner's approved environmental management plan ("**Approved EMP**") and with all directions of the Delivery Partner with respect to protection of the environment;
- (b) the Contractor, its sub-contractors and their respective personnel will comply in a timely manner with directions of the Delivery Partner so that the Delivery Partner discharges its obligations under any Environmental Law, including but not limited to compliance with the terms of any Approvals;
- (c) the Contractor, its sub-contractors and their respective personnel will consult, cooperate and coordinate activities with the Delivery Partner, RMS and all other persons who have obligations under any Environmental Law or Approval;
- (d) the Delivery Partner may exclude the Contractor, any of its sub-contractors and their respective personnel from the Site for any breaches of an Environmental Law;
- (e) the Delivery Partner may direct the Contractor, any of its sub-contractors and their respective personnel to perform or not perform certain acts for reasons of protection of the environment and the Contractor must comply with any such direction;
- (f) where construction work involving potentially high risk of harm to the environment is to be carried out in the performance of the Project Contractor Works, the Contractor must:
 - (i) prepare a works environmental management plan that complies with the Approved EMP ("**Works EMP**");
 - (ii) provide a copy of the Works EMP to RMS and the Delivery Partner prior to the commencement of the construction work;
 - (iii) review and revise the Works EMP in accordance with any applicable Environmental Law and Approval;
 - (iv) ensure that the construction work is carried out in compliance with the Works EMP; and
 - (v) where so directed by the Delivery Partner, suspend the performance of any construction work;

- (g) the Contractor shall in carrying out the work under the Project Contract, comply with, and ensure that all subcontractors and personnel comply with, all Environmental Laws and Approvals; and
 - (h) in its contracts with subcontractors, the Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Contractor under this Deed Poll.
3. Without limiting any other obligation or liability of, or indemnity by, the Contractor under the Project Contract or under any Environmental Law, the Contractor must notify the Delivery Partner in writing immediately upon the occurrence of any environmental incident (whether caused by the Contractor or any of its subcontractors, their respective personnel, or any of their agents or employees whilst performing the Project Contractor Works).

This notice must include:

- (a) details of the environmental incident (including details of any harm or potential harm to the environment) and its cause; and
 - (b) details of all remedial and/or corrective actions taken, or proposed to be taken, to rectify or avoid any harm to the environment as a result of the incident and to prevent a reoccurrence.
4. To the extent permitted by law, the Contractor indemnifies the Delivery Partner from and against any and all suits, actions, proceedings, claims, demands, losses, damages, liabilities, costs and expenses of whatsoever nature (including but not limited to any compensation, investigation costs, remediation costs, authority charges or imposts and legal costs) arising as a result of, to the extent of, or contributed to by:
- (a) any failure by the Contractor to comply with any direction given by the Delivery Partner in accordance with this Deed Poll;
 - (b) any pollution, overflow, leakage, release, discharge or escape (whether direct or indirect) of water, fire, gas, electricity, hazardous materials or other harmful agent or contaminant in or from the Site or any other place where the Project Contractor Works are being performed (including while any material, plant, equipment or other items are in transit to the Site) caused or contributed to by any breach, act or omission of the Contractor or any of its subcontractors, their respective personnel or any of their agents or employees;
 - (c) contamination of or damage to the environment, environmental harm or nuisance to the Site or to any other land, air, water or place (whether direct or indirect) caused or contributed to by any breach, act or omission of the Contractor, any of its subcontractors or their respective personnel, or any of their agents or employees whilst performing the Project Contractor Works;
 - (d) any notice, direction, order or proceeding issued or taken pursuant to any Environmental Law in respect of or relating to any breach, act or omission of the Contractor or any of its subcontractors, their respective personnel or any of their agents or employees; and
 - (e) any breach by the Contractor, any of its subcontractors, their respective personnel, or any of their agents or employees of:
 - (i) any Environmental Law;
 - (ii) any condition of an Approval ; or

(iii) the provisions of this Deed Poll.

2. This Deed Poll will be governed by and construed in accordance with the law for the time being of the State of New South Wales.

Executed as a Deed Poll.

Executed by [**Contractor**] by or in the presence of:



Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 18 - RMS Retained Obligations

RMS-Arranged Approvals

(Clause 1.1)

1. Pacific Highway Upgrade – Woolgoolga to Ballina

The only obligations identified in the Environmental Requirements and the Approvals that remain the responsibility of RMS are that RMS is:

- (a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically to the Works, the Project or the carrying out of the Services;
- (b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Project Completion, except for any that relate specifically to the Works, the Project or the carrying out of the Services after Project Completion;
- (c) in relation to the Minister for Planning's Approval for the Pacific Highway Upgrade – Woolgoolga to Ballina:
 - (i) to be responsible for condition A4., to the extent only that RMS is responsible for compliance with the Minister for Planning's requirements in relation to any strategies, plans, programs, reviews, audits, reports or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Minister for Planning's Approval as indicated in this clause 1 of Schedule 18;
 - (ii) to be responsible for condition A5.;
 - (iii) to be responsible for condition A6., as it applies to the conditions for which RMS is responsible, in accordance with this schedule;
 - (iv) to be responsible for condition A7., except for the obligations that relate specifically to the Works, the Project or the carrying out of the Services;
 - (v) to be responsible for condition A8., as it applies to the conditions for which RMS is responsible, in accordance with this schedule;
 - (vi) to be responsible for condition B33(c)., except that all agreements with affected landowners regarding impacts to property must be approved by RMS;
 - (vii) to be responsible for condition B81., except that the Delivery Partner must provide all the information, details, data, works and facilities that RMS requires to ensure that during the operation of the SSI, water quality risks to the Woodburn Borefield drinking water catchment are minimised to the satisfaction of Rous Water;
 - (viii) to be responsible for condition C4., except that the Delivery Partner must provide RMS with all the electronic information, details and data relating to the Works, the

Project or the carrying out of the Services that RMS requires to establish and maintain the new website;

- (ix) to be responsible for condition D1., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to develop the Mitigation Framework;
- (x) to be responsible for condition D3., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Biodiversity Offset Strategy;
- (xi) to be responsible for condition D4.;
- (xii) to be responsible for condition D5., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Biodiversity Offset Package;
- (xiii) to be responsible for condition D6., to the extent only that RMS will prepare a Nest Box Plan, and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Nest Box Plan;
- (xiv) to be responsible for condition D8., to the extent only that RMS will prepare a Threatened Species Management Plan, and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Threatened Species Management Plan;
- (xv) to be responsible for condition D9., to the extent only that RMS will prepare a Koala Management Plan, and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Koala Management Plan;
- (xvi) to be responsible for condition D15.;
- (xvii) to be responsible for condition D23., to the extent only that RMS is to nominate to and receive approval from the Director General to the Environmental Representative and to employ the Environmental Representative by way of the Deed of Appointment of Environmental Representative;
- (xviii) to be responsible for condition D29., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to incorporate the SSI into the existing environmental managements systems administered by RMS; and
- (xix) to be responsible for condition D31; and

- (d) in relation to the requirements nominated in the Minister for the Environment's Approval for the Pacific Highway Upgrade – Woolgoolga to Ballina:
- (i) to be responsible for condition of approval 1. except for the obligations that relate specifically to the Works, the Project or the carrying out of the Services;
 - (ii) to be responsible for condition of approval 5. except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to undertake population viability modelling the Ballina Koala population;
 - (iii) to be responsible for condition of approval 6.;
 - (iv) to be responsible for condition of approval 7. to the extent only that RMS will prepare a Ballina Koala Management Plan, and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Ballina Koala Management Plan;
 - (v) to be responsible for condition of approval 8. to the extent only that RMS will develop a Koala Management Plan for each relevant stage(s), and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to develop the Koala Management Plan for each relevant stage(s);
 - (vi) to be responsible for condition of approval 9.;
 - (vii) to be responsible for condition of approval 10.;
 - (viii) to be responsible for condition of approval 11. to the extent only that RMS will develop a Threatened Mammal Management Plan for each stage impacting on the Spotted-tail Quoll and the Long-nosed Potoroo and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to develop the Threatened Mammal Management Plan(s);
 - (ix) to be responsible for condition of approval 12., to the extent only that RMS will develop a Threatened Flora Management Plan for each stage impacting on the EPBC Act listed flora species and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to develop the Threatened Flora Management Plan(s);
 - (x) to be responsible for condition of approval 14. to the extent only that it applies to the conditions for which RMS is responsible, in accordance with clause 1(c) of this Schedule 18;
 - (xi) to be responsible for condition of approval 15. except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the

Project or the carrying out of the Services that RMS requires to prepare the Biodiversity Offset Strategy and Biodiversity Package;

- (xii) to be responsible for condition of approval 16. to the extent only that it applies to the conditions for which RMS is responsible, in accordance with clause 1(c) of this Schedule 18;
- (xiii) to be responsible for condition of approval 18;
- (xiv) to be responsible for condition of approval 19., to the extent only that RMS is responsible for collecting and recording survey data in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Minister for the Environment's Approvals as indicated in clause 1 of this Schedule 18;
- (xv) to be responsible for condition of approval 20.;
- (xvi) to be responsible for condition of approval 21., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare and publish a report on their website addressing compliance with the conditions of the Minister for the Environment's Approval for the Pacific Highway Upgrade – Woolgoolga to Ballina;
- (xvii) to be responsible for condition of approval 25.;
- (xviii) to be responsible for condition of approval 26., to the extent only that will maintain accurate records substantiating activities associated with or relevant to the conditions of approval, for which RMS is responsible under the Minister for the Environment's Approvals as indicated in this clause 1; and
- (xix) to be responsible for condition of approval 27., except that the Delivery Partner must provide RMS with all the Frameworks, Strategies, Plans or Packages that the Delivery Partner is required to prepare or develop in accordance with this clause.

2. Ballina Bypass Project

The only obligations identified in the Environmental Requirements and the Approvals that remain the responsibility of RMS are that RMS is:

- (a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically to the Works, the Project or the carrying out of the Services;
- (b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Project Completion, except for any that relate specifically to the Works, the Project or the carrying out of the Services after Project Completion; and
- (c) in relation to the Minister for Planning's Approval for the Ballina Bypass project:
 - (i) to be responsible for condition 2., to the extent only that RMS is responsible for compliance with the Director General's requirements in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Minister for Planning's Approvals as indicated in clause 2 of this Schedule 18;
 - (ii) to be responsible for condition 4., except that the Delivery Partner must provide RMS, within 10 Business Days of receipt by the Delivery Partner of a request from RMS to do so, with all the information, details and data relating to the Works, the Project or the carrying out of the Services, that RMS requires to prepare the Pre-Construction Compliance Report;
 - (iii) to be responsible for condition 5., except that the Delivery Partner must provide RMS, within 10 Business Days of receipt by the Delivery Partner of a request from RMS to do so, with all the information, details and data relating to the Works, the Project or the carrying out of the Services, that RMS requires to prepare the Pre-Operation Compliance Report;
 - (iv) to be responsible for condition 10, except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to establish and update the project internet site;
 - (v) to be responsible for condition 12., to the extent only that RMS is to nominate to and receive approval from the Director General to the Environmental Representative and to employ the Environmental Representative by way of the Deed of Appointment of Environmental Representative;
 - (vi) to be responsible for condition 16., except that the Delivery Partner must provide RMS with all information, details and data relating to the Works, the Project or the carrying out of the Services, that RMS requires to develop the Operational Environmental Management Plan;
 - (vii) to be responsible for condition 18.;

- (viii) to be responsible for condition 27., to the extent only that RMS will prepare a Groundwater and Settlement Management Sub Plan and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Groundwater and Settlement Management Sub Plan;
- (ix) to be responsible for condition 34.;
- (x) to be responsible for condition 36.;
- (xi) to be responsible for condition 38.;
- (xii) to be responsible for condition 40.;
- (xiii) to be responsible for condition 40A.; and
- (xiv) to be responsible for condition 66.

3. Coffs Harbour Highway Planning - Sapphire to Woolgoolga

The only obligations identified in the Environmental Requirements and the Approvals that remain the responsibility of RMS are that RMS is:

- (a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically to the Works, the Project or the carrying out of the Services;
- (b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Project Completion, except for any that relate specifically to the Works, the Project or the carrying out of the Services after Project Completion; and
- (c) in relation to the Minister for Planning's Approval for the Coffs Harbour Highway Planning - Sapphire to Woolgoolga:
 - (i) to be responsible for condition 1.3, to the extent only that RMS is responsible for compliance with the Director General's requirements in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Planning and Infrastructure Minister's Approvals as indicated in clause 3 of this Schedule 18;
 - (ii) to be responsible for condition 1.6;
 - (iii) to be responsible for condition 1.7 as it applies to the conditions for which RMS is responsible, in accordance with this schedule;
 - (iv) to be responsible for condition 1.10;
 - (v) to be responsible for condition 2.8., to the extent only that RMS has:
 - A. undertaken the pre-construction surveys;
 - B. updated the sensitive area/vegetation maps; and
 - C. identified the number of bat boxes to be installed;
 - (vi) to be responsible for condition 2.12 (Biodiversity Offset and Mitigation Strategy);
 - (vii) to be responsible for condition 2.13 (Biodiversity Offset and Mitigation Package) except that the Delivery Partner must provide RMS with all the information, details and data as a consequence of the Contractor's Work that RMS requires to prepare the Biodiversity Offset and Mitigation Package;
 - (viii) to be responsible for condition 2.29;
 - (ix) to be responsible for condition 2.39, except that the Delivery Partner must provide RMS with all the information, details and data as a consequence of the Works, the Project or the carrying out of the Services that RMS requires to incorporate the rest area into the existing environmental management systems;
 - (x) to be responsible for condition 2.40 except that the Delivery Partner must provide RMS with all the information, details and data as a consequence

of the Works, the Project or the carrying out of the Services that RMS requires to update the Biodiversity Offset and Mitigation Package;

- (xi) to be responsible for condition 3.1 (Ecological Monitoring Program) except that the Delivery Partner must provide RMS with all the information, details and data as a consequence of the Works, the Project or the carrying out of the Services that RMS requires to update the Ecological Monitoring Program;
- (xii) to be responsible for condition 3.2. except that the Delivery Partner must provide RMS with all the information, details and data as a consequence of the Works, the Project or the carrying out of the Services that RMS requires to undertake the operational noise monitoring and prepare the Operational Noise Report;
- (xiii) to be responsible for condition 3.3;
- (xiv) to be responsible for condition 4.1 (Compliance Tracking Program) except that the Delivery Partner must provide RMS, within 10 Business Days of receipt by the Delivery Partner of a request from RMS to do so, with all the information, details and data as a consequence of the Works, the Project or the carrying out of the Services that RMS requires to develop and implement the Compliance Tracking Program;
- (xv) to be responsible for condition 5.1 and 5.2 (Project Website) except that the Delivery Partner must provide RMS with all the electronic information, details and data as a consequence of the Works, the Project or the carrying out of the Services that that RMS requires to establish and maintain the new website;
- (xvi) to be responsible for condition 6.1 to the extent only that RMS is to nominate to and receive the approval from the Director General to the Environmental Representative and to employ the Environmental Representative jointly with the Delivery Partner by way of the Deed of Appointment of Environmental Representative; and
- (xvii) to be responsible for condition 6.4 (Environmental Management Systems), except that the Delivery Partner must provide RMS with all the information, details and data as a consequence of the Works, the Project or the carrying out of the Services that RMS requires to incorporate the rest area into the OEMP.

4. Pacific Highway Upgrade – Glenugie

The only obligations identified in the Environmental Requirements and the Approvals that remain the responsibility of RMS are that RMS is:

- (a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically the Works, the Project or the carrying out of the Services;
- (b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Project Completion, except for any that relate specifically to the Works, the Project or the carrying out of the Services after Project Completion;
- (c) in relation to the Minister for Planning's Approval for the Pacific Highway Upgrade – Glenugie:
 - (i) to be responsible for condition 1.3., to the extent only that RMS is responsible for compliance with the Director General's requirements in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Planning and Infrastructure Minister's Approvals as indicated in clause 4 of this Schedule 18;
 - (ii) to be responsible for condition 1.5;
 - (iii) to be responsible for condition 2.2., to the extent only that RMS will develop the Melaleuca Irbyana Strategy and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the develop the Melaleuca Irbyana Strategy;
 - (iv) to be responsible for condition 2.3., to the extent only that RMS will develop the Square-fruited Ironbark Offset Package and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Square-fruited Ironbark Offset Package;
 - (v) to be responsible for condition 5.2., except that the Delivery Partner must provide RMS with all the electronic information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to establish and maintain the new website;
 - (vi) to be responsible for condition 6.1 to the extent only that RMS is to nominate and receive approval from the Director General to the Environmental Representative and to employ the Environmental Representative by way of the Deed of Appointment of Environmental Representative; and
 - (vii) to be responsible for condition 6.3., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to incorporate the project into the existing environmental managements systems administered by RMS; and
- (d) in relation to the requirements nominated in the Minister for the Environment's Approval the Pacific Highway Upgrade – Glenugie:
 - (i) to be responsible for condition 3., except that the Delivery Partner must provide RMS with all the information, details and data relating to the

Works, the Project or the carrying out of the Services that RMS requires to prepare the Biodiversity Offset Strategy;

- (ii) to be responsible for condition 6., the extent only that RMS will develop a Management Plan for the Spotted-tail Quoll and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to develop the Management Plan for the Spotted-tail Quoll;
- (iii) to be responsible for condition 7.; and
- (iv) to be responsible for condition 8., except that the Delivery Partner must provide RMS with all the reports, plans, strategies and programs relating to the Works, the Project or the carrying out of the Services that RMS is required to make publically available on the Project website.

5. Pacific Highway Upgrade – Devils Pulpit

The only obligations identified in the Environmental Requirements and the Approvals that remain the responsibility of RMS are that RMS is:

- (a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically to the Contract, the Works, the Project or the carrying out of the Services;
- (b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Project Completion, except for any that relate specifically to the Contract, the Works, the Project or the carrying out of the Services after Project Completion;
- (c) in relation to the Minister for Planning's Approval for the Pacific Highway Upgrade – Devils Pulpit:
 - (i) to be responsible for condition A3., to the extent only that RMS is responsible for compliance with the Director General's requirements in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which RMS is responsible under the Planning and Infrastructure Minister's Approvals as indicated in clause 5 of this Schedule 18;
 - (ii) to be responsible for condition A5. except for the obligations that relate specifically to the Works, the Project or the carrying out of the Services;
 - (iii) to be responsible for condition A.7;
 - (iv) to be responsible for condition B4., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Biodiversity Offset Strategy;
 - (v) to be responsible for condition B5., except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Biodiversity Offset Package;
 - (vi) to be responsible for condition B6. the extent only that RMS will develop an Ecological Monitoring Program and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to develop the Ecological Monitoring Program;
 - (vii) to be responsible for condition B18., except that the Delivery Partner must provide RMS with all the electronic information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to establish and maintain the new website;
 - (viii) to be responsible for condition B21. to the extent only that RMS is to nominate to and receive approval from the Director General to the Environmental Representative and to employ the Environmental Representative by way of the Deed of Appointment of ER; and
 - (ix) to be responsible for condition D3. except that the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires

to incorporate the Project into the existing environmental management systems administered by RMS; and

- (d) in relation to the requirements nominated in the Minister for the Environment's Approval for the Pacific Highway Upgrade – Devils Pulpit:
- (i) to be responsible for condition of approval 4., to the extent only that RMS will prepare a Flora and Fauna Management Plan, and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Flora and Fauna Management Plan;
 - (ii) to be responsible for condition of approval 5 to the extent only that RMS will prepare a Spotted-Tail Quoll Management Plan, and the Delivery Partner must provide RMS with all the information, details and data relating to the Works, the Project or the carrying out of the Services that RMS requires to prepare the Spotted-Tail Quoll Management Plan;
 - (iii) to be responsible for condition of approval 7.;
 - (iv) to be responsible for condition of approval 8.;
 - (v) to be responsible for condition of approval 9.; and
 - (vi) to be responsible for condition of approval 14., to the extent only that will maintain accurate records substantiating activities associated with or relevant to the conditions of approval, for which RMS is responsible under the Minister for the Environment's Approvals as indicated in clause 5 of this Schedule 18.

Schedule 19 - Delivery Exceptions

(Clause 3.4(c))

The table below provides the list of design and construction activities permitted to be undertaken by Personnel engaged in the Services.

Personnel	Services Role	Permitted Design and Construction Activities
Delivery Partner design Personnel	Design	<p>Development of the concept design of the Glenugie to Ballina section of the Project to inform, and for the purposes of the development of tender documentation for the procurement and engagement of, Consultants and for the development of Project estimates and the DP Cost Plan, including;</p> <ul style="list-style-type: none"> • updating the current existing designs to address any known non-conformances; • incorporating revised earthworks strategies and constructability inputs; • progressing the flood models, optioneering of the major cross drainage openings and the design of typical design of water quality treatments and longitudinal drainage; and • developing other innovations.

Exhibit A - Services Brief

NOT CONTAINED WITHIN THIS FILE

Exhibit B - Works Brief

NOT CONTAINED WITHIN THIS FILE

Exhibit C - Initial DP Cost Plan

NOT CONTAINED WITHIN THIS FILE

Exhibit D - Electronic Files

NOT CONTAINED WITHIN THIS FILE

Exhibit E - Key Performance Indicators

NOT CONTAINED WITHIN THIS FILE

Exhibit F - Modifier Adjustments

NOT CONTAINED WITHIN THIS FILE

Exhibit G - RMS Insurance Policies

NOT CONTAINED WITHIN THIS FILE