

**MAJOR WORKS AUTHORISATION DEED
PRIVATE FINANCING AND CONSTRUCTION**

**Transport for NSW
("TfNSW")**

**The parties identified in Item 1 of the Schedule
("Developer")**

CONTENTS

CLAUSE	PAGE
1	Definitions and interpretation 6
1.1	Definitions 6
1.2	Interpretation..... 10
1.3	Not used..... 11
1.4	Separable portions..... 11
2.	ENVIRONMENTAL APPROVALS 12
2.1	ACKNOWLEDGEMENTS 12
2.2	Environmental Assessment of Works 12
2.3	Notification of Determination..... 12
3.	TFNSW AUTHORISATION UNDER ROADS ACT 13
4.	SECURITY 13
4.1	Purpose..... 13
4.2	Increase in Approved Security 13
5.	NATURE OF CONTRACT 15
5.1	General 15
5.2	All risks 15
6.	PROJECT VERIFIER..... 15
6.1	Project Verifier Selection..... 15
6.2	Project Verifier Appointment 15
7.	DESIGN 16
7.1	Design Obligations 16
7.2	Review Process..... 16
7.3	TfNSW not liable for checking 17
7.4	Obligations unaffected..... 17
8.	COMMENCEMENT OF THE WORKS 18
8.1	Preconditions to commencement 18
8.2	Appointment of Contractor..... 18
8.3	Principal contractor 19
8.4	Safety audits and surveillance 22
9.	CONSTRUCTION 22
9.1	Carrying out the Works..... 22
9.2	TfNSW works 24
9.3	Testing 24
9.4	Defects rectification 24
9.5	Sequencing of Separable Portions 24
10.	MODIFICATIONS..... 24
10.1	Modifications Only by Agreement..... 24
10.2	Effect on Estimated Cost of the Works 25
11.	PRACTICAL COMPLETION 25
11.1	Developer to Notify 25
11.2	TfNSW to Inspect and Give Notice..... 25
11.3	Unilateral Issue of Practical Completion Notice 26
11.4	Take Over Upon Practical Completion 26
11.5	Effect of Notice of Practical Completion..... 26

11.6	As Builts	26
11.7	Intellectual Property Warranty and Indemnity	26
11.8	Moral Rights.....	27
11.9	Dedication of Land	27
11.10	Traffic signal works	27
12.	PRACTICAL COMPLETION CLAIM AND FINAL COMPLETION CLAIM	28
12.1	Claims.....	28
12.2	Release after Practical Completion	28
12.3	Final Claim and Notice	28
12.4	Release after Final Claim and Notice.....	28
12.5	Final Certificate and Release of Approved Security	29
12.6	Right of Set-Off	30
12.7	Limitation	30
12.8	Payments from TfNSW to the Developer	30
13.	TFNSW COSTS.....	30
13.1	Developer liable to pay	30
13.2	TfNSW Cost Estimate	31
13.3	Invoice	31
13.4	Payment.....	31
13.5	Interest.....	31
13.6	Deferral of capitalised maintenance costs.....	31
14.	LIABILITY AND INDEMNITY	31
14.1	Indemnity.....	31
14.2	No limitation	32
14.3	TfNSW may remedy	33
15.	INSURANCE	33
15.1	Effect and maintain.....	33
15.2	Proof.....	33
15.3	TfNSW may effect insurances	33
16.	TERMINATION	33
16.1	Default by Developer.....	33
16.2	Take over the Works	34
16.3	Termination of Contract.....	34
16.4	Adjustment of costs on completion.....	35
16.5	No release	35
17.	AUTHORISED REPRESENTATIVES.....	35
17.1	Representatives to Perform Functions.....	35
17.2	Developer's Project Manager	35
17.3	Communications	35
17.4	Substitution	35
18.	DISPUTE RESOLUTION	35
18.1	Notice of Dispute	35
18.2	Response to Notice	36
18.3	Negotiation	36
18.4	Further Notice if not Settled	36
18.5	Reference to Expert	36
18.6	Rules.....	36
18.7	Assistance	36
18.8	Expert not an Arbitrator.....	37
18.9	Mediation.....	37
18.10	Litigation	37

18.11	Continue to Perform obligations.....	37
19.	GENERAL	38
19.1	No Representations by TfNSW	38
19.2	No Restriction on Rights	38
19.3	Notices	38
19.4	Assignment.....	38
19.5	Waiver	39
19.6	Joint and Several Liability	39
19.7	Not used.....	39
19.8	Governing Law and jurisdiction	39
19.9	Stamp duty.....	39
19.10	Prior agreements superseded	39
19.11	Modification of Deed.....	39
19.12	Media releases and enquiries.....	39
19.13	Disclosure by TfNSW	39
19.14	Proportionate liability	40
20.	GST	40
	[LOG-E note to TfNSW: This GST clause 20 is not yet agreed and is subject to receipt of tax advice]	40
20.1	Interpretation.....	40
20.2	Calculation of GST	40
20.3	GST invoices	40
21.	SFKC LIMITATION OF LIABILITY	41
21.1	SFKC warranties and limitation of liability	41
21.2	Definitions	41
21.3	Warranties.....	42
21.4	Limitation of Trustee's Liability	42
22.	ESR KECT LIMITATION OF LIABILITY.....	44
22.1	Definitions	44
22.2	Limitation of Trustee's Liability	44
23.	AUSTRALAND LIMITATION OF LIABILITY.....	46
24.	ESR LIMITATION OF LIABILITY	47
24.1	Definitions	47
24.2	Limitation of Trustee's Liability	47
25.	EXECUTION OF THIS DEED	48
25.1	Remote execution.....	48
25.2	Electronic execution and witnessing	49
	SCHEDULE	54
	ATTACHMENT A - PROJECT REQUIREMENTS	57
	ATTACHMENT B - DESCRIPTION OF WORKS	61
	ATTACHMENT C – INSURANCE SCHEDULE.....	62
	ATTACHMENT D - STATUTORY DECLARATION AND SUBCONTRACTOR STATEMENT REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION.....	76
	ATTACHMENT E – LAND TO BE DEDICATED	80
	ATTACHMENT F – DEED OF APPOINTMENT OF PROJECT VERIFIER.....	81
	ATTACHMENT G – TFNSW RULES FOR THE EXPERT DETERMINATION PROCESS AND THE CODE OF CONDUCT FOR AN EXPERT	131

ATTACHMENT H – CONCEPT DESIGN DOCUMENTS	132
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Schedule

1	Project Documents.....	105
2	Project Verifier Services.....	106
3	Payment Schedule	112
4	Initial Verification and Monitoring Plan	116
5	Minimum surveillance by Project Verifier during the Works.....	117
6	Minimum Requirements	121
7	Project Plan Certificate	123
8	Design Documents Certificate	124
9	Monthly Construction Certificate – Quality Assurance	125
10	Construction Completion Certificate.....	126
11	Final Verification Certificate.....	127
12	Form of Statutory Declaration	128

Works Authorisation Deed - Private Financing and Construction

Parties

TfNSW	Transport	for	NSW
	(ABN 18 804 239 602)		
	a NSW Government agency constituted under the <i>Transport Administration Act 1988</i> (NSW) of 20-44 Ennis Road, Milsons Point NSW 2061		

Developer The parties identified in Item 1 of the Schedule

Background

1. TfNSW is the decision making authority under the Act in relation to the Works and has the statutory right to undertake the Works or authorise the Works to be carried out.
2. The Developer has agreed to finance, design and construct the Works on the terms of this Deed.
3. TfNSW authorises the Developer to carry out the Works subject to the terms of this Deed.

Deed

1 Definitions and interpretation

1.1 Definitions

In this document:

'Act' means the *Roads Act 1993* (NSW);

'Amended Design Document' has the meaning given to that expression in clause 7.2;

'Approval' means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by Law, including by any TfNSW condition or approval, including those under this Deed, required for the commencement, execution or completion of the Works;

'Approved Security' means one or more unconditional undertakings or certificates in a form acceptable to TfNSW and given by a bank or other financial institution acceptable to TfNSW;

'As-Built Drawings' means the Design Documents which are the final as-executed drawings of the Works and which are endorsed with a certificate by the Project Verifier, stating that the Works as constructed comply with all Approvals, Legislative Requirements and the requirements of this Deed;

'Australand' means Australand C&I Land Holdings Pty Ltd (ACN 107 356 641);

'Authority' means a Commonwealth, State or local government department, a Minister, body, instrumentality, trust or public authority in the exercise of a governmental regulatory function;

'Business Day' means a day other than a Saturday, Sunday or public holiday in NSW and specifically excluding 27, 28, 29, 30 and 31 December;

'Concept Proposal' means drawings and specifications containing sufficient information to enable TfNSW to make the determination referred to in clause 2.1(a);

'Construction Program' means a program in logic linked critical path format showing the order of progress of the Works, to be prepared by the Developer and provided to TfNSW under clause 8.1(e);

'Date of Practical Completion' means the date of Practical Completion set out in a Notice of Practical Completion;

'Deed of Appointment of Project Verifier' means the deed in the form of Attachment F between the Developer, TfNSW and the Project Verifier;

'Defects Liability Period' means the period stated in Item 3 of the Schedule;

'Design Document' means:

- (a) a drawing, specification, construction document, design calculation, software, sample, model, pattern and the like required by this Deed or created for the construction, identification, modification, repair or maintenance of the Works;
- (b) a schedule setting out particulars of all notices, tests, hold points and materials as required by the individual sections of the Project Requirements, identifying all notification periods;
- (c) any geotechnical report, data or investigation relating to the Works; and
- (d) a health & safety in design report and risk register as required by the WHS Laws;

'Design Obligations' means all tasks necessary to design and specify the Works, including preparation and certification of the Design Documents and, if the Project Requirements include any preliminary design or specification, developing that preliminary design or specification;

'Detailed Proposal' means a complete package of Design Documents that the Developer proposes to issue or use for construction of the Works;

'Developer's Project Manager' means the person appointed by the Developer under clause 17.2(a);

'Environmental Management Plan' means a detailed plan setting out measures to manage and control the environmental impact of construction of the Works and so as to achieve compliance with this Deed;

'Estimated Cost of the Works' means the estimated cost for completing the Works and satisfying all of the Developer's obligations under this Deed (including payment of TfNSW Costs), which at the date of this Deed, is the amount specified in Item 2 of the Schedule;

'ESR1' means ESR Investment Management 1 (Australia) Pty Limited (ACN 626 831 945) in its capacity as trustee for the ESR Aldington Road Property Trust;

'ESR KECT' means ESR KECT (Australia) Pty Limited (ACN 668 299 545) in its capacity as trustee of the ESR LVH Asset Trust;

'EP&A Act' means the *Environmental Planning and Assessment Act 1979* (NSW);

'Frasers' means FPI Developments VIC Pty Limited (ACN 095 586 708);

'Inspection and Testing Plan' means a detailed plan setting out all testing and conformance data necessary to demonstrate conformance of the Works with the Project Requirements and Design Documents;

'Intellectual Property Rights' means all industrial and intellectual property rights of any kind including but not limited to copyright, trade mark, design, patent, semi-conductor or circuit layout rights, trade, business or company names or other proprietary rights, or any rights prior to registration of such rights;

'Law' includes:

- (a) Legislative Requirements; and
- (b) common law;

'Legislative Requirements' include:

- (a) an act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of New South Wales;
- (b) Approval of an Authority (including any condition or requirement under an Approval); and
- (c) any requirement to pay fees and charges in connection with paragraphs (a) and (b);

'Moral Rights' means each right defined as a 'moral right' in Part IX of the *Copyright Act 1968*;

'Notice of Practical Completion' means a notice under clause 11.2(b) by TfNSW stating that Practical Completion of the Works has been achieved;

'Notifiable Incident' has the meaning given to the term "notifiable incident" under the WHS Laws;

'Practical Completion' means that stage in the execution of the Works under this Deed when:

- (a) the Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation or handover to a relevant Authority, as the case may be, except for minor omissions and minor defects which:
 - (i) have been so identified on a list issued to the Developer by TfNSW;
 - (ii) do not impede use of the Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - (iii) will not prejudice the convenient and safe use of the Works during rectification; and
 - (iv) TfNSW Representative determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;
- (b) the Inspection and Testing Plan has been complied with and any other tests necessary to be carried out and passed before the Works, or a part thereof, is used and occupied by the public or handed over to a relevant Authority have been carried out and passed and all test results and conformance data identified in the Inspection and Testing Plan has been provided to TfNSW;
- (c) all relevant Legislative Requirements in respect of the Works have been carried out or satisfied;

- (d) all documents, certifications and information required under the Deed which, in the opinion of TfNSW, are essential for the use, operation and maintenance of the Works have been supplied, including all shop drawings and draft As-Built Drawings, all original manufacturers' or suppliers' warranties required by the Deed, all Approvals required to be obtained have been obtained from relevant Authorities and all other material provided as requested by TfNSW; and
- (e) with the approval of TfNSW, the Developer has commissioned into operation the Works including all plant incorporated into the Works and any traffic signalling equipment and demonstrated to the satisfaction of TfNSW that the commissioning has been successful;

'Principal Contractor' has the meaning given to the term 'principal contractor' in the WHS Laws;

'Product Quality Summary' means a summary of product quality records which:

- (a) indicates the lots or components or both, of the Works which have achieved full conformance with the requirements of this Deed; and
- (b) demonstrates how that full conformance was achieved;

'Project Requirements' mean the requirements, including standard specifications, set out or identified in Attachment A;

'Project Verifier' means the person appointed by the Developer in accordance with clause 6;

'Project Verifier Services' means the services set out in Schedule 2 of the Deed of Appointment of Project Verifier;

'Quality Plan' means a detailed plan setting out the quality control measures to be implemented to ensure construction of the Works satisfies the requirements of this Deed;

'REF' means a review of environmental factors required to assist the determining authority in discharging its obligations under Part 5 of the EP&A Act;

'Remaining Separable Portions' means all Separable Portions other than Separable Portion 1.

'Respective Developer' means each of the following parties jointly and severally:

- (a) Frasers;
- (b) SFKC; and
- (c) ESR KECT;

'Respective Proportion' means:

- (a) Frasers – 33.33%;
- (b) SFKC – 33.34%; and
- (c) ESR KECT – 33.33%;

'Road' means the road identified in Item 5 of the Schedule;

'Separable Portion' means any part of the Works that is:

- (a) identified as a "Separable Portion" in the Schedule; or
- (b) otherwise agreed to be a "Separable Portion" in accordance with clause 1.4;

'Separable Portion 1' means those parts of the Works described as such in the Schedule.

'Separable Portion 2' means those parts of the Works described as such in the Schedule.

'SFKC' means Stockland Fife Kemps Creek Pty Limited (ACN 628 770 141) in its capacity as trustee of the Stockland Fife Kemps Creek Trust (ABN 47 273 439 938);

'TfNSW Costs' mean costs and expenses reasonably incurred, or which will or may reasonably be incurred, by TfNSW in connection with this Deed, as further described (without limitation) in clause 13;

'TfNSW Preliminary Costs' means that part of TfNSW Costs described under clauses 13.1(a) and 13.1(b);

'TfNSW Representative' means the authorised representative of TfNSW stated in Item 7 of the Schedule, or any replacement advised by TfNSW in writing from time to time;

'Traffic Control Plan' means a detailed plan in accordance with TfNSW's 'Traffic Control at Work Sites Manual';

'Traffic Management Plan' means a detailed plan indicating how the Works and traffic will be managed during construction of the Works so as to minimise traffic disruption and achieve public safety and compliance with this Deed;

'WHS Laws' means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW) and any other occupational or work health and safety statute applicable in New South Wales including any regulations and other instruments under it or them including any Codes of Practice and any consolidations, amendments, re-enactments or replacements of it or them; and

'Works' mean the works described in Attachment B, as modified following any assessment or determination under clause 2 or clause 7 or any other modification agreed in writing between the parties, to be designed and constructed in accordance with the Deed.

1.2 Interpretation

- (a) clause headings are for convenience only and will be ignored in the interpretation of the Deed;
- (b) references to a party include the successors and permitted assigns of that party;
- (c) words importing the singular include the plural and words importing the plural include the singular;
- (d) words importing a person include a corporation, firm or body corporate;
- (e) nothing contained in the Deed will be deemed or construed as creating the relationship of partnership or agency;
- (f) references to a month mean a calendar month;
- (g) references to any document include any permitted amendment, supplement to or replacement or novation of the document;

- (h) references to any legislation or to any section or provision of any legislation includes any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision;
- (i) no waiver of any breach of the Deed or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach;
- (j) other grammatical forms of defined words or expressions have corresponding meanings;
- (k) 'including' and similar expressions are not words of limitation;
- (l) documents which are hyperlinked to the Deed do not form part of the Deed; and
- (m) hyperlinks are included for ease of reference only and may become lost or be inaccurate.

1.3 **Not used**

1.4 **Separable portions**

- (a) If agreed in writing by the parties the Works may be divided into Separable Portions (or further Separable Portions).
- (b) If the parties agree to divide the Works into Separable Portions (or further Separable Portions), they must document in writing:
 - (i) the parts of the Works that are to comprise each Separable Portion;
 - (ii) the Construction Program with appropriate updates to reflect the dividing of the Works into Separable Portion; and
 - (iii) the land to be dedicated for each Separable Portion.
- (c) Where the Works are divided into Separable Portions (or further Separable Portions), the interpretation of this Deed including the definitions of:
 - (i) Practical Completion;
 - (ii) Date of Practical Completion;
 - (iii) Defects Liability Period;
 - (iv) Design Document; and
 - (v) As-Built Drawings,

and clauses 7, 8, 9, 11 and 12 and any other applicable clause in this Deed, will apply separately to each Separable Portion and references therein to the Works will mean so much of the Works as is comprised in each relevant Separable Portion.

2. Environmental Approvals

2.1 Acknowledgements

The parties acknowledge and agree that:

- (a) the Works may be assessed by TfNSW as determining authority under Part 5 of the EP&A Act and that assessment (if any) will result in a determination that, for the purposes of the EP&A Act, either:
 - (i) the Works may not proceed; or
 - (ii) the Works may proceed, in which case a relevant Approval will be issued; and
- (b) an Approval contemplated under clause 2.1(a)(ii) may:
 - (i) modify the Works;
 - (ii) impose conditions on the Works; or
 - (iii) do both things referred to in clauses 2.1(b)(i) and (ii).

2.2 Environmental Assessment of Works

- (a) The Developer must within the earliest to expire of:
 - (i) a reasonable time after the date of this Deed; and
 - (ii) 20 Business Days of receipt of a notice from TfNSW,

procure and provide to TfNSW a draft Concept Proposal and a draft REF for the Works.
- (b) The Developer must promptly provide to TfNSW such further information and all reasonable assistance as TfNSW may reasonably require in order to carry out its responsibilities under Part 5 of the EP&A Act and, in the absence of the provision of such information within 20 Business Days of TfNSW's request in writing for the same to the Developer, TfNSW may in its discretion either suspend its determination process or determine, for the purposes of the EP&A Act, that the whole or any part of the Works should not proceed.
- (c) Subject to the Developer's compliance with clause 2.2(a), TfNSW will duly consider the environmental impacts of the Works and otherwise comply with the requirements of Part 5 of the EP&A Act and will make a determination under that Part.

2.3 Notification of Determination

- (a) TfNSW must within 5 Business Days of making a determination under Part 5 of the EP&A Act provide a copy of that determination to the Developer.
- (b) A determination under this clause that the Works may proceed for the purposes of the EP&A Act does not constitute any other Approval that may be required to be obtained from TfNSW or any other Authority, person or body under this Deed or at Law, and any condition on any such determination does not limit any other power or discretion of TfNSW under this Deed or at Law.
- (c) Without limiting paragraph (b), the Developer must ensure that the draft Detailed Proposal under and prepared in accordance with clause 7 is acceptable to TfNSW, and must also satisfy the matters referred to in clause 8.

- (d) In the event that the determination made under Part 5 of the EP&A Act is that the Works should not proceed, TfNSW must advise the Developer of the reasons for that determination and the Developer may in its discretion submit an amended draft Concept Proposal and an amended draft REF for consideration and determination by TfNSW and the provisions of this clause 2 will apply to that amended draft Concept Proposal and amended draft REF.

3. **TfNSW authorisation under Roads Act**

Provided that TfNSW has made a determination under clause 2 that the Works may proceed, or where the Works constitute exempt development under the Infrastructure SEPP, by issuing the authorisation letter referred to in clause 8.1, TfNSW authorises the Works under the Act and, to the extent that any consent is required, consents, pursuant to sections 64, 71, 72 and 87 and 138 of the Act, to the Developer and its authorised employees and contractors carrying out the Works within, over or across the Road and road reserves applicable to the Road in accordance with the Act subject to the terms of this Deed.

4. **Security**

4.1 **Purpose**

- (a) Before commencing the construction of the Works, the Developer must lodge with TfNSW the Approved Security for the amount stated in Item 9 of the Schedule for the purpose of ensuring the due and proper performance of the Developer's obligations under the Deed.
- (b) TfNSW acknowledges and agrees that:
 - (i) the Approved Security may be made up of a number of separate Approved Securities provided by each party comprising the Respective Developer for:
 - (A) a party's Respective Proportion for each Separable Portion; and
 - (B) a party's Respective Proportion for the Defects Liability Period;
 - (ii) the aggregate value of the separate Approved Securities for each Separable Portion will be equal to the value of Estimated Cost of the Works for that Separable Portion,provided that the total of the separate Approved Securities is equal the amount stated in Item 9 of the Schedule.
- (c) Nothing in clause 4.1(b) in any way limits the obligation of the Developer to provide the Approved Security in accordance with clause 4.1(a).

4.2 **Increase in Approved Security**

- (a) TfNSW may review and update the Estimated Cost of the Works at any time by giving written notice to the Developer if TfNSW, acting reasonably, considers that the Estimated Cost of the Works no longer reflects the actual cost of completing the Works and satisfying the Developer's obligations under this Deed (including payment of TfNSW's Costs).
- (b) The Developer must if requested provide prompt assistance to the TfNSW Representative to allow TfNSW to review the Estimated Cost of the Works and any changes to it for the purposes of this clause 4.2.
- (c) Subject to clause 4.2(g), if at any time the Estimated Cost of the Works exceeds the amount specified in Item 2 of the Schedule by 5% or more, TfNSW may by written

notice to the Developer require the Developer to provide additional Approved Security in an amount equal to the difference between the Estimated Cost of Works and the amount specified in Item 2 of the Schedule (**Additional Security**).

- (d) Subject to clause 4.2(g), the Developer must provide Additional Security in accordance with clause 4.2(c) within 20 Business Days after receiving a notice under clause 4.2(c).
- (e) The acknowledgement given by TfNSW in clause 4.1(b) in relation to the Approved Security also applies in relation to any Additional Security that is provided by the Developer pursuant to clause 4.2(c).
- (f) If TfNSW makes a demand on any Approved Security and it is later established by a court of competent jurisdiction that TfNSW was not entitled to make such a demand, TfNSW must return the amount demanded to the Developer.
- (g) TfNSW acknowledges and agrees that:
 - (i) at the Developer's cost, any review of the Estimated Cost of the Works requiring the provision of Additional Security in accordance with clause 4.2(c) must be independently verified by an independent expert appointed by the Developer; and
 - (ii) the Developer has no liability to provide Additional Security unless:
 - (A) an independent review has occurred in accordance with clause 4.2(f)(i); and
 - (B) the independent review shows that the Estimated Cost of the Works exceeds the amount specified in Item 2 of the Schedule by 5% or more.
- (h) Subject to any demands on the Approved Security, TfNSW must:
 - (i) for Separable Portion 1:
 - (A) release 50% of the total amount of Approved Security held for Separable Portion 1 within 15 Business Days after receipt of a written request from the Developer, which request may only be made after the date of issue of the Notice of Practical Completion for Separable Portion 1;
 - (B) release all remaining Approved Security for Separable Portion 1, being 50% of the total amount held for Separable Portion 1, within 15 Business Days after receipt of a written request from the Developer, which request may only be made after the expiration of the Defects Liability Period for Separable Portion 1;
 - (ii) for all Remaining Separable Portions:
 - (A) release 50% of the total amount of Approved Security held for the Remaining Separable Portions within 15 Business Days after receipt of a written request from the Developer, which request may only be made after the date of issue of the Notice of Practical Completion for the last Separable Portion of the Remaining Separable Portions to reach Practical Completion; and
 - (B) release all remaining Approved Security, being 50% of the total amount of the Approved Security for the Remaining Separable Portions, within 21 days after the date of the Final Certificate.

5. Nature of Contract

5.1 General

The Developer must finance, commission, design and construct the Works where TfNSW determines under clause 2 that the Works may proceed, and perform its other obligations under this Deed at its own cost without contribution from TfNSW.

5.2 All risks

The Developer accepts all risks associated with the obligations in clause 5.1, including the risk that the final cost of the Works is more than the Estimated Cost of the Works and the risk of changes to the Works necessary to comply with the Deed and all Approvals.

6. Project Verifier

6.1 Project Verifier Selection

(a) The Developer must, within such time as is reasonable having regard to the requirements of clause 6.1(b), propose in writing to TfNSW a person it considers to be a suitably qualified independent consultant engineer to perform the Project Verifier Services, being a person who:

(i) is independent of:

(A) the Developer,

(B) any consultant involved in preparation the Design Documents,

(C) the contractor engaged by the Developer to carry out the Works;

(ii) is a Chartered Engineer registered with the Institute of Engineers Australia,

(iii) is familiar with and experienced in using the TfNSW QA Specifications; and

(iv) holds appropriate professional indemnity insurance.

(b) If TfNSW:

(i) agrees to the person proposed, then they must be appointed in accordance with clause 6.2; or

(ii) does not agree to the person proposed, then TfNSW and the Developer must negotiate in good faith to agree on a person to be appointed and upon agreement that person must be appointed under clause 6.2.

(c) Any agreement required under this clause 6.1 must not be unreasonably withheld.

6.2 Project Verifier Appointment

(a) The Developer must appoint the Project Verifier to undertake the Project Verifier Services:

(i) on the basis set out in Attachment F; and

(ii) at the Developer's cost.

(b) The appointment under paragraph (a) must be made by a date early enough for the Project Verifier to have sufficient time to perform the Project Verifier Services.

- (c) The Developer must provide the Project Verifier with all necessary information and documents and allow the Project Verifier:
 - (i) to perform the Project Verifier Services;
 - (ii) to attend any meetings in connection with the Works;
 - (iii) access to any site upon which the Works are carried out; and
 - (iv) to inspect the records of the Developer and its contractors.

7. Design

7.1 Design Obligations

Where TfNSW determines under clause 2 that the Works may proceed, the Developer must:

- (a) provide TfNSW with a draft Detailed Proposal for the Works for consideration and acceptance within the period required by TfNSW;
- (b) perform the Design Obligations and produce the Design Documents to accord with the Project Requirements and Approvals, including those required by clause 2;
- (c) ensure that the Design Obligations are performed, and the Design Documents produced by or on behalf of the Developer are produced, with due skill, care and diligence and by personnel who are suitably qualified and experienced;
- (d) ensure that each Design Document which is a drawing or a specification is endorsed with a certificate from the Project Verifier stating that the Works if constructed in accordance with the Project Requirements and the relevant drawing or specification will comply with all Approvals, Legislative Requirements and requirements of this Deed and will be fit for their intended purposes; and
- (e) ensure that the Design Documents are fit for the construction of the Works and in compliance with all legislative requirements and applicable Laws, including the WHS Laws, including the safety in design requirements of structures under the WHS Laws.

7.2 Review Process

- (a) The Developer must:
 - (i) submit to TfNSW for consideration the Design Documents produced by or on behalf of the Developer before they are issued to tenderers or proposed contracting parties and in any event, not less than 21 Business Days before the Works or any part of the Works to which the Design Documents relate is proposed to be commenced, and if the obligations under clause 2 apply, after satisfaction of those obligations;
 - (ii) where a Design Document submitted by the Developer to TfNSW is amended after being submitted to TfNSW ('Amended Design Document'), submit the Amended Design Document to TfNSW for TfNSW's consideration; and
 - (iii) submit any Amended Design Document to TfNSW for consideration no later than 15 Business Days, or such other time as the parties may agree in writing, prior to the date that the Developer proposes that the Works or any part of the Works to which the Amended Design Document relates is proposed to be commenced.

- (b) Any Design Documents or Amended Design Documents submitted for review must include:
 - (i) electronic copies of all Design Documents in a format reasonably required by TfNSW;
 - (ii) all data, inputs, calculations and outputs in electronic form that enables interrogation, manipulation and re-calculation by the TfNSW Representative; and
 - (iii) any other information that the TfNSW Representative, acting reasonably, requests.
- (c) TfNSW must notify the Developer within 20 Business Days of receipt of Design Documents under clause 7.2(a)(i) whether TfNSW considers that those Design Documents comply with the Project Requirements and the Approvals and are acceptable to TfNSW. If TfNSW considers that those Design Documents do not comply with the Project Requirements and the Approvals and are not acceptable to TfNSW, TfNSW must so advise the Developer and give reasons.
- (d) If TfNSW receives any Amended Design Documents, TfNSW must notify the Developer by the later of:
 - (i) the expiry of the period in clause 7.2(c); and
 - (ii) 10 Business Days of receipt of the Amended Design Documents,
 whether TfNSW considers that the Amended Design Documents complies with the Project Requirements and the Approvals and are acceptable to TfNSW.
- (e) If TfNSW considers that any Amended Design Document does not comply with the Project Requirements and the Approvals and is not acceptable to TfNSW, TfNSW must so advise the Developer and give reasons.
- (f) The parties acknowledge and agree that as at the date of this Deed, the Design Documents contained in Attachment H have been approved by TfNSW as a concept design for the Works but that nothing in this clause 7.2(f) in any way limits the Developer's obligation to submit its detailed design for the Works to TfNSW for review in accordance with this clause 7.2.

7.3 **TfNSW not liable for checking**

TfNSW is not responsible or liable for checking or not checking Design Documents (including Amended Design Documents) for errors, omissions or compliance with the Project Requirements, the Approvals or the Deed even if the Design Documents are acceptable to TfNSW.

7.4 **Obligations unaffected**

The Developer acknowledges that the obligations in clause 7.1 and the Design Obligations will remain unaffected despite:

- (a) the Developer carrying out preliminary design or specification work which may be included in the Project Requirements;
- (b) any receipt, review, acceptance or approval of, or comment or direction on a Design Document (including an Amended Design Document) by TfNSW;
- (c) any information given by TfNSW to the Developer; or

- (d) any change to the Works necessary to comply with the requirements under the Deed (including the Project Requirements or any Approval).

8. Commencement of the Works

8.1 Preconditions to commencement

The Developer must not commence construction of the Works or any part of the Works until it has:

- (a) obtained all Approvals necessary to start construction of the Works, including those required under clause 2 and the issue of an authorisation letter, including a road occupancy approval, from TfNSW;
- (b) obtained the relevant notices from TfNSW under clause 7.2 that TfNSW considers that the Design Documents and Amended Design Documents (as the case may be) comply with the Project Requirements and the Approvals and are acceptable to TfNSW;
- (c) obtained written confirmation from TfNSW that the Developer has complied with any other pre-conditions to the commencement of construction required under this Deed, including a condition that the Developer has provided to TfNSW an Environmental Management Plan, Quality Plan, Inspection and Testing Plan, Traffic Control Plan and Traffic Management Plan together with certifications from the Project Verifier stating that each of the plans complies with the Project Requirements, the Approvals and the Deed and is suitable for its intended purpose;
- (d) provided the requisite Approved Security to TfNSW in accordance with clause 4 and anything else required to be provided under the Deed prior to commencement of the Works;
- (e) provided to TfNSW a Construction Program, which TfNSW has confirmed in writing is acceptable to TfNSW;
- (f) given to TfNSW Representative at least 10 Business Days written notice of the Developer's intention to start construction; and
- (g) given to TfNSW Representative documentary evidence of payment to the Long Service Corporation established under the *Long Service Corporation Act 2010* (NSW) or that body's agent, the amount of any long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) in respect of the Works.

TfNSW may delay in issuing an authorisation letter for the commencement of the Works if any of the requirements under the Deed have not been satisfied or the Works will coincide with other works, road occupancies or peak traffic flows which TfNSW considers will cause undue disruption to traffic.

8.2 Appointment of Contractor

The Developer must ensure that:

- (a) traffic signal works are only constructed or reconstructed by a contractor that, at the time of engagement, is prequalified for those works under the TfNSW Prequalification Scheme for Traffic Signal Contractors current at that time, unless otherwise agreed in writing by TfNSW;
- (b) to the extent requested by TfNSW, other work is constructed by a contractor that, at the time of engagement, is prequalified at a level and category appropriate for

that work under the National Prequalification System for Civil (Road and Bridge) Construction Contracts or the TfNSW Registration Scheme or Prequalification Scheme for Construction Industry Contractors;

- (c) such contractors are suitably experienced in constructing similar works;
- (d) the Developer and such contractors comply with the NSW Government Code of Practice for the Construction Industry and associated Implementation Guidelines;
- (e) the names of proposed contractors and subcontractors are submitted to TfNSW for prior written acceptance and prior to submitting those names, the Developer warrants that it has satisfied itself that any such principal contractors, contractors, consultants or persons engaged by it for the purposes of carrying out an activity in relation to the Works has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the relevant work and comply with its obligations under the WHS Laws;
- (f) in the case of work constructed by a non-prequalified contractor, the work is not commenced until TfNSW has given its prior written acceptance to the use of the contractor pursuant to clause 8.2(e) (which acceptance may be given or withheld in TfNSW's absolute discretion);
- (g) all requisite insurances have been effected by the proposed contractor; and
- (h) the proposed contractor is engaged by the Developer under terms and conditions that ensure the contractor will satisfy the Developer's obligations to TfNSW under the Deed.

8.3 **Principal contractor**

- (a) In this clause 8.3, "workplace", "construction project", "construction work" and "person conducting a business or undertaking" ('**PCBU**') have the same meanings assigned to those terms in the WHS Laws.
- (b) As part of any authorisation of, or consent to, the Works under clause 3, TfNSW authorises the Developer to exercise such authority and management and control of the workplace in connection with the Works as is necessary to enable the Developer to discharge the responsibilities imposed on a Principal Contractor for the Works under the WHS Laws.
- (c) Without limiting any other provision of this Deed, the Developer acknowledges and agrees that:
 - (i) the Respective Developers are each a PCBU that together commission the construction work and the construction project in connection with the Works for the purposes of the WHS Laws;
 - (ii) it has management and control of the workplace in connection with the Works for the purposes of the WHS Laws;
 - (iii) it will engage another PCBU as the Principal Contractor for the Works; and
 - (iv) it has sufficient authority and management and control of the workplace in connection with the Works to enable another PCBU it engages as Principal Contractor to comply with their respective obligations under the WHS Laws.
- (d) Without limiting the Developer's obligations under any other provision of this Deed, the Developer:

- (i) must at all relevant times exercise and fulfil its functions and obligations in relation to work, health and safety under the WHS Laws and this Deed in connection with the Works;
 - (ii) if the Developer engages a PCBU as Principal Contractor, must:
 - (A) require the Principal Contractor to comply with the obligations imposed on the Developer in relation to work, health and safety under this Deed; and
 - (B) ensure that the Principal Contractor fulfils its functions and obligations in relation to work, health and safety under the WHS Laws and this Deed;
 - (iii) must not:
 - (A) carry out; or
 - (B) permit any other PCBU engaged by, or under the control or direction of, the Developer to carry out,

any construction work unless the Developer, or a PCBU engaged by the Developer, is exercising and fulfilling the functions and obligations of Principal Contractor under the WHS Laws in respect of all construction work carried out under this Deed.
- (e) Without limiting any other provision of this Deed, each Respective Developer:
- (i) must itself comply with its, and ensure that all its employees, contractors and agents engaged in connection with the Works comply with their, respective obligations under the WHS Laws and under any plan relating to work health and safety;
 - (ii) is responsible for all costs associated with the PCBU engaged by it performing the role of Principal Contractor;
 - (iii) must comply with any direction on safety issued by a relevant Authority;
 - (iv) must immediately notify TfNSW of any Notifiable Incident in connection with the carrying out of the Works or which occurs at the workplace (which notification shall not reduce or otherwise affect any obligation of the Developer under the WHS Laws) and must (if required by TfNSW) assist TfNSW to promptly investigate and monitor the Notifiable Incident with a view to managing risks and any potential or actual claims against TfNSW;
 - (v) must provide to TfNSW all notices and correspondence concerning work health and safety in connection with the Works within 5 Business Days after the dispatch and/or receipt of any such notice or correspondence;
 - (vi) to the extent not prohibited by Law, the Developer will indemnify TfNSW against any damage, cost, expense, loss or liability suffered or incurred by TfNSW arising out of or in connection with:
 - (A) any failure of a PCBU engaged by the Developer, to exercise or fulfil the functions and obligations of the Principal Contractor under the WHS Laws or under this Deed; and
 - (B) any work health and safety claims in connection with the Works or the Developer's workplace,

except to the extent that the damage, cost, expense, loss or liability is directly caused by a wrongful, negligent or unlawful act or default of TfNSW or its employees, contractors or agents (excluding the Developer and its contractors);

- (vii) must ensure that it, and its employees, contractors and agents engaged in connection with the construction work, carry out the Works in a manner which ensures that TfNSW does not breach any obligations that TfNSW may have under the WHS Laws;
 - (viii) must carry out the Works safely so as to protect persons and property and the environment;
 - (ix) must have a corporate work health and safety management system which complies with the WHS Laws and is otherwise in accordance with the NSW Government Occupational Health & Safety Management Systems Guidelines;
 - (x) must display signs that are clearly visible from outside the workplace in connection with the Works identifying the Developer (or the relevant PCBU engaged by the Developer) as the Principal Contractor and stating the contact telephone numbers of the Principal Contractor (including an after hours emergency telephone number); and
 - (xi) must, on request by TfNSW, provide information to TfNSW in relation to its compliance with its health and safety obligations under this Deed or the WHS Laws.
- (f) If TfNSW Representative considers there has been, a breach of the WHS Laws arising out of or in connection with the Works, or that there is a risk of injury to people or damage to property or the environment arising out of or in connection with the Works:
 - (i) TfNSW Representative may direct the Developer to cease work immediately and the Developer must, at its cost, comply with any such direction;
 - (ii) TfNSW will be entitled to exercise any of the rights under clauses 16.1(k), 16.1(l) or 16.2 without notice and without prejudice to any other right of TfNSW; or
 - (iii) if TfNSW considers that there has been a failure by the Developer, or any PCBU engaged by the Developer as Principal Contractor, to comply with the WHS Laws or a breach of this clause 8.3, TfNSW may also, in its absolute discretion treat the failure or breach as a material breach under clause 16.1(i).
- (g) If TfNSW exercises any of its rights to take over or complete the whole or any part of the Works under clauses 16.1(k), 16.1(l) or 16.2:
 - (i) TfNSW will have management and control of the part of workplace in connection with that part of the Works;
 - (ii) TfNSW will be the PCBU that commissions the construction work in connection with that part of the Works; and
 - (iii) TfNSW will be the Principal Contractor, or will engage another PCBU as Principal Contractor for that part of the Works.

8.4 **Safety audits and surveillance**

- (a) TfNSW may itself, or have a third party, conduct a safety audit or surveillance, or require the Developer to conduct audits from time to time, of the Developer's compliance with its health and safety obligations under:
 - (i) this Deed; and
 - (ii) all WHS Laws,
('WHS Obligations').
- (b) The Developer must comply with and must procure that each PCBU engaged as the Principal Contractor for the Works complies with all requirements of a party undertaking an audit or surveillance under this clause 8.4, including giving reasonable access to all documents necessary to conduct the audit or surveillance, and access to the workplace.
- (c) If the Developer is required to conduct an audit under this clause, it must do so within the time reasonably required by TfNSW and promptly report to TfNSW in writing on the outcome of the audit.
- (d) Any corrective work or action which an audit or surveillance identifies as necessary to rectify any departure from the WHS Obligations must be undertaken by the Developer at its expense and within a reasonable time, given the nature of the departure.

9. **Construction**

9.1 **Carrying out the Works**

The Developer must, in undertaking the Works, ensure that:

- (a) the Project Requirements are complied with at all times;
- (b) the Works are carried out in accordance with the Design Documents and Amended Design Documents (as the case may be) which TfNSW has notified the Developer are acceptable to TfNSW pursuant to clause 7;
- (c) the Works are carried out in compliance with:
 - (i) all Legislative Requirements affecting the Works, including environmental, workers' compensation legislation and work health and safety legislation;
 - (ii) all requirements of other relevant Authorities;
 - (iii) the conditions of all Approvals for the Works; and
 - (iv) the Quality Plan, Environmental Management Plan, Inspection and Testing Plan, Traffic Control Plan and Traffic Management Plan;
- (d) any direction (including a direction to immediately stop work) and additional requirement of TfNSW given from time to time, relating to either:
 - (i) traffic safety and convenience, or
 - (ii) quality of work,are complied with;

- (e) it promptly notifies TfNSW if a 'pollution incident' occurs within the meaning of the Protection of the Environment Operations Act 1997 (NSW) in connection with the Works;
- (f) in addition to any actions taken in accordance with paragraph (e), do whatever is necessary, or which TfNSW reasonably requires, to remediate any contamination or pollution at the site of the Works that:
 - (i) occurred before the date of the Deed and was disturbed by the Developer;
 - (ii) first occurred or was first caused by the Developer on or after the date of the Deed,
 to the standard required by Law for use as a road;
- (g) water, debris or silt is prevented from collecting in or adjacent to the Works as a result of any activity associated with the Works;
- (h) it does not disturb traffic flow at the site of the Works, except in accordance with the Traffic Management Plan or with the prior approval of TfNSW Representative;
- (i) TfNSW is kept fully informed of progress and of any event that may affect traffic movements or other activities within or adjacent to the Works;
- (j) all safety devices, traffic control, barricades, signs and warnings required by TfNSW or which are necessary or desirable for the protection of people or property are provided;
- (k) people authorised by TfNSW are freely allowed to inspect the Works and access all information and records relating to the Works, including traffic control arrangements and test and survey results, provided that TfNSW and its authorised personnel do not cause unreasonable interference with, or unreasonably disrupt the conduct of, the Works;
- (l) noise, vibration and dust is minimised or avoided;
- (m) no explosives are used in relation to any part of the Works without the prior written approval of TfNSW;
- (n) the Works are carried out promptly and diligently until Practical Completion in accordance with the Construction Program accepted by TfNSW;
- (o) at all times it acts in a lawful manner in the performance of the Works;
- (p) the safety and welfare of all people, including members of the public and road users, who may be affected by the Works or the Developer's undertaking of the Works are maintained;
- (q) it fully co-operates and liaises with TfNSW and its contractors, employees and agents working in the vicinity of the Works;
- (r) it carefully coordinates and interfaces the Works with any works being carried out by TfNSW or another Authority and their contractors, employees and agents;
- (s) it carries out the Works so as to avoid interference with or disruption to or delay of the work of TfNSW or another Authority and their contractors, employees and agents;

- (t) it monitors the progress of work being performed by TfNSW, another Authority and their contractors, employees and agents and notifies TfNSW of any interface or sequence activities which may affect the commencement, progress or completion of any aspect of the Works;
- (u) all subcontractors and workers engaged by the Developer on the Works are fully paid money properly due and payable to them in connection with the Works under relevant awards, contracts and enterprise agreements; and
- (v) TfNSW is provided with any additional information and material relevant to the performance of the Developer's obligations under this clause 9.1, if requested in writing by TfNSW Representative, including information relating to traffic control, records, test, survey results for the Works and any other relevant information held or received by the Developer from time to time.

9.2 **TfNSW works**

TfNSW must, during the undertaking of the Works by the Developer, use reasonable endeavours to ensure that:

- (a) it liaises with the Developer if TfNSW is carrying out works in the vicinity of the Works; and
- (b) it carries out any such TfNSW works so as to minimise interference with or disruption to or delay of the Works.

9.3 **Testing**

The Developer must carry out all necessary tests on the Works as required by the Deed and comply with the Inspection and Testing Plan. The Developer must give TfNSW and the Project Verifier at least 3 Business Days prior written notice of the date, time and location of any testing to be undertaken to allow a TfNSW Representative and the Project Verifier to attend. All testing required pursuant to this Deed will be carried out at the Developer's cost.

9.4 **Defects rectification**

The Developer must promptly and in any event within the time frame referred to in clause 11.2(b)(iii) rectify defects or other non-conforming work which become apparent during construction of the Works or before the end of the Defects Liability Period in accordance with the requirements of the Deed.

9.5 **Sequencing of Separable Portions**

The Developer must ensure that Practical Completion is achieved in respect of Separable Portion 1 before any other intersection in Separable Portion 2 is commissioned into operation.

10. **Modifications**

10.1 **Modifications Only by Agreement**

The Developer must not make any modification to the Works unless it has first obtained:

- (a) the prior written agreement of the TfNSW Representative (acting reasonably); and
- (b) all Approvals required to carry out the Works as modified.

10.2 **Effect on Estimated Cost of the Works**

For the purposes of clause 4.2, the estimated value of a modification may be taken into account by TfNSW Representative in revising the Estimated Cost of the Works and the amount of Approved Security required.

11. **Practical Completion**

11.1 **Developer to Notify**

The Developer must:

- (a) give TfNSW written notice not less than 20 Business Days, unless Item 8 of the Schedule states otherwise, before it anticipates achieving Practical Completion of the Works; and
- (b) provide notice to TfNSW when it considers Practical Completion has been achieved, such notice to include the following details in relation to each item of the Works:
 - (i) any defects identified to date;
 - (ii) reports on preliminary commissioning of the services and installations;
 - (iii) compliance with the Inspection and Testing Plan and the provision of all required test results and conformance data;
 - (iv) Approvals; and
 - (v) a certificate from the Project Verifier that the item of the Works complies with all requirements of this Deed and is fit for occupation and use.

11.2 **TfNSW to Inspect and Give Notice**

TfNSW must:

- (a) promptly, and in any event no later than 5 Business Days after receiving the Developer's written notice under clause 11.1(b) or a notice under the final paragraph of this clause 11.2 (as the case may be), inspect the Works; and
- (b) if satisfied that Practical Completion has been achieved, within 15 Business Days of the inspection referred to in clause 11.2(a), issue a notice to the Developer:
 - (i) stating the date upon which TfNSW determines Practical Completion was achieved;
 - (ii) containing a list of any minor defects and minor omissions of the type described in paragraph (a) of the definition of 'Practical Completion' in clause 1.1; and
 - (iii) stating the time frame within which those defects and omissions identified must be rectified; or
- (c) if not satisfied that Practical Completion has been achieved, within 15 Business days of the inspection referred to in clause 11.2(a), issue a notice to the Developer containing a comprehensive list of all items that TfNSW considers necessary to be completed to achieve Practical Completion.

If TfNSW issues a notice under clause 11.2(c) the Developer must proceed to bring the Works to Practical Completion and thereafter when it considers it has achieved Practical

Completion it will give TfNSW written notice to that effect after which this clause 11.2 will reapply.

11.3 Unilateral Issue of Practical Completion Notice

If at any time a notice required to be given by the Developer to TfNSW under either of clauses 11.1 or 11.2 is not given by the Developer yet TfNSW is of the opinion that Practical Completion of the Works has been achieved, TfNSW may issue a Notice of Practical Completion under clause 11.2(b) for the Works.

11.4 Take Over Upon Practical Completion

Upon the issue of a Notice of Practical Completion:

- (a) the Developer must hand over the Works to TfNSW or the relevant Authority as notified by TfNSW; and
- (b) the Developer must correct all defects and omissions listed in the Notice of Practical Completion as soon as possible after the Date of Practical Completion.

11.5 Effect of Notice of Practical Completion

A Notice of Practical Completion:

- (a) will not constitute approval by TfNSW of the Developer's performance of its obligations under the Deed;
- (b) will not be taken as an admission or evidence that the Works comply with the Deed or any Approval;
- (c) will not prejudice any rights or powers of TfNSW; and
- (d) is only issued for the purposes of this Deed and is not a notice of practical completion of the Works as may be required to be issued under the contract entered into with the Developer's contractor to construct the Works.

11.6 As Builts

The Developer must ensure that:

- (a) within 20 Business Days of issue of the Notice of Practical Completion TfNSW is provided with all As-Built Drawings;
- (b) ownership of Intellectual Property Rights in all Design Documents and As-Built Drawings will vest in TfNSW on or immediately after their creation;
- (c) to the extent that any such Intellectual Property Rights vest in the Developer, the Developer assigns those rights to TfNSW; and
- (d) to the extent that such Intellectual Property Rights vest in the Developer's contractors, employees or agents, the Developer must procure that those contractors, employees and agents assign those rights to TfNSW.

The Developer must execute all documents and do all acts and things required by TfNSW for the purpose of giving effect to this clause.

11.7 Intellectual Property Warranty and Indemnity

The Developer:

- (a) warrants that TfNSW's use of the Design Documents, including As-Built Drawings, will not infringe the Intellectual Property Rights of any person; and
- (b) must indemnify TfNSW, and keep TfNSW indemnified from and against any loss, costs, expenses, demands or liability, arising out of a claim by a third party against TfNSW alleging that the Design Documents, including As-Built Drawings, or part of the Design Documents, including As-Built Drawings, infringes any Intellectual Property Rights.

11.8 Moral Rights

The Developer must:

- (a) obtain in writing from its contractors, employees, subcontractors and licensors all necessary, unconditional and irrevocable:
 - (i) consents permitted by applicable Law, to any alterations to, or use of the existing intellectual property or intellectual property created for the purpose of the Works that would otherwise infringe their respective Moral Rights in such intellectual property, whether occurring before or after the consent is given; and
 - (ii) waivers permitted by applicable law of their respective Moral Rights outside Australia,
 for the benefit of TfNSW;
- (b) provide TfNSW with copies of each written consent and waiver obtained under this clause, at TfNSW's request, or within 14 Business Days of the date of this Deed (or within 10 Business Days after engaging a contractor, employee, subcontractor or licensor not engaged at the date of this Deed), whichever occurs first; and
- (c) use its best endeavours to ensure that none of its contractors, employees, subcontractors or licensors institutes, maintains or supports any claim or proceeding for infringement of their Moral Rights by TfNSW.

11.9 Dedication of Land

If requested by TfNSW:

- (a) The Developer and ESR1 must grant or procure an easement in favour of TfNSW or its nominee in relation to any area of land adjacent to or surrounding the Road as identified in the Design Documents; and
- (b) ESR1 and ESR KECT must procure dedication of land owned or to be acquired in connection with the Works by the Developer, as identified in Item 11 of the Schedule or in the Design Documents, that is required by TfNSW to be dedicated as public road or road reserve for the relevant part of the Works, **[LOG-E note to TfNSW: we have amended this clause as the land to be dedicated is owned by ESR1 and ESR KECT, although ESR1 is not carrying out the Development and so is not a Developer under this agreement.]**

without any cost to TfNSW.

11.10 Traffic signal works

Upon Practical Completion of the Works, title in any traffic signalling plant, equipment, materials or installation that has been incorporated into the Work will vest in TfNSW or the relevant Authority notified by TfNSW in accordance with clause 11.4(a).

12. Practical Completion Claim and Final Completion Claim

12.1 Claims

Within 45 Business Days after the issue of a Notice of Practical Completion for the Works (or, if Separable Portions are agreed under clause 1.4, after the issue of a Notice of Practical Completion for the last Separable Portion to achieve Practical Completion) the Developer must give TfNSW notice of all liability, cost or expense which the Developer claims from TfNSW in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred up to the date of issue of the Notice of Practical Completion (or, if Separable Portions are agreed under clause 1.4, up to the date of issue of the Notice of Practical Completion for the last Separable Portion to achieve Practical Completion).

12.2 Release after Practical Completion

- (a) After the date for submitting the claim and notice under clause 12.1 has passed, the Developer releases TfNSW from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred prior to the date of issue of the Notice of Practical Completion of the Works (or, if Separable Portions are agreed under clause 1.4, prior to the date of issue of the Notice of Practical Completion of the last Separable Portion to achieve Practical Completion) except for any claim included in a claim or notice under clause 12.1 which is given to TfNSW within the time required by, and in accordance with the terms of, clause 12.1.
- (b) TfNSW acknowledges and agrees that the release in clause 12.2(a) does not affect or limit in any way the Developer's right to submit a final claim and notice pursuant to clause 12.3.

12.3 Final Claim and Notice

- (a) Within 21 Business Days after the end of the Defects Liability Period for the Works (or, if Separable Portions are agreed under clause 1.4, after the end of the last Defects Liability Period for the Works) the Developer must give TfNSW a final claim which must be for the Approved Security held by TfNSW and all other amounts retained by TfNSW and which must include notice of all liability, cost or expense which the Developer claims from TfNSW in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred during the Defects Liability Period for the Works (or, if Separable Portions are agreed under clause 1.4, during all Defects Liability Periods for the Works).
- (b) The final claim and notice must be accompanied by a certificate from the Project Verifier that all design, construction, inspection, repairs, maintenance and monitoring by the Developer has been undertaken in accordance with the requirements of the Deed.
- (c) The final claim and notice required under this clause 12.3 are in addition to the other notices which the Developer must give to TfNSW under the Deed in order to preserve its entitlements to make any such claims.

12.4 Release after Final Claim and Notice

- (a) Subject to clause 12.4(b), after the date for submitting the final claim and notice under clause 12.3 has passed, the Developer releases TfNSW from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with the Deed which occurred during the Defects Liability Period for the Works (or, if Separable Portions are agreed under clause 1.4, during all Defects Liability Periods for the Works) except for any claim included in a final

claim or notice under clause 12.3 which is given to TfNSW within the time required by, and in accordance with the terms of clause 12.3.

- (b) TfNSW acknowledges and agrees that the release in clause 12.4(a) does not affect or limit in any way TfNSW's obligation to release the Approved Security and any monies owing to the Developer.

12.5 **Final Certificate and Release of Approved Security**

- (a) TfNSW must issue a final certificate within 21 Business Days after receipt of the final claim and notice under clause 12.3 ('Final Certificate') if:
 - (i) each of the Respective Developers have lodged with TfNSW a statutory declaration in the form set out in Attachment D;
 - (ii) the Developer has procured from each contractor engaged by the Developer to carry out any part of the Works:
 - (A) a statutory declaration that all subcontractors and workers engaged by the contractor have been paid all monies due and payable and received all entitlements accrued; and
 - (B) a written statement in the form approved under Schedule 2 Part 5 of the Payroll Tax Act 2007, section 175B of the Workers Compensation Act 1987, and section 127 of the Industrial Relation Act 1996;
 - (iii) the Developer has completed all its obligations under the Deed;
 - (iv) all Defects Liability Periods under the Deed have expired;
 - (v) the Developer has provided TfNSW with a certificate from the Project Verifier as required by clause 12.3; and
 - (vi) there are no outstanding claims or disputes between the Developer and TfNSW.
- (b) The Final Certificate must set out the amount of the Approved Security determined by TfNSW as the amount finally due from TfNSW to the Developer less any set-off by TfNSW under this Deed.
- (c) If the Final Certificate shows money owing from TfNSW to the Developer, TfNSW must within 21 Business Days after the date of the Final Certificate:
 - (i) release that money to the Developer; and
 - (ii) release the balance of the remaining Approved Security and any other security then held for the Deed.
- (d) If the Final Certificate shows money owing from the Developer to TfNSW:
 - (i) the Developer must pay TfNSW the amount certified as payable by the Developer within 21 Business Days after the date of the Final Certificate; and
 - (ii) TfNSW has no obligation to release the Approved Securities or any other security held for the Deed until the Developer has paid the money due.

12.6 **Right of Set-Off**

TfNSW may withhold, deduct or set-off from moneys to which the Developer is otherwise entitled, or make a demand against any security held by TfNSW (including the Approved Security), the amount of:

- (a) any debt or other moneys due from the Developer to TfNSW; and
- (b) any claim to money which TfNSW may have against the Developer whether for damages or otherwise,

whether under the Deed or otherwise at law relating to the Works.

12.7 **Limitation**

Moneys which TfNSW is obliged under this Agreement to release to the Developer must not exceed the amount of the balance then available of the Approved Security and any other Security then held under the Deed.

12.8 **Payments from TfNSW to the Developer**

Any payment by TfNSW under this Deed to any account nominated in writing by the Developer, or failing such nomination, to any one or more persons constituting the Developer, will be deemed to be payment to all persons constituting the Developer.

13. **TfNSW Costs**

13.1 **Developer liable to pay**

Unless otherwise stated in this Deed, the Developer is liable to TfNSW for and must pay the TfNSW Costs, including:

- (a) TfNSW's costs (internal and external) in reviewing Design Documents and providing Approvals and any other consents, conditions or directions under the Deed;
- (b) TfNSW's project management costs for co-ordinating activities associated with the Works and liaising with the Developer;
- (c) the cost of surveillance and associated administration of surveillance of the Works;
- (d) legal costs and expenses (on a solicitor and own client basis) associated with the preparation, administration, enforcement and termination of this Deed;
- (e) costs associated with any assessment of the likely environmental impact of the Works required under the EP&A Act, assessment reports, determinations and any environmental impact statement required under the EP&A Act and costs associated with community consultation, participating in a commission of inquiry, complying with other Legislative Requirements, appealing or prosecuting any appeal and any other costs payable to an Authority to discharge obligations under the EP&A Act;
- (f) the replacement cost of any material, equipment, stock or other item used or supplied by TfNSW;
- (g) the cost of repairs or replacement of any road or associated infrastructure damaged:
 - (i) by the Developer or its employees, contractors or persons under the control of any of them; or

- (ii) attributed to damage caused by performance by the Developer of its obligations under the Deed,

except to the extent that the repair or replacement is the result of an act or omission for which TfNSW is liable to the Developer at common law;

- (h) the cost of remedying a breach of this Deed by the Developer;
- (i) costs of emergency or special traffic control measures required by TfNSW; and
- (j) if specified in Item 4 of the Schedule, the capitalised amount of the estimated maintenance costs of the Works for the period set out in Item 4, agreed by the parties and set out in Item 4.

13.2 **TfNSW Cost Estimate**

The parties acknowledge and agree that:

- (a) TfNSW provided the Developer with an estimate of the TfNSW Costs prior to execution of this Works Authorisation Deed (**TfNSW Cost Estimate**); and
- (b) If TfNSW anticipates that its costs will exceed the TfNSW Cost Estimate TfNSW must provide the Developer with written notice.

13.3 **Invoice**

- (a) Subject to clause 13.6, invoices for TfNSW Costs and interest accrued under clause 13.5 will be sent by TfNSW to the Developer upon execution of the Deed and then at not less than four weekly intervals.
- (b) An itemised invoice of TfNSW Costs together with a certification from TfNSW Representative that TfNSW Costs have been reasonably incurred and are true and accurate is sufficient evidence of TfNSW Costs unless a clear error has been made.

13.4 **Payment**

The Developer must pay the estimated amount of TfNSW Preliminary Costs stated in Item 10 of the Schedule within 10 Business Days of execution of the Deed. The Developer must pay the full amount of each other invoice for TfNSW Costs within 10 Business Days from the date of the invoice, including any interest payable under clause 13.5.

13.5 **Interest**

The Developer must pay interest on any amount due to TfNSW under this Deed but not paid at the rate stated in Item 6 of the Schedule from the day the amount became due under clause 13.4 until the date of payment.

13.6 **Deferral of capitalised maintenance costs**

Payment of TfNSW Costs referred to in clause 13.1(j) will not be payable by the Developer until Practical Completion (or, if Separable Portions are agreed under clause 1.4, until Practical Completion of the last Separable Portion to achieve Practical Completion).

14. **Liability and Indemnity**

14.1 **Indemnity**

The Developer:

- (a) must defend and hold harmless, indemnify and keep indemnified TfNSW and its employees, officers, agents and contractors from and against all claims, expenses, losses, including consequential losses, damages and costs (including costs on a solicitor and own client basis and whether incurred by or awarded against TfNSW) that TfNSW may sustain or incur as a result, whether directly or indirectly, arising out of or in connection with:
 - (i) any breach of this Deed by, or act or omission of, the Developer;
 - (ii) any injury to or death of any person including any injury to or death of the employees, officers, agents and contractors of the Developer or TfNSW which in any way arises out of, or is in any way connected with, the Works;
 - (iii) damage to or loss of any property arising out of the Works, including any damage to or loss of the Works or property of the Developer or TfNSW; or **[LOG-E note to TfNSW: Not agreed. TfNSW expressly agreed to this position on 28 August 2023]**
 - (iv) performance by the Developer of its obligations under the Deed, including claims by a person who is not a party to this Deed,

except to the extent those claims, expenses, losses, damages and costs have been caused or contributed to by the wrongful, negligent or unlawful act or omission of, or breach of this Deed by, TfNSW, its contractors, employees and agents; and
- (b) acknowledge that:
 - (i) the Developer, and not TfNSW, is responsible and liable for the design and carrying out of the Works, management of construction and programming of the Works in compliance with the provisions of this Deed; and
 - (ii) TfNSW is relying on the advice, skill and judgment of the Developer and its consultants and contractors in:
 - (A) the correctness and suitability of the Design Documents;
 - (B) the performance of the Developer's obligations under this Deed;
 - (C) the carrying out of the Works; and
 - (D) the adequacy of the plant, equipment and materials to be used in the construction of, or incorporated into the Works for the purposes of this Deed.

14.2 **No limitation**

Without limiting the generality of clause 14.1(b)(ii), the Developer must ensure that:

- (a) the processes and methods to be used for carrying out the Works will be suitable for the purposes for which they are required;
- (b) the Works are carried out in accordance with this Deed;
- (c) it will furnish efficient business administration, supervision and an adequate supply of workers and materials and perform its obligations in the best way and in the most expeditious and economical manner consistent with the best interests of TfNSW; and
- (d) it will obtain for the benefit of TfNSW all available product and work warranties from any suppliers, manufacturers, contractors and subcontractors in respect of plant,

equipment and materials used in the construction of, or incorporated into the Works or assign such benefit to TfNSW where the warranty is not in favour of TfNSW.

14.3 **TfNSW may remedy**

The Developer agrees that:

- (a) if it fails to remedy any breach of the Deed within 10 Business Days or as otherwise agreed by the parties, after receiving a notice from TfNSW requiring the Developer to remedy the breach, TfNSW may remedy the breach at the cost of the Developer and will be entitled to recover the cost of remedying the breach, including under clause 12.6; and
- (b) if remedial, protective or repair work, traffic management or traffic control work is urgently required to prevent loss of or damage to the Works, or to the site of or property adjacent to the Works, or to prevent injury to or death of any person, TfNSW may undertake that work at the cost of the Developer and will be entitled to recover the cost as a debt due, including under clause 12.6. TfNSW will, if practical, give notice to the Developer of the work urgently required.

15. **Insurance**

15.1 **Effect and maintain**

The Developer must ensure that the policies of insurances listed in Attachment C, on the terms, for the risks identified and for the periods of time set out in Attachment C are effected and maintained by the Developer or its contractors (as applicable).

15.2 **Proof**

The Developer must provide proof that the policies of insurance required under this Deed have been effected and are current at all times during the periods of insurance stated in Attachment C. As proof of compliance the Developer must provide certificates of currency to TfNSW in the form specified in Attachment C.

15.3 **TfNSW may effect insurances**

If the Developer does not comply with clause 15.2, TfNSW may, but is not obliged to, effect the relevant insurances and the cost of doing so will be a debt due from the Developer which TfNSW will be entitled to recover, including under clause 12.6.

16. **Termination**

16.1 **Default by Developer**

If the Developer:

- (a) without reasonable cause and/or without TfNSW's prior written approval suspends carrying out of the Works;
- (b) fails to carry out the Works promptly and diligently in accordance with the Construction Program accepted by TfNSW;
- (c) fails to lodge the Approved Security under clause 4.1 or an increase in Approved Security under clause 4.2;
- (d) not used;
- (e) fails to use or incorporate materials or work to the standards required by this Deed;

- (f) fails to remedy defects or non-conforming work or loss, damage, default or failure in accordance with this Deed;
- (g) is presumed to be insolvent under an applicable law, including any presumption under section 459C(2) of the Corporations Act 2001 (Cth), or has proposed or made an arrangement or composition with any or all of its creditors, or application is made to a court for an order, or a resolution is made, for its winding up or which may have the object of or result in its winding up;
- (h) not used;
- (i) commits any material breach of the Deed; or
- (j) has a receiver or liquidator (including provisional) or any official manager, controller or administrator of any of its assets or business appointed,

and fails to remedy such event within 10 Business Days (or such longer period as determined by TfNSW having regard to the nature of the breach) of a written request by TfNSW to do so, then TfNSW may, in its absolute discretion and without prejudice to its other rights, by notice in writing to the Developer do any or all of the following:

- (k) take over the whole or any part of the Works remaining to be completed or in its discretion, carry out other works so that the Road is safe for public use and occupation;
- (l) exclude the Developer and its contractors, employees or agents from performing the Works taken over; or
- (m) terminate the Deed as from the date of the notice, and in that case exercise any of the powers of exclusion conferred by subparagraphs 16.1(k) or 16.1(l),

without prejudice to its accrued rights under this Deed.

16.2 **Take over the Works**

If TfNSW exercises its rights under clause 16.1, it may complete the whole or any part of the Works remaining to be completed and may engage contractors, including contractors of the Developer and subcontractors for that purpose. TfNSW may take possession of and permit other persons to use any materials or equipment to be incorporated into the Works. The Developer shall have no right to any compensation or allowance for any action taken by TfNSW pursuant to this clause 16.2.

16.3 **Termination of Contract**

If the Deed is terminated under clause 16.1 or under any other provision of the Deed it will be deemed terminated as from the date when notice of termination in writing under the hand of TfNSW is served upon the Developer, or upon any official receiver, administrator, trustee in bankruptcy, liquidator, official or provisional liquidator, official manager of the Developer or of the business of the Developer.

On such termination of the Deed, all or any sums of money which may be in the hands of TfNSW in respect of the Deed and are not then payable to the Developer or any other person under or pursuant to any Law and the whole or part of the Approved Security, including cash lodged or retained for the due and proper performance of the Deed, may be declared by TfNSW to be forfeited and all sums and the whole or part of any security that are so declared to be forfeited shall be forfeited and shall be retained by or become payable to or vested in TfNSW.

On termination of the Deed, all moneys which have been previously paid together with all moneys then payable under or pursuant to any Law or any provision of the Deed to the Developer (to the extent not forfeited under the preceding paragraph) shall be deemed to be in full satisfaction of all claims of the Developer of any kind or description whatsoever under or in respect of the Deed.

16.4 Adjustment of costs on completion

All costs, losses, charges and expenses (including legal costs on a full indemnity basis) incurred by TfNSW in completing the whole or any part of the Works are a debt due to TfNSW which may, without limiting other rights, be recovered by TfNSW by set-off against other moneys due or by demand against the Approved Security at any time.

16.5 No release

Termination by TfNSW will not release the Developer from liability in respect of any breach of, or non-performance of any obligation pursuant to this Deed.

17. Authorised Representatives

17.1 Representatives to Perform Functions

The authorised representative of the Developer as stated in Item 1A of the Schedule and the TfNSW Representative as stated in Item 7 of the Schedule may perform any function of the Developer and TfNSW, respectively, under this Deed.

17.2 Developer's Project Manager

The Developer must:

- (a) appoint, for the duration of the Works, a Developer's Project Manager, who is suitably experienced in constructing works similar to the Works; and
- (b) notify TfNSW of the identity and contact details of the Developer's Project Manager and any change during the course of the Works.

17.3 Communications

A notice or communication given or made by or to an authorised representative of the Developer or to TfNSW Representative is effective as if it had been given or made by or to the party they represent.

17.4 Substitution

The Developer may substitute an authorised representative after first giving written notice to TfNSW.

TfNSW may substitute TfNSW Representative after first giving written notice to the Developer.

18. Dispute Resolution

18.1 Notice of Dispute

If a party claims that a dispute has arisen under this Deed ('the Claimant'), it must give written notice to the other party ('the Respondent') stating the matters in dispute and designating as its representative a person to negotiate the dispute (a 'Claim Notice').

18.2 **Response to Notice**

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

18.3 **Negotiation**

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

18.4 **Further Notice if not Settled**

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute ('Dispute Notice'). If the dispute relates to a technical claim or question in relation to the Works ('Technical Dispute'), the Dispute Notice must adequately identify the nature of the Technical Dispute and the date on which the Technical Dispute is alleged to have arisen.

18.5 **Reference to Expert**

- (a) Within 10 Business Days of receiving a Dispute Notice submitted by a party pursuant to clause 18.4 in relation to a Technical Dispute, the parties shall seek to agree upon and if agreed upon appoint an expert. In the event that the parties cannot agree on an expert to be appointed, the appointment of the expert is to be referred to the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- (b) For all Technical Disputes, the expert must:
 - (i) have reasonable qualifications and practical experience in road and safety matters; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty before his or her appointment.
- (c) The parties must refer the Technical Dispute to the expert for determination within 5 Business Days of the expert's appointment.
- (d) The determination of the expert will be final and binding on the parties except where there is manifest error in the expert's decision and the aggrieved party gives a notice of appeal to the other party within 15 Business Days of the relevant determination.

18.6 **Rules**

The expert must determine the dispute in accordance with the TfNSW Rules for the Expert Determination Process and the Code of Conduct for an Expert, a copy of which is at Attachment G.

18.7 **Assistance**

Each party must do all things necessary on its part or required by the expert for the proper conduct of the expert determination.

18.8 **Expert not an Arbitrator**

In determining the dispute the expert will be acting as an expert and not as an arbitrator.

18.9 **Mediation**

The parties agree that a dispute which is not a Technical Dispute should be mediated, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 18.9 ('**Mediator**') must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

18.10 **Litigation**

If the dispute is not finally resolved in accordance with clauses 18.5 to 18.9, either party is at liberty to litigate the dispute.

18.11 **Continue to Perform obligations**

Each party must continue to perform its obligations under this Deed, notwithstanding the existence of a dispute.

19. General

19.1 No Representations by TfNSW

TfNSW makes no representation or warranty as to the Works and assumes no duty of care in respect of them or any information provided by TfNSW.

19.2 No Restriction on Rights

Nothing in this Deed is deemed to:

- (a) prejudice or affect the rights of the public to free passage upon or along the site of the Works;
- (b) authorise any nuisance to or permanent obstruction of the site of the Works or public places;
- (c) confer upon the Developer any right or title to any part of the Works; or
- (d) in any way restrict or limit the powers of TfNSW or other relevant Authority or fetter TfNSW in the exercise of its statutory functions and in the event such exercise is undertaken in accordance with all relevant Laws, such exercise cannot and does not constitute a breach of the Deed.

19.3 Notices

- (a) A party notifying or giving notice under the Deed must do so in writing delivered by hand or sent by prepaid registered post or email to the other party's representative at the address or facsimile number specified in Item 1A or Item 7 of the Schedule.
- (b) A notice given in accordance with clause 19.3 will be deemed to have been given and received:
 - (i) if delivered, on receipt;
 - (ii) if posted, 3 Business Days after posting; and
 - (iii) if sent by email when the addressee's email system logs the email message as having been received.
- (c) Any notice received after 5.00pm or on a day not a Business Day shall be deemed to have been received at 9.00am on the next Business Day.

19.4 Assignment

- (a) The Developer or a Respective Developer must not assign or otherwise transfer or encumber any right, obligation or interest under this Deed without the prior written approval of TfNSW, such approval not to be unreasonably withheld. Approval is reasonably withheld if, without limiting other reasons that TfNSW may validly assert under this clause, the proposed assignee or person giving an encumbrance of a right, obligation or interest is not solvent and reputable and the assignment or encumbrance will materially adversely affect the obligations of the Developer and the rights of TfNSW.
- (b) If the Developer or a Respective Developer assigns or otherwise transfers its interest in the Works or this Deed, the Developer must at its own cost obtain a covenant by deed from the purchaser or transferee in favour of TfNSW that the purchaser or transferee will comply with and be bound by the provisions of this Deed.

19.5 **Waiver**

Failure by a party to compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of the party to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

19.6 **Joint and Several Liability**

If the Developer comprises more than one person those persons are jointly and severally liable for the performance and obligations of the Developer.

19.7 **Not used**

19.8 **Governing Law and jurisdiction**

- (a) This Deed is governed by and will be construed according to the law of New South Wales.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts.

19.9 **Stamp duty**

The Developer will be liable to pay any stamp duty payable on any transfer or easement required to effect TfNSW's requirements under the Deed.

19.10 **Prior agreements superseded**

This Deed:

- (a) wholly replaces and excludes all prior agreements, correspondence, negotiations, representations, explanations and statements between the Developer and TfNSW covering or in connection with the matters covered by this Deed (except to the extent expressly incorporated by reference); and
- (b) is the entire agreement between the Developer and TfNSW in respect of the Works.

19.11 **Modification of Deed**

No modification or alteration of any provision of this Deed will be valid unless it is in writing and signed by the Developer and TfNSW.

19.12 **Media releases and enquiries**

If requested by TfNSW Representative, the Developer must:

- (a) not issue, publish or authorise any media release or advertisement concerning this Deed, TfNSW or the Works without obtaining TfNSW's prior written approval; and
- (b) obtain a similar obligation from its contractors.

19.13 **Disclosure by TfNSW**

The Developer acknowledges that TfNSW may be required by law to disclose the contents of, or certain information concerning, this Deed in accordance with ss 9 or 27 – 35 of the Government Information (Public Access) Act 2009 (NSW) ('GIPA Act') and the Developer consents to, and releases TfNSW in respect of, any such disclosure.

If the Developer reasonably believes that any part of this Deed contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Developer should immediately advise TfNSW in writing, identifying the provisions or information and providing reasons so that TfNSW may consider seeking to exempt that information or those provisions from disclosure under s 32 of the GIPA Act.

19.14 **Proportionate liability**

- (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 19.14(a) it is further agreed that the rights, obligations and liabilities of TfNSW and the Developer (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.

20. **GST**

[LOG-E note to TfNSW: This GST clause 20 is not yet agreed and is subject to receipt of tax advice by the LOG-E]

20.1 **Interpretation**

In this clause:

- (a) the expressions 'adjustment note', 'consideration', 'Goods and Services Tax', 'GST', 'supply', 'tax invoice', 'recipient' and 'taxable supply' have the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999;
- (b) the expression 'excluded supply' means a taxable supply for which TfNSW is not eligible to issue a recipient created tax invoice ('**RCTI**'); and
- (c) a reference to a payment being made or received includes a reference to consideration other than money being given or received. **[LOG-E note to TfNSW: TfNSW to confirm whether it is anticipating any supply from the developers under the WAD. If any RCTI are issued, the Developers should receive an RCTI for their proportions]**

20.2 **Calculation of GST**

- (a) Unless otherwise expressly stated, all prices or other sums payable or payment to be made under or in accordance with the Deed, include an amount for GST.
- (b) No additional amount on account of GST is payable by a party who receives a taxable supply under or in connection with the Deed. All amounts payable reflect the GST-inclusive market value of the taxable supply.
- (c) Any contract entered into by a party to the Deed with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with the Deed, must include a clause including equivalent terms to this clause 20.2.

20.3 **GST invoices**

The parties agree that:

- (a) TfNSW will issue a tax invoice for each taxable supply it makes to the Developer without request;
- (b) TfNSW will issue to the Developer a RCTI for each taxable supply (other than an excluded supply) made by the Developer to TfNSW under this Deed, and will issue an adjustment note for any adjustment event;
- (c) TfNSW may serve written notice on the Developer stating which supplies are excluded supplies under this Deed. Unless and until TfNSW serves such a notice, there are no excluded supplies;
- (d) the Developer must not issue a tax invoice in respect of any supply it makes to TfNSW, other than for an excluded supply;
- (e) TfNSW is not required to make a payment for an excluded supply until TfNSW has received a tax invoice from the Developer for that supply;
- (f) each party must notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs;
- (g) each party acknowledges and warrants that at the time of entering into this Deed, it is registered for GST;
- (h) TfNSW will not issue a document that will otherwise be an RCTI, on or after the date when the Developer fails to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs; and
- (i) any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this Deed which is calculated by reference to an amount paid by another party must be reduced to the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled.

21. **SFKC Limitation of Liability**

21.1 **SFKC warranties and limitation of liability**

The provisions of this clause 21 apply despite anything to the contrary in this Deed.

21.2 **Definitions**

In this clause 21:

- (a) **Assets** includes all assets, property and rights real and personal of any value whatsoever of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this Deed.
- (d) **Trust** means Stockland Fife Kemps Creek Trust (ABN 47 273 439 938).
- (e) **Trustee** means Stockland Fife Kemps Creek Pty Limited (ACN 628 770 141).

- (f) **Trustee's Capacity** means the capacity in which the Trustee enters into this Deed, being as trustee of the Trust constituted by the Constitution.

21.3 **Warranties**

The Trustee:

- (a) warrants that:
- (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) as trustee it is authorised and empowered under the Trust Deed to enter into and to perform the Obligations;
 - (iii) it is not in breach of the Constitution;
 - (iv) it is not aware of any reason why the Assets might be insufficient to satisfy or discharge the Obligations; and
 - (v) it has the power under the Constitution to execute and perform the Obligations and all necessary action has been taken to authorise the execution and performance of the Obligations; and
 - (vi) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 1.2(a) of this Schedule 8; and
- (b) indemnifies TfNSW, and agrees to keep TfNSW indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 21.3(a); and
- (c) undertakes:
- (i) to not knowingly attempt or take steps to do anything which restricts the Trustee's right of indemnity from the Assets in respect of the Obligations; and
 - (ii) to comply with its obligations as trustee of the Trust.

21.4 **Limitation of Trustee's Liability**

- (a) Capacity

The Trustee's liability under this Deed is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

- (b) Limitation

Subject to clause 21.4(c) the liability of the Trustee in respect of any cause of action, claim or loss arising:

- (i) under or in connection with this Deed;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this Deed; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this Deed,

(each, a **Trust Claim**), is limited to the Assets. The right of the parties relying on the benefit of this Deed to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

(c) The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (i) subject to clause 21.4(d) below, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,
- (v) except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) Exception

If because the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable and the limitation in clause 21.4(b) does not apply.

22. **ESR KECT limitation of liability**

22.1 **Definitions**

- (a) In this clause 22:
 - (i) **Trustee** means ESR KECT (Australia) Pty Limited;
 - (ii) **Trust** means the ESR LVH Asset Trust (ABN 46 808 844 248); and
 - (iii) **Trustee Deed** means the trust deed establishing the Trust, as varied from time to time.

22.2 **Limitation of Trustee's Liability**

(a) Capacity

Each party to this Deed other than the Trustee acknowledges that the Trustee enters into this Deed only in its capacity as trustee of the Trust and in no other capacity.

(b) Limitation

Subject to clause 22.2(d):

- (i) a liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the property of the Trust. The limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligation of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement, or transaction related to this Deed;
 - (ii) no party to this Deed may sue the Trustee in any capacity other than as trustee in respect of the Trust, including seeking the appointment to the Trustee of a receiver (except in relation to property of the Trust), a liquidator, administrator or any similar person or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the Trust); and
 - (iii) each party to this Deed other than the Trustee waives its rights and releases the Trustee from any personal liability in respect of any loss which it may suffer as a consequence of a failure of the Trustee to perform its obligations under this Deed, which cannot be paid or satisfied out of any property held by the Trustee.
- (c) The provisions of clause 22.2(b) do not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, gross negligence or wilful default or where the Trustee's right of indemnity is otherwise reduced by operation of law.
 - (d) No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of the representations or warranty under this Deed) will be considered fraud, gross negligence or wilful default of the Trustee for the purposes

clause 22.2(b) to the extent to which the act or omission was caused by any act of omission of any other person.

(e) The Trustee:

(i) warrants that:

- (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
- (B) entry into this Deed is for the benefit of the beneficiaries of the Trust and as Trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed;
- (C) it is not in breach of the Trust Deed;
- (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed;
- (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed; and
- (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Deed and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed;

(ii) undertakes:

- (A) to comply with its obligations as Trustee of the Trust; and
- (B) not to agree, attempt or take steps to, do anything which restricts its right of indemnity from the assets of the Trust.

23. **Australand limitation of liability**

- (a) Australand enters into this Deed as trustee of the Frasers Property C&I Land Holdings (Kemps Creek No. 2) Trust (**Frasers Trust**) constituted by a trust deed (**Trust Deed**) and in no other capacity.
- (b) Australand will not be liable and the other parties may not enforce their rights against Frasers under this Deed except to the extent Frasers is entitled to be indemnified out of the assets of the Frasers Trust.
- (c) If a party does not recover all money owing to it arising from non-performance by Australand of its obligations under this Deed, it may not seek to recover the shortfall by:
 - (i) bringing proceedings against Australand in its personal capacity; or
 - (ii) applying to have Australand wound up.
- (d) The provisions of clauses 23(b) and 23(c) do not apply in respect of fraud or breach of trust by Frasers personally.
- (e) Australand:
 - (i) represents and warrants to the other parties that:
 - (A) it is the sole trustee of the Frasers Trust and no action has been taken to remove or replace it;
 - (B) as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled to be indemnified out of the assets of the Frasers Trust in respect of obligations and liabilities incurred by it under this Deed;
 - (E) it is not aware of any reason why the assets of the Frasers Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Deed and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed;
 - (ii) undertakes:
 - (A) to not knowingly attempt or take steps to, do anything which restricts its right of indemnity from the assets of the Frasers Trust in respect of the obligations incurred by Australand under this Deed; and
 - (B) to comply with its obligations as trustee of the Frasers Trust.

24. **ESR1 limitation of liability**

24.1 **Definitions**

(a) In this clause 24:

- (i) **Trustee** means ESR Investment Management 1 (Australia) Pty Limited (ACN626 831 945);
- (ii) **Trust** means the ESR Aldington Road Property Trust; and
- (iii) **Trust Deed** means the trust deed establishing the Trust, as varied from time to time.

24.2 **Limitation of Trustee's Liability**

(a) Capacity

Each party to this Deed other than the Trustee acknowledges that the Trustee enters into this Deed only in its capacity as trustee of the Trust and in no other capacity.

(b) Warranties and undertakings

The Trustee:

- (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this Deed is for the benefit of the beneficiaries of the Trust and as Trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Deed and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed;
- (ii) indemnifies TfNSW, and agrees to keep TfNSW indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 24.2(b)(i); and
- (iii) undertakes:
 - (A) to comply with its obligations as trustee of the Trust; and

- (B) not to agree, attempt or take steps to, do anything which restricts its right of indemnity from the assets of the Trust.

(c) Limitation

Subject to clause 24.2(d):

- (i) a liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the property of the Trust. The limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligation of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement, or transaction related to this Deed;
- (ii) no party to this Deed may sue the Trustee in any capacity other than as trustee in respect of the Trust, including seeking the appointment to the Trustee of a receiver (except in relation to property of the Trust), a liquidator, administrator or any similar person or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the Trust); and
- (iii) each party to this Deed other than the Trustee waives its rights and releases the Trustee from any personal liability in respect of any loss which it may suffer as a consequence of a failure of the Trustee to perform its obligations under this Deed, which cannot be paid or satisfied out of any property held by the Trustee.

25. Execution of this Deed

25.1 Remote execution

The parties acknowledge and agree that:

- (a) this Deed may be exchanged by hand or by post, or remotely by any electronic method that evidences a party's execution of this Deed;
- (b) if a counterpart of this Deed is executed remotely:
 - (i) a scan of that duly executed counterpart Deed will be considered an original copy of this Deed for the purposes of s.127 of the Corporations Act 2001 (Cth);
 - (ii) each party may make and rely on the assumptions set out in s.129(5) of the Corporations Act 2001 (Cth);
 - (iii) a reference to "a document" and "the document" in sections 127(1) and 129(5) of the Corporations Act 2001 (Cth) includes a reference to the electronic data file containing this Deed in electronic form; and
 - (iv) the TfNSW Representative may at any time direct the Developer to provide it with the original 'wet ink' signature pages executed by the directors, unless executed electronically in accordance with clause 25.2; and
- (c) each party will be taken to have received the other party's executed counterpart Deed at the time it would be taken to have received it if it were a notice served under clause 19.3.

25.2 **Electronic execution and witnessing**

The parties acknowledge and agree that:

- (a) this Deed including any counterpart, may be electronically executed, including by using software or a platform for the electronic execution of documents;
- (b) if this Deed or any counterpart is executed electronically, a scan or a hard copy print out of that executed Deed will be treated as if it is the original Deed or counterpart that has been executed;
- (c) if this Deed or any counterpart is executed electronically by or on behalf of a party, that party represents and warrants that it or anyone signing on its behalf:
 - (i) is duly authorised to enter into and execute this Deed and to create obligations that are valid and binding obligations on the party; and
 - (ii) affixed their own electronic signature to the Deed; and
- (d) no person may challenge the validity of the Deed by virtue only of the fact that it has been electronically executed and each party is estopped from asserting otherwise.

Executed as a Deed

Date:

**Signed, sealed and delivered by FPI
Developments VIC Pty Limited** (ACN
095 586 708) in accordance with
section 127 of the *Corporations Act
2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

EXECUTED for and on behalf of **Stockland Fife Kemps Creek Pty Limited** (ACN 628 770 141) in its capacity as trustee for **Stockland Fife Kemps Creek Trust** by its attorneys pursuant to registered power of attorney dated 18 October 2019 Book 4768 No 653 (who state that by executing this deed that the relevant attorney has received no notice of revocation of the power of attorney):

.....
Witness Signature

.....
Attorney Signature

.....
Print Name

.....
Print Name

.....
Witness Signature

.....
Attorney Signature

.....
Print Name

.....
Print Name

Signed, sealed and delivered by ESR Investment Management 1 (Australia) Pty Limited (ACN 626 831 945) in its capacity as trustee of ESR Aldington Road Property Trust in

accordance with section 127 of the
Corporations Act 2001 (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by **ESR
KECT (Australia) Pty Limited** (ACN
668 299 545) in its capacity as trustee
of ESR LVH Asset Trust in accordance
with section 127 of the *Corporations Act
2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Signed, sealed and delivered by
**Australand C&I Land Holdings Pty
Ltd** (ACN 107 356 641) in its capacity
as trustee of Frasers Property C&I Land
Holdings (Kemps Creek No. 2) Trust in
accordance with section 127 of the
Corporations Act 2001 (Cth) by:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full

Executed for and on behalf of
Transport for NSW
(ABN 18 804 239 602) by its
authorised delegate:

Signature of authorised delegate

Name of authorised delegate

Schedule

Item 1	Name of Developer: (Parties)	<p>FPI Developments VIC Pty Limited (ACN 095 586 708);</p> <p>and</p> <p>Stockland Fife Kemps Creek Pty Limited (ACN 628 770 141) in its capacity as trustee of the Stockland Fife Kemps Creek Trust (ABN 47 273 439 938);</p> <p>and</p> <p>ESR Investment Management 1 (Australia) Pty Limited (ACN 626 831 945) in its capacity as trustee for the ESR Aldington Road Property Trust;</p> <p>and</p> <p>ESR KECT (Australia) Pty Limited (ACN 668 299 545) in its capacity as trustee of the ESR LVH Asset Trust;</p> <p>and</p> <p>Australand C&I Land Holdings Pty Ltd (ACN 107 356 641) in its capacity as trustee of Frasers Property C&I Land Holdings (Kemp Creek No. 2) Trust.</p>
Item 1A	Authorised Representative: (Clause 17.1) Name: Address: Telephone: Email:	<p><i>[TfNSW Note: The Authorised Representative will need to be a single person that is authorised to act as the sole point of contact and representative for all of the parties that comprise the Developer.]</i></p>
Item 2	Estimated Cost of the Works: (clause 1.1)	Refer to Separable Portions
Item 3	Defects Liability Period: (clause 1.1)	12 months from the Date of Practical Completion.
Item 4	Agreed Capitalised Maintenance Costs: Period: [Normally not required unless Works include traffic control signals or other electronic equipment, a bridge, tunnel or other appropriate element] (clause 13.1(j))	<p>[\$400,500.00] [10 years from the Date of Practical Completion] (Inclusive of GST) <i>[KWM note to LOG-E: LOG-E to confirm.]</i></p>
Item 5	Road: (clause 1.1)	Mamre Road and Abbotts Road

Item 6	Rate of Interest on overdue payments: (clause 13.4)	(12% per annum if nothing is stated)
Item 7	TfNSW Representative: (clause 17.1) Address: Telephone: Email:	Suthes Kumar 129a Orchardleigh Street Yennora NSW 2161 0408 655 528 suthes.kumar@transport.nsw.gov.au
Item 8	Notice of estimate of Date of Practical Completion (clause 11.1):	20 Business Days
Item 9	Approved Security (clause 4.1):	Refer to Separable Portions
Item 10	Estimated amount of TfNSW Preliminary Costs (clauses 1.1 and 13.3):	[\$545,900.00] (Inclusive of GST) [KWM note to LOG-E: LOG-E to confirm.]
Item 11	Land to be Dedicated (clause 11.9(b))	As per Attachment E

Separable Portions

Separable Portion No:	1
Description of Works:	Construction of traffic signals at the intersection of Mamre Road and Abbots Rd in Kemps Creek and associated road works as per TfNSW accepted drawings and TfNSW requirements.
Estimated Cost of the Works:	\$20,600,000 (Inclusive of GST) [KWM note to LOG-E: LOG-E to confirm.]
Approved Security:	[\$ XXXX (normally not less than the Estimated Cost of the Works)]

Separable Portion No:	2
Description of Works:	All parts of the Works other than those that are comprised in Separable Portion 1

Estimated Cost of the Works:	\$1,100,000 (Inclusive of GST) [KWM note to LOG-E: LOG-E to confirm.]
Approved Security:	[\$ XXXX (normally not less than the Estimated Cost of the Works)]

Attachment A - Project Requirements

The Developer must ensure that the Project Requirements are complied with at all times.

General

1. All plans and documents required to be prepared under this Deed (including without limitation the Design Documents and Project Plans) must comply with all standards set by TfNSW (including Technical Directions), Australian Standards and Austroads Guides with TfNSW Supplements and relevant Codes of Practice.
2. The Design Documents must include the provision of all necessary road markings and sign posting.
3. The Design Documents must include:
 - (a) Health & Safety in Design Report including the Register for concept and detailed design stages showing:
 - (i) all hazards eliminated or mitigated So Far As Is Reasonably Practicable (SFAIRP);
 - (ii) Hazards for construction, maintenance operations and demolition clearly identified and the most appropriate controls proposed; and
 - (iii) All information pertaining to resolved and residual health and safety hazards is recorded.
4. A Stage three detailed design Road Safety Audit (RSA) is to be submitted as part of the final design submission. The RSA must be carried out by an independent auditor. The auditor cannot be from the same organisation that carried out the detailed design. In addition, for works with a construction value in excess of \$500,000 (in the road reserve) a Stage four Pre-opening Road Safety Audit must be undertaken prior to practical completion.
5. A minimum footpath reserve of 3.5m is to be provided to accommodate pedestrian facilities and public utilities. If the 3.5m footpath reserve, in respect of both the Works encroaches onto private land the necessary land is to be acquired and dedicated as public road at no cost to TfNSW.

Community Consultation

6. Liaison with the community concerning the project is the responsibility of the Developer. If the completed works or the construction activities are likely to be perceived as having an adverse impact on the amenity of road users or pedestrians, consultation with stakeholders must be undertaken.
7. Any media releases, letterbox drops or other publications concerning the Works, must be approved by TfNSW prior to release. The TfNSW Project Manager will assess the extent of any TfNSW response, depending on the nature of the Works.
8. Where private driveway crossovers and stormwater drainage connections abut the works, the design of the driveway and drainage connections are to be agreed with the property owners. This is to include consideration of, and agreement to, the type and width of driveway and the method of disposal of property stormwater.

Construction

9. Approval to commence construction works is not permitted until TfNSW issues an Approval to Commence Construction. This will be issued after the receipt and acceptance of all statutory approvals, pre-construction documentation and Project Plans. These include:
 - Verification and Monitoring Plan
 - Quality Plan
 - Detailed Construction Program showing critical path
 - Construction Environmental Management Plan, including an Erosion & Sediment Control Plan and any safeguards or requirements identified in any environmental approvals
 - Inspection & Test Plans
 - Traffic Management (including Traffic Control Plans)
10. The Works must be carried out and completed to TfNSW QA Specifications, Environmental and Planning Approvals current at the date of execution of this Works Authorisation Deed. "TfNSW QA Specifications" means all specifications published from time to time by TfNSW on its website (www.rms.nsw.gov.au) and any other specification prepared as approved and notified by TfNSW.
11. The roadwork and bridgework components are to be undertaken by suitably prequalified and registered contractors acceptable to TfNSW. The contractors are to be prequalified and registered at a class appropriate to the value and type of works in accordance with the TfNSW Prequalification and Registration Schemes.
12. The Quality Plan must make provision for internal quality audits and the results of those audits must be provided to TfNSW within ten business days of the audit being undertaken.
13. All affected utilities are to be relocated to allow for the Works and meet the requirements of TfNSW and all relevant utility authorities, at no cost to TfNSW. TfNSW approval must be obtained prior to utilities being relocated outside of the standard Public Utility Space Allocations as detailed in the NSW Streets Opening Conference's Guide to Codes and Practices for Streets Opening. In particular, power poles and lighting columns must be relocated at least three metres behind the back of kerb.
14. A dated construction schedule is to be submitted and routinely updated so that TfNSW can plan timely inspections. TfNSW reserves the right to carry out surveillance and auditing of the quality system and/or works at any time. Following a written request from TfNSW, the Developer and/or Developer's Contractor must make resources available for the audit process.
15. Road condition reports must be prepared and submitted to TfNSW for all roads likely to be affected by the construction prior to commencement and post completion of construction. Prior to Completion, any damage to the existing road infrastructure (including without limitation road signage, signalling equipment and footpaths) caused during the course of the Works is to be restored and made good to the satisfaction of TfNSW and Council.
16. A summary of the results of all inspections and tests, described in the Inspection and Testing Plans, carried out within a particular month during the course of the Works are to be forwarded to TfNSW within ten Business Days of the end of that month.
17. All final linemarking on asphalt pavements (including transverse and median pavement markings) shall be Thermoplastic material. On a spray seal pavements a reapplication of

waterborne paint is required no less than 2 months and no later than 3 months after initial linemarking.

18. For each Separable Portion, the Developer is responsible for all road maintenance between the limit of works from the start of construction of that Separable Portion until the end of the Defects Liability Period for that Separable Portion.
19. "Works-as-Executed" (WAE) drawings must be submitted within 4 weeks from the date of Practical Completion, including electronic copies of CAD drawings for signal designs.

Traffic Management

20. A Traffic Management Plan (TMP) must be prepared and submitted for acceptance. Approval to commence construction will not be issued until the TMP is accepted. The TMP must:
 - Be drawn in accordance with AS1742.3 and the TfNSW Traffic Control at Work Sites (TCAWS) Manual.
 - Include Traffic Control Plans (TCPs) for the proposed work. The TCPs must be on scaled drawings of the affected section of road including lane widths, sign spacings and traffic control devices proposed. If temporary pavement marking changes are proposed then a TCP is also required for the pavement marking. The designer should visit the site to ensure that the proposed location of signage is suitable and practical.
 - Include appropriate signage to warn road users of construction vehicle entry/exit points and of excavations.
 - Include a Vehicle Movement Plan (where required by TCAWS) showing signage and other directional devices.
 - Show how pedestrians and cyclists will be directed safely through or around the work site.
 - Be prepared by a designer with a current certificate of training as required by TCAWS. The TCP shall be signed and dated including the designer's certificate number.
21. All pavement markings requiring removal must be removed by water blasting or grinding. Waterborne paint may be used for interim traffic stages. Retro-reflective raised pavement markings must be installed for all traffic stages.
22. A Road Occupancy Licence is required for all Works, including any approved maintenance period. The Road Occupancy Licence is separate and additional to the approval for the traffic management plan and the traffic control plans.
23. Where roadworks speed zone restrictions are proposed, a Speed Zone Authorisation is required.

Practical Completion

24. Prior to Practical Completion deposited plans of subdivision for any land to be dedicated as Public Road must be Registered at no cost to TfNSW or council.

Traffic Control Signals

25. The traffic signal installation work must be in accordance with TfNSW specification SI/TCS/8. Due to the specialised nature of traffic control signal installations, TfNSW requires that adequate notice be given to it for release of signal specification hold points, so that its representative can witness these achievements.

26. All traffic signal equipment must be new, must be supplied by the Developer or its contractor (including without limitation housing labels) and must comply with TfNSW Specifications. LED (Light Emitting Diode) traffic signal lanterns must be used for all traffic signal works. Reconstruction of existing sites which currently utilise Incandescent or Quartz Halogen lanterns must be upgraded to LED lantern sites in accordance with Technical direction TDT2008/05a.
27. The Developer is to engage TfNSW Service Provider to certify that all the traffic signal works are in accordance with the Design Documents and specifications.

Attachment B - Description of Works

- A.** Installation of traffic signals (TCS5186) and associated road works as per the TfNSW accepted drawings (DS2023/001186) and TfNSW requirements at the intersection of Mamre Rd and Abbots Rd, Kemps Creek:
- a. Demolition;
 - b. Earthworks;
 - c. Drainage;
 - d. Utilities;
 - e. Pavement;
 - f. Signage and Line marking;
 - g. Concrete works (kerb, medians, and footpaths);
 - h. Landscaping;
 - i. Traffic Control Signals.
- B.** Installation of traffic signals and associated concrete works, signage and line marking as per the TfNSW accepted Traffic Signal drawings and TfNSW requirements at the following intersections:
- a. Intersection 1 (TCS5180) Abbots Rd and Aldington Road, Kemps Creek:
 - i. Concrete works (kerb, medians, and footpaths);
 - ii. Signage and Line marking;
 - iii. Traffic Control Signals.
 - b. Intersection 2 (TCS5242) Aldington Road and DCP Road, Kemps Creek:
 - i. Concrete works (kerb, medians, and footpaths);
 - ii. Signage and Line marking;
 - iii. Traffic Control Signals.
 - c. Intersection 3 (TCS5181) Aldington Road and DCP Road Kemps Creek:
 - i. Concrete works (kerb, medians, and footpaths);
 - ii. Signage and Line marking;
 - iii. Traffic Control Signals.
 - d. Intersection 4 (TCS5182) Aldington Road and DCP Road, Kemps Creek:
 - i. Concrete works (kerb, medians, and footpaths);
 - ii. Signage and Line marking;
 - iii. Traffic Control Signals.

[KWM note to LOG-E: ESR have noted it is reviewing this schedule. ESR to confirm.]

Attachment C – Insurance Schedule

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
i	Broadform Public and Products Liability effected with an approved insurer as defined in Definitions and Notes clause 1 below. * If products are not involved in performance of the Services, it will be acceptable not to obtain Products Liability.	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences. The total aggregate liability during any one period of insurance for all claims arising out of the Developer's and Contractor's Products shall not exceed \$20 million.	From the earlier of the Works commencing or time construction contract is awarded to the end of the last Defects Liability Period.	<p>(a) lists the Developer and all contractors for their respective rights, interests and liabilities as named insureds.</p> <p>(b) lists TfNSW as an additional named insured as defined in Definitions and Notes clause 2 below.</p> <p>(c) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below.</p> <p>(d) liability arising out of the use of hoists, cranes, unregistered vehicles, boilers and pressure vessels.</p> <p>(e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.</p>	

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
ii	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below.	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences.	From the earlier of the Works commencing or time construction contract is awarded to completion of the Deed including any warranty / maintenance / service period.	<p>(a) all plant, equipment and motor vehicles owned or used by the Developer or contractors directly or indirectly engaged in performance of the Works.</p> <p>(b) lists the Developer and all contractors for their respective rights, interests and liabilities as named insureds.</p> <p>(c) lists TfNSW as an additional named insured as defined in Definitions and Notes clause 2 below.</p> <p>(d) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below.</p> <p>(e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.</p>	

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
iii	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below.	As per the Act.	From the earlier of the Works commencing or time construction contract is awarded to completion of the Deed including any warranty / maintenance / service period.	To cover all persons directly or indirectly engaged in performance of the Works under the Deed for loss, damage, claims and all direct and associated costs and expenses arising under any statute relating to workers or accident compensation or at common law.	
iv	Professional Indemnity* effected with an approved insurer as defined in Definitions and Notes clause 1 below.	\$10 million per occurrence and in the aggregate annually.	From the earlier of the design of the Works commencing or time construction contract is awarded to completion of the Deed plus 7 years following completion of the contract. The insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of this contract.	<p>(a) is effected by the contractor and each consultant providing design services.</p> <p>(b) a description of the risk covered by the policy.</p> <p>(c) cancellation clause requiring not less than 30 days' notice to be given by the insurer of an intent to cancel.</p> <p>(d) one automatic restatement per period of insurance.</p> <p>(e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.</p>	

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
v	Contract, works, plant and equipment insurance	To cover the replacement value of Works, including any TfNSW supplied materials.	From the earlier of the Works commencing or time construction contract is awarded to the end of the last Defects Liability Period.	<p>(a) material damage in relation to Works, temporary works, form works and all other material as supplied in the construction contract.</p> <p>(b) includes Architect, Engineer's and Surveyor's fees.</p> <p>(c) includes owner supplied materials, equipment, temporary buildings and the like, including all additional costs of reconstruction, rectification or repair.</p> <p>(d) lists the Developer and all contractors and subcontractors for their respective rights, interests and liabilities as named insureds.</p> <p>(e) lists TfNSW as an additional named insured as defined in Definitions and Notes clause 2 below.</p>	

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
				<p>(f) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below.</p> <p>(g) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.</p>	
vi	[Other*]			[*Include additional specific risk policies as required].	

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) if there is any placement of the risk overseas, a related general insurance company in Australia which is approved by the APRA and who has accepted the insurance transfer; or
- (d) if there is any placement of the risk overseas, and does not apply to items (b) and (c) above, the following actions/documentation need to take place and be provided to TfNSW:
 - (1) The Contractor's Finance Committee or appropriate finance personnel of the Contractor, must undertake a full financial risk assessment of the insurer/s being proposed for insurance where the following points must be achieved:
 - (i) the financial rating of the insurer by independent financial advisers must have credit rating of at least 'A' Standard & Poors (S&P) or the equivalent rating by the Moody's Investment Service or AM Best;
 - (ii) the Contractor's Insurance Brokers' Financial Committee or appropriate financial personnel of the Insurance Broker, must have its own report and approve the dealing with the Approved Insurer in addition to point (i) above; or
- (e) a Treasury Managed Fund insurance scheme with the NSW State Government; or
- (f) the Comcover insurance scheme for the Australian Federal Government.

OFFICIAL

2. TfNSW as an additional named insured for liability arising out of the Developer's / Contractor's activities. This extension includes liability:

(a) for injury to any TfNSW employee;

(b) arising from work undertaken away from the Developer's / Contractor's premises;

(c) for damage to TfNSW's property not in the Developer's / Contractor's physical or legal control.

3. Cross Liability and Waiver of Subrogation Clause

Cross liability clause means the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance has been issued to each of them (subject always to the overall insured sum).

4. Insurances to be subject to Australian jurisdiction and law of New South Wales

All insurances held by the Developer to provide that the insurer consents to the jurisdiction of all States and Territories of Australia and is subject to the law of New South Wales.

**CERTIFICATE OF CURRENCY (PROJECT SPECIFIC)
BROADFORM PUBLIC AND PRODUCTS LIABILITY INSURANCE**

Contract Document Number:	
TfNSW:	Transport for NSW
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of TfNSW and Others as described below.

Specifically the policy:

1. Covers the Insured's liability arising from bodily injury or damage caused by any act or omission of the Insured, its employees and vicarious liability for subcontractors or agents subject to the attached standard policy terms and conditions.
2. Indemnifies the Insured's contractors and subcontractors Yes / No
see note below
3. Includes TfNSW as an additional named insured for liability arising out of the Insured's activities. This extension includes liability:
 - for injury to any TfNSW employee;
 - arising from work undertaken away from the Insured's premises;
 - for damage to TfNSW's property not in the Insured's physical or legal control.
4. Includes a cross liability clause operates as if there was a separate policy of insurance covering each of the insured.
5. Covers liability arising out of the use of hoists, cranes, unregistered vehicles, boilers and pressure vessels.
6. Covers property of TfNSW whilst in the Insured's legal and physical control.
7. Agrees to waiver of subrogation clause against any Insured where they are indemnified by the policy.
8. Provides a limit of indemnity of not less than:
 - Public - \$20,000,000 for any single occurrence and unlimited in the aggregate to the number of occurrences;
 - Products - \$20,000,000 for any single occurrence and total aggregate liability during any one period of insurance for all claims arising out of the Insured's products.
9. Is subject to the following excess \$..... each and every occurrence or series of occurrences arising out of the one event which the Insured is required to pay.
10. Is current for the period to

11. Protects the interest of the Insured for the business activity of:

.....
.....
.....

Signed Insurance Company Stamp

Dated

Note:

*If contractors and subcontractors are not covered under this insurance as per item 2 above, the Insured is to obtain a separate set of Certificates of Currency from contractors and subcontractors as evidence of contractor's and subcontractor's insurance covers.*

The following COC's are deemed to be acceptable:

- (a) TfNSW's printed COC as above, signed and stamped by the insurer;***
- (b) TfNSW's printed COC as above, signed and stamped by the Insurance Broker with a written authority from the respective insurer/s;***
- (c) Insurer issuing their own COC which incorporates all TfNSW extensions as listed above.***

**CERTIFICATE OF CURRENCY (PROJECT SPECIFIC)
MOTOR VEHICLE FLEET AND MOBILE PLANT INSURANCE**

Contract Document Number:	
TfNSW:	Transport for NSW
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of TfNSW and Others as described below.

Specifically the policy (subject to the attached standard policy terms and conditions):

1. Covers the Insured's liability arising from bodily injury or damage caused by any act or omission of the Insured, its employees and vicarious liability for subcontractors or agents.
2. Indemnifies the Insured's contractors and subcontractors Yes / No
see note below
3. Includes TfNSW as an additional named insured for liability arising out of the Insured's activities. This extension includes liability:
 - arising from work undertaken at and away from the Insured's premises;
 - for damage to TfNSW's property not in the Insured's physical or legal control.
4. Is either a comprehensive policy or third party property damage policy covering all motor vehicles and mobile plant.
5. Includes a cross liability clause and operates as if there was a separate policy of insurance covering each of the insured.
6. Contains a waiver of subrogation clause waiving all rights, remedies or relief to which the insurer might become entitled by way of subrogation.
7. Contains a clause providing that failure by the insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to TfNSW.
8. Provides a limit of indemnity of not less than \$20,000,000 for any single occurrence and unlimited in the aggregate to the number of occurrences.
9. Attached is a copy of the policy wording.
10. Is current for the period to
11. Is subject to the following excess \$..... each and every occurrence or series of occurrences arising out of the one event which the Insured is required to pay.

12. Protects the interest of the Insured for the business activity of:

.....
.....
.....

Signed Insurance Company Stamp

Dated

Notes:

*If contractors and subcontractors are not covered under this insurance as per item 2 above, the Insured is to obtain a separate set of Certificates of Currency from contractors and subcontractors as evidence of contractor's and subcontractor's insurance covers.*

(i) *If the Insured does not have a motor vehicle fleet policy but instead has a single motor vehicle insurance policy, a Certificate of Currency (COC) will not be required, instead copies of the following documents are required:*

(a) *current registration paper;*

(b) *paid current renewal or new business certificate for motor vehicle insurance;*

(c) *motor vehicle policy.*

(ii) *The following COC's are deemed to be acceptable:*

(a) *TfNSW's printed COC as above, signed and stamped by the insurer;*

(b) *TfNSW's printed COC as above, signed and stamped by the Insurance Broker with a written authority from the respective insurer/s;*

(c) *Insurer issuing their own COC which incorporates all TfNSW extensions as listed above.*

**CERTIFICATE OF CURRENCY (PROJECT SPECIFIC)
NSW WORKERS COMPENSATION INSURANCE**

Contract Document Number:	
TfNSW:	Transport for NSW
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of TfNSW and Others as described below.

Specifically the policy:

1. Protects the interests of the Insured for the business activity of:
.....
.....
.....
2. Covers liability for death or injury to persons employed by the Insured arising under legislation or at common law.
3. Is current for to

Signed Insurance Company Stamp

Dated

Note: The following COC's are deemed to be acceptable:

- (a) TfNSW's printed COC as above, signed and stamped by the insurer;**
- (b) Insurer issuing their own COC which incorporates all TfNSW extensions as listed above.**

**CERTIFICATE OF CURRENCY (PROJECT SPECIFIC)
PROFESSIONAL INDEMNITY INSURANCE**

Contract Document Number:	
TfNSW:	Transport for NSW
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of TfNSW and Others as described below.

Specifically the policy

1. Covers the Insured's liability arising from a breach of professional duty, whether owed in contract or otherwise, caused by any act or omission of the Insured, its employees and vicarious liability for contractors, consultants or agents subject to the attached standard policy terms and conditions.
2. Provides a limit of indemnity of not less than \$.....
3. Is current from to
4. Protects the interests of the Insured for the business activity of:
.....
.....
.....
5. Includes one automatic reinstatement provision.
6. Is subject to the following excess \$..... each and every occurrence or series of occurrences arising out of the one event which the Insured is required to pay.
7. Retroactive date is unlimited.

Signed Insurance Company Stamp

Dated

Note: The following COC's are deemed to be acceptable:

- (a) TfNSW's printed COC as above, signed and stamped by the insurer;**
- (b) TfNSW's printed COC as above, signed and stamped by the Insurance Broker with a written authority from the respective insurer/s;**
- (c) Insurer issuing their own COC which incorporates all TfNSW extensions as listed above.**

**CERTIFICATE OF CURRENCY (PROJECT SPECIFIC)
CONTRACT WORKS INSURANCE**

Contract Document Number:	
TfNSW:	Transport for NSW
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of TfNSW and Others as described below.

Specifically the policy (subject to the attached standard policy terms and conditions):

1. Covers loss and / or damage or destruction of the following for an amount not less than the following amounts:

THE WORKS	\$.....
TEMPORARY WORKS	\$.....
EQUIPMENT AND MATERIALS ON SITE	\$.....
CONSTRUCTIONAL PLANT	\$.....
REMOVAL OF DEBRIS	\$.....
ARCHITECT'S / ENGINEER'S FEES	\$.....

2. Indemnifies the Insured's contractors and subcontractors Yes / No # see note below
3. Location anywhere in Australia.
4. Covers property of TfNSW whilst in the Insured's legal and physical control, limited to \$..... any one occurrence.
5. Includes a cross liability clause and operates as if there was a separate policy of insurance covering each of the insured.
6. Agrees to waiver of subrogation clause against any Insured where they are indemnified by the policy.
7. Contains a clause providing that failure by the Insured to observe and fulfil the terms of the policy does not prejudice the insurance in regard to TfNSW.
8. Provides a limit of indemnity of not less than \$..... for any single occurrence and unlimited in the aggregate to the number of occurrences.
9. Is subject to the following excess \$..... each and every occurrence or series of occurrences arising out of the one event which the Insured is required to pay.
10. Is current for the period to Plus Defects Liability Period of months.

11. Protects the interests of the Insured for the business activity of:

.....
.....

Signed Insurance Company Stamp

Dated

Note:

*If contractors and subcontractors are not covered under this insurance as per item 2 above, the Insured is to obtain a separate set of Certificates of Currency from contractors and subcontractors as evidence of contractor's and subcontractor's insurance covers.*

The following COC's are deemed to be acceptable:

- (a) TfNSW's printed COC as above, signed and stamped by the insurer;***
- (b) TfNSW's printed COC as above, signed and stamped by the Insurance Broker with a written authority from the respective insurer/s;***
- (c) Insurer issuing their own COC which incorporates all TfNSW extensions as listed above***

Attachment D - Statutory Declaration and Subcontractor Statement regarding Workers Compensation, Pay-roll Tax and Remuneration

Schedule	
<p align="center">Statutory Declaration</p> <p>I, _____ of _____ do solemnly and sincerely declare that:</p> <p>1. I am a representative of _____ ("Developer") in the Office Bearer capacity of _____</p> <p>2. The Developer has a contract with Transport for NSW to carry out certain works for _____ ("Contract").</p> <p>3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the Developer in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:</p> <p style="margin-left: 20px;">a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;</p> <p style="margin-left: 20px;">b. under the Payroll Tax Act 2007, Schedule 2 Part 5, in the form and providing the detail required by that legislation; and</p> <p style="margin-left: 20px;">c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.</p> <p>4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</p> <p>5. The obligations of the Developer under the Contract relating to Security of Payment, if any, including payment of employees, workers and Subcontractors of the Developer have been complied with by the Developer.</p> <p>6. If the Developer has contractors, the Developer has received from each of those subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).</p> <p>7. All statutory declarations and Subcontractor's Statements received by the Developer from contractors referred to in clause 6 were:</p> <p style="margin-left: 20px;">(a) given to the Developer in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ('Acts'); and</p> <p style="margin-left: 20px;">(b) given by the contractors in their capacity as 'Subcontractors' as defined in the Acts.</p> <p>8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the Developer by its Subcontractors.</p> <p>9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _____ to _____.</p>	<p>Insert name of Declarant</p> <p>Insert address</p> <p>Insert name of Developer and ABN if applicable</p> <p>insert position title of Declarant</p> <p>Insert name of Contract</p> <p>Insert the relevant payment period</p>

10. The Developer is not, under any law, insolvent or unable to pay its debts as and when they fall due.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at _____ (place where declaration made) on
_____ (date of declaration) by

Signature of person making the declaration

before me: _____

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place]

Certificate under section 34 (1)(c) of Oaths Act 1900

**Please cross out any text that does not apply*

I _____, a _____,
insert name of authorised witness *insert qualification to be authorised witness*

certify the following matters concerning the making of this statutory declaration by the person who made it:

1. *I saw the face of the person *or* *I did not see the face of the person because the person's face was covered, but I am satisfied that the person had a special justification for not removing the covering.
2. *I have known the person for at least 12 months *or* *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was
describe identification document relied on

Signature of authorised witness (print)

Date

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)
[strike through above if document is not witnessed electronically]



SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature Full name.....

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that 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.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or 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.

Attachment E – Land to be Dedicated

Land dedication to be completed as per the attached drawing. **[KWM note to LOG-E: ESR to provide plan]**

Deed of Appointment of Project Verifier

This Deed made at Sydney on

Parties **[Insert Developer's name]** (ABN **[Insert Developer's ABN]**) of **[Insert Developer's address]** ("Developer")

[Insert Contractor's name] (ABN **[Insert Contractor's ABN]**) of **[Insert Contractor's address]** ("Contractor")

Transport for NSW (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point 2061 a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("**TfNSW**")

[Insert Project Verifier's name] (ABN **[Insert Project Verifier's ABN]**) of **[Insert Project Verifier's address]** ("Project Verifier")

Recitals

- A. On **[insert date]** the Developer entered into a Works Authorisation Deed with TfNSW in respect of the Works.
- B. The Contractor has entered into the Contract with the Developer in respect of the Works.
- C. The Project Verifier represents that it is experienced generally in construction and project management and, in particular, in the construction and project management of works similar to the Works and offers its expertise in those fields.
- D. The Works Authorisation Deed contemplates that the Project Verifier will discharge those functions set out in Schedule 2 of this Deed.
- E. The Project Verifier will perform its obligations on the terms and conditions of this Deed.

This Deed provides:

1. **Definitions and interpretation**

1.1 **Definitions**

In this Deed words and expressions which have a defined meaning in the Works Authorisation Deed have the same meaning in this Deed, except where otherwise expressly defined in this Deed, and

Construction Phase Services means all Services relating to the verification of the construction of the Works and the performance by the Developer of its construction obligations under the Works Authorisation Deed.

Construction Program means the construction program under the Contract.

Construction Site means the "Site" as defined in the Works Authorisation Deed.

Contract means the contract for the design and construction of the Works between the Developer, as principal under the Contract, and the Contractor.

Date of Final Completion has the meaning set out in the Works Authorisation Deed.

Design Phase Services means all Services relating to the verification of the design of the Works and the performance by the Developer of its design obligations under the Works Authorisation Deed.

Fee means the amount payable to the Project Verifier for the performance of the Services in accordance with the Payment Schedule.

GST, GST law and other terms used in clause 8.3 have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) or any replacement or other relevant legislation and regulations, except "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 8.3) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Initial Verification and Monitoring Plan means the initial verification and monitoring plan contained in Part 1 of Schedule 4 to this Deed.

Insolvency Event means when:

- (a) one party informs the other parties in writing, or its creditors generally, that it is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- (b) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (c) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (d) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
- (e) a sequestration order or winding up order is made in respect of the corporation;
- (f) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (g) a mortgagee of any property of the corporation takes possession of that property; or

- (h) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

Minimum Requirements means the minimum requirements for the Verification and Monitoring Plan, as set out in Schedule 6 to this Deed.

NCR means a non-conformity report.

Other Parties means TfNSW, the Developer and the Contractor.

Payment Schedule means Schedule 3 to this Deed.

Project Documents means those agreements described in Schedule 1 to this Deed.

Project Verifier's Representative means the relevant person referred to in clause 3.3(c)(i) or clause 3.3(c)(ii) and any person holding that position in accordance with clause 3.3(b).

Services means those services listed in Schedule 2 to this Deed and such other services as the Project Verifier may be required to perform and/or provide under this Deed.

Verification and Monitoring Plan means the plan the Project Verifier is required to prepare in accordance with clause 3.6, and in respect of which the Developer has not issued a notice under clause 3.6(b)(ii), as that plan is updated from time to time in accordance with clause 3.7 of this Deed.

Works means the "Works" as defined in the Works Authorisation Deed.

Works Authorisation Deed means the document entitled "Works Authorisation Deed – {INSERT}" dated [insert date] between TfNSW and the Developer.

1.2 Interpretation

In this Deed:

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

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 **Governing Law**

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

2. **Appointment of the Project Verifier**

2.1 **Appointment**

- (a) Each of the Other Parties appoints the Project Verifier under this Deed to perform the Services.
- (b) The Project Verifier confirms its acceptance of the appointment referred to in clause 2.1(a).

2.2 **Payment**

- (a) The Developer must pay the Project Verifier, and warrants to TfNSW and the Contractor that it will pay the Project Verifier, the Fee in accordance with the Payment Schedule.
- (b) The Project Verifier must notify TfNSW in writing if any part of the Fee that is due and payable by the Developer under and in accordance with this Deed remains unpaid 90 days after the due date for payment under and in accordance with this Deed.

2.3 **Nature of Services**

The Project Verifier and the Other Parties acknowledge and agree that the Verification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Project Verifier's obligations under this Deed.

3. **Project Verifier's obligations**

3.1 **Acknowledgement**

The Project Verifier acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "Project Verifier" under the Project Documents.

3.2 Further acknowledgements and warranties

The Project Verifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the knowledge, skill, expertise and experience of the Project Verifier in the performance of its obligations under this Deed; and
 - (ii) may suffer loss if the Project Verifier does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and the Project Documents, and where no time is prescribed, within a reasonable time, and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Project Verifier under or pursuant to this Deed or the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services in accordance with this Deed; and
 - (ii) without limiting subparagraph (i), to the extent the Verification and Monitoring Plan is not inconsistent with:
 - (A) the Project Documents; or
 - (B) the nature of the Services,

it will carry out and perform the Services in accordance with the Verification and Monitoring Plan; and
- (f) will provide transport on site for the use of its site personnel.

3.3 Key Personnel

- (a) The Project Verifier must provide personnel with a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under this Deed.
- (b) The Project Verifier must ensure that the people referred to in clause 3.3(c):
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:

- (A) they must be replaced by people of at least equivalent knowledge, skill, expertise and experience; and
 - (B) prior to removal and replacement, there must be a proper and adequate handover to ensure that the new personnel have a reasonable understanding of the Project and the Services; and
- (iii) are available for consultation as any party may reasonably require from time to time.
- (c) The people required to perform the Services are:
 - (i) **[Insert name]** as the Project Verifier's Representative for the Design Phase Services;
 - (ii) **[Insert name]** as the Project Verifier's Representative for the Construction Phase Services;
 - (iii) **[Insert name]** as the Project Verifier's project director; and
 - (iv) the other persons listed in clause 6 of the Payment Schedule.
- (d) The Other Parties may jointly direct the Project Verifier to remove from the performance of the Services any of the people referred to in clause 3.3(c) and the Project Verifier must comply with any such direction.
- (e) The Project Verifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 2 which the Project Verifier is required to execute as part of the Services. The Project Verifier must ensure that these certificates and documents are signed by the person or persons so notified.

3.4 Subcontracting

- (a) Subject to clause 3.3, the Project Verifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed).
- (b) The Project Verifier remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting, and will be liable for the acts and omissions of any subcontractor as if they were acts and omissions of the Project Verifier.
- (c) Unless the Other Parties otherwise approve in writing, the Project Verifier must contract with the subcontractors set out below in respect of the relevant part of the Services set out below:

Name of subcontractor	Relevant Services
[Name to be inserted]	[Details of Services to be inserted]

3.5 Quality Assurance

- (a) The Project Verifier must implement a quality system in accordance with ISO9000 and ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The Project Verifier will not be relieved of any requirement to perform any obligation under this Deed as a result of:

- (i) compliance with the quality assurance requirements of this Deed; or
- (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Verification and Monitoring Plan or any audit under clause 3.9.

3.6 **Verification and Monitoring Plan**

- (a) The Project Verifier must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Verification and Monitoring Plan" which must:
 - (i) be based on the Initial Verification and Monitoring Plan;
 - (ii) address the matters identified in Part 2 of Schedule 4 to this Deed; and
 - (iii) comply with the Minimum Requirements.
- (b) TfNSW and the Developer may:
 - (i) review the Verification and Monitoring Plan submitted under clause 3.6(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, or if TfNSW believes that the Verification and Monitoring Plan does not comply with the Minimum Requirements,

notify the Project Verifier with details of the non-compliance.
- (c) If the Project Verifier receives a notice under clause 3.6(b)(ii), the Project Verifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clause 3.6(b) will reapply.
- (d) If the Project Verifier does not receive a notice under clause 3.6(b)(ii) within 21 days after the submission of the relevant Verification and Monitoring Plan, the relevant Verification and Monitoring Plan submitted will be the Verification and Monitoring Plan with which the Project Verifier must comply (as it is updated from time to time under and in accordance with clause 3.7).

3.7 **Revisions to the Verification and Monitoring Plan**

- (a) The Project Verifier must:
 - (i) progressively amend, update and develop the Verification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Works, and variations under the Works Authorisation Deed and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Verification and Monitoring Plan under clause 3.7(a)(i) are consistent with, and comply with, the Minimum Requirements; and
 - (iii) submit each revision of the Verification and Monitoring Plan to the Other Parties.
- (b) TfNSW and the Developer may:

- (i) review the Verification and Monitoring Plan submitted under clause 3.7(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, including that the revised Verification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Initial Verification and Monitoring Plan,
- notify the Project Verifier with details of the non-compliance or reduction.
- (c) If the Project Verifier receives a notice under clause 3.7(b)(ii), the Project Verifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clauses 3.7(a) to 3.7(c) will re-apply.
 - (d) TfNSW, the Developer and the Contractor owe no duty to the Project Verifier to review the Verification and Monitoring Plan for errors, omissions or compliance with this Deed.
 - (e) Without limiting clause 3.2(e), the Project Verifier must not, either in the preparation of the Verification and Monitoring Plan required by clause 3.6(a) or the amending, updating and development of the Verification and Monitoring Plan required by clause 3.7(a)(i), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise contained in the Initial Verification and Monitoring Plan without the prior written approval of TfNSW's Authorised Officer.
 - (f) The Project Verifier must not amend the Verification and Monitoring Plan other than in accordance with this clause 3.7.

3.8 Progress Reports by the Project Verifier

During the period from the date of this Deed until the Date of Final Completion under the Works Authorisation Deed, the Project Verifier must provide a monthly progress report (one hard copy plus simultaneous provision of an electronic copy) to the Other Parties by the seventh day of each calendar month and in such format as is required by TfNSW's Authorised Officer, containing, identifying or setting out in relation to the Works Authorisation Deed:

- (a) a description of the verification activities undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Project Verifier during the reporting period (which must, as a minimum, include the surveillance activities specified in Schedule 5);
- (c) a summary of key risks and issues relating to the Services;
- (d) the Project Verifier's current and planned resources and staffing levels;
- (e) details of any Developer non-conformities raised by the Project Verifier or TfNSW and details on the verification of the rectification by the Developer of non-conformities;
- (f) details of the surveillance, monitoring and auditing proposed to be undertaken by the Project Verifier in the forthcoming reporting period (which must, as a minimum, include the surveillance activities specified in Schedule 5), including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;

- (g) details of the current version of the Verification and Monitoring Plan and a summary of any amendments, updates and developments to the Verification and Monitoring Plan during the reporting period; and
- (h) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Services, together with detailed particulars on how the Project Verifier is dealing or proposes to deal with any such act, matter or thing.

3.9 **Audit and surveillance**

- (a) The Project Verifier must:
 - (i) allow any audit of its quality assurance system under this Deed by a third party, at the request of the Other Parties or any one of them; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Project Verifier must, at all times:
 - (i) give to the third party access to premises occupied by the Project Verifier where the Services are being undertaken; and
 - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

3.10 **Access to records**

From the date of this Deed and for a period of seven years following completion of the Services, the Project Verifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents prepared or generated by or on behalf of the Project Verifier arising out of or in connection with the carrying out the Services.

4. **Independence and Confidentiality**

4.1 **Project Verifier to be independent**

- (a) The Project Verifier warrants to the Other Parties that in performing the Services, it will act:
 - (i) independently of the Other Parties;
 - (ii) honestly, diligently and reasonably;
 - (iii) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the design and construction of major engineering works in particular; and
 - (iv) within the time prescribed under this Deed or the Project Documents or as anticipated by the Construction Program.
- (b) Clauses 4.1(a)(i) and 4.1(a)(ii) do not prevent the Project Verifier from meeting with any of the Other Parties without all of the Other Parties being present.

4.2 **Confidentiality**

The Project Verifier must keep confidential details of this Deed and all information and documents provided to, or by, the Project Verifier relating to the Services, the Project or

the Project Documents and not provide, disclose or use the information or documents except:

- (a) to the Other Parties;
- (b) for the purposes of performing the Services;
- (c) where required by law or to obtain legal advice on this Deed; or
- (d) with the prior written consent of the Other Parties.

This obligation will survive completion of the Services and the termination of this Deed.

5. Obligations of the Other Parties

5.1 No Interference or Influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Project Verifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this Deed will not of itself constitute a breach of this clause.
- (b) Clause 5.1(a) does not prevent the Other Parties from providing written comments to the Project Verifier in respect of a Design Document or any other aspect of the Works.

5.2 Co-operation by the Developer and the Contractor

Without limiting or otherwise affecting any of:

- (a) the Developer's obligations under this Deed or the Works Authorisation Deed; or
- (b) the Contractor's obligations under this Deed or the Contract,

the Developer and the Contractor must:

- (c) co-operate with and provide the Project Verifier with all information and documents necessary or reasonably required by the Project Verifier to perform the Services, or otherwise requested by the Project Verifier or directed by TfNSW;
- (d) allow the Project Verifier to attend all design meetings and procure for the Project Verifier access to such premises as may be reasonably necessary to enable the Project Verifier to perform the Services or as requested by the Project Verifier or directed by TfNSW, including allowing access to the Construction Site and all places at which the Developer's activities under the Works Authorisation Deed are being undertaken;
- (e) ensure that Hold Points and Witness Points are included in the Project Documents as required by the Project Verifier to enable the Project Verifier to perform the Services; and
- (f) not proceed beyond any Hold Point until it has been released by the Project Verifier.

5.3 TfNSW to have no liability

- (a) Each party acknowledges that TfNSW does not, nor will it be taken to have, a liability, or to have assumed or become (on enforcement of any of its powers or otherwise), liable:

- (i) to any party to this Deed by reason of them being a party to this Deed; or
 - (ii) for the performance of any obligation of the Developer, the Contractor or the Project Verifier under this Deed or the Project Documents.
- (b) Without limiting clause 5.3(a), each party acknowledges and agrees that the Project Verifier does not have the authority to authorise any non-compliance with the Project Documents.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the Project Verifier's liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to \$[10] million.

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to any claims arising out of or in connection with any of the following on the part of the Project Verifier or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the Project Verifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed.

6.3 Insurances

The Project Verifier must, from the date of the Works Authorisation Deed, hold and maintain:

- (a) professional indemnity insurance with:
 - (i) a limit of indemnity of not less than \$[10] million for any single claim in respect of legal liability (including, without limitation, in connection with property damage, personal injury or death) arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Project Verifier or its employees, agents or consultants; and
 - (ii) a deductible of not more than \$[500,000];
- (b) workers compensation insurance in accordance with the requirements of Law; and
- (c) public liability insurance with a limit of liability of no less than \$[20] million for any single claim for any loss of, or damage to, any real or personal property and personal injury to any person, arising out of this Deed and which names TfNSW and the Developer as insured parties.

6.4 Notice of matter affecting insurance

The Project Verifier must notify the Other Parties 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

6.5 Provision of information

Before the Project Verifier starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the Project Verifier must supply proof that all insurance policies which the Project Verifier is required to hold and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.

6.6 Periods for insurance

The Project Verifier must keep:

- (a) the professional indemnity insurance current until 12 years after the Project Verifier ceases to perform the Services; and
- (b) the workers compensation insurance current until it ceases to perform the Services.

6.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 6 does not limit the liability or other obligations of the Project Verifier under this Deed.

6.8 Indemnity

Subject to clause 6.1, the Project Verifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:

- (a) any damage to or loss of property; or
- (b) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the negligent act, error or omission of the Project Verifier, its employees, agents, subcontractors or consultants.

7. Termination of appointment

7.1 Notice of termination

The Other Parties may jointly terminate this Deed by notice in writing served on the Project Verifier if:

- (a) the Project Verifier is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the Project Verifier is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Project Verifier; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the Project Verifier a notice of termination of this Deed, on a date specified in the notice, being not less than 21 days after the date of issue of the notice.

7.2 Prior agreement on replacement

Prior to serving a notice under clause 7.1, the Other Parties must have agreed upon another person to act as a replacement for the Project Verifier.

7.3 Termination

Where a notice is served on the Project Verifier under clause 7.1, the appointment of the Project Verifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 7.1; or
- (b) the appointment of a replacement for the Project Verifier.

7.4 Delivery of documents

Upon the date of termination of the appointment of the Project Verifier, the Project Verifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Project Verifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for the purposes of the Project Documents and the Works.

7.5 Reasonable assistance

Where the Other Parties give a notice of termination under clause 7.1, the Project Verifier must provide full assistance to the Other Parties and any replacement for the Project Verifier appointed in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

7.6 Payment until date of termination

Where this Deed is terminated under clause 7.1(d), the Project Verifier is only entitled to be paid by the Developer the proportion of the Fee for Services performed up to the date of the termination.

7.7 Termination without payment

Termination of this Deed will be without prejudice to any claim which the Other Parties or any one of them may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

7.8 Survive termination

This clause 7 will survive the termination of this Deed by the Other Parties under clause 7.1.

7.9 Rights upon Termination

If this Deed is terminated pursuant to clauses 7.1(a), 7.1(b) or 7.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the Deed had the Project Verifier repudiated the Deed and the Other Parties elected to treat the Deed as at an end and recover damages.

8. **Expenses, Stamp Duty and GST**

8.1 **Expenses**

Except as otherwise provided in this Deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Deed.

8.2 **Stamp Duties**

- (a) The Contractor must:
 - (i) pay all stamp duties (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed; and
 - (ii) indemnify each other party against any liability arising from failure to comply with clause 8.2(a)(i).
- (b) The Contractor is authorised to make any application for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

8.3 **GST**

- (a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (the "**Supplier**") under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
 - (ii) an additional amount will be payable by the party to whom that supply is made (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause (b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 14 days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.

- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

9. **Miscellaneous**

9.1 **Further acts**

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Deed.

9.2 **Notices**

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Name: Transport for NSW

Address: **[Insert address for notices]**

Fax no: **[Insert fax number]**

For the attention of: **[Insert name and/or position details]**

Name: TfNSW's Authorised Officer

Address: **[Insert address for notices]**

Fax no: **[insert fax number]**

For the attention of: **[Insert name and/or position details]**

Name: The Developer

Address: **[Insert address for notices]**

Fax no: **[Insert fax number]**

For the attention of: **[Insert name and/or position details]**

Name: The Developer's Authorised Officer
Address: **[Insert address for notices]**
Fax no: **[Insert fax number]**
For the attention of: **[Insert name and/or position details]**

Name: The Contractor
Address: **[Insert Contractor's address]**
Fax no: **[Insert Contractor's facsimile]**
For the attention of: **[Insert contact name and/or position details]**

Name: **[Insert Project Verifier's name]**
Address: **[Insert Project Verifier's address]**
Fax no: **[Insert Project Verifier's facsimile]**
For the attention of: **[Insert contact name and/or position details]**

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

9.3 **Jurisdiction**

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 9.3(a).

9.4 **Amendments**

This Deed may only be varied by a document signed by or on behalf of each of the parties.

9.5 **Assignment**

No party to this Deed may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party to this Deed.

9.6 **Waiver**

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

9.7 **Consents**

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

9.8 **Counterparts**

This Deed may be executed in any number of counterparts. Each counterpart is an original and the counterparts together constitute one and the same Deed.

9.9 **Indemnities**

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

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

9.10 **Entire agreement**

To the extent permitted by law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

9.11 No representation or reliance

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

9.12 Relationship of the parties

- (a) The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing herein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) It is understood that the Project Verifier is acting as an independent contractor for the Other Parties and therefore, the Project Verifier is not authorised to enter into any binding obligations on behalf of any or all of the Other Parties.

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or
- (b) ceases to exist,

this Deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body.

9.14 Severance

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

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

9.15 Moratorium Legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this Deed or otherwise, are expressly waived.

9.16 **Civil Liability Act**

- (a) It is agreed that the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 9.16(a) it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

9.17 **Remote execution**

The parties acknowledge and agree that:

- (a) this Deed may be exchanged by hand or by post, or remotely by any electronic method that evidences a party's execution of this Deed;
- (b) if a counterpart of this Deed is executed remotely:
 - (i) a scan of that duly executed counterpart Deed will be considered an original copy of this Deed for the purposes of s.127 of the Corporations Act 2001 (Cth);
 - (ii) each party may make and rely on the assumptions set out in s.129(5) of the Corporations Act 2001 (Cth);
 - (iii) a reference to "a document" and "the document" in sections 127(1) and 129(5) of the Corporations Act 2001 (Cth) includes a reference to the electronic data file containing this Deed in electronic form; and
 - (iv) TfNSW's Authorised Officer may at any time direct any other party to this Deed to provide it with the original 'wet ink' signature pages executed by the directors of that party, unless executed electronically in accordance with clause 9.18; and
- (c) each party will be taken to have received another party's executed counterpart Deed at the time it would be taken to have received it if it were a notice served under clause 19.2.

9.18 **Electronic execution**

The parties acknowledge and agree that:

- (a) this Deed including any counterpart, may be electronically executed, including by using software or a platform for the electronic execution of documents;
- (b) if this Deed or any counterpart is executed electronically, a scan or a hard copy print out of that executed Deed will be treated as if it is the original Deed or counterpart that has been executed;
- (c) if this Deed or any counterpart is executed electronically by or on behalf of a party, that party represents and warrants that it or anyone signing on its behalf:
 - (i) is duly authorised to enter into and execute this Deed and to create obligations that are valid and binding obligations on the party; and

- (ii) affixed their own electronic signature to the Deed;
- (d) no person may challenge the validity of the Deed by virtue only of the fact that it has been electronically executed and each party is estopped from asserting otherwise.

EXECUTED as a deed.

Date:

EXECUTED by **[INSERT NAME AND
ABN OF DEVELOPER]** in accordance
with section 127 of the *Corporations Act
2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

Electronic signature of me,

Electronic signature of me,

[insert full name, including any middle name]

[insert full name, including any middle name]

affixed by me on

affixed by me on

[insert date and time]

[insert date and time]

[Strike through above if document is not executed
electronically]

[Strike through above if document is not executed
electronically]

Executed for and on behalf of
Transport For NSW
(ABN 18 804 239 602) by its
authorised delegate in the presence of:

Signature of witness

Signature of authorised delegate

Full name of witness

Name of authorised delegate

Electronic signature of me,

Electronic signature of me,

[insert full name, including any middle name]

[insert full name, including any middle name]

affixed by me on

affixed by me on

[insert date and time]

[insert date and time]

This document was signed in counterpart and
witnessed over audio visual link in accordance with
section 14G of the *Electronic Transactions Act 2000*
(NSW)

[Strike through above if document is not executed
electronically]

[Strike through above if document is not executed
electronically]

EXECUTED by **[INSERT NAME AND
ABN OF CONTRACTOR]** in accordance
with section 127 of the *Corporations Act
2001* (Cth):

Signature of director / secretary

Name

Electronic signature of me,

[insert full name, including any middle name]

affixed by me on

[insert date and time]

[Strike through above if document is not executed
electronically]

Signature of director/secretary

Name

Electronic signature of me,

[insert full name, including any middle name]

affixed by me on

[insert date and time]

[Strike through above if document is not executed
electronically]

EXECUTED by **[NOTE: INSERT NAME
AND ABN OF PROJECT VERIFIER]** in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Name

Electronic signature of me,

[insert full name, including any middle name]

affixed by me on

[insert date and time]

[Strike through above if document is not executed
electronically]

Signature of director / secretary

Name

Electronic signature of me,

[insert full name, including any middle name]

affixed by me on

[insert date and time]

[Strike through above if document is not executed
electronically]

SCHEDULE 1

Project Documents

The Project Documents are as follows:

1. Works Authorisation Deed.
2. Developer's Development Application.
3. Developer's Development Consent.
4. Project Plans:
 - (a) Construction Program;
 - (b) Traffic Management (including Traffic Control Plans);
 - (c) Quality Plan;
 - (d) Environmental Management Plan; and
 - (e) Inspection and Testing Plan.
5. Concept Design Documentation.
6. Detailed Design Documentation (including full engineering design documentation and drawings, including design report, geotechnical report, specification, document, calculation, software, sample, model, pattern and the like, required by the Works Authorisation Deed or the Developer's Development Consent or created for the construction of the Works).
7. TfNSW QA Specifications.
8. Schedule of delegated Hold and Witness Points.
9. Road Safety Audits.
10. Project Verification Certificates (being those certificates set out in Schedules 7-11 of Attachment F).
11. Other relevant documents which are agreed, in writing, by TfNSW and the Developer to be Project Documents for the purposes of this Deed.
12. Documents related to Health & Safety in Design and Constructability Workshops.

SCHEDULE 2

Project Verifier Services

SECTION 1 – SCOPE OF SERVICES

The Project Verifier must discharge the functions, obligations, duties and services which the Project Documents contemplate will be discharged by the Project Verifier, including the following:

1. Receive and review each revision of the Project Plans within 15 days of submission of the plan to the TfNSW Authorised Representative and provide Project Plan Certificates in the form of Schedule 7.
2. Provide a certification stating that all findings / non-conformances of Road Safety Audits have been satisfactorily addressed and closed out prior to their acceptance by TfNSW.
3. Receive all information and documents, attend all design meetings (as required) and obtain access to such premises as may be necessary or reasonably required for the performance of the obligations of the Project Verifier.
4. Verify the final version of Detailed Design Documentation for each design component and providing design certification in the form of Schedule 8.
5. Review the Developer's Schedule of delegated Hold and Witness Points and obtain TfNSW acceptance.
6. Observe, monitor, review and assess the quality of the Works and the durability of the Works to verify the Developer's compliance with the requirements of the Project Documents.
7. Independently verify that the Works comply with the Project Documents.
8. Execute and provide certificates in the form of:
 - (a) Schedule 7 - Project Plan Certificate;
 - (b) Schedule 8 - Design Documents Certificate;
 - (c) Schedule 9 - Monthly Construction Certificate;
 - (d) Schedule 10 - Construction Completion Certificate; and
 - (e) Schedule 11 - Final Verification Certificate (upon expiry of the [last] Defects Liability Period);
9. Provide a monthly progress report, by the tenth day of the following month, including details on:
 - (a) the status and progress made by the Developer in the previous month in respect of the Works;
 - (b) a register of all Inspection and Test Plans current and closed out during the month;
 - (c) outline of any construction issues not closed out within a 2 week period;
 - (d) the Project Verifier's current and planned resources and staffing levels; and
 - (e) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Project Verifier Services, together with detailed

particulars on how the Project Verifier is dealing or proposes to deal with any such act, manner or thing.

SECTION 2 – VERIFICATION ACTIVITIES

1. Application of verification activities

The provision of verification services in respect of the Works undertaken by the Developer is the key process to be implemented by the Project Verifier during the design and construction phases of this project.

The independent Project Verifier will implement and operate systems for undertaking the following functions for this project.

2. Review and certification of project plans

The Developer is required by the Works Authorisation Deed to prepare and submit to TfNSW the Project Plans referred to in Schedule 1. The purpose of each Project Plan is for the Developer to describe in detail how he intends to carry out the Works in accordance with the requirements of the Project Documents.

Project Plans are controlled documents that will require ongoing development, amendment and updating throughout the duration of the Works.

The Project Verifier will maintain a register of all Project Plans received from the Developer. The Project Verifier will make itself familiar with all received Project Plans and raise comments where applicable. The Project Verifier will issue the Project Verification Certificates.

3. Risk assessment

The level and scope of verification of the design and verification/surveillance of the construction activity will be based on a continuous risk assessment process taking into account the importance of:

- commercial, safety, community involvement elements etc;
- results of previous audits/ surveillance;
- engineering/environmental constraints/ difficulties;
- effect on future work; and
- any other item identified during the Works.

The Project Verifier's Representative (to be notified to TfNSW upon the appointment of the Project Verifier by the Developer), will determine the extent and type of verification required for the project, having regard to the following:

- complexity of the design;
- assessed risk and the likelihood and consequence of failure;
- requirements of the Project Documents;
- durability implications;
- adequacy of documentation content;

- compliance with project specific requirements; and
- any direction given by TfNSW.

4. **Design verification**

The Project Verifier will independently verify that the design of the Works including temporary works complies with the requirements of the Project Documents.

Design verification will be carried out to confirm compliance of the design with the current input documents, design criteria, design codes and standards, specifications and accepted engineering practice on all design elements.

Process

The Project Verifier will review, where appropriate, the design documents (drawings, specifications and reports) generally at the concept design documentation (15% complete) and detail design documentation (85%) and review and verify on 100% complete stages.

At the successful completion of the 100% reviews the Project Verifier will issue the Project Verifier's Design Documents Certificate.

During the review process the Project Verifier is to ensure that any TfNSW comment on the design has been incorporated or determined before the issue of the Design Documents Certificate.

Following resolution of any outstanding qualifications and issues raised by the Verifier or TfNSW, the Developer shall issue accepted "For Construction" documents including final drawings, final specifications, and final design reports.

The Project Verifier will exercise discretion when carrying out independent design checks on key elements and specific issues of the design to satisfy himself that the design complies with the Project Documents. Key elements will be defined by a risk assessment process.

If the structures are propriety items, design inputs and design outputs (inclusive of drawings, fabrication process and technical specifications) must be certified by the sub-contractors for compliance with the Project Documents before the verification process commences.

The design outputs, drawings and technical specifications will be reviewed to verify that the intended design inputs and technical requirements have been incorporated in the Project Documents and design output meets the requirements of design criteria, project objectives, codes and standards.

If any design documentation is rejected, then the design amendments will be subjected to the same verification process outlined above.

The response time by the Project Verifier will be mutually agreed with the Developer and TfNSW for each design package (generally within 15 days).

Other Outputs

- Progressively review and certify accepted 'For Construction' detailed design documentation (drawings and specifications) of both permanent and temporary staging works.
- Review and certify Amended Design Documents that might arise during the course of construction.

5. **Construction works verification**

General

The Project Verifier will independently verify that the Works as constructed, including temporary works and product and process, comply with the requirements of the Project Documents. It is acknowledged, the majority of the construction obligations will be met by the Developer's Principal Contractor.

Site Surveillance

The Project Verifier will monitor the construction activities on site and will identify, raise and document observations, which indicate non-compliance with the requirements of the Technical Specifications, Project Documents and the Project Quality Plan including the Technical Procedures ('TPs') and Inspections and Tests Plans ('ITPs'). These observations together with comments of agreed actions and Project Verifier acceptance will be recorded by the Developer in a register of Construction Issues.

Construction Control - Inspection and Test Plans

The Developer is required to establish ITPs for all manufacturing and construction activities to comply with the requirements of the Project Documents. TPs, ITPs and Verification Checklists ('VCs') are controlled documents that will be subject to review and amendment during the term of this Deed.

The Project Verifier will review all ITPs, TPs and VCs issued by the Developer based on the requirements of the (Project) Documents to ensure that adequate construction and verification steps are included to provide an adequate level of control of the construction process. The Documents will also be reviewed to ensure that all the Hold Points, Witness Points, acceptance criteria, methods of testing, frequency of testing, time limits for testing, time constraints for submissions, responsibilities, traceability and evidence of conformance in the form of quality records have been identified.

All comments raised during the review process will be forwarded to the Developer for action. The Developer's response, which will be required on the same review form, will be reviewed and if found satisfactory the latest document will be used as the basis for monitoring and surveillance.

Progressive Certification Reports

Throughout the construction phase there is to be a monthly issuing of Quality Assurance Verification.

The Project Verifier will carry out quality record audits to verify that all required quality records that provide evidence of conformance of individual work components (lots) have been obtained, verified, analysed as required, stored and maintained with adequate product and record traceability. Examples of such quality records includes Test and Commissioning Certificates, Supplier's/Manufacturer's Conformance Certificates, survey conformance reports, verification checklists and ITPs, delivery dockets, measurements, inspection reports, verification reports, conformance reports, NCRs, CARs and calibration records.

Hold Points

The Developer's appointed Quality Manager must be satisfied that all activities in the process including methods of work, sequence of activities, inspections and tests preceding any Hold / Witness Point specified in the Quality Plan comply fully with the requirements of the Project Documents prior to release of any Hold Point or request release of the Hold Points from the appropriate delegated representative as detailed in the approved schedule of delegated Hold & Witness Points.

Hold Points for recommendation for release by the Project Verifier can be described under the following categories and will be determined by the Project Verifier undertaking a risk assessment process to ensure critical items are identified:

- release of document, information or notice Hold Points. The Developer is responsible for the verification of all information prior to submission to the Project Verifier. Submissions related to critical work items (such as concrete mix designs) will be reviewed to ensure that the requirements of the Specifications have been met. The Project Verifier will review all submissions and raise comments where applicable; and
- release of construction activity Hold Points after a satisfactory outcome of inspection, witness, testing and verification of conformance records. The Project Verifier will inspect the product or the work activity at the stage specified, review testing and quality records that provide evidence of conformance including evidence of verification by the nominated personnel of the preceding procedural steps or activities.

The Developer must not proceed beyond any Hold Point referred to in the Quality Plan without release by the delegated representative.

Non-conformances

The Developer must establish an appropriate method for identification and control of all occasions where the product or service fails to pass any inspection or test in accordance with the defined acceptance criteria.

Upon the identification of a non-compliance during monitoring or surveillance audits, the Project Verifier will document the finding and immediately advise the Developer. Even if the non-compliance can be fixed on the spot or during the conduct of the surveillance audit, the action shall still be documented in a register of construction issues (Construction Issues Register). If the non-compliance cannot be fixed on the spot, the issue will be documented in the Construction Issues Register and the Developer will be given the opportunity to raise a NCR under its Quality System, within two working days of identifying the non-compliance, or a Non-conformance Notice will be issued. The Project Verifier may request the Developer to propose a Corrective Action to prevent recurrence of the non-conformance.

TfNSW may also issue a 'Non-conforming Product Notification' upon the identification of a nonconforming product. Non-conformances identified by TfNSW or the Project Verifier must be dealt with in the same manner as if the Developer had identified it.

All construction issues shall be documented in the Construction Issues Register and then categorised under the appropriate resolution process eg: NCR, RFI, Design Change, CAR etc.

TfNSW must immediately be notified of issues that have the potential to adversely impact the quality and/or durability of the Works. In this regard, the Project Verifier will use its professional judgment, based on risk, as to when the issue must be communicated to TfNSW. Irrespective, any construction issues not satisfactorily closed out within a two week period must be communicated to TfNSW's Authorised Representative.

Construction Issue Register

A Construction Issues Register must be maintained by the Developer on a spreadsheet file, to identify and document issues highlighted during the construction period as a result of surveillance and monitoring.

The Construction Issue Register will also document any follow up action, reference relevant documentation/filing and record date of close out.

Construction Completion

When Practical Completion is achieved, the Project Verifier shall issue the Construction Completion Certificate, as set out in Schedule 10, verifying the Works have been completed in accordance with the Project Documents, subject to minor defects and/or omissions.

Final Completion

Subject to satisfactory defect rectification and acceptance by TfNSW, at the end of the [last] Defects Liability Period, the Project Verifier shall issue the Final Verification Certificate.

SCHEDULE 3

Payment Schedule

1. Payment claim

At the end of each month (from and including the month in which the Works Authorisation Deed is executed), the Project Verifier must submit to the Developer an account for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this Deed during the relevant month;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as the Developer may reasonably require (which shall include a signed statutory declaration in the form set out in Schedule 12),

(Payment Claim).

The Project Verifier must, at the time of submission of its Payment Claim to the Developer, provide a copy of the Payment Claim to TfNSW.

2. Payment

Subject to clause 3 of this Payment Schedule, the Developer must, within 30 days after receipt of the Payment Claim for the month, pay the Project Verifier that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

The Developer must pay the Project Verifier any amount included in a Payment Claim which it does not dispute. If the Developer disagrees with an amount included in the Payment Claim, the Developer must within 10 Business Days after receipt of the relevant Payment Claim notify the Project Verifier and TfNSW in writing of the reasons for any amount which is disputed. If the Developer fails to give any such notice, the Developer must pay the Project Verifier the amount claimed by the Project Verifier in the Payment Claim.

4. The Fee

- (a) The Fee shall comprise of:
 - (i) with respect to the Design Phase Services, a lump sum of \$**[insert]** inclusive of GST; and **[KWM note to LOG-E: LOG-E to confirm.]**
 - (ii) with respect to the Construction Phase Services, an amount payable on a cost-reimbursable schedule of rates basis and calculated in accordance with the rates set out in the schedule of rates in clause 6(b) of this Payment Schedule, subject to adjustment in accordance with clause 4(b) of this Payment Schedule (as the case may be).
- (b) Adjustments will be made to the lump sum referred to in clause 4(a)(i) of this Payment Schedule in accordance with the appropriate rates set out in the schedule of rates in clause 6(a) of this Payment Schedule, for reasonable increases or

decreases in the cost to the Project Verifier of performing the Design Phase Services which arise as a result of (without double counting):

- (i) a variation agreed under the Works Authorisation Deed;
- (ii) any re-verification of previously certified design packages due to changes in Design Documents. [In relation to the re-verification of any design packages during the provision of the Construction Phase Services, adjustments will be made to the lump sum for the Design Phase Services referred to in clause 4(a)(i) of this Payment Schedule only to the extent that the time involved in undertaking the re-verification work, and addressing non-conformities, by the Project Verifier exceeds [insert] hours in total;
- (iii) a significant delay to the performance of the Design Phase Services having regard to the Construction Program, but only to the extent that the Design Phase Services are required to be carried out for longer than [insert] months;
- (iv) the review and verification of more than [insert] design packages in total; or
- (v) any additional services jointly directed in writing by the Other Parties under this Deed.

In this clause, a "design package" means each submission of the Design Documentation to the Project Verifier relating to each discrete design element of the Works and includes the Design Documentation that is produced for each of the Developed Concept Design, Preliminary Detailed Design, Substantial Detailed Design and Final Design Documentation stages.

- (c) The Project Verifier acknowledges that (except as described in and payable under clause 7 of this Payment Schedule) it has allowed in the lump sum referred to in clause 4(a)(i) of this Payment Schedule for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from the Construction Site and provision of the Project Verifier site facilities), disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.

5. **Not used**

6. **Schedule of Rates**

(a) Design Phase Services – adjustments pursuant to clause 4(b) above

[Note: The roles, nominated personnel and daily rates below will be completed in accordance with the successful tenderer's tender.]

Role	Nominated Personnel	Daily Rate (\$)
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]

[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]

(b) Construction Phase Services

Role	Nominated Personnel	Daily Rate (\$)
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]
[Insert]	[Insert]	[Insert]

These rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements and other costs necessary for and arising out of or in connection with the Services for which the Project Verifier is to be paid on a schedule of rates basis under this Deed, excluding disbursements described in and payable under clause 7 of this Payment Schedule and reasonable costs for transport outside the Greater Sydney area, which incorporates Newcastle and Wollongong, and the areas within and in the vicinity of the Construction Site.

When claiming payment for any Services for which the Project Verifier is to be paid on a schedule of rates basis the Project Verifier must provide details and evidence of the time expended by the Project Verifier in performing the Services for which the Project Verifier is entitled to be paid on a schedule of rates basis.

7. Disbursements

- (a) The Project Verifier will be entitled to reimbursement of disbursements incurred in the course of carrying out the Construction Phase Services, provided that any such disbursements:
- (i) have been reasonably and properly incurred for the sole purpose of performing the Construction Phase Services;
 - (ii) do not fall into the category of one of the disbursements described in clause 7(b) of this Payment Schedule;
 - (iii) were approved in writing by the Developer prior to being incurred where they exceed \$1,000; and
 - (iv) are supported by documentation provided to the Developer which is satisfactory to the Developer.

- (b) The Project Verifier is not entitled to reimbursement of costs relating to vehicles, local transport (within the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site), car parking, computers, insurance, general office consumables and telecommunications.
- (c) Not used.
- (d) The Project Verifier will not be entitled to make any claim against the Developer arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clause 7(a) of this Payment Schedule.

8. **Monthly payment schedule for lump sums**

The Project Verifier is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to clauses 1 and 2 of this Payment Schedule, the indicative monthly payment to be made under the lump sum is set out in the following table:

Month after the date the Works Authorisation Deed was entered into by TfNSW and the Developer	Payment (\$ excluding GST)
1	[<i>Insert</i>]
2	[<i>Insert</i>]
3	[<i>Insert</i>]
etc	[<i>Insert</i>]
TOTAL	[<i>Insert</i>]

9. **GST**

All lump sums, rates and amounts in this Payment Schedule exclude GST.

SCHEDULE 4

Initial Verification and Monitoring Plan

Part 1

[Note: insert Initial Verification and Monitoring Plan covering the services to be performed under the Works Authorisation Deed]

Part 2

[Note: insert matters to be addressed for the Works Authorisation Deed]

SCHEDULE 5

Minimum surveillance by Project Verifier during the Works

The surveillance activities set out in the table below must be performed in relation to the Works Authorisation Deed.

Surveillance Activity	Minimum Frequency
Environmental Surveillance [Note: TfNSW to insert relevant Environmental Surveillance Requirements. The requirements below are suggested]	
Traffic Surveillance 1. Monitor traffic management and traffic controls to assess compliance with the conditions of Road Occupancy Licences, including: 2. as-built layouts for compliance with approved traffic control plans, including sign maintenance and delineation; 3. provisions for cyclists, pedestrians, disabled persons and buses; 4. timing and duration of road occupancies; 5. qualifications of traffic control personnel; 6. haulage routes off the Construction Site; and 7. night inspections of roadworks.	
Work Health Safety and Rehabilitation Surveillance [Note: TfNSW to insert relevant Work Health & Safety Surveillance Requirements. The requirements below are suggested]	

Surveillance Activity	Minimum Frequency
<p>Construction Surveillance</p> <p>Monitor the Developer's obligation to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses.</p> <p>Monitor on-site design changes.</p> <p>Check that the Works and Temporary Works are being constructed using Design Documentation that has been endorsed in accordance with clause 7.2 of the Works Authorisation Deed.</p> <p>Check that durability requirements of the Works are being addressed and satisfied.</p> <p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> • all operations management and control systems and infrastructure; • use of materials, plant and equipment that differs from accepted industry practices; • concrete and AC pavements; and • blasting. <p>Record general and detailed work in progress using photographs.</p> <p>Quality Management Surveillance</p> <p>Inspect work in progress for compliance with the requirements of the Works Authorisation Deed.</p> <p>Inspect Construction Site circumstances where significant non-conformities are or are likely to be reported.</p> <p>Check compliance with method statements</p>	<p>Monthly</p> <p>All changes</p> <p>50% of design lots</p> <p>20% of design lots</p> <p>Each trial and test</p> <p>20 photographs/ month</p> <p>Twice/week</p> <p>Each occurrence</p> <p>Each method statement</p>
<p>Check implementation of inspection and test plans, including:</p> <ul style="list-style-type: none"> • testing frequencies; • test methods; • test result verifications; and • release of hold points. <p>Monitor the implementation of significant approved NCR dispositions.</p>	<p>Weekly</p> <p>All dispositions</p>
<p>Quality Product Surveillance</p> <p>Monitor foundation and subgrade preparation and treatments, including:</p> <ul style="list-style-type: none"> • structure foundations; • pavement subgrades; • cast-in-place pile foundations; and 	<p>Initial preparation and treatment and twice/week thereafter</p>

Surveillance Activity	Minimum Frequency
<ul style="list-style-type: none"> inaccessible drainage foundations. 	
<p>Monitor compaction of earthworks and reinforced soil.</p> <p>Monitor:</p> <ul style="list-style-type: none"> water testing and grouting. <p>Monitor:</p> <ul style="list-style-type: none"> preparation and testing of grout test specimens. <p>Monitor preparation of shotcrete test specimens</p> <p>Monitor concrete supply, including:</p> <ul style="list-style-type: none"> audits of each batch plant; reviews of grout, mortar, concrete and shotcrete mix designs (including offsite work); and monitoring of supplied mixes compared with mix designs. 	<p>Initial testing, grouting and stressing and twice/week thereafter</p> <p>Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.</p> <p>Monthly</p> <p>Four times</p> <p>Each mix</p> <p>Twice/mix</p>
<p>Monitor concreting (road and bridge), including:</p> <ul style="list-style-type: none"> preparation; production conformity records formwork (including certification); bracing; reinforcement (including heating and welding); placing; finishing; curing; and stripping formwork. <p>Monitor:</p> <ul style="list-style-type: none"> water testing and grouting; and stressing operation, <p>of post-tensioned concrete.</p> <p>Monitor concrete pavement subbases and bases, including:</p> <ul style="list-style-type: none"> thickness, levels, relative density, curing, cracking and surface profile for rideability; pavement strengths prior to trafficking by vehicular traffic; and conditions for trafficking of pavements by heavy (off road) vehicles. 	<p>Initial activity and twice/week thereafter</p> <p>Twice/structure</p> <p>Daily</p> <p>Daily</p> <p>Initial conditions</p>

Surveillance Activity	Minimum Frequency
<p>Asphaltic concrete supply, including:</p> <ul style="list-style-type: none"> audits of each batch plant; reviews of AC mix designs; and monitoring of supplied mixes compared with mix designs. <p>Monitor the laying of asphaltic concrete.</p> <p>Steel fabrication, including:</p> <ul style="list-style-type: none"> reviews of welding procedures; and monitoring of the fabrication and welding processes for major members (off-site). <p>Monitor protective treatment systems (off-site).</p> <p>Monitor the interfaces of civil and electrical works, including:</p> <ul style="list-style-type: none"> backfilling of cabling conduit trenches. <p>Monitor landscaping preparation and implementation</p> <p>Monitor Landscaping Maintenance</p>	<p>Four times</p> <p>Each mix</p> <p>Twice/mix</p> <p>Daily</p> <p>Each procedure</p> <p>Twice/week</p> <p>Twice/week</p> <p>Initial backfilling and weekly thereafter</p>

SCHEDULE 6

Minimum Requirements

The Verification and Monitoring Plan must, as a minimum, address and detail:

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Project Verifier's internal and external lines of authority, communication and reporting, including those with TfNSW's Authorised Officer, the Developer's Authorised Officer and the Contractor;
- (d) the identification of delegated authorities of the Project Verifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Project Verifier;
- (e) all compliance records to be maintained, in the form of a schedule;
- (f) the proposed timing of progressive verification for the performance of discrete elements of the Services, including the timing for conducting audits of Project Plans and other aspects of the Works;
- (g) Hold Point and Witness Point requirements, including the identification of all Witness Points and Hold Points required by the Project Verifier, in the form of a schedule which identifies all Hold Points to be released by the Project Verifier;
- (h) the Project Verifier's comprehensive plans for:
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the Developer's compliance with design and construction obligations, including methodology for certification of Design Documentation;
 - (ii) without limiting paragraph (h)(i), continual observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Works and the Temporary Works to determine, verify and ensure the Developer's compliance with the requirements of the Works Authorisation Deed;
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
 - (iv) off-site surveillance of critical activities, including precasting yards, concrete production plants and steel fabrication;
- (i) the Project Verifier's strategies, processes, methodologies and procedures for:
 - (i) reviewing and assessing the Project Plans;
 - (ii) addressing environmental monitoring and protection;
 - (iii) audit, surveillance and monitoring of the Developer's design and construction activities, including the processes used for determining the levels and scope of

- surveillance of the Developer's design and construction activities, including in relation to work health safety;
- (iv) identifying and managing the Project Verifier's work to be subcontracted, including quality, reporting and communication aspects of the work;
 - (v) ensuring that the Developer has addressed all issues of review, comment and consultation with TfNSW in relation to Design Documentation and construction; and
 - (vi) risk management of the work covered by items (i), (ii) and (iii) above; and
- (j) the Project Verifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied to achieve and satisfy the following requirements:
- (i) verification of the Developer's processes for ongoing checking of testing, calibration and parallel testing to check compliance and test error;
 - (ii) verification of the Developer's interface issues between processes and elements and Project Plans;
 - (iii) verification of the Developer's processes for the control of the Contractor and its subcontractors;
 - (iv) verification of the Developer's processes for environmental monitoring and protection;
 - (v) verification of the Developer's processes to address safety in design issues;
 - (vi) verification of the Developer's processes to ensure that durability is incorporated into all aspects of the design and construction of the Project Works;
 - (vii) verification of the Developer's processes to address constructability issues; and
 - (viii) verification of the rectification by the Developer of non-conformities.

SCHEDULE 7

Project Plan Certificate

Project: *[Insert Project Name]*

In accordance with the terms of the Works Authorisation Deed (Deed) between Transport for NSW and the Developer with respect to the Works, we hereby certify that:

The *[insert Project Plan referred to in Schedule 1, eg. Quality Plan]*:

- (a) complies with all the requirements of the Deed and the Project Documents; and
- (b) the Developer's quality system complies with AS/NZS ISO 9001:2008.

.....

Signed for and on behalf of

[Insert name of Project Verifier]

[Insert date]

SCHEDULE 8

Design Documents Certificate

Project: *[Insert Project Name]*

In accordance with the terms of the Works Authorisation Deed (Deed) between Transport for NSW and the Developer with respect to the Works, we hereby certify that:

- (a) The attached Design Documents:
 - (i) comply with all the requirements of the Deed and the Project Documents; and
 - (ii) are documented to enable construction in compliance with the Project Documents.
- (b) The Developer has addressed all issues of review, comment and consultation with Transport for NSW in respect of the Design Documents.

.....
Signed for and on behalf of

[Insert name of Project Verifier]

[Insert date]

SCHEDULE 9

Monthly Construction Certificate – Quality Assurance

Project: ***[Insert Project Name]***

In accordance with the terms of the Works Authorisation Deed between Transport for NSW and the Developer with respect to the Works, for the work activities carried out between ***[insert date]*** to ***[insert date]*** we hereby certify that for this period:

- (a) all activities (lots) and the associated Inspection and Test Plans (ITP's) carried out are detailed in the attached ITP register; and
- (b) all work carried out by the Developer has been executed and is in accordance with the requirements of the ITP's and the Project Documents, subject to the following:

[insert]

.....

Signed for and on behalf of

[Insert name of Project Verifier]

[Insert date]

SCHEDULE 10

Construction Completion Certificate

Project: ***[Insert Project Name]***

In accordance with the terms of the Works Authorisation Deed between Transport for NSW and the Developer with respect to the Works, we hereby certify that:

- (a) The Developer and its contractors have complied with and satisfied the requirements of the TfNSW Quality Assurance Specification Q6;
- (b) The Developer has completed construction in accordance with the Design Documents and the Project Documents it was entitled to use for construction purposes, subject to minor defects or omissions;
- (c) The release of all Hold & Witness Points has been undertaken in accordance with the Project Documents;
- (d) All documentation has been recorded and submitted to TfNSW in accordance with the Deed; and
- (e) The Works comply with the requirements of the Deed and the Project Documents.

.....
Signed for and on behalf of

[Insert name of Project Verifier]

[Insert date]

SCHEDULE 11

Final Verification Certificate

Project: *[Insert Project Name]*

In accordance with the terms of the Works Authorisation Deed (**Deed**) between Transport for NSW and the Developer with respect to the Works, we hereby certify that at the date of the expiration of the [last] Defects Liability Period as defined in the Deed:

- (a) all design, construction, inspection, repairs, maintenance and monitoring by the Developer has been undertaken in accordance with the Deed and the Project Documents; and
- (b) all documentation has been recorded and submitted to Transport for NSW in accordance with the Deed.

.....

Signed for and on behalf of

[Insert name of Project Verifier]

[Insert date]

SCHEDULE 12

Form of Statutory Declaration

I of do solemnly and sincerely declare that:

1. I am an authorised officer of (the **Project Verifier**).
2. I personally know the facts which I have set out in this declaration.
3. The Project Verifier has entered into a Deed with [**Note: Insert name of Contractor**] (amongst others) for (the **Deed**).
4. All workers engaged by the Project Verifier in connection with the work under the Deed:
 - (a) have been paid all monies which as at the date of this declaration are due and payable to them in respect of their employment on work under the Deed; and
 - (b) have otherwise received or had accrued to their account all benefits to which they are entitled as at the date of this declaration in respect of their employment on work under the Deed pursuant to any award, enterprise Deed, act or regulation, apart from the workers listed in the attached "Schedule of Unpaid Workers" for the respective amounts and benefits shown in this schedule. (The schedule also shows the addresses of each worker listed and a description of the amount or benefit not paid or received or accrued—for example wages, holiday pay, allowances and superannuation).
5. All subcontractors, subconsultants and other service providers ("subcontractors") engaged by or contracted to the Project Verifier in connection with the work under the Deed have been paid all monies which at the date of this declaration are due and payable to them in respect of work or services performed by them in connection with the Deed apart from the subcontractors listed in the attached "Schedule of Unpaid subcontractors" for the respective amounts shown in that schedule. (The schedule also shows the address of each subcontractor listed and a description of the work or services of each such subcontractor).
6. In all cases where a subcontractor has provided services and/or materials in respect of the Deed and has submitted a payment claim to the Project Verifier for these services or materials which as at the date of this declaration would have been payable but which the Project Verifier disputes, the reasons for such dispute have been notified in writing to the Project Verifier by the subcontractor prior to the date of this declaration. Where such dispute relates to part only of the Project Verifier's payment claim, that part not in dispute has been paid by the Project Verifier to the subcontractor as at the date of this declaration except for the amounts listed in 5 above.
7. The provisions of the Deed relating to security of payment, if any, including payment of employees, workers and subcontractors of the Project Verifier have been complied with by the Project Verifier.
8. The Project Verifier has been informed by each subcontractor to the Project Verifier by statutory declaration in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration);
 - (a) that their subcontracts with their subcontractors comply with the requirements of Deed relating to payment or employees, workers and subcontractors of the Project Verifier or

(b) that all employees, workers and contractors, as at the date of making of such a declaration:

- have been paid all monies due and payable to them by; or
- had accrued to their account or received all benefits to which they are entitled from;

the subcontractor of the Project Verifier or from any other contractor in respect of any work under the Deed; and

(c) of details of any amounts due and payable or benefits due to be received or accrued described in b. above which have not been paid, received or accrued, except for the following subcontractors to the Project Verifier who have failed to provide such a declaration. (Next to the name of each subcontractor listed as follows is the amount due to that subcontractor by the subcontractor and the subcontractor's address):

.....

9. Where a subcontractor to the Project Verifier has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor involved, the names and addresses of the affected employees, workers and subcontractors of that subcontractor, and the respective amounts or benefits either unpaid or not received or accrued are as follows:

.....

10. All Worker Compensation premiums due and payable have been paid.

11. All pay-roll tax due and payable in respect of employees who performed work has been paid.

12. I am not aware of anything which would contradict the statements made in the statutory declarations provided to the Project Verifier by its subcontractors.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the [insert the name of the relevant legislation for the state for the making of Statutory Declarations]. I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at (place where declaration made)
on (date of declaration)
by

Signature of person making the declaration

before me:

Justice of the Peace/ Practising Solicitor of the Supreme Court of the State or other person legally authorised to administer an oath under the [*insert the name of the relevant legislation of the State for the making of Statutory Declarations or where the declaration is sworn outside the State of [], any person having authority to administer an oath in that place*].

And as a witness, I certify the following matters concerning the person who made this statutory declaration (the **declarant**):

1. I saw the face of the declarant.

[OR]

I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2. I have known the declarant for at least 12 months.

[OR]

I have confirmed the declarant's identity using the following identification document:

[insert description of ID document]

.....

(Signature of witness)

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

[strike through above if document is not witnessed electronically]

**Attachment G – TfNSW Rules for the Expert Determination Process and the Code of
Conduct for an Expert**
