



New South Wales Government
GC21 (Edition 2)
Schedules & Attachments
Sydney Modern Project

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Schedule 1 – Subcontractor's Warranty

Refer to clauses 30 of the GC21 General Conditions of Contract.

Details

Deed

Subcontractor:

between

Name

ABN/ACN/ARBN

Address

Email

Attention

AND

Contractor:

Name

ABN/ACN/ARBN

Address

Email

Attention

And

Each of the Beneficiaries
as follows:

The Principal:

Name

ABN/ACN/ARBN

Address

Email

Attention

AGNSW

Name

ABN/ACN/ARBN

Address

Email

Attention »

concerning

Subcontract Work:

.....

Recitals

- A. The Contractor has entered into the Contract with the Principal for the carrying out of the Works.
 - B. The Subcontractor has entered into an agreement with the Contractor for the Subcontract Work, which are to be used by the Contractor in performing the Contract.
 - C. The Beneficiaries, the Contractor and the Subcontractor wish to set out the obligations that the Subcontractor will owe each of the Beneficiaries directly, and make certain arrangements relating to the Contract and Subcontract.
 - D. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Beneficiaries (or any one of them) against the Contractor or the Subcontractor.
-

Terms of Deed

1 Definitions

In this Deed the following words and expressions have the meanings set out below:

- .1 **Beneficiaries** means the Principal and AGNSW and each of their successors and permitted assignees.
- .2 **Contract** means the contract between the Principal and the Contractor dated **[insert]** for the Works.
- .3 **Default Event** means any failure by the Contractor to comply with an obligation imposed upon the Contractor under the Subcontract if such failure:
 - .1 would entitle the Subcontractor to give the Contractor a notice under the Subcontract requiring the Contractor to remedy such failure; or
 - .2 whether immediately or following the delivery of a notice or effluxion of time, would entitle the Subcontractor to exercise any Right.
- .4 **Details** means the section of this Deed headed Details.
- .5 **Material Notice** means a notice issued under the Subcontract by:
 - .1 either the Subcontractor or the Contractor following an Insolvency Event;
 - .2 by the Subcontractor or the Contractor relating to events and circumstances entitling either party to terminate, rescind, accept a repudiation or suspend performance of any obligations under the Subcontract; or
 - .3 by the Subcontractor purporting to exercise its Rights.
- .6 **party** means the Subcontractor or the Beneficiaries (or any one of them).
- .7 **Related Body Corporate** has the meaning it has in the *Corporations Act 2001* (Cth).
- .8 **Right** means the Subcontractor's right under the Subcontract to terminate, rescind, accept a repudiation by the Contractor of, or suspend performance of any obligations under, the Subcontract.
- .9 **Subcontract** means the contract between the Contractor and the Subcontractor dated **[insert]** for the Subcontract Work.
- .10 **Subcontract Work** means all of the works and services to be performed by the Subcontractor to comply with its obligations under the Subcontract, including the subcontract work and products identified in the Details and work carried out pursuant to the Subcontract prior to the date of this Deed.
- .11 **Warranty Period** means **[insert]** years from the *Actual Completion Date* of the whole of the Works.

2 Interpretation

- .1 Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Deed:
 - .1 the singular includes the plural and vice versa;
 - .2 a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
 - .3 a reference to a document also includes any variation, replacement or novation of it;
 - .4 the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
 - .5 a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
 - .6 a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - .7 a reference to a time of day is a reference to Sydney time;
 - .8 a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
 - .9 a reference to "law" includes common law, principles of equity and legislation (including regulations);
 - .10 a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
 - .11 a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
 - .12 a reference to any thing (including an amount) is a reference to the whole and each part of it;
 - .13 a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
 - .14 if a day on which a party must do something under this Deed is not a Business Day, the party must do it on the next Business Day.
- .2 Unless the contrary intention appears, a term which has a defined meaning in the Contract has the same meaning when used in this Deed.
- .3 If a provision of this Deed is inconsistent with a provision of the Subcontract, the provisions of this Deed prevail to the extent of the inconsistency.

3 Warranty

- .1 The Subcontractor warrants to the Beneficiaries that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work will:
 - .1 comply in all respects with the requirements of the Contract;
 - .2 to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract, then the *Materials* or standard of workmanship must:
 - .1 comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any relevant Australian Standards or international standard in the absence of any relevant Australian Standard; and
 - .2 be new and of good and merchantable quality;
 - .3 be free of all liens, charges and encumbrances of any kind;
 - .3 be fit for the purposes for which they are required;
 - .4 capable of safe and reliable operation; and

- .5 be free from defects and deficiencies.
- .2 The Subcontractor represents, warrants and undertakes to the Beneficiaries that:
 - .1 the Subcontractor will:
 - .1 perform its obligations under the Subcontract in a proper and workmanlike manner and to a standard of care, skill, judgment and diligence; and
 - .2 provide suitably qualified staff to a standard, commensurate with a competent professional experienced in work of a similar nature to the Subcontract Work;
 - .2 the Subcontractor will perform its obligations under the Subcontract in accordance with the Subcontract and all applicable legislative requirements;
 - .3 the Subcontract Works will be fit for their intended purpose and meet any design life specified in the Contract in respect of those Subcontract Works; and
 - .4 to the extent that it is obliged to assign or license Intellectual Property Rights to the Contractor or the Beneficiaries (or any one of them):
 - .1 it is the legal and beneficial owner of such rights; and
 - .2 it has not previously assigned, transferred nor exclusively licensed such rights.
- .3 The Subcontractor gives to the Beneficiaries the same warranties, guarantees and indemnities that it has given the Contractor under the Subcontract and agrees that the Beneficiaries may assign these warranties and guarantees without the consent of the Subcontractor.

4 Replacement or making good

- .1 Until the expiry of the Warranty Period, the Subcontractor must replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work which does not comply with the requirements of this Deed.

5 Notice of Defects

- .1 The Beneficiaries (or any one of them) may notify the Subcontractor in writing if it considers there has been any breach of this Deed or if the Beneficiaries (or any one of them) requires the Subcontractor to replace or make good any of the Subcontract Work in accordance with clause 4 of this Deed ("**Remedy Notice**").

6 Time to remedy

- .1 The Subcontractor must do everything to remedy any breach or to carry out any replacement or making good notified to it in the Remedy Notice within a reasonable time after receiving the Remedy Notice.

7 Failure to remedy

- .1 If the Subcontractor fails to remedy the breach or complete the work specified in the Remedy Notice within a period determined by the Beneficiaries (or any one of them) to be reasonable in the circumstances, the Beneficiaries (or any one of them) may give written notice to the Subcontractor that the Beneficiaries (or any one of them) intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- .2 If the Subcontractor fails to complete the work by the date specified in clause 7.1 of this Deed, or another date agreed by the parties, the Beneficiaries (or any one of them) may have the work carried out by others, and any Loss suffered or incurred by the Beneficiaries (or any of them) will be a debt due from the Subcontractor to the Beneficiaries (as applicable).

8 Indemnity

- .1 The Subcontractor indemnifies the Beneficiaries against claims (including *Claims*, actions and Losses) brought against, suffered or incurred by the

Beneficiaries (or any one of them) arising out of a breach of this Deed by the Subcontractor.

9 Liability

- .1 The liability of the Subcontractor under this Deed is not affected by the:
 - .1 Principal exercising or refraining from exercising any or all of their rights against the Contractor, at law or in equity;
 - .2 AGNSW exercising or refraining from exercising any or all of their rights against the Contractor at law or in equity; or
 - .3 the Contractor exercising or refraining from exercising any or all of their rights against the Subcontractor, at law or in equity.
- .2 Any information provided to, and any inspection undertaken by, the Beneficiaries (or any one of them) or any person authorised by the Beneficiaries (or any one of them) will not:
 - .1 limit or discharge the obligations of the Subcontractor under the Subcontract; or
 - .2 relieve the Subcontractor from any liability which it may have in respect of any defect or default in or relating to the Subcontract Work.

10 Urgent action by Principal

- .1 The Beneficiaries (or any one of them) may take any urgent action necessary to protect the Works, other property or people as a result of a breach of this Deed.
- .2 The Subcontractor agrees that the Beneficiaries (or any one of them) taking action under clause 10.1 does not affect the warranty or any other obligation of the Subcontractor under this Deed.
- .3 Any Loss suffered or incurred by the Beneficiaries (or any of them) as a consequence of the Beneficiaries (or any one of them) taking action under clause 10.1 will be a debt due from the Subcontractor to the Beneficiaries (as applicable).

11 Assignment

- .1 The Subcontractor may not assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or to be varied without the prior written consent of the Beneficiaries (which may be given or withheld in the Beneficiaries' absolute discretion).
- .2 Each of the Beneficiaries may assign or otherwise deal with its rights under this Deed in any way it considers appropriate. If a Beneficiary does this, neither the Contractor nor the Subcontractor may claim against any assignee (or any other person who has an interest in this Deed) any right of set-off or other rights the Contractor or the Subcontractor has against the relevant Beneficiary.

12 Material Notices

- .1 The Subcontractor must give the Beneficiaries:
 - .1 copies of any Material Notice;
 - .2 copies of all documents issued by the Subcontractor to the Contractor relating to the event or circumstance to which the Material Notice relates;at the same time as it gives the Material Notice to the Contractor, or as soon as is reasonably possible following receipt of a Material Notice from the Contractor.

13 Novation

- .1 The Subcontractor acknowledges that under the Contract that, in the event of a Contractor Termination Event, the Contractor must:
 - .1 assign to the Principal the Contractor's rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract; and

- .2 consent to the novation to the Principal or its nominee of the Subcontract, if required by the Principal.
- .2 If required by the Beneficiaries (or any one of them), the Subcontractor agrees to do all things reasonably necessary (including to execute a deed of novation or provide such information as reasonably required by the Beneficiaries) to give effect to:
 - .1 the novation of the Subcontract; and
 - .2 assignment of any rights or benefits in connection with the Subcontract Work, including any warranties, unconditional undertakings, bank guarantees, insurance bonds or other security, to the Beneficiaries (or any one of them).
- .3 The Subcontractor acknowledges and agrees that the Beneficiaries (or any one of them) may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the Subcontract, if novated, from amounts otherwise payable to the Contractor or from any Undertakings given on the Contractor's behalf.

14 Acknowledgements

- .1 The Contractor acknowledges that:
 - .1 neither the existence of the Contract nor the fact that the Beneficiaries (or any one of them) exercises a power under the Contract or this Deed will of itself contravene, or constitute a Default Event under the Subcontract or entitle the Contractor to exercise any Right or power under the Subcontract; and
 - .2 the Beneficiaries will not be liable, or taken to have assumed liability, for any liability or obligation under or in respect of the Subcontract as a result of the entry into, or exercise of any rights or powers under, the Contract or this Deed.

15 Representations and warranties

- .1 Each of the Subcontractor and the Contractor represents and warrants to the Beneficiaries that:
 - .1 **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
 - .2 **(power)** it has the power to enter into and perform its obligations under this Deed;
 - .3 **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this Deed and; and
 - .4 **(binding obligations)** this Deed contains legal, valid and binding obligations, enforceable in accordance with its terms.

16 Confidentiality

- .1 Each party agrees not to disclose information provided by another party that is not publicly available except:
 - .1 to any person in connection with an exercise of rights or a dealing with rights or obligations under this Deed; or
 - .2 to officers, employees, legal and other advisers and auditors of any party; or
 - .3 to any party to this Deed or any Related Body Corporate of any party to this Deed, provided the recipient agrees to act consistently with this clause; or
 - .4 with the consent of the party who provided the information; or
 - .5 as allowed by any law or stock exchange.

17 Notices

- .1 Notices must be sent to the relevant persons at the addresses in the Details, or at the address for service most recently notified in writing by the addressee.
- .2 All notices must be in writing.
- .3 Notices are taken to be received:
 - .1 if sent by post, 3 days after posting;
 - .2 if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
 - .3 if sent by email:
 - .1 when the sender receives an automated message confirming delivery; or
 - .2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,whichever happens first.

18 Governing Law

- .1 This Deed is governed by the law in force in the State of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

19 General

- .1 The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this Deed and of other related documentation, except stamp duty.
- .2 This Deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the Deed.
- .3 Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this Deed and the transactions contemplated by it.
- .4 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this Deed or any part of it.
- .5 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.
- .6 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.
- .7 A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

20 Operation of Deed

- .1 This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Beneficiaries.

Executed as a deed

Signing page

DATED: _____

Signed sealed and delivered by)

as Chief Executive Officer of)
INFRASTRUCTURE NSW ABN 85 031)
302 516 pursuant to the *Infrastructure*)
NSW Act 2011 (NSW))
in the presence of)

.....)
Signature of witness)

.....)
Name of witness (block letters))

EXECUTED by **[SUBCONTRACTOR]**)
in accordance with section 127(1) of)
the *Corporations Act 2001* (Cth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature)

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

SIGNED by **[AGNSW REP]** as)
authorised representative for **[AGNSW]**)
in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
By executing this document the)
signatory warrants that the signatory is)
duly authorised to execute this)
document on behalf of **[AGNSW]**)

EXECUTED by **[CONTRACTOR]** in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable

Schedule 3 – Payment Claim Worksheet

Refer to clause 58 of the GC21 General Conditions of Contract.

The Contractor:
 ...
 ABN

The Contract: The contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

	1	2	3	4	5
Activity to suit schedule of prices and/or activities		Activity number	Value of activity \$	Activity completed %	Activity completed value \$ (col 3 x col 4)
Amount brought forward from previous sheet					\$
Amount carried forward to next sheet					\$

Value Completed	\$
Less payments already made	\$
Less retention for the <i>Completion Amount</i> under clause 60, if applicable	\$
Claimed Amount	\$

Schedule 4 – Parent Company Guarantee

Refer to clauses 33 of the GC21 General Conditions of Contract.

Deed of Guarantee and Indemnity

Sydney Modern Project

Dated

[insert party name and ABN/ACN/ARBN] ("**Guarantor**")

Infrastructure NSW ABN 85 031 302 516 ("**Beneficiary**")

Details

Parties	Guarantor and Beneficiary	
Guarantor	Name	[insert]
	ABN/ACN/ARBN	[insert]
	Address	[insert]
	Fax	[insert]
	Email	[insert]
	Attention	[insert]
Beneficiary	Name	Infrastructure NSW
	ABN/ACN/ARBN	ABN 85 031 302 516
	Address	Level 15, 167 Macquarie St, Sydney NSW 2000
	Fax	+ 61 2 8016 0101
	Email	[insert]
	Attention	[insert]
Contractor	Name	[insert]
	ACN	[insert]
	Address	[insert]
Governing law	New South Wales	
Date of deed	See Signing page	
Recitals	A	The Beneficiary has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provides this deed.
	B	The Guarantor considers that, by providing this deed, there will be a commercial benefit flowing to the Guarantor.

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means, in respect of a party, a director or secretary of the party or another person appointed by the party to act as an Authorised Officer under this deed.

Beneficiary means the person or persons so described in the Details.

Claim means any claim, action, suit, demand of any kind.

Contract means the design and construct contract dated [*insert date*] between the Beneficiary and the Contractor for [*insert description of works*].

Contractor means the person or persons so described in the Details.

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

Costs includes costs, charges and expenses, including reasonable Costs incurred in connection with advisers and any reasonable legal costs on a full indemnity basis.

Details means the section of this deed headed "Details".

Guarantor means the person so described in the Details.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them, but does not include a Tax imposed by any jurisdiction on the net income of the Beneficiary other than a Tax:

- (a) calculated on or by reference to the gross amount of any payment (without allowance for any deduction) derived by the Beneficiary under this deed or the Contract; or
- (b) imposed as a result of the Beneficiary being considered a resident of or organised or doing business in that jurisdiction solely as a result of it being a party to this deed or the Contract.

1.2 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this deed:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);

- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (q) if a party must do something under this deed on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (r) if the day on which a party must do something under this deed is not a Business Day, the party must do it on the next Business Day; and
- (s) a reference to “property” or “asset” includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it.

1.3 Terms defined in Contract

Unless the contrary intention appears, a term which has a defined meaning in the Contract has the same meaning when used in this deed.

2 Guarantee and indemnity

2.1 Consideration

The Guarantor acknowledges that the Beneficiary is acting in reliance on the Guarantor incurring obligations and giving rights under this deed.

2.2 Guarantee

- (a) The Guarantor unconditionally and irrevocably guarantees to the Beneficiary the Contractor's compliance with the Contractor's obligations in connection with the Contract, including each obligation to pay money.
- (b) If the Contractor does not comply with those obligations on time and in accordance with the Contract, then the Guarantor agrees to comply with, or procure compliance with, those obligations within the period required by the Beneficiary (which shall not be less than 10 Business Days of receipt by the Guarantor of a demand from the Beneficiary. A demand must state that it made under this clause 2.2 and provide details of the Contractor's non-compliance and may be made whether or not the Beneficiary has made demand on the Contractor.

2.3 Indemnity

- (a) The Guarantor indemnifies the Beneficiary against any Loss arising from, and any Costs it incurs, if:
 - (i) the Contractor does not, or is unable to, comply with an obligation it has (including an obligation to pay money) in connection with the Contract; or
 - (ii) an obligation the Guarantor would otherwise have under clause 2.2 ("Guarantee") is found to be void, voidable or unenforceable; or
 - (iii) a representation or warranty by the Contractor in the Contract is found to have been incorrect or misleading when made or taken to be made.
- (b) The Guarantor agrees to pay amounts due under this clause within 10 Business Days of receiving a demand from the Beneficiary. Any such demand must:
 - (i) state that it is made under clause 2.3 of this deed; and
 - (ii) state and provide details of the amount being demanded and details of the basis for the demand.
- (c) The Beneficiary need not incur expense or make payment before enforcing this right of indemnity.

2.4 Extent of guarantee and indemnity

Each of the guarantee in clause 2.2 ("Guarantee") and the indemnity in clause 2.3 ("Indemnity") is a continuing obligation and extends to all of the Contractor's obligations in connection with the Contract. The Guarantor waives any right it has of first requiring the Beneficiary to commence proceedings or enforce any other right against the Contractor or any other person before claiming from the Guarantor under this deed.

2.5 Variations and replacements

- (a) The Guarantor acknowledges that the Contract may be varied or replaced from time to time.
- (b) The Guarantor confirms that the obligations guaranteed under clause 2.2 (“Guarantee”) include any obligations under the Contract as varied or replaced. The Guarantor confirms that this applies regardless of:
 - (i) how the Contract is varied or replaced; and
 - (ii) the reasons for the variation or replacement; and
 - (iii) whether the obligations decrease or increase or the Contract is otherwise more onerous as a result of the variation or replacement.
- (c) This clause does not limit clause 6 (“Rights of the Beneficiary are protected”).

2.6 Acknowledgment

The Guarantor acknowledges that, before entering into this deed, it:

- (a) was given a copy of the Contract (and all documents giving rise to an obligation of the Contractor in connection with the Contract) and had full opportunity to consider their provisions; and
- (b) is responsible for making itself aware of the financial position of the Contractor and any other person who guarantees any of the Contractor’s obligations in connection with the Contract.

2.7 Liability of Guarantor

Notwithstanding any other provision of this deed:

- (a) the liability of the Guarantor to the Beneficiary under or in connection with this deed shall, per occurrence and in the aggregate, be no greater than the liability of the Contractor to the Beneficiary under the Contract after applying the limitations and exclusions on liability under clause 26.8 (subject to clause 26.9) and clause 26.10 of the Contract;
- (b) the Beneficiary shall not be entitled to recover against the Guarantor in respect of any Loss under or in connection with this deed that has already been recovered from the Contractor under or in connection with the Contract;
- (c) the Beneficiary shall not be entitled to recover against the Contractor in respect of any Loss under or in connection with the Contract that has already been recovered from the Guarantor under or in connection with this deed;
- (d) the liability of the Guarantor to the Beneficiary for failing to comply for any reason with its obligations under clause 2.2 is limited to the liability of the Guarantor to the Beneficiary under clause 2.3; and
- (e) the Guarantor will not be liable to the Beneficiary in respect of an action in connection with a Claim which is not maintainable against the Contractor by operation of a limitation period under the Contract or a limitation period provided for otherwise at law; and

- (f) the remedies available to the Beneficiary against the Guarantor for failing to comply for any reason with its obligations under clause 2.2 are limited to the right of the Beneficiary to make a claim on the Guarantor under clause 2.3.

3 Interest

3.1 Obligation to pay interest

- (a) The Guarantor agrees to pay interest on any amount under this deed which:
 - (i) is not paid on the due date for payment; and
 - (ii) is not otherwise incurring interest.
- (b) The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (c) The Guarantor agrees to pay interest under this clause on demand from the Beneficiary. Nothing in this Deed is intended to render the Contractor and the Guarantor liable to pay interest twice for the same failure to pay an amount due and payable.

3.2 Rate of interest

The rate of interest applying to each daily balance is the most recent 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if that rate has not been published, another rate set by the Beneficiary in good faith).

3.3 Compounding

Interest payable under clause 3.1 ("Obligation to pay interest") which is not paid when due for payment may be added to the overdue amount by the Beneficiary at intervals which the Beneficiary determines from time to time or, if no determination is made, every 30 days. Interest is payable on the increased overdue amount at the rate set out in clause 3.2 ("Rate of interest") and in the manner set out in clause 3.1 ("Obligation to pay interest").

4 Payments

The Guarantor agrees to make payments under this deed:

- (a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

5 No merger

- (a) This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any other guarantee, indemnity, mortgage, charge or other encumbrance, or other right or remedy to which the Beneficiary is entitled; or
 - (ii) a judgment which the Beneficiary obtains against the Guarantor, the Contractor or any other person in connection with the Contract.

- (b) The Beneficiary may still exercise its rights under this deed as well as under the judgment, mortgage, charge or other encumbrance or the right or remedy.

6 Rights of the Beneficiary are protected

Subject to the express terms of this deed, the rights given to the Beneficiary under this deed, and the Guarantor's liabilities under it, are not affected by any act or omission or any other thing which might otherwise affect them under law or otherwise. For example, those rights and liabilities are not affected by:

- (a) any act or omission:
 - (i) varying or replacing in any way and for any reason any agreement or arrangement under which the obligations guaranteed under clause 2.2 are expressed to be owing;
 - (ii) releasing the Contractor or giving the Contractor a concession (such as more time to pay);
 - (iii) releasing any person (other than the Guarantor) who gives a guarantee or indemnity in connection with any of the Contractor's obligations;
 - (iv) by which a person becomes a Guarantor after the date of this deed;
 - (v) by which the obligations of any person who guarantees any of the Contractor's obligations (including obligations under this deed) may become unenforceable;
 - (vi) by which any person who was intended to guarantee any of the Contractor's obligations does not do so, or does not do so effectively;
 - (vii) by which a person who is co-surety or co-indemnifier is discharged under an agreement or by operation of law;
- (b) a person dealing in any way with the Contract or this deed;
- (c) the death, mental or physical disability, or liquidation, administration or insolvency of any person including the Guarantor or the Contractor;
- (d) changes in the membership, name or business of any person; or
- (e) acquiescence or delay by the Beneficiary or any other person.

7 Guarantor's rights are suspended

- (a) As long as any obligation is required, or may be required, to be complied with in connection with this deed, the Guarantor may not, without the Beneficiary's consent:
 - (i) reduce its liability under this deed by claiming that it or the Contractor or any other person has a right of set-off or counterclaim against the Beneficiary; or
 - (ii) claim, or exercise any right to claim, to be entitled (whether by way of subrogation or otherwise) to the benefit of another guarantee, indemnity, mortgage, charge or other encumbrance:

- (iii) in connection with the Contract or any other amount payable under this deed; or
 - (iv) in favour of a person other than the Beneficiary in connection with any obligations of, or any other amounts payable, by the Contractor to, or for the account of, that other person; or
 - (v) claim an amount from the Contractor, or another guarantor (including a person who has signed this deed as a "Guarantor"), under a right of indemnity or contribution in respect of the Contractor's obligations in connection with the Contract; or
 - (vi) accept an amount in the liquidation, administration or insolvency of the Contractor or of another guarantor of any of the Contractor's obligations (including a person who has signed this deed as a "Guarantor") ahead of the satisfaction of the Beneficiaries entitlement to amounts in such liquidation, administration or insolvency.
- (b) If the Beneficiary asks, the Guarantor agrees to notify any relevant person of the terms of this clause and other parts of this deed that may be relevant. The Guarantor also authorises the Beneficiary to do so for the purposes of enforcing this clause (and other relevant parts of this deed necessary to enforce this clause) at any time in its discretion and without first asking the Guarantor to do it. This applies despite anything else in this deed.
- (c) This clause continues after this deed ends.

8 Reinstatement of rights

- (a) Under law relating to liquidation, administration, insolvency or the protection of creditors, a person may claim that a transaction (including a payment) in connection with this deed or the Contract is void or voidable. If a claim is made and upheld, conceded or compromised, then:
- (i) the Beneficiary is immediately entitled as against the Guarantor to the rights in connection with this deed or the Contract to which it was entitled immediately before the transaction; and
 - (ii) on request from the Beneficiary, to the extent permitted by law the Guarantor agrees to do anything (including signing any document) to restore to the Beneficiary any mortgage, charge or other encumbrance (including this deed) held by it from the Guarantor immediately before the transaction.
- (b) The Guarantor's obligations under this clause are continuing obligations, independent of the Guarantor's other obligations under this deed and continue after this deed ends.

9 Costs

- (a) The Guarantor agrees to pay or reimburse the Beneficiary within 10 Business Days of a demand from the Beneficiary on the Guarantor for:
- (i) the Beneficiary's reasonable Costs in enforcing and doing anything in connection with this deed including reasonable legal Costs in on a full indemnity basis; and

- (ii) all duties, fees, Taxes and charges which are payable in connection with this deed or a payment or receipt or other transaction contemplated by it.
- (b) Money paid to the Beneficiary by the Guarantor must be applied first against payment of Costs under this clause then against other obligations under this deed in any way the Beneficiary considers appropriate.

10 Notices and other communications

10.1 Form - all communications

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

10.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 10.1. Email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

10.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) sent by email to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

10.4 When effective

Communications take effect from the time they are received or taken to be received under clause 10.5 ("When taken to be received") (whichever happens first) unless a later time is specified.

10.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

10.6 Receipt outside business hours

Despite anything else in this clause 10, if communications are received or taken to be received under clause 10.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

11 Assignment

11.1 No assignment by Guarantor

The Contractor may not assign or otherwise deal with its rights under this deed or allow any interest in them to arise or to be varied without the prior written consent of the Beneficiary (which may be given or withheld in its absolute discretion).

11.2 Assignment by Beneficiary

The Beneficiary may assign or otherwise deal with its rights under this deed in any way it considers appropriate to any party to whom it validity assigns the benefit of the Contract on a confidential basis. General

12 General

12.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this deed and of other related documentation, except stamp duty.

12.2 Discretion in exercising rights

Unless this deed expressly states otherwise, the Beneficiary may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this deed in its absolute discretion (including by imposing conditions).

12.3 Partial exercising of rights

Unless this deed expressly states otherwise, if the Beneficiary does not exercise a right, power or remedy in connection with this deed fully or at a given time, they may still exercise it later.

12.4 Remedies cumulative

The rights, powers and remedies of the Beneficiary in connection with this deed are in addition to other rights, powers and remedies given by law independently of this deed.

12.5 Stamp duty

The Guarantor agrees to pay all stamp duty (including fines and penalties) chargeable, payable or assessed in relation to this deed and any transaction contemplated by it.

12.6 Governing law

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

12.7 Counterparts

This deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the deed.

12.8 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this deed and the transactions contemplated by it.

12.9 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this deed or any part of it.

12.10 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.

12.11 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

12.12 Variation and waiver

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

12.13 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this deed given by the Guarantor:

- (a) is a continuing obligation;
- (b) is independent of any other obligations under this deed; and
- (c) continues after this deed, or any obligation arising under it, ends.

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

12.14 Confidentiality

Each party agrees not to disclose information provided by another party that is not publicly available except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this deed; or

- (b) to officers, employees, legal and other advisers and auditors of any party; or
- (c) to any party to this deed or any Related Body Corporate of any party to this deed, provided the recipient agrees to act consistently with this clause; or
- (d) with the consent of the party who provided the information; or
- (e) as allowed by any law or stock exchange.

12.15 Proportionate liability

To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW), and any equivalent statutory provisions, is excluded in relation to all rights, obligations and liabilities in connection with this deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort (including negligence) or otherwise.

EXECUTED as a deed

Signing page

DATED: _____

Signed sealed and delivered by)
[insert] as Chief Executive Officer of)
INFRASTRUCTURE NSW ABN 85 031)
302 516 pursuant to the *Infrastructure*)
NSW Act 2011 (NSW))
in the presence of)

.....)
Signature of witness)

.....)
Name of witness (block letters))

EXECUTED by [GUARANTOR] in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by authority)
of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature)

.....)
Signature of director/company)
secretary*)

*delete whichever is not applicable

.....)
Name of director/company secretary*)
(block letters))

*delete whichever is not applicable

Schedule 5 – Expert Determination Procedure

Refer to clauses 68 and 71 of the GC21 General Conditions of Contract.

1 Questions to be determined by the Expert

- .1 For each *Issue*, the *Expert* must determine the following questions, to the extent that they are applicable to the *Issue* and unless otherwise agreed by the parties:
 - .1 Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the *Issue* if no compensation is claimed:
 - .1 under the Contract,
 - .2 for damages for breach of the Contract, or
 - .3 otherwise in law?
 - .2 If so:
 - .1 what is the event, act or omission?
 - .2 on what date did the event, act or omission occur?
 - .3 what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
 - .4 is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim or other legal right?
 - .3 In light of the answers to the questions in clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
 - .1 what compensation, if any, is payable by one party to the other and when did it become payable?
 - .2 applying the rate of interest specified in the Contract, what interest, if any, is payable when the *Expert* determines that compensation?
 - .3 if compensation is not claimed, what otherwise is the resolution of the *Issue*?
- .2 The *Expert* must determine, for each *Issue*, any other questions identified or required by the parties, having regard to the nature of the *Issue*.

2 Submissions

- .1 The procedure for submissions to the *Expert* is as follows:
 - .1 The party to the Contract which referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
 - .2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the party desiring the longer period may make a submission on the point to the *Expert*, within the time specified by the *Expert*, and the *Expert* will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.
 - .3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.

- .4 The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.
- .2 The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- .3 The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.
- .4 All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address stated in Contract Information item 52.

3 Conference

- .1 The *Expert* may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.
- .2 The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

4 Role of Expert

- .1 The *Expert*:
 - .1 acts as an *Expert* and not as an arbitrator;
 - .2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the *Expert's* own expertise; and
 - .3 must issue a certificate in a form the *Expert* considers appropriate, stating the *Expert's* determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
- .2 If a certificate issued by the *Expert* contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the *Expert* must correct the certificate.

Schedule 6 – Combined Subcontractor’s Statement and Supporting Statement

Refer to clause 58 of the GC21 General Conditions of Contract.

Part 1



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:

of

has entered into a contract with ABN:..... (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/...../.....

Part 2



SUPPORTING STATEMENT BY HEAD CONTRACTOR REGARDING PAYMENT TO SUBCONTRACTORS

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

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

Head Contractor: [business name of head contractor]

ABN:

1. Has entered into a contract with [business name of subcontractor]

ABN:

Contract number/identifier:

OR

2. Has entered into a contract with the subcontractors listed in the attachment to this statement.

[Delete whichever of the above does not apply]

This statement applies for work between: [start date] and [end date] inclusive (the construction work concerned), subject of the payment claim dated: [date]

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

Signature:

Date:

Full name:

Position/Title:

Penalties

The *Building and Construction Security of Payment Act 1999* provides that:

Section 13(7) A head contractor must not serve a payment claim on the principal unless the claim is accompanied by a supporting statement that indicates that it relates to that payment claim.
Maximum penalty: \$22,000 (200 penalty units).

And:

Section 13(8) A head contractor must not serve a payment claim on the principal accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances.
Maximum penalty: \$22,000 (200 penalty units) or 3 months imprisonment, or both.

Attachment

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

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

Schedule 8 – Principal’s Planning Obligations

Refer to clause 12 of the GC21 General Conditions of Contract.

Part A – Responsibility Matrix

FINAL CONDITIONS OF CONSENT MATRIX
Sydney Modern Project
SSD: 6471

12-Jun-19

ID	CONDITION DESCRIPTION	ACTION	ACTION BY	TIMING	STATUS	DOC REFERENCE
A	ADMINISTRATIVE CONDITIONS					
	Obligation to Minimise Harm to the Environment					
A1	In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development.	Note				
	Terms of Consent					
A2	The development may only be carried out: a) in compliance with the conditions of this consent; b) in accordance with all written directions of the Planning Secretary; c) in accordance with the EIS and RTS; and d) in accordance with the approved plans in the table below.	Note				
A3	Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to: a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Planning Secretary; and b) the implementation of any actions or measures contained in any such document referred to in condition A3(a) above.	Note				
A4	The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in Condition A2(c). In the event of an inconsistency, ambiguity or conflict between any of the documents listed in Condition A2(c), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict. Note: For the purposes of this condition, there will be an inconsistency between documents if it is not possible to comply with both documents, or in the case of a condition of consent or direction of the Planning Secretary, and a document, if it is not possible to comply with both the condition or direction, and the document.	Note				
	Limits on Consent					
A5	This consent will lapse five years from the date of the consent unless the works associated with the development have physically commenced.	Note				
	Prescribed Conditions					
A6	The Applicant must comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the EP&A Regulation.	Note				
	Long Service Levy					
A7	For work costing \$25,000 or more, a Long Service Levy must be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.	LSL Payment	Contractor			
	Legal Notices					
A8	Any advice or notice to the consent authority must be served on the Planning Secretary.	Note				
	Revision of Strategies, Plans and Programs					
A9	Within three months of: a) the submission of a Compliance Report under Condition B9; b) the submission of an incident report under Condition A12; c) the submission of an Independent Audit under Condition B13; d) the approval of any modification of the conditions of this consent; or e) the issue of a direction of the Planning Secretary under Condition A2 which requires a review, the strategies, plans and programs required under this consent must be reviewed, and the Department must be notified in writing that a review is being carried out. If necessary to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans and programs required under this consent must be revised to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review. Note: This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.	AGNSW to action as necessary with input, where relevant, from contractor	Principal	Ongoing Within 3 months of all Compliance Reports, S96 approvals, or Independent Audits	Open	
	Evidence of Consultation					
A10	Where conditions of this consent require consultation with an identified party, the Applicant must: (i) consult with the relevant party prior to submitting the subject document to the Planning Secretary for approval; and (ii) provide details of the consultation undertaken including: i. a description of how matters raised by those consulted have been resolved to the satisfaction of both the Applicant and the party consulted; and ii. details of any disagreement remaining between the party consulted and the Applicant and how the Applicant has addressed the matters not resolved.	Note				
	Structural Adequacy					
A11	All new buildings and structures, and any alterations or additions to existing buildings and structures, that are part of the development, must be constructed in accordance with the relevant requirements of the BCA. Notes: • Under Part 4A of the EP&A Act, the Applicant is required to obtain construction and occupation certificates for the proposed building works. • Part 8 of the EP&A Regulation sets out the requirements for the certification of the development.	Provide certification.	Contractor			
	Incident Notification, Reporting and Response					
A12	The Department must be notified in writing to compliance@planning.nsw.gov.au immediately after the Applicant becomes aware of an incident. The notification must identify the development (including the development application number and the name of the development if it has one), and set out the location and nature of the incident. Subsequent notification must be given and reports submitted in accordance with the requirements set out in Appendix 1.	Provide notification. Contractor to supply information for submission by INSW.	Principal	Ongoing		
	Non-Compliance Notification					

FINAL CONDITIONS OF CONSENT MATRIX

Sydney Modern Project

SSD: 6471

A13	The Department must be notified in writing to compliance@planning.nsw.gov.au within seven days after the Applicant becomes aware of any non-compliance. The PCA must also notify the Department in writing to compliance@planning.nsw.gov.au within seven days after they identify any non-compliance.	Note				
A14	The notification must identify the development and the application number for it, set out the condition of consent that the development is non-compliant with, the way in which it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.	Note				
A15	A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.	Note				
Monitoring and Environmental Audits						
A16	Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification and independent environmental auditing. Note. For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an "environmental audit" is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.	Note				
Applicability of Guidelines						
A17	References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.	Note				
A18	However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.	Note				
Operation of Plant and Equipment						
A19	All plant and equipment used on site, or to monitor the performance of the development must be: (a) maintained in a proper and efficient condition; and (b) operated in a proper and efficient manner.	Note				
A20	Any structure located partly or wholly over the land bridge, must be designed and constructed so they are capable of being vertically supported by alternate means if the land bridge is removed or altered. If significant works to, or removal of, the land bridge is proposed in the future, and if directed by the Planning Secretary, the Applicant must prepare and submit to the Planning Secretary's satisfaction, updated engineering plans demonstrating any structure located partly or wholly over the land bridge can be vertically supported by alternate means. A separation application shall be lodged with the relevant consent authority for the updated engineering plans and associated works.	Note			Letter sent to DPE 8 Feb 2019, awaiting response	
B PRIOR TO THE COMMENCEMENT OF WORKS						
Crown Building Work						
B1	Crown building work cannot be commenced unless the Crown Building work is certified by or on behalf of the Crown to comply with the technical provisions of the State's building laws in force as at: a) the date of the invitation for tenders to carry out Crown building work; or b) in the absence of tenders, the date on which the Crown building work commences.	CC to be issued by PCA. Contractor to provide design certificates.	Contractor			
Design Excellence and Design Integrity						
B2	The approved development shall be subject to a Design Integrity process throughout the design development and construction documentation period in consultation with the Government Architect NSW (GANSW), and through the State Design Review Panel (SDRP) Pilot Program. The SDRP is to be augmented by a member of the design competition jury, to be nominated by the Art Gallery of NSW and endorsed by GANSW. For presentations to the SDRP, the project team shall include the following members as a minimum: i) a representative from the competition winning international architectural practice; ii) a representative from the local architect of record. The Applicant is to submit evidence that the above Design Integrity process has been established, including confirmation of support for the process from the GANSW, within 3 months of the date of consent. Prior to the issue of any Crown Building Works Certificate, the Applicant is to submit a Design Integrity Report (DIR), to the satisfaction of the Planning Secretary, that demonstrates how design excellence and design integrity will be achieved in accordance with: - the design objectives of the original competition winning scheme; - the approved design upon development approval; and - the conditions of consent. The DIR shall include a summary of feedback provided by SDRP and responses by the project team to this advice. The DIR shall also include how the process will be implemented through to completion of the approved development.	DIP underway	Principal	ASAP	In the process of being finalized	
Entry Plaza Canopy						
B3	No approval is granted for the design of the entry plaza canopy. Prior to the issue of the relevant Crown Building Works Certificate, the Applicant shall prepare a revised entry plaza canopy design for review that - further improves sightlines between the existing gallery building and the Woolloomooloo Gate of the Royal Botanic Gardens; and - further improves and enhances the built form interface with its landscape setting. The revised design shall demonstrate a response to the following: a) modification to the overall extent of the canopy structure; b) increased street setbacks and landscaped area in and around the canopy structure; c) modification of the street alignment and orientation of the canopy structure between the existing sandstone gallery wing, proposed extension and sightlines to the Woolloomooloo Gate; d) architectural and structural detailing to achieve a light-weight built form character that is secondary in visual appearance to its landscape setting. The revised design shall be prepared in consultation with the Government Architect NSW (GANSW), OEH and the Royal Botanic Gardens and Domain Trust, and submitted to the satisfaction of the Planning Secretary.	Underway. Design to be reviewed in conjunction with DRP.	Principal		In the process of being finalized	

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Provision of Green Roof to Gallery 1						
B4	Prior to the commencement of relevant construction work, the plans/elevations and documentation shall be amended to provide a green roof to gallery 1 and submitted to the satisfaction of the Planning Secretary.	Design documentation generated	Principal	Must be approved by the planning Secretary prior to commencement of relevant works.	In the process of being finalized	
Notification of Commencement						
B5	The Department must be notified in writing of the dates of commencement of physical work at least 48 hours before those dates. If the construction of the development is to be staged, the Department must be notified in writing at least 48 hours before the commencement of each stage, of the date of commencement and the development to be carried out in that stage.	Contractor to provide notification to Planner/PCA	Contractor			
Community Communication Strategy						
B6	A Community Communication Strategy must be prepared to provide mechanisms to facilitate communication between the Applicant, City of Sydney Council and the community (including adjoining affected landowners and businesses, and others directly impacted by the development), during the design and construction of the development and for a minimum of 12 months following completion of construction. The Community Communication Strategy must: a) identify people to be consulted during the design and construction phases; b) set out procedures and mechanisms for the regular distribution of accessible information about or relevant to the development; c) provide for the formation of community-based forums, if required, that focus on key environmental management issues for the development; d) set out procedures and mechanisms: (i) through which the community can discuss or provide feedback to the Applicant; (ii) through which the Applicant will respond to enquiries or feedback from the community, and (iii) to resolve any issues and mediate any disputes that may arise in relation to construction and operation of the development, including disputes regarding rectification or compensation. The Community Communication Strategy must be submitted to the Planning Secretary for approval no later than one month before the commencement of any work. Work for the purposes of the development must not commence until the Community Communications Strategy has been approved by the Secretary, or within another timeframe agreed with the Planning Secretary. The Community Communication Strategy, as approved by the Planning Secretary, must be implemented for a minimum of 12 months following the completion of construction.	AGNSW to own the strategy. Contractor to provide input.	Principal (AGNSW)	Strategy must be submitted to Planning Secretary no later than 1 month pre commencement so contractor input should be minimised	In the process of being finalized	
Compliance						
B7	The Applicant must ensure that all of its employees, contractors (and their sub-contractors) are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.	Note				
Compliance Reporting						
B8	No later than 6 weeks before the date notified for the commencement of construction, a Compliance Monitoring and Reporting Program prepared in accordance with the Compliance Reporting Post Approval Requirements (Department 2018) must be submitted to the Department.	Compliance Monitoring and Reporting Program to be prepared and submitted to DPE	Principal	Confirm timing requirement @ Compliance Reporting Post Approval Requirements		
B9	Compliance Reports of the project must be carried out in accordance with the Compliance Reporting Post Approval Requirements (Department 2018).	Note				
B10	The Applicant must make each Compliance Report publicly available no later than 60 days after submitting it to the Department and notify the Department in writing at least 7 days before this is done.	Note	Principal	Compliance Report to be published no more than 60 days after issuance to DPE. DPE notified 7 days before publication		
Complaints and Enquiries Procedure						
B11	Prior to the commencement of construction works, or as otherwise agreed by the Planning Secretary, the following must be made available for community enquiries and complaints for the duration of construction: a) a toll-free 24-hour telephone number(s) on which complaints and enquiries about the carrying out of any works may be registered; b) a postal address to which written complaints and enquiries may be sent; and c) an email address to which electronic complaints and enquiries may be transmitted.		Contractor	Prior to commencement of construction		
Access to Information						
B12	At least 48 hours before the commencement of construction and until the completion of all works under this consent or such other time as agreed by the Planning Secretary, the Applicant must: a) make the following information and documents (as they are prepared, obtained or approved) publicly available on its website: i. the documents referred to in Condition A2 of this consent; ii. all current statutory approvals for the development; iii. all approved strategies, plans and programs required under the conditions of this consent; iv. regular reporting on the environmental performance of the development in accordance with the reporting arrangements in any plans or programs approved under the conditions of this consent; v. a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs; vi. a comprehensive summary of the current stage and progress of the development; vii. contact details to enquire about the development or to make a complaint; viii. a complaints register, updated monthly; ix. audit reports prepared as part of any independent environmental audit of the development and the Applicant's response to the recommendations in any audit report; x. any other matter required by the Planning Secretary; and b) keep such information up to date, to the satisfaction of the Planning Secretary.	AGNSW to own the strategy. Contractor to provide input. Note various inputs required for publication on website. Identify all plans, programs, reports and updates, which need to be published and who will input these e.g. 'comprehensive summary of the current stage and progress of the development' - who will author this? Inputs needs to be programmed.	Principal	All required information to be published at least 48 hours prior to commencement of construction		
Independent Audit						
B13	No later than four weeks before the date notified for the commencement of construction, an Independent Audit Program prepared in accordance with the Independent Audit Post Approval Requirements (Department 2018) must be submitted to the Department.		Principal			
B14	Independent Audits of the development must be carried out in accordance with: (a) the Independent Audit Program submitted to the Department under condition B11 of this consent; and (b) the requirements for an Independent Audit Methodology and Independent Audit Report in the Independent Audit Post Approval Requirements (Department 2018).	Note		Confirm timing requirement for Audit Report 01 @ Independent Audit Post Reporting Post Approval Requirements		

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B15	In accordance with the specific requirements in the Independent Audit Post Approval Requirements (Department 2018), the Applicant must: (a) review and respond to each Independent Audit Report prepared under condition 0 of this consent; (b) submit the response to the Department; and (c) make each Independent Audit Report and response to it publicly available no later than 60 days after submission to the Department and notify the Department in writing at least 7 days before this is done.	Note		Timing dependent on date of Independent Audit Report 01 and response to be published no more than 60 days after issuance to DPE. DPE to be notified of publication 7 days prior.		
Geotechnical Design, Certification and Monitoring Plan						
B16	The proposed development involves the construction of subsurface structures and excavation that has potential to adversely impact neighbouring property if undertaken in an inappropriate manner. To ensure there are no adverse impacts arising from such works, the applicant must engage a suitably qualified and practicing Engineer having experience in the geotechnical and hydrogeological fields, to design, certify and oversee the construction of all subsurface structures associated with the development. This engineer is to prepare the following documentation: a) Certification that the civil and structural details of all subsurface structures are designed to: • provide appropriate support and retention to neighbouring property; • ensure there will be no ground settlement or movement during excavation or after construction (whether by the act of excavation or dewatering of the excavation) sufficient to cause an adverse impact to adjoining property or public infrastructure; and • ensure that the treatment and drainage of groundwater will be undertaken in a manner which maintains the pre-developed groundwater regime, so as to avoid constant or ongoing seepage to the public drainage network and structural impacts that may arise from alteration of the pre-developed groundwater table. b) A Geotechnical Monitoring Plan (GMP) to be implemented during construction that: • is based on a geotechnical investigation of the site and subsurface conditions, including groundwater; • details the location and type of monitoring systems to be utilised, including those that will detect the deflection of all shoring structures, settlement and excavation induced ground vibrations to the relevant Australian Standard; • details recommended hold points and trigger levels of any monitoring systems, to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and • details an action plan and contingency for the principal building contractor in the event these trigger levels are exceeded. The certification and the GMP is to be submitted for the approval of the Certifying Authority prior to the commencement of any works.	Contractor to provide certifications, and develop and implement GMP as per requirements. Note - Coffey has been engaged by AGNSW to complete a GMP to ensure the Gallery's requirements for the protection of artworks are met. This will be passed on to the contractor for it to adopt or modify as required.	Contractor			
External Walls and Cladding						
B17	The external walls of all buildings must comply with the relevant requirements of the BCA. Before the commencement of the relevant works, the Applicant must provide the Certifying Authority with documented evidence that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the requirements of the BCA. The Applicant must provide a copy of the documentation to the Certifying Authority and to the Planning Secretary within seven days after the Certifying Authority accepts it.	Contractor to supply information on finishes to Certifying Authority, AGNSW to submit to DPE and Planning Secretary	Contractor	Prior to commencement of relevant works		
Structural Details						
B18	Prior to the commencement of the relevant works, the Applicant shall submit to the satisfaction of the Certifying Authority structural drawings prepared and signed by a suitably qualified practising Structural Engineer that demonstrates compliance with: a) the relevant clauses of the BCA; and b) the development consent.	Contractor to provide certification.	Contractor			
1920s Carriageway Walls Interpretation						
B19	The footprint of the 1920s low carriageway walls is to be interpreted in the new paving. The sandstone from the low wall is to be salvaged, reused and interpreted within the proposed development. Design details are to be submitted to the OEH Heritage Division for review and endorsement. Details demonstrating compliance with this condition must be submitted to the Planning Secretary and the Certifying Authority prior to the commencement of the relevant works.	AGNSW to provide strategy and brief for Contractor to document, AGNSW to manage endorsement by OEH and Planning, and submit details to Planning Secretary.	Principal (AGNSW)	Prior to commencement of relevant works		
New Steps, Ramp and Pedestrian Control Structures						
B20	Design details for the new steps and ramp at the end of the Domain path adjacent to the Art Gallery Road pedestrian crossing opposite the existing gallery building entry, and any pedestrian control structures at the western edge of Art Gallery Road, are to be submitted to the OEH Heritage Division for review and endorsement. Any pedestrian control structures must be visually recessive and lightweight and must not impede pedestrian access to the existing gallery building entry. Details demonstrating compliance with this condition must be submitted to the Planning Secretary and the Certifying Authority prior to the commencement of the relevant works.	AGNSW to provide strategy and brief for Contractor to document, AGNSW to manage endorsement by OEH and Planning, and submit details to Planning Secretary.	Principal	Prior to commencement of relevant works		
Works to the Former Naval Fuel Bunker						
B21	The design of new structures in the southern former naval fuel bunker should not damage the existing concrete structure and be lightweight and complement the character of the bunker. Design details of the following work are to be submitted to the OEH Heritage Division for review and endorsement: a) structural supports and strengthening of the bunker itself and the new structures above; b) new stairs, ramps, wall openings, any floor systems and coverings; c) new services i.e. electrical, communication/data/hydraulic, mechanical and fire services; d) any waterproofing or moisture management methods; e) conservation and repair methods for significant concrete structure, ceilings, walls, floor and columns; f) any upgrade to comply with the NCC and Disability (Access to Premises - Buildings) Standards 2010. Details demonstrating compliance with this condition must be submitted to the Planning Secretary and the Certifying Authority prior to the commencement of the relevant works.	AGNSW to develop package for submission and presentation to OEH, AGNSW to manage endorsement by OEH and Planning, and submit details to Planning Secretary.	Principal	Prior to commencement of relevant works	Documentation package prepared by AGNSW + relevant consultants.	
External Materials						
B22	High reflective surfaces, large areas of unshaded glass and bright white finishes are to be avoided. External colours are to be subdued and be compatible with the Sydney sandstone character of the locality. Samples of proposed external materials for walls, roofs, eaves and soffits, columns, glazing and its assemblies, rainwater goods, paving and retaining walls are to be submitted to the OEH Heritage Division for review and endorsement. Details demonstrating compliance with this condition must be submitted to the Department and the Certifying Authority prior to the commencement of works.	AGNSW to develop package for submission and presentation to OEH, AGNSW to manage endorsement by OEH and Planning, and submit details to Planning Secretary.	Principal	Must be endorsed by OEH prior to commencement of works	Documentation package prepared by AGNSW + relevant consultants.	
Nominated Historical Archaeologist						
B23	Prior to the commencement of works, a suitably qualified historical archaeologist shall be engaged who must satisfy the Excavation Director Criteria of the Heritage Council of NSW for the proposed activity and significance level.	AGNSW to engage archaeologist. Contractor to allow for interface and compliance with requirements.	Principal	Prior to commencement of works	AGNSW received fee proposal	
Public Domain Plan						

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B24	<p>The Applicant shall ensure the following:</p> <p>a) A detailed Public Domain Plan must be lodged with Council's Public Domain Section and approved by Council prior to the relevant works. The Public Domain Plan is to be submitted with a completed Public Domain Plan checklist (available in the City of Sydney's Public Domain Manual), and</p> <p>b) The Public Domain Plan documents all works required to ensure that the public domain complies with the Council's Public Domain Manual, Sydney Streets Design Code and Sydney Streets Technical Specification, including requirements for footway pavement, kerb and gutter, drainage, vehicle crossovers, pedestrian ramps and other relevant public domain elements. The Public Domain Plan submission is to incorporate the approved Alignment Levels (refer to Condition B23). If the proposed detailed design of the public domain requires changes to any previously approved Alignment Levels, an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to the commencement of the relevant works.</p>	Contractor to manage production of all documents and approval by CoS.	Contractor			
Public Domain Works – Lincoln Crescent and Cowper Wharf Road Frontages - Alignment Levels						
B25	<p>The Applicant shall ensure the following:</p> <p>a) Alignment levels for the buildings and site frontages of those buildings are submitted to and approved by Council prior to the commencement of the relevant works. The submission must be prepared by a Registered Surveyor or suitably qualified engineer and must be submitted with a completed Alignment Levels checklist (available in the Public Domain Manual) and Footpath Levels and Gradients Approval Application form (available on Council's website);</p> <p>b) If the proposed detailed design of the public domain (refer to Condition B26) requires changes to any previously approved Alignment Levels, an amended Alignment Levels submission must be submitted to and approved by Council to reflect these changes prior to the commencement of the relevant works;</p> <p>c) The works to the public domain are completed in accordance with the approved Public Domain Plan and Alignment Levels plans and the Public Domain Manual before the use of the development commences, whichever is earlier;</p> <p>d) If required by Council, a Public Domain Works Deposit is paid to Council for the public domain works, in accordance with the Council's adopted fees and charges and the Public Domain Manual. The Public Domain Works Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for completion of the obligations under this consent.</p> <p>Council's Public Domain section is contacted to determine the guarantee amount prior to lodgement of the guarantee. The guarantee must be lodged with Council prior to the commencement of the relevant works.</p> <p>The Bank Guarantee will be retained in full until all Public Domain works are completed and the required certifications, warranties and works-as-executed documentation are submitted and approved by Council in writing. On satisfying the above requirements, 90% of the total securities will be released. The remaining 10% will be retained for the duration of the specified Defects Liability Period.</p>	Contractor to manage production of all documents and approval by CoS.	Contractor			
Public Domain Works – Lincoln Crescent and Cowper Wharf Road Frontages – Hold Points and Handover						
B26	<p>The Applicant shall ensure the following</p> <p>Prior to a Crown Building Works Certificate being issued for public domain work, including civil, drainage and subsurface works, a set of hold points for approved public domain, civil and drainage work is determined with and approved by Council's Public Domain section in accordance with the Council's Public Domain Manual and Sydney Streets Technical Specification; and</p>	Contractor to manage	Contractor			
Public Domain Damage Deposit – Lincoln Crescent and Cowper Wharf Road Frontages						
B27	<p>A Public Domain Damage Deposit calculated on the basis of 4 linear metres of asphaltic concrete site frontage must be lodged with Council in accordance with the Council's of Sydney's adopted Schedule of Fees and Charges. The Public Domain Damage Deposit must be submitted as an unconditional bank guarantee in favour of Council as security for repairing any damage to the public domain in the vicinity of the site.</p> <p>The guarantee must be lodged with Council prior to the commencement of the relevant works.</p> <p>The Bank Guarantee will be retained in full until the use of the development commences and any rectification works to the footway and Public Domain are completed to Council's satisfaction. On satisfying the above requirements 90% of the total securities will be released, with the remaining 10% to be retained for the duration of the 12 months Defect Liability Period.</p>	Contractor	Contractor			
Seawater Heat Exchange System						
B28	<p>The detailed design of the seawater heat exchange system must comply with the preliminary design details outlined in the Seawater Heat Exchange Report (dated 16 March 2018) in Appendix H of the RTS. Details demonstrating compliance with this condition must be submitted to the satisfaction of the Certifying Authority prior to the commencement of the relevant works.</p>	Contractor	Contractor			
Wayfinding and Signage						
B29	<p>Prior to the commencement of the relevant works, a Wayfinding and Signage Strategy prepared by suitably qualified persons shall be endorsed by the Heritage Council and the Royal Botanic Gardens and Domain Trust and submitted to the satisfaction of the Certifying Authority. The Strategy shall be prepared in consultation with the OEH Heritage Division, Council, TNSW and the Royal Botanic Gardens and Domain Trust. The Strategy must:</p> <p>a) detail the final location, type, design and fixing methods (dimensions, materials, finish, illumination etc) of all wayfinding and signage (building identification, business identification, wayfinding, security signage etc) to be provided in the precinct;</p> <p>b) ensure wayfinding and signage is designed in a visually consistent, cohesive and uniform manner and to respect the character and heritage values of the precinct;</p> <p>c) ensure any illuminated signage would not cause adverse amenity impacts;</p> <p>d) have regard to the recommendations of the OPTED Report, dated 16 February 2018, (Appendix O in the RTS);</p> <p>e) detail how the strategy would improve wayfinding and dissemination of customer information to make it easier for people to get to and from the site, locate major transport hubs and increase mode share of public transport, walking and cycling;</p> <p>f) include a travel access guide increase mode share of public transport and active transport. This shall include signage to transport nodes;</p> <p>g) ensure wayfinding and signage is designed to integrate into Council's existing system's consistent with the Legible Sydney Wayfinding Strategy 2012, the Legible Sydney Design Manual 2012, the Harbour Domain North Public Domain Strategy 2012 and TNSW's Sydney City Centre Access Strategy 2013.</p> <p>The Strategy shall also be used to guide future applications for signage.</p> <p>Prior to the commencement of use, a copy of the final Signage Strategy must be submitted to Council, the Royal Botanic Gardens and Domain Trust, TNSW and the Planning Secretary.</p>	AGNSW to manage preparation of the strategy, endorsements and approval by Certifying Authority	Principal (AGNSW)	Must be endorsed by the Heritage Council and RBGDT prior to commencement of relevant works. Final strategy before use.		
External Works Visual Impact Mitigation						

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B30	The Applicant must ensure: a) the external lifts are designed to minimise visual impacts and view blocking effects; b) internal framing and structure of the external lifts minimised to increase transparency in views and reduce the visual presence of the lifts in views; and c) external lifts are encased in non-reflective glass to increase the transparency of the lift glazing to views. Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to commencement of the relevant works.	Note: Documentation to be provided by the Contractor	Contractor			
Environmental Sustainability						
B31	The Applicant shall ensure the detailed design of the development incorporates the environmental sustainability objectives, measures and initiatives outlined in the Environmentally Sustainable Development Report (dated 1 November 2017) in Appendix AB of the EIS, taking into consideration amendments required by condition B2. Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the commencement of the relevant works	Note: Documentation to be provided by the Contractor	Contractor			
Reflectivity						
B32	The visible light reflectivity from building materials used on the facades of any buildings or structures shall not exceed 20 per cent and shall be designed so as to minimise glare. In particular, the north-eastern glazed wall of the multi-purpose room should be revised as recommended in the supplemental Reflectivity Report dated 13 April 2018 (Appendix Q of the RTS). A report/documentation demonstrating compliance with these requirements is to be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor	Contractor			
Installation of Water Efficient Fixtures and Fittings						
B33	All toilets installed within the development must be of water efficient dual-flush capacity with at least 4-star rating under the Water Efficiency and Labelling Scheme (WELS). The details must be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor.	Contractor			
B34	All taps and shower heads installed within the development must be water efficient with at least a 3-star rating under the Water Efficiency and Labelling Scheme (WELS), where available. The details must be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor.	Contractor			
B35	New unnaal suites, unnaals and unnaal flushing control mechanisms installed within the development must demonstrate that products have been selected with at least a 4-star rating under the Water Efficiency and Labelling Scheme (WELS). The details must be submitted to the Certifying Authority prior to the commencement of the relevant works	Note: Documentation to be provided by the Contractor.	Contractor			
B36	Systems must include 'smart controls' to reduce unnecessary flushing. Continuous flushing systems are not approved. Details are to be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor.	Contractor			
Bicycle Parking						
B37	A minimum of 12 bicycle parking spaces are to be provided for staff within the approved loading dock and an additional 33 publicly accessible bicycle rails (66 bicycle parking spaces) are to be provided for visitors adjacent to Art Gallery Road. The layout, design and security of all bicycle facilities must comply with the minimum requirements of AS 2890.3 – 1993 Parking Facilities Part 3: Bicycle Parking Facilities. Staff bicycle parking should be provided according to the security level B as specified AS 2890.3:2015. Documentation demonstrating compliance with this condition shall be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor.	Contractor		Clarification the 12 spaces are not in addition to proposed bike racks in SSDA	
Outdoor Lighting						
B38	All outdoor lighting (including tree uplighting and any signage illumination) shall comply with the recommendations of the Exterior Lighting Report dated 5 October 2017 (Appendix AG of the EIS) and, where relevant, AS 1158.3.1-2005 Pedestrian Area (Category P) Lighting and AS 4282-1997 Control of the Obtrusive Effects of Outdoor Lighting. Details demonstrating compliance with these requirements are to be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor	Contractor			
Access for People with Disabilities						
B39	Access and facilities for people with disabilities must be designed in accordance with the BCA. Prior to the commencement of the relevant works, a certificate certifying compliance with this condition from an appropriately qualified person must be provided to the Certifying Authority.	Note: Documentation to be provided by the Contractor.	Contractor			
Construction and Fit-out of Food Premises						
B40	The construction, fit-out and finishes of any food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the Food Act 2003 all relevant Australian Standards and the provisions of the BCA. Details of compliance with the relevant provisions shall be prepared by a suitably qualified person and submitted to the Certifying Authority prior to the construction and fit-out of any food premises	Note: Documentation to be provided by the Contractor.	Contractor			
Cool Rooms						
B41	Any cool room(s), refrigerated chambers or strong rooms must be constructed in accordance with G 1.2 of the BCA	Note	Contractor			
Grease Traps						
B42	A grease trap (if required by Sydney Water) must not be installed in any kitchen, food preparation or food storage area. Installation of the grease trap must comply with the requirements of Sydney Water. Note: Sydney Water Authority also have requirements for grease arrestors that you need to comply with.	Note	Contractor			
Mechanical Ventilation						
B43	The premises must be ventilated in accordance with the BCA and AS1668.1 and AS1668.2	Performance solution developed by Mechanical Engineer. Contractor to verify and provide supporting documentation.	Contractor	Relevant works		
B44	Details of any mechanical ventilation and/or air conditioning system complying with AS1668.1, AS1668.2, the BCA and relevant Australian Standards must be prepared by a suitably qualified person certified and certified in accordance with Clause A2.2(a)(iii) of the BCA, to the Certifying Authority prior to the commencement of the relevant works	Note: Documentation to be provided by the Contractor.	Contractor			
Interlocks – Mechanical Ventilation						
B45	Interlocks shall be installed to the kitchen mechanical ventilation system to ensure that the system is not operated unless the filters are correctly installed and enhanced filtration and odour systems are fully functional and operational	Note				
Sanitary Facilities – Food Premises						
B46	The sanitary facilities must be separated from all food handling areas via an airlock, self-closing door or mechanical ventilation in accordance with the provisions of the BCA, Part F 3.1, 4.8 and 4.9.	Note				
Sanitary Facilities for Disabled Persons						
B47	The Applicant shall ensure that the provision of sanitary facilities for disabled persons complies with Section F2.4 of the BCA. Plans demonstrating compliance with this condition shall be submitted to the Certifying Authority prior to the commencement of the relevant works.	Note: Documentation to be provided by the Contractor.	Contractor			
Sydney Water Assets						

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B48	Building plans must be stamped and approved by Sydney Water prior to the issue of a Crown Building Works Certificate, due to the proximity of works to Sydney Water assets. For further assistance, please visit www.sydneywater.com.au or telephone 13 20 92.	Contractor to manage approval by Sydney Water. Note - AGNSW has engaged a WSC and fee includes Building Plan Approval (BPA), so BPA will be sought by AGNSW prior to contract award to mitigate CC delay risk. Sewer connection design to be completed by WSC before BPA process can proceed. Sewer connection design in progress.	Contractor	Building Plan Approval required prior to commencement of works		
Pre-Construction Dilapidation Report						
B49	The Applicant is to engage a suitably qualified professional(s) to prepare a Pre-Construction Dilapidation Report detailing the current structural condition of all retained existing and adjoining buildings, infrastructure and roads within the 'zone of influence'. The report must be submitted to the Certifying Authority prior to issue of the Construction Certificate or any works commencing whichever is earlier. A copy of the report must be forwarded to the affected landowners. The Pre-Construction Dilapidation Report must also include a photographic recording of the public domain site frontages and must be prepared to the satisfaction of the PCA. The recording must include clear images of the footpath, nature strip, kerb and gutter, driveway crossovers and laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street. The form of the recording is to be as follows: a) a PDF format report containing all images at a scale that clearly demonstrates the existing site conditions; b) each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage; c) each image is to be numbered and cross referenced to a site location plan; d) a summary report, prepared by a suitable qualified professional, must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record.	Contractor	Contractor			
Lincoln Crescent Zone Substation						
B50	Further details demonstrating the proposed exhaust system and the proposed seawater heat exchange system pipelines will not adversely impact the operation of the Lincoln Crescent zone substation are to be submitted for the endorsement of Ausgrid. Details of compliance must be submitted to the satisfaction of the Certifying Authority prior to the commencement of the relevant works.	Preliminary consultation with Ausgrid has been undertaken. Ausgrid has confirmed acceptance of proposed HHR methodology and exhaust stack/zone sub proximity. Contractor to develop detailed solution and implement.	Principal	Ausgrid endorsement required prior to commencement of works		
Requirements of Public Authorities						
B51	The Applicant must comply with the requirements of any public authorities (e.g. Ausgrid, Sydney Water, Telstra Australia) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services are the responsibility of the Applicant. Details of compliance with the requirements of any relevant public authorities must be submitted to the satisfaction of the Certifying Authority prior to the commencement of the relevant works.	Contractor	Contractor			
Demolition Works						
B52	Demolition work must comply with the provisions of Australian Standard AS2601 2001 The Demolition of Structures (Standards Australia, 2001). The work plans by AS2601 2001 must be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the statement of compliance shall be submitted to the Certifying Authority prior to the commencement of works.	Note: Documentation to be provided by the Contractor.	Contractor			
Hoarding						
B53	A separate application under section 138 of the Roads Act 1993 is to be made to the relevant road authority to erect a hoarding and/or scaffolding in a public road (if required) and such application is to include: a) architectural, construction and structural details of the design as well as proposed artwork; and b) structural certification prepared and signed by an appropriately qualified practising structural engineer. Evidence of the issue of a Structural Works Inspection Certificate and structural certification will be required prior to the commencement of construction works on site.	Contractor to obtain hoarding installation approval.	Contractor		Hoarding design to be installed finalised by AGNSW	
Barricade Permit						
B54	Where construction/building works require the use of a public place including a road or footpath, approval under section 138 of the Roads Act 1993 for a Barricade Permit is to be obtained prior to the commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of the relevant road authority.	Contractor	Contractor			
Interface Access Agreement						
B55	An Interface Access Agreement, between the Applicant and Roads and Maritime Services (RMS), must be prepared. A copy of the final agreement, endorsed by RMS, is to be provided to the Planning Secretary prior to the commencement of works.	AGNSW to submit on finalisation.	Principal		IAD executed, AGNSW to provide to the Planning Secretary	
Road Occupancy Licence						
B56	A Road Occupancy Licence (ROL) must be obtained from the relevant road authority under section 138 of the Roads Act 1993 for any activity that may impact on the operation of the road network. The ROL allows the Applicant to use a specified road space at approved times, provided certain conditions are met. The Applicant must allow a minimum of 10 working days for processing ROL applications. Traffic Control Plans are to accompany each ROL application(s) for any such activities.	Contractor to manage and obtain if and as required.	Contractor			
Parking Restrictions						
B57	The Applicant shall ensure it has obtained approval from Council's Pedestrian Cycling and Traffic Calming Committee for any changes required to on-street parking restrictions for construction, prior to the commencement of the relevant works.	Contractor to advise impact and provide documentation.	Contractor			
Maritime Exclusion Zone						
B58	The Applicant shall contact RMS at least four weeks prior to the establishment of any maritime exclusion zone and provide details of the start and end dates for the maritime exclusion zone and associated construction activities. Details should be sent to maritimelicensing@msw.nsw.gov.au .	Contractor to manage approval.	Contractor			
Construction Licence						
B59	If required, the Applicant shall ensure it has obtained a Construction Licence from RMS in respect to any required occupation of RMS land during construction, prior to the commencement of works.	AGNSW to manage and acquire licence.	Principal	Prior to commencement of works	Captured in IAD	
Heritage Dilapidation Survey						
B60	Prior to the commencement of works, a heritage specific dilapidation survey and report for significant elements, materials and finishes in the existing gallery building and site (including the forecourt sculptures) must be prepared and a copy provided to the Certifying Authority.	Contractor to commission and provide survey. AGNSW to provide high level brief identifying the significant elements, materials and finishes that must be covered by the survey.	Contractor	Prior to commencement of works		
Construction Environmental Management Plan						

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<p>B61</p>	<p>Prior to the commencement of works, the Applicant shall prepare and implement a Construction Environmental Management Plan (CEMP) for the development and be submitted to the Certifying Authority. The CEMP must:</p> <ul style="list-style-type: none"> a) describe the relevant stages and phases of construction including work program outlining relevant timeframes for each stage/phase; b) describe all activities to be undertaken on the site during site establishment and construction of the development; c) clearly outline the stages/phases of construction that require ongoing environmental management monitoring and reporting; d) detail statutory and other obligations that the Applicant is required to fulfil during site establishment and construction, including approvals, consultations and agreements required from authorities and other stakeholders, and key legislation and policies; e) be prepared in consultation with the Council, EPA, DPI, RMS, TNSW, and the OEH Heritage Division and include specific consideration of measures to address any requirements of these agencies during site establishment and construction; f) describe the roles and responsibilities for all relevant employees involved in the site establishment and construction of the works; g) detail how the environmental performance of the site preparation and construction works will be monitored, and what actions will be taken to address identified potential environmental impacts, including but not limited to noise, traffic and air impacts; h) include measures to ensure adequate groundwater entitlement is sourced in order to account for groundwater flows into the construction excavations, unless any exemption applies; i) management of groundwater during construction; j) commits to relocating intertidal and subtidal boulders, moved for installation of the sea water heat exchange system pipes, back to their original position or otherwise within the appropriate intertidal or subtidal zone in the vicinity; k) designs erosion and sediment controls to be used during construction to reduce the potential for turbidity related impacts to Woolloomooloo Bay; l) document and incorporate all relevant sub environmental management plans (Sub-Plans), control plans, studies and monitoring programs required under this part of the consent; and m) include arrangements for community consultation and complaints handling procedures during construction. <p>In the event of any inconsistency between the consent and the CEMP, the consent shall prevail.</p> <p>Prior to the commencement of works, a copy of the CEMP must be submitted to Council and the Planning Secretary</p>	<p>Contractor to prepare</p>	<p>Contractor</p>			
<p>Construction Pedestrian Traffic Management Plan</p>						
<p>B62</p>	<p>Prior to the commencement of works, a Construction Pedestrian Traffic Management Plan (CPTMP) prepared by a suitably qualified person shall be endorsed by TNSW (Sydney Coordination and Metro Delivery Offices) and submitted to the Certifying Authority. The CPTMP must be prepared in consultation with Council, TNSW (Sydney Coordination and Metro Delivery Offices), and RMS. The CPTMP shall address (but not be limited to):</p> <ul style="list-style-type: none"> a) location of the proposed work zone; b) haulage routes; c) construction vehicle access and traffic control arrangements; d) proposed construction hours; e) estimated number of construction vehicle movements; f) any changes required to on street parking; g) restriction on vehicles over 6 m in length turning right from Lincoln Crescent into Cowper Wharf Road; h) construction program; i) any potential impacts to general traffic, cyclists, pedestrians and bus services within the vicinity of the site from construction vehicles during the construction; j) cumulative construction impacts of projects including Sydney Light Rail Project and Sydney Metro City and South West considering any traffic and pedestrian management plans prepare for these projects to ensure that work activities are coordinated and managed to minimise impacts on the road network; k) measures to ensure construction vehicles do not arrive at the site or surrounding areas outside approved hours; l) measures proposed to mitigate any associated general traffic, public transport, pedestrian access and cyclist impacts/conflicts; and m) measures to encourage public transport use and other non-car travel options by construction workers. <p>Prior to the commencement of works, a copy of the CPTMP must be submitted to Council and the Planning Secretary</p>	<p>Contractor to prepare</p>	<p>Contractor</p>			
<p>Construction Noise and Vibration Management Plan</p>						
<p>B63</p>	<p>Prior to the issue of the relevant Crown Building Works Certificate, a Construction Noise and Vibration Management Plan (CNVMP) prepared by a suitably qualified person shall be submitted to the Certifying Authority. The CNVMP must be prepared in consultation with, and address the relevant requirements of, Council and the EPA. The CNVMP shall address (but not be limited to):</p> <ul style="list-style-type: none"> a) be prepared in accordance with the EPA's Interim Construction Noise Guideline; b) identify nearby sensitive receivers and land uses; c) identify the noise management levels for the project; d) identify the construction methodology and equipment to be used and the key sources of noise and vibration; e) details of all reasonable and feasible management and mitigation measures to be implemented to minimise construction noise and vibration; f) be consistent with and incorporate all relevant recommendations and noise and vibration mitigation measures outlined in the Acoustic Report (dated 28 February 2018) in Appendix P of the RTS; g) ensure all potentially impacted sensitive receivers are informed by letterbox drops prior to the commencement of construction of the nature of works to be carried out, the expected noise levels and duration, as well as contact details for a construction community liaison officer; and h) include a suitable proactive construction noise and vibration monitoring program which aims to ensure the construction noise and vibration criteria in this consent are not exceeded. <p>Prior to the commencement of works, a copy of the CNVMP must be submitted to Council and the Planning Secretary</p>	<p>Contractor to prepare</p>	<p>Contractor</p>			
<p>Air Quality and Odour Management Plan</p>						

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B64	<p>Prior to the issue of the relevant Crown Building Works Certificate, an Air Quality and Odour Management Plan (AQOMP) must be prepared and submitted to the Certifying Authority. The AQOMP must recommend measures to minimise and manage any odours arising from excavation, stockpiling and removal of contaminated and acid sulfate soils including, but not limited to:</p> <ul style="list-style-type: none"> a) staged excavation to limit the surface area of exposed odorous material; b) application of odour suppressants; c) effective covering of stockpiles and truckloads of excavation spoil; and d) expedited removal of odorous material from the development to a facility legally able to accept those wastes. <p>The AQOMP should include consideration of measures referenced in the Air Quality Assessment dated November 2017 (Appendix AJ in the EIS) and must include proactive and reactive management strategies, key performance indicators, monitoring measures, record keeping, response mechanisms, contingency and compliance reporting measures.</p>	Contractor to prepare.	Contractor			
Waste Management Plan						
B65	<p>Prior to the commencement any construction (including demolition), a Waste Management Plan (WMP) must be prepared and submitted to the Certifying Authority. The WMP must:</p> <ul style="list-style-type: none"> a) demonstrate that an appropriate area will be provided for the storage of garbage bins and recycling containers and all waste and recyclable material generated by the works; b) provide details demonstrating compliance with the relevant legislation, particularly with regard to the removal of asbestos and hazardous waste, the method of containment and control of emission of fibres to the air; c) require that all waste generated during the project is assessed, classified and managed in accordance with the EPA's "Waste Classification Guidelines Part 1: Classifying Waste"; d) require that the body of any vehicle or trailer used to transport waste or excavation spoil from the Subject Site, is covered before leaving the Subject Site to prevent any spill, or escape of any dust, waste, or spoil from the vehicle or trailer; e) require that mud, splatter, dust and other material likely to fall from or be cast off the wheels, underside or body of any vehicle, trailer or motorised plant leaving the Subject Site, is removed before the vehicle, trailer or motorised plant leaves the Subject Site; f) require that concrete waste and rinse water are not disposed on the site and are prevented from entering Sydney Harbour; and <p>The design and management of waste must comply with the requirements of City of Sydney Development Control Plan 2012.</p>	Contractor to prepare.	Contractor			
Water and Stormwater Management Plan						
B66	<p>Prior to the commencement of works, a detailed Water and Stormwater Management Plan, prepared by a suitably qualified person and endorsed by City of Sydney Council, shall be submitted to the satisfaction of the Certifying Authority.</p>	Contractor to prepare for endorsement by Council. To include responses to comments made by Council on civil tender drawings. Note - can either be undertaken by ARUP Civil now, or by the Contractor at a later stage.	Contractor	Prior to the commencement of works		
Crime Prevention Through Environmental Design (CPTED)						
B67	<p>To minimise the opportunity for crime in accordance with CPTED principles, the relevant recommendations provided in the CPTED Report dated 16 February 2018 (Appendix O of the RTS), shall be demonstrated on the architectural plans (in consistency with Condition D12) prior to the commencement of the relevant works.</p>	Contractor to prepare	Contractor			
Acid Sulfate Soils Management Plan						
B68	<p>Prior to the commencement of works, an Acid Sulfate Soils Management Plan, prepared by a suitably qualified person, shall be submitted to the Certifying Authority.</p>	Contractor to prepare based on the one supplied in SSDA submission.	Contractor			
Hazardous Materials Management Plan						
B69	<p>Prior to the commencement of works, a Hazardous Materials Management Plan (HMMP) prepared by a suitably qualified person, shall be submitted to the Certifying Authority. The HMMP must be prepared in consultation with the EPA and SafeWork NSW. The HMMP must:</p> <ul style="list-style-type: none"> a) ensure the development complies with the NSW Occupational Health and Safety Regulation 2001 and Part 7 of the Protection of the Environment Operations (Waste) Regulation 2014; b) be consistent with Safe Work Australia's codes of practice How to Safely Remove Asbestos 2011 and How to Manage and Control Asbestos in the Workplace 2011; c) identify any known or potential areas of concern on site for hazardous and asbestos containing materials; d) outline the procedures for identification, handling and disposal of hazardous materials; e) include an Asbestos Management Plan; f) ensure that all hazardous materials would be handled and disposed of by suitably qualified and licensed experts in accordance with the relevant guidelines and legislation; g) ensure an induction process is in place for site workers and visitors regarding the identification of hazardous and asbestos containing materials and the formal procedures to be followed if such materials are identified on site; h) include a suitable airborne asbestos fibre monitoring program for all asbestos removal works areas; and i) outline the procedures for validation and inspection following the completion of asbestos removal works and issuing of asbestos clearance certificates. <p>Prior to the commencement of works, a copy of the HMMP must be submitted to the EPA, SafeWork NSW and the Department.</p>	Contractor to prepare based on the one supplied in SSDA submission.	Contractor			
B70	<p>The Applicant shall comply with any notification requirements to SafeWork NSW concerning the handling and removal of any asbestos.</p>	Note				
B71	<p>Prior to the commencement of any work, the Applicant is required to satisfy the requirements of the Protection of the Environment Operations (Waste) Regulation 2014 with particular reference to Part 7 asbestos wastes.</p>		Contractor			
Contamination						
B72	<p>Prior to the commencement of any works, an Unexpected Contamination Finds Protocol (UFP) prepared by a suitably qualified and experienced expert shall be submitted to the satisfaction of the EPA and the Certifying Authority. The UFP must be developed considering the findings of the Stage 1 Preliminary Environmental Study (dated 25 September 2017) in Appendix T of the EIS, the Remedial Action Plan (dated 25 September 2017) in Appendix Y of the EIS, and the Site Audit Report (dated 2 December 2016) in Appendix Z of the EIS. The UFP must be implemented for the duration of construction works.</p>	Contractor to prepare.	Contractor			
C DURING CONSTRUCTION						
Demolition						
C1	<p>Demolition work must comply with Australian Standard AS 2601-2001 The demolition of structures (Standards Australia, 2001). The work plans required by AS 2601-2001 must be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the statement of compliance must be submitted to the PCA before the commencement of works.</p>	Contractor to prepare.	Contractor			
Construction Hours						
C2	<p>Construction, including the delivery of materials to and from the site, may only be carried out between the following hours:</p> <ul style="list-style-type: none"> a) between 7.00 am and 6.00 pm, Mondays to Fridays inclusive; b) between 8.00 am and 3.30 pm, Saturdays. 	Note	Contractor			

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C3	No construction work may be carried out on Sundays or public holidays.	Note			
C4	Activities may be undertaken outside of these hours if required: a) by the Police or a public authority for the delivery of vehicles, plant or materials; or b) in an emergency to avoid the loss of life, damage to property or to prevent environmental harm	Note	Contractor		
C5	Notification of such activities must be given to affected residents before undertaking the activities or as soon as is practical afterwards.	Note			
C6	Rock breaking, rock hammering, sheet piling, pile driving and similar activities may only be carried out between the following hours: a) 9.00 am to 12.00 pm, Monday to Friday, b) 2.00 pm to 5.00 pm, Monday to Friday, and c) 9.00 am to 12.00 pm, Saturday.	Note	Contractor		
Noise and Vibration Management					
C7	The development must be constructed with the aim of achieving the construction noise management levels detailed in the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009). All feasible and reasonable noise mitigation measures must be implemented and any activities that could exceed the construction noise management levels must be identified and managed in accordance with the Construction Environmental Management Plan.	Note	Contractor		
C8	Heavy vehicles and oversized vehicles must not queue or idle on Art Gallery Road, Mrs Macquaries Road or Lincoln Crescent outside of construction zones awaiting access to the Subject Site.	Note	Contractor		
C9	The Applicant must schedule intra-day 'respite periods' for construction activities predicted to result in noise levels in excess of the 'highly noise affected' levels, including the addition of 5 dB to the predicted levels for those activities identified in the Interim Construction Noise Guideline as being particularly annoying to noise sensitive receivers.	Note	Contractor		
C10	Vibration caused by construction at any residence or structure outside the subject site must be limited to: SSD 6471 NSW Government 26 Department of Planning and Environment a) for structural damage vibration to buildings (excluding heritage buildings), British Standard BS 7385 Part 2:1993 Evaluation and Measurement for Vibration in Buildings; b) for structural damage vibration to heritage buildings, German Standard DIN 4150 Part 3 Structural Vibration in Buildings Effects on Structure; and c) for human exposure to vibration, the evaluation criteria presented in British Standard BS 6842: Guide to Evaluate Human Exposure to Vibration in Buildings (1Hz to 80 Hz) for low probability of adverse comment.	Note	Contractor		
Site Protection and Works					
C11	All significant building fabric and building elements are to be protected during the works from potential damage. Protection systems must ensure historic fabric is not damaged or removed.	Note	Contractor		
C12	The installation of new services must be carried out in such a manner as to minimise damage to, or removal of, significant fabric.	Note	Contractor		
Disposal of Seepage and Stormwater					
C13	Any seepage or rainwater collected on-site during construction shall be either re-used or disposed of, so as not to cause pollution. Seepage or rainwater shall not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.	Note	Contractor		
Approved plans to be onsite					
C14	A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification must be kept on the Subject Site at all times and must be readily available for perusal by any officer of the Department, Council or the PCA.	Note	Contractor		
Site Notice					
C15	A site notice(s) must be prominently displayed at the boundaries of the Subject Site for the purposes of informing the public of project details including, but not limited to the details of the Builder, Certifying Authority and Structural Engineer. The notice(s) is to satisfy all, but not be limited to, the following requirements: a) minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size; b) the notice is to be durable and weatherproof and is to be displayed throughout the works period; c) the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24-hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and d) the notice(s) is to be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.	Contractor to submit for approval by the Principal and install as approved	Contractor		
Archaeology					
C16	The Historical Archaeologist nominated under condition B21 must be on-site to monitor all sub-surface works associated with excavation within areas of archaeological potential.	Contractor to coordinate with AGNSW appointed archeologist	Contractor	Ongoing Consultant to be engaged prior to construction	
Impacts of Below Ground (Sub Surface) Works – Non-Aboriginal Objects					
C17	If during the course of construction the Applicant becomes aware of any previously unidentified heritage object(s), all work likely to affect the object(s) must cease immediately and the OEH Heritage Division must be notified immediately and consulted with regard to the recommencement of works. This protocol must be included in the induction for all construction workers on the site.	Note	Contractor		
Impacts of Below Ground (Sub Surface) Works – Aboriginal Objects					
C18	The management and mitigation measures contained in the Aboriginal Cultural Heritage Assessment Report prepared by GML Heritage, dated August 2018, must be implemented. If during the course of construction the Applicant becomes aware of any previously unidentified Aboriginal object(s), all work likely to affect the object(s) must cease immediately and OEH informed in accordance with section 89A of the National Parks and Wildlife Act 1974. Relevant works must not recommence until written authorisation from the OEH Heritage Division is received by the Applicant. This protocol must be included in the induction for all construction workers on the site.	Contractor to include in induction.	Contractor	Ongoing Consultant to be engaged prior to construction	
Maritime Archaeology					
C19	If the pipelines are to be laid in a trench, arrangements must be made for the nominated maritime archaeologist to inspect the site during trenching or immediately upon completion of trenching but prior to installation of the pipes. If any relics are found during trenching, work must cease in that area and advice sought from the Nominated Maritime Archaeologist. If any maritime relics of State significance are uncovered, all work shall immediately cease in that area and a written assessment of the nature and significance of the resource, together with the treatment of the remains shall be submitted to the Planning Secretary and delegate of the OEH Heritage Division for approval. The method of materials conservation, archival documentation and conservation and storage of any items recovered during any trenching works, prepared in accordance with condition B23, must be complied with.	Note	Contractor	Ongoing Consultant to be engaged prior to construction	
Contamination					
C20	Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about site contamination, the Department must be immediately notified and works must cease. Works must not recommence on site until the Department confirms works can recommence.	Note	Contractor		

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C21	Groundwater discharged from the site must not be contaminated by hydrocarbons or other chemicals associated with previous use of the site for naval fuel storage or iron from local bedrock.	Note	Contractor		
	SafeWork NSW Requirements				
C22	To protect the safety of work personnel and the public, the work site must be adequately secured to prevent access by unauthorised personnel, and work must be conducted at all times in accordance with relevant SafeWork NSW requirements.	Note	Contractor		
	Hoarding/Fencing Requirements				
C23	The following hoarding requirements must be complied with: a) no third-party advertising is permitted to be displayed on the subject hoarding/fencing; and b) the construction site manager must be responsible for the removal of all graffiti from any construction hoarding/fencing or the like within the construction area within 48 hours of its application.	Note	Contractor		
	Implementation of Management Plans				
C24	The Applicant must ensure the requirements of the Construction Environmental Management Plan, Construction Noise and Vibration Management Plan, Construction Pedestrian Traffic Management Plan, Construction Waste Management Plan, Geotechnical Design, Certification and Monitoring Plan, Tree Protection Plan, Air Quality and Odour Management Plan and Acid Sulfate Soils Management Plan required by Part B of this consent are implemented during construction.	Note	Contractor		
	Waste Management				
C25	Notwithstanding the WMP referred to in condition B70, the Applicant must ensure that: a) all waste generated by the development is classified and managed in accordance with the EPA's Waste Classification Guidelines Part 1: Classifying Waste 2009; b) all waste generated by the development is treated and/or disposed of at a facility that has sufficient capacity to and may lawfully accept that waste; c) waste (including litter, debris or other matter) is not caused or permitted to enter the waters of Sydney Harbour; d) any vehicle used to transport waste or excavation spoil from the site is covered before leaving the premises; e) the wheels of any vehicle, trailer or mobilised plant leaving the site are cleaned of debris prior to leaving the premises; and f) concrete waste and rinse water are not disposed of on the site and are not caused or permitted to enter the waters of Sydney Harbour.	Note	Contractor		
	Asbestos and Hazardous Waste Removal				
C26	Any existing filling on the site must be assessed for the presence of asbestos materials during construction. All materials requiring removal from the site must be classified in accordance with Waste Classification Guidelines (NSW EPA, 2014). The Applicant must satisfy the requirements of the Protection of the Environment Operations (Waste) Regulation 2014 to ensure that demolition works are undertaken so that cross-contamination of the site does not occur.	Note	Contractor		
C27	Removal of asbestos and other hazardous building materials must be undertaken by a suitably licensed contractor and an asbestos clearance certificate must be provided before waste classification, disposal or site validation is undertaken.	Note	Contractor		
	Covering of Loads				
C28	All vehicles involved in the excavation and / or demolition process and departing from the property with materials, spoil or loose matter must have their loads fully covered before entering the public roadway.	Note	Contractor		
	Vehicle Cleansing				
C29	Prior to the commencement of work, suitable measures are to be implemented to ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the Site. It is an offence to allow, permit or cause materials to pollute or be placed in a position from which they may pollute waters.	Note	Contractor		
	Stockpile Management				
C30	The Applicant must ensure: a) stockpiles of excavated material do not exceed 4 metres in height; b) stockpiles of excavated material are constructed and maintained to prevent cross contamination; and c) suitable erosion and sediment controls are in place for stockpiles.	Note	Contractor		
	Erosion and Sediment Control				
C31	All erosion and sediment control measures are to be effectively implemented and maintained at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.	Note	Contractor		
	Dust Control Measures				
C32	Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures should be adopted: a) physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions; b) earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed; c) all materials shall be stored or stockpiled at suitable locations and stockpiles shall be maintained at manageable sizes which allow them to be covered, if necessary, to control emissions of dust and/or VOCs/odour; d) the surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs; e) all vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material; f) all equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive-through washing bays; g) gates shall be closed between vehicle movements and shall be fitted with shade cloth; and h) cleaning of footpaths and roadways shall be carried out regularly.	Note	Contractor		
	No Obstruction of Public Way				
C33	The public way must not be obstructed other than as specified in the Construction Pedestrian Traffic Management Plan and Section 138 permit, by any materials, vehicles, refuse skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by the Planning Secretary to stop all work on site.	Note	Contractor		
	Contact Telephone Number				
C34	The Applicant must ensure that the 24-hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.	Note	Contractor		
	Acid Sulfate Soils				

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C35	The Applicant must ensure that any acid sulfate soils (ASS) and potential acid sulfate soils (PASS) excavated or otherwise disturbed during construction is managed in accordance with: a) the Acid Sulfate Soil Management Plan for the site (condition B66); b) the Acid Sulfate Soils Manual 1986 (NSW Acid Sulfate Soil Management Advisory Committee); and c) the EPA's Waste Classification Guidelines 2014 (Part 4: Acid Sulfate Soils)	Note	Contractor		
Bunding					
C36	The Applicant shall store all chemicals, fuels and oils used on-site in appropriately banded areas in accordance with the requirements of all relevant Australian Standards, EPL requirements and/or EPA's Storing and Handling Liquids: Environmental Protection - Participants Handbook.	Note	Contractor		
Pollution of Waters					
C37	No approval is granted to pollute waters. All water discharge from the site must meet all requirements of the Protection of the Environment Operations Act 1997.	Note	Contractor		
Protection of Trees					
C38	No trees are to be removed or transplanted unless specifically identified for removal or transplantation in the approved landscape plans (condition A3) or removal is required in an emergency to avoid the loss of life or damage to property.	Note	Contractor		
C39	Within and adjacent to the site, tree removal, protection of retained trees, pruning of trees and transplanting of trees shall be conducted in accordance with the recommendations of the Arboricultural Impact Assessment Report, dated November 2017 (Appendix AH in the EIS).	Note	Contractor		
C40	A Project Arborist with minimum AQF level 5 qualifications is to be engaged to ensure adequate tree protection measures are put in place for all trees to be retained on the subject site and neighbouring allotments and that recommendations contained within the Arboricultural Impact Assessment Report, dated November 2017 (Appendix AH in the EIS) are carried out.	Contractor to propose a suitable qualified arborist for endorsement by the Principal.	Contractor	Consultant to be engaged prior to construction	
C41	All trees are to be monitored by the Project Arborist to ensure adequate health throughout the construction period is maintained. Additionally, all work within the Tree Protection Zones is to be supervised throughout construction. All tree works must be carried out in accordance with all relevant Australian Standards.	Note	Contractor		
Selection of Appropriate Tradespeople					
C42	All heritage work must be carried out by suitably qualified tradespeople with practical experience in conservation and restoration of similar structures, materials and methods.	Note	Contractor		
Nominated Historical Archaeologist					
C43	The Nominated Historical Archaeologist (refer to condition B21) is to regularly inspect the site and provide ongoing advice to the tradespeople undertaking the works for the duration of construction to ensure that there is no unapproved removal of elements, significant fabric is not damaged and that all work is being carried out in accordance with the conditions of this consent.	Note. Contractor to coordinate inspections.	Contractor	Ongoing. Consultant to be engaged prior to construction	
D PRIOR TO OCCUPATION OR COMMENCEMENT OF USE					
Nominated Historical Archaeologist					
D1	Prior to occupation or commencement of use, the Applicant shall provide a report to the Planning Secretary and the OEH Heritage Division prepared by the Nominated Historical Archaeologist certifying all heritage works have been carried out in accordance with the terms of this consent outlined in Condition A2.	AGNSW to manage.	Principal	Prior to occupation	
Seawater Heat Exchange System					
D2	Prior to occupation or commencement of the use, the Applicant is to provide documentation to the PCA demonstrating the design of the seawater heat exchange system complies with the preliminary design details outlined in the Seawater Heat Exchange Report (dated 16 March 2018) in Appendix H of the RTS.	Contractor to manage and provide documentation and certification.	Contractor		
Environmental Sustainability					
D3	Prior to occupation or commencement of the use, the Applicant is to provide documentation to the PCA demonstrating the development has incorporated, and would operate in accordance with, the environmental sustainability objectives, measures and initiatives outlined in the Sustainable Development Report (dated 1 November 2017) in Appendix AB of the EIS, taking into consideration amendments required by condition B4.	Contractor to provide all required design documentation and Greenstar as built certification. AGNSW to develop operating plan.	Contractor/Principal	Prior to occupation	
Public Domain and Landscaping Works					
D4	All public domain and landscape works are to be completed prior to occupation or commencement of use, with the exception of the forecourt plaza which must be completed within 6 months of the occupation or commencement of use.	Note	Contractor	Post Occupation	
Operational Plan of Management					
D5	Prior to occupation or commencement of the use, a new/updated Operational Plan of Management (OPM) prepared by a suitably qualified person shall be submitted to and approved by the Planning Secretary. The OPM must be prepared in consultation with Council and the Royal Botanic Gardens and Domain Trust. The OPM shall address (but not be limited to): a) operational strategies for the expanded Art Gallery of NSW (AGNSW); b) roles and responsibilities of key employees involved in overseeing the management and operation of the expanded AGNSW; c) hours of operation; d) event management, loading and unloading, sustainable travel, traffic, transport access and parking, pedestrian access, noise and vibration, heritage and conservation management, security and staff management, emergency management/evacuation and incident response protocols, alcohol and food management, occupational health and safety, infrastructure and services management, patron safety, waste management, water management, wayfinding and signage and lighting, and e) community consultation and complaints management procedures. Prior to occupation or commencement of the use, a copy of the OPM must be submitted to the Council and the Certifying Authority.	AGNSW to prepare.	Principal	Prior to occupation	
Green Travel Plan					
D6	Prior to occupation or commencement of the use, a Green Travel Plan (GTP) prepared by a suitably qualified person shall be endorsed by TNSW (Sydney Coordination Office) and submitted to the Certifying Authority. The GTP must be prepared in consultation with Council, RMS and TNSW (Sydney Coordination Office). The GTP shall outline all measures proposed to increase the mode share of walking and cycling to the site and expanded AGNSW. The GTP shall include a monitoring requirement in relation to the future demand for the expansion of staff and visitor bicycle parking spaces and staff end-of-trip facilities and provision of visitor end-of-trip facilities. The Applicant shall deliver on any recommendations for expansion or provision of facilities from the results of the monitoring.	AGNSW to prepare.	Principal	Prior to occupation	
Loading Dock and Vehicle Management Plan					

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D7	<p>Prior to occupation or commencement of the use, a Loading Dock and Vehicle Management Plan (LDVMP), prepared by a suitably qualified person, shall be endorsed by TfNSW (Sydney Coordination and Metro Delivery Offices), RMS and Council and submitted to the Certifying Authority. The LDVMP must outline all measures to be implemented to ensure the safe and efficient operation of the loading dock and to minimise disruption to neighbouring properties, Lincoln Crescent and the adjacent road network. The LDVMP shall address (but not be limited to):</p> <p>a) loading dock management details including service vehicle movements during peak periods, the maximum size and number of vehicles per day, and staggering of delivery times throughout the loading dock operating period;</p> <p>b) restriction on the use of vehicle reversing alarms between 9 pm and 7 am;</p> <p>c) closure of the loading dock door during loading dock activities;</p> <p>d) no collection of glass waste (i.e. bottles) between 6 pm and 7 am Monday to Saturday and 6 pm and 8 am Sundays and public holidays;</p> <p>e) ensure timing of HRVs is managed to minimise internal loading dock conflict;</p> <p>f) consider pre-booking of deliveries to manage timing of loading dock access;</p> <p>g) management of incidents at the access to the loading dock entry from Lincoln Crescent;</p> <p>h) confirm that the vehicle access and circulation areas are designed in accordance with the relevant Australian Standards, including for loading dock areas;</p> <p>i) management of conflicts between vehicles accessing the loading dock and staff car and bicycle parking;</p> <p>j) management of conflicts between vehicles accessing the site and pedestrian movements adjacent to the site;</p> <p>k) with the exception of smaller vehicles utilising the loading area on Art Gallery Road, ensure all service and loading vehicles associated with the use of the premises are accommodated on site at all times.</p> <p>A copy of the LDVMP must be provided to the Planning Secretary.</p>	AGNSW to prepare.	Principal	Prior to occupation		
Waste Management Plan						
D8	<p>Prior to the commencement of use, an updated Waste Management Plan (WMP) prepared by a suitably qualified person shall be submitted to the Certifying Authority. The WMP must be prepared in consultation with Council and the EPA.</p> <p>The WMP must outline all measures that would be implemented to ensure the effective management of operational waste associated with the development. The WMP must outline how waste would be minimised, handled, stored and disposed of in accordance with the relevant guidelines and legislation. Prior to the commencement of use, a copy of the WMP must be submitted to Council, the EPA and the Planning Secretary.</p>	AGNSW to prepare.	Principal	Prior to use		
Operational Noise and Vibration Management Plan						
D9	<p>Prior to occupation or commencement of the use, an Operational Noise and Vibration Management Plan (ONVMP) prepared by a suitably qualified person shall be submitted to the Planning Secretary for approval. The ONVMP must be prepared in consultation with Council and the EPA. The ONVMP shall include (but not be limited to):</p> <p>a) be prepared in accordance with the EPA's Industrial Noise Policy;</p> <p>b) identify nearby sensitive receivers and land uses;</p> <p>c) identify the noise limits applying to the development;</p> <p>d) identify all key sources of operational noise and vibration;</p> <p>e) details of all reasonable and feasible management and mitigation measures to be implemented to minimise noise and vibration including for the proposed café and associated outdoor terrace;</p> <p>f) be consistent with and incorporate all relevant recommendations and mitigation measures outlined in the Acoustic Report (dated 28 February 2018) in Appendix P of the RTS and the supplementary Acoustic Report (dated 4 July 2018) in Appendix G of the RTSAR (dated 8 August 2018);</p> <p>g) include a suitable proactive noise and vibration monitoring program which aims to ensure the noise and vibration criteria in this consent are not exceeded.</p> <p>Prior to the commencement of use, a copy of the approved NVMP must be submitted to Council, the Certifying Authority and the EPA.</p>	AGNSW to prepare.	Principal	Prior to occupation		
Mechanical Ventilation						
D10	<p>Following completion of the works, installation and testing of all the mechanical ventilation systems, the Applicant shall provide evidence to the satisfaction of the PCA, prior to the use of the development, that the installation and performance of the mechanical systems complies with:</p> <p>a) the Building Code of Australia;</p> <p>b) Australian Standard AS1668 and other relevant codes;</p> <p>c) the development consent and any relevant modifications; and</p> <p>d) any dispensation granted by the Fire and Rescue NSW.</p>	Contractor to provide all required certification of the works	Contractor			
Crime Prevention Through Environmental Design						
D11	<p>Prior to the commencement of use, evidence shall be submitted to the Certifying Authority demonstrating the recommendations of the CPTED Report dated 16 February 2018 (Appendix O of the RTS) (Condition B7.2) have been fulfilled.</p>	Contractor to provide all required certification of the works.	Contractor			
Internal Air Quality						
D12	<p>Prior to the commencement of use, evidence shall be submitted to the Certifying Authority demonstrating consultation with NSW Health regarding appropriate internal air quality criteria for the use of the former naval fuel bunker and an agreed monitoring program to ensure the ongoing suitability of use of the bunker.</p>	Contractor to provide all required certification of the works.	Contractor			
Road Damage						
D13	<p>The cost of repairing any damage caused to Council or other public authority's assets in the vicinity of the site as a result of construction works associated with the approved development is to be met in full by the Applicant prior to the occupation or commencement of the use.</p>	Note				
Restriction on Vehicles Turning Right from Lincoln Crescent						
D14	<p>Prior to the commencement of use, signage must be erected at the intersection of Lincoln Crescent and Cowper Wharf Road restricting any right turn movements of vehicles over 6 m in length exiting Lincoln Crescent. The signage must be retained in perpetuity.</p>	Contractor to install.	Contractor			
Parking Restrictions						
D15	<p>The Applicant shall ensure it has obtained approval from Council's Pedestrian Cycling and Traffic Calming Committee in relation to the requirements of condition D15 and for any changes required to on-street parking restrictions for the on-going operation of the development, prior to occupation or commencement of the use.</p>	AGNSW to manage.	Principal	Prior to occupation		
Sydney Water Compliance						
D16	<p>A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.</p> <p>Application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of the web site www.sydneywater.com.au then follow the "e-Developer" icon or telephone 13 20 92 for assistance.</p> <p>The Section 73 Certificate must be submitted to the PCA prior to the use of the development.</p>	Contractor to manage and provide documentation and certification.	Contractor			
Utility Providers						
D17	<p>Prior to occupation or commencement of the use, written advice shall be obtained from the relevant water supply authority, wastewater disposal authority, electricity supply authority, an approved telecommunications carrier and an approved gas carrier (where relevant) stating that satisfactory arrangements have been made to ensure provision of adequate services.</p>	Contractor to manage and provide documentation and certification.	Contractor			
Fire Safety Certification						
D18	<p>Prior to the occupation or commencement of use of the development, a Fire Safety Certificate shall be obtained for all the Essential Fire or Other Safety Measures forming part of this consent. A copy of the Fire Safety Certificate must be submitted to the relevant authority and be prominently displayed in the building.</p>	Contractor to manage and provide documentation and certification.	Contractor			
Structural Inspection Certificate						

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D19	A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the PCA prior to the use of the development and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact approval authority for specific electronic format) shall be submitted to the Department and Council after: a) the site has been periodically inspected and the Certifier is satisfied that the structural works is deemed to comply with the final design drawings; and b) the drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s	Contractor to provide all required certification of the works	Contractor			
Post-Construction Dilapidation Report						
D20	Prior to occupation or commencement of the use: a) the Applicant must engage a suitably qualified person to prepare a post-construction dilapidation report at the completion of the construction works. This report to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads. b) the report is to be submitted to the Certifying Authority. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the Certifying Authority must: c) compare the post-construction dilapidation report with the pre-construction dilapidation report required by these conditions; d) have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads; and e) a copy of this report is to be forwarded to the Council and the Planning Secretary and each of the affected property owners	Contractor to provide	Contractor			
Waste and Recycling Collection						
D21	Prior to the occupation or commencement of the use, whichever is the earlier, the building owner must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. the roadways, footpaths, plazas, and reserves at any time	AGNSW to arrange	Principal	Prior to occupation		
Food Premises – Health Registration Database						
D22	Prior to the commencement of food handling operations, the proprietor of the food premises must notify and register the food premises with Council's Health and Building Unit and the NSW Health Department at www.foodnotify.nsw.gov.au prior to the opening of the premises	AGNSW to arrange	Principal	Prior to use		
D23	Prior to the commencement of food handling operations, the proprietor of the food premises must notify the NSW Health Department of the following information: a) contact details of the food business including the name of the food business and the name and address of the proprietor; b) the nature of the food business; and c) the location of all food premises of the food business within the jurisdiction of NSW Health	AGNSW to arrange	Principal	Prior to use		
Sanitary Facilities for Disabled Persons						
D24	Prior to occupation and commencement of the use, details must be provided to the Certifying Authority demonstrating that the provision of sanitary facilities for disabled persons within the premises complies with Section F2.4 of the BCA and Condition B49	Contractor to manage and provide documentation and certification	Contractor			
Protection of Public Infrastructure						
D25	Unless the Applicant and the applicable authority agree otherwise, the Applicant must: a) repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by carrying out the development; and b) relocate, or pay the full costs associated with relocating any infrastructure that needs to be relocated as a result of the development	Note				
Public Domain Works – Hold Points and Handover						
D26	Prior to a Certificate of Completion being issued for public domain works and before the use of the development commences, whichever is earlier, electronic works-as-executed (as-built) plans and documentation, certified by a suitably qualified, independent professional are submitted to and accepted by Council for all public domain works. Completion and handover of the constructed public domain works must be undertaken in accordance with the Council's Public Domain Manual and Sydney Streets Technical Specification, including requirements for as-built documentation, certification, warranties and the defects liability period	Contractor to manage and provide documentation and certification	Contractor			
Fuel Bunker Wall Greening Plan and Implementation						
D27	Prior to the occupation or commencement of use, a landscape plan, endorsed by OEH Heritage Division, illustrating the proposed greening of the east facing fuel bunker wall, shall be prepared for review and approved by the Planning Secretary. The approved plan must be implemented prior to the occupation or commencement of use	AGNSW to develop strategy. Contractor to implement	Principal	Prior to occupation		
Interpretation Strategy						
D28	An Interpretation Strategy for the development must be prepared by a suitably qualified heritage interpretation practitioner and submitted to the OEH Heritage Division for review and endorsement. The strategy must make decisive recommendations on how a range of interpretation media should be included in the project to enhance an understanding of the heritage significance of the Art Gallery of NSW, the Royal Botanic Gardens and the Domain, and the former naval fuel bunker. The strategy is to include: a) interpretation objectives and principles for the site and the proposal; b) a targeted analysis of the significance of the place and the primary and secondary interpretation themes and messages for the site; c) identify the most effective options for delivery of interpretive programs (e.g. signage, artwork, interpretation as part of the new building, events, activities, guided tours, publications, internet etc.); and d) methods for monitoring and evaluating the implementation of the strategy. The strategy must recommend that an Interpretation Plan be prepared that confirms actual media, any event, activities, any construction work, installations and communication devices to be included in the development, the locations, artwork, content and a program for implementation. The Interpretation Strategy and Interpretation Plan shall be prepared as an integral component of the final detailed design of the development and must be submitted to the Planning Secretary and Certifying Authority prior to the occupation or commencement of use	AGNSW to develop strategy and implement	Principal	Prior to occupation		
Contamination						
D29	The recommendations of the Remedial Action Plan are to be implemented including provision of a Section A Site Audit Statement to the Certifying Authority at the completion of remediation and validation works certifying suitability of that part of the site requiring remediation as identified in the Remedial Action Plan for the proposed development. Groundwater is not to be abstracted from the site for beneficial use		Contractor			
E POST OCCUPATION OR DURING USE						
Operational Management						
E1	The Operational Plan of Management (refer to Condition D5) and all relevant plans must be fully implemented during use of the premises	Note				
Hours of Operation						

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E2	<p>The hours of operation shall be as specified in the table below.</p> <p>Land Use / Activities Maximum Hours of Operation</p> <p>Offices, general administration and duties, security</p> <p>24 hours</p> <p>Public access to Gallery spaces</p> <p>7 am to 12 midnight</p> <p>Multi-purpose room</p> <p>7 am to 10 pm (indoor areas only)</p> <p>No use of outdoor areas</p> <p>Cafe</p> <p>7 am to 12 midnight</p> <p>External terraces (including cafe terrace)</p> <p>7 am to 10 pm</p> <p>Loading dock</p> <p>24 hours Lifts Minimum Hours of Operation</p> <p>Lincoln Crescent public lift</p> <p>7 am to 6 pm Thursday to Tuesday</p> <p>7 am to 10 pm Wednesdays</p> <p>* Notwithstanding the above minimum hours of operation, the lift must be operational at least 30 minutes after the end of any functions or events within the AGNSW</p> <p>Land bridge public lift</p> <p>24 hours</p>	Note				
Operational Restrictions						
E3	<p>Operational restrictions shall apply as specified in the table below.</p> <p>Aspect Restriction</p> <p>Multi-purpose room</p> <p>Maximum capacity of 510 persons</p> <p>Cafe</p> <p>Maximum capacity of 150 persons</p> <p>Cafe terrace</p> <p>Maximum capacity of 500 persons</p> <p>Playing of amplified music outdoors</p> <p>No amplified music shall be played outdoors, including the public domain and outdoor areas associated with the premises</p> <p>Playing of amplified music indoors</p> <p>Internal speakers must not be placed to direct the playing of music towards the public domain or outdoor areas associated with the premises</p>	Note				
Noise Control – Plant and Machinery						
E4	<p>Noise associated with the operation of any plant, machinery or other equipment on the site, shall not give rise to any one or more of the following</p> <p>a) a sound pressure level at any affected residential property that exceeds the background (LA90, 15 minute) noise level by more than 5dB(A). The background noise level must be measured in the absence of noise emitted from the premises. The source noise level must be assessed as a LAeq, 15 minute, or</p> <p>b) exhibit tonal, impulsive or other annoying characteristics.</p>	Note				
Noise Monitoring						
E5	<p>During commissioning of any plant, machinery or other equipment operated on site and during general operations, the Applicant shall undertake noise monitoring to confirm compliance with the noise limits in condition E4 and E5 of this consent. In the event that compliance with the noise limits is not achieved, suitable attenuation measures must be implemented to achieve compliance and the ONVMP required under condition D9 be updated to include such measures.</p>	Note				
Noise Control						
E6	<p>The doors and windows of the cafe and the multi-function room must be closed after 10 pm.</p>	Note				
Unobstructed Driveways and Parking Areas						
E7	<p>At all times the service vehicle docks, car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.</p>	Note				
Review of Traffic and Transport Management Plans						
E8	<p>Within 12 months of the commencement of use, the Applicant must review each of the following plans in consultation TNSW (Sydney Coordination Office), Roads and Maritime Services and City of Sydney Council:</p> <p>a) the Green Travel Plan (condition D6);</p> <p>b) the Loading Dock and Vehicle Management Plan (condition D7).</p> <p>The review is to consider whether any amendments are required to the plans to ensure the efficient and safe management of the development to mitigate any adverse impacts to traffic (including buses) or pedestrian safety, or if any additional measures are required. The findings of each review and any amendments to the plans shall be submitted to the Coordinator General, Transport Coordination, within three months following the above periods.</p>	AGNSW to complete.	Principal	Within 12 months of commencement of use		
Loading/Unloading						
E9	<p>All vehicles using the loading dock shall enter and exit the site in a forward motion.</p>	Note				
E10	<p>All loading and unloading operations associated with the site must be carried out</p> <p>a) in accordance with the LDVMP (condition D7);</p> <p>b) within the confines of the site, at all times and must not obstruct other properties/units or the public way, and</p> <p>c) out in a manner so as not to cause inconvenience to the public or detrimentally impact the amenity of the locality.</p>	Note				
Annual Fire Safety Certificate						
E11	<p>An annual Fire Safety Statement must be given to Council and the Fire & Rescue NSW commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued. This must ensure that the essential services installed in the building for the purpose of fire safety have been inspected and at the time of inspection are capable of operating to the required minimum standard.</p>	AGNW to obtain.	Principal	12 months after initial Interim/Final Fire Safety Certificate is issued		
Fire Safety Certification						
E12	<p>The development shall operate in accordance with the Fire Safety Certificate obtained in accordance with condition D19 of this consent.</p>	Note				
Storage and Handling of Waste						
E13	<p>All waste collection services utilising Lincoln Crescent must not be undertaken outside the hours of 7.30 am to 6 pm Monday to Friday</p>	Note				
E14	<p>No waste must be placed for collection in a public place e.g. footpaths, roadways and reserves under any circumstances.</p>	Note				
Wastewater Disposal						
E15	<p>All domestic wastewater must be disposed of to the sewer in accordance with a current agreement with the relevant wastewater disposal authority.</p>	Note				

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No Pollution of Waters					
E16	No part of this approval provides any approval to pollute waters. The Applicant must ensure that any water quality, temperature and quantity discharge off-site complies with the requirements of the Protection of the Environment Operations Act 1997.	Note			
Bunding					
E17	The Applicant shall store all chemicals, fuels and oils used on-site in appropriately banded areas in accordance with the requirements of all relevant Australian Standards, EPL requirements and/or EPA's Storing and Handling Liquids - Environmental Protection - Participants Handbook.	Note			
Temporary Event Structures					
E18	Any temporary event structures shall comply with the relevant provisions of the applicable Australian Standards including the Australian Building Codes Board Temporary Structures Standard 2015 and the BCA.	Note			
Tree Planting, Landscape and Public Domain Works					
E19	All tree planting, landscaping and public domain works approved by condition A2, including planting a minimum of 273 trees, are to be completed prior to the commencement of use.	Note. The required tree planting is identified in tender documentation.	AGNSW preference for this to be Contractor responsibility		
Public Access					
E20	The Applicant must ensure that public access to, and around, the site is maintained at all times and is not unduly obstructed.	Note			
Operation of Plant and Equipment					
E21	All plant and equipment used on site, or to monitor the performance of the development must be: a) maintained in a proper and efficient condition, and b) operated in a proper and efficient manner.	Note			
Seawater Heat Exchange System Operation					
E22	The operation of the seawater heat exchange system must comply with the following at all times: a) any anti-foulant product used is registered at the time of use by the Australian Pesticides and Veterinary Medicines Authority for the purpose of a marine growth anti-foulant; b) waste water discharged must contain less than the concentration of anti-foulant product specified on the pesticides label for that product; c) the intake pipework is pigged not less than twice per year; d) an appropriate system is installed for the integrated collection and storage of all waste generated from pigging the intake pipework, and e) all pigging waste from the intake pipework is disposed of to sewer, or where such disposal is not approved by Sydney Water Corporation, is disposed of a facility legally able to accept the waste for treatment and proper disposal.	Note			
Public Domain Works - Defects Liability Period					
E23	All works to the Council's public domain, including rectification of identified defects, are subject to a 12-month defects liability period from the date of final completion. The date of final completion will be nominated by Council on the Certificate of Completion for public domain works.	Note			
Interpretation Plan					
E24	The Interpretation Plan (condition D28) must be fully implemented within 12 months of the completion of the works.	Note	AGNSW preference for this to be Principal responsibility	Within 12 months of completion	
E25	All sides of the Entry Canopy must remain fully accessible and open. The Entry Canopy must not be enclosed by any device, design feature (drop-down blinds, glass walls etc) or structure at any time.				
F PRIOR TO THE ISSUE OF SUBDIVISION CERTIFICATE/S					
Subdivision Certificate					
F1	A Subdivision Certificate shall be obtained prior to the registration of a final subdivision plan with the Registrar-General at the NSW Land and Property Information.	Note			
Creation of Easements					
F2	Easements for services, drainage, support and shelter, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over the appropriate lots in the subdivision pursuant to Section 88B of the Conveyancing Act 1919.	Note			
Registration of Easements					
F3	Prior to the issue of the final Subdivision Certificate, the Applicant shall provide to the PCA evidence that all matters required to be registered on title, including easements noted on the draft subdivision plans listed in Part A, approvals and other consents have been lodged for registration or registered at the NSW Land and Property Information.	AGNSW to complete.	Principal	Prior to issue of final subdivision certificate	
Encroaching and/or Shared Services					
F4	Any pipes, service lines or the like servicing each lot shall be contained within their respective lots or, if service lines encroach upon adjoining lots within the subdivision, or are shared by more than one lot, appropriate easements must be created, pursuant to Section 88B of the Conveyancing Act 1919, over the service lines where any such encroachment occurs.	Note			
AN ADVISORY NOTES					
APPEALS					
AN1	The Applicant has the right to appeal to the Land and Environment Court in the manner set out in the EP&A Act and the EP&A Regulation.				
OTHER APPROVALS AND PERMITS					
AN2	The Applicant shall apply to the relevant authority for all necessary permits including crane permits, road opening permits, hoarding or scaffolding permits, footpath occupation permits and/or any other approvals under section 68 (Approvals) of the Local Government Act 1993 or section 138 of the Roads Act 1993.				
RESPONSIBILITY FOR OTHER CONSENTS / AGREEMENTS					
AN3	The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.				
TEMPORARY STRUCTURES					
AN4	a) An approval under State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 must be obtained from the Authority for the erection of the temporary structures. The application must be supported by a report detailing compliance with the provisions of the BCA. b) Structural certification from an appropriately qualified practicing structural engineer must be submitted to the Authority with the application under State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007 to certify the structural adequacy of the design of the temporary structures.				
DISABILITY DISCRIMINATION ACT					

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AN5	This application has been assessed in accordance with the EP&A Act. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The Applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the BCA which references AS 1428.1 - Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the Disability Discrimination Act 1992 currently available in Australia.					
COMMONWEALTH ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999						
AN6	a) The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) provides that a person must not take an action which has, will have, or is likely to have a significant impact on a matter of national environmental significance (NES) matter, or Commonwealth land, without an approval from the Commonwealth Environment Minister. b) This application has been assessed in accordance with the EP&A Act. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation. It is the Applicant's responsibility to consult the Department of Sustainability, Environment, Water, Population and Communities to determine the need or otherwise for Commonwealth approval and you should not construe this grant of approval as notification to you that the EPBC Act does not have application. The EPBC Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.					
BUILDING PLAN APPROVAL						
AN7	You must have your building plans stamped and approved before any construction is commenced. Approval is needed because construction/building works may affect Sydney Water's assets (e.g. water, sewer and stormwater mains). For further assistance please telephone 13 20 92 or refer to the Building over or next to assets page on the Sydney Water website (see plumbing, building and developing then building over or next to assets).					
WORKS ON WATERFRONT LAND						
AN8	Any works on waterfront land should be carried out in accordance with the Guidelines for Controlled Activities on Waterfront Lands (2012).					

APPENDIX 1 WRITTEN INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

	<p>A written incident notification addressing the requirements set out below must be emailed to the Department at the following address: compliance@planning.nsw.gov.au within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under condition 0 or, having given such notification, subsequently forms the view that an incident has not occurred.</p> <p>WRITTEN INCIDENT NOTIFICATION REQUIREMENTS</p> <p>Written notification of an incident must:</p> <ol style="list-style-type: none"> identify the development and application number; provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident); identify how the incident was detected; identify when the Applicant became aware of the incident; identify any actual or potential non-compliance with conditions of consent; describe what immediate steps were taken in relation to the incident; identify further action(s) that will be taken in relation to the incident; and identify a project contact for further communication regarding the incident. <p>INCIDENT REPORT REQUIREMENTS</p> <p>Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.</p> <p>The Incident Report must include:</p> <ol style="list-style-type: none"> a summary of the incident; outcomes of an incident investigation, including identification of the cause of the incident; details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and details of any communication with other stakeholders regarding the incident. 					
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Part B

SYDNEY MODERN - AUTHORITY & PROVISIONAL SUMS REVIEW & APPROVALS	DATE FOR SUBMISSION OF ACCEPTABLE DOCUMENTATION	REQUIRED DATE OF APPROVAL
AUTHORITY APPROVALS	DATE	DATE
HIGH VOLTAGE (AUSGRID) <ul style="list-style-type: none"> • AUSGRID LEVEL 3 DESIGN REVIEW & APPROVAL FOR NEW CHAMBER SUBSTATION CONNECTIONS 	Already submitted	24/03/2020
NSW FIRE & RESCUE <ul style="list-style-type: none"> • NSW FIRE & RESCUE UPDATED FER REVIEW & APPROVAL • NOTE: ONLY REQUIRED IF THE CONTRACTOR DIVERTS FROM THE CURRENT FER (WHICH INCORPORATES INITIAL FEBQ) 	If required	38 days after submission
SSDA - SECTION 4.55 (COOLING TOWERS) APPROVAL <ul style="list-style-type: none"> • LATEST DATE FOR APPROVAL 	Already submitted	29/11/2019

Schedule 9 – Subcontract requirements

Refer to clause 28.4.1 of the GC21 General Conditions of Contract.

1 General requirements for specified subcontracts

In addition to its obligations under clause 28 and 29, for all Subcontracts valued at or over the amount stated in Contract Information item 29, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

1. clause 3 - Co-operation
2. clause 4 - Duty not to hinder performance
3. clause 5 - Early warning
4. clause 6 - Evaluation and monitoring
5. clause 10 - Governing law of the Contract
6. clause 13 - Compliance with Code of Practice for Procurement
7. clause 14 - No collusive arrangements
8. clause 15.1.2 - Work Health and Safety management, except that the submission and implementation of the Safe Work Method Statements is subject to the decision of the Contractor as principal contractor for work health and safety matters.
9. clause 15.1.6 - Aboriginal Participation in Construction
10. clause 16 - Work Health and Safety
11. clause 23 - Intellectual Property
12. clause 24 - Confidentiality
13. clause 25 - Media releases and enquiries
14. clause 26 - Care of people, property and the environment, indemnities and limitations
15. clauses 27.5, 27.10.1.1, 27.10.1.2, 27.10.1.5 and 27.10.1.6 - Insurances
16. clause 28 - Subcontractor relationships
17. clause 58 - Payment Claims
18. clause 59 - Payments
19. Schedule 1 (Subcontractor's Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 30 to provide the warranty)
20. Schedule 9 (Subcontract requirements)

Schedule 10 – Not used

Schedule 11 – Statement regarding Materials

Refer to clause 58.7 of the GC21 General Conditions of Contract.

I am a representative of *[name of company/entity with custody of the Materials or on whose land the Materials are stored]* in the capacity of *[insert position]* and I am authorised to make this statement on behalf of the Company. I confirm that the Company has no lien, charge or other encumbrance over the *Materials* listed in the schedule to this statement (“Materials”). I acknowledge that the *Materials* are the property of the Principal named in the schedule to this statement (“Principal”) and I hereby irrevocably authorise the Principal or its officers or others acting with its authority to enter the premises where the *Materials* are stored at any reasonable hour to inspect or remove the *Materials*. I undertake to make no claim or charge against the Principal in respect of the storage of the *Materials*.

SCHEDULE

Materials

[list the Materials]

Principal

[insert name of the Principal]

SIGNED.....

DATE:.....

Schedule 12 – Compliance with Building Code 2016

Refer to clause 13.15 of the GC21 General Conditions of Contract.

1. The Contractor must comply with the *Building Code 2016* (Building Code). Copies of the Building Code are available at <https://www.abcc.gov.au/building-code>.
2. Compliance with the Building Code shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any *Defect* in the works arising from compliance with the Building Code.
3. Where a change in the Contract is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Building Code will be affected.
4. The Contractor must maintain adequate records of compliance by it with the Building Code.
5. The Contractor must maintain adequate records of compliance with the Building Code by its Related Persons (as defined in the Building Code).
6. If the Contractor does not comply with the requirements of the Building Code in the performance of this Contract such that a sanction is applied by the Minister for Employment, without prejudice to any rights that would otherwise accrue, funding entities or funding recipients (as the case may be) shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of Commonwealth funded building work.
7. The Contractor must not enter into a Subcontract with a Subcontractor where:
 - (a) there are reasonable grounds to believe the building contractor or building industry participant is covered by an enterprise agreement that is inconsistent with the Building Code; or
 - (b) there are reasonable grounds to believe that the building contractor or building industry participant is a party to an agreement of a kind described in subsection 10(1) of the Building Code; or
 - (c) an exclusion sanction applies to the building contractor or building industry participant; or
 - (d) an adverse decision, direction or order of a court or tribunal has been made in relation to the building contractor or building industry participant and a contravention of any of the following in respect of building work:
 - (i) a designated building law; or
 - (ii) Workplace Health and Safety Legislation or a corresponding WHS law; or
 - (iii) the Competition and Consumer Act 2010; and,there are reasonable grounds to believe that the building contractor or building industry participant has failed to comply with the decision, direction or order.
8. The Contractor will, and will require its related entities and its Subcontractors to, provide the Commonwealth or a person occupying a position in the Fair Work Building Industry Inspectorate, which is known and operates as Fair Work Building and

Construction (FWBC), with full access to the premises and records of the above-mentioned entity to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the work in connection with the Contract th; and
- (c) interview any person,

as is necessary to demonstrate its compliance with the Building Code.

9. The Contactor will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in FWBC, to produce a specified document within a specified period, in person, by fax, by electronic means or by post.
10. The Contractor will ensure that its related entities and its Subcontractors will agree to the requests in clause 9 of this Schedule 12.
11. The Contactor consents to disclosure by the Commonwealth, the Director of FWBC and Minister for Employment information concerning its and its related entities' compliance with the Building Code and whether or not an exclusion sanction has been imposed on it and/or its related entity. The Contactor must ensure that its Subcontractors are also aware of, and agree to comply with, these rights of use and disclosure.
12. The Contractor must ensure the obligations outlined in this Schedule 12 are contained in any Subcontracts.

Schedule 13 – Novation Deed

Refer to clauses 9.6 and 29.5 of the GC21 General Conditions of Contract.

Novation Deed

Sydney Modern Project

Dated

Art Gallery of NSW ABN/ACN/ARBN [insert] (“**Incoming Party**”)

Infrastructure NSW ABN 85 031 302 516 (“**Outgoing Party**”)

[insert] (“**Consenting Party**”)

King & Wood Mallesons

Level 33

Waterfront Place

1 Eagle Street

Brisbane QLD 4000

Australia

T +61 7 3244 8000

F +61 7 3244 8999

DX 311 Brisbane

www.kwm.com

Details

Parties	Incoming Party, Outgoing Party and Consenting Party	
Incoming Party	Name	Art Gallery of NSW
	ABN/ACN/ARB N	#insert ABN/ACN/ARB#
	Address	#address#
	Fax	#fax number#
	Attention	#position#
Outgoing Party	Name	Infrastructure NSW
	ABN	85 031 302 516
	Address	Level 15, 167 Macquarie St, Sydney NSW 2000
	Fax	+ 61 2 8016 0101
	Attention	
Consenting Party	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Attention	[insert]
Recitals	A	Outgoing Party and Consenting Party are parties to the Contract.
	B	The parties to this deed have agreed to the novation of the Contract on the terms of this deed.
Contract	Sydney Modern Project Design and Construction Contract	
Novation Date	#insert date novation to be effective from#	
Governing law	New South Wales	
Date of deed	See Signing page	

General terms

1 Definitions and Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means, in respect of a party, a director or secretary of the party or another person appointed by the party to act as an Authorised Officer under this deed.

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday in New South Wales; and
- (b) 27, 28, 29, 30 and 31 December.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Contract means the contract referred to in the Details.

Details means the section of this deed headed Details.

New Contract means the new contract formed under clause 3.1.

Novation Date means the date set out in the Details.

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

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this deed:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (g) a reference to a time of day is a reference to New South Wales time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it; and
- (p) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day.

2 Consideration

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and the New Contract and for other valuable consideration.

3 Novation

3.1 Novation

With effect on and from the Novation Date, the parties agree that the Contract is discharged and the New Contract is created on the same terms and conditions as the Contract except that:

- (a) Incoming Party is substituted for Outgoing Party; and
- (b) each reference to Outgoing Party will be read as a reference to Incoming Party in the New Contract; and
- (c) notices to Incoming Party must be provided using its details specified in the Details; and

3.2 Rights and benefits

With effect on and from the Novation Date, Incoming Party:

- (a) is bound by the New Contract as the Contract relates to Outgoing Party; and

- (b) enjoys under the New Contract all the rights and benefits conferred on Outgoing Party under the Contract.

3.3 Release from future performance

On and from the Novation Date, Consenting Party releases Outgoing Party from any obligation under the Contract to be performed on or after the Novation Date.

3.4 Consenting Party acknowledgement

The Consenting Party acknowledges that nothing in this deed or any of the transactions contemplated by this deed constitutes:

- (a) a breach of any term of the Contract;
- (b) an event of default under the Contract; or
- (c) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of, the Contract.

3.5 Contract security

- (a) Within 10 Business Days of the Novation Date, Consenting Party shall procure the issue of new security in favour of Incoming Party ("**New Security**").
- (b) The New Security must be on the same terms and for the same amount as the Existing Security and must otherwise comply with the Contract.
- (c) Outgoing Party must return any security still held under the Contract ("**Existing Security**") to Consenting Party within five days after the Consenting Party has provided the New Security to the Incoming Party pursuant to clause 3.5(a).
- (d) Nothing in this clause 3.5 limits or affects Outgoing Party's right to have recourse to the Existing Security in accordance with the Contract prior to the Novation Date.

4 Accrued Rights

4.1 Mutual release

- (a) Subject to clause 4.1(b), on and from the Novation Date, each of Consenting Party and Outgoing Party releases the other from:
 - (i) any obligation or liability under or in respect of the Contract; and
 - (ii) any Claim which it, but for this release, had or may in the future have had against the other under or in respect of the Contract,arising in connection with the performance of the Contract before the Novation Date.
- (b) Clause 4.1(a) does not apply to:
 - (i) any Claim Outgoing Party had, or may in the future have had, against Consenting Party under or in respect of the Contract; and

- (ii) any liability Consenting Party had, or may in the future have had, to Outgoing Party under or in respect of the Contract,

in respect of any event or circumstance for which Consenting Party indemnifies Outgoing Party pursuant to the Contract.

4.2 Assumption by Incoming Party

On and from the Novation Date Incoming Party assumes responsibility for any obligation or liability of the Outgoing Party owed to the Consenting Party under or in respect of the Contract arising in connection with the performance of the Contract before the Novation Date.

5 Representations and warranties

5.1 General representations and warranties

Each party represents and warrants to each other party that:

- (a) **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed and, for Incoming Party and Outgoing Party, the New Contract;
- (c) **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this deed and, for Incoming Party and Outgoing Party, the New Contract; and
- (d) **(binding obligations)** this deed and, for Incoming Party and Outgoing Party, the New Contract, constitute legal, valid and binding obligations, enforceable in accordance with their terms.

6 GST

6.1 Consideration GST exclusive

Unless expressly stated otherwise in this deed, all amounts payable or consideration to be provided under this deed are exclusive of GST.

6.2 Payment of GST

If GST is payable on any supply made under this deed, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 6.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

6.3 Reimbursements

If a party is required under this deed to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

6.4 Calculation of payments

If an amount payable under this deed is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

6.5 Interpretation

For the purposes of this clause 6:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 6;
- (b) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

7 Notices and other communications

7.1 Form - all communications

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

7.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 7.1. However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

7.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) sent by email to the address set out or referred to in the Details.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

7.4 When effective

Communications take effect from the time they are received or taken to be received under clause 7.5 (whichever happens first) unless a later time is specified.

7.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

7.6 Receipt outside business hours

Despite anything else in this clause 7, if communications are received or taken to be received under clause 7.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day.

8 General

8.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this deed and of other related documentation, except stamp duty.

8.2 Stamp duty

Consenting Party agrees to pay all stamp duty (including fines and penalties) chargeable, payable or assessed in relation to this deed and any transaction contemplated by it.

8.3 Governing law

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

8.4 Counterparts

This deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the deed.

8.5 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this deed and the transactions contemplated by it.

8.6 No merger

The representations, warranties and indemnities in this deed do not merge on the Novation Date.

8.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this deed or any part of it.

8.8 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous deeds, understandings and negotiations on that subject.

8.9 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

8.10 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

8.11 Confidentiality

Each party agrees not to disclose information provided by another party that is not publicly available except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this deed; or
- (b) to officers, employees, legal and other advisers and auditors of any party; or
- (c) to any party to this deed or any Related Body Corporate of any party to this deed, provided the recipient agrees to act consistently with this clause; or
- (d) with the consent of the party who provided the information; or
- (e) as allowed by any law or stock exchange.

EXECUTED as an deed

Signing page

DATED: _____

EXECUTED by [OUTGOING PARTY])
in accordance with section 127(1) of)
the *Corporations Act 2001* (Cth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)

*delete whichever is not applicable

.....)
Name of director/company secretary*)
(block letters))

*delete whichever is not applicable

EXECUTED by [INCOMING PARTY] in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)

*delete whichever is not applicable

.....)
Name of director/company secretary*)
(block letters))

*delete whichever is not applicable

EXECUTED by [CONSENTING)
PARTY] in accordance with section)
127(1) of the *Corporations Act 2001*)
(Cth) by authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)

*delete whichever is not applicable

.....)
Name of director/company secretary*)
(block letters))

*delete whichever is not applicable

Schedule 17 – ED Interface Deed

Refer to clauses 15B, 26, 34A, 34B, 34C, 34D and 34E of the GC21 General Conditions of Contract.

Art Gallery of NSW
Sydney Modern Project –
Eastern Distributor
Construction Interface
and Access Deed

Dated 21 December 2018

Airport Motorway Limited (ABN 26 057 283 093) and AMT Management Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607) ("ED Operator")

The Art Gallery of New South Wales Trust, a statutory corporation constituted under section 5 of the Art Gallery of New South Wales Act 1980 (NSW) (ABN 24 934 492 575) ("AGNSW")
Roads and Maritime Services of New South Wales ("RMS")

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

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Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed Details

Parties		
ED Operator	Name	Airport Motorway Limited and AMT Management Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607)
	ABN	26 057 283 093
	Formed in	Australia
	Address	Level 31, Tower 5, Collins Square, 727 Collins Street, Docklands Victoria 3008
	Telephone	(02) 9254 4918
	Email	edassetmanager@transurban.com and lbeer@transurban.com
	Attention	Louise Beer, ED Asset Manager
AGNSW	Name	The Art Gallery of New South Wales Trust, a statutory corporation constituted under section 5 of the Art Gallery of New South Wales Act 1980 (NSW)
	ABN	24 934 492 575
	Address	Art Gallery Road, The Domain, Sydney NSW 2000
	Telephone	(02) 9225 1852
	Email	sally.webster@ag.nsw.gov.au
	Attention	Sally Webster, Head Sydney Modern Project
RMS	Name	Roads and Maritime Services of New South Wales
	Address	Level 22, 101 Miller Street, North Sydney NSW 2059
	Telephone	(02) 8588 4135
	Email	Felicity.FINLAYSON@rms.nsw.gov.au
	Attention	Director Motorway Partnerships & Planning

Recitals	A	RMS owns the ED Land.
	B	ED Operator leases the ED Land from RMS pursuant to the ED Lease and operates, maintains and tolls the ED Motorway and the ED Operator and RMS are entitled to the revenue derived from the operation of the ED Motorway pursuant to the ED Project Deed.
	C	AGNSW (or Infrastructure NSW on its behalf) intends to undertake the Works which form part of the Project, on, or in the vicinity of, the ED Land.
	D	The ED Land comprises Zone 1, Zone 2 and Zone 3. AGNSW requires access to Zone 1 and Zone 2A to undertake the Works, and may require access to Zone 2B and Zone 3 in order to monitor, inspect, test or undertake the Works.
	E	AGNSW will be granted access to the ED Land for the purposes of carrying out the Works on the terms set out in this Deed.
	F	The parties intend that Zone 1 will be excised from the ED Lease after Completion, and that RMS will make tenure arrangements for such excised land directly with AGNSW.
	G	The parties agree to the matters set out in this Deed.

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

General terms

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Deed are set out below:

Term	Meaning
Access Requirements	the requirements in Schedule 2 ("Access Requirements").
AMT	AMT Management Limited (ABN 55 078 953 607).
Airport Motorway Limited	Airport Motorway Limited (ABN 26 057 283 093).
Approvals	any consent, approval, authorisation, licence, registration, order, permission or concurrence required by any Law which must be obtained or satisfied (as the case may be) to carry out the Project Activities and for the avoidance of doubt, includes the Planning Approval.
Assignment	means an assignment, transfer or other dealing with an interest and Assign has a corresponding meaning.
Building Contract	the design and construction contract entered into by the AGNSW (or by Infrastructure NSW on its behalf) and the Building Contractor for the design and construction of the Project.
Building Contractor	the person engaged pursuant to the Building Contract by the AGNSW (or Infrastructure NSW on its behalf) from time to time to design and construct the Works as notified by AGNSW to the ED Operator and RMS.
Business Day	a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in Sydney, and excludes 27 to 31 December (inclusive).
Certificate of Works Completion	the relevant certificate issued by the Independent Certifier under the Independent Certifier Deed of Appointment certifying that Works Completion has been achieved.

Term	Meaning
Claim	<p>any claim, action, demand or proceeding:</p> <ol style="list-style-type: none"> 1 under, arising out of, or in any way in connection with, this Deed; 2 arising out of, or in any way in connection with the Project Activities; or 3 otherwise at Law or in equity including: <ol style="list-style-type: none"> (i) under or for breach of any statute; (ii) in tort for negligence or otherwise, including negligent misrepresentation; or (iii) for restitution, including restitution based on unjust enrichment.
Commencement Date	the date on which all of the Conditions Precedent have been satisfied (or waived by the parties in writing).
Completion	the stage when the Building Contractor has achieved "Completion" (as defined in the Building Contract) of the Project.
Condition Precedent	a condition precedent set out in Schedule 1 ("Conditions Precedent").
Consequential Loss	<p>any:</p> <ol style="list-style-type: none"> 1 loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of any business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production, loss of value to the ED Motorway (whether that loss is direct or indirect); 2 indirect or consequential loss, howsoever arising; or 3 failure to realise anticipated savings, reduced costs or other benefits, <p>in each case whether present or future, fixed or unascertained, actual or contingent.</p>
Contamination	<p>the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:</p> <ol style="list-style-type: none"> 1 at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or 2 toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos,

Term	Meaning
	toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.
Current Design Documentation	the design documentation for the Works contained in Schedule 10 to this Deed.
Date of Completion	the date on which: <ol style="list-style-type: none"> 1 Completion has been achieved; and 2 INSW has notified the parties to this Deed in writing that Completion has been achieved.
Date of Works Completion	<ol style="list-style-type: none"> 1 the date specified in the Certificate of Works Completion as the date on which Works Completion has been achieved; or 2 where another date is determined in any binding expert determination, litigation, arbitration or other binding dispute resolution process as the date upon which "Works Completion" was achieved, that other date.
Day 1 Clauses	clauses 1 ("Definitions and interpretation"), 2 ("Conditions Precedent"), 6.2 ("Disclaimer"), 10 ("Liability"), 11 ("Fees and other costs"), 13 ("Confidentiality"), 14 ("Dispute Resolution"), 15 ("Notices") and 16 ("General")
Deed	this document, together with all schedules and exhibits to this document.
Deed of Partial Surrender	the deed of partial surrender in respect of the ED Lease attached as Schedule 11 with all blanks completed and with any further amendments agreed between the parties (acting reasonably).
Design Documentation	<ol style="list-style-type: none"> 1 the Current Design Documentation; and 2 any amendments to that documentation permitted under this Deed (including Design Documentation Amendments permitted under Schedule 6 ("Design and Plans Review")).
Design Documentation Amendment	has the meaning given to it in Schedule 6 ("Design and Plans Review")
Development Deed	the "Sydney Modern Project Development Deed" between AGNSW, RMS and RBGDT, dated on or about the date of this Deed.

Term	Meaning
Development Footprint	the footprint within Zone 1 on which the Works will be located as settled following the final survey undertaken for the purposes of the subdivision and excise of Zone 1.
ED Land	the area comprised of Zone 1 (until its excision), Zone 2 and Zone 3.
ED land bridge	the bridge above the ED Motorway which connects the AGNSW and RBGDT leased land, but does not include Art Gallery Road.
ED Lease	the lease of the ED Land which RMS (as lessor) or its predecessor in title must grant ED Operator pursuant to the ED Project Deed
ED Motorway	the Eastern Distributor Motorway, including the road, tunnel and other physical works, facilities, systems, control centre and all plant machinery, equipment, fixtures, fittings and landscaping.
ED Operator Information	has the meaning given to it in clause 6.1(a).
ED Project Deed	the document titled 'Eastern Distributor Project Deed' between RMS (formerly Roads and Traffic Authority of New South Wales), the Minister for Roads and the Minister for Ports, Public Works and Services, and ED Operator dated 27 June 1997 (including all schedules and exhibits) (as amended from time to time).
ED Project Documents	each of the following documents: <ol style="list-style-type: none"> 1 the ED Project Deed; 2 the document entitled "RMS Consent Deed" dated 15 August 1997 between, amongst others, the RTA, ED Operator, Westpac Banking Corporation as security trustee and Westpac Banking Corporation as agent for the Banks and Swap Counterparties (each as defined in the Common Terms Deed), as amended on 18 April 2000, novated on 29 October 2004, amended on 4 April 2007, amended on 14 July 2009, amended on 6 July 2011, amended on 20 November 2013 and amended on 10 May 2018; 3 the RTA Deed of Charge (as defined in the ED Project Deed), as amended and restated on 6 July 2011; and 4 the ED Lease.
Emergency	an event which arises out of or in relation to the Works, the Project or the Project Activities which poses or may pose a serious risk or threat: <ol style="list-style-type: none"> 1 of personal injury or death of any person or to the health or

Term	Meaning
	<p>safety of any person;</p> <p>2 of damage to or destruction of Zone 2B or Zone 3 or other property (including infrastructure) on or in relation to Zone 2B or Zone 3; or</p> <p>3 to users of the ED Motorway.</p>
Environment	<p>components of the earth, including:</p> <p>1 land, air and water;</p> <p>2 any layer of the atmosphere;</p> <p>3 any organic or inorganic matter and any living organism;</p> <p>4 human-made or modified structures and areas; and</p> <p>5 interacting natural ecosystems that include components referred to in paragraphs 1 to 3 of this definition.</p>
EP&A Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
External Event	<p>an event which poses or may pose a serious risk or threat:</p> <p>1 of personal injury to or death of any person or to the health or safety of any person;</p> <p>2 of damage to or destruction to Zone 2B or Zone 3 or other property (including infrastructure) on or in relation to Zone 2B or Zone 3; or</p> <p>3 to users of the ED Motorway,</p> <p>which is not an Emergency.</p>
For Construction Drawings	the for construction drawings to be prepared by the Building Contractor for the Works.
Government Agency	a department of State, statutory or public authority, instrumentality, corporation, body or person, whether Commonwealth, State, territorial or local.
GST	has the meaning given to that term in the GST Act.
GST Act	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Independent Certifier	the person or entity appointed as the Independent Certifier pursuant to the Independent Certifier Deed of Appointment or such other person(s) as may be engaged by AGNSW, RMS and ED Operator in accordance with the Independent Certifier Deed of Appointment.

Term	Meaning
Independent Certifier Candidate	has the meaning given in clause 5.1(a).
Independent Certifier Deed of Appointment	the deed titled 'Deed of Appointment of Independent Certifier' to be entered into between AGNSW, RMS, ED Operator, the Building Contractor, the Independent Certifier and any other relevant stakeholders, which will be substantially in the form of the document which appears as Exhibit 1 ("Independent Certifier Deed of Appointment") to this Deed.
Independent Certifier's Services	the services to be performed by the Independent Certifier as set out in the Independent Certifier Deed of Appointment.
Insurances	has the meaning given in clause 12 ("Insurance").
Land Bridge	means that part of the ED Motorway that is constructed and located beneath the surface of the land which is the subject of the RMS Lease.
Law	<ol style="list-style-type: none"> 1 any statute, regulation, rule, proclamation, order, ordinance or by-law whether present or future and whether Commonwealth, State, territorial or local; 2 the common law; 3 any Approval (including any condition or requirement under an Approval); and 4 any requirements of any Government Agency.
Loss	<p>includes:</p> <ol style="list-style-type: none"> 1 any cost, expense, loss, damage or liability whether direct, indirect or consequential (including Consequential Loss or pure economic loss), present or future, fixed or unascertained, actual or contingent; and 2 without being limited by paragraph (1) and only to the extent not prohibited by Law, any fine or penalty.
Operating Interface Principles	the operating interface principles set out in Schedule 5 ("Operating Interface Principles").
Planned ED Lane Occupancy Fee	the fee specified for that a Planned ED Lane Occupancy Period specified in Part B of the Access Requirements.
Planned ED Lane Occupancy Period	in respect of a period of access to Zone 3 contemplated by clause 7.3, a period of time determined in accordance with Part C of the Access Requirements.

Term	Meaning
Planning Approval	the consent relating to State Significant Development Application No. 6471 granted by the Minister for Planning (or delegate) under Part 4 of the EP&A Act as modified from time to time.
Project	the 'Sydney Modern Project' being the proposed expansion of the Art Gallery of NSW as contemplated by the Planning Approval.
Project Activities	the undertaking by AGNSW (or Infrastructure NSW on its behalf) of the Project and all things and tasks which AGNSW (or Infrastructure NSW on its behalf) or any of its contractors is, or may be, required to carry out or do under this Deed to comply with AGNSW's obligations under this Deed, including designing and constructing the Works.
RBGDT	the Royal Botanic Gardens and Domain Trust.
RMS Lease	a lease of proposed Lot 2001 as shown indicatively in the Stage 3 Subdivision Plan (as defined in the Development Deed), the form of which lease is annexed to the Development Deed at Schedule 3.
Registrable Subdivision Plan	has the meaning given in clause 8.1(a)(i).
Responsible Parties	<ol style="list-style-type: none"> 1 Infrastructure NSW (on behalf of AGNSW) and the directors, employees, officers, representatives, agents, contractors and consultants of Infrastructure NSW (on behalf of AGNSW); 2 the Building Contractor and the directors, employees, officers, representatives, agents, contractors and consultants of the Building Contractor; and 3 the subcontractors of AGNSW, Infrastructure NSW (on behalf of AGNSW), the Building Contractor and their sub-subcontractors and the directors, employees, officers, representatives, agents, contractors and consultants of the subcontractors of the Building Contractor and their sub-subcontractors, <p>who are involved in the execution of, or in any performance of, the Project Activities.</p>
Senior Representative	<p>in respect of:</p> <ol style="list-style-type: none"> 1 ED Operator, the AML Asset Manager; 2 RMS, the Director Motorway Partnerships and Planning; and 3 AGNSW, Dr Michael Brand, Director, Art Gallery of New South Wales <p>or such other person (or delegate) notified in writing by the applicable party to the other parties.</p>

Term	Meaning
Sunset Date	31 December 2023, or such later date as the parties may agree in writing from time to time.
Step-In Event	has the meaning given in clause 7.5(a).
Trust	the Airport Motorway Trust, constituted under the Airport Motorway Trust Deed dated on or about 27 June 1997.
Unplanned ED Lane Occupancy Fee	the fee specified in Part D of the Access Requirements.
WHS Regulation	the <i>Work Health and Safety Regulation 2017</i> (NSW).
Works	the physical works required to carry out the Project (including any temporary works) which are on or directly or indirectly affect any of the ED Land.
Works Completion	the stage when: <ul style="list-style-type: none"> 1 the structural and architectural works to be carried out under the Project within the hatched areas shown on the plans attached at Exhibit 4 are complete, except for minor defects; and 2 the Independent Certifier has certified that the remaining Project Activities which are required to occur within the hatched areas will have no adverse impact on Zone 2A, Zone 2B and Zone 3; and 3 the Works have been constructed in accordance with the For Construction Drawings certified by the Independent Certifier.
Zone 1	the area identified and described as such in Exhibit 3.
Zone 2	Zone 2A and Zone 2B.
Zone 2A	the area identified and described as such in Exhibit 3.
Zone 2B	the area identified and described as such in Exhibit 3.
Zone 3	the area identified and described as such in Exhibit 3.

1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, any Government Agency, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the words "includes" in any form is not a word of limitation;
- (c) a reference to any party includes that party's executors, administrators, successors, and permitted assigns, including any person taking by way of novation;
- (d) a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (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 other statutory instruments (however described) issued under it;
- (g) a reference to a standard in accordance with which the Works are to be performed or tested is a reference to the version of the standard current on the date of this Deed;
- (h) references to parties, clauses, schedules, exhibits and 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) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (j) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) a reference to a day, month, quarter or year is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year respectively;
- (l) a reference to "\$" or "dollar" is to Australian currency;
- (m) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and

- (n) where the phrase "at the cost of" is used, the liable party is under an obligation to pay the costs incurred by the other party.

1.3 No bias against drafting party

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

1.4 Business Day

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

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

1.5 Excluding liability

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

1.6 Joint and several obligations

- (a) The obligations of the entities comprising ED Operator under this Deed are joint and several
- (b) The parties agree that the provision to, or receipt of any information or notice by, Airport Motorway Limited under or in connection with this Deed is deemed to be provision to or receipt by each of Airport Motorway Limited and AMT.

1.7 AMT's capacity

- (a) AMT enters into this Deed in its capacity as trustee of the Trust and in no other capacity. Subject to clause 1.7(f), Airport Motorway Limited, AGNSW and RMS acknowledge that AMT's obligations under this Deed are incurred by AMT solely in its capacity as trustee of the Trust.
- (b) Subject to clause 1.7(f), AMT will be liable to pay or satisfy any obligations (if any) under this Deed only out of the assets of the Trust out of which AMT is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (c) Subject to clause 1.7(f), Airport Motorway Limited, AGNSW and RMS may enforce their rights against AMT arising from non-performance of AMT's obligations under this Deed only to the extent of AMT's right of indemnity out of the assets of the Trust.
- (d) Subject to clause 1.7(f), if Airport Motorway Limited, AGNSW and RMS do not recover all money owing to them arising from non-performance of AMT's obligations under this Deed by enforcing the rights referred to in clause 1.7(b), they may not seek to recover the shortfall by:
 - (i) bringing proceedings against AMT in its personal capacity; or

- (ii) applying to have AMT wound up or proving in the winding up of AMT unless another creditor has initiated proceedings to wind up AMT.
- (e) Subject to clause 1.7(f), Airport Motorway Limited, AGNSW and RMS waive their rights and release AMT from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach by AMT of its duties under this Deed; or
 - (B) non-performance by AMT of its obligations under this Deed; and
 - (ii) which cannot be paid or satisfied out of the assets of the Trust out of which AMT is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (f) The limitations in clauses 1.7(a) to 1.7(e) will not apply in the case of fraud, negligence or breach of trust on the part of AMT or a failure on the part of AMT to perform its duties properly within the meaning of section 601GA(2) of the *Corporations Act 2001* (Cth), in each case in its capacity as trustee of the Trust.

1.8 RMS as a public authority

- (a) The parties acknowledge and agree that RMS enters into this Deed in its capacity as owner of the Land and a party to the ED Project Deed and not in any other capacity.
- (b) Notwithstanding any other provision of this Deed (but subject to clause 1.8(c)), this Deed does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RMS to exercise any of its functions and powers pursuant to any Law.
- (c) RMS acknowledges and agrees that clauses 1.8(b) and 1.8(d) do not limit RMS's obligations under this Deed or any acknowledgement given by RMS under this Deed.
- (d) Notwithstanding any other provision in this Deed (but subject to clause 1.8(c)), AGNSW and ED Operator acknowledge and agree that, without limiting clauses 1.8(b) and 1.8(c):
 - (i) nothing in this Deed operates to limit the operation or terms of any condition of any consent or approval in respect of the Project (including in respect of the Project Activities) provided or to be provided by RMS under any Law or the exercise by RMS of any discretion, right or remedy available to RMS in any capacity other than as a party to this Deed under any such consent or approval; and
 - (ii) anything which RMS does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by RMS under this Deed and will not entitle either AGNSW or ED Operator to make any claim against RMS.
- (e) The parties agree that clauses 1.8(a) to 1.8(d) are not taken to limit any liability which RMS would have had to AGNSW or ED Operator under

this Deed as a result of a breach by RMS of a term of this Deed but for clauses 1.8(b) and 1.8(c).

2 Conditions Precedent

2.1 Commencement of obligations

The rights and obligations of the parties under this Deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived by the parties in writing), except for the Day 1 Clauses which commence on the date of this Deed.

2.2 Satisfaction of Conditions Precedent

The parties must use reasonable endeavours to satisfy each Condition Precedent by the Sunset Date.

2.3 Termination

- (a) If each of the Conditions Precedent have not been satisfied (or waived by the parties in writing) by the Sunset Date, any party to this Deed may terminate this Deed by notice in writing to each other party.
- (b) Any termination of this Deed under clause 2.3(a) will not prejudice or affect any accrued rights or liabilities of any party under this Deed as at the date of termination of this Deed.

3 Approvals and Consents

3.1 Consent to Project Activities

- (a) Each of RMS and ED Operator consent to:
 - (i) each other entering into this Deed; and
 - (ii) the matters set out in clause 3.1(b)(ii) and clause 3.1(b)(iv),including for the purposes of the ED Project Deed and the ED Lease.
- (b) ED Operator and RMS acknowledge and agree that neither ED Operator nor RMS will be in breach of any express or implied obligation under the ED Project Documents or other covenant implied by law as a result of:
 - (i) ED Operator, RMS and AGNSW entering into this Deed;
 - (ii) the performance of the Project Activities, including the construction of the Works as contemplated by this Deed;
 - (iii) the acts and omissions of AGNSW and Responsible Parties in relation to the Project Activities; or
 - (iv) the fact that any part of the Project Activities is on, or passes over, the ED Land.
- (c) ED Operator and RMS acknowledge and agree that:
 - (i) the matters set out in clause 3.1(b) will not constitute:

- (A) an event of default under clause 14.2 of the ED Project Deed; or
 - (B) a basis for any claim, action, demand or proceeding under or in relation to the ED Project Documents; and
- (ii) neither RMS nor ED Operator will be liable to make any payment whether by way of compensation or otherwise to the other under or in relation to the ED Project Documents or any covenant implied by law arising out of or in relation to the matters contemplated by this Deed.

4 Obligations regarding Project Activities

4.1 Design obligations

The parties acknowledge and agree that:

- (a) AGNSW has procured the preparation of the Current Design Documentation;
- (b) RMS and ED Operator have reviewed the Current Design Documentation in accordance with the letter from AGNSW to the ED Operator and RMS dated 18 September 2017 and titled "Sydney Modern Project – Design Review";
- (c) AGNSW will procure the Building Contractor to prepare For Construction Drawings that are based on and consistent with the Design Documentation; and
- (d) the provisions in Schedule 6 ("Design and Plans Review") will apply to the review by the ED Operator and RMS of:
 - (i) Design Documentation Amendments;
 - (ii) the For Construction Drawings; and
 - (iii) Project Plans (as defined in Schedule 6 ("Design and Plans Review")).

4.2 Carrying out of Project Activities

- (a) Without limiting AGNSW's other obligations under this Deed, AGNSW must:
 - (i) obtain, or procure that all Approvals required to carry out the Project Activities are obtained;
 - (ii) carry out, and procure that, the Project Activities are carried out:
 - (A) in accordance with all relevant Approvals, Laws and the requirements of this Deed, including Schedule 8 ("Construction Requirements");
 - (B) in a timely and expeditious manner;
 - (C) in a proper, thorough and workmanlike manner;
 - (D) in a manner which prevents:

- (1) any interference with the operation and use of Zone 2B and Zone 3 and other property (including infrastructure) on those areas; and
 - (2) any traffic adjustment on Zone 3 or impact on Zone 2B and Zone 3 and other property (including infrastructure) on those areas,
- except as permitted in accordance with Schedule 2 ("Access Requirements");
- (E) using good workmanship and materials to ensure that the structure and integrity of Zone 2B and Zone 3 and other property (including infrastructure) on those areas is intact at all times;
 - (F) so as not to prevent ED Operator and RMS from complying with its obligations under Law; and
 - (G) so as not to prevent ED Operator and RMS from complying with their respective obligations under the ED Project Deed.
- (iii) ensure that the Works are constructed in accordance with the For Construction Drawings which have been certified by the Independent Certifier; and
 - (iv) do all things necessary to prevent objects falling from the Works (or from vehicles or machinery used in connection with the Works) onto Zone 2B or Zone 3 or other property (including infrastructure) on those areas.
- (b) The parties acknowledge and agree that:
- (i) as between the parties to this Deed, AGNSW is solely responsible for all occupational health and safety matters in connection with the Project Activities; and
 - (ii) prior to commencement of the Project Activities, RMS will engage AGNSW, the Building Contractor or a nominee of AGNSW (as agreed between AGNSW and RMS) as 'principal contractor' for the Works for the purposes of the WHS Regulation .
- (c) Subject to clauses 4.2(d), 4.4(a), 4.4(d) and 7.5, ED Operator and RMS must not hinder or impede the implementation of the Project Activities.
- (d) ED Operator and RMS may take such action as is necessary to:
- (i) comply with all Laws;
 - (ii) comply with obligations or to exercise rights in relation to the operation and maintenance of Zone 2B and Zone 3 and other property (including infrastructure) on those areas; and
 - (iii) exercise rights under clause 7.5, Schedule 2 ("Access Requirements") or Schedule 3 ("Monitoring Regime Process"),
- notwithstanding the fact that the scope, manner and timing of those actions have not been notified to the other parties.

4.3 Assistance by ED Operator

ED Operator must promptly upon request from AGNSW, at the cost of AGNSW:

- (a) provide all reasonable assistance to AGNSW in connection with obtaining Approvals contemplated by clause 4.2(a)(i);
- (b) provide AGNSW such assistance (including through the provision of information) as is reasonably required by AGNSW, to enable AGNSW to comply with its obligations as a person commissioning a construction project under Chapter 6 of the WHS Regulation, including information relating to hazards and risks to health and safety at or in the vicinity of the Project;
- (c) where practicable, take all reasonable steps (such steps being agreed between ED Operator and AGNSW prior to being undertaken) to:
 - (i) mitigate; and
 - (ii) to the extent reasonably possible, overcome,

any impact that the carrying out of the Project Activities has or may have on the ability of ED Operator to perform its obligations under the ED Project Deed, including the operation and maintenance of Zone 2B and Zone 3 and other property (including infrastructure) on those areas; and
- (d) take all reasonable steps (such steps being agreed between ED Operator and AGNSW prior to being undertaken) to mitigate Losses incurred or suffered by ED Operator that would be the subject of the indemnity in clause 10.1.

4.4 Emergency work

- (a) In the case of an Emergency:
 - (i) AGNSW must; and
 - (ii) ED Operator and RMS may,

at the cost of AGNSW, undertake all actions necessary to manage the Emergency notwithstanding the fact that the scope, manner and timing of those actions have not been notified to the other parties.
- (b) AGNSW indemnifies ED Operator against any Claim or Loss (other than Consequential Loss) suffered or incurred by ED Operator in relation to any action undertaken by ED Operator pursuant to clause 4.4(a) except to the extent the Claim or Loss is caused or contributed to by the negligence of the ED Operator or one of its employees, agents or contractors.
- (c) AGNSW indemnifies RMS against any Claim or Loss (other than Consequential Loss) suffered or incurred by RMS in relation to any action undertaken by RMS pursuant to clause 4.4(a) except to the extent the Claim or Loss is caused or contributed to by the negligence of the RMS or one of its employees, agents or contractors.
- (d) In the case of an External Event, ED Operator and RMS may undertake all actions necessary to manage the External Event notwithstanding the fact that the scope, manner and timing of those actions have not been notified to the other parties.

- (e) Clauses 4.4(b) and 4.4(c) survives termination or expiry of this Deed for any reason.

4.5 Contamination

If:

- (a) AGNSW or the Building Contractor disturbs or interferes with any Contamination in, on or under the ED Land; or
- (b) the carrying out of the Project Activities:
 - (i) causes, contributes or exacerbates any Contamination in, on or under the ED Land; or
 - (ii) uncovers any Contamination in, on or under Zone 1 or Zone 2,

(Relevant Contamination), then AGNSW must, or must procure the Building Contractor to, at the cost of AGNSW:

- (c) immediately notify any relevant Government Agency as required by Law;
- (d) promptly notify ED Operator and RMS;
- (e) as soon as reasonably practicable, remediate, dispose of, or otherwise deal with, the Relevant Contamination in accordance with Law and the Planning Approval; and
- (f) obtain, or procure the obtaining of, all Approvals required to remediate, dispose of, or otherwise deal with, the Relevant Contamination.

4.6 Advertising and Signage

AGNSW must not, without the prior written consent of RMS and ED Operator, place or permit the placement of any signage, including commercial advertising signage, on any part of the ED Land or the Project Activities, other than signage that contains public information such as safety warnings or information.

5 Independent Certifier

5.1 Appointment of Independent Certifier

- (a) AGNSW must nominate in writing to ED Operator and RMS at least three persons (each an **Independent Certifier Candidate**) to be appointed as the Independent Certifier for the purposes of the Project.
- (b) Each Independent Certifier Candidate must:
 - (i) be a suitably qualified engineering consultant from a reputable consultancy;
 - (ii) have no interest or duty which conflicts with its role as Independent Certifier in respect of the Project; and
 - (iii) be able and prepared to act in accordance with the terms of the Independent Certifier Deed of Appointment.
- (c) AGNSW, ED Operator and RMS must use reasonable endeavours to agree on the identity of the Independent Certifier. If AGNSW, ED

Operator and RMS cannot agree, the parties will request (at the cost of AGNSW) that the President of the Royal Australian Institute of Architects (or its replacement or equivalent) nominate the Independent Certifier from the list of Independent Certifier Candidates provided under clause 5.1(a), and the parties must appoint the Independent Certifier nominated by the President of the Royal Australian Institute of Architects as soon as practicable thereafter on the terms set out in the Independent Certifier Deed of Appointment.

- (d) The Independent Certifier must be engaged by AGNSW, RMS and ED Operator on the terms set out in the Independent Certifier Deed of Appointment, at the cost of AGNSW.
- (e) The engagement of the Independent Certifier pursuant to clause 5.1(d) must be made prior to commencement of the Works and by a date early enough for the Independent Certifier to have sufficient time to perform the Independent Certifier Services.
- (f) If the Independent Certifier Deed of Appointment is terminated before its scheduled expiry, or if any incumbent Independent Certifier ceases to act as Independent Certifier for the purposes of the Project Activities, AGNSW, ED Operator and RMS must, prior to the termination or cessation if practicable, or in any event within 10 Business Days after the termination of the Independent Certifier Deed of Appointment or cessation (as applicable) appoint another person to act as Independent Certifier in accordance with the process set out in this clause 5.1.

5.2 Independent Certifier Services

- (a) The parties acknowledge and agree that the Independent Certifier is to act independently of AGNSW, ED Operator and RMS and any of their respective contractors.
- (b) AGNSW, ED Operator and RMS must provide the Independent Certifier with all necessary information and documents reasonably required by the Independent Certifier and allow the Independent Certifier:
 - (i) to perform the Independent Certifier's Services;
 - (ii) to attend any meetings in connection with the Project Activities;
 - (iii) access to any site upon which the Project Activities are carried out (subject to compliance with the Access Requirements in relation to access to the ED Land); and
 - (iv) to inspect any records of ED Operator, RMS and AGNSW which the Independent Certifier considers are required for the performance of the Independent Certifier's Services.
- (c) All notices and documents provided by a party to the Independent Certifier must be copied to the other parties.

5.3 Determinations of the Independent Certifier

- (a) The parties acknowledge that, unless otherwise agreed by the parties:
 - (i) determinations of the Independent Certifier in relation to the Works (including in relation to Design Documentation (including Design Documentation Amendments) and For Construction Drawings) are immediately binding on the parties, in the

- absence of manifest error or fact or law or a breach of the Independent Certifier Deed of Appointment;
- (ii) if a party, acting reasonably, believes a manifest error of fact or law has occurred in relation to a determination of the Independent Certifier, or the Independent Certifier has breached the Independent Certifier Deed of Appointment, that party may raise this as a dispute in accordance with the dispute resolution process in the Independent Certifier Deed of Appointment;
 - (iii) AGNSW may proceed at its own risk pending a decision of the Independent Certifier or determination of the dispute under the Independent Certifier Deed of Appointment; and
 - (iv) the parties must give effect to determinations of the Independent Certifier unless and until they are revised pursuant to the dispute resolution process in the Independent Certifier Deed of Appointment.
- (b) In the absence of manifest error of fact or law or a breach of the Independent Certifier Deed of Appointment, the Independent Certifier's certification as set out in a Certificate of Works Completion is final and binding on the parties for the purposes only of establishing that Works Completion has occurred.

6 Information and meetings

6.1 Provision of information

- (a) Subject to clause 6.1(c), ED Operator will, upon written request from AGNSW, provide to AGNSW, within 7 Business Days of receipt of the written request, any information relating to design, construction, engineering, operation, maintenance or technical matters in respect of the ED Motorway (**ED Operator Information**) which is requested by AGNSW for the purposes of the Project Activities at the cost of AGNSW.
- (b) Subject to clause 6.1(c), ED Operator may disclose to AGNSW such further ED Operator Information (in addition to that requested by AGNSW) that it considers should be made available to AGNSW for the purposes of the Project Activities.
- (c) The parties acknowledge and agree that ED Operator does not have to provide to AGNSW under clauses 6.1(a) and 6.1(b) any information:
 - (i) the disclosure of which would cause ED Operator to breach an obligation of confidentiality owed by ED Operator to a third party;
 - (ii) which ED Operator considers is commercially sensitive to ED Operator;
 - (iii) the disclosure of which is not approved by RMS (such approval not to be unreasonably withheld); or
 - (iv) the disclosure of which is not permitted by Law.

6.2 Disclaimer

- (a) AGNSW acknowledges that neither ED Operator nor RMS has:
 - (i) made any representation;

- (ii) given any information or advice; or
- (iii) given any warranty,

of any kind in respect of any information or data supplied or made available by ED Operator or RMS under or in connection with this Deed.

(b) AGNSW acknowledges and agrees that:

- (i) neither RMS nor ED Operator is liable to AGNSW (or Infrastructure NSW or any Building Contractor) for or in relation to:
 - (A) the review of documents by ED Operator or RMS under or in connection with this Deed; or
 - (B) comments, information or consent provided by ED Operator or RMS under or in relation to this Deed including under Schedule 6 ("Design and Plans Review"), but excluding the provision of consent under clause 3.1(a);
 - (ii) without limiting clause 6.2(b)(i), clause 4 ("General") of Schedule 6 ("Design and Plans Review") will apply in relation to the review of any Design Documentation Amendments, the For Construction Drawings, the Construction Plan and the Construction Pedestrian Traffic Management Plan; and
 - (iii) it waives any Claims it may have against ED Operator or RMS in relation to any matter referred to in clauses 6.2(a) or 6.2(b).
- (c) AGNSW indemnifies ED Operator against any Claim or Loss suffered or incurred by ED Operator in respect of any Claim made by a third party relating to a matter referred to in clause 6.2(a) or 6.2(b) other than to the extent caused or contributed to by a wrongful or negligent act or wrongful or negligent omission of ED Operator or its employees, agents or contractors.
- (d) AGNSW indemnifies RMS against any Claim or Loss suffered or incurred by RMS in respect of any Claim made by a third party relating to a matter referred to in clause 6.2(a) or 6.2(b) other than to the extent caused or contributed to by a wrongful or negligent act or wrongful or negligent omission of RMS or its employees, agents or contractors.
- (e) This clause 6.2 survives the termination or expiry of this Deed for any reason.

6.3 Monitoring Regime

The provisions in Schedule 3 ("Monitoring Regime Process") apply.

6.4 Monitoring Meetings

- (a) AGNSW will arrange for meetings to be held on a fortnightly basis (or at such other intervals as ED Operator may require from time to time) on and from the Commencement Date between Senior Representatives of ED Operator, RMS, AGNSW and the senior representative(s) of the Building Contractor (once the Building Contractor is appointed) to review the progress, monitoring and management of the Project Activities in relation to the ED Land and to discuss and resolve any matters of concern in relation to or arising out of those matters including any breach

of this Deed by any party or other matters of concern (including in relation to public health and safety, workplace health and safety, emergencies, property damage or traffic management).

- (b) Any party to this Deed may request a meeting of Senior Representatives and the senior representative(s) of the Building Contractor (following reasonable notice) to deal with any matters of concern to a party, including concerns that an aspect of the Project may affect any part of the ED Land or the ED Motorway.
- (c) Each party will use reasonable endeavours to ensure that its Senior Representative attends any such meetings under this clause 6.4 or, if that person is not available, a person who has equivalent power and authority to make decisions in relation to the relevant matter attends such meetings.
- (d) AGNSW must take all reasonable steps to ensure that the relevant senior representative(s) of the Building Contractor attend any such meetings if so requested.
- (e) AGNSW will attend, and will take all reasonable steps to procure that a relevant senior representative of the Building Contractor will attend, any meeting about, or that part of any meeting about, the performance of the Project Activities required by ED Operator, provided that ED Operator provides at least 3 Business Days' prior notice of any such meeting.

7 Access

7.1 Access to Zone 1 and Zone 2A

- (a) The parties acknowledge and agree that AGNSW and the Building Contractor will require access to Zone 1 and Zone 2A in order to carry out the Project Activities.
- (b) Subject to clause 7.1(d)(ii), RMS and ED Operator must:
 - (a) give and ensure that AGNSW, the Building Contractor and the Responsible Parties involved in the execution of, or in any performance of, the Works have unimpeded access to Zone 1 and Zone 2A on and from the Commencement Date; and
 - (b) thereafter continue to allow, or ensure that AGNSW, the Building Contractor and Responsible Parties involved in the execution of, or in any performance of, the Works, are continued to be allowed unimpeded access to Zone 1 and Zone 2A.
- (c) At all times that AGNSW has access to Zone 1 and Zone 2A, AGNSW must control access to, and ensure public safety on, Zone 1 and Zone 2A.
- (d) AGNSW must:
 - (i) ensure that it and the Building Contractor liaise with ED Operator in relation to the carrying out of the Works during any period AGNSW or the Building Contractor has access to Zone 1 or Zone 2A; and
 - (ii) provide ED Operator and RMS with access to Zone 1 and Zone 2A to the extent necessary to:

- (A) exercise its rights under clause 7.5 ("ED Operator Step In");
 - (B) exercise ED Operator's or RMS's rights under the Access Requirements or Schedule 3 ("Monitoring Regime Process");
 - (C) respond to an Emergency or External Event;
 - (D) comply with all Laws; and
 - (E) undertake operation and maintenance activities in respect of Zone 2B (including the installation and maintenance of throw screens on the ED land bridge), subject to ED Operator or RMS (as applicable):
 - (1) complying with AGNSW's safety and security management procedures; and
 - (2) coordinating its access to Zone 1 and Zone 2A with the Building Contractor's programme of works in order to limit any delay to the Works.
- (e) Where ED Operator or RMS (as applicable) accesses Zone 1 or Zone 2A:
- (i) under clause 7.1(d)(ii)(A) it will, where practicable to do so, provide AGNSW with reasonable prior notice; and
 - (ii) under clause 7.1(d)(ii)(B), (D) or (E) it will, where practicable to do so, provide AGNSW with reasonable prior notice. If a minimum of 5 Business Days' notice is not provided, the Building Contractor may refuse access until a period of 5 Business Days has elapsed from the date that the ED Operator or RMS (as applicable) provides notice if, in its sole assessment (acting reasonably), the construction program will be materially delayed or if the granting of access will or is likely to detrimentally affect safety at the site.

7.2 Access to Zone 2B

- (a) The parties acknowledge and agree that AGNSW and the Building Contractor will require access to Zone 2B in order to carry out the Project Activities.
- (b) Subject to clause 7.2(c), RMS and ED Operator must:
 - (i) give, or ensure that AGNSW, the Building Contractor and the Responsible Parties involved in the execution of, or in any performance of, the Works have, access to Zone 2B on and from the date and time determined in accordance with Part B of Schedule 2 ("Access Requirements"); and
 - (ii) thereafter continue to allow, or ensure that AGNSW, the Building Contractor and the Responsible Parties involved in the execution of, or in any performance of, the Works continue to be allowed access to Zone 2B in accordance with Part B of Schedule 2 ("Access Requirements").
- (c) AGNSW must:

- (i) comply, and must ensure that the Building Contractor complies, with Part B of Schedule 2 ("Access Requirements") at all times it has access to Zone 2B;
- (ii) ensure that it and the Building Contractor liaise with ED Operator in relation to the carrying out of the Project Activities during any period AGNSW or the Building Contractor has access to Zone 2B; and
- (iii) provide ED Operator and RMS with access to Zone 2 to the extent necessary to:
 - (A) exercise its rights under clause 7.5 ("ED Operator Step In");
 - (B) exercise ED Operator or RMS's rights under Schedule 2 ("Access Requirements") or Schedule 3 ("Monitoring Regime Process");
 - (C) respond to an Emergency or External Event; or
 - (D) comply with all Laws.

7.3 Access to Zone 3 during Planned ED Lane Occupancy Period

- (a) The parties acknowledge and agree that AGNSW and the Building Contractor may require access to Zone 3 in order to carry out the Project Activities and that such access will only be available during a Planned ED Lane Occupancy Period.
- (b) Subject to clause 7.3(c), ED Operator will give AGNSW and the Building Contractor a Planned ED Lane Occupancy Period which provides AGNSW sufficient access to Zone 3 to carry out the Project Activities upon the dates and times determined in accordance with the Access Requirements.
- (c) AGNSW must:
 - (i) comply, and must ensure that the Building Contractor complies, with Part C of Schedule 2 ("Access Requirements") at all times it has access to Zone 3;
 - (ii) subject to clause 7.3(d), pay the ED Operator the Planned ED Lane Occupancy Fee for that Planned ED Lane Occupancy Period;
 - (iii) ensure that it and the Building Contractor liaise with ED Operator in relation to the carrying out of the Project Activities during any period it has access to Zone 3; and
 - (iv) provide ED Operator and RMS with access to Zone 3 to the extent necessary to:
 - (A) exercise its rights under clause 7.5 ("ED Operator Step In");
 - (B) exercise ED Operator or RMS's rights under Schedule 2 ("Access Requirements") or Schedule 3 ("Monitoring Regime Process");
 - (C) respond to an Emergency or External Event; and

(D) comply with all Laws.

- (d) If, as a result of an event contemplated by clause 7.3(c)(iv) or clause 7.5, AGNSW or the Building Contractor is unable to access all or part of Zone 3 for a period in which AGNSW or the Building Contractor (as applicable) would otherwise be liable to pay a Planned ED Lane Occupancy Fee, other than to the extent caused or contributed to by AGNSW or the Responsible Parties, the Planned ED Lane Occupancy Fee for that area and for that period will be reduced to the extent necessary to reflect the duration of the period for which AGNSW or the Building Contractor (as applicable) is unable to access Zone 3.
- (e) Subject to clause 7.3(f) but notwithstanding any other provision of this Deed, ED Operator, RMS and AGNSW acknowledge and agree that the Planned ED Lane Occupancy Fee payable by AGNSW in accordance with clause 7.3(c) is ED Operator's sole remedy for, and AGNSW will not be liable for, loss of use of Zone 3 and any other Consequential Loss incurred or suffered as a result of loss of use of Zone 3 during a Planned ED Lane Occupancy Period. The parties agree that this clause does not limit AGNSW's liability under clauses 10.1(a), 10.1(b), 10.1(d) and 10.1(e).
- (f) If this clause 7.3 (or any part) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle ED Operator from recovering any of the Planned ED Lane Occupancy Fees which would otherwise be payable under this clause 7.3, then ED Operator is entitled to recover damages at law from AGNSW for the loss of use of Zone 3 as contemplated in Part C of Schedule 2 ("Access Requirements") in relation to the matters specified in Part C of Schedule 2 ("Access Requirements"), provided that the ED Operator's entitlement to recover damages at Law will be limited to the amount of the Planned ED Lane Occupancy Fees to which it would otherwise have been entitled had this clause 7.3 not been void, invalid or otherwise inoperative.

7.4 Access to the ED Land generally

- (a) The parties acknowledge and agree that to the extent that Zone 1 is not the subject of the ED Lease, ED Operator has no obligation to provide access as contemplated by this clause 7.
- (b) RMS and ED Operator agree not to hinder or disrupt AGNSW or the Building Contractor or any of their employees, agents and contractors in accessing:
 - (i) Zone 1;
 - (ii) Zone 2; or
 - (iii) Zone 3 during a Planned ED Lane Occupancy Period,other than to the extent necessary to:
 - (iv) exercise its rights under clause 7.5 ("ED Operator Step In");
 - (v) to exercise its rights under the Access Requirements or Schedule 3 ("Monitoring Regime Process");
 - (vi) respond to an Emergency or External Event; and
 - (vii) comply with all Laws.

- (c) In exercising its rights under this clause 7, and without limiting AGNSW's other obligations under this Deed, AGNSW must consult and work co-operatively with ED Operator and RMS.

7.5 ED Operator Step In

- (a) In the event that:
 - (i) any vehicle or machinery used by the Building Contractor in connection with the Project Activities is left unattended and unsecured in or on the ED Land or any part of the Project Activities (including building material or equipment) is left unattended and unsecured on any part of the ED Land and, in the reasonable opinion of ED Operator, is causing or may cause:
 - (A) a risk or threat to health or safety of persons in or on Zone 2B or Zone 3; or
 - (B) any damage or destruction of any part of Zone 2B or Zone 3 or other property (including infrastructure) on those areas; or
 - (ii) ED Operator or RMS suffers any Loss or any damage or destruction of any part of Zone 2B or Zone 3 or other property (including infrastructure) on those areas occurs from or arising out of the Project Activities,

(each, for the purposes of this clause 7.5, a "Step-In Event");
 - (iii) ED Operator may notify AGNSW of the occurrence of a Step-In Event;
 - (iv) in the case of a Step-In Event set out in clause 7.5(a)(i), if AGNSW or the Building Contractor fails to remove the vehicle or machinery, or secure the Project Activities within 24 hours, ED Operator may take steps to eliminate the risk or threat to health or safety in or on Zone 2B or Zone 3 (as applicable), including removing such vehicle or machinery to a secure location or securing the Project Activities, provided that:
 - (A) ED Operator has first notified AGNSW of the occurrence of a Step-In Event under clause 7.5(a)(iii); and
 - (B) in doing so, ED Operator does not breach, or cause AGNSW to breach, any Law or Approvals;
 - (v) In the case of a Step-In Event set out in clause 7.5(a)(ii), ED Operator may:
 - (A) take immediate steps to clear any debris and begin initial repair work;
 - (B) carry out such steps as are necessary to:
 - (1) minimise any Loss to ED Operator or RMS; and
 - (2) ensure:

- (b) the prompt repair or replacement of any damage to or destruction of Zone 2B or Zone 3 or other property (including infrastructure) on those areas so that it complies with the ED Project Deed and there is minimal disruption to the operation and maintenance of Zone 2B or Zone 3 and/or tolling of the ED Motorway; and
 - (c) that, to the greatest extent possible, ED Operator and RMS are able to continue to comply with their obligations under the ED Project Deed;
 - (C) manage all repair and replacement activities so as to minimise the impact on Zone 2B or Zone 3 or other property (including infrastructure) on those areas; and
 - (D) will keep RMS fully informed of the progress of the repair and replacement activities undertaken under this clause 7.5(a)(v).
- (b) AGNSW indemnifies ED Operator from any Claim or Loss incurred or suffered by ED Operator arising out of or in relation to the exercise by ED Operator of its rights under this clause 7.5.
 - (c) Any amount claimed by ED Operator pursuant to the indemnity in clause 7.5(b) will be reduced proportionally to the extent that the Claim or Loss arises from a negligent act or negligent omission of ED Operator or one of its employees, agents or contractors.
 - (d) Clause 7.5(b) survives the termination or expiry of this Deed for any reason.

8 Subdivision of ED Land

8.1 Registrable Plan of Subdivision to be prepared

- (a) AGNSW will:
 - (i) in consultation with RMS, prepare, as soon as practicable after the Commencement Date and at AGNSW's cost, a subdivision plan that is:
 - (A) in a form that is registrable at Land Registry Services NSW; and
 - (B) consistent with the subdivision plans and principles set out in Schedule 9

(Registrable Subdivision Plan) and will use its reasonable endeavours to procure that the Registrable Subdivision Plan is completed and registered by the Date of Completion;
 - (ii) provide each of AML and RMS with a progress report at the end of each 3 monthly period after Commencement Date as to the status and progress of preparation and registration of the Registrable Subdivision Plan (including details of any potential sources of delay to registration of that plan);

- (iii) once the Registrable Subdivision Plan has been approved by all relevant stakeholders (including the parties to this Deed and RBGDT), notify RMS in writing that the Registrable Subdivision Plan has been approved and, at AGNSW's cost, expeditiously lodge for registration the approved Registrable Subdivision Plan;
 - (iv) at AGNSW's cost, be responsible for attending to all requisitions, if any, that Land Registry Services NSW issues in relation to the Registrable Subdivision Plan; and
 - (v) once the Registrable Subdivision Plan has been registered, notify RMS and AML in writing that the Registrable Subdivision Plan has been registered and finalise entry into the Deed of Partial Surrender with AML and the agreed form of lease with RMS. Each of AML and RMS will enter into those documents in their agreed form promptly after being notified by AGNSW under this paragraph.
- (b) ED Operator may not object to the subdivision and excising of that land unless:
- (i) the land to be excised or the terms of its excision and surrender are inconsistent with the subdivision plans and principles set out in Schedule 9; or
 - (ii) AGNSW has not entered into the agreement or protocol contemplated in clause 8.2(b)(i); or
 - (iii) RBGDT has not entered into the agreement or protocol contemplated in clause 8.2(c)(i); or
 - (iv) RMS and/or RBGDT has not granted ED Operator (or the ED Operator does not otherwise have the benefit of) rights of access contemplated in paragraphs 10 and 11 of the Operating Interface Principles and in paragraph 2(d) of Schedule 9 over the part of the land to be excised pursuant to the Deed of Partial Surrender and leased to RBGDT.
- (c) AGNSW must obtain, at its cost, all approvals required in relation to the Registrable Subdivision Plan.

8.1A Grant of Licence if Registrable Subdivision Plan not registered by Date of Completion

- (a) If, despite AGNSW's reasonable endeavours, the Registrable Subdivision Plan has not been registered by the Date of Completion, then:
- (i) the ED Operator (as lessee under the ED Lease) grants AGNSW a licence ("AML Licence") to occupy the part of Zone 1 within the Development Footprint (as determined at the Date of Completion) (the "Licensed Land"):
 - (A) on and from the Date of Completion until the date of registration of the Registrable Subdivision Plan; and
 - (B) subject to the terms set out in clause 8.1A(b); and
 - (ii) to the extent that ED Operator does not have the power, capacity and authority under the ED Lease to grant the AML Licence or any rights required by AGNSW under the AML

Licence, RMS (as registered proprietor of the Licensed Land) consents to the grant of the AML Licence and irrevocably waives any breach of the ED Lease by the ED Operator as a result of the grant of the AML Licence.

(b) Any licence granted to AGNSW under clause 8.1A(a) is granted on and is subject to the following terms and conditions:

(i) for the term of the AML Licence:

(A) AGNSW agrees that it will comply with the obligations set out in the RMS Lease in respect of the Licensed Land (the "**RMS Lease Obligations**"); and

(B) RMS irrevocably and unconditionally releases ED Operator from performance of its obligations under the ED Lease in respect of the Licensed Land (the "**ED Lease Obligations**") and any Claim or Loss for a breach of the ED Lease Obligations to the extent that the breach is caused or contributed to by, or arises out of or in relation to AGNSW performing or failing to perform the RMS Lease Obligations, except to the extent that the Claim or Loss is caused or contributed to by, or arises out of or in relation to the acts or omissions of the ED Operator or its sub-licensees (other than AGNSW or its own sub-licensees or its officers, agents, contractors, consultants, invitees or any other person on or about the Licensed Land at the invitation of or under the control or direction of AGNSW), including the negligence, fraud or wilful misconduct of those parties;

(ii) the licence is subject to the ED Operator's and RMS' continuing rights of access to the Licensed Land for the purposes set out in clause 7.1(d)(ii); and

(iii) subject to clauses 8.1A(c) and 8.1A(d), AGNSW indemnifies RMS and ED Operator (each an "**Indemnified Party**") from and against:

(A) any Claim or Loss (including Consequential Loss) suffered or incurred by the relevant Indemnified Party in relation to the Licensed Land or the occupation of the Licensed Land by AGNSW or any person taking an interest or exercising access rights through AGNSW; or

(B) any Claim or Loss (including Consequential Loss) suffered or incurred by the relevant Indemnified Party arising out of or in relation to:

(1) any injury to, or disease or illness (including mental illness) or death of, persons;

(2) the loss of (whether total or partial) or destruction or damage to, any real or personal property of any person (including the ED Operator and RMS);

(3) the loss of use (whether total or partial) of any real or personal property of any person (including the ED Operator and RMS);

- (4) the ED Operator or RMS, as the case may be, being unable to comply with its obligations under any Law; or
- (5) the ED Operator or RMS, as the case may be, being unable to comply with or being in breach of the ED Project Deed or the ED Lease,

to the extent caused by or contributed to, arising out of or in relation to:

- (C) the occupation or use of the Licensed Land by AGNSW (or its sub-licensees, officers, agents, contractors, consultants, invitees or any other person on or about the Licensed Land at the invitation of or under the control or direction of AGNSW);
 - (D) the acts or omissions of AGNSW (or its sub-licensees, officers, agents, contractors, consultants, invitees or any other person on or about the Licensed Land at the invitation of or under the control or direction of AGNSW) including the negligence, fraud or wilful misconduct of those parties; or
 - (E) any breach by AGNSW (or its sub-licensees, officers, agents, contractors, consultants, invitees or any other person on or about the Licensed Land at the invitation of or under the control or direction of AGNSW) of the terms of the licence granted under clause 8.1A(a).
- (c) Any amount claimed by RMS pursuant to the indemnity in clause 8.1A(b)(iii) will be reduced proportionally to the extent the Loss or Claim arises from a wrongful or negligent act or wrongful or negligent omission of RMS or one of its employees, agents or contractors.
 - (d) Any amount claimed by ED Operator pursuant to the indemnity in clause 8.1A(b)(iii) will be reduced proportionally to the extent the Loss or Claim arises from a wrongful or negligent act or wrongful or negligent omission of ED Operator or one of its employees, agents or contractors.

8.2 Operating Interface Principles

- (a) The parties agree that:
 - (i) on and from the Date of Works Completion, AGNSW will operate and maintain the Works and the land on which the Works are constructed; and
 - (ii) the Operating Interface Principles set out in Schedule 5 ("Operating Interface Principles") reflect the manner in which AGNSW, ED Operator and RMS intend to interact with each other in respect of the operation of the completed Works on and from the Date of Works Completion on Zone 2 and the management of interface matters on and in the vicinity of the ED Land.
- (b) The parties will:
 - (i) develop the Operating Interface Principles further and enter into an agreement or protocol reflecting those principles (as further

- developed) no later than 24 months after the Commencement Date; and
- (ii) until the agreement or protocol contemplated in clause 8.2(b)(i) is entered into, comply with and be entitled to exercise the rights set out in:
 - (A) paragraph 15 of the Operating Interface Principles with effect from the Commencement Date; and
 - (B) all other Operating Interface Principles with effect from the Date of Works Completion.
- (c) RMS and the ED Operator agree that:
- (i) ED Operator and RMS intend to, and RMS will include provisions in the Development Deed requiring RBGDT to, develop operating interface principles further in respect of the land contemplated by the Development Deed to be excised pursuant to the Deed of Partial Surrender and leased to RBGDT (based on principles equivalent to the Operating Interface Principles) and enter into an agreement or protocol between the ED Operator, RMS and RBGDT reflecting those principles (as further developed) no later than 24 months after the Commencement Date;
 - (ii) RMS will include provisions in the Development Deed requiring that until the agreement or protocol contemplated in clause 8.2(c)(i) is entered into, RBGDT will with effect from the Date of Works Completion:
 - (A) comply with operating interface principles equivalent to the Operating Interface Principles; and
 - (B) grant rights of access (or consent to RMS granting such rights) contemplated in paragraphs 10 and 11 of the Operating Interface Principles and in paragraph 2(d) of Schedule 9 over the part of the land to be excised pursuant to the Deed of Partial Surrender and leased to RBGDT; and
 - (iii) RMS will until the agreement or protocol contemplated in clause 8.2(c)(i) is entered into, comply with the operating interface principle equivalent to the Operating Interface Principle at section 15(b) of Schedule 5 (in respect of easements, covenants or restrictions on use requested by RBGDT).

8.3 Deed of Partial Surrender

No later than five Business Days after receiving notice that the Registrable Subdivision Plan has been approved in accordance with clause 8.1(a)(ii), RMS must prepare the Deed of Partial Surrender and deliver and release to the ED Operator two originals of the Deed of Partial Surrender validly executed by RMS.

8.4 ED Operator may require easements, restrictions or covenants

- (a) The ED Operator may require and have the benefit of easements, restrictions or covenants benefiting or burdening the proposed lots 3001 or 3002 (forming part of stage 2 of the subdivision plan attached to Schedule 9) for the following purposes:

- (i) to provide access to proposed lot 3002 (forming part of stage 2 of the subdivision plan attached to Schedule 9) ("Lot 3002");
- (ii) for the support of structures erected in Lot 3002;
- (iii) if the easement, restriction or covenant is required by any Government Agency or under any Law;
- (iv) to comply with the requirements of any Government Agency or with any Law;
- (v) to undertake operation and maintenance activities required in connection with the ED Project Deed; or
- (vi) for any purpose that the ED Operator deems appropriate, acting reasonably,

subject to ED Operator obtaining AGNSW's and RMS' consent, not to be unreasonably withheld or delayed. AGNSW and RMS cannot withhold or delay their consent to any easement, restriction or covenant required by ED Operator under clause 8.4(a) that does not materially adversely affect AGNSW's use and operation of proposed lot 2001 (forming part of stage 3 of the subdivision plan (as shown indicatively in the Stage 3 Subdivision Plan (as defined in the Development Deed))).

- (b) Any easements, restrictions or covenants required by ED Operator under clause 8.4(a) are at the cost of AGNSW.

9 Representations and Warranties

9.1 ED Operator warranties

ED Operator represents and warrants to the other parties to this Deed that it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced and that its obligations under this Deed are legally valid, binding and enforceable.

9.2 AGNSW warranties

AGNSW represents and warrants to the other parties to this Deed that it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced and that its obligations under this Deed are legally valid, binding and enforceable.

9.3 RMS warranties

RMS represents and warrants to the other parties to this Deed that it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced and that its obligations under this Deed are legally valid, binding and enforceable.

9.4 Trustee warranties

AMT, in its capacity as trustee of the Trust:

- (a) represents and warrants the following are true:

- (i) it has been properly appointed as trustee of the Trust;
 - (ii) there are no other trustees of the Trust (other than any others who are also parties to this Deed);
 - (iii) it is not proposing to resign as trustee of the Trust nor is it aware of any proposal to be removed or for another trustee to be appointed;
 - (iv) the Trust is validly formed and the trust documents comply with the law;
 - (v) if it has provided copies of any trust documents then they are current and complete;
 - (vi) it is not in default under any trust documents;
 - (vii) it has a full right of indemnity from the trust assets in respect of its obligations and liability under this Deed;
 - (viii) it has entered into this Deed as part of the proper administration of the Trust and for the commercial benefit of the Trust and entering into this Deed is a proper trust purpose;
 - (ix) the Trust has not been terminated and no action is pending to wind up, terminate, reconstitute or resettle the Trust nor has any event for the vesting of the assets occurred; and
 - (x) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that, if disclosed, might be expected to affect the decision of RMS to enter into this Deed; and
- (b) promises that:
- (i) it will not do anything which may result in the loss of its full right of indemnity from the trust assets or the termination of the Trust; and
 - (ii) if it is replaced or joined by a new trustee, it will procure that the new trustee enters into a deed covenanting to comply with this clause 9.4.

10 Liability

10.1 Liability and indemnity

Subject to clauses 10.2 ("RMS's acts or omissions") and 10.3 ("ED Operator's acts or omissions"), AGNSW indemnifies RMS and ED Operator (**Indemnified Party**) from and against any Claim or Loss (including Consequential Loss) suffered or incurred by the Indemnified Party arising out of or in relation to:

- (a) any injury to, or disease or illness (including mental illness) or death of, persons;
- (b) the loss of (whether total or partial) or destruction or damage to, any real or personal property of any person (including ED Operator and RMS);
- (c) the loss of use (whether total or partial) of any real or personal property of any person (including ED Operator and RMS), excluding:

- (i) the loss of use during a Planned ED Lane Occupancy Period of any lane or part of Zone 3 which is the subject of a Planned ED Lane Occupancy Period; and
 - (ii) the loss of use of any lane or part of Zone 3 outside of a Planned ED Lane Occupancy Period arising out of or in relation to the Project Activities;
- (d) (where ED Operator is the Indemnified Party) ED Operator being unable to comply with its obligations under any Law; or
- (e) (where ED Operator is the Indemnified Party) ED Operator being unable to comply with or being in breach of the ED Project Deed,
- to the extent caused by or contributed to, arising out of or in relation to:
- (f) the Project Activities;
 - (g) the acts or omissions of AGNSW or the Responsible Parties (including the negligence, fraud or wilful misconduct of those parties); or
 - (h) any breach of this Deed by AGNSW.

10.2 RMS's acts or omissions

Any amount claimed by RMS pursuant to the indemnity in clause 10.1 ("Liability and indemnity") will be reduced proportionally to the extent the Loss or Claim arises from a wrongful or negligent act or wrongful or negligent omission of RMS or one of its employees, agents or contractors.

10.3 ED Operator's acts or omissions

Any amount claimed by ED Operator pursuant to the indemnity in clause 10.1 ("Liability and indemnity") will be reduced proportionally to the extent the Loss or Claim arises from a wrongful or negligent act or wrongful or negligent omission of ED Operator or one of its employees, agents or contractors.

10.4 Fines

Costs incurred by ED Operator or RMS in paying any fine, penalty or sanction imposed by a court or other authority in relation to the Project Activities will be reimbursed by AGNSW to ED Operator or RMS (as the case may be) to the extent that AGNSW or the Building Contractor is responsible for the event or circumstances which resulted in the fine or penalty or sanction being imposed on ED Operator or RMS (as the case may be).

10.5 Release

- (a) Except as otherwise expressly stated in this Deed, AGNSW accepts all risk in relation to the Project Activities and this Deed, and releases:
- (i) ED Operator from all Claims and Loss in this respect, except to the extent:
 - (A) caused or contributed to by a breach by ED Operator of this Deed; or
 - (B) caused or contributed to by a negligent or wrongful act or negligent or wrongful omission of ED Operator; and

- (ii) RMS from all Claims and Loss in this respect, except to the extent:
 - (A) caused or contributed to by a breach by RMS of this Deed; or
 - (B) caused or contributed to by a negligent or wrongful act or negligent or wrongful omission of RMS.
- (b) Subject to clauses 8.1A(b), 10.1 and 13.5 and to the maximum extent permitted by law, each party excludes all liability to each other party for any Consequential Loss.

10.6 Survival

This clause 10 survives the termination or expiry of this Deed for any reason.

11 Fees and other costs

11.1 Unplanned impact on ED Motorway

- (a) To the extent the Project Activities cause any traffic impact or loss of use of Zone 3 outside of a Planned ED Lane Occupancy Period, AGNSW will pay the ED Operator the Unplanned ED Lane Occupancy Fee.
- (b) Subject to clause 11.1(c), but notwithstanding any other provision of this Deed, ED Operator, RMS and AGNSW acknowledge and agree that the Unplanned ED Lane Occupancy Fee payable by AGNSW in accordance with clause 11.1(a) is ED Operator's sole remedy for, and AGNSW will not be liable for, loss of use of Zone 3 and any other Consequential Loss incurred or suffered as a result of loss of use of Zone 3 outside of a Planned ED Lane Occupancy Period. The parties agree that this clause does not limit AGNSW's liability under clauses 10.1(a), 10.1(b), 10.1(d) and 10.1(e).
- (c) If this clause 11.1 (or any part) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle ED Operator from recovering any of the Unplanned ED Lane Occupancy Fees which would otherwise be payable under clause 11.1(a), then ED Operator is entitled to recover damages at law from AGNSW for the loss of use of Zone 3 as contemplated in Part D of Schedule 2 ("Access Requirements") in relation to the matters specified in Part D of Schedule 2 ("Access Requirements"), provided that the ED Operator's entitlement to recover damages at Law will be limited to the amount of the Unplanned ED Lane Occupancy Fees to which it would otherwise have been entitled had this clause 11.1 not been void, invalid or otherwise inoperative.

11.2 Other costs

In addition to any Planned ED Lane Occupancy Fees and Unplanned ED Lane Occupancy Fees, but subject to clauses 7.3(e) and 11.1(b), AGNSW will pay:

- (a) to ED Operator:
 - (i) the reasonable costs incurred by ED Operator:
 - (A) from or in relation to, the Project Activities including, but not limited to, reasonable costs (both external and internal) in relation to the development and review of the Design Documentation Amendments, For Construction

Drawings and Project Plans, delivery, certification, attendance at meetings (including engineering and technical reviews), supervision of Project Activities on the ED Land, internal project management, traffic approvals, advertising, and traffic controls;

- (B) in undertaking any inspections on the ED Land (or on any other area) in connection with the Works;
 - (C) in making any amendments required to the ED Project Documents as a result of the Project Activities;
 - (D) in the negotiation, preparation and execution of this Deed (for the avoidance of doubt, including both engineering and legal costs and the costs incurred in connection with obtaining the necessary consents and approvals from ED Operator's financiers);
 - (E) in the negotiation, preparation and execution of the Deed of Partial Surrender; and
 - (F) in the negotiation, preparation and execution of:
 - (1) any agreement or protocol contemplated in clause 8.2(b); and
 - (2) any agreement or protocol contemplated in clause 8.2(c)(i); and
 - (ii) any other costs expressly stated in this Deed as the responsibility of AGNSW;
- (b) to RMS:
- (i) the reasonable costs incurred by RMS:
 - (A) in making any amendments required to the ED Project Documents as a result of the Project Activities;
 - (B) in the negotiation, preparation and execution of this Deed (for the avoidance of doubt, including both engineering and legal costs);
 - (C) in the negotiation, preparation and execution of the Deed of Partial Surrender; and
 - (D) in the negotiation, preparation and execution of:
 - (1) any agreement or protocol contemplated in clause 8.2(b); and
 - (2) any agreement or protocol contemplated in clause 8.2(c)(i); and
 - (ii) any other costs expressly stated in this Deed as the responsibility of AGNSW; and
- (c) unless otherwise expressly stated to the contrary in this Deed, all costs properly incurred or payable by ED Operator and RMS, or which ED Operator and RMS become or are liable for, in relation to the Project Activities or this Deed, including the reasonable costs incurred in the

obtaining of (including negotiation, preparation and execution and registration of the necessary documentation for, and obtaining the necessary consents and approvals for) any easements, restrictions or covenants required by ED Operator over the land to be excised pursuant to the Deed of Partial Surrender for the purpose of undertaking operation and maintenance activities required in connection with the ED Project Deed.

11.3 Invoices and disputes

- (a) ED Operator will invoice AGNSW:
 - (i) on a monthly basis for Planned ED Lane Occupancy Fees and Unplanned ED Lane Occupancy Fees (plus GST) payable by AGNSW under clause 7.3(c)(iv) or 11.1(a); and
 - (ii) from time to time, for any other costs payable by AGNSW under this Deed.

The invoice must include details of the Planned ED Lane Occupancy Fees and Unplanned ED Lane Occupancy Fees and a reasonable breakdown of any costs claimed.

- (b) Any invoice issued in accordance with clause 11.3(a) will be payable by AGNSW within 30 Business Days of receipt of the invoice.
- (c) If AGNSW disputes any invoice, it will pay the undisputed amount in accordance with clause 11.3(b) and will notify ED Operator promptly in accordance with clause 14 ("Dispute Resolution") of the disputed amount. The dispute will be a Dispute for the purposes of clause 14 ("Dispute Resolution") and clause 14 ("Dispute Resolution") will apply.

12 Insurance

12.1 Care of the works

- (a) Subject to clause 12.1(b), AGNSW is responsible at all times from the Commencement Date until the Date of Completion for the care of the Works.
- (b) To the extent the damage, destruction or loss to the Works is caused by a negligent act or negligent omission of RMS or ED Operator, or their agents, employees or subcontractors, RMS or ED Operator (as the case may be) must pay the reasonable costs and expenses actually incurred by AGNSW in rectifying the damage or replacing the Works.

12.2 Insurance

- (a) AGNSW must take out, or must ensure that the Building Contractor takes out, all appropriate insurances in connection with the Project Activities as set out in Schedule 4 ("Insurance") ("Insurances").
- (b) AGNSW must ensure that:
 - (i) the professional indemnity insurance remains in existence for the duration of the Project Activities and for a further 7 years after the Date of Completion;
 - (ii) the other Insurances remain in existence until the Date of Completion;

- (iii) such Insurances are not amended or varied in any manner which would prejudice the position of ED Operator as an insured; and
- (iv) at least 10 Business Days prior to the commencement of the Works (and thereafter on each anniversary of the date of this Deed), AGNSW provides ED Operator and RMS with a certificate of currency (that contains sufficient information to verify that the Insurances are in effect) issued by the relevant insurer in relation to the Insurances.

13 Confidentiality

13.1 General restriction

Subject to clauses 13.2, 13.3 and 13.4, neither ED Operator nor AGNSW will, at any time, without the consent of the other party, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the Building Contractor, the Independent Certifier and their officers, employees, consultants, advisers and agents who require such reports, studies, information and data to enable them properly to carry out their duties):

- (a) any of the contents of this Deed;
- (b) any information relating to the negotiations concerning this Deed;
- (c) any information provided by one party to the other under or in connection with this Deed (including the ED Operator Information); or
- (d) any information which may have come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the other parties.

13.2 Exceptions

The restrictions imposed by clause 13.1 ("General restriction") will not apply to the disclosure of any information:

- (a) which is now or hereafter comes into the public domain (other than as a result of a breach of clause 13.1 ("General restriction")) or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by law or the Listing Rules of the Australian Securities Exchange (if applicable);
- (c) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party; or
- (d) which, in the reasonable opinion of the applicable party, is required to be disclosed to:
 - (i) any actual or prospective investor in or lender to (or assignee or novatee of a lender to) the party;
 - (ii) any insurer in respect of the Works or any insurer of the ED Motorway; or

- (iii) any of applicable party's officers, employees, professional advisers, auditors, contractors and consultants.

13.3 Publicity

- (a) ED Operator and RMS may each provide information to the public in relation to lane closures on the ED Motorway or other traffic adjustments as a result of the Project Activities in a timely manner and by such methods as it considers appropriate and AGNSW must not provide any such information to the public without prior consultation with ED Operator and RMS.
- (b) ED Operator and RMS may each issue any information, publication, document or article for publication concerning the Project Activities to the extent it is required to do so to comply with Law.

13.4 Disclosure and Release

- (a) The parties acknowledge that each of them may be required by Law to disclose the contents of, or certain information concerning, this Deed (including in accordance with section 9 or sections 27 to 35 of the *Government Information (Public Access) Act 2009 (NSW)*).
- (b) Each party consents to, and releases the other, in respect of any such disclosure.

13.5 Disclosure of ED Operator Information

AGNSW will procure that the Building Contractor treats any ED Operator Information received from ED Operator or via AGNSW or RMS as confidential. If any ED Operator Information which is not available in the public domain is disclosed to the Building Contractor or any other third party AGNSW indemnifies ED Operator from and against any Claim or Loss (including Consequential Loss) suffered or incurred by ED Operator arising out of or in relation to a failure to keep the ED Operator Information confidential.

14 Dispute Resolution

14.1 Disputes

If any dispute or difference arises between the parties as to any fact, matter or thing arising out of or in connection with this Deed ("Dispute"), the procedures in Schedule 7 ("Dispute Resolution Procedures") will apply to the resolution of the Dispute.

14.2 Continuance of performance

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

15 Notices

Any communication between the parties under or in accordance with this Deed:

- (a) must be in writing;

- (b) must be addressed as shown below or as otherwise notified in writing by the parties from time to time:

RMS:	<p>Felicity Finlayson Director Motorway Partnerships & Planning Level 22, 101 Miller Street, North Sydney NSW 2059 Felicity.FINLAYSON@rms.nsw.gov.au (02) 8588 4135</p>
ED Operator	<p>Louise Beer ED Asset Manager Level 31, Tower 5, Collins Square, 727 Collins Street, Docklands Victoria 3008 edassetmanager@transurban.com and lbeer@transurban.com (02) 9254 4918</p>
AGNSW	<p>Sally Webster Head Sydney Modern Project Art Gallery of New South Wales Art Gallery Road, The Domain, Sydney NSW 2000 sally.webster@ag.nsw.gov.au (02) 9225 1852</p>

- (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 by hand or posted by prepaid post to the address of the addressee, in accordance with clause 15(b); and
- (e) will be deemed to be received by the addressee:
- (i) (in the case of prepaid post) on the second Business Day after the date of posting; and
 - (ii) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 15(b), unless that delivery is made on a non-Business Day, or after 5.00 pm on a Business Day, in which case that communication will be deemed to have been received at 9.00 am on the next Business Day.

16 General

16.1 Entire agreement

- (a) Subject to clause 16.1(b), this Deed represents the entire agreement between the parties in respect of its subject matter and supersedes all

prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of the subject matter of this Deed.

- (b) Nothing in this Deed affects the rights and obligations of the ED Operator and RMS under the ED Project Deed in relation to the subject matter of the ED Project Deed.

16.2 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.

16.3 Governing law and jurisdiction

- (a) This Deed is to be governed by, and will be construed according to, the laws of New South Wales.
- (b) 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.
- (c) 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 16.3(b).

16.4 Severability

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction then:

- (a) that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed; and
- (b) the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 16.4(b)(i), preserves to the minimum possible extent:
 - (A) the enforceability of the provision and the provisions of this Deed; and
 - (B) the original effect and intent of this Deed.

16.5 Amendments

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

16.6 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) Except as expressly provided in this Deed, 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 another breach of that term or of a breach of any other term of this Deed.

16.7 Consents

Any consent or approval referred to in, or required under, this Deed other than that given by ED Operator and RMS under clause 3, may be given or withheld, or may be subject to any conditions as the relevant party (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

16.8 Deed does not affect operation of statutes

- (a) The parties acknowledge and agree that nothing in this agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of a party to this Deed in the exercise of any of its functions and powers pursuant to any Law. The rights and powers conferred by this Deed upon a party are in addition to the statutory rights and powers of that party.
- (b) To the extent of any inconsistency between this clause 16.8 and any other provision of this Deed, this clause prevails.

16.9 Assignment

- (a) A party must not Assign its interest under this Deed without the prior consent of the other parties.
- (b) Without limiting clause 16.9(a), if the ED Operator Assigns any interest in the ED Motorway or the ED Project Documents other than under clause 16.9(c) or 16.9(d), the ED Operator must ensure that the person to whom the Assignment is made is bound by this Deed as though it were the ED Operator.
- (c) Despite clause 16.9(a), a party may Assign its interest under this Deed to a Government Agency without the necessity of obtaining the other parties' consent. For the purposes of this clause 16.9(c) only, 'Government Agency' means the State of New South Wales or any authority within the meaning of the *Public Authorities (Financial Arrangements) Act 1987* (NSW).
- (d) Despite clause 16.9(a) and subject to ED Operator providing the other parties with prior written notice, ED Operator may Assign its interest under this Deed to the financiers, or parties appointed by the financiers, who hold security in relation to the ED Motorway or the ED Project Documents, without the need to obtain the consent of the other parties.

- (e) A party (the "Consenting Party") must not withhold its consent to an Assignment of the other party's interest under this Deed if the other party (the "Assignor") first makes an application to the Consenting Party for consent and the Assignor demonstrates to the Consenting Party's reasonable satisfaction that the proposed assignee is a solvent person who is capable of performing all of the obligations in this Deed to be performed on the part of the Assignor.

16.10 Indemnities

- (a) Any indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.
- (c) A party must pay on demand any amount it must pay under any indemnity in this Deed.

16.11 Counterparts

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

16.12 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 (including GST) 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. Each of the parties will be assumed to be entitled to full input tax credits unless they provide evidence to the other parties to the contrary.
- (b) If GST becomes payable on any supply made by a party ("Supplier") under this Deed:
 - (i) unless indicated otherwise, any amount payable under any other provision of this Deed for that supply ("Agreed Amount") is exclusive of GST;
 - (ii) to the extent that the consideration for the supply is not expressed as an amount of money, the value of the non-monetary consideration is to be treated as inclusive of GST; and
 - (iii) an additional amount will be payable by the party providing consideration for that supply ("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,

provided that the Recipient will not be required to pay an additional amount until the Supplier has provided a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply.

- (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 clause 16.12(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). 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 10 Business 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 (absent manifest error). 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. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (e) The right of the Supplier to recover any additional amount in respect of GST under this clause is subject to the issuing of the relevant tax invoice or adjustment note to the Recipient within 4 years of the Supplier's liability to pay that GST arising.
- (f) The parties must use their best endeavours to determine the mutually acceptable GST inclusive market value of any non-monetary consideration provided for supplies made under this Deed to be included in tax invoices to be issued to the Recipient of the relevant supply.

EXECUTED as a deed

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

Schedule 1 Conditions Precedent

1. ED Operator has obtained, on terms satisfactory to ED Operator, consent of its financiers to the terms of this Deed and entry into this Deed and the carrying out of the transactions contemplated by it (including the subdivision of land and excising from the ED Lease contemplated in clause 8.1), as required under the Common Terms Deed dated 2 July 2009 between, amongst others, ED Operator and Westpac Banking Corporation as security trustee, as amended and restated on 6 July 2011 and amended on 20 November 2013.

Schedule 2 Access Requirements

PART A - GENERAL

For the purposes of this Part A, unless the context otherwise requires, a reference to a "**Lane Occupancy Fee**" is a reference to both the Planned ED Lane Occupancy Fee and Unplanned ED Lane Occupancy Fee.

AGNSW agrees that:

- (a) the amount and enforceability of the Lane Occupancy Fees provided in this Schedule 2 ("Access Requirements") have been carefully negotiated between AGNSW and ED Operator and represent a liability which AGNSW willingly undertakes;
- (b) the Planned ED Lane Occupancy Fee in Part C of this Schedule 2 ("Access Requirements") is a genuine pre-estimate of the Loss which ED Operator will suffer as a result of the loss of use of Zone 3 during a Planned ED Lane Occupancy Period;
- (c) the Unplanned ED Lane Occupancy Fee in Part D of this Schedule 2 ("Access Requirements") is a genuine pre-estimate of the Loss as set out in Part D of this Schedule 2 ("Access Requirements") which ED Operator will suffer as a result of the loss of use of Zone 3 outside of a Planned ED Lane Occupancy Period;
- (d) in calculating the amount of the Lane Occupancy Fees, ED Operator has:
 - (i) carefully considered the amount of the Lane Occupancy Fee, relying on the agreement of AGNSW that the Lane Occupancy Fees are a genuine pre-estimate of those Losses; and
 - (ii) taken into account the Loss which will be suffered by it as a result of the loss of use of Zone 3 caused by the Project Activities; and
- (e) both AGNSW and ED Operator have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professional advisers in relation to their rights and obligations under this Deed.

PART B - Access to Zone 2B

Where Works are to be performed in Zone 2B, AGNSW must provide 5 Business Days' prior written notice to the ED Operator and details of the Works intended to be performed.

Where, in the reasonable opinion of ED Operator, Project Activities performed in Zone 2B involve Works that cause or may cause a risk or threat to health or safety of any persons in or on Zone 3, and lanes of the ED Motorway will need to be closed for the duration of these Project Activities in order to limit that risk, then Part C of this Schedule 2 will apply to these Project Activities and AGNSW's associated access to Zone 2B.

PART C – Access to Zone 3 - Planned ED Lane Occupancy Period

This Part C sets out the requirements to agreeing a Planned ED Lane Occupancy Period and the Planned ED Lane Occupancy Fees payable to ED Operator in respect of a Planned ED Lane Occupancy Period.

For the purposes of this Part C "Authority to Work Permit" is the work authority permit produced from the "Maximo ATW" Authority to Work system used by ED Operator to control access to Zone 3.

AGNSW must:

- comply with Table 2 below in relation to access to Zone 3; and
- prepare and submit an Authority to Work Permit to ED Operator for its review and comment, such comment to be limited to the extent that the Authority to Work Permit does not comply with this Deed or Law.

The parties acknowledge that the provision of the Authority to Work Permit, any review and comment by ED Operator, and any amendments required, must occur within the relevant timeframe set out in Table 2 below.

Any review and comment by ED Operator on the Authority to Work Permit will not limit or relieve AGNSW of any of its obligations or liabilities under the Deed or give rise to any Claim by AGNSW against ED Operator or RMS.

Please note that the requirements for Planned ED Lane Occupancy Periods in this schedule reflect ED Operator's requirements for access to Zone 3. ED Operator will secure a Road Occupancy Licence (ROL) and any other approvals that may be required from the Transport Management Centre (TMC) on behalf of AGNSW, at AGNSW's cost. Notice periods and specific requirements for obtaining an ROL or any other approval from the TMC may differ from the requirements set out in this schedule. ED Operator does not warrant that compliance with this Schedule 2 will result in an ROL from the TMC.

For each occupancy, traffic control must be provided to ED Operator's satisfaction. ED Operator will carry out traffic control for closures within the motorway (including at the entry/exit ramps), however AGNSW must provide all other traffic control required for the Works.

As indicated below, some closures may require additional coordination with operators of Sydney Harbour Tunnel (SHT) or the Cross City Tunnel (CCT).

1. Evening Periods

Planned ED Lane Occupancy Periods may be sought in an Evening Period (as defined in Table 1 below).

Table 1 - Planned ED Lane Occupancy Periods

Evening Period
Each of the following comprises an Evening Period:
<ul style="list-style-type: none">• Monday 11pm to Tuesday 5am;• Tuesday 11pm to Wednesday 5am;• Wednesday 11pm to Thursday 5am;• Thursday 11pm to Friday 5am;• Friday 11pm to Saturday 5am;

- Saturday 12am to Sunday 5am; or
- Sunday 10pm to Monday 4am;

but not including long weekends, gazetted public holidays, the first or last day of gazetted school holidays, Father's Day, Mother's Day and days or parts of days advised by RMS as special events in Sydney.

2 Fees, notice periods and requirements

The following Table 2 outlines the Planned ED Lane Occupancy Fees payable for the different types of Planned ED Lane Occupancy Periods that can be sought by AGNSW, the minimum notice periods, and specific requirements.

AGNSW and ED Operator acknowledge that the Planned ED Lane Occupancy Fees include amounts payable by AGNSW to ED Operator for:

- 1 ED Operator's management and involvement in the ROL process (applies to all types);
- 2 ED Operator's Eastern Distributor Motorway site costs for providing additional tow truck coverage (applies to occupancy types 3, 6 and 9);
- 3 ED Operator's traffic management costs within the Eastern Distributor Motorway (applies to all types);
- 4 ED Operator's margins and management overheads on costs (all types of occupancy);
- 5 a reasonable and genuine pre-estimate of loss incurred by ED Operator of toll revenue for Eastern Distributor Motorway and liabilities for lost revenues (applies to types 5, 6, 7 and 8) in connection with a Planned ED Lane Occupancy Period.

During the delivery of the Project Activities, the Planned ED Lane Occupancy Fees will be subject to escalation at 1.5% per calendar quarter, commencing on 1 October 2018 (and thereafter at the start of each calendar quarter).

Table 2 – Occupancy Fees, Notice Requirements and Specific Requirements for Planned ED Lane Occupancy Periods

No	Description	Direction	Planned ED Lane Occupancy Periods	Period of notice for seeking approval of Planned ED Lane Occupancy Period from ED Operator	Specific Requirements	Lane Occupancy Fees (\$AUD) payable to ED Operator (fees do not include GST)
1	Full closure of exit ramp to Woolloomooloo – Cowper Wharf Rd Exit	Southbound	Evening Period	Two weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$10,116 per Evening Period or part of an Evening Period.
2	Single lane occupancy of the Eastern Distributor Motorway	Southbound	Evening Period	Two weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$10,116 per Evening Period or part of an Evening Period.
3	Two lane occupancy of the Eastern Distributor Motorway	Southbound	Evening Period	Two weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$13,379 per Evening Period or part of an Evening Period.
4	Full closure (three lane occupancy) of the Eastern Distributor Motorway	Southbound	Evening Period	Six weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$12,400 per Evening Period or part of an Evening Period.
5	Single lane occupancy of the Eastern Distributor Motorway	Northbound	Evening Period	Two weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$21,276 per Evening Period or part of an Evening Period.
6	Two lane occupancy of the Eastern Distributor Motorway	Northbound	Evening Period	Two weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$24,539 per Evening Period or part of an Evening Period

No	Description	Direction	Planned ED Lane Occupancy Periods	Period of notice for seeking approval of Planned ED Lane Occupancy Period from ED Operator	Specific Requirements	Lane Occupancy Fees (\$AUD) payable to ED Operator (fees do not include GST)
7	Full closure (three lane occupancy) of the Eastern Distributor Motorway. Not including Sir John Young Crescent	Northbound	Evening Period	Six weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$31,000 per Evening Period or part of an Evening Period.
8	Full Closure of the Eastern Distributor Motorway (six lane occupancy). Not including Sir John Young Crescent	Northbound and Southbound	Evening Period	Six weeks	Traffic control may extend to Cross City Tunnel and/or Sydney Harbour Tunnel	\$38,831 per Evening Period or part of an Evening Period.
9	Full Closure of Sir John Young Crescent	Northbound	Evening Period	Four weeks	Traffic control may extend to Cross City Tunnel and/or RMS roads in the vicinity	\$15,531 per Evening Period or part of an Evening Period.
10	Gazetted public holidays, the first or last day of gazetted school holidays, Father's Day, Mother's Day and days or parts of days advised by RMS as special events in Sydney		By application and subject to ED Operator and TMC's consideration but usually not granted	Commence discussions with ED Operator no less than two months prior to the proposed occupancy and acknowledge that preferred period not guaranteed at the time that the request is made.	By application and agreement	By application and agreement
11	Cancellation of any occupancy: more than three weeks' notice prior to start of occupancy					No charge

No	Description	Direction	Planned ED Lane Occupancy Periods	Period of notice for seeking approval of Planned ED Lane Occupancy Period from ED Operator	Specific Requirements	Lane Occupancy Fees (\$AUD) payable to ED Operator (fees do not include GST)
12	Cancellation of any occupancy: three weeks' notice or less, but more than one week's notice, prior to start of occupancy					No charge
13	Cancellation of any occupancy: one week's notice or less, but more than twenty-four hours' notice, prior to start of occupancy					40% of the relevant Lane Occupancy Fee
14	Cancellation of any occupancy: twenty-four hours' notice or less prior to start of occupancy					80% of the relevant Lane Occupancy Fee

ED Operator (at the cost of AGNSW) will provide notices of Works to the neighbours as required under the ROL and procure all other permits required to complete the Works.

* All occupancies must be approved and co-ordinated with ED Operator. Every endeavour is made to commence occupancies at the requested times, however ED Operator may need to delay commencement due to circumstances outside its control, including (without limitation) adverse weather, a direction from TMC, and/or incidents or emergencies on the ED Motorway. AGNSW acknowledges and agrees that ED Operator shall not be liable for any Loss arising from any delayed commencement.

* ED Operator maintains an annual shutdown calendar for the ED Motorway, which it will provide to AGNSW on an annual basis once it is available until the Date of Completion. Where practicable, closures for Works should be coordinated with closures for the ED Motorway. An example of the calendar is shown below. This is indicative only and is subject to change at ED Operator's discretion. Where a Planned ED Lane Occupancy overlaps with a closure on the ED Motorway that is in the ED Operator's shutdown calendar or is otherwise planned by ED Operator and does not arise in connection with the Project Activities, then no Planned ED Lane Occupancy Fee will apply in relation to the overlap.

PART D – Outside Planned ED Lane Occupancy Period

Where there is a closure on Zone 3 due to the Project Activities outside of a Planned ED Lane Occupancy Period (e.g. (without limitation) due to late-finishing roadworks), then additional fees will apply as set out in the following Tables 3, 4, 5 and 6.

AGNSW and ED Operator acknowledge that the Fees set out in the following Tables 3, 4, 5 and 6 cover amounts payable by AGNSW to ED Operator for:

- 1 ED Operator's traffic management costs within the Eastern Distributor Motorway;
- 2 ED Operator's margins and management overheads on costs (all types of occupancy); and
- 3 a reasonable and genuine pre-estimate of loss incurred by ED Operator of toll revenue for Eastern Distributor Motorway and liabilities for lost revenues. AGNSW and ED Operator acknowledge and agree that if this component of the Fee is found to be void, invalid or unenforceable, ED Operator may claim for damages at Law.

In respect of an unauthorised lane or tube closure on Zone 3, rates applicable for closure of lanes on Zone 3 during any applicable hour or part thereof on Weekdays are detailed in Tables 3 and 4 and during any applicable hour or part thereof on Weekends including Public Holidays are detailed in Tables 5 and 6.

During the delivery of the Project Activities, these Fees set out in the Tables 3, 4, 5 and 6 below will be subject to escalation at 1.5% per calendar quarter, commencing on 1 October 2018 (and thereafter at the start of each calendar quarter).

"Public Holidays" means long weekends, gazetted public holidays, the first or last day of gazetted school holidays, Father's Day, Mother's Day and days or parts of days advised by RMS as special events in Sydney.

Table 3 - Loss of Lane Availability - Weekday Northbound

Time of day/night the lane/tube in Zone 3 is closed	Single On/Off Ramp or Single Lane Closed (excl. GST)	All Lanes Closed (excl. GST)
00:00-00:59	\$ 3,237	\$ 5,395
01:00-01:59	\$ 2,997	\$ 4,995
02:00-02:59	\$ 2,997	\$ 4,995
03:00-03:59	\$ 3,177	\$ 5,295
04:00-04:59	\$ 3,897	\$ 6,495
05:00-05:59	\$ 9,477	\$ 15,795
06:00-06:59	\$ 20,277	\$ 33,795
07:00-07:59	\$ 22,617	\$ 37,695
08:00-08:59	\$ 23,037	\$ 38,395
09:00-09:59	\$ 20,757	\$ 34,595

10:00-10:59	\$ 19,617	\$ 32,695
11:00-11:59	\$ 19,497	\$ 32,495
12:00-12:59	\$ 19,137	\$ 31,895
13:00-13:59	\$ 18,537	\$ 30,895
14:00-14:59	\$ 19,497	\$ 32,495
15:00-15:59	\$ 19,797	\$ 32,995
16:00-16:59	\$ 20,337	\$ 33,895
17:00-17:59	\$ 20,697	\$ 34,495
18:00-18:59	\$ 19,677	\$ 32,795
19:00-19:59	\$ 15,237	\$ 25,395
20:00-20:59	\$ 11,877	\$ 19,795
21:00-21:59	\$ 10,677	\$ 17,795
22:00-22:59	\$ 7,497	\$ 12,495
23:00-23:59	\$ 5,397	\$ 8,995

Table 4 - Loss of Lane Availability - Weekday Southbound

Time of day/night the lane/tube in Zone 3 is closed	Single On/Off Ramp or Single Lane Closed (excl. GST)	All Lanes Closed (excl. GST)
00:00-00:59	\$ 2,676	\$ 4,460
01:00-01:59	\$ 2,640	\$ 4,400
02:00-02:59	\$ 2,640	\$ 4,400
03:00-03:59	\$ 2,667	\$ 4,445
04:00-04:59	\$ 2,775	\$ 4,625
05:00-05:59	\$ 3,612	\$ 6,020
06:00-06:59	\$ 5,232	\$ 8,720
07:00-07:59	\$ 5,583	\$ 9,305
08:00-08:59	\$ 5,646	\$ 9,410

Time of day/night the lane/tube in Zone 3 is closed	Single On/Off Ramp or Single Lane Closed (excl. GST)	All Lanes Closed (excl. GST)
09:00-09:59	\$ 5,304	\$ 8,840
10:00-10:59	\$ 5,133	\$ 8,555
11:00-11:59	\$ 5,115	\$ 8,525
12:00-12:59	\$ 5,061	\$ 8,435
13:00-13:59	\$ 4,971	\$ 8,285
14:00-14:59	\$ 5,115	\$ 8,525
15:00-15:59	\$ 5,160	\$ 8,600
16:00-16:59	\$ 5,241	\$ 8,735
17:00-17:59	\$ 5,295	\$ 8,825
18:00-18:59	\$ 5,142	\$ 8,570
19:00-19:59	\$ 4,476	\$ 7,460
20:00-20:59	\$ 3,972	\$ 6,620
21:00-21:59	\$ 3,792	\$ 6,320
22:00-22:59	\$ 3,315	\$ 5,525
23:00-23:59	\$ 3,000	\$ 5,000

Table 5 - Loss of Lane Availability - Weekends and Public Holidays Northbound

Time of day/night the lane/tube in Zone 3 is closed	Single On/Off Ramp or Single Lane Closed (excl. GST)	All Lanes Closed (excl. GST)
00:00-00:59	\$ 7,734	\$ 12,891
01:00-01:59	\$ 6,414	\$ 10,691
02:00-02:59	\$ 5,934	\$ 9,891
03:00-03:59	\$ 5,874	\$ 9,791
04:00-04:59	\$ 5,994	\$ 9,991
05:00-05:59	\$ 7,674	\$ 12,791

06:00-06:59	\$ 11,334	\$ 18,891
07:00-07:59	\$ 14,214	\$ 23,691
08:00-08:59	\$ 16,494	\$ 27,491
09:00-09:59	\$ 18,954	\$ 31,591
10:00-10:59	\$ 21,414	\$ 35,691
11:00-11:59	\$ 22,434	\$ 37,391
12:00-12:59	\$ 22,974	\$ 38,291
13:00-13:59	\$ 22,074	\$ 36,791
14:00-14:59	\$ 20,814	\$ 34,691
15:00-15:59	\$ 20,994	\$ 34,991
16:00-16:59	\$ 20,574	\$ 34,291
17:00-17:59	\$ 21,354	\$ 35,591
18:00-18:59	\$ 19,674	\$ 32,791
19:00-19:59	\$ 16,014	\$ 26,691
20:00-20:59	\$ 13,314	\$ 22,191
21:00-21:59	\$ 12,414	\$ 20,691
22:00-22:59	\$ 11,574	\$ 19,291
23:00-23:59	\$ 9,234	\$ 15,391

Table 6 - Loss of Lane Availability - Weekends and Public Holidays Southbound

Time of day/night the lane/tube in Zone 3 is closed	Single On/Off Ramp or Single Lane Closed (excl. GST)	All Lanes Closed
00:00-00:59	\$ 5,541	\$ 9,236
01:00-01:59	\$ 5,343	\$ 8,906
02:00-02:59	\$ 5,271	\$ 8,786
03:00-03:59	\$ 5,262	\$ 8,771
04:00-04:59	\$ 5,280	\$ 8,801

05:00-05:59	\$ 5,532	\$ 9,221
06:00-06:59	\$ 6,081	\$ 10,136
07:00-07:59	\$ 6,513	\$ 10,856
08:00-08:59	\$ 6,855	\$ 11,426
09:00-09:59	\$ 7,224	\$ 12,041
10:00-10:59	\$ 7,593	\$ 12,656
11:00-11:59	\$ 7,746	\$ 12,911
12:00-12:59	\$ 7,827	\$ 13,046
13:00-13:59	\$ 7,692	\$ 12,821
14:00-14:59	\$ 7,503	\$ 12,506
15:00-15:59	\$ 7,530	\$ 12,551
16:00-16:59	\$ 7,467	\$ 12,446
17:00-17:59	\$ 7,584	\$ 12,641
18:00-18:59	\$ 7,332	\$ 12,221
19:00-19:59	\$ 6,783	\$ 11,306
20:00-20:59	\$ 6,378	\$ 10,631
21:00-21:59	\$ 6,243	\$ 10,406
22:00-22:59	\$ 6,117	\$ 10,196
23:00-23:59	\$ 5,766	\$ 9,611

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Schedule 3 Monitoring Regime Process

1 Definitions

In this Schedule 3 a reference to a clause is a reference to a clause of this Schedule 3 and:

Alert Event means the occurrence of one of the following events:

- (a) exceedance of a limit defined in the Monitoring Regime;
- (b) an Emergency; or
- (c) an event which requires an urgent response to prevent any occurrence which affects:
 - (i) the free and continuous flow of traffic on Zone 3; or
 - (ii) the safe operation of Zone 2B or Zone 3 or other property (including infrastructure) on those areas.

Expert means, as the context requires, any consultant or consultants engaged by AGNSW in accordance with clause 2.

Location means, in respect of each Monitoring Regime, the locations where monitoring in accordance with that Monitoring Regime must take place on or in the vicinity of the ED Land that are specified in, or determined in accordance with, Exhibit 2 ("Monitoring Regime Scope and Details").

Monitoring Activities means the activities that AGNSW must carry out or procure, as part of any Monitoring Regime.

Monitoring Equipment means any devices, equipment, wires, conduits or hardware used as part of the Monitoring Regimes.

Monitoring Regime means the regime to be agreed in accordance with Exhibit 2 ("Monitoring Regime Scope and Details").

2 Implementation

- (a) AGNSW, RMS and ED Operator must agree the Monitoring Regime.
- (b) AGNSW must:
 - (i) carry out Monitoring Activities on the ED Land prior to carrying out any Project Activities to determine ambient ranges of parameters at each Location, in accordance with the Monitoring Regime set out at Exhibit 2 ("Monitoring Regime Scope and Details");

- (ii) ensure that the Monitoring Regimes are carried out during any period specified in relation to each Monitoring Regime in Exhibit 2 ("Monitoring Regime Scope and Details") and in accordance with clauses 2 to 11 and Exhibit 2 ("Monitoring Regime Scope and Details");
- (iii) at its cost, engage each Expert; and
- (iv) take all reasonable steps to procure that each Monitoring Regime is developed by the relevant Expert, in accordance with Exhibit 2 ("Monitoring Regime Scope and Details") and clause 2(b).

3 Modification of Monitoring Regimes

- (a) The parties agree that if an Alert Event occurs, AGNSW may make modifications to enhance a Monitoring Regime.
- (b) AGNSW must implement any modifications to a Monitoring Regime required by:
 - (i) AGNSW under this clause 3; or
 - (ii) ED Operator under clause 4,

and ED Operator will provide all reasonable assistance to enable AGNSW to implement such modifications.

4 ED Operator's right to require modifications

- (a) If an Alert Event occurs on the ED Land as a result of the carrying out of the Project Activities, ED Operator may provide a notice in writing to AGNSW specifying the modifications required to the relevant Monitoring Regime or Monitoring Regimes and the reasons those modifications are required.
- (b) If AGNSW does not direct that any or all of the modifications requested by ED Operator under clause 4(a) are made:
 - (i) AGNSW must within 24 hours of receiving ED Operator's notice respond to ED Operator in writing, identifying the modifications that AGNSW has not accepted and giving reasons; and
 - (ii) if ED Operator determines that failure to modify one or more of the Monitoring Regimes results in:
 - (A) an imminent risk or danger to persons or property (including the ED Motorway); or
 - (B) a disruption to the operation and maintenance of Zone 2B or Zone 3 or other property (including infrastructure) on those areas,

ED Operator may direct AGNSW to modify the Monitoring Regime and AGNSW shall promptly comply with the direction.

5 Access

- (a) AGNSW acknowledges that in order to gain access to the ED Land to install any Monitoring Equipment or otherwise carry out the Monitoring Activities, it will be required to access in accordance with this Deed.
- (b) ED Operator will use its best endeavours to facilitate AGNSW obtaining access to Zone 2B or Zone 3 in a timely manner to install the Monitoring Equipment or otherwise carry out the Monitoring Activities.
- (c) Nothing under this clause 5 limits the operation of clause 7 of the Deed.

6 Risk in relation to operation of Monitoring Equipment

- (a) AGNSW accepts all risk in relation to the continued operation of the Monitoring Equipment and releases ED Operator and RMS from all liability and claims in this respect, except if caused or contributed to by a wilful and negligent act of ED Operator or RMS.
- (b) If ED Operator or any representative, contractor, agent, employee, licensee or invitee interferes with, damages or destroys the Monitoring Equipment or any part of the Monitoring Equipment:
 - (i) ED Operator must immediately notify AGNSW of such interference, damage or destruction; and
 - (ii) AGNSW may as soon as practicable, and in consultation with ED Operator, access the ED Land for the purpose of rectifying such damage or destruction and to minimise the impact of such interference and ED Operator must facilitate access to the relevant ED Land in accordance with clause 5.

7 Monitoring communications

At all times during which the Works are being undertaken, AGNSW must ensure that:

- (a) an effective and practical communications system exists and is operational between the monitoring station, the relevant Works, the machinery operators and ED Operator; and
- (b) all results of the Monitoring Regime are submitted:
 - (i) in the case of a detection of any exceedance of the levels specified in the Monitoring Regime, a notice must be provided to ED Operator and the Independent Certifier immediately which includes:
 - (A) a description of the exceedance;
 - (B) the monitor location;
 - (C) the cause of the exceedance (where practicable);
 - (D) AGNSW's proposed corrective action (where practicable); and

- (ii) in the case of routine reporting under the Monitoring Regime, to ED Operator and the Independent Certifier within the time frames specified in the Monitoring Regimes from time to time.

8 AGNSW to notify

If AGNSW becomes aware of the occurrence of an Alert Event, AGNSW must, at its cost:

- (a) immediately inform ED Operator of the Alert Event and keep it informed about the Alert Event and provide ED Operator with sufficient information to enable ED Operator to assess the nature of the Alert Event and the likely effect of the Alert Event on the issues contemplated by paragraph (b) or (c) of the definition of Alert Event; and
- (b) thereafter, and as soon as is reasonably practicable, notify RMS of the Alert Event.

9 Risk mitigation

If an Alert Event occurs, AGNSW must immediately:

- (a) if the Alert Event is an Emergency, cooperate with ED Operator and adhere to any instruction provided by ED Operator including by:
 - (i) ceasing to carry out or suspending that part of the Project Activities which gave rise to the Emergency; and
 - (ii) temporarily vacating, and ensuring that the Building Contractor temporarily vacates, Zone 2 or Zone 3 (as applicable) if required to avert any danger;
- (b) without limiting or otherwise restricting clause 9(a), assist ED Operator to take such action as ED Operator directs is necessary to avert any danger and ameliorate the risk of danger;
- (c) without limiting clauses 9(a) and 9(b), allow representatives of ED Operator to enter the ED Land for the purpose of taking any action directed by ED Operator to avert any danger and ameliorate the risk of danger; and
- (d) consult with RMS in relation to the Alert Event and any steps taken by AGNSW and ED Operator to address the relevant Alert Event.

10 Representative on-call

Each Senior Representative (or their respective nominees) must be available on a 24 hour call basis to respond to any suspension under clause 9.

11 ED Operator's right to direct the Building Contractor

ED Operator has the right to direct the Building Contractor in accordance with clause 9 if:

- (a) AGNSW's Senior Representative cannot be immediately contacted; and

- (b) ED Operator determines that the Alert Event is an Emergency which will result in an imminent:
 - (i) risk or danger to persons or property; or
 - (ii) impact on the free and continuous flow of traffic on Zone 3; or
 - (iii) impact on the safe operation of Zone 2B or Zone 3 other property (including infrastructure) on those areas.

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Schedule 4 Insurance

	Types of Insurances	Minimum Sum Insured	Period of Insurance	Insurance Cover is to include the following	Comments
1	Public Liability and Product Liability	\$500,000,000 for any one occurrence or series of occurrences arising out of the same source or original cause and unlimited in the aggregate during the period of insurance but in the aggregate in respect of all occurrences with respect to products and completed operations liability.	Until the Date of Completion	<ul style="list-style-type: none"> (a) Is with an Approved Insurer as defined in clause 1 of the Definitions and Notes below; (b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below; (c) Lists RMS and ED Operator as an additional named insured; (d) Includes contractors and sub-contractors for their respective rights, interests and liabilities as an additional insured; (e) Covers the use of any construction plant and equipment not covered under a comprehensive or third party motor vehicle insurance policy; and (f) Includes a cross liability clause as defined in clause 3 of the Definitions and Notes below. 	
2	Motor Vehicle Insurance (Compulsory Third Party)	To legislative requirements	Until the Date of Completion	To legislative requirements.	
3	Plant and equipment insurance	Market value of plant and equipment	Until the Date of Completion	A plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased) which is used in connection with the carrying out of the Project Activities.	
4	Workers Compensation	As per relevant Workers Compensation State legislation.	Until the Date of Completion	As per relevant Workers Compensation State legislation.	
5	Professional Indemnity Insurance	\$20,000,000 for any one claim and in the aggregate for the duration of the Project Activities.	In relation to the construction phase, for the period starting no later than the commencement of the Works until the date which is 7 years	<ul style="list-style-type: none"> (a) Is with an Approved Insurer as defined in clause 1 of the Definitions and Notes below; and (b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions 	

	Types of Insurances	Minimum Sum Insured	Period of Insurance	Insurance Cover is to include the following	Comments
			after the Date of Completion.	and Notes below.	
6	Contract Works	For the replacement value of the Works	Until the Date of Completion	<p>(a) Is with an Approved Insurer as defined in clause 1 of the Definitions and Notes below;</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below;</p> <p>(c) Lists ED Operator and RMS and all contractors and subcontractors for their respective rights, interests and liabilities as additional named insureds; and</p> <p>(d) Includes a cross liability clause as defined in clause 3 of the Definitions and Notes below.</p>	

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 and rated not less than A minus (A-) from Standard and Poor's (Australia) Pty Limited or an equivalent rating;
- (b) Lloyds Underwriters;
- (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
- (d) the Comcover insurance scheme for the Australian Federal Government.

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

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

3 Where so noted in the table above, insurances must include a waiver and cross liability clause in which the insurer agrees:

- (a) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
- (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
- (c) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance.

- 4 References in this Insurance Schedule to the "contractor" and the "contract" are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (e.g. "AGNSW" and "Deed" or as the case may be).
- 5 Promptly after the Commencement Date, AGNSW will procure icare to undertake a full risk assessment of the Project and its impact on the ED Motorway. AGNSW will provide a copy of this assessment to ED Operator and RMS and the parties will, following their review of the assessment, meet and discuss in good faith whether a reduction in the level of Public Liability and Product Liability insurance cover is appropriate.

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

Schedule 5 Operating Interface Principles

- 1 AGNSW and ED Operator must adopt each other's safety and environmental protocols when working immediately adjacent to where Zone 2 and/or Zone 3 and the Works meet, or where there is any risk of overhead activity on the ED land bridge (within Zone 1 or in the vicinity of Zone 2) causing people / equipment or materials to fall onto Zone 3 and cause damage, accident or motorway closure.
- 2 AGNSW must take out or ensure that its chosen operator takes out all appropriate insurances in connection with operation and maintenance of the Works. ED Operator and RMS must be included as a named insured for public and products liability.
- 3 AGNSW will maintain Zone 1 and infrastructure associated with the Works after construction is completed, within the Development Footprint.
- 4 ED Operator will maintain the ED land bridge underlying superstructure and headwalls on either side of the ED land bridge (in Zone 2).
- 5 AGNSW will maintain any new permanent rock anchors installed as a part of the Works to condition state 2 in accordance with the RMS Bridge Inspection Procedure Manual at AGNSW's cost. Any inspections that are required will be undertaken by an inspector who has a RMS Level 2 bridge inspection qualification in accordance with the RMS Infrastructure Asset Management Policy PN 158. ED Operator will have inspection and access rights regarding the rock anchors if there is concern over the condition of the rock anchors on the ED Motorway. AGNSW will pay any costs associated with the ED Operator's inspection and access.
- 6 Where they can be readily inspected, AGNSW will undertake an inspection of new bearings installed as part of the Works 12 months after the Date of Works Completion and every 24 months thereafter, at AGNSW's cost. AGNSW will ensure that the inspector has a RMS Level 2 bridge inspection qualification in accordance with the RMS Infrastructure Asset Management Policy PN 158. Inspection reports will be promptly provided to the other parties. If the reports indicate deterioration of the condition of the bearings that have been inspected, then the ED Operator (or its appointed contractor) will have the right to inspect and access the bearings. In the circumstances where deterioration of the condition of the bearings has been identified, the ED Operator may require that the remaining bearings be examined by the ED Operator. AGNSW will pay any costs associated with the ED Operator's inspection and access.
- 7 The parties will attend meetings:
 - annually to review and discuss interface matters;
 - in response to any Emergencies, External Events, or threats to safety of persons on or in the vicinity of the ED Land; and
 - as otherwise requested by either party from time to time.
- 8 The parties will work together in good faith to agree processes to undertake future works other than maintenance (e.g. asset upgrades).

- 9 The parties will work together in good faith to agree an ongoing monitoring regime to commence on and from the Date of Works Completion.
- 10 ED Operator will have ongoing rights of access to Zone 1, including by way of an easement or other rights of access over Zone 1 within the Development Footprint (the land subject to such easement to be maintained by AGNSW), to enable ED Operator's ongoing maintenance of the ED land bridge (including the installation and maintenance of throw screens) and performance of its operation and maintenance obligations under the ED Project Deed, subject to ED Operator complying with AGNSW's (or, if applicable, RBGDT's) reasonable safety management procedures. Without limiting this paragraph 10, the ED Operator will require one or more easements of access over the proposed lot 3001 (forming part of stage 2 of the subdivision plan attached to Schedule 9) and Lot 3002.
- 11 If, during construction, remediation or strengthening requirements are identified in respect of the protection slab and/or waterproof membrane outside the Development Footprint, and AGNSW has not been requested to remediate that part of the protection slab and/or waterproof membrane in accordance with the Construction Requirements, then ED Operator and/or RMS following the Date of Works Completion may access Zone 1 in order to undertake the remediation works, subject to ED Operator and/or RMS, as the case may be, complying with RBGDT's (or, if applicable, AGNSW's) reasonable safety management procedures.
- 12 From the Date of Works Completion, if, as part of the Works, AGNSW has (at its cost) remediated the protection slab, geotechnical materials, water drainage cells and waterproof membrane that lie within the bounds of the Development Footprint, then AGNSW will continue to protect and maintain that remediated work.
- 13 The average loads to be imposed on the ED land bridge deck by the proposed building in its permanent condition are described in Arup drawing SMP-S-4020X00 Rev02.06, "Land Bridge – Loading Plan". Loads are expressed both as Dead Load and Live Load separately, and as a Factored Load combination with appropriate load factors. Any future change in Dead or Live Load which results in a net increase in the Factored Load exerted on the ED land bridge is not permitted unless it has been:
- demonstrated through the preparation of a Level 4 inspection report in accordance with the requirements of PN158 of the ED land bridge and subsequent Loading Rating Assessment prepared by a Structural Engineer whose selection is agreed by all the parties; and
 - approved by ED Operator (acting reasonably).
- This may include changes which, although outside the ED land bridge footprint, nevertheless increase the loading on the ED land bridge.
- 14 AGNSW must not without ED Operator's prior written approval:
- do anything that may cause a safety risk to the Land Bridge, to the ED Motorway or to the motorists using the ED Motorway; or
 - do anything which may disturb or interfere with the Land Bridge or the ED Motorway; or
 - alter or affect the drainage system of or in the land within the Development Footprint or otherwise the subject of the RMS Lease, such that the Land Bridge or ED Motorway may be damaged or the stability of the Land Bridge or ED Motorway may be affected; or

- plant any tree, or allow any tree to grow, whose weight or roots may damage the Land Bridge or ED Motorway; or
- do anything that causes vibration within the land within the Development Footprint or otherwise the subject of the RMS Lease at vibration levels that could damage the Land Bridge or ED Motorway.

15 AGNSW Easements

- (a) If AGNSW requests any easements, covenants or restrictions on use benefiting and burdening any part of the RMS Land (as defined in the Development Deed), including land within the Development Footprint or otherwise the subject of the RMS Lease ("**AGNSW Easements**") under clause 9.10 of the Development Deed or clause 16.6 of the RMS Lease, then AGNSW must deliver to the ED Operator a copy of the request, and all other details that it provides to RMS, at the same time that it delivers them to RMS.
- (b) Subject to paragraph (c) and without limiting paragraph (d), RMS may not consent or approve an AGNSW Easement:
- that is inconsistent with the Operating Interface Principles or the agreement or protocol contemplated in clause 8.2(b)(i); or
 - that is inconsistent with any rights or restrictions in favour of the ED Operator in the ED Project Documents, this Deed or any easements, covenants, restrictions or other interests registered at NSW Land Registry Services; or
 - in respect of which RMS is otherwise entitled to withhold consent or approval under the Development Deed or RMS Lease (as applicable),
- without the ED Operator's prior written approval.
- (c) Subject to paragraph (d), the grant of the easement for support and shelter contemplated in clause 9.10(i) of the Development Deed or clause 16.6(g) of the RMS Lease (as applicable) in the form set out in Schedule 12 of the Development Deed or Schedule 2 of the RMS Lease (as applicable) does not require further written approval from the ED Operator.
- (d) The parties acknowledge and agree that no AGNSW Easement over any part of the RMS Land may be granted or registered prior to the Partial Surrender Date (as defined in the Deed of Partial Surrender) (other than the easement for support and shelter contemplated in clause 9.10(i) of the Development Deed which, despite consent to its grant, cannot come into effect or be registered until after the Partial Surrender Date) without the ED Operator's prior written approval.

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

Schedule 6 Design and Plans Review

1 Definitions

- (a) In this Schedule 6 a reference to a paragraph is a reference to a paragraph of this Schedule 6 and:
- (i) **"Construction Plan"** means the plan so titled to be prepared by or on behalf of AGNSW or the Building Contractor (or its delegate or nominee) in respect of the carrying out of construction of the Works.
 - (ii) **"Design Documentation Amendment"** means any amendment to the Design Documentation of a material nature or that is likely to have an effect on the ED Motorway.
 - (iii) **"Project Plans"** means the Construction Plan and the Construction Pedestrian Traffic Management Plan.
 - (iv) **"Construction Pedestrian Traffic Management Plan"** means the plan so titled to be prepared by or on behalf of AGNSW or the Building Contractor (or its delegate or nominee) in respect of the carrying out of construction of the Works.
 - (v) **"Review Period"** means:
 - (A) subject to paragraph (B) of this definition, 15 Business Days after receipt of the Design Documentation; and
 - (B) 15 Business Days where paragraph 2(c) or 2(d) applies to resubmitted Design Documentation.
- (b) AGNSW may not, after the date of this Deed, make any amendment to the Design Documentation of a material nature or that is likely to have an effect on the ED Motorway unless it has completed the review process in clause 2 below, and ED Operator and RMS have confirmed that they have no comments on the applicable Design Documentation Amendment.

2 Review of For Construction Drawings and Design Documentation Amendment

- (a) AGNSW will provide to the Independent Certifier, ED Operator and RMS a copy of:
- (i) the For Construction Drawings; and
 - (ii) if applicable, any Design Documentation Amendment,
- for each stage of construction of the Works in a self-contained package which contains:

- (iii) a sufficient level of detail in respect of the stage of construction;
- (iv) any information reasonably required for the review of the For Construction Drawings and, if applicable, the Design Documentation Amendment, to enable interpretation by each of ED Operator and RMS without reference to any other external materials; and
- (v) a comments register pursuant to which ED Operator and RMS may provide comments to address non-compliances with Law or this Deed, or safety concerns, in accordance with paragraph 2(b).

(each a "Design Package").

- (b) ED Operator and RMS may, within the Review Period, review the For Construction Drawings and, if applicable, the Design Documentation Amendment and by notice to AGNSW and the Independent Certifier either:
 - (i) reject the design if the Design Package does not comply with this Deed or Law (including if the For Construction Drawings are not consistent with the Design Documentation) or raises legitimate safety concerns in respect of Zone 2 or Zone 3 or other property (including infrastructure) on those areas, and provide its reasons for doing so including details of the non-compliance or safety concerns;
 - (ii) notify AGNSW of any changes it considers necessary to the For Construction Drawings and/or Design Documentation Amendment to address non-compliances from this Deed or Law or safety concerns;
 - (iii) request more information in relation to the For Construction Drawings and/or Design Documentation Amendment; or
 - (iv) confirm that it has no comments on the For Construction Drawings and/or Design Documentation Amendment.
- (c) Where ED Operator or RMS rejects the design under paragraph 2(b)(i) or notifies AGNSW of any changes under paragraph 2(b)(ii):
 - (i) AGNSW may resubmit the amended parts of the For Construction Drawings and/or the Design Documentation Amendment and any other materials making up the associated Design Package; and
 - (ii) unless ED Operator or RMS (as applicable) considers (acting reasonably) that its comments can be addressed in the next design stage, paragraph 2(b) will reapply.
- (d) Where ED Operator or RMS (or their design consultants) requests further information under paragraph 2(b)(iii), AGNSW must promptly provide this information to ED Operator and RMS (or their design consultants). Upon receipt of this additional information, the requirements under paragraph 2(b) will apply again.
- (e) If reasonably requested by AGNSW, ED Operator and RMS will use their reasonable endeavours to consult with AGNSW and its design and engineering consultants so as to discuss ED Operator's and RMS's concerns with any design submitted.

- (f) Paragraphs 2(a) to 2(e) will reapply to any For Construction Drawings and Design Documentation subsequently amended after ED Operator and RMS have confirmed that they have no comments on the relevant For Construction Drawings and/or Design Documentation under paragraph 2(b)(iv).
- (g) In respect of the Current Design Documentation, AGNSW warrants and represents that such Current Design Documentation does not produce a design that is in breach of this Deed including Schedule 8 ("Construction Requirements") or Law, or that causes safety issues on Zone 2 or Zone 3 or in relation to other property (including infrastructure) on those areas.

3 Construction Plan and Construction Pedestrian Traffic Management Plan

- (a) Prior to commencement of construction of the Works, AGNSW will provide to ED Operator and RMS:
 - (i) the Construction Plan for each stage of construction of the Works detailing the proposed work methods for the Works, including the applicable monitoring regime; and
 - (ii) the Construction Pedestrian Traffic Management Plan for each stage of construction of the Works detailing the proposed management of the impact of the Works on the operation of Zone 2B and Zone 3 and other property (including infrastructure) on those areas,

to the extent that they relate to the Works and accompanied with any other information reasonably required for the review of the For Construction Drawings and, if applicable, any Design Documentation Amendment.

- (b) The parties agree that sections 2(b), 2(c) and 2(d) of this Schedule 6 will apply to the Construction Plan and Construction Pedestrian Traffic Management Plan as though references to "For Construction Drawings", "Design Documentation Amendment" and "Design Package" were references to the "Construction Plan" or the "Construction Pedestrian Traffic Management Plan" (as applicable).

4 General

AGNSW acknowledges and agrees that:

- (a) no review or comments on the For Construction Drawings, the Design Documentation (including any Design Documentation Amendment) or the Project Plans by ED Operator or RMS (or their design consultants) will reduce or lessen the obligations of AGNSW or the acknowledgements and undertakings made by, or liabilities assumed by, AGNSW in this Deed;
- (b) any feedback, advice, recommendations, comments or other information provided by ED Operator or RMS (or their design consultants) in respect of the For Construction Drawings, Design Documentation (including any Design Documentation Amendment) and Project Plans are provided to AGNSW on a strictly non-reliance basis;

- (c) it will rely on its own opinion and professional advice (based on its independent analysis, assessment, investigation and appraisal) in designing the Project; and
- (d) notwithstanding any other provision of this Deed:
 - (i) neither ED Operator nor RMS assumes or owes any duty of care to AGNSW to review or comment on, or in reviewing and commenting on, the For Construction Drawings, Design Documentation (including any Design Documentation Amendment) or the Project Plans, including in relation to the contents, sufficiency and suitability of the For Construction Drawings, Design Documentation Amendment or Project Plans;
 - (ii) neither ED Operator nor RMS (including their design consultants), nor any person acting on behalf of, or associated with, any of them, will have any liability in respect of the For Construction Drawings, Design Documentation (including any Design Documentation Amendment) or Project Plans, ED Operator's or RMS's review of or comments on, or failure to review or provide any comments on, the For Construction Drawings, the Design Documentation (including any Design Documentation Amendment), the Project Plans, the Project or otherwise in relation to this Schedule 6;
 - (iii) neither AGNSW nor its Building Contractor or engineering and design consultants will be entitled to make any claim against ED Operator or RMS or any of their associates (including their design consultants) in respect of the For Construction Drawings, Design Documentation (including any Design Documentation Amendment) or Project Plans, ED Operator's or RMS's review of or comments on, or failure to review or provide any comments on, the For Construction Drawings, the Design Documentation (including any Design Documentation Amendment), the Project Plans, the Project or otherwise in relation to this Schedule 6; and
 - (iv) AGNSW releases ED Operator and RMS and any of their associates (including their design consultants) from any liability or claim in respect of ED Operator's or RMS's review of or comments on, or failure to review or provide any comments on, the For Construction Drawings, the Design Documentation (including any Design Documentation Amendment), the Project Plans, the Project or otherwise in relation to this Schedule 6.

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Schedule 7 Dispute Resolution Procedures

1 Notices

If any dispute or difference arises between the parties as to any fact, matter or thing arising out of or in connection with this Deed (“Dispute”), then a party may give to the other party or parties to the Dispute a notice identifying the matters the subject of the dispute or difference together with detailed particulars of it and that dispute or difference will be dealt with in accordance with this Schedule 7.

2 No court proceedings

Prior to commencement of court proceedings in relation to any Dispute, the procedures set out in clause 14 (“Dispute Resolution”) and this Schedule 7 must be followed.

3 Senior Representatives Meeting

During the 14 days after a notice is given under clause 1 of this Schedule 7 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of Senior Representatives to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to the Expert if one of them requests to do so in writing.

4 Determination of Expert

(a) The Expert will:

- (i) act as an expert and not as an arbitrator;
- (ii) proceed in any manner he or she thinks fit without being bound to observe the rules of evidence;
- (iii) take into consideration all documents, information and other material which the parties give the Expert and which the Expert in his or her absolute discretion, considers relevant to the determination of the dispute;
- (iv) not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so wishes;
- (v) take into consideration the general objectives of this Deed;
- (vi) act in good faith and make his or her decision within 20 Business Days of accepting appointment or such longer period as is agreed by the parties; and

- (vii) give written reasons for his or her determination.
- (b) The Expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers, engineers, surveyors, traffic consultants or other technical consultants, to provide information to assist the Expert in his or her decision.
- (c) The parties will indemnify the Expert for the cost of retaining those advisers or consultants.

5 Provision of Information

- (a) The parties to the Dispute will provide the Expert with any relevant information they consider necessary to keep the Expert informed and able to carry out his or her function.
- (b) A copy of all information provided by one party under this clause 5 must be sent to the other party to the Dispute.

6 Expert's Finding

The determination of the Expert must be in writing and will be final and binding on each party to the Dispute unless a party gives notice to the other party or parties of its intention to initiate proceedings in respect of the determination in a court or other tribunal within 20 Business Days of receiving the written Expert's determination.

The parties are to give effect to the determination of the Expert unless and until it is reversed, overturned or otherwise changed by any subsequent litigation proceedings.

7 Release

The Expert will not be liable in respect of his or her determination, except in the case of fraud or wilful misconduct on the part of the Expert. The parties will release and indemnify the Expert from and against all claims, except in the case of fraud or wilful misconduct on the part of the Expert, which may be made against him or her by any person in respect of the Expert's appointment to determine the dispute.

8 Costs

Each party to the Dispute will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay an equal portion of the Expert's costs.

9 Expert

For the purposes of this Schedule 7, **Expert** means a person:

- (a) with at least 10 years' exposure to roads infrastructure construction and bridge or rail infrastructure construction, unless otherwise agreed by the parties to the Dispute in writing;

- (b) agreed by the parties to the Dispute in writing or, failing agreement within 20 Business Days after the Dispute was referred to expert determination in accordance with this Deed, selected by the President of the Law Society of New South Wales or his nominee; or
- (c) appointed by the parties to the Dispute in writing to act as an independent expert for the purposes of clause 3 in this Schedule 7.

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

Schedule 8 Construction Requirements

1 Level 3 Condition Assessments

- (a) Prior to commencement of construction, AGNSW must undertake updated Level 3 condition assessments on Zone 2. AGNSW will ensure that the party undertaking the condition assessment has a RMS Level 3 bridge inspection qualification in accordance with the RMS Infrastructure Asset Management Policy PN 158.
- (b) Following the Date of Works Completion, AGNSW must undertake an updated Level 3 condition assessment on Zone 2. ED Operator may nominate the Inspector that is to be engaged by AGNSW to perform this inspection.

2 Compliance with plans

AGNSW will perform the Works in accordance with:

- (a) the Construction Plan;
- (b) the Construction Pedestrian Traffic Management Plan; and
- (c) RMS QA Specification B114 Ground Anchors for the design, construction, and monitoring of the rock anchors.

3 Monitoring

- (a) The updated Level 3 condition assessments performed under clause 1 above will determine what monitoring instrumentation will be required to be installed on Zone 2 during construction.
- (b) At a minimum, AGNSW will perform the following geotechnical monitoring of the rock pillar and monitoring of the ED land bridge structure:
 - (i) Geotechnical monitoring
 - (A) A 3D geotechnical ground model will be developed prior to construction, to assist visualisation of the excavation sequence for the Fuel Bunker, the subsequent ED construction and the proposed new excavation along the northern elevation. The 3D model will be used to assist in appreciation of geotechnical issues and potential locations of stress concentration and potential wedge/block type failure mechanisms in the vicinity of the ED land bridge.

- (B) The monitoring regime will also meet the requirements of RMS technical note GTD 2012/001 "Excavation adjacent to RMS Structures".
 - (C) For geotechnical monitoring of Wall 5: Continuous vibration monitoring during rock excavation at minimum 3 locations along Wall 5; Tilt meters, minimum 6 along segment of Wall 5, that abuts the proposed excavation; and crack meters on concrete structure elements where existing cracks are observed.
 - (D) For geotechnical monitoring of the rock pillar between Wall 5 and the proposed excavation: Inclinometers – minimum 3 nos. will be installed; and progressive geological mapping of the excavated face completed.
- (ii) Structural monitoring
- (A) For survey monitoring of the ED land bridge, survey targets will be installed to allowing monitoring of movements of various parts of the land-bridge structure within the zone of influence of excavation before, during and after the construction of the Works.
 - (B) For survey monitoring of Wall 5 (northeast abutment), within a segment of existing works (i.e. between permanent expansion joints), survey targets will be installed as a minimum, at each end and mid-way underside of a land-bridge beam; sill beam or top of wall at the same chainage; base of wall at the same chainage.
 - (C) For survey monitoring of Wall 4 within a segment of existing works (i.e. between permanent expansion joints) survey targets will be installed as a minimum, at each end and mid-way underside of a land-bridge beam; sill beam or top of wall at the same chainage.
 - (D) The frequency of monitoring will be agreed prior to commencement of excavation.
 - (E) Where existing pot bearings allow translational movement, measurements of bearing movement shall be taken prior to excavation and at the completion of excavation (span #3 and span #4 only).
 - (F) Where existing elastomeric bearings allow translational movement, the bearings shall be inspected and typical displacements recorded prior to excavation and at the completion of excavation (span #3 and span #4 only).
- (c) Trigger levels and timing and method of notification of exceedances will be agreed with ED Operator and the AGNSW engineers, as noted in the Monitoring Regime in Schedule 3.

4 Inspection Rights

- (a) ED Operator and RMS will be given a reasonable opportunity to inspect Zone 1 and Zone 2 to inspect any repair works (to the protection slab or otherwise) that may be required.

- (b) AGNSW will procure that at a minimum, ED Operator and RMS will be given at least five Business Days' notice by the Building Contractor of the following inspection witness points:
 - (i) Inspection of protection slab and any uncovered sections of waterproof membrane after excavation;
 - (ii) If protection slab and/or waterproof membrane is damaged, inspection of damage and rectification;
 - (iii) Inspection of protection slab prior to backfilling;
 - (iv) Installation of rock anchors; and
 - (v) Review of excavation mapping and site inspection (if necessary) to assess the condition of the excavated face for any potential stability issues, prior to construction of the structural elements that may restrict future accessibility.
- (c) ED Operator, RMS and AGNSW will cooperate in good faith to prevent the inspection witness points having any material impact on AGNSW's construction timetable.

5 Remediation of Waterproof Membrane

- (a) According to the as-built drawings of the ED land bridge, the waterproof membrane located in Zone 2B is covered by a concrete protection slab of 75mm in thickness and with an unknown extent of reinforcement. There is a possibility that the protection slab may be damaged or removed during the excavation by AGNSW.
- (b) The quality of the protection slab cannot be assessed until the protection slab is uncovered.
- (c) If remediation or strengthening requirements are identified, AGNSW will provide a proposed plan for the approval of ED Operator and RMS (acting reasonably) to remediate the protection slab and/or waterproof membrane, so that the protection slab and/or waterproof membrane will be remediated or replaced to a standard that:
 - (i) complies with all relevant Building Code and AS standards and RMS standards, including:
 - (A) for protection slab sitting directly above the concrete slab, AS5100 and RMS B80;
 - (B) for geotechnical materials, RMS B30 and R44;
 - (C) for water drainage cells sitting directly above the protective slab, Atlantis Drainage Cell;
 - (D) for perforated drainage pipe, AS2439.1, R33, R38 and RMS 3552; and
 - (E) for waterproof membrane, AS5100 and RMS B80; and
 - (ii) is at least equivalent to its original standard.
- (d) If remediation or strengthening requirements are identified, AGNSW will:

- (i) at its own cost, remediate the protection slab and/or waterproof membrane within the Development Footprint; and
- (ii) at RMS and/or the ED Operator's request (subject to paragraph 5(e) below), remediate the protection slab and/or waterproof membrane outside the Development Footprint,

in accordance with AGNSW's approved remediation plan and in such a way to meet the minimum requirements contemplated in paragraph 5(c).

- (e) If RMS and/or the ED Operator requests AGNSW to remediate or strengthen the protection slab and/or waterproof membrane outside the Development Footprint, then AGNSW will provide RMS and/or the ED Operator (as applicable) an estimate of the cost of this work. The parties agree that:
 - (i) AGNSW will not be required to perform the remediation work contemplated in paragraph 5(d)(ii) unless it is reimbursed for the cost of this work; and
 - (ii) the cost of this work for which AGNSW will be reimbursed may not include any type of delay or prolongation cost charged by AGNSW or any Responsible Party.
- (f) The parties agree that neither ED Operator nor RMS will have any liability to AGNSW or its Responsible Parties for any delay to the Project or change to the Project Activities or Project Plans or Design Documentation arising from any remediation or strengthening works to the protection slab and/or waterproof membrane.

6 Temporary works

- (a) ED Operator will have the opportunity to review and comment on temporary works packages in Zone 1 (and indirectly affecting Zone 2 and Zone 3) such as (without limitation):
 - (i) temporary shoring designs in the vicinity of the ED land bridge;
 - (ii) lift studies of any crane lifts occurring on or in the vicinity to our assets;
 - (iii) design of any hoarding required in the vicinity of the ED land bridge;
 - (iv) excavation staging and load shifts on the ED land bridge and in parts of the build potentially affecting the motorway and ED land bridge (e.g. the sandstone to the side of motorway);
 - (v) construction staging and any associated load limits placed on the ED land bridge; and
 - (vi) any other temporary works that have the potential to impact the safe functioning of the ED Motorway.
- (b) ED Operator will require evidence of the checking and reviewing of temporary works designs (e.g. via Independent Certification).

7 Reinstatement

AGNSW will be responsible for making good to the satisfaction of ED Operator and RMS any damage to Zone 2B or Zone 3 and any property on Zone 2B or Zone 3 that is damaged as a result of the Project Activities or any acts or omissions of AGNSW or Responsible Parties, and for site inspections and condition reports required to evidence the reinstatement.

8 Further requirements

- (a) The average loads to be imposed on the ED land bridge deck by the proposed building in its permanent condition and described in Arup drawing SMP-S-4020X00 Rev02.06, "Land Bridge – Loading Plan". Loads are expressed both as Dead Load and Live Load separately, and as a Factored Load combination with appropriate load factors. Any future change in Dead or Live Load which results in a net increase in the Factored Load exerted on the ED land bridge is not permitted unless it has been:
- (i) demonstrated through the preparation of a Level 4 inspection report in accordance with the requirements of PN158 of the ED land bridge and subsequent Loading Rating Assessment prepared by a Structural Engineer whose selection is agreed by all the parties; and
 - (ii) approved by ED Operator (acting reasonably).

This may include changes which, although outside the ED land bridge footprint, nevertheless increase the loading on the ED land bridge.

- (b) The existing palisade fence panels located on the precast concrete fascia panels must not be disturbed at any time, except where the pedestrian bridge connecting the ED land bridge to the external lift is to be constructed.

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Schedule 9 Subdivision principles

1 Subdivision plan

The land to be excised:

- (a) will include a lot comprising the upper stratum of part of Lot 107 in DP1105308, comprising airspace, turf/grass, topsoil surface, subsoil and, if applicable, drainage cells over and on top of the ED land bridge, shown indicatively in the attached Lot 107 plan; and
- (b) will in all other respects be materially consistent with the land identified for excise in the attached draft subdivision plan

Lot 107 plan (paragraph 1(a))



Markup DP1105308
for Additional LandI

Draft subdivision plan (paragraph 1(b))

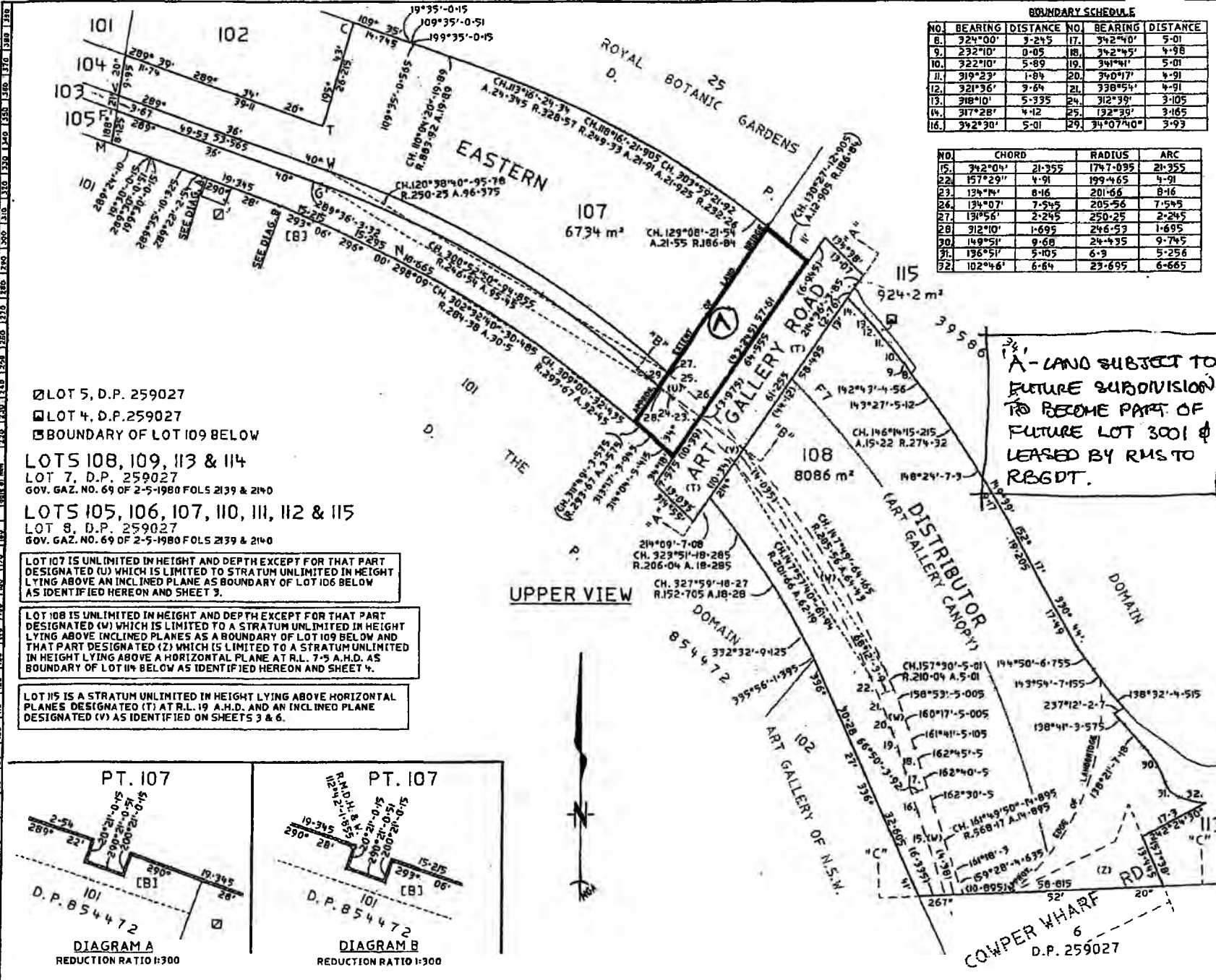


0714-14C stratum
sub.pdf

2 Subdivision principles

- (a) Following the excising of the land the land leased to the ED Operator under the ED Lease will:
 - (i) include the balance of Lot 107 (excluding the subdivided upper stratum described in paragraph 1(a) above);
 - (ii) include Zones 2A, 2B and 3; and
 - (iii) comprise up to (but excluding) the underside structure of the structure of the lot above.
- (b) AGNSW must as soon as practicable following the Date of Completion:
 - (i) procure a survey of the land the subject of the subdivision plan for the purpose of finalising the Registrable Subdivision Plan (as defined in clause 8.1(a)(i) of this Deed); and
 - (ii) provide a copy of that survey to the relevant stakeholders (including the ED Operator and the parties to this Deed).

- (c) AGNSW must ensure that the following survey principles are applied by the surveyor when preparing the survey referred to in paragraph 2(b)(i):
- (i) the survey must reflect the intention of the parties set out at paragraph 2(a) above;
 - (ii) stratum boundaries are required to be defined relative to Australian Height Datum;
 - (iii) horizontal boundaries – the lot retained by the ED Operator includes all structural elements of the road and is unlimited in depth; and
 - (iv) vertical boundaries – the lot retained by the ED Operator extends to comprise the land and the components in Zone 2B as set out in Exhibit 3 (including fencing).
- (d) The parties agree that in preparing the plan of subdivision, the ED Operator must have and be granted the benefit of any rights of access needed over the excised land (or any adjoining land) in order to continue its occupation and for the purpose of repair and maintenance of the remainder of the land the subject of the ED Lease.



BOUNDARY SCHEDULE

NO.	BEARING	DISTANCE	NO.	BEARING	DISTANCE
8.	324°00'	3.245	17.	342°40'	5.01
9.	232°10'	0.05	18.	342°45'	4.98
10.	322°10'	5.89	19.	341°41'	5.01
11.	319°23'	1.84	20.	340°17'	4.91
12.	321°36'	3.64	21.	338°54'	4.91
13.	318°10'	5.335	24.	312°39'	3.105
14.	317°28'	4.42	25.	132°39'	3.165
16.	392°30'	5.01	29.	340°74'0"	3.93

NO.	CHORD	RADIUS	ARC
15.	342°40'	21.355	174.7.039
22.	157°29'	4.91	199.4.65
23.	134°14'	8.16	201.66
24.	134°07'	7.545	205.56
27.	131°56'	2.245	250.25
28.	312°10'	1.695	246.53
30.	149°51'	9.68	24.4.35
31.	136°51'	5.105	6.3
32.	102°46'	6.64	23.695

DP1105308

Registered: 12-1-2007

This is sheet 5 of my plan 6 sheets dated 16-12-2005

SEE SIGNATURES FORM

Signature: _____ Dated: _____
 Surveyor registered under Surveying Act, 2002.

This is sheet of the plan of _____
 governed by Subdivision Certificate No: _____

Author: _____
 State where used is appropriate

L.G.A.: SYDNEY CITY
 Locality: SYDNEY
 Parish: ST JAMES
 County: CUMBERLAND

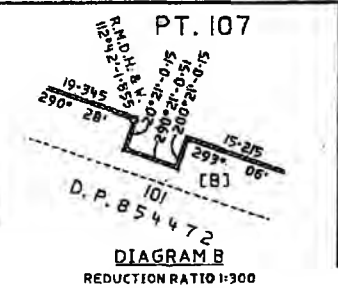
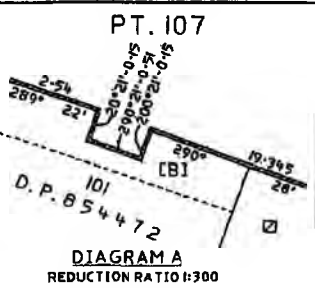
For use where space is insufficient in any column on Plan Form 3.

- LOT 5, D.P. 259027
- LOT 4, D.P. 259027
- BOUNDARY OF LOT 109 BELOW
- LOTS 108, 109, 113 & 114
- LOT 7, D.P. 259027
- GOV. GAZ. NO. 69 OF 2-5-1980 FOLS 2139 & 2140
- LOTS 105, 106, 107, 110, 111, 112 & 115
- LOT 8, D.P. 259027
- GOV. GAZ. NO. 69 OF 2-5-1980 FOLS 2139 & 2140

LOT 107 IS UNLIMITED IN HEIGHT AND DEPTH EXCEPT FOR THAT PART DESIGNATED (W) WHICH IS LIMITED TO A STRATUM UNLIMITED IN HEIGHT LYING ABOVE AN INCLINED PLANE AS A BOUNDARY OF LOT 106 BELOW AS IDENTIFIED HEREON AND SHEET 3.

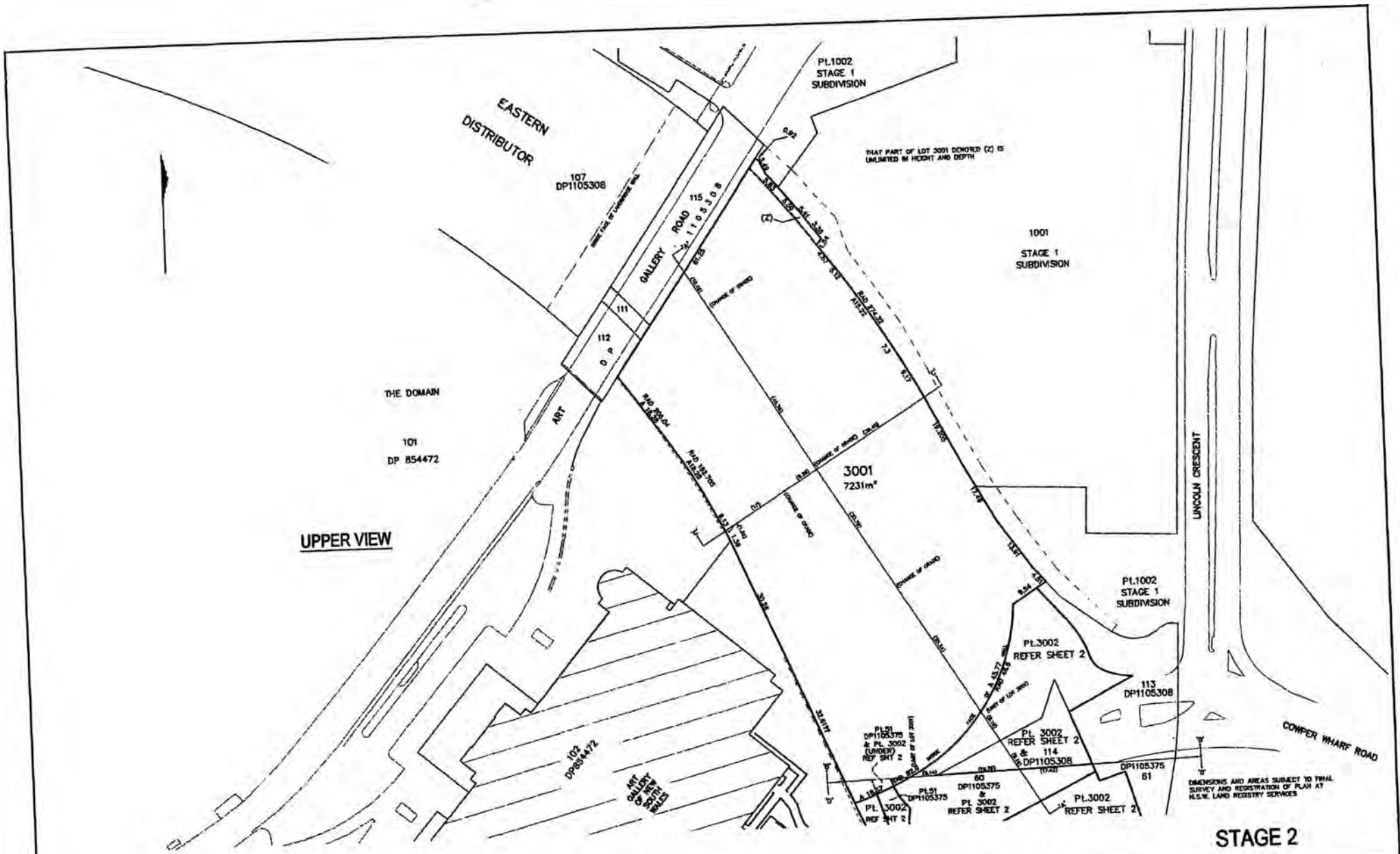
LOT 108 IS UNLIMITED IN HEIGHT AND DEPTH EXCEPT FOR THAT PART DESIGNATED (W) WHICH IS LIMITED TO A STRATUM UNLIMITED IN HEIGHT LYING ABOVE INCLINED PLANES AS A BOUNDARY OF LOT 109 BELOW AND THAT PART DESIGNATED (Z) WHICH IS LIMITED TO A STRATUM UNLIMITED IN HEIGHT LYING ABOVE A HORIZONTAL PLANE AT R.L. 7.5 A.H.D. AS BOUNDARY OF LOT 114 BELOW AS IDENTIFIED HEREON AND SHEET 4.

LOT 115 IS A STRATUM UNLIMITED IN HEIGHT LYING ABOVE HORIZONTAL PLANES DESIGNATED (T) AT R.L. 19 A.H.D. AND AN INCLINED PLANE DESIGNATED (V) AS IDENTIFIED ON SHEETS 3 & 6.



Reg: R096185 / Doc: DP 1105308 P / Rev: 17-Jan-2007 / Sta: SC, OK / Pct: 18-Jan-2007 06:46 / Pgr: ALL / Seq: 5 of 7
 Ref: Roads & Traffic Authority / Src: P

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 PRIOR TO ANY EXCAVATION OR BORE

22/10/16	INCLUSION OF LOT 4 DP 259027 IN DA	P.Y.	
15/09/16	INCLUSION OF LOT S2 DP 1105308 IN AND CHANGE PROPOSED LOT NUMBERS	P.Y.	
DATE	REVISIONS	BY	



YSCO GEOMATICS
 LAND RESOURCE CONSULTANTS
 SUITE 4, 88 SHARPOUR ROAD, AUSTINWOOD, 2064
 PH: 02 95 96 2272 FAX: 02 95 94 7452
 Email: enquiries@yescogeomatics.com.au
 Website: www.yescogeomatics.com.au
 YSCO Geomatics is a member firm of the YSCO Group

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 Quality Insured by a relevant
 approved under
 Standards Legislation

PLAN SHOWING PROPOSED SUBDIVISION OF PART OF
 EASTERN DISTRIBUTOR, BEING LOT 4 IN D.P. 1105308
 LOT 4 IN D.P. 259027 AND LOT S2 IN D.P. 1105375
 IN SYDNEY L.G.A.

DRAWN 08 AUGUST 2016	CHECKED P.Y.	SCALE 1:500 @ A1	DATUM A.H.D.	REFERENCE 0714/14C SHT 1 OF 3 SHTS
----------------------------	-----------------	------------------------	-----------------	---

We take note of notification of Australia's National Fire Safety System (NFSS) and under clause...



THIS PLAN IS A PRELIMINARY DESIGN AND SHOULD NOT BE USED FOR CONSTRUCTION WITHOUT THE APPROVAL OF THE LOCAL AUTHORITY.

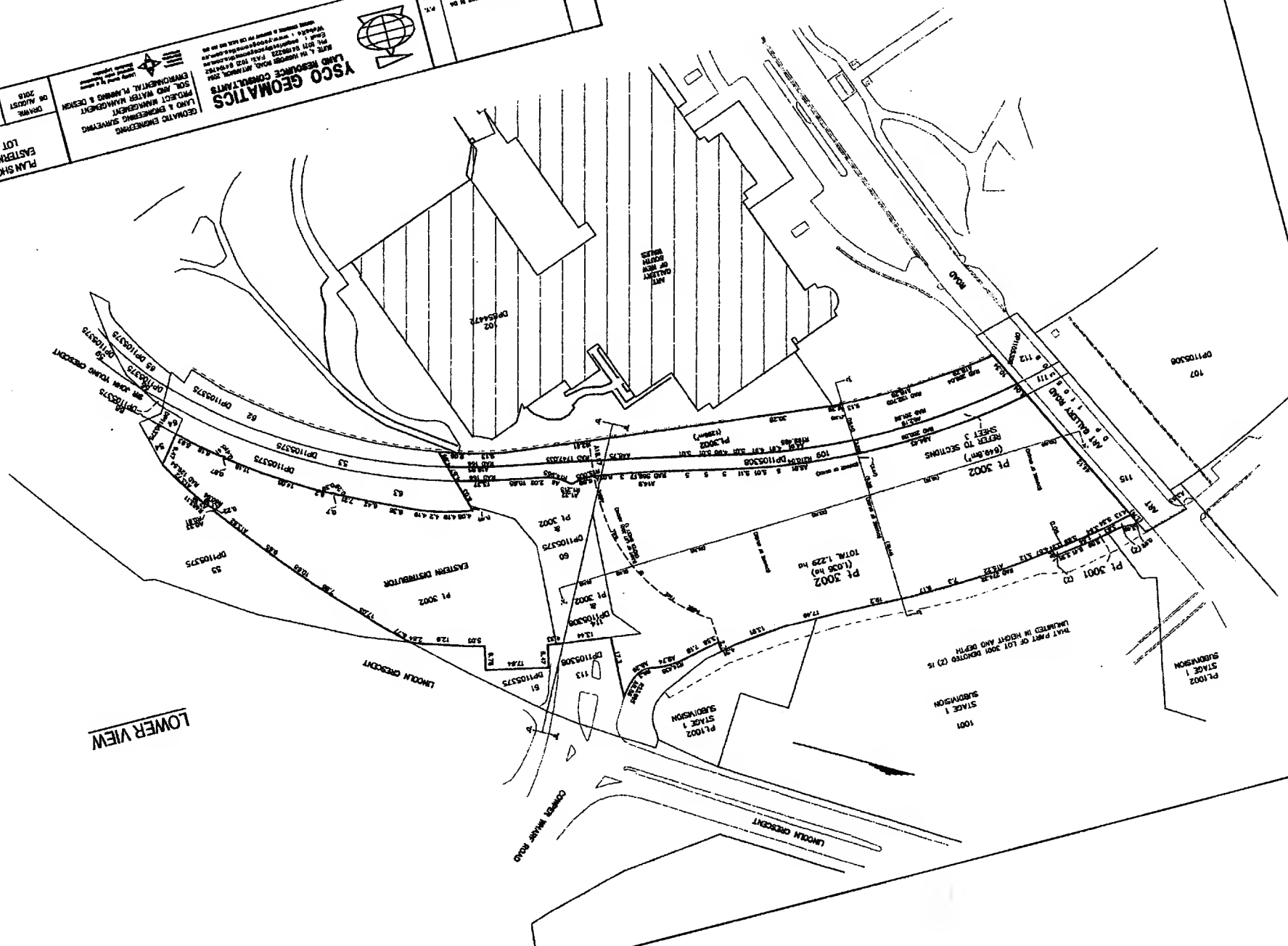
DATE	REVISIONS
14/08/10	ISSUANCE OF LOT 1 & 2 SUBDIVISION
14/08/10	ISSUANCE OF LOT 3 & 4 SUBDIVISION
14/08/10	ISSUANCE OF LOT 5 & 6 SUBDIVISION
14/08/10	ISSUANCE OF LOT 7 & 8 SUBDIVISION
14/08/10	ISSUANCE OF LOT 9 & 10 SUBDIVISION
14/08/10	ISSUANCE OF LOT 11 & 12 SUBDIVISION
14/08/10	ISSUANCE OF LOT 13 & 14 SUBDIVISION
14/08/10	ISSUANCE OF LOT 15 & 16 SUBDIVISION
14/08/10	ISSUANCE OF LOT 17 & 18 SUBDIVISION
14/08/10	ISSUANCE OF LOT 19 & 20 SUBDIVISION
14/08/10	ISSUANCE OF LOT 21 & 22 SUBDIVISION
14/08/10	ISSUANCE OF LOT 23 & 24 SUBDIVISION
14/08/10	ISSUANCE OF LOT 25 & 26 SUBDIVISION
14/08/10	ISSUANCE OF LOT 27 & 28 SUBDIVISION
14/08/10	ISSUANCE OF LOT 29 & 30 SUBDIVISION
14/08/10	ISSUANCE OF LOT 31 & 32 SUBDIVISION
14/08/10	ISSUANCE OF LOT 33 & 34 SUBDIVISION
14/08/10	ISSUANCE OF LOT 35 & 36 SUBDIVISION
14/08/10	ISSUANCE OF LOT 37 & 38 SUBDIVISION
14/08/10	ISSUANCE OF LOT 39 & 40 SUBDIVISION
14/08/10	ISSUANCE OF LOT 41 & 42 SUBDIVISION
14/08/10	ISSUANCE OF LOT 43 & 44 SUBDIVISION
14/08/10	ISSUANCE OF LOT 45 & 46 SUBDIVISION
14/08/10	ISSUANCE OF LOT 47 & 48 SUBDIVISION
14/08/10	ISSUANCE OF LOT 49 & 50 SUBDIVISION
14/08/10	ISSUANCE OF LOT 51 & 52 SUBDIVISION
14/08/10	ISSUANCE OF LOT 53 & 54 SUBDIVISION
14/08/10	ISSUANCE OF LOT 55 & 56 SUBDIVISION
14/08/10	ISSUANCE OF LOT 57 & 58 SUBDIVISION
14/08/10	ISSUANCE OF LOT 59 & 60 SUBDIVISION
14/08/10	ISSUANCE OF LOT 61 & 62 SUBDIVISION
14/08/10	ISSUANCE OF LOT 63 & 64 SUBDIVISION
14/08/10	ISSUANCE OF LOT 65 & 66 SUBDIVISION
14/08/10	ISSUANCE OF LOT 67 & 68 SUBDIVISION
14/08/10	ISSUANCE OF LOT 69 & 70 SUBDIVISION
14/08/10	ISSUANCE OF LOT 71 & 72 SUBDIVISION
14/08/10	ISSUANCE OF LOT 73 & 74 SUBDIVISION
14/08/10	ISSUANCE OF LOT 75 & 76 SUBDIVISION
14/08/10	ISSUANCE OF LOT 77 & 78 SUBDIVISION
14/08/10	ISSUANCE OF LOT 79 & 80 SUBDIVISION
14/08/10	ISSUANCE OF LOT 81 & 82 SUBDIVISION
14/08/10	ISSUANCE OF LOT 83 & 84 SUBDIVISION
14/08/10	ISSUANCE OF LOT 85 & 86 SUBDIVISION
14/08/10	ISSUANCE OF LOT 87 & 88 SUBDIVISION
14/08/10	ISSUANCE OF LOT 89 & 90 SUBDIVISION
14/08/10	ISSUANCE OF LOT 91 & 92 SUBDIVISION
14/08/10	ISSUANCE OF LOT 93 & 94 SUBDIVISION
14/08/10	ISSUANCE OF LOT 95 & 96 SUBDIVISION
14/08/10	ISSUANCE OF LOT 97 & 98 SUBDIVISION
14/08/10	ISSUANCE OF LOT 99 & 100 SUBDIVISION

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 PROJECT MANAGEMENT
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 SOIL AND WATER MANAGEMENT
 LAND SURVEYING & DESIGN

DATE OF ADJUST: 07/14/10
 SCALE: 1:500
 A.H.D. DATE: 07/14/10
 SHEET 2 OF 3 SHEETS

STAGE 2
 PLAN SHOWING PROPOSED SUBDIVISION OF PART OF
 EASTERN DISTRIBUTOR, BEING LOT 108 IN D.P. 1105308
 IN SYDNEY L.G.A.

BOUNDARIES AND AREAS SUBJECT TO FINAL
 SURVEY AND REGISTRATION SERVICES



LOWER VIEW

THAT PART OF LOT 308 BENTON (2) IS
 SUBDIVISION
 STAGE 1
 SUBDIVISION

STAGE 1
 SUBDIVISION
 STAGE 2

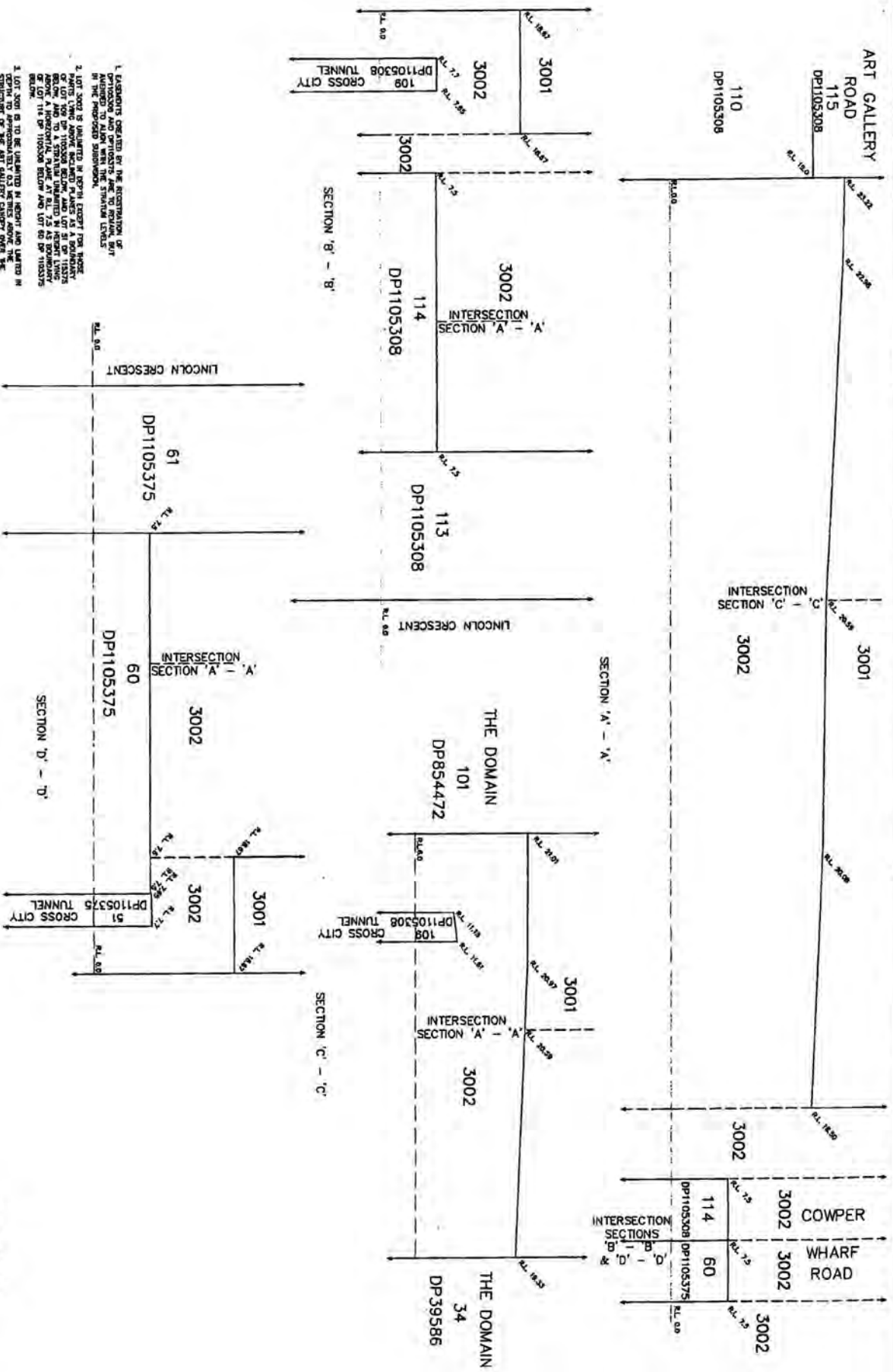


10
 100% STAKE VOLUNTARY
 FIRST-TIME RECORDING FEE
 The total value of a subdivision of land does not exceed \$100,000 and includes:

1. EASEMENTS GRANTED FOR THE RECEPTION OF WASTE WATER AND SEWAGE TREATMENT PLANT WASTEWATER TO ADJACENT TRENCHES IN THE PROPOSED SUBDIVISION.
2. LOT 3002 IS UNLIMITED IN DEPTH EXCEPT FROM HEREON TO BE UNLIMITED TO THE CENTERLINE OF LOT 109 OR TO A STRUCTURE UNLIMITED IN HEIGHT LIVING BELOW AND TO A STRUCTURE UNLIMITED IN HEIGHT LIVING ABOVE AND TO A STRUCTURE UNLIMITED IN HEIGHT LIVING BELOW AND TO A STRUCTURE UNLIMITED IN HEIGHT LIVING ABOVE OF LOT 114 OR TO A STRUCTURE UNLIMITED IN HEIGHT LIVING BELOW AND TO A STRUCTURE UNLIMITED IN HEIGHT LIVING ABOVE OF LOT 113 OR TO A STRUCTURE UNLIMITED IN HEIGHT LIVING BELOW AND TO A STRUCTURE UNLIMITED IN HEIGHT LIVING ABOVE OF LOT 60 OR TO A STRUCTURE UNLIMITED IN HEIGHT LIVING BELOW AND TO A STRUCTURE UNLIMITED IN HEIGHT LIVING ABOVE OF LOT 61.
3. LOT 3001 IS TO BE UNLIMITED IN HEIGHT AND LIMITED IN DEPTH TO APPROXIMATELY 13.5 METERS ABOVE THE EXISTING SUBMERGENT HIGHWATER.

DESIGNERS AND LISTS SUBJECT TO FINAL SURVEY AND REGISTRATION OF PLAN AT N.L.S. LAND REGISTRY SERVICES

STAGE 2



SECTION/INCLUSION OF LOT 4 OR 5 OR 6 OR 7 OR 8 OR 9 OR 10 OR 11 OR 12 OR 13 OR 14 OR 15 OR 16 OR 17 OR 18 OR 19 OR 20 OR 21 OR 22 OR 23 OR 24 OR 25 OR 26 OR 27 OR 28 OR 29 OR 30 OR 31 OR 32 OR 33 OR 34 OR 35 OR 36 OR 37 OR 38 OR 39 OR 40 OR 41 OR 42 OR 43 OR 44 OR 45 OR 46 OR 47 OR 48 OR 49 OR 50 OR 51 OR 52 OR 53 OR 54 OR 55 OR 56 OR 57 OR 58 OR 59 OR 60 OR 61 OR 62 OR 63 OR 64 OR 65 OR 66 OR 67 OR 68 OR 69 OR 70 OR 71 OR 72 OR 73 OR 74 OR 75 OR 76 OR 77 OR 78 OR 79 OR 80 OR 81 OR 82 OR 83 OR 84 OR 85 OR 86 OR 87 OR 88 OR 89 OR 90 OR 91 OR 92 OR 93 OR 94 OR 95 OR 96 OR 97 OR 98 OR 99 OR 100	P.Y.	P.Y.
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YSCO GEOMATICS
 LAND RESOURCE CONSULTANTS
 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100

QUALITY ENGINEERING
 LAND & ENGINEERING CONSULTANTS
 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100

PLAN SHOWING PROPOSED SUBDIVISION OF PART OF EASTERN DISTRIBUTION, BEING LOT 108 IN D.P. 1105308, LOT 4 IN D.P. 258871 AND LOT 52 IN D.P. 1105375 IN SYDNEY, N.S.W.	DATE:	07/4/14
DRAWN BY:	SCALE:	DATE:
CHECKED BY:	SCALE:	DATE:
DATE:	SCALE:	DATE:

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

Schedule 10 Current Design Documentation

The design documentation listed in the following documents:

PDF

180924_SMP
Drawing Register Tr.

PDF

180919_Drawing
register_Land bridge

Document Transmittal Register

Project name SYDNEY MODERN PROJECT - AGNSW File A02_TRNS
 Project no. 140419 Project stage SD DA/TP DD CD CS
 Approved for issue Reason for issue Land Bridge Approval Project Leader signature John Jeffrey Date 24 September 2018

Issue date
 day 24 month 09 year 18

Reason for issue / Person sending / Issue method If information in this document is not received, please contact Architectus
 X-info P-progress A-approval T-tender C-construction A
 Initials of sender JJ
 M-mail; C-courier; H-hand; E-email; FT-fp; A-econex A
 issued to Attention No. of copies (paper) and/or file medium (E - electronic D - disk)
 AGNSW Nicholas Wolf E

Dwg no.	Dwg title	Scale @ A1	Revision	Revision et issue date (-) indicates no revision status
DA_0100	Proposed Site Plan	1: 500	J	
DA_1000	Roof Plan	1: 250	J	
DA_1001	Entry Level Plan	1: 250	J	
DA_1002	Lower Level 1 Plan	1: 250	J	
DA_1003	Lower Level 2 Plan	1: 250	J	
DA_1005.0	Lower Level 3 Plan - Proposed Plan	1: 250	H	
DA_1007.0	Lower Level 4 Plan - Proposed Plan	1: 250	I	
DA_2000	Sections AA & BB	1: 250	J	
DA_2001	Sections CC & DD	1: 250	J	
DA_2002	Perspective Section Sheet 1	NTS	E	
DA_2003	Perspective Section Sheet 2	NTS	E	
DA_2004	Perspective Section Sheet 3	NTS	E	
DA_2006	Proposed Excavation Sections	1: 250	C	
DA_3000	North & South Elevations	1: 250	I	
DA_3001	East & West Elevations	1: 250	I	
DA_3002	Overall West Elevation	1: 200	E	
DA_3010	North Part Elevation A	1: 100	D	
DA_3011	North Part Elevation B	1: 100	D	
DA_3012	South Elevation	1: 100	D	
DA_3013	East Part Elevation A	1: 100	D	
DA_3014	East Part Elevation B	1: 100	D	
DA_3015	West Part Elevations	1: 100	D	

CD
 Total drawings: 22

DOCUMENT TRANSMITTAL

Project Name: Art Gallery of NSW Expansion Project - Sydney Modern
Art Gallery Road Sydney, NSW, 2000
Project No 247039
Transmittal Issue Date 20/09/2018

Drawing Number	Drawing Name	19/09/2018 Issued for Land Bridge Approval
0000X00	Cover Sheet	02.06
0000X01	3D Views - Sheet 1	02.05
0000X05	Symbols, Abbreviations and Schedules	02.04
0000X10	General Notes - Sheet 1	02.06
0000X11	General Notes - Sheet 2	02.06
1000X00	Shoring Plan	02.05
1000X01	Shoring Elevations	02.05
1000X02	Shoring Sections - Sheet 1	02.05
1000X03	Shoring Sections - Sheet 2	02.05
1000X04	Shoring Sections - Sheet 3	02.02
1001X00	Foundation Layout	02.06
1002X00	LL4 Level - Overall Arrangement Plan	02.06
1002X01	LL4 Level - 3D Floor Plan	02.06
1004X00	LL3 Level - Overall Arrangement Plan	02.06
1004X01	LL3 Level - 3D Floor Plan	02.06
1006C00	LL2 Level - General Arrangement - Zone C	02.06
1006L10	LL2 Level (Existing) - General Arrangement - Zone L	02.06
1006X00	LL2 Level - Overall Arrangement Plan	02.06
1006X01	LL2 Level (Existing) - Overall Arrangement Plan	02.06
1006X02	LL2 Level - 3D Floor Plan	02.06
1008H00	LL1 Level - General Arrangement - Zone H	02.06
1008J00	LL1 Level - General Arrangement - Zone J	02.06
1008L00	LL1 Level - General Arrangement - Zone L	02.06
1008X00	LL1 Level - Overall Arrangement Plan	02.06
1008X01	LL1 Level - 3D Floor Plan	02.06
1009H00	LL1 Mezzanine Level General Arrangement - Zone H	02.03
1009J00	LL1 Mezzanine Level - General Arrangement - Zone J	02.03
1010H00	Entry Level - General Arrangement - Zone H	02.06
1010H05	Entry Level - Steel Framing - Zone H	02.06
1010J00	Entry Level - General Arrangement - Zone J	02.06
1010J05	Entry Level - Steel Framing - Zone J	02.06
1010K00	Entry Level - General Arrangement - Zone K	02.06
1010L00	Entry Level - General Arrangement - Zone L	02.06
1010X00	Entry Level - Overall Arrangement Plan	02.06
1010X01	Entry Level - 3D Floor Plan	02.06
1012H00	Roof Level - General Arrangement - Zone H	02.06
1012J00	Roof Level - General Arrangement - Zone J	02.06

1012K05	Roof Level - Steel Framing - Zone K	02.06
1012X00	Roof Level - Overall Arrangement Plan	02.06
1012X01	Roof Level - 3D Floor Plan	02.06
2000H00	Zone H Sections - Sheet 1	02.05
2000H01	Zone H Sections - Sheet 2	02.05
2000H02	Zone H Sections - Sheet 3	02.03
2000H03	Zone H Sections - Sheet 4	02.03
2000J00	Zone J Sections - Sheet 1	02.05
2000J01	Zone J Sections - Sheet 2	02.03
2000X05	Perimeter Sections - Sheet 1	02.05
2000X06	Perimeter Sections - Sheet 2	02.05
4020X00	Land Bridge - Loading Plan	02.05

**Art Gallery of NSW Sydney Modern Project –
Eastern Distributor Construction Interface
and Access Deed**
Schedule 11 Deed of Partial Surrender

Deed of Partial Surrender of Lease

Dated

Eastern Distributor Project

Roads and Maritime Services of New South Wales (ABN 76 236 371 088)

Airport Motorway Limited and AMT Management Limited as trustee of the
Airport Motorway Trust (ABN 26 057 283 093)

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Deed of Partial Surrender of Lease

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Deed of Partial Surrender of Lease

Details

Parties		
RMS	Name	Roads and Maritime Services of New South Wales , a NSW Government agency and corporation incorporated under section 46 of the Transport Administration Act 1988 (NSW)
	ABN	76 236 371 088
	Address	Level 22, 101 Miller Street, North Sydney NSW 2059
	Email	felicity.finlayson@rms.nsw.gov.au
Tenant	Name	Airport Motorway Limited and AMT Management Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607)
	ABN	26 057 283 093
	Address	Level 31, Tower 5, Collins Square, 727 Collins Street, Docklands Victoria 3008
	Telephone	(02) 9254 4918
	Email	edassetmanager@transurban.com and lbeer@transurban.com
	Attention	Louise Beer and ED Asset Manager
Premises	The land and airspace leased to the Tenant under the Lease	
Lease	Lease (undated) between RMS (as successor in law to Roads and Traffic Authority of New South Wales), as landlord, and the Tenant, as tenant, initially in the form of the Annexed Trust Lease in Exhibit A to the Project Deed	
Partial Surrender Date	The date determined in accordance with clause 2.2(b)	
Partial Surrender Sum	\$1.00	
Background	A	RMS (as successor in law to RTA) and the Tenant are parties to the Project Deed.

- B** RMS owns the Premises.
- C** RMS and the Tenant are required to enter into or are deemed to be bound by the Lease pursuant to the Project Deed.
- D** The parties agree to effect the Partial Surrender for the purposes of facilitating the construction and carrying out of works by AGNSW on and around land the subject of the Lease.

Deed of Partial Surrender of Lease

General terms

1 Interpretation

1.1 Definitions

The following words have the following meanings in this deed, unless the context requires otherwise.

AGNSW means the **Art Gallery of New South Wales Trust**, a statutory corporation constituted under section 5 of the *Art Gallery of New South Wales Act 1980 (NSW)* ABN (24 934 492 575).

Airport Motorway Limited means Airport Motorway Limited (ABN 26 057 283 093).

AMT means AMT Management Limited (ABN 55 078 953 607).

Associates means the employees, agents, officers, delegates, contractors (including a sub-contractor), licensees, invitees and other authorised persons a party.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in New South Wales.

Claim includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with this deed; or
- (b) otherwise at Law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Details means the section of this deed headed "Details".

GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), and terms used which are not defined in this deed, but which are defined in the GST Law, have the meanings given in the GST Law.

Interface Deed means the document headed "Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed" between the Tenant, AGNSW and RMS.

Lease means the lease specified in the Details.

LRS means NSW Land Registry Services.

Partial Surrender means the partial surrender of the Lease in accordance with the terms and conditions of this deed.

Partial Surrender Date means the date specified in the Details.

Partial Surrender Sum means the amount specified in the Details.

Premises means the premises specified in the Details.

Project Deed means the document titled 'Eastern Distributor Project Deed' between RMS (as successor in law to RTA), the Minister for Roads and the Minister for Ports, Public Works and Services, and the Tenant dated 27 June 1997 (including all schedules and exhibits) (as amended from time to time).

Surrender Premises means that part of the Premises shown as [Lots **TBC**] on Registrable Subdivision Plan attached at Schedule 1.

Registrable Subdivision Plan has the meaning given to that term in clause 8.1(a) of the Interface Deed.

RTA means the former Roads and Traffic Authority of New South Wales.

Trust means the Airport Motorway Trust, constituted under the Airport Motorway Trust Deed dated on or about 27 June 1997.

1.2 Interpretation

The following apply in the interpretation of this deed, unless the context requires otherwise.

- (a) A reference to this deed, this document or a similar term means either the agreement set out in this deed or the deed itself, as the context requires.
- (b) A reference to this deed or any other agreement, deed, lease or document is a reference to this deed or that other agreement, deed, lease or document as varied, novated, consolidated, restated or replaced in any way.
- (c) A reference to a law includes any law, principle of equity, statute and official directive of any governmental authority.
- (d) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (e) A reference to the singular includes the plural number and vice versa.
- (f) A reference to a party means a person who is named as a party to this deed.
- (g) A reference to a person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (h) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed, their substitutes and assigns.
- (i) An agreement on the part of, or in favour of, 2 or more persons binds or is for the benefit of them jointly and severally.
- (j) A reference to includes means includes but without limitation.

- (k) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (l) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (m) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed.
- (n) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (o) A reference to dollars or \$ is to Australian currency.
- (p) A heading is for reference only. It does not affect the meaning or interpretation of this deed.
- (q) Any schedule attached to this deed forms part of it. If there is any inconsistency between any clause of this deed and any provision in any schedule, the clause of this deed prevails.

2 Partial Surrender

2.1 Registrable Subdivision Plan

Once the Registrable Subdivision Plan is approved by the Tenant in accordance with the Interface Deed it will show the Surrender Premises.

2.2 Partial Surrender Date

- (a) The Partial Surrender is conditional on:
 - (i) the Date of Completion having occurred (as defined in the Interface Deed); and
 - (ii) the Interface Deed being current and not having been determined as at the Partial Surrender Date.
- (b) Subject to clause 2.2(a), the Partial Surrender Date is midnight on the date that RMS gives notice to the Tenant that the Registrable Subdivision Plan (as approved by the Tenant in accordance with the Interface Deed) is registered by LRS and attaching a copy of an LRS registration notice.
- (c) RMS must as soon as practicable after RMS becomes aware of the registration of the Registrable Subdivision Plan at LRS:
 - (i) notify the Tenant that the Registrable Subdivision Plan has been registered at LRS and that the date of registration is the Partial Surrender Date under this deed; and
 - (ii) provide a copy of the registered Registrable Subdivision Plan to the Tenant.

2.3 Partial Surrender

- (a) In consideration of the Tenant paying the Partial Surrender Sum (receipt of which is acknowledged by RMS), the Tenant surrenders, and RMS

accepts the partial surrender of, the Lease insofar as the Surrender Premises forms part of the Premises.

- (b) The Partial Surrender is effective from the Partial Surrender Date.
- (c) If the Lease has been registered or lodged for registration at the Partial Surrender Date, the parties must execute a Real Property Act form of partial surrender of lease in registrable form if requested by RMS and RMS must cause that form to be lodged for registration at LRS.

2.4 Project Deed agreement and consent

For the purposes of the Project Deed, RMS and the Tenant:

- (a) agree that the Surrender Premises does not form part of any land leased or required to be leased by RMS to the Tenant under the Project Deed as at the Partial Surrender Date; and
- (b) agree that the Surrender Premises will not form part any lease or sublease required to be granted to the Tenant under the Project Deed.

3 Release

- (a) On and from the Partial Surrender Date, RMS and the Tenant release and discharge each other and their respective Associates from all Claims and obligations whatsoever under the Lease which either of them may or would be entitled to make or maintain against the other party but only to the extent that those Claims and obligations relate to the Surrender Premises.
- (b) Nothing in clause 3(a) or otherwise in this deed releases or discharges RMS or the Tenant from any of their obligations and liabilities under the terms and conditions of the Lease:
 - (i) created or incurred prior to the Partial Surrender Date; or
 - (ii) which relate to the lease of that part of the Premises not surrendered by this deed.

4 Costs and stamp duty

4.1 Costs

The parties agree that their costs incurred in connection with the negotiation, preparation and execution of this deed will be included in the costs of that party in connection with the Interface Deed and dealt with in accordance with clause 11.2 of the Interface Deed.

4.2 Stamp duty

The parties agree that any stamp duty (including any fines and penalties) payable in connection with this deed or the Partial Surrender will be included in the costs of RMS in connection with the Interface Deed and dealt with in accordance with clause 11.2 of the Interface Deed.

5 Financier consents

The Tenant warrants to RMS:

- (a) that the Tenant does not require the consent or approval of any person, including a mortgagee, to the Partial Surrender; or
- (b) if the Tenant does require a consent or approval to the Partial Surrender, the Tenant has obtained that consent or approval on or prior to the Partial Surrender Date.

6 Dispute Resolution

6.1 Disputes

If any dispute or difference arises between the parties as to any fact, matter or thing arising out of or in connection with this deed (**Dispute**), the procedures in clause 14 of the Interface Deed will apply to the resolution of the Dispute.

6.2 Continuance of performance

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

6.3 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 (including GST) 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. Each of the parties will be assumed to be entitled to full input tax credits unless they provide evidence to the other parties to the contrary.
- (b) If GST becomes payable on any supply made by a party (**Supplier**) under this deed:
 - (i) unless indicated otherwise, any amount payable under any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) to the extent that the consideration for the supply is not expressed as an amount of money, the value of the non-monetary consideration is to be treated as inclusive of GST; and
 - (iii) an additional amount will be payable by the party providing consideration for that supply (**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,

provided that the Recipient will not be required to pay an additional amount until the Supplier has provided a tax invoice (or equivalent documentation which complies with the GST Law) to the Recipient in respect of that supply.
- (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 clause 6.3(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). 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 10 Business 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 (absent manifest error). 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. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (e) The right of the Supplier to recover any additional amount in respect of GST under this clause is subject to the issuing of the relevant tax invoice or adjustment note to the Recipient within 4 years of the Supplier's liability to pay that GST arising.
- (f) The parties must use their best endeavours to determine the mutually acceptable GST inclusive market value of any non-monetary consideration provided for supplies made under this deed to be included in tax invoices to be issued to the Recipient of the relevant supply.

7 General

7.1 Notices

A notice required to be given under this deed may be given in the same way in which a notice may be given to a party under the Interface Deed.

7.2 Waiver and variation

A provision of or a right under this deed may not be waived or varied except in writing signed by whoever is to be bound.

7.3 Counterparts

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

7.4 Further assurance

Each party must do everything necessary, or reasonably required, by the other party, to give effect to this deed and the transactions contemplated by this deed.

7.5 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.

- (b) The parties submit to the jurisdiction of the courts of New South Wales.

8 Limitation of liability – Trustee

8.1 Trustee's AMT's capacity

- (a) AMT enters into this deed in its capacity as trustee of the Trust and in no other capacity. Subject to clause 8.1(f), RMS acknowledges that AMT's obligations under this deed are incurred by AMT solely in its capacity as trustee of the Trust.
- (b) Subject to clause 8.1(f), AMT will be liable to pay or satisfy any obligations (if any) under this deed only out of the assets of the Trust out of which AMT is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (c) Subject to clause 8.1(f), Airport Motorway Limited and RMS may enforce their rights against AMT arising from non-performance of AMT's obligations under this deed only to the extent of AMT's right of indemnity out of the assets of the Trust.
- (d) Subject to clause 8.1(f), if Airport Motorway Limited and RMS do not recover all money owing to them arising from non-performance of AMT's obligations under this deed by enforcing the rights referred to in clause 8.1(b), they may not seek to recover the shortfall by:
- (i) bringing proceedings against AMT in its personal capacity; or
 - (ii) applying to have AMT wound up or proving in the winding up of AMT unless another creditor has initiated proceedings to wind up AMT.
- (e) Subject to clause 8.1(f), Airport Motorway Limited and RMS waive their rights and release AMT from any personal liability whatsoever, in respect of any loss or damage:
- (i) which they may suffer as a result of any:
 - (A) breach by AMT of its duties under this deed; or
 - (B) non-performance by AMT of its obligations under this deed; and
 - (ii) which cannot be paid or satisfied out of the assets of the Trust out of which AMT is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (f) The limitations in clauses 8.1(a) to 8.1(e) will not apply in the case of fraud, negligence or breach of trust on the part of AMT or a failure on the part of AMT to perform its duties properly within the meaning of section 601GA(2) of the *Corporations Act 2001* (Cth), in each case in its capacity as trustee of the Trust.

8.2 Joint and several obligations

- (a) The obligations of the entities comprising the Tenant under this deed are joint and several.
- (b) The parties agree that the provision to, or receipt of any information or notice by, Airport Motorway Limited under or in connection with this deed

is deemed to be provision to or receipt by each of Airport Motorway Limited and AMT.

8.3 Trustee warranties

AMT, in its capacity as trustee of the Trust:

- (a) represents and warrants the following are true:
 - (i) it has been properly appointed as trustee of the Trust;
 - (ii) there are no other trustees of the Trust (other than any others who are also parties to this deed);
 - (iii) it is not proposing to resign as trustee of the Trust nor is it aware of any proposal to be removed or for another trustee to be appointed;
 - (iv) the Trust is validly formed and the trust documents comply with the law;
 - (v) if it has provided copies of any trust documents then they are current and complete;
 - (vi) it is not in default under any trust documents;
 - (vii) it has a full right of indemnity from the trust assets in respect of its obligations and liability under this deed;
 - (viii) it has entered into this deed as part of the proper administration of the Trust and for the commercial benefit of the Trust and entering into this deed is a proper trust purpose;
 - (ix) the Trust has not been terminated and no action is pending to wind up, terminate, reconstitute or resettle the Trust nor has any event for the vesting of the assets occurred; and
 - (x) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that, if disclosed, might be expected to affect the decision of RMS to enter into this deed; and
- (b) promises that:
 - (i) it will not do anything which may result in the loss of its full right of indemnity from the trust assets or the termination of the Trust; and
- (c) if it is replaced or joined by a new trustee, it will procure that the new trustee enters into a deed covenanting to comply with this clause 8.3.

9 RMS as a public authority

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RMS to exercise any of its functions and powers pursuant to any law or approval.
- (b) Clause 9(a) does not limit RMS' obligations under this deed or any acknowledgement given by RMS under this deed.

- (c) Anything which RMS does, fails to do or purports to do pursuant to its functions and powers under any law or approval will be deemed not to be an act or omission by RMS under this deed and will not entitle the other parties to make any Claim against RMS.

EXECUTION

Executed as a deed on 2018

Tenant

**EXECUTED by AIRPORT
MOTORWAY LIMITED (ABN 26 057
283 093)** in accordance with section
127(1) of the *Corporations Act 2001*
(Cth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

**EXECUTED by AMT MANAGEMENT
LIMITED as trustee of the Airport
Motorway Trust (ABN 55 078 953
607)** in accordance with section 127(1)
of the *Corporations Act 2001* (Cth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

RMS

Signed Sealed and Delivered for and
on behalf of **Roads and Maritime
Services** by its authorised delegate in
the presence of:

.....
Witness Signature

.....
Print Name

.....
Authorised Delegate Signature

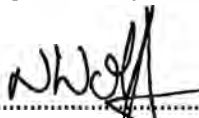
.....
Print Name

Schedule 1 Plan of Surrender Premises

**Art Gallery of NSW Sydney Modern Project –
Eastern Distributor Construction Interface
and Access Deed
Signing page**

DATED: 21 December 2018

SIGNED, SEALED AND DELIVERED)
for and on behalf of The Art Gallery of)
New South Wales Trust, a statutory)
corporation constituted under)
section 5 of the Art Gallery of New)
South Wales Act 1980 (NSW) (ABN)
24 934 492 575) by its authorised)
delegate in the presence of:)


.....
Signature of witness)

NICHOLAS HOUFF
.....
Name of witness (block letters))


.....
Authorised Delegate Signature)

Mr David Gonski AC
.....
Print Name *President*)



Dr Michael Brand
.....
Director)

EXECUTED by AIRPORT)
MOTORWAY LIMITED (ABN 26 057)
283 093) in accordance with section)
127(1) of the Corporations Act 2001)
(Cth) by authority of its directors:)

.....
Signature of director)

.....
Name of director (block letters))

.....
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

**Art Gallery of NSW Sydney Modern Project –
Eastern Distributor Construction Interface
and Access Deed
Signing page**

DATED: 21 December 2018

SIGNED, SEALED AND DELIVERED)
for and on behalf of **The Art Gallery of**)
New South Wales Trust, a statutory)
corporation constituted under)
section 5 of the Art Gallery of New)
South Wales Act 1980 (NSW) (ABN)
24 934 492 575) by its authorised)
delegate in the presence of:)

.....
Authorised Delegate Signature

.....
Print Name

.....
Signature of witness

.....
Name of witness (block letters)

EXECUTED by AIRPORT)
MOTORWAY LIMITED (ABN 26 057)
283 093) in accordance with section)
127(1) of the Corporations Act 2001)
(Cth) by authority of its directors:)

.....
Signature of director

KRISTINE COONEY
.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

AMANDA LYDIA STREET
.....

Name of director/company secretary*
(block letters)

*delete whichever is not applicable

EXECUTED by AMT MANAGEMENT)
LIMITED as trustee of the Airport)
Motorway Trust (ABN 55 078 953)
607) in accordance with section 127(1))
of the Corporations Act 2001 (Cth) by)
authority of its directors:)


.....
Signature of director)


.....
Name of director (block letters))


.....
Signature of director/company)
secretary*)
*delete whichever is not applicable)

..... AMANDA LYDIA STREET
Name of director/company secretary)
(block letters))
*delete whichever is not applicable)

SIGNED, SEALED AND DELIVERED)
for and on behalf of ROADS AND)
MARITIME SERVICES by its)
authorised delegate in the presence of:)

.....
Signature of witness)

.....
Name of witness (block letters))

.....
Authorised Delegate Signature)

.....
Print Name)

The seal of **ROADS AND MARITIME SERVICES** was affixed to this document in the presence of the Chief Executive pursuant to the *Transport Administration Act 1988 (NSW)* in the presence of:

[Handwritten signature]
.....
Signature of witness

Felicity Finlayson
.....
Name of witness (block letters)

[Handwritten signature]
.....
Signature of Chief Executive



Ken Kanofski

**Art Gallery of NSW Sydney Modern Project –
Eastern Distributor Construction Interface
and Access Deed**

**Exhibit 1 – Independent Certifier Deed of
Appointment**

Sydney Modern Project - Deed of Appointment of Independent Certifier

Dated

Infrastructure NSW (ABN 85 031 302 516) ("Principal")
Airport Motorway Limited (ABN 26 057 283 093) and AMT Management
Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607)
("ED Operator")
The Art Gallery of New South Wales Trust (ABN 24 934 492 575)
("AGNSW")
Roads and Maritime Services of New South Wales ("RMS")
[insert] (ABN [insert]) ("D&C Contractor")
[insert] (ABN [insert]) ("Independent Certifier")

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Independent Certifier Deed

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Independent Certifier Deed

Details

Parties		
Principal	Name	Infrastructure NSW
	ABN	85 031 302 516
	Address	Level 15, 167 Macquarie St, Sydney NSW 2000
	Fax	+ 61 2 8016 0101
	Attention	David Riches
ED Operator	Name	Airport Motorway Limited and AMT Management Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607)
	Address	Level 23, Tower One, Collins Square, 727 Collins Street, Docklands Victoria 3008
	Telephone	(02) 9254 4918
	Email	edassetmanager@transurban.com and lbeer@transurban.com
	Attention	Louise Beer, ED Asset Manager
RMS	Name	Roads and Maritime Services of New South Wales, a NSW Government agency and corporation incorporated under section 46 of the Transport Administration Act 1988 (NSW)
	Address	99 Phillip Street, Parramatta 2150
	Telephone	(02) 8837 0901
	Email	Felicity.FINLAYSON@rms.nsw.gov.au
	Attention	Director Motorway Partnerships & Planning
AGNSW	Name	The Art Gallery of New South Wales Trust, a statutory corporation constituted under section 5 of the Art Gallery of New South Wales Act 1980 (NSW)
	Address	24 934 492 575
	Telephone	(02) 9225 1852

	Email	sally.webster@ag.nsw.gov.au
	Attention	Sally Webster
D&C Contractor	Name	[TBC]
	Address	[TBC]
	Fax	[TBC]
	Telephone	[TBC]
	Email	[TBC]
Independent Certifier	Name	[TBC]
	Address	[TBC]
	Fax	[TBC]
	Telephone	[TBC]
	Email	[TBC]
	Attention	[TBC]
Governing law	New South Wales	
Recitals	A	ED Operator, RMS and AGNSW have entered into the Interface Deed.
	B	The Principal and the D&C Contractor have entered into the D&C Contract.
	C	The Interface Deed and the D&C Contract contemplate that an independent certifier will be engaged to carry out the Services.
	D	ED Operator, RMS, AGNSW, the Principal and the D&C Contractor wish to engage an independent certifier to carry out the Services.
	E	The Independent Certifier has represented to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that it has the experience and expertise in the carrying out of services equivalent to the Services.
	F	The Independent Certifier has agreed to carry out the Services and its other obligations arising out of or in any way in connection with this document in accordance with the terms and conditions of this document.

General terms

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this document are set out below.

Authorised Officer means:

- (a) in the case of the Principal, the mayor, the chief executive officer, chief financial officer and any other officer of the Principal nominated by the Principal to act as an authorised officer for the purposes of this document; and
- (b) in the case of any other party, a director or secretary of that party or any other person nominated by that party to act as an authorised officer for the purposes of this document.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

Certificate means a certificate issued by the Independent Certifier under this document.

Certificate of Works Completion has the meaning given in the Interface Deed.

Claim means any claim, loss, suit, proceeding, action, cause of action, demand, notice, litigation, investigation, judgment, execution, liability or responsibility, including for any Damages or for any injury or death, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), in equity, statute or otherwise.

Commencement Date means the date that this document is executed by all of the parties to this document.

Communications has the meaning given in clause 17.1(a).

Confidential Information means all Information disclosed to the Receiving Party or any Related Body Corporate of the Receiving Party, under or in connection with this document, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Disclosing Party or any of its Related Bodies Corporate;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling; or
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

whether the Information was disclosed:

- (d) orally, in writing or in electronic or machine readable form;
- (e) before, on or after the date of this document;
- (f) as a result of discussions between the parties concerning or arising out of the matters the subject of this document; or
- (g) by the Disclosing Party or its Representative, any of its Related Bodies Corporate, or by any third person.

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

Costs means all costs, expenses, losses, charges and payments including any fees payable to consultants, agents or contractors, legal fees (on a full indemnity basis) and any administration costs.

Current Design Documentation has the meaning given in the Interface Deed

Damages means any loss, Costs or damage whatsoever including, but not limited to, direct, indirect, incidental, consequential or special damages, damage to property or to land.

Date of Works Completion means the date specified by the Independent Certifier in a Certificate of Works Completion as the date on which Works Completion was achieved.

Design Documentation has the meaning given to it in the Interface Deed.

Design Documentation Amendment has the meaning given to it in the Interface Deed.

Design Package has the meaning given to it in clause 2 of Schedule 6 of the Interface Deed.

Details means the section of this document headed "Details".

Disclosing Party means the party disclosing Confidential Information.

Dispute includes any dispute, controversy, difference or Claim arising out of or in connection with this document or the subject matter of this document, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Dispute Notice has the meaning given in clause 11.2(a)(i).

document means the agreement between the parties as set out in this document.

Document Particulars means the particulars set out in Schedule 1 ("Document Particulars").

D&C Contract means the contract between the Principal and the D&C Contractor dated *[insert]* for the design and construction of the Works.

ED IFC Design Documentation has the meaning given to it in the D&C Contract.

ED Land has the meaning given in the Interface Deed.

Excluded Information means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this document or an obligation of confidence owed to the Disclosing Party or any Related Body Corporate of the Disclosing Party;
- (b) the Receiving Party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Disclosing Party or its Related Bodies Corporate or Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Receiving Party acquires from a source other than the Disclosing Party or any Related Body Corporate or Representative of the Disclosing Party where such source is entitled to disclose it.

Good Industry Practice means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a prudent, experienced, properly qualified and competent person carrying out the role of independent certifier seeking in good faith to comply with its contractual obligations.

GST includes amounts defined as "GST" under the GST Act and "GST equivalents" payments under the *GST and Related Matters Act 2000 (Qld)* (or similar payments under corresponding legislation of any State or Territory).

GST Amount has the meaning given in clause 10.2(a).

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

- (a) the business, technology or other affairs of the Disclosing Party or any Related Body Corporate of the Disclosing Party; or
- (b) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is marked "confidential" or is otherwise indicated to be subject to an obligation of confidence owned or used by or licensed to the Disclosing Party or a Related Body Corporate of the Disclosing Party.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller (as defined in the Corporations Act) appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c);

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) happens in connection with that person under the law of any jurisdiction.

Interface Deed means the deed entitled "Art Gallery of NSW Modern – Eastern Distributor Construction Interface and Access Deed" entered into between the ED Operator, RMS and AGNSW dated [insert].

Key Personnel means any of the people named in Item 1 of Schedule 1 ("Document Particulars").

Loss means, in relation to any person, any loss (including loss of reputation), liability, Damages, Cost, fine or penalty incurred by the person however arising and whether present or future, fixed or unascertained, actual or contingent whether based in contract, tort (including negligence), statute or otherwise including where arising under any Claim.

Material Form includes any form (whether visible or not) of storage from which reproductions can be made.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Planned ED Lane Occupancy Period has the meaning given in the Interface Deed.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) any other requirement under Australian law, industry code, policy or statement relating to the handling of Personal Information.

Project has the meaning given to it in the Interface Deed.

Project Brief has the meaning given to it in the D&C Contract.

Project Plan has the meaning given to it in the Interface Deed.

Receiving Party means the recipient of Confidential Information.

Related Body Corporate has the meaning it has in the Corporations Act.

Representative means a duly authorised representatives of either ED Operator, RMS, AGNSW, the Principal and the D&C Contractor (as applicable).

Review Period has the meaning given to it in the Interface Deed.

Services means:

- (a) all of the powers, obligations, duties, functions, services and tasks conferred on, or contemplated to be carried out by the Independent Certifier under this document and the Interface Deed and the D&C

Contract (including the functions as described in Schedule 3 ("Services")) as varied from time to time in writing by the parties; and

- (b) without limiting paragraph (a) above, all other things and tasks not described in this document or the Interface Deed or the D&C Contract if those things or tasks should have been reasonably anticipated by an experienced and professional provider of services equivalent to the Services as being necessary for the carrying out of the Services or which are otherwise capable of inference from this document or the Interface Deed or the D&C Contract.

Site has the meaning given to it in the D&C Contract.

Statutory Requirements has the meaning given to it in the D&C Contract.

Temporary Works has the meaning given to it in the D&C Contract.

Termination Event means:

- (a) the Independent Certifier is Insolvent;
- (b) the Independent Certifier fails or refuses to perform all or any part of its obligations, duties and functions under this document, the Interface Deed and the D&C Contract within the time required under this document, the Interface Deed or the D&C Contract (as applicable); or
- (c) the Independent Certifier commits a material breach of any of its obligations, duties and functions under this document and fails promptly to remedy such breach after notice jointly from the Principal, ED Operator and RMS to the Independent Certifier requesting it to do so.

Test has the meaning given to it in the D&C Contract.

Works has the meaning given in the Interface Deed.

Works Completion has the meaning given to it in the Interface Deed.

Zone 1 has the meaning given in the Interface Deed.

Zone 2 has the meaning given in the Interface Deed.

Zone 2B has the meaning given in the Interface Deed.

Zone 3 has the meaning given in the Interface Deed.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document or an agreement (including this document) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated;

- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes and, in the case of a trustee, includes a substituted or additional trustee;
- (f) a reference to an Authority includes that Authority's successors and substitutes or any agency that performs substantially the same functions and powers;
- (g) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (h) a reference to a time of day is a reference to Sydney, New South Wales time;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to "Law" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, representation, warranty or indemnity by 2 or more persons binds them jointly and each of them individually;
- (n) an agreement, representation, warranty or indemnity in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;
- (q) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (r) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day;
- (t) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (u) labels used for definitions are for convenience only and do not affect interpretation.

2 Appointment

2.1 Engagement of Independent Certifier

The Independent Certifier is engaged by ED Operator, RMS, AGNSW, the Principal and the D&C Contractor as an independent certifier to carry out the obligations, functions, duties and services of an independent certifier in accordance with the Interface Deed and the D&C Contract, which obligations, functions, duties and services include the carrying out of the Services.

2.2 Services

In carrying out the Services, the Independent Certifier must:

- (a) comply with all Laws;
- (b) act as an expert and not as an arbitrator;
- (c) at all times act independently of ED Operator, RMS, AGNSW, D&C Contractor and the Principal;
- (d) at all times act impartially, reasonably, fairly, honestly and with due expedition and without delay (and in any event within the time requirements for the carrying out of its obligations specified in this document, the Interface Deed and the D&C Contract);
- (e) exercise all reasonable skill, care and diligence expected of a properly qualified and competent professional rendering services of an equivalent nature to the Services and experienced in projects of a similar size, scope and complexity as the Works and in accordance with Good Industry Practice;
- (f) not waive or vary any requirements in the D&C Contract or the Interface Deed;
- (g) not discharge or release a party from any of its obligations arising out of the D&C Contract or the Interface Deed;
- (h) provide a copy of any certificate or determination made in the course of performing the Services to each of ED Operator, RMS, AGNSW and the Principal on the same day as the issue of such certificate or determination;
- (i) ensure that only Key Personnel carry out the Services;
- (j) carry out the Services within the time limits specified in the D&C Contract and the Interface Deed and if no time limit is specified for the performance of a particular Service then by the date that is 10 Business Days after the date on which the requirement to perform the Service arose; and
- (k) carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person except where it is the unavoidable consequence of performing the Services.

2.3 Key Personnel

The Independent Certifier may appoint different persons to be the Key Personnel for the purposes of this document with the prior written approval of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor. ED Operator, RMS, AGNSW, the Principal and the D&C Contractor must not unreasonably withhold

their approval if the persons nominated by the Independent Certifier hold the same or substantially similar position, skills and qualifications as the Key Personnel named in Schedule 1 ("Document Particulars").

2.4 Binding certificates and determinations

- (a) ED Operator, RMS, AGNSW, the Principal and the D&C Contractor acknowledge and agree that all certificates or determinations provided by the Independent Certifier in performing the Services shall, in the absence of manifest error of fact or law or a breach of this document, be final and binding on ED Operator, RMS, AGNSW, the Principal and the D&C Contractor.
- (b) If ED Operator, RMS, AGNSW, the Principal and the D&C Contractor believes a manifest error of fact or law has occurred in relation to a certificate or determination of the Independent Certifier, or the Independent Certifier has breached this document, that party may raise this as a Dispute in accordance with clause 11 ("Dispute Resolution") of this document.

2.5 Progress reports

Throughout the term of this document, the Independent Certifier must provide a monthly progress report to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor, by the seventh day of the following month and in such format as is required by the Principal, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a summary of key risks and issues relating to the Services; and
- (c) details of any D&C Contractor non-conformances relevant to the Interface Deed raised by the Independent Certifier or AGNSW or the Principal and details on the verification of the rectification by D&C Contractor of non-conformances.

3 Term

3.1 Commencement

The engagement of the Independent Certifier commences on the Commencement Date and, unless terminated earlier under clause 3.2, continues until the Independent Certifier has completed and discharged all of its duties and functions under this document.

3.2 Termination

This document will terminate immediately on:

- (a) the termination of the D&C Contract and the Interface Deed (in which case this document terminates automatically); or
- (b) termination of this document in accordance with clause 14,

save in relation to any matter which remains outstanding and in progress as at the date of termination, which will continue to be subject to, and be completed in accordance with, the terms of this document.

4 Independent Certifier's acknowledgements

The Independent Certifier acknowledges that:

- (a) it has received a copy of the D&C Contract and the Interface Deed;
- (b) its obligations under this document extend to and include the obligations, functions, duties and services of the 'independent certifier' arising under the D&C Contract and the Interface Deed; and
- (c) ED Operator, RMS, AGNSW, the Principal and the D&C Contractor:
 - (i) are entitled to, and will, rely on:
 - (A) the skill and expertise of the Independent Certifier in performing the Services; and
 - (B) any certificate or determination that the Independent Certifier signs or gives; and
 - (ii) may suffer loss if the Independent Certifier does not perform the Services in accordance with this document.

5 Representations and warranties

5.1 Authority to act

The Independent Certifier represents and warrants to each of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that:

- (a) it is validly existing under the Laws of its place of incorporation or registration;
- (b) its obligations under this document are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (c) other than as expressly set out in this document it has no right or authority to give any directions to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor; and
- (d) it has no authority to waive any terms or conditions of the D&C Contract or the Interface Deed, or to amend or vary those terms or conditions or discharge or release:
 - (i) the Principal or the D&C Contractor from any of their respective obligations under the D&C Contract; or
 - (ii) the ED Operator, RMS, or AGNSW from any of their respective obligations under the Interface Deed.

5.2 Conflicts of interest

The Independent Certifier represents and warrants to each of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that:

- (a) it has disclosed all contractual relationships that it has in connection with the Works to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor;

- (b) at the date of its execution and delivery of this document, no conflict of interest exists or is likely to arise in connection with the performance of its obligations and the discharge of its duties and functions under this document; and
- (c) if, during the term of this document, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify ED Operator, RMS, AGNSW, the Principal and the D&C Contractor immediately in writing of that conflict or risk of conflict and comply with all reasonable requests or directions of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor jointly in relation to such conflict or risk of conflict.

5.3 Knowledge of requirements

The Independent Certifier represents and warrants to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that:

- (a) it has the skill, experience and ability to perform the Services;
- (b) it has read, and is familiar with, the terms of the D&C Contract and the Interface Deed in so far as they relate to the Services;
- (c) without limiting clause 5.3(a), it has informed itself of all time limits and other requirements for any function that the Independent Certifier must perform under the D&C Contract and the Interface Deed;
- (d) it has informed itself of the nature of the work necessary to perform the Services and (so far as possible) the means of access to and facilities on the land on which the Works are to be carried out, including any restrictions on that access; and
- (e) it has satisfied itself that the fee payable under this document is sufficient having regard to the costs that it will incur in complying with its obligations under this document.

6 Variation and suspension

6.1 Variation

- (a) ED Operator, RMS, AGNSW, the Principal and the D&C Contractor may give the Independent Certifier a notice jointly instructing the Independent Certifier:
 - (i) to vary a Service;
 - (ii) not to carry out a Service; or
 - (iii) to carry out a Service that is not listed in Schedule 3 ("Services") at the date of this document.
- (b) The Independent Certifier must comply with that notice.

6.2 Meeting with other parties

- (a) If any of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor is of the opinion that the Independent Certifier is not performing any of the Services in accordance with this document, that party may call a meeting with the other parties (other than the Independent Certifier) by giving a notice of the meeting (to be held at least 2 Business Days after the notice is given to the other party) to decide on appropriate action to resolve the issue and duly authorised

representatives of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor ("**Representatives**") must attend the meeting.

- (b) Without limiting the discussion or the decision made, the **Representatives** must consider at that meeting whether to resolve the issue referred to in clause 6.1(a) by any one or more of the following:
- (i) requesting the Independent Certifier to comply with this document;
 - (ii) changing the Services in accordance with clause 6.1(a)(i);
 - (iii) asking the Independent Certifier not to carry out a Service under clause 6.1(a)(ii);
 - (iv) appointing a substitute Independent Certifier in connection with those Services in accordance with clause 6.4;
 - (v) suspending all or any of the Services in accordance with clause 6.2; and
 - (vi) terminating the appointment of the Independent Certifier in accordance with clause 14.

6.3 Suspension of Services

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor may give the Independent Certifier a notice jointly instructing the Independent Certifier to suspend its performance of any or all of the Services until ED Operator, RMS, AGNSW, the Principal and the D&C Contractor give the Independent Certifier a notice instructing the Independent Certifier to recommence performing those Services. The Independent Certifier cannot make any claim against ED Operator, RMS, AGNSW, the Principal or the D&C Contractor if any or all of the Services are suspended under this clause 6.3.

6.4 Substitute Independent Certifier appointed

- (a) Subject to clause 6.2(b)(iv), ED Operator, RMS, AGNSW, the Principal and the D&C Contractor may appoint another independent certifier to carry out Services that they have instructed the Independent Certifier not to carry out under clause 6.1(a)(ii).
- (b) As between ED Operator, RMS, AGNSW, the Principal and the D&C Contractor (but not as between ED Operator, RMS, AGNSW, the Principal and the D&C Contractor and the Independent Certifier) decisions of the substitute Independent Certifier are to be treated as if they are decisions of the Independent Certifier.
- (c) Subject to any claim that ED Operator, RMS, AGNSW, the Principal or the D&C Contractor may have in respect of the Independent Certifier's performance, the Independent Certifier is not responsible for the substitute Independent Certifier's performance.

6.5 Independent Certifier must continue to perform

Despite any action by ED Operator, RMS, AGNSW, the Principal or the D&C Contractor under this clause 6, the Independent Certifier must continue to perform the Services, as varied under clause 6.1(a)(i), in accordance with this document.

7 Insurance

- (a) At least 10 Business Days before commencing the carrying out of the Services, the Independent Certifier must effect and maintain the insurances:
 - (i) on terms as set out in Schedule 4 ("Insurance") and as are acceptable to ED Operator, RMS, AGNSW and the Principal, acting reasonably;
 - (ii) with insurer(s) that are regulated by the Australian Prudential Regulation Authority and maintain an external financial security rating of not less than A- Standard and Poors (or equivalent other ratings agency), or are acceptable to ED Operator, RMS, AGNSW and the Principal, acting reasonably;
 - (iii) with a limit of indemnity of not less than the amount (if any) stated in Schedule 4 ("Insurance"); and
 - (iv) for the period of time stated in Schedule 4 ("Insurance").
- (b) At least 5 Business Days prior to commencing the carrying out of the Services, and as and when otherwise required by ED Operator, RMS, AGNSW, the Principal or the D&C Contractor, the Independent Certifier must produce for inspection documentary evidence that the insurances in sub-clause (a) have been effected and are being maintained in accordance with this document. The effecting of insurance under this clause 7 shall not in any way limit the obligations and liabilities of the Independent Certifier under the provisions of this document.

8 Indemnity

- (a) The Independent Certifier indemnifies ED Operator, RMS, AGNSW, the Principal and the D&C Contractor from and against any Claim or Loss which ED Operator, RMS, AGNSW, the Principal and the D&C Contractor or any one of them suffers, incurs or becomes liable for or may suffer, incur or become liable for arising out of or in any way in connection with a breach by the Independent Certifier of this document or any wrongful or negligent act or wrongful or negligent omission of the Independent Certifier.
- (b) The Independent Certifier's liability to indemnify the Principal will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of the Principal directly contributed to the relevant Loss or Claim.
- (c) The Independent Certifier's liability to indemnify ED Operator will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of ED Operator directly contributed to the relevant Loss or Claim.
- (d) The Independent Certifier's liability to indemnify the D&C Contractor will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of the D&C Contractor directly contributed to the relevant Loss or Claim.
- (e) The Independent Certifier's liability to indemnify RMS will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of RMS directly contributed to the relevant Loss or Claim.

- (f) The Independent Certifier's liability to indemnify AGNSW will be reduced proportionally to the extent that any act or omission of AGNSW directly contributed to the relevant Loss or Claim.

9 Payment

9.1 Fees

AGNSW is liable to pay the fees set out in Schedule 2 ("Fees") for the performance of the Services by the Independent Certifier.

9.2 Invoices

At the end of each calendar month, the Independent Certifier must submit to AGNSW a detailed payment claim, in a form approved by AGNSW, showing:

- (a) the total amount previously paid to the Independent Certifier in respect of the performance of the Services;
- (b) the amount claimed by the Independent Certifier for that month or period in relation to the Services; and
- (c) such other information as may be reasonably required by AGNSW.

9.3 Payment

Within 20 Business Days after receipt of a claim under clause 9.2, AGNSW must assess and pay to the Independent Certifier the amount properly payable to the Independent Certifier for that month or period in respect of the Services.

10 Goods and services tax

10.1 Interpretation

For the purposes of this clause 10:

- (a) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 10 unless the contrary intention appears;
- (c) unless expressly stated otherwise in this document, all consideration to be provided under this document is exclusive of GST; and
- (d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it were a separate supply.

10.2 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this document, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply ("GST Amount").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.

- (c) This clause 10.2 does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

10.3 Adjustment events

If an adjustment event arises for a supply made under or in connection with this document, the GST Amount must be recalculated to reflect that adjustment, the supplier or the recipient (as the case may be) must make any payments necessary to reflect the adjustment and the supplier must issue an adjustment note.

10.4 Reimbursements

Any payment, reimbursement, indemnity or similar payment that is required to be made under this document which is calculated by reference to an amount paid by another party shall be reduced by 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. If the reduced payment is consideration for a taxable supply, clause 10.2 will apply to the reduced payment.

10.5 Calculation of payments

If an amount payable under this document is to be calculated by reference to:

- (a) the amount payable for a taxable supply then, for the purposes of that calculation, the amount is to be calculated by reference to the GST-exclusive amount payable for the taxable supply; and
- (b) the amount payable for an acquisition then, for the purposes of that calculation, the amount payable is calculated by reference to the GST-exclusive amount payable for the acquisition.

10.6 Survival

Clause 10.1 to clause 10.5 inclusive do not merge on the rescission, termination or expiration of this document.

11 Dispute resolution

11.1 Determination of Disputes

Any Dispute will be resolved in accordance with the requirements and procedures set out in this clause 11.

11.2 Negotiation

- (a) If any party considers that there is a Dispute, then:
- (i) that party may notify the other parties in writing of the Dispute, setting out full particulars of the Dispute ("**Dispute Notice**");
- (ii) within 10 Business Days after the Dispute Notice is given under clause 11.2(a)(i), the Representatives of each party will meet and use reasonable endeavours to resolve the Dispute by joint discussions;
- (iii) if the Dispute has not been resolved within 20 Business Days after the date on which the Dispute Notice was given under clause 11.2(a)(i), any party may refer the Dispute to senior representatives of each other party (who must have authority to settle the Dispute and who must not be a Representative under this document) who will meet within 5 Business Days and use

reasonable endeavours to resolve the Dispute by joint discussions; and

- (iv) if the Dispute has not been resolved within 20 Business Days after the date on which the Dispute was referred to senior representatives under clause 11.2(a)(i), any party may refer the Dispute to the chief executive officers (or equivalent personnel) of each party who will meet within 5 Business Days and use reasonable endeavours to resolve the Dispute by joint discussions.

- (b) Each meeting under clause 11.2(a) will be without prejudice except to the extent of any agreements made, recorded and signed by the attendees.

11.3 Failure to resolve Dispute by negotiation

If the Dispute is not settled by negotiation under clause 11.2, then any party may commence court proceedings in relation to the Dispute.

11.4 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has complied with the procedures in this clause 11, unless the party seeks injunctive or other interlocutory relief.

11.5 Continuation of rights and obligations

Despite the existence of a Dispute or difference each party will continue to perform its obligations under this document.

12 Assignment and subcontracting

12.1 Independent Certifier

The Independent Certifier:

- (a) must not assign this document or subcontract any part of the Services without the prior written consent of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor; and
- (b) remains responsible for performing the Services in accordance with this document, despite any subcontracting.

12.2 ED Operator, RMS, AGNSW and the Principal

ED Operator, RMS, AGNSW or the Principal may assign this document where, at the same time of the assignment, ED Operator, RMS or AGNSW (as applicable) assigns to the assignee the Interface Deed and in the case of the Principal, the D&C Contract.

12.3 D&C Contractor

The D&C Contractor may not assign, transfer or otherwise deal with its rights under this document without the prior written consent of the Principal.

13 Information, access and assistance

13.1 Information

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor must each provide such information and documentation to the Independent Certifier as:

- (a) is required to be provided under this document, the Interface Deed or the D&C Contract and at the times that information and documentation is required to be provided under this document, the Interface Deed or the D&C Contract; and
- (b) otherwise is reasonably required by the Independent Certifier to enable it to perform its obligations and discharge its duties and functions under this document and as soon as reasonably practicable after the Independent Certifier requests that information and documentation.

13.2 Access

- (a) The Principal, AGNSW and the D&C Contractor must provide such access to the Works as may be required by the Independent Certifier, or as is necessary, from time to time, to enable the Independent Certifier to perform its obligations and discharge its duties and functions under this document.
- (b) The Independent Certifier must, when accessing the Works under clause 13.2(a):
 - (i) comply with any reasonable access requirements and procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) stipulated by the Principal, AGNSW or the D&C Contractor, and ensure that its officers, employees, agents and contractors also comply with such requirements and procedures; and
 - (ii) not, and must use its reasonable endeavours to ensure that its officers, employees, agents and contractors also do not, unreasonably obstruct or interfere with the carrying out of the Works.
- (c) If the Independent Certifier requires access to Zone 2B or Zone 3 to enable it to perform its obligations and discharge its duties and functions under this document, then it may only access that land with ED Operator's prior written consent (not to be unreasonably withheld) and it must, when accessing that land:
 - (i) comply with any reasonable access requirements and procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) stipulated by ED Operator, and ensure that its officers, employees, agents and contractors also comply with such requirements and procedures; and
 - (ii) not, and must ensure that its officers, employees, agents and contractors also do not:
 - (A) access Zone 3 other than during Planned ED Lane Occupancy Periods agreed between AGNSW and ED Operator under the Interface Deed;
 - (B) interfere with the operation and use of Zone 2B and Zone 3 and other property (including infrastructure) on those areas; or
 - (C) cause any traffic adjustment on Zone 3 or impact on Zone 2B and Zone 3 and other property (including infrastructure) on those areas.

13.3 Assistance

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor agree to:

- (a) promptly provide the Independent Certifier with whatever other assistance the Independent Certifier may reasonably require in connection with the performance of its obligations and the discharge of its duties and functions under this document;
- (b) not interfere or attempt to influence the Independent Certifier so that the Independent Certifier breaches its obligations under clause 2.2(c); and
- (c) provide to the Independent Certifier on request such information as the Independent Certifier reasonably requires in order to assist the Independent Certifier in carrying out and performing the Services.

13.4 Specialist advice

- (a) In carrying out the Services, the Independent Certifier will, if it is necessary to obtain consultant or specialist advice, obtain that advice from sub-consultants and contractors independent of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor, unless ED Operator, RMS, AGNSW, the Principal and the D&C Contractor agree otherwise.
- (b) If ED Operator, RMS, AGNSW, the Principal and the D&C Contractor do not approve the appointment of the sub-consultant or contractor requested by the Independent Certifier, such approval not to be unreasonably withheld or delayed, then the issue of the appointment of the subcontractor or contractor will be treated as a dispute and dealt with in accordance with clause 11
- (c) If ED Operator, RMS, AGNSW, the Principal and the D&C Contractor agree with the Independent Certifier's request or appointment of the sub-consultant or contractor determined under clause 11, then the Independent Certifier must engage that sub-consultant or contractor on terms reasonably approved by the ED Operator, RMS, AGNSW, the Principal and the D&C Contractor at the cost of AGNSW.

14 Termination

14.1 Termination by ED Operator, RMS, AGNSW, the Principal and the D&C Contractor

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor jointly may terminate this document:

- (a) immediately by written notice to the Independent Certifier if a Termination Event occurs; or
- (b) upon 30 Business Days written notice to the Independent Certifier.

14.2 Termination by the Independent Certifier

The Independent Certifier may terminate this document upon 30 Business Days' notice to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor if there are persistent material breaches of the payment obligations of AGNSW under clause 9 and such breaches are not promptly remedied or cured after notice from the Independent Certifier.

14.3 Accrued rights or remedies not affected

Termination of this document does not affect any accrued rights or remedies of any party.

14.4 Return of records

- (a) Within 5 Business Days after the termination of the engagement of the Independent Certifier, the Independent Certifier must deliver to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor jointly all books, records, plans, specifications and other documents relating to the obligations, functions or duties of the Independent Certifier under this document which are in its possession or under its control. The Independent Certifier may keep for its own records a copy of any such books, records, plans, specifications, or other documents so delivered to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor.
- (b) The Independent Certifier acknowledges that ED Operator, RMS, AGNSW, the Principal and the D&C Contractor have the right to use, for the purposes of the works, all books, records, plans, specifications and other documents the Independent Certifier has delivered to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor.

15 Confidential Information and privacy

15.1 Confidential Information

Subject to clauses 15.4 and 15.5, no Confidential Information may be disclosed by the Receiving Party to any person except:

- (a) to Representatives of the Receiving Party or its Related Bodies Corporate requiring the information for the purposes of this document;
- (b) with the prior written consent of the Disclosing Party;
- (c) if the Receiving Party is required to do so by law, a stock exchange or any regulatory authority; or
- (d) if the Receiving Party is required to do so in connection with legal proceedings relating to this document.

15.2 Disclosure of Confidential Information

If the Receiving Party discloses information under clause 15.1(a) or (b) the Receiving Party must use its reasonable endeavours to ensure that recipients of the Confidential Information do not disclose the Confidential Information except in the circumstances permitted in clause 15.1.

15.3 Use of Confidential Information

The Receiving Party must not use any Confidential Information except for the purpose of performing its obligations under this document.

15.4 Excluded Information

Clauses 15.1, 15.2 and 15.3 do not apply to Excluded Information.

15.5 Privacy

The Independent Certifier agrees:

- (a) to comply with all relevant Privacy Laws in connection with Personal Information;
- (b) not to disclose Personal Information outside of Australia without written consent from the Principal;

- (c) not to do anything with Personal Information that may cause the Principal to be in breach of any relevant Privacy Law; and
- (d) not to give access to, or copies of, Personal Information to anyone unless required to do so under a Privacy Law.

This clause 15.5 prevails over the balance of this clause 15 to the extent of any inconsistency in respect of Personal Information which is also Confidential Information.

15.6 Use of Personal Information

If a party is required or authorised by this document or by Law to retain any Personal Information which is part of the Confidential Information, that party may use and disclose that Personal Information for the purpose for which it is required or authorised to be retained under this document or as required by that other Law.

15.7 Survival on termination

This clause 15 will survive termination of this document.

16 Announcements

16.1 Public announcements

Subject to clause 16.2, the Independent Certifier may not make or send a public announcement, communication or circular concerning the matters referred to in this document unless it has first obtained the written consent of ED Operator, RMS, AGNSW and the Principal which consent is not to be unreasonably withheld or delayed.

16.2 Public announcements required by law

Clauses 15.1 and 16.1 do not apply to a public announcement, communication or circular required by Law or a regulation of a stock exchange, if the party required to make or send it has:

- (a) provided the other party with sufficient notice to enable it to seek a protective order or other remedy; and
- (b) provided all assistance and co-operation that the other party considers necessary to prevent or minimise that disclosure.

17 Communications

17.1 Form

- (a) Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications ("**Communications**") in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.
- (b) All Communications (other than email Communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).
- (c) Email Communications must state the first and last name of the sender and are taken to be signed by the named sender.

17.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then Communications must be sent to the changed contact details.

17.3 Certain Communications not to be sent by email

Despite anything else in this clause 17, the following Communications must not be sent by email:

- (a) a notice terminating this document under clause 14; and
- (b) a Dispute Notice given under clause 11.

17.4 When effective

Communications take effect from the time they are received or taken to be received under clause 17.5 (whichever happens first) unless a later time is specified in the Communication.

17.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 5 days after posting (or 10 days after posting if sent from 1 country to another); or
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

17.6 Receipt outside business hours

Despite anything else in this clause 17, if Communications are received or taken to be received under clause 17.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

18 General

18.1 Prompt performance

If this document specifies when a party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

18.2 Variation

A provision of this document may not be varied except in writing signed by each party.

18.3 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by Law independently of this document.

18.4 Consents, approvals or waivers

- (a) A provision of this document, or any right, power or remedy created under it, may not be waived except in writing signed by the party giving the waiver. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A party is not liable for any loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (b) By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

18.5 No reliance

No party has relied on any statement by any other party that has not been expressly included in this document.

18.6 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

18.7 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

18.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document given by the Independent Certifier:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

18.9 No Merger

The rights and obligations of the parties under this document do not merge after the expiry of this document.

18.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of this document.

18.11 Service of process

Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of Communications under this document.

18.12 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.13 Supervening Law

Any present or future Law which operates to vary the obligations of a party in connection with this document with the result that any other party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

18.14 Provisions prohibited by Law

If:

- (a) a Law would otherwise make a provision of this document illegal, void or unenforceable; or
- (b) a provision of this document would otherwise contravene a requirement of a law or impose an obligation or Loss which is prohibited by Law,

this document is to be read as if that provision were varied to the extent necessary to comply with that Law or, if necessary, omitted.

18.15 Relationship

Except where this document expressly states otherwise, it does not create a relationship of employment, trust, agency, partnership or joint venture between the parties.

18.16 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

18.17 Governing Law and jurisdiction

The Law in force in New South Wales governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

18.18 Inconsistent Law

To the extent the Law permits, this document prevails to the extent it is inconsistent with any Law.

18.19 No liability for Loss

Unless this document expressly states otherwise, ED Operator, RMS, AGNSW, the Principal and the D&C Contractor are not liable for any Loss, or Costs arising

in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

18.20 Survival

Clauses [insert] and any other clauses which are expressed to survive termination will survive rescission, termination or expiration of this document.

EXECUTED as a deed

Independent Certifier Deed

Schedule 1 Document Particulars

ITEM	DESCRIPTION	PARTICULARS
1	Key Personnel (clause 1)	<i>[insert]</i>
2	Independent Certifiers Representative (clause 1)	<i>[insert]</i>

Independent Certifier Deed

Schedule 2 Fees

1 Fixed fee

For Services under Item no. [#] in Schedule 3 Fixed fee of \$[#]

For Services under Item no. [#] in Schedule 3 Fixed fee of \$[#]

2 Schedule of rates

Hourly and daily rate and fixed fees for any work in performing the Services or any other work instructed by ED Operator, RMS, AGNSW, the Principal and the D&C Contractor under clause 6.1(a)(iii):

Person	Role	\$/hr	\$/day
[insert]			

Note: The above hourly and daily rates are inclusive of all disbursements and other expenses.

Independent Certifier Deed

Schedule 3 Services

1 Services

1.1 Scope of Services

- (a) The Independent Certifier must discharge the functions, obligations, duties and services which the D&C Contract, the Interface Deed and this document contemplate will be discharged by the Independent Certifier, including the following:
- (i) receive and review each revision of the Project Plans within [10] Business Days of submission of the plan from the D&C Contractor or AGNSW or the Principal (as applicable) and, if the Independent Certifier deems the Project Plans to be acceptable then, provide the relevant certification for each Project Plan;
 - (ii) receive and review all ED IFC Design Documentation and Design Documentation Amendments, 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 Independent Certifier;
 - (iii) receive and review the results of the Monitoring Regime as contemplated by item 7 of Schedule 3 to the Interface Deed;
 - (iv) certify that the ED IFC Design Documentation and each Design Documentation Amendment complies with the Interface Deed and the D&C Contract;
 - (v) review the Contractor's schedule of designated witness points as required by the Interface Deed and obtain RMS and ED Operator acceptance;
 - (vi) observe, monitor, review and assess the quality of the Works and the durability of the Works to verify the Contractor's compliance with the requirements of the Design Documentation and the ED IFC Design Documentation;
 - (vii) independently certify that the Works comply with, and are constructed in accordance with, the Design Documentation and the ED IFC Design Documentation; and
 - (viii) execute and provide Certificates in the form of:
 - (A) Project Plan certificates;
 - (B) Design Documentation certificates;
 - (C) Temporary Works certificates;
 - (D) monthly construction certificates;
 - (E) a Certificate of Works Completion;

- (b) During the period from the date of this document until the Date of Completion, the Independent Certifier must in accordance with clause 2.5 of this document, provide a monthly progress report within [7] days of the following month.

2 Certification Activities

2.1 Application of certification activities

- (a) The provision of certification services in respect of the Works undertaken by the D&C Contractor is the key process to be implemented by the Independent Certifier during the design and construction phases of the Project.
- (b) The Independent Certifier must implement and operate systems for undertaking the functions set out below in clauses 2.2, 2.3, 2.4, 2.5 and 2.6 of this Schedule 3.

2.2 Review and certification of Project Plans

- (a) The D&C Contractor is required by the D&C Contract to prepare and submit to the Principal, AGNSW, RMS and the ED Operator the Project Plans. The purpose of each Project Plan is for the D&C Contractor to describe in detail how the D&C Contractor intends to carry out the Works in accordance with the requirements of the D&C Contract;
- (b) Project Plans are controlled documents that will require ongoing development, amendment and updating throughout the duration of the Works.
- (c) The Independent Certifier must:
 - (i) maintain a register of all Project Plans received from the Contractor;
 - (ii) make itself familiar with all received Project Plans and raise comments where applicable; and
 - (iii) in accordance with clause 2.2(h) of this document, issue certificates and provide a copy of any certificate or determination made in the course of performing the Services to each of the ED Operator, RMS, AGNSW and the Principal.

2.3 Risk assessment

- (a) The Independent Certifier acknowledges that the level and scope of certification of the design and certification of the construction activity will be based on a continuous risk assessment process taking into account the importance of, without limitation:
 - (i) commercial, safety and community involvement elements (etc.);
 - (ii) results of previous audits and surveillance;
 - (iii) engineering, environmental constraints and difficulties;
 - (iv) effect on future work; and
 - (v) any other item identified during the Works.
- (b) The Independent Certifier will determine the extent and type of certification required for the Project having regard to the following:

- (i) complexity of the design;
- (ii) assessed risk and the likelihood and consequence of failure;
- (iii) requirements of the D&C Contract, the Interface Deed, the Design Documentation and the ED IFC Design Documentation;
- (iv) durability implications;
- (v) adequacy of documentation content; and
- (vi) compliance with this document, the Interface Deed and the D&C Contract.

2.4 Design certification

- (a) The D&C Contractor is required under the D&C Contract to prepare and submit to the Principal, AGNSW, RMS and the ED Operator the ED IFC Design Documentation and any Design Documentation Amendment.
- (b) The Independent Certifier will independently verify that the design of the Works (including any Temporary Works) complies with the requirements of the D&C Contract, the Design Documentation and the ED IFC Design Documentation.
- (c) Design certification 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

- (a) The D&C Contractor must provide to the Independent Certifier, ED Operator and RMS a copy of each Design Package.
- (b) The Independent Certifier will review, where appropriate, each Design Package (including, but not limited to, drawings, specifications and reports).
- (c) During the review process the Independent Certifier is to ensure that any comment by RMS, ED Operator, the Principal or AGNSW (as applicable) on a Design Package has been incorporated or determined before the issue of the certificate for any Design Package.
- (d) Following resolution of any outstanding qualifications and issues raised by the Independent Certifier, RMS, ED Operator, the Principal or AGNSW (as applicable), the Independent Certifier will certify that the Design Package complies with the D&C Contract and the Interface Deed.
- (e) 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 Design Package and the design output meets the requirements of the design criteria necessary to comply with the D&C Contract and the Interface Deed and all relevant Statutory Requirements and all relevant codes and standards.
- (f) If any of ED IFC Design Documentation or Design Documentation Amendment is rejected, then the design amendments will be subjected to the same certification process outlined above.

- (g) The Independent Certifier acknowledges that the response time for reviewing the Design Documentation will be [10] Business Days of receipt of the Design Documentation.

Other Outputs

- (h) The Independent Certifier must review and certify amended ED IFC Design Documentation that might arise during the course of construction, including any Design Documentation Amendments.

2.5 Construction works certification

General

- (a) The Independent Certifier must independently certify that the Works as constructed (including Temporary Works and product and processes) comply with the requirements of the D&C Contract, the Interface Deed, the Design Documentation and the certified ED IFC Design Documentation.

Works Completion

- (b) When Works Completion of the Works has been achieved, the Independent Certifier must issue the Certificate of Works Completion, verifying that the Works have been completed in accordance with the D&C Contract, the Interface Deed, the Design Documentation, and the certified ED IFC Design Documentation.

Independent Certifier Deed

Schedule 4 Insurance

Insurance Policy	Minimum Requirements
<p>Public and Products Liability Insurance</p>	<p>(a) Public and products liability policy that covers the liability of the Independent Certifier and indemnifies ED Operator, RMS, AGNSW, the Principal and the D&C Contractor and their Related Bodies Corporate and the Security Trustee, for:</p> <ul style="list-style-type: none"> (i) loss of or damage to property; and (ii) the death of or injury to any person. <p>(b) The limit of liability for public liability must be no less than \$20 million for any one occurrence</p> <p>(c) The limit of liability for products liability must be \$20 for each claim and in the aggregate for all occurrences in any one 12 month policy period.</p> <p>(d) The policy must be maintained from the Commencement Date until completion of the Services.</p>
<p>Professional Indemnity</p>	<p>(a) Professional indemnity insurance covering the civil liability of the Independent Certifier arising from a breach of duty owed in a professional capacity, by reason of any act or omission of the Independent Certifier or any of its employees or agents.</p> <p>(b) The limit of liability must be no less than \$10 million for any one claim and in the annual aggregate.</p> <p>(c) The policy must be maintained from the Commencement Date until the earlier of the expiry of 7 years after the date of completion of the Services or the expiry of 7 years after the termination of this document.</p>
<p>Worker's Compensation Insurance</p>	<p>(a) Workers' compensation insurance as required by Law.</p> <p>(b) The limit of liability provided by the insurance policy must be not less than that required by Law.</p> <p>(c) The policy must be maintained so as to be in force from the Commencement Date until completion of the Services.</p>

Independent Certifier Deed

Signing page

DATED: _____

ED Operator

EXECUTED by AIRPORT MOTORWAY LIMITED (ABN 26 057 283 093) in accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth) by authority of its directors:)	
.....)	
Signature of director) Signature of director/company secretary
.....)	
Name of director (block letters)) Name of director/company secretary (block letters)

EXECUTED by AMT MANAGEMENT LIMITED as trustee of the Airport Motorway Trust (ABN 55 078 953 607 accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth) by authority of its directors:)	
.....)	
Signature of director) Signature of director/company secretary
.....)	
Name of director (block letters)) Name of director/company secretary (block letters)

RMS

SIGNED SEALED AND DELIVERED)
for and on behalf of **ROADS AND**)
MARITIME SERVICES by its)
authorised delegate in the presence of:)

.....)
Signature of witness)

.....)
Authorised Delegate Signature)

.....)
Name of witness (block letters))

.....)
Print Name)

Art Gallery of NSW Sydney Modern Project – Eastern Distributor Construction Interface and Access Deed

Exhibit 2 - Monitoring Regime Scope and Details

The monitoring regime will be developed by AGNSW and agreed with RMS and ED Operator once a Building Contractor is appointed, with consideration of Building Contractor's proposed design and construction method.

The monitoring regime will need to consider at least the following disciplines:

- Structural engineering (including, but not limited to, vibration, deflection and crack meters);
- Geotechnical (including, but not limited to, vibration, tilt meters, inclinometers, progressive geological mapping);
- Hydrogeology; and
- Arboriculture.

This will include monitoring the background conditions for an appropriate period to determine the ambient range of parameters at each location where monitoring is being carried out.

Exhibit 3 – Zones

Zone 1

Land identified as Zone 1 in attached drawings, comprising airspace, turf/grass, topsoil surface, subsoil on top of the protection slab, and drainage cells.

Zone 2A

Land identified as Zone 2A in attached drawings, comprising the surfaces of Zone 2B elements where in contact with Zone 1.

Zone 2B

Land identified as Zone 2B in attached drawings, being the ED land bridge structure, comprising any engineered or structural elements of the ED land bridge, including:

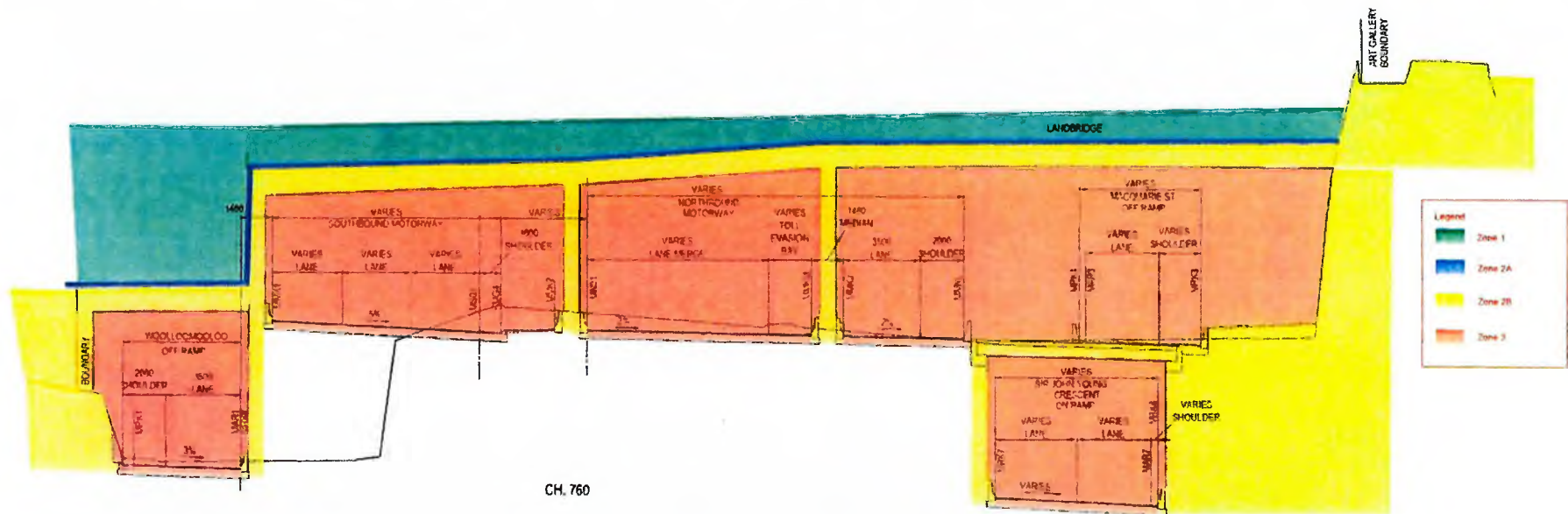
- the protection slab below the subsoil;
- the water proof membrane;
- concrete slab;
- girders;
- the sandstone / concrete walls supporting the ED land bridge; and
- balustrade on ED land bridge.

Zone 3

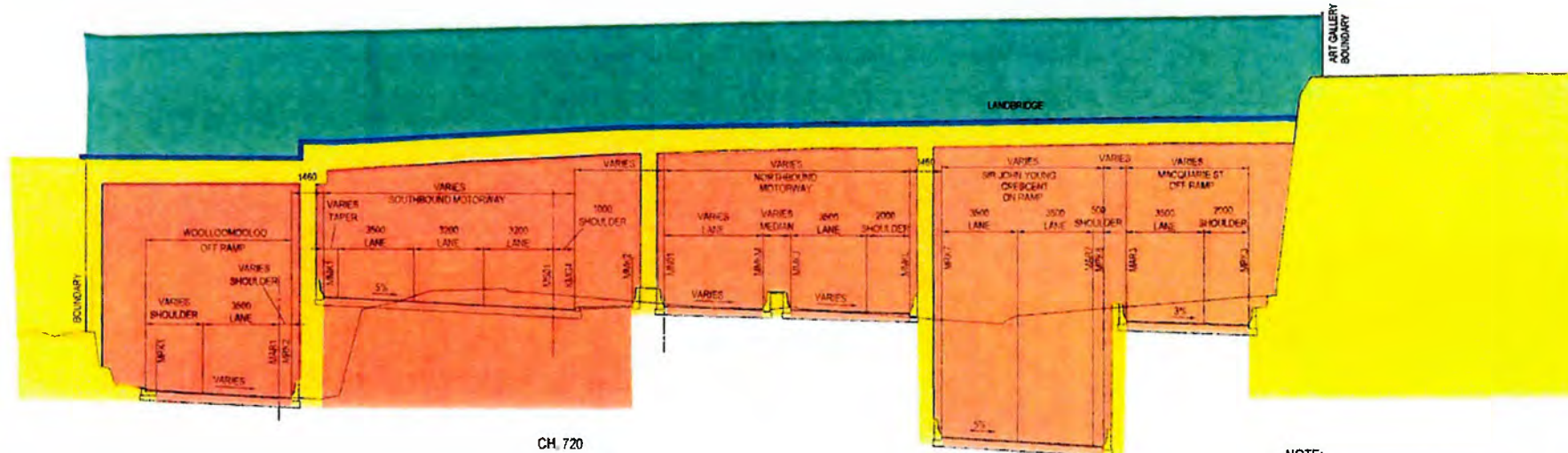
Land identified as Zone 3 in attached drawings, comprising the Eastern Distributor motorway and airspace under the ED land bridge.



Zone definition for
Interface_V2.0.pdf



CH. 760



CH. 720

NOTE:
1. FOR DRAWING REFERENCES REFER DRG. No. 2503.

DATE	18.03.09	AS BUILT
EDP	17.08.97	ISSUED FOR CONSTRUCTION WITH HALLIB
APP AL	17.08.97	ISSUED FOR APPROVAL
PD AL	29.03.07	ISSUED FOR CONTRACT
REV	DATE	DESCRIPTION

EASTERN DISTRIBUTOR
AS-BUILT DRAWING
ENDORSED AS A TRUE RECORD OF CONSTRUCTION

Scale	1m 6 1 2 3 4 5m	1:100 AT A1
Author	ACH/MS	D. MARRING
Checker	A. CHIVAS	H. MULLISTER
Status	AS-BUILT	

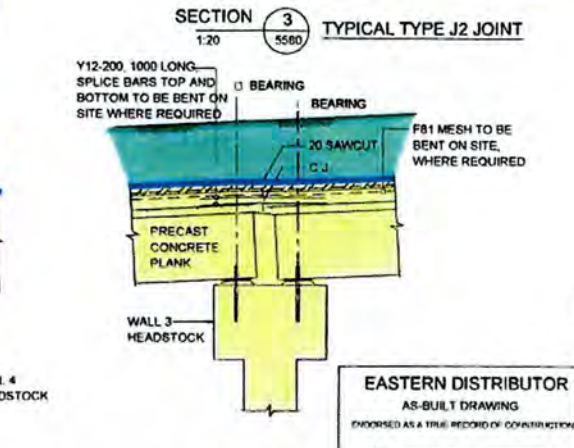
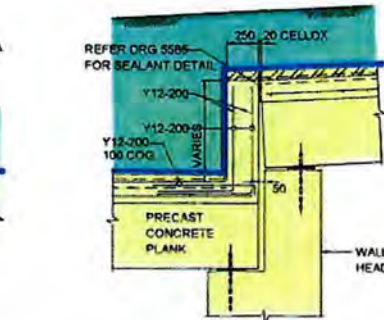
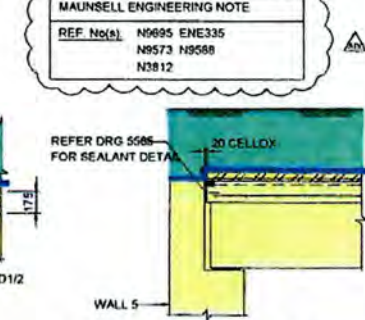
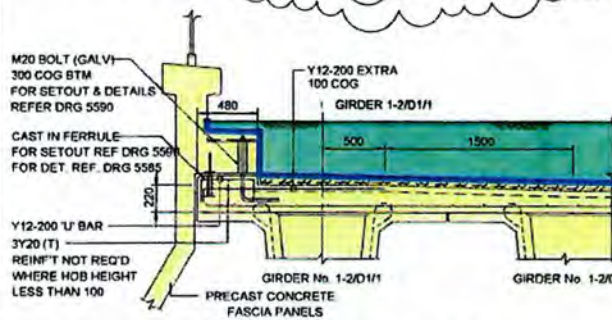
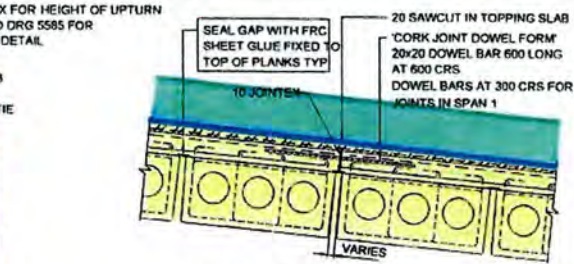
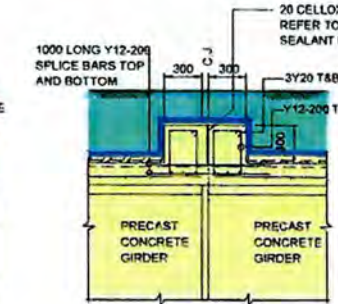
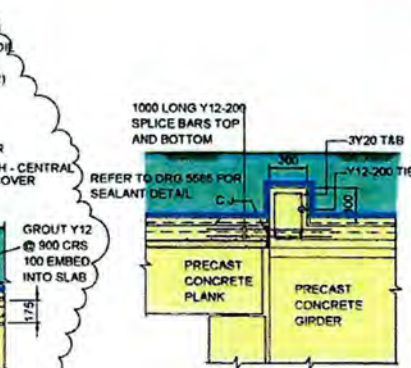
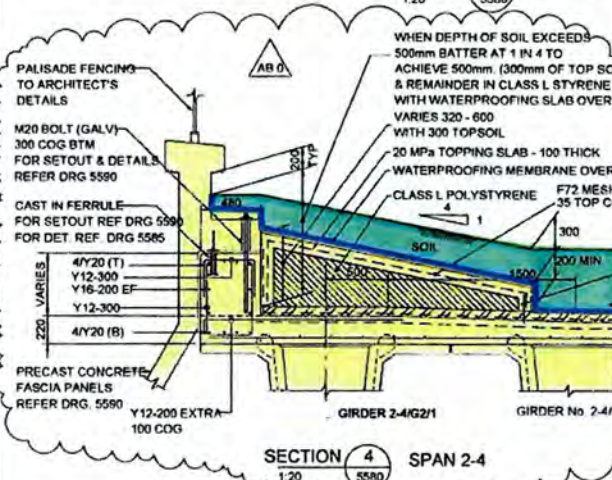
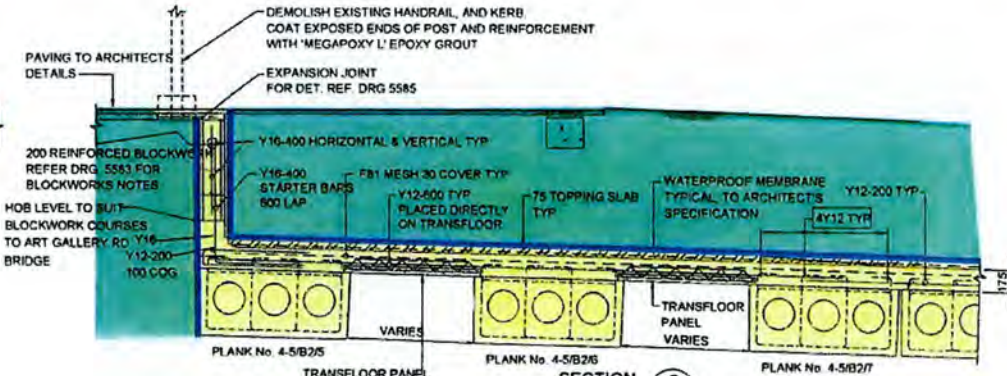
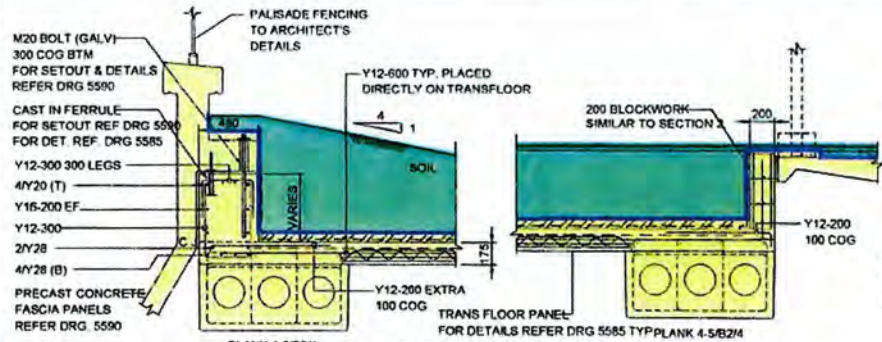
**Maunsell
McIntyre**
A C N 004 844 824

Leighton Contractors Pty Limited
Level 10, 12 Help Street
Chatswood NSW 2007
Australia
A C N 000 893 697



EASTERN DISTRIBUTOR
TYPICAL CROSS SECTIONS
NORTHERN LANDWORKS
CH. 720 & CH. 760
Dwg No. N641N/CV/2571
REV AB 0

DRAWN BY: EASTERN DISTRIBUTOR/CH. 720 & CH. 760



MAUNSELL ENGINEERING NOTE
 REF No(s) N9695 ENE335
 N9573 N9588
 N3812

EASTERN DISTRIBUTOR
 AS-BUILT DRAWING
 ENDORSED AS A TRUE RECORD OF CONSTRUCTION

REV	DATE	DESCRIPTION
01	21/04/02	AS BUILT SECTION 4 REVISED AS PER ENG NOTE ADD 60
02	28/07/02	ISSUED FOR CONSTRUCTION WORK PLAN 1A
03	2/02/03	RE ISSUED FOR APPROVAL
04	31/05/03	ISSUED FOR APPROVAL

Connell Wagner
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 Facsimile 02 9495 5099
 Australia

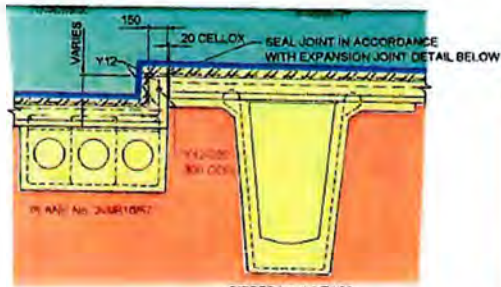
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DATE	21/04/02
PROJECT	ART GALLERY LANDBRIDGE
CLIENT	ART GALLERY
DESIGNER	J. REEFLE
STATUS	AS BUILT

Maunsell McIntyre
 A.C.N. 064 846 674

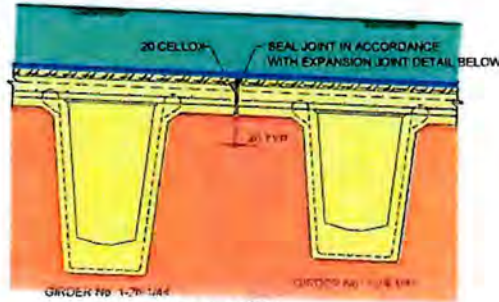
Leighton Contractors Pty Limited
 Level 10, 12 Help Street
 Chatswood NSW 2067
 Australia
 A.C.N. 100 803 447



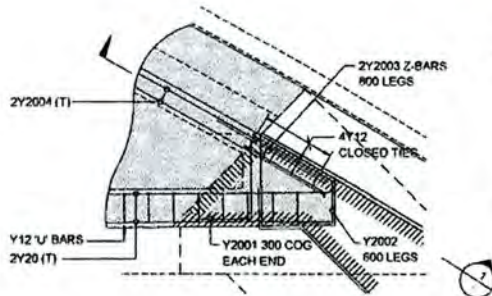
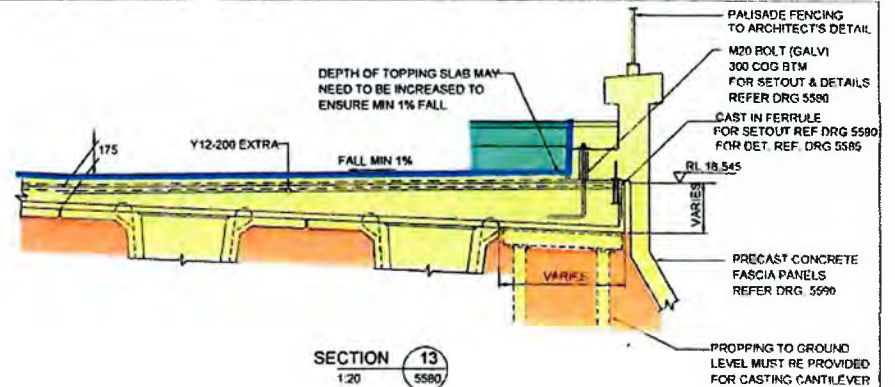
EASTERN DISTRIBUTOR
 DRG 1911
 NORTHERN
 ART GALLERY LANDBRIDGE
 DECK
 DETAILS - SHEET 1
 DRG No. N641/N/ST/5582
 PIV AB 0



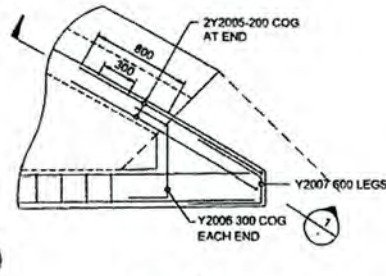
SECTION 11
1:20
5580
JOINT J3



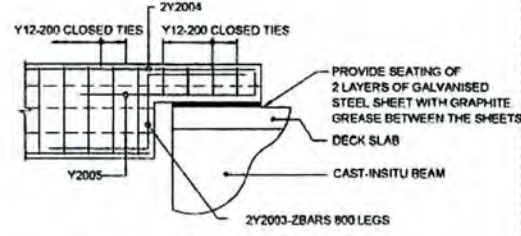
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JOINT J3



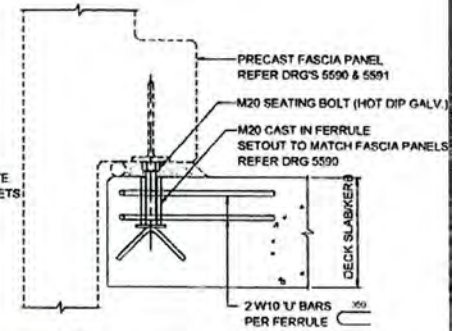
DETAIL A TOP
1:20
5584



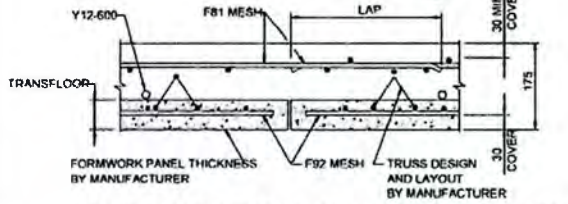
DETAIL A BOTTOM
1:20
5584
ADJACENT SLAB/BEAMS NOT SHOWN



SECTION 1
1:20
5584

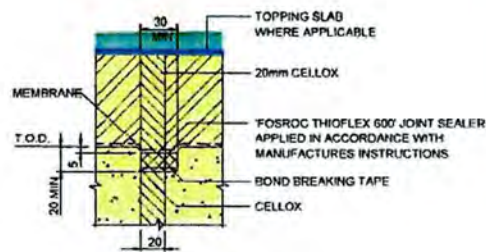


CAST IN FERRULE DETAIL
SCALE 1:5

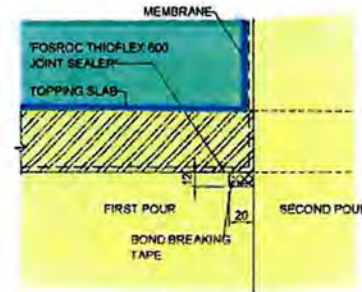


TYPICAL PRECAST CONCRETE PERMANENT FORMWORK
SCALE 1:5

- NOTE
- PRECAST PERMANENT FORMWORK TO BE 'RECRETE TRANSFLOOR OR APPROVED EQUIVALENT
 - DESIGN OF THE PERMANENT FORMWORK PANEL LAYOUT AND CAPACITY DURING HANDLING AND THE DECK CONSTRUCTION SHALL BE BY THE MANUFACTURER. DESIGN SHALL BE IN ACCORDANCE WITH 92 AUSTRROADS BRIDGE CODE
 - THE CONCRETE STRENGTH AT 28 DAYS FOR THE FORMWORK SHALL BE 45MPa
 - MINIMUM BEARING ON PRECAST CONCRETE PLANKS SHALL BE 40mm
 - 90mm MINIMUM BEARING IS REQUIRED AT TYPE J1 JOINT



DECK EXPANSION JOINT
SCALE 1:2
TYPICAL SEALANT DETAIL FOR JOINTS J1 - J3



CONSTRUCTION JOINT
SCALE 1:2
TYPICAL FOR ALL CONSTRUCTION JOINTS IN THE DECK

MAUNSELL ENGINEERING NOTE

REF. No(s): N9588
N9586
N9573

EASTERN DISTRIBUTOR
AS-BUILT DRAWING
(EMPOISED AS A TRUE RECORD OF CONSTRUCTION)

DATE	DESCRIPTION
21/04/05	AS BUILT END NOTE ADDED
26/09/04	ISSUED FOR CONSTRUCTION WORK IN AREA 11 & 1A 6A
07/02/04	RE-DESIGNED FOR APPROVAL
11/08/03	DETAILS ACCEPTED
04/08/03	ISSUED FOR APPROVAL

Connell Wagner	
Connell Wagner Pty Ltd A.C.N. 000 138 973 Express & Transport Telephone 02 9493 9399 Facsimile 02 9493 9399 Australia	118 Military Road P.O. Box 516 Meadow Bay New South Wales 2026 Australia
JOB No: 52701C/B	Proj Date:
Client:	

200	0	200	400	600	800	1000mm	1:20 AT A1
Maunsell Engineering							
Author:	5 ENR/MT	1 RY/LAND					
Checked:	J SPEELE	CL/REDF/RS					
STATUS: AS BUILT							
A C N 004 816 524							

Maunsell McIntyre

A C N 004 816 524

Leighton Contractors Pty Limited

Level 10, 12 Help Street
Chalwood NSW 2067
Australia

A C N 000 683 067

AIRPORT MOTORWAY

EASTERN DISTRIBUTOR

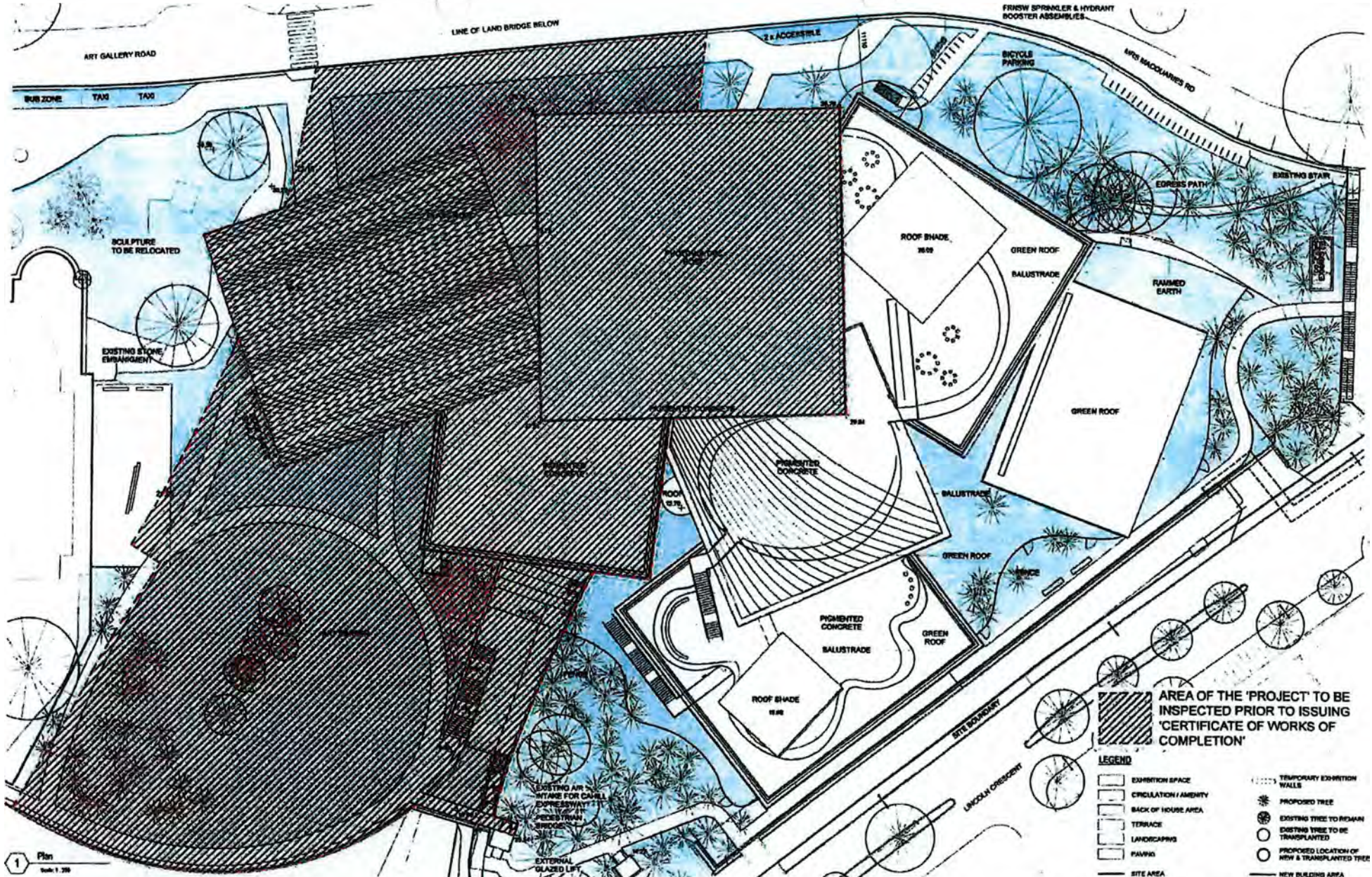
NORTHERN
ART GALLERY LANDBRIDGE
DECK
DETAILS - SHEET 4

REF: N641/N/ST/5585

REV: AB 0

Exhibit 4 – Works for inspection by the Independent Certifier


Draft Extent of
Landbridge Works f



AREA OF THE 'PROJECT' TO BE INSPECTED PRIOR TO ISSUING 'CERTIFICATE OF WORKS OF COMPLETION'

- LEGEND**
- [Hatched Box] AREA OF THE 'PROJECT' TO BE INSPECTED PRIOR TO ISSUING 'CERTIFICATE OF WORKS OF COMPLETION'
 - [White Box] EXHIBITION SPACE
 - [White Box] CIRCULATION / AMENITY
 - [White Box] BACK OF HOUSE AREA
 - [White Box] TERRACE
 - [White Box] LANDSCAPING
 - [White Box] PAVING
 - [White Box] SITE AREA
 - [Dotted Line] TEMPORARY EXHIBITION WALLS
 - [Tree Symbol] PROPOSED TREE
 - [Tree Symbol] EXISTING TREE TO REMAIN
 - [Tree Symbol] EXISTING TREE TO BE TRANSPLANTED
 - [Circle Symbol] PROPOSED LOCATION OF NEW & TRANSPLANTED TREE
 - [Line Symbol] NEW BUILDING AREA

1 Plan
Scale: 1:200

Revision	Description	Date
L	Issued for RTS	31 07 2018
M	Issued for RTS	08 08 2018
1	Issued for Information	12 09 2018
2	Issued for Information	13 09 2018

Scale: 1:200 @ A1
1:500 @ A2



Art Gallery of NSW
Art Gallery Place
Sydney NSW, 2000
T(61) 2 9225 1700

Lead Architect

SANAA

ART GALLERY OF NSW EXPANSION PROJECT - SYDNEY MODERN

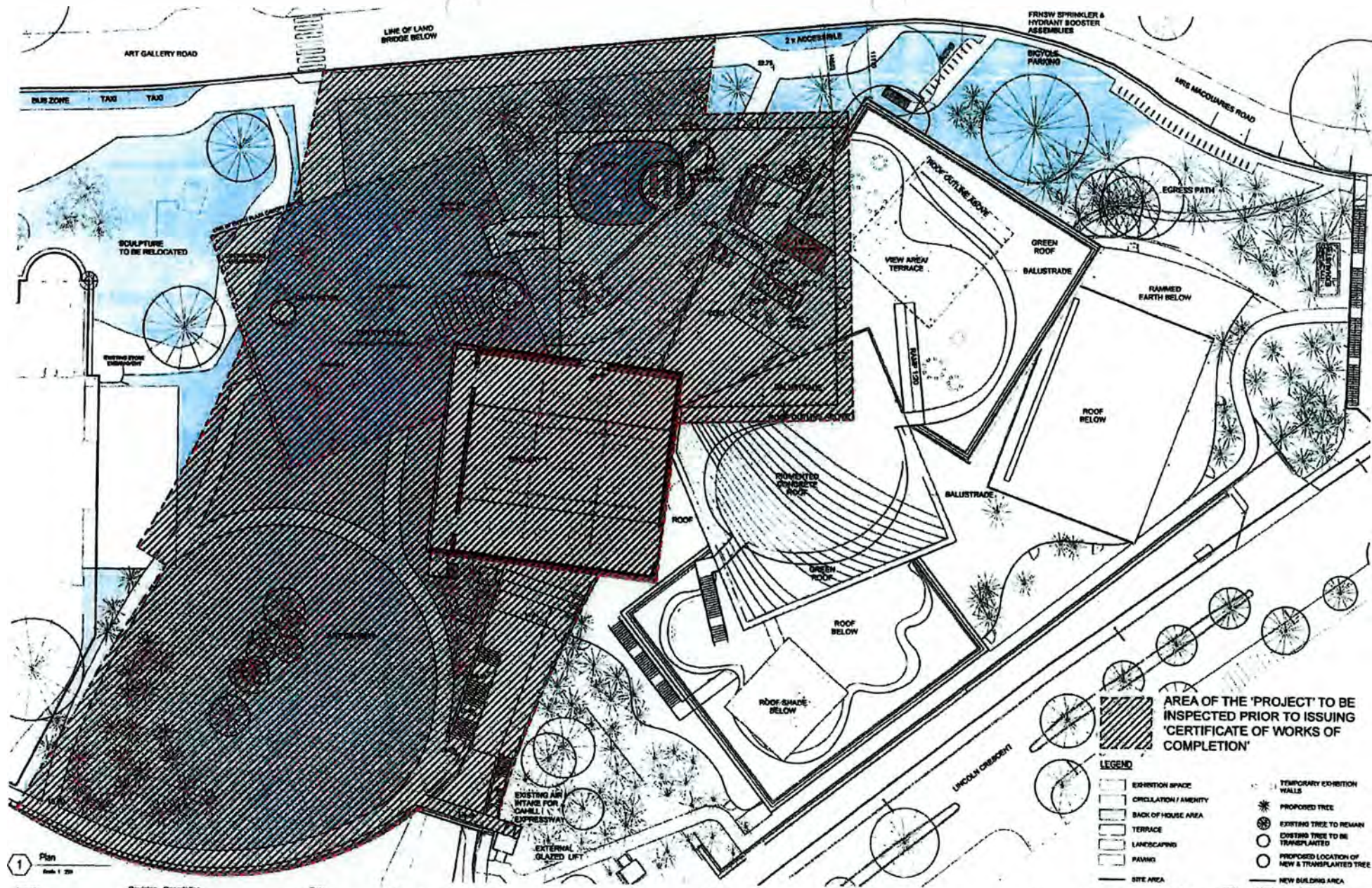
Executive Architect

architectus

Roof Plan
Proposed Area of Landbridge 'Works'

DA_1000

2



1 Plan
Scale: 1:250

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Revision	Description	Date
1	Issued for RTS	31 07 2018
2	Issued for RTS	08 08 2018
3	Issued for Information	12 09 2018
4	Issued for Information	13 09 2018

Scale: 1:250 @ A1
1:500 @ A2

Author: LIZMILL
Date: 13/09/2018
Architect: architectus
The seal needs stamping.



Art Gallery of NSW
Art Gallery Road
Sydney NSW 2000
T 61 61 9325 5700

Lead Architect: **SANA A**
Robert Wilson + Peter Williams | SANA A
1111 George Street
Sydney NSW 2000
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F 61 2 9232 3333
www.sanaa.com.au

ART GALLERY OF NSW EXPANSION
PROJECT - SYDNEY MODERN
Working with:
Entry Level Plan
Working on:
DA_1001



AREA OF THE PROJECT TO BE INSPECTED PRIOR TO ISSUING CERTIFICATE OF WORKS OF COMPLETION



1 Plan
Scale 1:300

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Revision	Description	Date
K	Issued for RTS	31 07 2018
L	Issued for RTS	08 08 2018
1	Issued for Information	12 08 2018
2	Issued for Information	13 08 2018

Scale
1:300 @ A1
1:600 @ A2

Author L. KAVALLI
Drawn Architecture
Scale 1:300



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Architect architectus
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Project ART GALLERY OF NSW EXPANSION PROJECT - SYDNEY MODERN

Working Lower Level 1 Plan

Project No. DA_1002

Page 2



1 Plan
Scale 1:200

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Revision	Description	Date
K	Issued for RTS	31 07 2018
L	Issued for RTS	06 08 2018
1	Issued for Information	12 08 2018
2	Issued for Information	13 09 2018

Scale: 1:200 @ A1
1:500 @ A2
1:1000 @ A3



Client:
ART
NSW
Art Gallery of NSW
Art Gallery Road
Sydney, NSW, 2000
T 615 9320 1700

Lead Architect: **SANA A**
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E info@sanaa.com.au
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Executive Architect: **architectus**
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F 61 2 9250 1001
E info@architectus.com.au
www.architectus.com.au

Project: **ART GALLERY OF NSW EXPANSION PROJECT - SYDNEY MODERN**
Drawing: **Lower Level 2 Plan**
Drawing No: **DA_1003**
Revision: **2**



1 Plan
Scale 1:250

AREA OF THE 'PROJECT' TO BE INSPECTED PRIOR TO ISSUING 'CERTIFICATE OF WORKS OF COMPLETION'

- LEGEND**
- [Hatched Box] AREA OF THE 'PROJECT' TO BE INSPECTED PRIOR TO ISSUING 'CERTIFICATE OF WORKS OF COMPLETION'
 - [White Box] EXHIBITION SPACE
 - [Light Blue Box] CIRCULATION / AMENITY
 - [Green Box] BACK OF HOUSE AREA
 - [Light Green Box] TERRACE
 - [Dark Green Box] LANDSCAPING
 - [Dotted Box] PAVING
 - [Thin Line] SITE AREA
 - [Dashed Line] TEMPORARY EXHIBITION WALLS
 - [Sun Symbol] PROPOSED TREE
 - [Circle with Dot] EXISTING TREE TO REMAIN
 - [Circle with Cross] EXISTING TREE TO BE TRANSPLANTED
 - [Circle with Star] PROPOSED LOCATION OF NEW & TRANSPLANTED TREE
 - [Thick Line] NEW BUILDING AREA

Revision	Description	Date
H	Issued for RTS	30 07 2018
1	Issued for RTS	09 08 2018
1	Issued for Information	12 08 2018
2	Issued for Information	15 08 2018

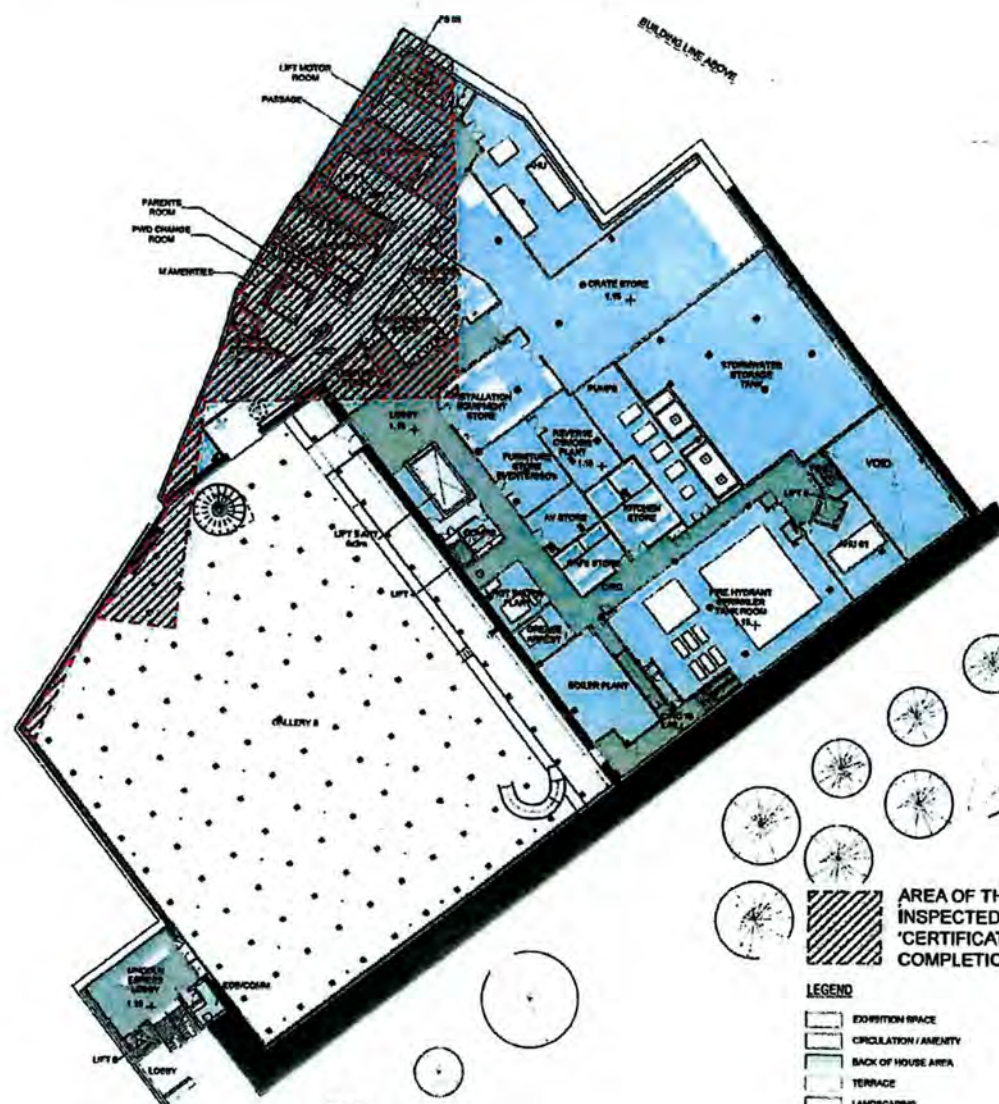
Scale: 1:250 @ A1
1:500 @ A2

Author: J. J. J. J.
Drawn: J. J. J. J.
Do not scale drawings



Lead Architect: **SANAA**
 Project: ART GALLERY OF NSW EXPANSION PROJECT - SYDNEY MODERN
 Architect: **architectus**

Project: ART GALLERY OF NSW EXPANSION PROJECT - SYDNEY MODERN
 Drawing: Lower Level 3 Plan - Proposed Plan
 Drawing No: DA_1005.0
 Page: 2

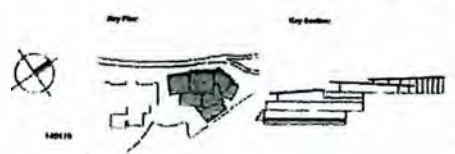


- LEGEND**
- [Hatched Box] AREA OF THE 'PROJECT' TO BE INSPECTED PRIOR TO ISSUING 'CERTIFICATE OF WORKS OF COMPLETION'
 - [Dotted Box] EXHIBITION SPACE
 - [White Box] CIRCULATION / AMENITY
 - [Light Blue Box] BACK OF HOUSE AREA
 - [Light Green Box] TERRACE
 - [Light Yellow Box] LANDSCAPING
 - [Light Purple Box] PAVING
 - [Thick Black Line] SITE AREA
 - [Dashed Line] TEMPORARY EXHIBITION WALLS
 - [Star Symbol] PROPOSED TREE
 - [Circle with Star Symbol] EXISTING TREE TO REMAIN
 - [Circle with Dotted Symbol] EXISTING TREE TO BE TRANSPLANTED
 - [Circle with Circle Symbol] PROPOSED LOCATION OF NEW & TRANSPLANTED TREE
 - [Thick Black Line] NEW BUILDING AREA

1 Plan
Scale 1:750

Revision	Description	Date
1	Issued for RFS	30.07.2018
2	Issued for RFS	06.09.2018
1	Issued for Information	12.08.2018
2	Issued for Information	13.08.2018

Scale: 1:750
1 2 3 4 5 10 15 30



Art Gallery of NSW
100 George Street
Sydney NSW 2000
T 61 61 9221 1700

SANAA
Lead Architect
SANAA Architects
100 George Street
Sydney NSW 2000
T 61 61 9221 1700

ART GALLERY OF NSW EXPANSION PROJECT - SYDNEY MODERN

Working: Lower Level 4 Plan - Proposed Plan

DA_1007.0

Schedule 18 – Not used

Schedule 19 - Document Submission Schedule

Refer to clause 39 of the GC21 General Conditions of Contract.

1 Document submission schedule

All documents referred to in the Project Brief and the Preliminaries or other contract documents as requiring to be submitted, reviewed or approved by the Principal, including but not limited to:

- Design Documentation;
- Drawings (Architectural and all other disciplines);
- Specifications;
- Reports;
- Tests, Audits or inspection records; and
- Schedules or Data Sheets.

2 Project Plans

The Contractor must submit updated drafts of the Contractor's Project Plans in accordance with the Contract, the Principal's Project Requirements and this schedule.

In addition to the plans detailed below, the Contractor will also be required to prepare and update other Contractor's Project Plans as required by legislation, regulation, the Principal's Project Requirements and the Contract:

Description	Full Plan submission
Work Health and Safety Management Plan	30 Days after Contract Award
Community Engagement Plan	30 Days after Contract Award
Stakeholder Management Plan	30 Days after Contract Award
Environmental Management Plan	30 Days after Contract Award
Construction Management Plan	30 Days prior to commencement of any activities on the Site
Design Management Plan	30 Days after Contract Award
Demolition Management Plan	30 Days prior to commencement of any activities on the Site

Description	Full Plan submission
Construction Traffic Management Plan	30 Days after Contract Award
Risk Management Plan	30 Days after Contract Award
Quality Management Plan	30 Days after Contract Award
Workplace Relations Management Plan	30 Days after Contract Award
Remediation Action Plan	30 Days prior to commencement of any activities on the Site
Completion Plan	9 months prior to the Contract Completion Date

Schedule 20 – Site Access Schedule

Refer to clauses 34, 34A and 34B of the GC21 General Conditions of Contract.

Ownership of the Sydney Modern Project development site is split between:

- the Art Gallery of NSW (AGNSW) Trust,
- Royal Botanic Gardens (RBG) and Domain Trust and
- Roads and Maritime Services (RMS).

Additionally, the land bridge structure over the ED, to the North East of the existing AGNSW building, forms part of the site. The operators of the ED are RMS and Airport Motorway Limited (AML).

The site access will be regulated by two documents:

- *Development Agreement* – between AGNSW, RMS and RBG – land owners, and
- *ED Interface Deed* – between AGNSW and ED operators (RMS and AML).

Part A - Site Plan

The Construction Site Plan indicates:

- Area 1 – Main Construction Site Area under control of the contractor for the duration of the project and consisting of:
 - Area 1A – General site area (including disused fuel bunker). Access to this area will be regulated by the *Development Agreement*.
 - Area 1B – land bridge over ED roadway. Access to this area is regulated by the *ED Interface Deed*.
- Area 2 - Secondary Construction Area. To be accessed by the contractor during the works to upgrade soft and hard landscaping in front of existing AGNSW building. Access of this area to be managed and staged to enable operations of the AGNSW at all times. Access to this area will be available for up to 6 months during the hard and

soft landscaping works. Access to this area will be regulated by the *Development Agreement*.

- Area 3 - Secondary Construction Area. To be accessed and occupied by the contractor for up to 12 months during installation of the Harbour Heat Rejection system. Access to this area will be regulated by the *Development Agreement*.
-

Further definition of the Area 1B – land bridge over ED

Area 1B (land bridge over ED) is further divided into 4 zones as identified below and indicated in the attached Area 1B – Zones Drawing Set.

Zone 1

Land identified as Zone 1 in attached drawings, comprising airspace, turf/grass, topsoil surface, subsoil on top of the protection slab, and drainage cells

Zone 2A

Land identified as Zone 2A in attached drawings, comprising the surfaces of Zone 2B elements where in contact with Zone 1.

Zone 2B

Land identified as Zone 2B in attached drawings, being the ED land bridge structure, comprising any engineered or structural elements of the ED land bridge, including:

- the protection slab below the subsoil;
 - the water proof membrane;
 - concrete slab;
 - girders;
 - suspension;
 - throw screens / surface level façade and walls;
 - the sandstone / concrete walls supporting the ED land bridge; and
 - balustrade on ED land bridge
-

Zone 3

Land identified as Zone 3 in attached drawings, comprising the Eastern Distributor motorway and airspace under the ED land bridge

Part B - Site Access Dates

Site access dates are set out in the table below:

Area 1A and Area 1B – Zones 1 and 2A	9 September 2019 (for the duration of the works)
--------------------------------------	--

Area 1B – Zone 2B	Where Works are to be performed in Zone 2B, AGNSW must provide 5 Business Days' prior written notice to the ED Operator and details of the Works intended to be performed. Where, in the reasonable opinion of ED Operator, Project Activities performed in Zone 2B involve Works that cause or may cause a risk or threat to health or safety of any persons in or on Zone 3, and lanes of the ED Motorway will need to be closed for the duration of these Project Activities in order to limit that risk, then Zone 3 access requirements will apply.
Area 1B – Zone 3	Zone 3 access requirements as stipulated by the <i>ED Interface Deed</i> .
Area 2	6 months from the project completion for a period of up to 6 months
Area 3	For up to 12 months from the programmed commencement of Harbour Heat Rejection installation works

Part C – Site Access Conditions

Site access conditions for the following areas will be in accordance with the requirements of *ED Interface Deed* and the *Development Agreement*:

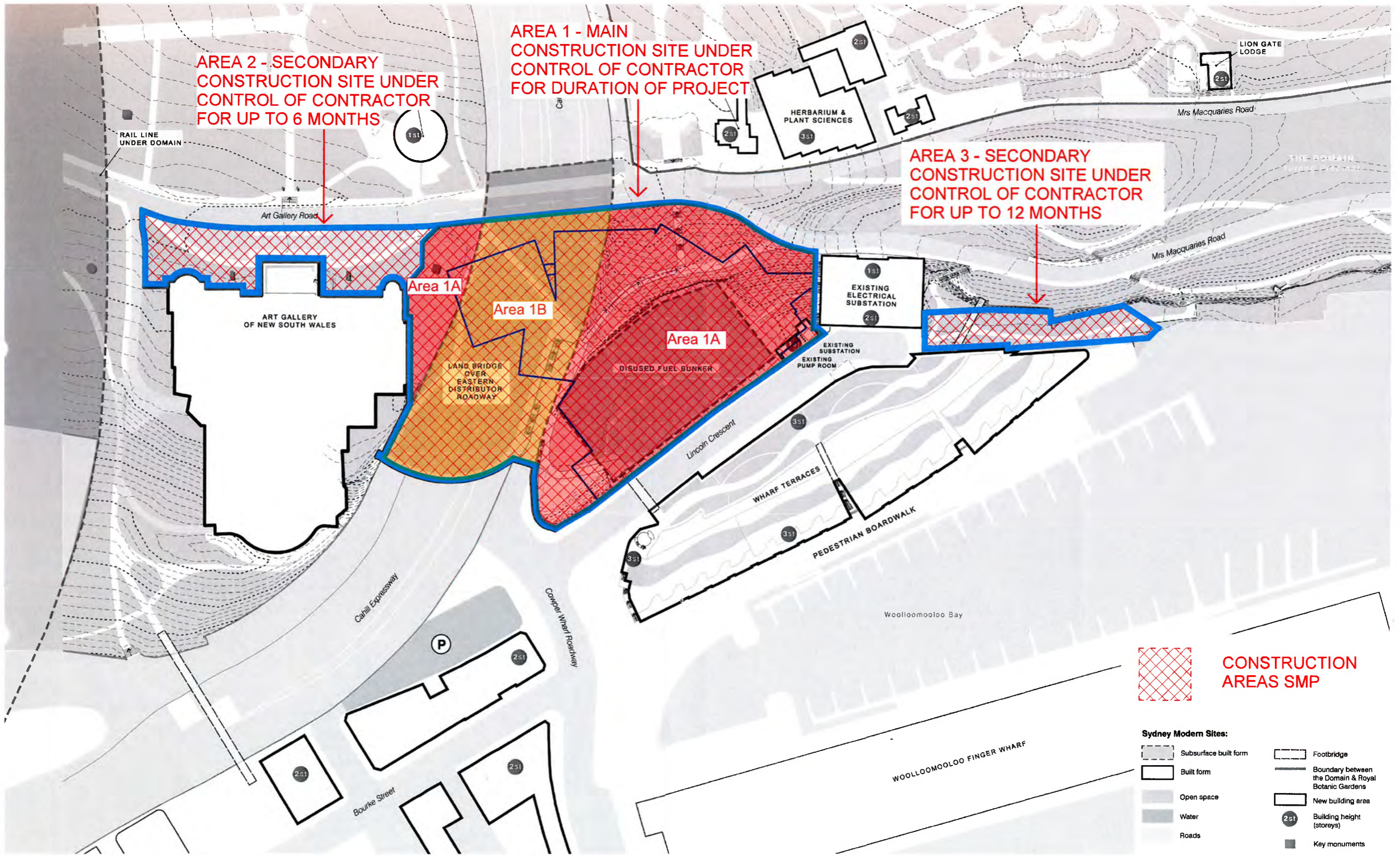
- Area 1A and Area 1B – Zones 1 and 2A
- Area 2
- Area 3

References to the access conditions under *Development Agreement*

Clause 3.1	Representatives
Clause 3.2	Precinct Working Group, Meetings and Reports
Clause 3.3	Stakeholder Engagement re RBGDT Land
Clause 7.1	Grant of construction licence
Clause 7.2	Dilapidation and 'As is where is'
Clause 7.3	Access for inspection by Owners
Clause 7.4	Access requirements for Owner
Clause 7.5	Principal contractor
Clause 7.7	Use of Mrs Macquaries Road and Art Gallery Road
Clause 10.1	Contamination
Clause 10.2	Relics and archaeological objects
Clause 10.3	Care of Development Works
Clause 10.4	Reinstatement
Schedule 8	Construction Licence Site Plan

Site access requirements for the Area 1B will be in accordance with the requirements of the *ED Interface Deed*.

Access requirements are specified in the *Schedule 2 – Access Requirements* of the Deed.



AREA 2 - SECONDARY CONSTRUCTION SITE UNDER CONTROL OF CONTRACTOR FOR UP TO 6 MONTHS

AREA 1 - MAIN CONSTRUCTION SITE UNDER CONTROL OF CONTRACTOR FOR DURATION OF PROJECT

AREA 3 - SECONDARY CONSTRUCTION SITE UNDER CONTROL OF CONTRACTOR FOR UP TO 12 MONTHS

CONSTRUCTION AREAS SMP

- Sydney Modern Sites:**
- Subsurface built form
 - Built form
 - Open space
 - Water
 - Roads
 - Footbridge
 - Boundary between the Domain & Royal Botanic Gardens
 - New building area
 - Building height (storeys)
 - Key monuments

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	Revision	Description	Date																		
H	Issued for RTS	30 07 2018																			
1	Issued for RTS	06 08 2018																			
1	Issued for Information	12 09 2018																			
2	Issued for Information	13 09 2018																			
<p>checked: LJJ/NWJ</p> <p>drawn: Architectus</p> <p>project no: 140419</p> <p>Do not scale drawings.</p>	<p>Architectus Sydney</p> <p>Level 14, 110 Kent Street, Sydney NSW 2000</p> <p>T (61 2) 9225 1780</p> <p>F (61 2) 9225 1780</p> <p>www.architectus.com.au</p>	<p>DA_0015</p> <p>2</p>																			

Schedule 31 – Not used

Schedule 34 – Certificates

Refer to clauses 37F, 39, 65 and 67A of the GC21 General Conditions of Contract.

Part A – Consultant's Design Certificate

To: Infrastructure NSW and Art Gallery of NSW

From: **[Insert Consultant's name]**
(ABN **[Insert Consultant's ABN]**)
("Consultant")

In accordance with the terms of clauses **[insert]** of the contract between the Principal and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Works, we certify that the attached *Design Documentation* prepared by or on behalf of the Contractor:

- (a) complies with all the requirements of the Contract, including the *Project Brief*, and
- (b) is documented to enable construction of the Works in compliance with the Contract.

Unless otherwise defined in this notice, capitalised terms have the meaning given to them in the Contract.

.....
Signed for and on behalf of
[Insert Consultant's name]

Part D – Property Owner’s Certificate

(clause 37F)

This Deed Poll is in favour of:

Infrastructure NSW of [insert address] (ABN [insert]) (“**Principal**”)

and

Art Gallery of NSW of [insert address] (ABN [insert]) (“**AGNSW**”),

and their successors and permitted assigns (together, the **Beneficiaries**).

PROPERTY ADDRESS: (“**Property**”)

1 I/We confirm that we are the registered owner/occupier/lessee of the Property.

2 I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

(a) [Insert description of works] (“**Works**”)

3 I/We confirm that:

(a) the Works have been carried out to my/our satisfaction;

(b) the Property has been rehabilitated and all damage and degradation on it repaired to my/our satisfaction.

4 I/We release the Beneficiaries from all claims and actions (whether for damages or otherwise and howsoever arising) which I/we may have arising out of or in connection with the works referred to in section 1 above.

SIGNED as a Deed Poll

SIGNED, SEALED and DELIVERED by
[insert name] in the presence of:

Signature of witness

Signature

Name of witness in full

Schedule 35 – Contractor Warranty Deed

Refer to clause 9A of the GC21 General Conditions of Contract.

Contractor Warranty Deed

Dated

Art Gallery of NSW ABN/ACN/ARBN# ("AGNSW")
Infrastructure NSW ABN85 031 302 516 ("Principal")
[insert] ("Contractor")
#insert name and ABN/ACN/ARBN# ("Guarantor")

Details

Parties	AGNSW, Principal and Contractor	
AGNSW	Name	[insert]
	ABN/ACN/ARBN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Principal	Name	Infrastructure NSW
	ABN/ACN/ARBN	85 031 302 516
	Address	Level 15, 167 Macquarie St, Sydney NSW 2000
	Email	
	Attention	
Contractor	Name	[insert]
	ABN/ACN/ARBN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Recitals	A	The Principal has entered into the Contract with the Contractor for the design and construction of a stand-alone building located north of the existing Art Gallery of NSW, partly extending over the Eastern Distributor land bridge and including two disused WWII naval oil tanks located to the north east of the land bridge (" Project ").
	B	Upon completion of the works, AGNSW will become the owner and operator of the Project.
	C	AGNSW, the Principal and the Contractor wish to set out additional obligations that the Contractor will owe AGNSW directly, and make certain arrangements relating to the Contract.
Date of deed	See Signing page	
Governing law	New South Wales	

General terms

1 Definitions and Interpretation

1.1 Definitions

In this deed the following words and expressions have the meanings set out below:

Authorised Officer means, in respect of a party, a director or secretary of the party or another person appointed by the party to act as an Authorised Officer under this deed.

Contract means the contract between the Principal and the Contractor dated [*insert*] for the Works.

Details means the section of this deed headed Details.

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

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this deed:

- (a) the singular includes the plural and vice versa;
- (a) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (b) a reference to a document also includes any variation, replacement or novation of it;
- (c) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (d) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (e) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) a reference to a time of day is a reference to Sydney time;
- (g) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (h) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;

- (l) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (m) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (n) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (o) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (p) if a day on which a party must do something under this deed is not a Business Day, the party must do it on the next Business Day.

1.3 Terms defined in Contract

Unless the contrary intention appears, a term which has a defined meaning in the Contract has the same meaning when used in this deed.

1.4 Inconsistent documents

If a provision of this deed is inconsistent with a provision of the Contract, the provisions of this deed prevail to the extent of the inconsistency.

1.5 Joint and several liability

Where the Contractor comprises two or more entities, each of them is jointly and severally liable for all of the Contractor's liabilities and obligations under the Contract.

2 Commencement

This deed shall become effective on the date this deed is executed by the Contractor and is effective whether or not executed by AGNSW or the Principal.

3 Warranties

3.1 Contractor warranties

- (a) The Contractor warrants and guarantees to AGNSW that:
 - (i) it will carry out the work in connection with the Contract and perform its obligations under the Contract in accordance with the Contract; and
 - (ii) the Works will:
 - (A) comply with the Contract;
 - (B) comply with all Statutory Requirements; and
 - (C) at the Actual Completion Date and at all times thereafter, meet or exceed the design life standards specified in the Project Brief.
- (b) The Contractor gives to AGNSW the benefit of the same warranties, guarantees, undertakings and indemnities that it has given to the Principal under the Contract.

3.2 Additional obligations

The obligations of the Contractor under this deed are additional to and do not derogate or replace the obligations of the Contractor under the Contract.

4 Liquidated Damages

4.1 Acknowledgment

- (a) The Contractor and AGNSW acknowledge and agree that:
 - (i) the Principal is the party responsible for procuring the Project on behalf of the State of New South Wales;
 - (ii) following Completion of the works, AGNSW will become the owner and operator of the Project;
 - (iii) AGNSW will suffer loss in the event that the Contractor fails to achieve Completion by the Contractual Completion Date; and
 - (iv) the liquidated damages payable by the Contractor under clause 51 of the Contract are a genuine pre-estimate of the loss that AGNSW will suffer in the event the Contractor fails to achieve Completion by the Contractual Completion Date (including in respect of liability to tenants and other users of the Works).

4.2 Payment of liquidated damages by the Contractor

- (a) The Contractor acknowledges and agrees that:
 - (i) the Principal may recover liquidated damages from the Contractor pursuant to clause 51 of the Contract on behalf of AGNSW; and
 - (ii) the Contractor must pay to AGNSW the amount of liquidated damages payable under the Contract on demand, except to the extent that the Contractor has already paid the Principal the amount of such liquidated damages under the Contract.

4.3 Other relief

If it is determined that the Contractor's liability to pay the liquidated damages is deemed to be or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), AGNSW may claim general damages for the Contractor's failure to achieve Completion by the Contractual Completion Date provided that the AGNSW's entitlement to, and the Contractor's obligation to pay, such general damages will not exceed the daily rate stated in Contract Information item 49B of the Contract for every day after the Contractual Completion Date up to and including the Actual Completion Date or the amount set out in Contract Information item 20 of the Contract in the aggregate.

5 Liability

- (a) The liability of the Contractor under this deed is not affected by the Principal exercising or refraining from exercising any or all of its rights against the Contractor under the Contract, at law or in equity.
- (b) Any information provided to, and any inspection undertaken by, the Principal or any person authorised by the Principal will not:
 - (i) limit or discharge the obligations of the Contractor under the Contract; or
 - (ii) relieve the Contractor from any liability which it may have in respect of any defect or default in or relating to the Works under the Contract.

6 Limit of liability

- (a) Notwithstanding any other provision of this deed:

- (i) the obligations of the Contractor to AGNSW shall be the same as the obligations which the Contractor owes to the Principal under the Contract;
- (ii) the provisions of clauses 26.8 and 26.9 of the Contract shall apply to the aggregate liability of:
 - (A) the Contractor to the Principal under the Contract;
 - (B) the Contractor to AGNSW under the indemnities referred to in clause 11A of the Contract; and
 - (C) the Contractor to AGNSW under this deed;
- (iii) AGNSW shall not be entitled to recover against the Contractor in respect of any Loss under or in respect of this deed that has already been recovered from the Contractor by the Principal under or in respect of the Contract, and the Principal shall not be entitled to recover against the Contractor in respect of any Loss under or in respect of the Contract that has already been recovered from the Contractor by AGNSW under or in respect of this deed; and
- (iv) the provisions of clause 26.10 of the Contract shall apply in respect of any liability of the Contractor to AGNSW under this deed;

7 Representations and warranties

7.1 General representations and warranties

The Contractor represents and warrants to the Principal and AGNSW that:

- (a) **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed;
- (c) **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this deed and; and
- (d) **(binding obligations)** this deed contains legal, valid and binding obligations, enforceable in accordance with its terms.

8 GST

8.1 Consideration GST exclusive

Unless expressly stated otherwise in this deed, all amounts payable or consideration to be provided under this deed are exclusive of GST.

8.2 Payment of GST

If GST is payable on any supply made under this deed, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the

supplier (as the case may be) must make any payments necessary to reflect the adjustment; and

- (c) this clause 8.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

8.3 Reimbursements

If a party is required under this deed to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

8.4 Calculation of payments

If an amount payable under this deed is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

8.5 Interpretation

For the purposes of this clause 8:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 8;
- (b) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

9 Notices and other communications

9.1 Form - all communications

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

9.2 Form - communications sent by email

- (a) Communications sent by email need not be marked for attention in the way stated in clause 9.1. However, the email must state the first and last name of the sender.
- (b) Communications sent by email are taken to be signed by the named sender.

9.3 Delivery

Communications must be:

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

- (c) sent by email to the address set out or referred to in the Details.

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

9.4 When effective

Communications take effect from the time they are received or taken to be received under clause 9.5 (whichever happens first) unless a later time is specified.

9.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by email:
- (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

9.6 Receipt outside business hours

Despite anything else in this clause 9, if communications are received or taken to be received under clause 9.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

10 Assignment

10.1 No assignment by Contractor

The Contractor may not assign or otherwise deal with its rights under this deed or allow any interest in them to arise or to be varied without the prior written consent of the Principal (which may be given or withheld in its absolute discretion).

10.2 Assignment by Principal

The Principal may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If the Principal does this, neither the Contractor nor the Subcontractor may claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights the Contractor or the Subcontractor has against the Principal.

10.3 Assignment by AGNSW

AGNSW may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If AGNSW does this, neither the Contractor nor the Principal may claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights the Contractor or the Principal has against AGNSW.

11 General

11.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this deed and of other related documentation, except stamp duty.

11.2 Stamp duty

The Contractor agrees to pay all stamp duty (including fines and penalties) chargeable, payable or assessed in relation to this deed and any transaction contemplated by it.

11.3 Governing law

This deed is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

11.4 Counterparts

This deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the deed.

11.5 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this deed and the transactions contemplated by it.

11.6 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this deed or any part of it.

11.7 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.

11.8 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

11.9 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

11.10 Confidentiality

Each party agrees not to disclose information provided by another party that is not publicly available except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this deed; or
- (b) to officers, employees, legal and other advisers and auditors of any party; or
- (c) to any party to this deed or any Related Body Corporate of any party to this deed, provided the recipient agrees to act consistently with this clause; or

Sydney Modern Project - SCHEDULES

- (d) with the consent of the party who provided the information; or
- (e) as allowed by any law or stock exchange.

EXECUTED as a deed

Signing page

DATED: _____

SIGNED by _____)

as attorney for **[insert]** under power of attorney dated 1 September 2016, who declares that the attorney has not received any notice of the revocation of such power of attorney, in the presence of:

.....)
Signature of witness)

.....)
Name of witness (block letters))

Signed sealed and delivered by _____)

as **Chief Executive Officer** of **INFRASTRUCTURE NSW** ABN 85 031 302 516 pursuant to the Infrastructure NSW Act 2011 in the presence of

.....)
Signature of witness)

.....)
Name of witness (block letters))

SIGNED by **[AGNSW'S AUTHORISED REP]** as authorised representative for **[AGNSW]** in the presence of:

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....
Signature of attorney

.....
Signature

.....
By executing this document the signatory warrants that the signatory is duly authorised to execute this document on behalf of **[AGNSW]**

Schedule 36 - Deed of Release

Refer to clause 67A of the GC21 General Conditions of Contract.

This Deed Poll is in favour of:

Infrastructure NSW of [insert address] (ABN [insert]) ("**Principal**")

and

Art Gallery of NSW of [insert address] (ABN [insert]) ("**AGNSW**"),

and their successors and permitted assigns (together, the **Beneficiaries**).

THIS DEED OF RELEASE IS EXECUTED on [Insert date]

BY: [Insert Contractor's Name] of [Insert Contractor's address].

RECITALS

- A. By contract dated [insert date] between the Contractor and the Principal, ("**Contract**"), the Contractor agreed to perform the Works.
- B. Pursuant to clause [67A.2] of the Contract, the Contractor must execute and deliver to the Principal a deed of release once it considers the Works have achieved *Final Completion*.

THE CONTRACTOR AGREES

- 1 The Contractor warrants to the Beneficiaries that it has lodged with the Principal all *Claims* that it has which arise out of or in connection with the Contract, the execution of the work in connection with the Contract or associated with the Works and those *Claims* have been satisfied in full by the Principal.
- 2 The Contractor releases and forever discharges the Beneficiaries from all causes of action, proceedings, claims or demands which it has or may in the future have against the Beneficiaries arising out of or in connection with the Contract, the execution of the work in connection with the Contract or associated with the Works (**Claims**).
- 3 The Contractor acknowledges that the Principal will issue a *Certificate of Final Completion* pursuant to clause [67A.3] in reliance on the warranties and releases contained in this deed.
- 4 This deed may be pleaded by the Beneficiaries as a bar to any *Claims*.
- 5 The release under this deed does not apply to:
 - (a) claims the Contractor has already made in writing against the Principal as at the date of this deed;
 - (b) claims in relation to the Contractor's entitlement to the return of the *Undertakings* pursuant to the Contract;
 - (c) the extent that the grant of the release would prevent the Contractor from enforcing its rights under any policy of insurance required to be effected under the Contract; or
 - (d) prevent the Contractor from:
 - (i) raising a defence, or any cross-claim or counter-claim by way of a defence, to any claim brought against the Contractor by a Beneficiary; or

Schedule 37 – Consultant’s Deed of Covenant

Refer to clause 31 of the GC21 General Conditions of Contract.

This Deed Poll is in favour of:

Infrastructure NSW of *[insert address]* (ABN *[insert]*) (“Principal”)

and

Art Gallery of NSW of *[insert address]* (ABN *[insert]*) (“AGNSW”),

and their successors and permitted assigns (together, the Beneficiaries).

Recitals

- A The Principal has engaged *[Insert Contractor’s name]* (ABN *[Insert Contractor’s ABN]*) of *[Insert Contractor’s address]* (“Contractor”) to carry out certain works for the Principal by contract dated *[insert date]* (“Contract”).
- B The Contractor has engaged *[Insert Consultant’s name]* (“Consultant”) to carry out the design work specified in the Schedule for the purposes of its obligations under the Contract (“Design Work”).
- C Under the Contract the Contractor is required to procure the Consultant to execute this deed poll in favour of the Beneficiaries.

Operative

1 Duty of care

The Designer warrants to the Beneficiaries that in performing the Design Work and in providing any certificate under clause *[insert]* of the Contract:

- (a) it will owe a duty of care to the Beneficiaries;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that the Beneficiaries will be relying upon the skill and judgement of the Consultant in performing the Design Work.

2 Governing law and jurisdiction

This deed poll will be construed in accordance with the law of New South Wales and the Consultant irrevocably submits to the jurisdiction of the Courts of New South Wales.

Executed as a deed poll

EXECUTED by **[CONTRACTOR]** in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

.....)
Signature of director)

.....)
Name of director (block letters))

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

SCHEDULE

[insert description of design work]

Schedule 39 – Preliminaries

1 General

1.1 Electronic communications

The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

1.2 Use of Qualified Designers

Use persons professionally qualified in the relevant disciplines when completing the design of the Works. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

1.3 Use of Qualified Tradepersons

Use qualified tradepersons to carry out the Works. The use of such persons shall not relieve the Contractor of liability for the fitness of the Works for the purposes required by the Contract.

1.4 Licences and approvals

The following licences, approvals and consents for the Site and the Works have been obtained:

- A State Significant Development Application (SSD14_6471). Conditions of Consent Responsibility Matrix is appended to this document.
- Art Gallery of NSW Modern – Eastern Distributor Construction Interface and Access Deed;
- Royal Botanic Gardens and Domain Trust and Art Gallery of New South Wales Development Deed;
- Review of Environmental Effects for Early Works Package.

The Contractor must provide the Principal with a copy of all other licences and approvals required, and pay all associated fees prior to commencing the affected work.

1.5 Certification of compliance with building and fire regulations

Provide a certificate obtained from a consultant appropriately accredited as an Accredited Certifier in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) stating that the Works fully comply with all applicable building and fire regulation statutory requirements.

1.6 Contractor performance reporting

During the course of the Contract, the Contractor's performance may be monitored and assessed in accordance with the *Performance management practice guide* which is available on the ProcurePoint website.

1.7 Exchange of information between government agencies

The Contractor authorises the Principal and its employees and agents to make information concerning the Contractor and its performance available to other government agencies and local government authorities, which may take such information into account in considering whether to offer the Contractor future opportunities for work.

The Principal regards the provision of information about the Contractor to any government agency or local government authority as privileged under the *Defamation Act 2005* (NSW). The Contractor agrees that it will have no entitlement to make any claim against the Principal in respect of any matter arising out of the provision or receipt of such information.

2 Documents

2.1 Inclusions in Contractor's documents

- The Contractor's Documents must include, without limitation:

- Construction drawings;
- Any reports, calculations and modelling required to demonstrate proposed design meets performance requirements;
- Specifications;

2.2 Not used

2.3 Work as executed drawings

Progressively produce work as executed drawings. Submit work as executed drawings showing work which has been completed within 28 days after completion of that work. Endorse each drawing certifying accuracy and correctness.

Submit two (2) copies of the drawings on electronic media using identical and portable Solid State Drive/s of sufficient capacity and with at least 30% spare capacity in each. Ensure the included data is complete and identical. Label each of them with:

- "Confidential"; and
- Respectively:
 - "SMP WAE ORIGINAL – COPY 1" and
 - "SMP WAE ORIGINAL – COPY 2".

Maintain all as executed information, including access for the Principal, on the selected electronic document management system for 12months following Final Completion (ex post-completion/maintenance) for this contract.

Any CAD files submitted must be in DGN, DWG, or DXF format with an identical .pdf version. The Contractor must ensure that any CAD files submitted will correctly display and print in Microstation.

The drawings must, as a minimum, include:

- heights based on AHD;
- boundary details;
- details of structures, improvements, notations, including height and dimensions;
- asset identification for all new, salvaged and re-used equipment;
- contour interval at 0.5m
- standard topography details and RL's throughout the site;
- details of any trees/plants;
- details of all services, including man-holes, services and services pits/covers;
- service inspection outlets
- disconnected and services left in-situ;
- valves and meter locations.

Submit the drawings electronically on formatted standard sized sheets acceptable to the Principal. Endorse each drawing certifying its accuracy, completeness and correctness.

Re-submit revised and corrected drawings within 7 days after receiving any comments from the Principal. LOD500 As Built BIM Model to be submitted at the completion of the project.

2.4 Operation and maintenance manuals

General

Produce operation and maintenance manuals written in clear, concise English covering the various building elements, assemblies, equipment, service installations and systems incorporated into the Works. Comply with this Clause - **Operation and Maintenance Manuals** and any detailed requirements contained in the Technical Specification.

Contents

Include the following documents and information:

- **Table of Contents:** A table of contents for each volume.
- **Directory:** Names, addresses, telephone, email and facsimile numbers of the Contractor and relevant subcontractors, suppliers and consultants. Include emergency contact details.
- **Certificates:** Certificates from relevant authorities, copies of manufacturers' warranties and product certificates.
- **Drawings and Technical Data.**
- **Equipment Descriptions.**
- **Operation and Maintenance Procedures:** Operating instructions, including technical maintenance information; preventive and corrective maintenance procedures and manufacturers' technical literature.
- **Maintenance Records:** Records of any maintenance completed by the Contractor.

Format – Hard Copy

Bind each copy of the manuals in A4 size, 4 ring binders, no more than 75 mm thick, with durable, commercial quality, hard plastic covers. Limit the filling of binders to 85% of capacity. Index each binder and mark the spine and cover with relevant building elements. Divide and subtitle each section. Number all pages. Include manufacturers' printed data and associated diagrams.

Format – Electronic Copy

Provide the specified documentation in PDF or equivalent electronic file format.

Submission

Not less than 7 days before Completion of the Works is reached, submit 3 hard copies and 1 electronic copy of the operation and maintenance manuals.

As a condition of achieving Completion, operation and maintenance manuals that comply with the specification must be submitted.

2.5 Restricted documents

All documents marked "Restricted", and any other documents the Principal notifies as "Restricted" are classified maximum security documents. No copies are to be made or retained by the Contractor, subcontractors, suppliers, agents or anyone else other than for the Contract.

All originals and copies of restricted classification documents are to be returned to the Principal on Completion.

2.6 NATSPEC subscription

If any of the Contractor's Documents are based on NATSPEC, then the Contractor must provide to the Principal proof of the Contractor's current NATSPEC subscription.

3 Not used

4 Administration

4.1 Quality management requirements

Quality Management System

Maintain the Contractor's Quality Management System. Obtain evidence from proposed subcontractors and certify that subcontractors' quality management systems meet the requirements of the Contractor's Quality Management System.

Project Quality Management Plan

Develop and implement a Project Quality Management Plan that complies with the current NSW Government *Quality Management Systems Guidelines (QMS Guidelines)*. The *QMS Guidelines* are available on the ProcurePoint website.

Submit the Project Quality Management Plan within 28 days of the Date of Contract together with *QMS Guidelines* Appendix, **Quality Management Plan assessment**

checklist, completed by the Contractor, with cross-referencing of the AS/NZS ISO 9001:2008 clause numbers to the Contractor's Project Quality Management Plan.

The Project Quality Management Plan must cover the relevant elements of the Contractor's Quality Management System and include an index of the Contractor's quality procedures and proposed Inspection and Test Plans and associated checklists.

Include a schedule of internal audits for the Contract. Submit a copy of each audit report within 14 days of the date of audit.

Design Plan

Prior to commencing design work, prepare and submit a Design Management Plan to the Principal's Authorised Representative in accordance with clause 32A and the Contractor's Management Plan section of this Preliminaries.

Managing work quality

Prepare and implement Inspection and Test Plans, complying with the *QMS Guidelines*, incorporating the Hold and Witness points specified in the Contract.

Submit copies of Inspection and Test Plans and checklists not less than 7 days before commencing the work to which they apply. Also submit certification that the relevant quality management plans and Inspection and Test Plans of subcontractors and Consultants meet the requirements of the *QMS Guidelines*. Do not start any work before the relevant documentation is submitted.

Give at least 24 hours notice prior to reaching a Hold or Witness point.

The Contractor must not proceed beyond a Hold point without endorsement by the Principal or its authorised representative.

The Principal, at its discretion, may inspect the work at a Witness point, but work may proceed without endorsement.

Endorsement by the Principal at a Hold or Witness point does not release the Contractor from its obligations to achieve the specified requirements of the Contract.

The Principal, at its discretion, may undertake surveillance (monitoring) of any or all work associated with the Contract.

Conformance records

Submit copies of conformance records as specified, including:

Conformance records	Time when records are required
Verified and Completed Inspection & Test Plans and associated checklists	With each Payment Claim
Requirements detailed in the Project Brief (Architectural, Electrical, Mechanical, Fire, Hydraulic, Structural, etc.)	Refer to the Project Brief
Heritage related works including impact statements, certification and approvals	Progressively
Dilapidation surveys and related documents and records	Before commencing any other physical works on site
Noise, Movement, Vibration and air monitoring results, including any clearance certificates	With each payment claim, unless required sooner, due to a breach or notifiable concern.
Approvals from Regulatory Authorities including Road Opening and closure permits, and payment of fees	5 Business Days before the related work is due to commence
Set-out and survey records:	Progressively
Services Rough-in records	Progressively

Conformance records	Time when records are required
As-built performance testing records	Prior to Construction Completion and with the as-executed information, including correct integration into the relevant Operation and Maintenance Manuals
All quality, test and compliance records of materials to be incorporated into the works (including from manufacturers).	2 Business days before being incorporated into the works
Records associated for the disposal of contaminated fill	With each Payment Claim
Register of product conformity records	At Construction Completion and with the as-executed information, including correct integration into the relevant Operation and Maintenance Manuals
Temporary Services metered consumption	With each Payment Claim
Environmental Clearance certificate/s	Within 3 Business Days following receipt
Geotechnical Compliance certificates	Within 3 Business Days following receipt
Operation and Maintenance Manuals	Within 3 Business Days following receipt

Failure to Comply

If the Contractor fails to comply with the requirements of this clause – **Quality Management**, the Principal may implement such inspections and tests as the Principal determines and the cost incurred by the Principal shall be a debt due from the Contractor.

4.2 Aboriginal participation

The Contractor must comply with the NSW Government *Policy on Aboriginal Participation in Construction*, which is available from the Policy framework for construction page in the ProcurePoint website:

<https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-reform/construction/policy-framework-construction>

A minimum amount of 1.5% of the Contract Price (as at the Date of Contract) must be spent on employment and education activities for Aboriginal people. At least 50% of this expenditure must be allocated to activities directly related to the Contract.

An Aboriginal Participation Plan must be submitted to the Principal within 60 days after the Date of Contract and a Participation Report must be submitted when the Contract is 90% complete. Templates for the Aboriginal Participation Plan and Participation Report are available on the web page referenced above. Click on the Information for contractors link.

The Aboriginal Participation Plan and Participation Report must also be submitted to the NSW Procurement Board.

The Aboriginal Participation Plan and Report must be in the format specified by the Procurement Board, which is found at:

<https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-policies>

4.3 Skills development and training

The Contractor's attention is drawn to the requirements of the NSW Government Procurement Guideline *Skills and Training in the Construction Industry*. The Guideline is attached to NSW Procurement Board Direction PBD 2016-02 - *Construction apprenticeships*, which is available on the ProcurePoint website.

The Contractor is required to meet the following targets:

Requirement	Target
Apprentice hours as a percentage of hours worked by qualified trades.	20% of hours worked
Trainee hours as a percentage of hours worked by occupations with recognised traineeships	20% of hours worked

From the Date of Contract until Completion, at intervals no greater than three months, the Contractor must provide reports to the Principal, giving details of the apprentices and trainees engaged on work under the Contract and demonstrating that the Contractor is meeting (or will meet at Completion) its commitments to skills development.

4.4 Audit and review

Make available, on request, all records, including those of or relating to subcontractors or suppliers, relevant to compliance with requirements of the Contract, for the purposes of audit, review or surveillance. Provide all reasonable assistance during the audits or reviews including attendance by the Contractor.

Promptly implement effective corrective action on matters disclosed by audit or review.

4.5 Dilapidation Report

Carry out and submit a completed Dilapidation Report for the work areas, its surroundings and each property or asset adjacent to which the work is to be carried out. No works are to be started prior to the Dilapidation Report being submitted to the Principal.

Arrange for an inspection of any neighbouring and/or existing property and assets at a time that suits the owner (may be outside normal working hours). In the course of a single visit, recover all the information required to prepare the Dilapidation Report. The condition of the adjacent items prior to construction of the works is to be recorded.

The Dilapidation Report will take the form of a report with digital photographs and a video recording (on a DVD) of all the items within and adjacent to the work and also including both exterior and interior of neighbouring facilities, including tunnels and basements; all pits (including interiors). All photos in the report must be suitably labelled with a statement of the extent and severity of the defect, its exact location, street name, direction faced, and any other relevant comments annotated.

The Dilapidation Report must clearly state the exact location of the defects so that the records can be used efficiently on a later date by anyone. Video and still photography may be required is to be of sufficient high quality to show all defects clearly, and must be provided to the principal in a format compatible with DVD or generic media player.

Any cracks that are identified in the Dilapidation Report will be measured and marked with glass "tell tales" under the supervision of a structural engineer, engaged by the Contractor. Comply with the (City of Sydney) Sydney Streets Technical Specifications B1. Preliminaries / General Version 3: 18.12.2013 Page 12, relevant for this project. Particular attention must be paid to the condition of basements, tunnels, and waterproofing membranes. Any evidence of leakage or water damage must be recorded.

Carry out and submitted post-completion dilapidation reports.

4.6 Scope of Dilapidation Report

The Dilapidation Report must cover the following items as a minimum:

- All existing fences within the site and adjoining area;
- Art Gallery of New South Wales Existing Building
- Land bridge structure

- RBG Pavilion on western side of Mrs Macquaries Road
- RBG offices on western side of Mrs Macquaries Road
- The entirety of Art Gallery Road and Mrs Macquaries Road ie the full circular loop
- Oil tanks
- Ausgrid Zone substation facade
- Lincoln Crescent footpaths, roadways
- Western elevation of The Wharf Terraces building adjoining Lincoln Crescent
- Trees, shrubs and grasses;
- All existing street furniture and signage including seats, public telephones, post boxes, parking meters, and the like;
- All existing lighting poles, traffic poles and signs;
- All existing footpaths and kerbstones;
- All existing services and utilities where recording is possible;
- All existing pit covers that are to be reused;
- Interiors of all existing service pits;
- Traffic facilities, e.g. thresholds, speed humps etc.;
- Inspect the interior of all existing services and utility pits with the relevant utility authority representative and record the outcome of the inspection.
- Any other areas/items as required under the SSDA approval.

Typically the Dilapidation Report is to include details of the following:

- Materials of construction;
- General condition of materials;
- Location and description of any defects including structural defects; and
- Location, sizes, and description of any cracking.

4.7 Record Of Damage

The Contractor is required to create a Record of Damage for the site. This is required to determine who is responsible for damage to any assets should matters be raised in the future. The Record of Damage must document any damage to property or assets within the extent of area occupied by the Contractor during the works, or affected by the works, including areas proposed for storage and floating of plant.

4.8 Green Star As-Built Certification

The Contractor is required to appoint a Green Star accredited consultant and manage the process of obtaining Green Star As-built Certification.

5 Site

5.1 Site access and limitations

Note that the land bridge has limited loading capacity. Refer to the land bridge documentation and *Art Gallery of NSW Modern – Eastern Distributor Construction Interface and Access Deed* to ensure that the load on the bridge never exceeds rated capacity.

Note that the existing Oil Tank roof has a loading capacity as advised in the Design Documents. Contractor to ensure that the loading capacity of the Oil Tank roof is not exceed during construction.

All site access related to demolition and excavation works will be via Lincoln Crescent.

Contractor will comply with all site access requirements of:

- SSDA Approval;
- Early Works REF;

- Art Gallery of NSW Modern – Eastern Distributor Construction Interface and Access Deed;
- Royal Botanic Gardens and Domain Trust and Art Gallery of New South Wales Development Deed;
- Access Management Plan for Inspection Works of Former Garden Island Fuel Bunker.

5.2 Item to be Salvaged

Preliminaries Schedule 11.4 *Items to be Salvaged*, lists the items that the contractor will be responsible for salvaging and handing over to AGNSW.

5.3 Maintaining Egress Requirements of the Existing AGNSW Building

The contractor will ensure that egress requirements of the existing AGNSW building are maintained during delivery of the project.

Current egress and evacuation plan as well as draft egress and evacuation plan during construction are provided in the **Information Documents**.

5.4 Art Gallery Road Bridge and Eastern Distributor Land Bridge

The contractor is responsible to obtain and review all as-built documentation required to comply with the limitations of the existing Art Gallery Road bridge and the Eastern Distributor Land Bridge.

As-built information is provided in the **Information Documents**.

The contractor is responsible for verifying completeness of the available information.

Note: No cutting or milling of the Art Gallery Road bridge pavement (footpath or roadway) is permitted, with the exception of the installation of the pram ramp as documented.

5.5 Existing services

Preventing Unplanned Contact with Live Services

The Contractor is responsible for locating existing services, including underground essential services, and isolating them where necessary to prevent unplanned contact with live services. In doing so, the Contractor must comply with the NSW Government *Construction Work Code of Practice*.

Locating Existing Services

Before starting construction work:

- appoint a site manager to be responsible for locating and preventing unplanned contact with existing services; and
- establish and verify the precise locations of all underground and other existing services at the Site, and in areas adjacent to the Site that may be affected by the work under the Contract.

To locate existing services:

- obtain advice from Dial Before You Dig and the owners of the services;
- engage a services locator;
- examine the Site and surrounding areas for indications of services; and
- where any service is underground, use pot-holing (or equivalent non-destructive techniques) to locate the service.

Mark prominently on the Site the locations of all existing services. Document the locations of services on a site plan and provide a copy of the plan to each subcontractor before the subcontractor starts work on the Site.

Provide written confirmation to the Principal that these actions have been completed.

Isolation of Existing Services

Before undertaking any work involving cutting into, penetrating, or otherwise breaking into building fabric (floor, walls or ceiling), ensure the services are isolated in the relevant work area.

Wherever reasonably practical and with the prior approval of the Principal's Authorised Person, isolate electrical and gas services for the whole building where work is being carried out, before starting work on existing building services.

Notify the Principal's Authorised Person and the appropriate persons within the facility of any proposed disruption of services in sufficient time to enable affected personnel to be informed and any changes to operations to be made. Wherever possible, consult with the Principal's Authorised Person prior to issuing the notification.

Include in the notification:

- details of the service to be disrupted;
- the date and time that the disruption will commence;
- the estimated duration of the disruption and when the service will resume operation;
- the possible impact of the disruption (eg loss of power, loss of gas); and
- any other relevant information.

On completion of the work and the resumption of the services, check all penetrations for live or damaged services and give the following to the Principal's Authorised Person:

- a clearance certificate that affected utilities and equipment (eg heaters, boilers) have been tested and are functioning appropriately; and
- the name and phone number of a responsible person who can be contacted if problems are experienced with any of the affected utilities or equipment.

Interference with Existing Services

Deal with existing services (such as drains, watercourses, public utilities, telecommunications and other services) obstructing the Works or damaged in the course of the Contract as follows:

- if the service is to be continued: repair, divert or relocate as required;
- if the service is to be abandoned: cut and seal or disconnect and make safe as required;

Cost and Delay

Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor shall bear all costs and any delays for repairing or disconnecting the service.

Notification

Notify the Principal immediately upon discovering any damaged services or services that obstruct the Works and are not shown in the Principal's Documents.

5.6 Heritage and Archaeology

The site has defined heritage and archaeological significance and the Contractor is required to fully inform himself and undertake the Works in accordance with the requirements defined in the Heritage Impact Statement (HIS) Maritime Archaeological Assessment and Aboriginal Cultural Heritage Assessment (ACHA) that form part of the SSDA approval.

The Contractor will comply with the requirements identified in these reports, the SSDA consent conditions and Early Works REF.

5.7 Tree Protection

The contractor will comply with the requirements of the Arborist Report that forms part of the SSDA application.

5.8 Work health and safety management

Accreditation under the Australian Government Building and Construction WHS Accreditation Scheme

The Contractor must maintain accreditation under the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme) established by the Building and Construction Industry Improvement Act 2005 (BCII Act) while building work (as defined in section 5 of the BCII Act) is carried out. The Contractor must comply with all conditions of Scheme accreditation.

Design

The Contractor must consult with the Principal's Authorised Person to identify any risks to health and safety arising from the design.

The Contractor must ensure, in carrying out the design that, so far as is reasonably practicable, the structure and plant are designed to be without risks to anyone who constructs, uses, maintains, or demolishes the structure and plant.

When undertaking design, the Contractor must carry out any calculations, analysis, testing or examination that may be necessary to eliminate or minimise risks. The Contractor must provide current relevant information on any risks arising from the design to anyone who constructs the structure or plant.

The Contractor must provide a Safe Design Report for the designed structure and plant to record any hazards not eliminated in the design that may impose a risk to those constructing, using, maintaining or demolishing the structure and plant..

An up to date copy of the Safe Design Report must be provided to the Principal at the *Actual Completion Date* of the Works or the date the Works are occupied or taken over, whichever is earlier.

WHS Management Monthly Report

No later than the fifth (5th) Business Day of each month, submit a WHS Management Monthly Report, detailing *Inspection, testing and servicing* activities, *Internal reviews* and *Incident management and corrective action*, as evidence of the implementation of the Project WHS Management Plan during the previous month.

As a minimum, the WHS Management Monthly Report must include the following information:

Contract Details

- Contract
- Contractor
- Contractor's representative
- Signature and Date
- Period Covered

Implementation of *Inspection, testing and servicing* procedures

Summary of WHS inspections and tests carried out for:

- plant and equipment
- incoming products
- work site conditions
- adherence to and completeness of Risk Assessments, Safe Work Method Statements and Site Safety Rules
- work site access and exits
- personal protective equipment

Implementation of *Incident management and corrective action* procedures

Details of:

- any WHS incidents or WHS issues, including non-compliance with WHS processes and procedures and near misses
- implementation of incident management
- implementation of corrective action

- WHS statistics for entire the Contract including:

	This Month	Total Cumulative
Number of Lost Time Injuries		
Number of Hours Worked		
Number of Hours Lost Due to Injury		
Lost Time Injury Frequency Rate LTIFR		
Number of WHS Management Audits		
Number of WHS Inspections		

Implementation of *Internal Reviews*

Details of internal reviews, including audits and inspections, undertaken to verify that on-site WHS processes and practices conform with the Project WHS Management Plan including:

- System element(s) and activities audited and/or reviewed
- Non-conformance(s), improvement(s) identified and corrective action(s) taken
- Details of auditors and reviewers and dates and durations of audits and reviews
- Copies of third party audit reports and details of the Contractor's responses to the reports.

Incident Reports

Ensure compliance with the notification and other requirements of the *WHS Act 2011* (NSW) sections 35-39 for any notifiable incident, including immediate notification to SafeWork NSW.

Notify the Principal of any notifiable incident and any incident requiring medical treatment or involving lost time as soon as reasonably practicable after the incident.

Provide a written report to the Principal within twenty-four hours after the incident, giving details of the incident and evidence that requirements of the *WHS Act* have been met.

When requested, provide to the Principal an incident investigation report, including identification of the root cause of the incident and corrective actions taken, in the form directed.

Prohibition, Improvement, Non-disturbance and Penalty Notices

Immediately notify the Principal of any Prohibition, Improvement, Non-disturbance or Penalty Notice issued by SafeWork NSW for any work under the Contract. Provide the Principal with a copy of the Notice and written details of the corrective action taken by the Contractor and/or the applicable subcontractor to rectify the breach and to prevent recurrence.

Electrical work

In compliance with clauses 154-156 of the *WHS Regulation 2011*, ensure that electrical work is not carried out on electrical equipment while the equipment is energised, except when, in accordance with clauses 157–162 of the *WHS Regulation*, it is necessary in the interests of health and safety that the electrical work be carried out on the equipment while the equipment is energised.

At the completion of electrical work, provide a *Certificate of Compliance – Electrical Work* (CCEW) signed by a licensed electrician, setting out details of the installation work that has been carried out and confirming that the work complies with AS/NZS 3000 and is suitable for its intended use.

Independent Certification of Formwork

Ensure that formwork complies with AS 3610-1995 *Formwork for Concrete* and is designed, constructed and maintained so as to support safely all loads that are to be placed on it.

The Contractor must ensure that, for both horizontal and vertical formwork, before a concrete pour where:

- the formwork surface is 3 metres or more above the lowest surrounding; or
- the area of the formwork surface is 16 square metres or greater,

an independent qualified engineer inspects and certifies that the formwork complies with AS 3610–1995 *Formwork for Concrete*.

'Qualified engineer' means a person qualified for member grade of the Australian Institution of Engineers, having not less than 4 years post-qualification professional engineering experience in formwork.

The qualified engineer must not be a proprietor, director, officer, or employee either of the entity carrying out the formwork erection or a related entity. If the Contractor carries out the design of the formwork, then the qualified engineer must not be a proprietor, director, officer or employee either of the Contractor or a related entity to the Contractor.

The Contractor and any subcontractors involved must include the inspection and certification as actions in Safe Work Method Statements for the erection and use of formwork, and they must be hold points in the Contractor's and subcontractors' Inspection and Test Plans.

Submit formwork certification before commencing the use of the formwork. Do not use the formwork before this certification is submitted.

5.9 Hazardous substances discovered unexpectedly on the Site

Definition

'Hazardous substance' means a substance that is listed in the Hazardous Substances Information System (HSIS) document entitled *HSIS Consolidated List – Alphabetical Index* published by Safe Work Australia. The document is available at:

<http://hsis.safeworkaustralia.gov.au/ConsolidatedLists>

Asbestos, material containing asbestos, polychlorinated biphenyl (PCB) and lead based paints are hazardous substances. For the purposes of this clause, these substances are referred to as 'Nominated Hazardous Substances'.

Other substances in certain situations are also considered hazardous and therefore require controlled handling in accordance with statutory requirements. Examples are glues, solvents, cleaning agents, paints, water treatment chemicals and materials containing silica.

Response to unexpected discovery

The requirements of this clause apply when a Nominated Hazardous Substance whose presence is not identified in the Contract Documents is discovered unexpectedly on the Site. General Conditions of Contract clause – **Site Conditions** does not apply.

If any Nominated Hazardous Substance is discovered unexpectedly on the Site, the Contractor must suspend all work that may result in exposure to the substance and notify the Principal immediately of the type of substance and its location. The suspension shall be deemed to be a suspension by the Principal under General Conditions of Contract clause – **Principal's suspension** to the extent that it was required to prevent such exposure.

With the initial notification, or as soon as practicable thereafter, submit details including:

- the additional work and resources the Contractor estimates will be necessary to deal with the Nominated Hazardous Substance so that work and subsequent use of the Works may proceed safely and without risk to health;
- the Contractor's estimate of the cost of the measures necessary to deal with the Nominated Hazardous Substance;
- the Contractor's estimate of the anticipated effect on Contractual Completion Dates; and
- other details reasonably required by the Principal.

In planning and carrying out any work dealing with the Nominated Hazardous Substance, the Contractor must take all reasonable steps to:

- carry out the work concurrently with other work wherever possible; and
- otherwise minimise the effects of the work on the *Contractual Completion Date(s)*.

Control and decontamination

When the Contractor notifies that a Nominated Hazardous Substance has been discovered unexpectedly on the Site, the Principal may:

- suspend the whole or any part of the work, in accordance with General Conditions of Contract clause - **Principal's suspension**, until the substance is isolated or removed; or
- instruct the Contractor to take responsibility for the control of the Nominated Hazardous Substance and decontamination of the Site, and treat any necessary additional work as a *Variation*.

Where the Contractor is required, under the Contract or following an instruction from the Principal, to take responsibility for the control of hazardous substances and decontamination of the Site, the Contractor must handle, use, isolate, remove and dispose of such substances in accordance with statutory requirements.

The Environment Protection Authority or Waste Service NSW may advise suitable disposal sites.

5.10 Asbestos removal

Requirement

Comply with the relevant statutory requirements, standards, codes and guidelines in respect of any asbestos removal work, including but not limited to:

- SafeWork NSW requirements
- WorkCover Code of Practice *How to manage and control asbestos in the workplace*
- WorkCover Code of Practice *How to safely remove asbestos*
- *Environmentally Hazardous Chemicals Act 1985* (NSW)
- *Waste Avoidance and Resource Recovery Act 2001* (NSW)
- WorkCover Guide *Managing Asbestos in or on Soil*

Comply with the requirements of any Asbestos Management Plan that applies to the Site or the building where removal is taking place.

Notification and Permit

Not less than 7 days prior to starting any asbestos removal work, notify the Principal of the intention to carry out that work. Provide to the Principal a copy of the asbestos removal contractor's licence and a copy of any permit required for the work.

Monitoring

For all friable asbestos removal and for non-friable asbestos removal in occupied areas, provide air monitoring by an independent, licensed asbestos assessor:

- on each day during asbestos removal, immediately before asbestos removal work starts; and
- on completion of each area where removal has been undertaken.

Clearance Certificate

Submit to the Principal a clearance certificate from an independent licensed asbestos assessor at the completion of the asbestos removal work.

5.11 Principal's site office

Provide an office for the use of the Principal and nominees, in a position agreed with the Principal. Make the office ready for occupation before any major site activities start. If during the progress of the Works it becomes necessary to move the office, do so without charge and with the minimum of inconvenience. Service, clean and maintain the office for

the duration of the Works. Provide safe access to the office at all times. Remove the office at Completion, but not until the Principal's permission is obtained.

The office will provide workspace accommodation for 6 occupants and include suitable spatial provisions for printing and storage.

5.12 Temporary services provided by the Principal

The Contractor must make all arrangements and pay all costs (including for connection, metering and disconnection) associated with the provision of temporary services necessary to carry out and complete the Works.

AGNSW has commenced the process for obtaining approval for the installation of a temporary padmount kiosk substation as a temporary power supply. Design documents for these works are included in the Principals Documents. The existing Ausgrid chamber substation must remain in situ and operational until the kiosk substation is complete and commissioned.

The Contractor is responsible for all works associated with installation of the temporary kiosk substation and connection of all existing services to the temporary substation.

The Contractor is responsible for all works associated with removal of the temporary kiosk substation and connection of all existing services to the permanent chamber substation. The Contractor is responsible for all associated make good works.

5.13 Hoarding

The Contractor is required to comply with the provisions of the SMP Hoarding Strategy document.

5.14 Signboard

Signboard will be provided in accordance with the specification in the Hoarding Requirements.

All signboards and signage will be submitted for approval prior to installation.

6 Environmental protection

6.1 Environmental management

Environmental Management Monthly Report

Submit an Environmental Management Monthly Report with each claim for payment, signed by the Contractor's representative and including the information specified below, as evidence of implementation of the Environmental Management Plan.

Contract details - the names of the Contract, Contractor and Contractor's representative, the report date and the period covered.

Implementation of *environmental management* - details of:

- the environmental risks and opportunities, and significant environmental impacts associated with the work;
- environmental objectives, targets and measures of performance (where practical); and
- management actions, including environmental controls, training, inspections and testing.

Implementation of *incident management, including emergency response* - details of all environmental incidents or emergencies, including non-compliance with environmental procedures and near misses, implementation of incident and emergency response management, and implementation of corrective action.

Implementation of *reviews* - details of internal reviews, audits and inspections undertaken to verify that on-site environmental processes and practices conform with the Environmental Management Plan, including:

- monitoring, measurement, evaluation and review of activities;

- the consequences of non-conformances;
- investigation, analysis, evaluation and follow-up verification; and
- corrective and preventive action taken.

Incident reports

Ensure compliance with the notification and other requirements of the *Protection of the Environment Operations Act 1997 (NSW) (POEO Act)*.

Immediately notify the Principal of any pollution incident that may cause material harm to the environment, providing evidence that notification requirements of the POEO Act have been met, where applicable.

Report immediately the details of any waste removed from the Site and not disposed of at a lawful facility.

When requested, provide an incident investigation report, including identification of the cause of the incident and corrective actions taken, in the form directed.

6.2 Ecologically sustainable development

Requirement

The Contractor is required to achieve As Built 6 Greenstar Rating, in accordance with the GBCA Greenstar Design Certification 6 Greenstar Rating received. Existing Greenstar rating documentation is provided as part of design documents.

Apply strategies to maximise the achievement of ecologically sustainable development in the design, construction and operation of the Works, including reducing pollutants, greenhouse gas emissions and demand on non-renewable resources such as energy sources and water.

Restricted timbers

Do not use the following timbers or their products for work under the Contract:

- rainforest timbers, unless certification is provided that they are plantation grown;
- timber from Australian high conservation forests.

6.3 Waste management

Requirement

Implement waste minimisation and management measures, including:

- recycling and diverting from landfill surplus soil, rock, and other excavated or demolition materials, wherever practical;
- separately collecting and streaming quantities of waste concrete, bricks, blocks, timber, metals, plasterboard, paper and packaging, glass and plastics, and offering them for recycling where practical.

Ensure that no waste from the Site is conveyed to or deposited at any place that cannot lawfully be used as a waste facility for that waste.

Monitoring

Monitor and record the volumes of waste and the methods and locations of disposal.

Submit a progress report every two months, and a summary report before Completion, on the implementation of waste management measures, including the total quantity of material purchased, the quantity purchased with recycled content, the total quantity of waste generated, the total quantity recycled, the total quantity disposed of and the method and location of disposal in the form of a *Waste Recycling and Purchasing Report* available on the ProcurePoint website.

With the *Waste Recycling and Purchasing Report*, submit waste disposal certificates and/or company certification confirming appropriate, lawful disposal of waste.

6.4 Pest control

Do not use any chemical pesticides or termiticides for new construction work. Use preventive treatment by physical means to minimise the risk of pest infestations.

Chemical treatments may be used in existing buildings only as a last resort for the eradication of pest and termite infestations. Chemical pesticides used for this purpose

must be registered by the National Registration Authority for Agricultural and Veterinary Chemicals and applied by a Pest Control Operator licensed by SafeWork NSW or the NSW Environment Protection Authority.

Pest preventive methods must comply with AS 3660.1-2014 *Termite management – New building work* (except for references to chemical soil barriers), as well as supplementary standards for existing buildings.

7 Materials and workmanship

7.1 Standards

Where the Contract requires compliance with a standard or code, unless otherwise specified that standard or code shall be the one current at the closing date for tenders, except for the Building Code of Australia, which shall be the one current at Completion.

Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.

7.2 Cleaning up

At Completion, all visible external and internal surfaces, including fittings, fixtures and equipment, must be free of marks, dirt, dust, vermin and unwanted materials.

7.3 Samples

Match any approved samples throughout the Works. Do not commence work that requires approval of samples until the samples have been approved.

Approved samples will be tagged, signed and dated by the relevant design consultant, principal representative and the contractor. Keep approved samples in a locked room on site for the duration of the project.

Samples required for approval are listed in the **Architectural Specifications** that form part of Contract Documents.

7.4 Testing

Independent Testing Authority

Any testing required to be by an independent authority shall be carried out by an authority registered with the National Association of Testing Authorities Australia (NATA) to perform the specified testing.

7.5 Proprietary items

Identification by the Principal of a proprietary item does not necessarily imply exclusive preference for that item, but indicates the required properties of the item.

The Contractor may offer an alternative to any proprietary item. Apply in writing for approval to use the alternative. Provide details, including sufficient technical information, to describe how, if at all, the alternative differs from the proprietary item and how it would affect other parts of the Works, including performance and operation.

Except to the extent that the approval, if any, of the Principal includes a contrary provision, the approval is deemed to include the conditions that:

- use of the alternative must not directly or indirectly result in any increase in the cost to the Principal of the Works;
- the Contractor must indemnify the Principal against any increase in costs;
- use of the alternative must not directly or indirectly cause any delay to the Works and if it does, the Contractor will compensate the Principal for any loss which the delay causes.

7.6 Items supplied by the Principal

Generally

The items in the Preliminaries schedule - **Schedule of Principal Supplied Items** will be supplied free to the Contractor for incorporation into the Works.

Take delivery, unload and inspect the items for defects. Notify the Principal if the items are defective or unsuitable for the proposed use. Provide storage suitable to maintain the condition of the items until incorporated into the Works. Record the storage location on the delivery documents and submit copies of the delivery documents to the Principal. Notify the Principal if items are not delivered 5 Business Days before they are due to be incorporated into the Works or if items are lost from storage. Return unused items to the Principal.

Responsibility

If in the opinion of the Principal any damage to items supplied was due to defects existing at the time of receipt, but not discoverable upon reasonable inspection, the Contractor shall not be held responsible for such damage.

7.7 Plant and equipment details

Requirement

As a minimum, submit the following details of Plant and Equipment listed prior to ordering:

- Chiller Plant
- Lifts
- Escalators
- Gallery Lighting
- Kitchen Equipment

Additional requirements are identified in the **Contract Documents**.

8 Electronic Document & Contract Management System

8.1 Communications and Document Management system

The Contractor, must as soon as practicable from date of contract award, establish (including relevant licensing) an online document and contract communications management system, without limitation.

The Contractor must, arrange, manage, pay for and utilise an electronic system for this project, including for the Principal and its personnel.

The Contractor must ensure, for the duration of the works:

- Secure access is available from a web-based browser, supported by the Principal;
- Secure separation of communications is enabled between organisations, so confidentiality is maintained at all times;
- Current versions of documents and drawings (in both CAD and .pdf) are updated and loaded on the system, as soon as they become available;
- The drawings and documents must follow a logical naming convention agreed with the Principal. The naming convention must be enforced by the Contractor across their advisors, consultants and sub-contractors.
- Each document transmittal is to contain a bound pdf of the documents contained in that transmittal.
- Previous versions of documents are not deleted and remain accessible;
- Integration with any system previously used by the Principal;
- Written communications can be facilitated, searched and accessed, as required.
- Maintain full operation throughout the works including throughout the post completion period and for 6 months beyond the final post-completion period.
- At Completion, provide the Principal with a full electronic version of the electronic records on a separate Solid State Hard-Disk Drive (SSD).

9 Contractor's Project Plans

The require Preliminary drafts of the Contractor's Project Plans are contained in Schedules 21-30 and 32 and 33 of the Contract. The Contractor must submit updated drafts of these Contractor's Project Plans in accordance with the Contract and the Project Brief and in accordance with the following schedule. In addition to the plans detailed below, the Contractor will also be required to prepare and update other Contractor's Project Plans as required by legislation, regulation, the Project Brief and the Contract.

Description	Full Plan submission
Work Health and Safety Management Plan	30 Days after Contract Award
Community Engagement Plan	30 Days after Contract Award
Stakeholder Management Plan	30 Days after Contract Award
Environmental Management Plan	30 Days after Contract Award
Construction Management Plan	30 Days prior to commencement of any activities on the Site
Design Management Plan	30 Days after Contract Award
Demolition Management Plan	30 Days prior to commencement of any activities on the Site
Construction Traffic Management Plan	30 Days after Contract Award
Risk Management Plan	30 Days after Contract Award
Quality Management Plan	30 Days after Contract Award
Industrial Relations management Plan	30 Days after Contract Award
Remediation Action Plan	30 Days prior to commencement of any activities on the Site
Completion Plan	9 months prior to the Contract Completion Date

9.1 Work Health and Safety Management Plan

- (a) The Contractor must develop, implement and maintain a Work Health and Safety (WHS) Management Plan, which identifies how the

Contractor will pro-actively manage safety in all the Contractor's activities and comply with the requirements of the Contract and the NSW Government OHS Management System Guidelines.

- (b) WHS Management Plan must, as a minimum, address and detail:
 - (i) a WHS policy statement;
 - (ii) the WHS team organisation including:
 - (A) WHS personnel including Key Personnel;
 - (B) authorities and roles of WHS personnel including Key Personnel;
 - (C) lines of responsibility and communication; and
 - (D) interfaces with the overall project organisational structure.
 - (iii) notifications and registration requirements;
 - (iv) process of safety risk management and mitigation, or references to other documents that address safety, risk management and mitigation;
 - (v) emergency planning;
 - (vi) consultative processes;
 - (vii) prescribed and restricted occupations;
 - (viii) hazard identification and risk analysis processes;
 - (ix) hazardous substance management;
 - (x) WHS training;
 - (xi) induction procedures for all workers before they commence on site;
 - (xii) safe work method processes and statements;
 - (xiii) Subcontractor controls;
 - (xiv) accident and incident recording, reporting, investigation and analysis including corrective action;
 - (xv) periodic team meetings to identify occupational health, safety and rehabilitation issues;
 - (xvi) site vehicle, equipment and plant movement plans and processes; and
 - (xvii) safety audits.
- (c) The WHS Management Plan must, as a minimum:
 - (i) address safety in the design, documentation and specification of the Works and the Contractor's activities;

- (ii) establish systems that ensure that health and safety issues will be identified, recorded and responded to throughout the performance of the Contractor's activities;
 - (iii) demonstrate the orderly management of health and safety throughout the performance of the Contractor's activities, and provide evidence that the Contractor has met its legal health and safety responsibilities;
 - (iv) establish procedures that ensure continuing involvement of the designers in the construction stages of the Works and must include, when applicable:
 - (A) health and safety implications of design elements of the Works;
 - (B) unforeseen risk eventualities resulting in substantial design change which might affect health and safety and resources; and
 - (C) health and safety implications of design where design work is carried out in stages.
 - (v) ensure that health and safety issues that are a function of or result from the Design Documentation form part of and are included in the health and safety assessment process for construction. These health and safety issues must be included in construction documentation and procedures to ensure that they are effectively managed during construction activities.
- (d) The WHS Management Plan must be further developed and updated:
- (i) to take into account changes in site conditions and work, generally accepted occupational health and safety and rehabilitation practices and changes in Law;
 - (ii) where reasonably requested or required by Project Director or any Authority;
- (e) the following risks are covered:
- (i) Demolition;
 - (ii) Removal of Contaminated material;
 - (iii) Public/ Contractor interface including park users;
 - (iv) Traffic and Vehicles management and work close to transport corridors;
 - (v) Noise, Dust and Vibration;
 - (vi) Underground Services;
 - (vii) Formwork;
 - (viii) Heavy and overhead lifting;
 - (ix) Moving Plant and Machinery; and
 - (x) Deep Excavation and Working at heights.

This list of risks is not exhaustive and must not be relied upon by the Contractor. The Contractor must undertake its own detailed analysis of all work health and safety risks under the Contract;

- (f) Include a program indicating the timetable and resources allocated for Inspection, testing and servicing and Internal review (WHSMS Guidelines, elements 7 and 11); and
- (g) Nominate the resources allocated for Incident management and corrective action (WHSMS Guidelines, element 8).

9.2 Community Engagement Plan

- (a) The Contractor must develop, implement and maintain a Community Engagement Plan.
- (b) The Community Engagement Plan must:
 - (i) be informed by and sit within the State's Overarching Stakeholder and Community Engagement Strategy;
 - (ii) ensure alignment with the Contract Program;
 - (iii) describe ways that community interests and issues will be addressed; and
 - (iv) describe ways the community will be informed of design and project impacts;
- (c) The Contractor must ensure the communications and engagement process is robust and will:
 - (i) demonstrate a willingness to listen and consider community concerns;
 - (ii) provide high-quality information;
 - (iii) create opportunities for community feedback, where possible;
 - (iv) ensure participants are aware of what they can and cannot influence; and
 - (v) respond to emergent issues and correct erroneous information in a timely fashion.
- (d) The Community Engagement Plan must, as a minimum, address and detail:
 - (i) the stakeholder and community engagement management team structure including:
 - (A) Key Personnel and other significant appointees;
 - (B) authority and roles of Key Personnel and other significant appointees;
 - (C) lines of responsibility and communication;
 - (D) minimum skill levels of each role; and

- (E) interfaces with the overall project organisation structure including INSW.
 - (ii) principles and methodologies for proactive community engagement;
 - (iii) strategies for responding to and accommodating the reasonable expectations of the community;
 - (iv) community engagement and communication activities;
 - (v) in a schedule, the key issues which are likely to be of concern/interest to the community and how these issues will be managed proactively;
 - (vi) key messages to be used in the preparation of information materials and responding to enquiries and complaints;
 - (vii) communication and consultation tools to be used for keeping the stakeholders and community informed and to seek input on specific issues;
 - (viii) communication protocols and procedures, including those associated with approvals and handling enquiries from media and political representatives;
 - (ix) a strategy for communicating traffic and access changes and ensuring integration across the communications and traffic and transport management functions;
 - (x) processes for monitoring, evaluation and reporting; and
 - (xi) community engagement site induction information to be provided to the Contractor's personnel and the Subcontractor's personnel.
 - (xii) stakeholders who may be affected, messages that should be communicated and when they should be communicated.
- (e) When preparing the Community Engagement Plan, the Contractor may wish to consider, but not limit itself to, the following:
- (i) the deployment of a Stakeholder and Community Relations Manager;
 - (ii) ongoing community liaison;
 - (iii) community meetings;
 - (iv) public displays, local events and activities;
 - (v) website and social media;
 - (vi) complaints management;
 - (vii) incident and crises management;
 - (viii) media relations and events; and
 - (ix) response to community representations.

9.3 Stakeholder Management Plan

- (a) The Contractor must develop, implement and maintain a Stakeholder Management Plan.
- (b) The Stakeholder Management Plan must:
 - (i) be informed by and sit within the Principal's Stakeholder and Community Engagement Strategy;
 - (ii) ensure alignment with the Contract Program;
 - (iii) describe ways that stakeholder issues will be addressed; and
 - (iv) describe ways stakeholders will be informed of design and project impacts.
- (c) The Contractor must ensure the communications and engagement is robust and will:
 - (i) demonstrate a willingness to listen and consider concerns;
 - (ii) provide high-quality information;
 - (iii) create opportunities for feedback, where possible;
 - (iv) ensure participants are aware of what they can and cannot influence; and
 - (v) respond to emergent issues and correct erroneous information in a timely fashion.
- (d) The Stakeholder Management Plan must, as a minimum, address and detail:
 - (i) the stakeholder management team structure including:
 - (A) Key Personnel and other significant appointees;
 - (B) authority and roles of Key Personnel and other significant appointees;
 - (C) lines of responsibility and communication;
 - (D) minimum skill levels of each role; and
 - (E) interfaces with the overall project organisation structure including INSW;
 - (ii) principles and methodologies for proactive stakeholder involvement;
 - (iii) strategies for responding to and accommodating the reasonable expectations of stakeholders;
 - (iv) stakeholder communication activities;
 - (v) all stakeholders with an interest in, or directly affected by, the Project;

- (vi) in a schedule, the key issues which are likely to be of concern/interest to stakeholders and how these issues will be managed proactively;
 - (vii) key messages to be used in the preparation of information materials and responding to enquiries and complaints;
 - (viii) communication and consultation tools to be used for keeping the stakeholders informed and to seek input on specific issues;
 - (ix) communication protocols and procedures, including those associated with approvals and handling enquiries from media and political representatives;
 - (x) processes for monitoring, evaluation and reporting; and
 - (xi) stakeholder site induction information to be provided to the Contractor's personnel and the Subcontractor's personnel.
- (e) When preparing the Stakeholder Management Plan, the Contractor may wish to consider, but not limit itself to, the following:
- (i) the deployment of a Stakeholder and Community Relations Manager;
 - (ii) stakeholder meetings;
 - (iii) Construction Site visits by external personnel;
 - (iv) incident and crisis management; and
 - (v) response to stakeholder representations.

9.4 Environmental Management Plan

- (a) The Contractor must develop, implement and maintain an Environmental Management Plan that must include, as a minimum:
- (i) identification of the statutory and other obligations which the Contractor is required to fulfil, including all licences, approvals, consultations and agreements required from Authorities and other stakeholders, and the key legislation and policies applying to the Project;
 - (ii) monitoring, inspection and test plans for all activities and environmental qualities which are important to the environmental performance of the Works and any other development activities, including a description of potential site impacts, performance criteria, specific tests and monitoring requirements, protocols and procedures;
 - (iii) steps to ensure compliance with all plans and procedures;
 - (iv) strategies for the management of carbon and energy, water resources, noise, water quality, access and traffic, groundwater, settlement, waste, removal and disposal, hydrology including flooding, visual screening, landscaping and rehabilitation, hazards and risks, and energy use, resource use and recycling; and

- (v) how the Contractor will comply with the environmental management requirements of the Contract and the Project Brief, at a standard that satisfies all relevant Authorities.
- (b) The Environmental Management Plan must, as a minimum:
 - (i) identify and assess the risk, provide protection from and mitigate any adverse environmental effect which may result from the performance of any component of the Contractor's activities;
 - (ii) define the environmental responsibilities of the Contractor and each position within the Contractor's management team;
 - (iii) include schedules of available resources, including personnel to deal with environmental incidents at all stages of the Project; and
 - (iv) address the need for environmental safeguards and the adoption of environmentally sensitive work practices during any of the Contractor's activities including, but not limited to, procedures for:
 - (A) on-going noise, water, air quality, vibration and groundwater monitoring and control;
 - (B) management measures to reduce noise levels;
 - (C) management measures to avoid, reduce, reuse and recycle waste;
 - (D) dust control including monitoring, mitigation and remedial actions;
 - (E) detection, treatment and disposal of contaminated materials and water;
 - (F) water quality control measures and facilities; and
 - (G) erosion and sediment control plans.
- (c) The Environmental Management Plan must be further developed and updated:
 - (i) to take into account changes to the environment or generally accepted environmental management practices, new risks to the environment, any pollution, contamination or changes in Law; and
 - (ii) where requested or required by the Department of Planning and Environment or any other Authority.

9.5 Construction Management Plan

- (a) The Contractor must develop, implement and maintain a Construction Management Plan, which identifies how the Contractor will comply with the requirements of the Contract.
- (b) The Construction Management Plan must, as a minimum, address and detail:
 - (i) the construction team organisational structure including:

- (A) construction personnel including Key Personnel;
 - (B) authority and roles of construction personnel including Key Personnel;
 - (C) roles and lines of responsibility and communication;
 - (D) the minimum skill levels of each role; and
 - (E) interfaces with overall project organisational structure.
- (ii) how design performance and durability requirements are to be addressed and satisfied during construction;
 - (iii) construction methods and planned resource levels;
 - (iv) detailed staging diagrams to show visually how the Works will be built.
 - (v) technical specifications and construction standards applicable to each construction element and package;
 - (vi) construction program development, monitoring, review and management;
 - (vii) construction documentation applicable to each construction package;
 - (viii) processes for the development and management of work method statements;
 - (ix) processes for construction risk mitigation and management;
 - (x) access to the Site and to affected properties;
 - (xi) in a schedule, the necessary property works and utility service works;
 - (xii) processes for the development and storage of "As-Built" information and document requirements;
 - (xiii) provision of up-to-date information to the Principal's Authorised Person as required by the Contract;
 - (xiv) management of safety and incidents during construction, including reporting of incidents and near-misses;
 - (xv) interfaces with other Contractor's Project Plans;
 - (xvi) procurement and subcontractor management strategies;
 - (xvii) in a schedule, the required Approvals and certifications and a process and program for obtaining those Approvals and certification;
 - (xviii) safe processes for each element of work, and how outcomes in the Design Management Plan are to be incorporated into construction to ensure these outcomes are achieved; and
 - (xix) maintenance methods for temporary facilities and equipment to be used during construction.

- (c) The Construction Management Plan must be further developed and updated:
 - (i) for changes in design or construction sequence, staging, methodology or resourcing;
 - (ii) to take into account progress of the Contractor's activities;
 - (iii) for changes in access to the Site; and
 - (iv) to take into account changes directed by the Principal under the Contract.

9.6 Design Management Plan

- (a) The Contractor must develop, implement and maintain a Design Management Plan that complies with the *QMS Guidelines* and which identifies how the Contractor will comply with the design requirements of the Contract.
- (b) The Design Management Plan must include a BIM Manual, which sets out the drawing standards, and protocols, which must be used by all designers preparing Design Documentation and Construction Documentation.
- (c) The Design Management Plan must, as a minimum, address and detail:
 - (i) the Contractor's design team organisational structure including:
 - (A) lead design personnel including Key Personnel;
 - (B) authority and roles of lead design personnel including Key Personnel;
 - (C) lines of responsibility and communication;
 - (D) the minimum skill and competency levels of each role; and
 - (E) relationships and interfaces with the overall project organisational structure.
 - (ii) design management processes including processes for the integration of relevant design disciplines into each area or element of work and communication between design teams;
 - (iii) design standards to be adopted for each design component and design package;
 - (iv) in a schedule, the design packages including the scope and package numbering;
 - (v) Design Development Program giving details of, the design review process, including the timing and Design Documentation to be provided for each design package;
 - (vi) the strategy for achieving compliance with all relevant codes and standards for accessibility;

- (vii) design strategies for ensuring functionality, performance, durability, design life and fitness for purpose, survey and other requirements are met;
 - (viii) processes for design risk assessment and design risk mitigation;
 - (ix) processes for addressing the safe construction of the works through the design stage (safety in design principles within the design);
 - (x) processes for identifying and incorporating utility services requirements and adjustments;
 - (xi) processes for the development of specifications for the construction of all elements of the Works;
 - (xii) processes for design presentations including timing, level of documentation to be presented, presentation methods and feedback procedures;
 - (xiii) design management processes for the internal verification and certification of each design package and how integrated verification and certification will occur;
 - (xiv) processes for the management of requests for information, modifications and updating of Design Documentation;
 - (xv) processes for submission, certification, verification and storing of samples, prototypes, models and other similar submissions;
 - (xvi) design management processes for the review of proposed design changes and adjustments during construction to ensure the requirements of the Contract are met,;
 - (xvii) processes for ensuring that maintainability requirements have been addressed;
 - (xviii) process for review and certification of IFC Design Documentation;
 - (xix) processes for the development of as built information; and
 - (xx) interfaces with other Contractor's Project Plans.
- (d) The Design Management Plan must include the establishment of design packages. The design packaging selection must take into account:
- (i) the Project Brief;
 - (ii) the Principal's Design;
 - (iii) the requirements of the Contract Program;
 - (iv) the design and construction processes and activities;
 - (v) the logical sequence of design definition;
 - (vi) the interfaces and inter-relationships between packages;
 - (vii) the identification and resolution of interfaces with the relevant Authorities;

- (viii) the processes for managing the interface between design teams and between different design disciplines within the packages;
 - (ix) the transition of completed Design Documentation packages to IFC Design Documentation packages; and
 - (x) the roles, skills and competencies of the personnel proposed to undertake design work and the resources to be applied.
- (e) The Design Management Plan must be further developed and updated as necessary to address the design of new elements not covered by the existing Design Management Plan.

9.7 Demolition Management Plan

- (a) The Contractor must develop, implement and maintain a Demolition Management Plan which identifies how the Contractor will comply with the requirements of the Contract.
- (b) The Demolition Management Plan must, as a minimum, address and detail:
- (i) the demolition team organisational structure including:
 - (A) construction personnel including Key Personnel;
 - (B) authority and roles of construction personnel including Key Personnel;
 - (C) roles and lines of responsibility and communication;
 - (D) the minimum skill levels of each role; and
 - (E) interfaces with overall project organisational structure.
 - (ii) demolition methods and planned resources
 - (iii) demolition program
 - (iv) processes for the development and management of work method statements;
 - (v) processes for risk mitigation and management;
 - (vi) access to the Site and to affected properties;
 - (vii) management of safety and incidents, including reporting of incidents and near-misses;
 - (viii) procurement and subcontractor management strategies; and
 - (ix) in a schedule, the required Approvals and certifications and a process and program for obtaining those Approvals and certification;
- (c) The Demolition Management Plan must be further developed and updated:
- (i) for changes in design or construction sequence, staging, methodology or resourcing;

- (ii) to take into account progress of the Contractor's activities;
- (iii) for changes in access to the Project Site; and
- (iv) to take into account Changes directed by the Principal under the Contract.

9.8 Construction Traffic and Management Plan

- (a) The Contractor must develop, implement and maintain a Construction Traffic Management Plan which identifies how the Contractor will comply with the traffic management and traffic safety requirements of the Contract.
- (b) The Construction Traffic Management Plan must contain a draft of all traffic control plans to be submitted for review.
- (c) Controlled copies of the Construction Traffic Management Plan must be issued to Project Director and the relevant construction, operation and maintenance staff of the Contractor.
- (d) The Construction Traffic Management Plan must be further developed and updated:
 - (i) to address changes in the design and construction processes;
 - (ii) for design and construction processes which the existing Construction Traffic Management Plan does not address;
 - (iii) to respond to any incidents or traffic disruptions arising from the Contractor's activities; and
 - (iv) to avoid recurrence of any identified risks to the safety of road users and the public.
- (e) The Construction Traffic Management Plan must provide for constant monitoring and review of the Contractor's activities to ensure continued compliance with the Traffic and Pedestrian Management Plan.
- (f) The Construction Traffic Management Plan must comply with the requirements of the Contract and the Project Brief and address the following key issues as a minimum:
 - (i) safety and amenity of road users and the public;
 - (ii) temporary lane or road closures, detours and other disruptions to public transport services and traffic flows including identification of additional traffic generated as a consequence of these disruptions;
 - (iii) access for people using the Precinct;
 - (iv) access for disabled persons, pedestrians, cyclists and public transport passengers;
 - (v) site security, site access;
 - (vi) signage, including:
 - (A) Project identification including signs to acknowledge Government initiatives;

- (B) traffic (or road user) delay management;
 - (C) information signage, distance information and advance warning signs;
 - (D) speed limit signage; and
 - (E) changes to existing signage locations and provisions for emergency and incident response; and
- (vii) frequency of inspections.

9.9 Risk Management Plan

- (a) The Contractor must develop, implement and maintain a Risk Management Plan which identifies how the Contractor will comply with the Risk Management Plan requirements of the Contract.
- (b) For the purposes of the Risk Management Plan, a risk is defined as any event or uncertainty that has the potential to impact the achievement of either the Principal's or the Contractor's objectives with regard to the Project.
- (c) The Risk Management Plan must be consistent with the requirements of Australian/New Zealand Standard AS/NZS ISO 31000:2009, Risk management - Principles and guidelines.
- (d) Risk identification and assessment by the Contractor must be a continuous process throughout the Project. The Contractor must report on identified risks and associated risk management matters as follows:
 - (i) in respect of monthly reporting associated with the status and progress of the design, construction and commissioning, include a summary of key risks (threats and opportunities) and corresponding current and planned risk treatments. Key risk reporting areas include but are not limited to:
 - (A) timely completion of the design (including intermediate milestones);
 - (B) status of risk management implementation; and
 - (C) achievement of project objectives including those associated with:
 1. operational outcomes;
 2. key stakeholders including the community;
 3. key interfaces; and
 4. environment and cultural heritage.
 - (ii) Where information is to be provided to the Principal for the purposes of decision making, justification or information, the Contractor must include all associated and relevant risk-related information pertaining to the particular matter.

9.10 Quality Management Plan

- (a) The Contractor must develop, implement and maintain a Quality Management Plan (Development Phase) in accordance with ISO 9001,

which identifies how the Contractor will comply with the quality requirements of the Contract.

- (b) The Quality Management Plan must, as a minimum, address and detail:
 - (i) the Contractor's quality team organisational structure including:
 - (A) quality management personnel;
 - (B) authority and roles of quality management personnel;
 - (C) lines of responsibility and communication;
 - (D) the minimum skill levels of each role; and
 - (E) interfaces with the overall project organisational structure.
 - (ii) quality risk management and mitigation processes;
 - (iii) how inspection, witnessing, monitoring and reporting will be undertaken;
 - (iv) procedures for the production, management and control of quality records;
 - (v) the Contractor's proposed design methodology and scope for the review and witnessing of the carrying out of the construction of the Works;
 - (vi) procedures in respect of non-conformances, improvement opportunities and the taking of corrective action, including reporting procedures;
 - (vii) auditing procedures for the Quality Management Plan; and
 - (viii) interfaces with other Contractor's Project Plans.
- (c) The Quality Management Plan must be further developed and updated to address:
 - (i) changes in the design and construction process including the use of and development of new designs and materials; and
 - (ii) design and construction processes requiring documentation which the existing Quality Management Plan does not address.

9.11 Industrial Relations Management Plan

- (a) The Contractor must develop, implement, and maintain an Industrial Relations and Management Plan which identifies how the Contractor will comply with the Industrial Relations requirements of the Contract.
- (b) The Industrial Relations Management Plan must include arrangements for the Contractor's employees and the Contractor's Subcontractors' employees, including permanent, contract and casual staff.
- (c) The Industrial Relations Management Plan must cover, on an individual or collective basis as appropriate, selection, recruitment, termination, consultation, negotiation, discipline, grievance and welfare arrangements.

9.12 Remediation Action Plan and Acid Sulfate Soil Management Plan

- (a) Remediation Action Plan (RAP) and Site Audit Report have been developed and are provided as part of SSDA Documents.
- (a) Acid Sulfates Soil Management Plan has been developed and is provided as part of the SSDA Documents
- (b) The Contractor will review provided documents, comply with identified assessments and investigations and develop RAP, Site Audit Report and Acid Sulfates Soil Management Plan.
- (c) The Contractor must implement, and maintain a Remediation Action Plan, Site Audit Report and Acid Sulfates Soil Management Plan which identifies how the Contractor will comply with the contamination management requirements of the Contract and the Project Brief, at a standard that satisfies all relevant Authorities.
- (d) The Remediation Plan must be developed in accordance with the requirements of the following:
 - (i) Authorities:
 - (A) NSW Department of Planning and Environment; and
 - (B) NSW Environment Protection Authority;
 - (ii) Guidelines:
 - (A) DUAP Managing Land Contamination: Planning Guidelines - SEPP 55 Remediation of Land.
- (e) The Contractor must not commence any work upon the Project Site until the Contractor has:
 - (i) received approval for the Remediation Action Plan from the relevant Authorities or have been advised by the relevant Authorities that such approval is not required; and
 - (ii) provided a copy of such approval or advice (as the case may be) to Principal.

9.13 Completion Plan

- (a) The Contractor must develop, implement and maintain a Completion Plan which identifies how the Contractor will achieve Completion in accordance with the requirements of the Contract including how the Contractor will verify to the Principal that:
 - (i) all functional components have been tested, commissioned and operated to ensure that they are operating as intended and have been designed and constructed in accordance with the applicable standards and codes;
 - (ii) the Works meet the requirements of the Contract; and
 - (iii) all statutory certifications of and Approvals in respect of all relevant systems have been obtained;
- (b) The Completion Plan must include:
 - (i) the Contractor's strategy for achieving Completion;

- (ii) details of all activities the Contractor will and must undertake to achieve Completion;
- (iii) details of the parties involved in achieving each of the Completion criteria and the Contractor's strategy for managing the interfaces between those various parties;
- (iv) details of Contractor's dedicated Completion team including the names, roles and responsibilities of key personnel in this regard;
- (v) details of each of the Completion criteria and Contractor's proposed methodology for achieving each of the Completion criteria;
- (vi) details of each of the Completion tests including a methodology for the conduct of each test, details of the systems and parties involved in the conduct of each and the objectives of each test;
- (vii) a documented procedure for reporting the conduct and outcome of all Completion Tests which must include details of the parties present at the tests and details of the area systems tested;
- (viii) a list of all Approvals, certificates and permits required from all Authorities for the Project including details of which parties are responsible for obtaining such Approvals, certificates and permits, their status and the time at which they are required;
- (ix) a list of all Approvals and certificates of compliance required for the Project and the time at which they are required;
- (x) the manner in which the Contractor will involve the Principal in Completion;
- (xi) the Contractor's testing and commissioning methodology for:
 - (A) carrying out commissioning processes generally;
 - (B) confirming that all control systems including building management systems are in place, fully commissioned and operational;
 - (C) the method of recording and distribution of test results;
 - (D) success and failure metrics of each test;
 - (E) information nominating the scheduling frequency of all testing and commissioning activities; and
 - (F) testing schedules for all systems and infrastructure including:
 1. a description of the nature and purpose of each test;
 2. the location at which each test is to be conducted; and
 3. identification of any tests where input and assistance is required from Other Contractors, Authorities and any other parties identified by the Contractor.

- (xii) the process for testing and commissioning of all FF&E to ensure that they are ready for operation;
 - (xiii) confirmation that all warranties have been obtained or otherwise are in place; and
 - (xiv) a process for ensuring that all documentation that must be provided by the Contractor as a condition precedent to Completion has been completed and provided.
- (c) As part of the Completion Plan the Contractor must produce and keep updated a Completion Program. The Completion Program must:
- (i) clearly identify all activities associated with Completion together with planned timing and sequence of activities;
 - (ii) be sufficiently detailed to enable the Principal to plan, program and co-ordinate its obligations; and
 - (iii) be regularly updated to show planned versus actual progress and submitted to the Principal.
- (d) The Completion Test Plan must contain test and commissioning plans for all systems and services including:
- (i) electrical distribution network;
 - (ii) electrical services;
 - (iii) mechanical services;
 - (iv) central plant system;
 - (v) power generation systems;
 - (vi) fire services;
 - (vii) evacuation systems;
 - (viii) duress systems;
 - (ix) security and access control services;
 - (x) CCTV systems;
 - (xi) hydraulic services;
 - (xii) food and beverage services;
 - (xiii) audio visual systems;
 - (xiv) communications systems;
 - (xv) technology systems;
 - (xvi) integration between systems;
 - (xvii) telephony systems;
 - (xviii) building envelope performance;

- (xix) building management system;
 - (xx) asset management system;
 - (xxi) signage and information system;
 - (xxii) acoustics performance;
 - (xxiii) other systems and services.
- (e) Without limiting the Contractor's obligation to comply with the requirements under the Contract, the testing and commissioning aspects of the Completion Plan must comply with the following standards and codes of practice:
- (i) AS 1851-2005;
 - (ii) AS/NZS 3000:2007;
 - (iii) AS 2670:1990;
 - (iv) ISO 2631:2003;
 - (v) IEC 60268-16:2003;
 - (vi) AS/NZS 2460:2002;
 - (vii) NEBB Commissioning Codes; and
 - (viii) TAB Manual for Technicians;
 - (ix) CIBSE Commissioning Codes:
 - (A) Code A:1996 (2006) Air Distribution Systems;
 - (B) Code B: 2002 Boilers;
 - (C) Code C: 2001 Automatic Controls
 - (D) Code M: 2003 Commissioning Management;
 - (E) Code R: 2002 Refrigerant Systems; and
 - (F) Code W: 2003 Water Distribution Systems

10 Schedules to Preliminaries

10.1 Schedule of Samples for Approval

Requirement

Samples are required for the following items:

- Refer to Project Brief and Principal's Design

10.2 Schedule of Principal Supplied Items

Supply by Principal

The following items will be supplied by the Principal:

- Nil

10.3 Not Used

10.4 Items to be Salvaged

Trees and plants to be salvaged for art commissions

The following trees are to be salvaged and provided to the Principal for the purpose of being used in artworks (creating shields and boomerangs) to be commissioned by the Principal:

- mix of gum and banksia trees from those identified for removal in the landscape documentation;
- Trees are to have a trunk diameter of 150mm or more. Leafy vegetation should be removed. Roots are not required;
- Trunks and major limbs with bends are required, to be cut into 1.5m lengths, with cuts at least 500mm from either side of the bend.

The following plants are to be salvaged and provided to the Principal for the purpose of being used in artworks (weaving) to be commissioned by the Principal:

- 5 x Lomandra grass plants, cut at the base. Roots are not required.

RBG items to be salvaged

The following items are to be carefully removed and delivered to a designated location on the RBG Access Road at a time and location to be agreed with the RBG via the Principals Authorised Person:

- Street light poles and Bega light fittings
- Metal crowd control barriers
- RBG padlocks
- Red slatted public seating
- Cast iron bollards
- Round traffic mirror and pole
- CCTV camera pole (once decommissioned)
- Blue stone paving and treads – RBGDT will supply timber pallets, quantities will depend on quality after removal
- Wayfinding signage
- RMS dedication plaque

END OF SECTION – PRELIMINARIES

Schedule 40 – Independent Certifier Deed of Appointment

Refer to clauses 2A, 2B, 2C and 73 of the GC21 General Conditions of Contract.

Sydney Modern Project - Deed of Appointment of Independent Certifier

Dated

Infrastructure NSW (ABN 85 031 302 516) ("Principal")
Airport Motorway Limited (ABN 26 057 283 093) and AMT Management
Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607)
("ED Operator")
The Art Gallery of New South Wales Trust (ABN 24 934 492 575)
("AGNSW")
Roads and Maritime Services of New South Wales ("RMS")
[insert] (ABN [insert]) ("D&C Contractor")
[insert] (ABN [insert]) ("Independent Certifier")

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Independent Certifier Deed

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Independent Certifier Deed

Details

Parties		
Principal	Name	Infrastructure NSW
	ABN	85 031 302 516
	Address	Level 15, 167 Macquarie St, Sydney NSW 2000
	Fax	+ 61 2 8016 0101
	Attention	David Riches
ED Operator	Name	Airport Motorway Limited and AMT Management Limited as trustee of the Airport Motorway Trust (ABN 55 078 953 607)
	Address	Level 23, Tower One, Collins Square, 727 Collins Street, Docklands Victoria 3008
	Telephone	(02) 9254 4918
	Email	edassetmanager@transurban.com and lbeer@transurban.com
	Attention	Louise Beer, ED Asset Manager
RMS	Name	Roads and Maritime Services of New South Wales, a NSW Government agency and corporation incorporated under section 46 of the Transport Administration Act 1988 (NSW)
	Address	99 Phillip Street, Parramatta 2150
	Telephone	(02) 8837 0901
	Email	Felicity.FINLAYSON@rms.nsw.gov.au
	Attention	Director Motorway Partnerships & Planning
AGNSW	Name	The Art Gallery of New South Wales Trust, a statutory corporation constituted under section 5 of the Art Gallery of New South Wales Act 1980 (NSW)
	Address	24 934 492 575
	Telephone	(02) 9225 1852

	Email	sally.webster@ag.nsw.gov.au
	Attention	Sally Webster
D&C Contractor	Name	[TBC]
	Address	[TBC]
	Fax	[TBC]
	Telephone	[TBC]
	Email	[TBC]
Independent Certifier	Name	[TBC]
	Address	[TBC]
	Fax	[TBC]
	Telephone	[TBC]
	Email	[TBC]
	Attention	[TBC]
Governing law	New South Wales	
Recitals	A	ED Operator, RMS and AGNSW have entered into the Interface Deed.
	B	The Principal and the D&C Contractor have entered into the D&C Contract.
	C	The Interface Deed and the D&C Contract contemplate that an independent certifier will be engaged to carry out the Services.
	D	ED Operator, RMS, AGNSW, the Principal and the D&C Contractor wish to engage an independent certifier to carry out the Services.
	E	The Independent Certifier has represented to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that it has the experience and expertise in the carrying out of services equivalent to the Services.
	F	The Independent Certifier has agreed to carry out the Services and its other obligations arising out of or in any way in connection with this document in accordance with the terms and conditions of this document.

General terms

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this document are set out below.

Authorised Officer means:

- (a) in the case of the Principal, the mayor, the chief executive officer, chief financial officer and any other officer of the Principal nominated by the Principal to act as an authorised officer for the purposes of this document; and
- (b) in the case of any other party, a director or secretary of that party or any other person nominated by that party to act as an authorised officer for the purposes of this document.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

Certificate means a certificate issued by the Independent Certifier under this document.

Certificate of Works Completion has the meaning given in the Interface Deed.

Claim means any claim, loss, suit, proceeding, action, cause of action, demand, notice, litigation, investigation, judgment, execution, liability or responsibility, including for any Damages or for any injury or death, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), in equity, statute or otherwise.

Commencement Date means the date that this document is executed by all of the parties to this document.

Communications has the meaning given in clause 17.1(a).

Confidential Information means all Information disclosed to the Receiving Party or any Related Body Corporate of the Receiving Party, under or in connection with this document, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Disclosing Party or any of its Related Bodies Corporate;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling; or
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

whether the Information was disclosed:

- (d) orally, in writing or in electronic or machine readable form;
- (e) before, on or after the date of this document;
- (f) as a result of discussions between the parties concerning or arising out of the matters the subject of this document; or
- (g) by the Disclosing Party or its Representative, any of its Related Bodies Corporate, or by any third person.

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

Costs means all costs, expenses, losses, charges and payments including any fees payable to consultants, agents or contractors, legal fees (on a full indemnity basis) and any administration costs.

Current Design Documentation has the meaning given in the Interface Deed

Damages means any loss, Costs or damage whatsoever including, but not limited to, direct, indirect, incidental, consequential or special damages, damage to property or to land.

Date of Works Completion means the date specified by the Independent Certifier in a Certificate of Works Completion as the date on which Works Completion was achieved.

Design Documentation has the meaning given to it in the Interface Deed.

Design Documentation Amendment has the meaning given to it in the Interface Deed.

Design Package has the meaning given to it in clause 2 of Schedule 6 of the Interface Deed.

Details means the section of this document headed "Details".

Disclosing Party means the party disclosing Confidential Information.

Dispute includes any dispute, controversy, difference or Claim arising out of or in connection with this document or the subject matter of this document, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Dispute Notice has the meaning given in clause 11.2(a)(i).

document means the agreement between the parties as set out in this document.

Document Particulars means the particulars set out in Schedule 1 ("Document Particulars").

D&C Contract means the contract between the Principal and the D&C Contractor dated [insert] for the design and construction of the Works.

ED IFC Design Documentation has the meaning given to it in the D&C Contract.

ED Land has the meaning given in the Interface Deed.

Excluded Information means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this document or an obligation of confidence owed to the Disclosing Party or any Related Body Corporate of the Disclosing Party;
- (b) the Receiving Party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Disclosing Party or its Related Bodies Corporate or Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Receiving Party acquires from a source other than the Disclosing Party or any Related Body Corporate or Representative of the Disclosing Party where such source is entitled to disclose it.

Good Industry Practice means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a prudent, experienced, properly qualified and competent person carrying out the role of independent certifier seeking in good faith to comply with its contractual obligations.

GST includes amounts defined as "GST" under the GST Act and "GST equivalents" payments under the *GST and Related Matters Act 2000 (Qld)* (or similar payments under corresponding legislation of any State or Territory).

GST Amount has the meaning given in clause 10.2(a).

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

- (a) the business, technology or other affairs of the Disclosing Party or any Related Body Corporate of the Disclosing Party; or
- (b) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is marked "confidential" or is otherwise indicated to be subject to an obligation of confidence owned or used by or licensed to the Disclosing Party or a Related Body Corporate of the Disclosing Party.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller (as defined in the Corporations Act) appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c);

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) happens in connection with that person under the law of any jurisdiction.

Interface Deed means the deed entitled "Art Gallery of NSW Modern – Eastern Distributor Construction Interface and Access Deed" entered into between the ED Operator, RMS and AGNSW dated [insert].

Key Personnel means any of the people named in Item 1 of Schedule 1 ("Document Particulars").

Loss means, in relation to any person, any loss (including loss of reputation), liability, Damages, Cost, fine or penalty incurred by the person however arising and whether present or future, fixed or unascertained, actual or contingent whether based in contract, tort (including negligence), statute or otherwise including where arising under any Claim.

Material Form includes any form (whether visible or not) of storage from which reproductions can be made.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Planned ED Lane Occupancy Period has the meaning given in the Interface Deed.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) any other requirement under Australian law, industry code, policy or statement relating to the handling of Personal Information.

Project has the meaning given to it in the Interface Deed.

Project Brief has the meaning given to it in the D&C Contract.

Project Plan has the meaning given to it in the Interface Deed.

Receiving Party means the recipient of Confidential Information.

Related Body Corporate has the meaning it has in the Corporations Act.

Representative means a duly authorised representatives of either ED Operator, RMS, AGNSW, the Principal and the D&C Contractor (as applicable).

Review Period has the meaning given to it in the Interface Deed.

Services means:

- (a) all of the powers, obligations, duties, functions, services and tasks conferred on, or contemplated to be carried out by the Independent Certifier under this document and the Interface Deed and the D&C

Contract (including the functions as described in Schedule 3 ("Services")) as varied from time to time in writing by the parties; and

- (b) without limiting paragraph (a) above, all other things and tasks not described in this document or the Interface Deed or the D&C Contract if those things or tasks should have been reasonably anticipated by an experienced and professional provider of services equivalent to the Services as being necessary for the carrying out of the Services or which are otherwise capable of inference from this document or the Interface Deed or the D&C Contract.

Site has the meaning given to it in the D&C Contract.

Statutory Requirements has the meaning given to it in the D&C Contract.

Temporary Works has the meaning given to it in the D&C Contract.

Termination Event means:

- (a) the Independent Certifier is Insolvent;
- (b) the Independent Certifier fails or refuses to perform all or any part of its obligations, duties and functions under this document, the Interface Deed and the D&C Contract within the time required under this document, the Interface Deed or the D&C Contract (as applicable); or
- (c) the Independent Certifier commits a material breach of any of its obligations, duties and functions under this document and fails promptly to remedy such breach after notice jointly from the Principal, ED Operator and RMS to the Independent Certifier requesting it to do so.

Test has the meaning given to it in the D&C Contract.

Works has the meaning given in the Interface Deed.

Works Completion has the meaning given to it in the Interface Deed.

Zone 1 has the meaning given in the Interface Deed.

Zone 2 has the meaning given in the Interface Deed.

Zone 2B has the meaning given in the Interface Deed.

Zone 3 has the meaning given in the Interface Deed.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document or an agreement (including this document) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated;

- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes and, in the case of a trustee, includes a substituted or additional trustee;
- (f) a reference to an Authority includes that Authority's successors and substitutes or any agency that performs substantially the same functions and powers;
- (g) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (h) a reference to a time of day is a reference to Sydney, New South Wales time;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to "Law" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, representation, warranty or indemnity by 2 or more persons binds them jointly and each of them individually;
- (n) an agreement, representation, warranty or indemnity in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;
- (q) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (r) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day;
- (t) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (u) labels used for definitions are for convenience only and do not affect interpretation.

2 Appointment

2.1 Engagement of Independent Certifier

The Independent Certifier is engaged by ED Operator, RMS, AGNSW, the Principal and the D&C Contractor as an independent certifier to carry out the obligations, functions, duties and services of an independent certifier in accordance with the Interface Deed and the D&C Contract, which obligations, functions, duties and services include the carrying out of the Services.

2.2 Services

In carrying out the Services, the Independent Certifier must:

- (a) comply with all Laws;
- (b) act as an expert and not as an arbitrator;
- (c) at all times act independently of ED Operator, RMS, AGNSW, D&C Contractor and the Principal;
- (d) at all times act impartially, reasonably, fairly, honestly and with due expedition and without delay (and in any event within the time requirements for the carrying out of its obligations specified in this document, the Interface Deed and the D&C Contract);
- (e) exercise all reasonable skill, care and diligence expected of a properly qualified and competent professional rendering services of an equivalent nature to the Services and experienced in projects of a similar size, scope and complexity as the Works and in accordance with Good Industry Practice;
- (f) not waive or vary any requirements in the D&C Contract or the Interface Deed;
- (g) not discharge or release a party from any of its obligations arising out of the D&C Contract or the Interface Deed;
- (h) provide a copy of any certificate or determination made in the course of performing the Services to each of ED Operator, RMS, AGNSW and the Principal on the same day as the issue of such certificate or determination;
- (i) ensure that only Key Personnel carry out the Services;
- (j) carry out the Services within the time limits specified in the D&C Contract and the Interface Deed and if no time limit is specified for the performance of a particular Service then by the date that is 10 Business Days after the date on which the requirement to perform the Service arose; and
- (k) carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person except where it is the unavoidable consequence of performing the Services.

2.3 Key Personnel

The Independent Certifier may appoint different persons to be the Key Personnel for the purposes of this document with the prior written approval of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor. ED Operator, RMS, AGNSW, the Principal and the D&C Contractor must not unreasonably withhold

their approval if the persons nominated by the Independent Certifier hold the same or substantially similar position, skills and qualifications as the Key Personnel named in Schedule 1 ("Document Particulars").

2.4 Binding certificates and determinations

- (a) ED Operator, RMS, AGNSW, the Principal and the D&C Contractor acknowledge and agree that all certificates or determinations provided by the Independent Certifier in performing the Services shall, in the absence of manifest error of fact or law or a breach of this document, be final and binding on ED Operator, RMS, AGNSW, the Principal and the D&C Contractor.
- (b) If ED Operator, RMS, AGNSW, the Principal and the D&C Contractor believes a manifest error of fact or law has occurred in relation to a certificate or determination of the Independent Certifier, or the Independent Certifier has breached this document, that party may raise this as a Dispute in accordance with clause 11 ("Dispute Resolution") of this document.

2.5 Progress reports

Throughout the term of this document, the Independent Certifier must provide a monthly progress report to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor, by the seventh day of the following month and in such format as is required by the Principal, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a summary of key risks and issues relating to the Services; and
- (c) details of any D&C Contractor non-conformances relevant to the Interface Deed raised by the Independent Certifier or AGNSW or the Principal and details on the verification of the rectification by D&C Contractor of non-conformances.

3 Term

3.1 Commencement

The engagement of the Independent Certifier commences on the Commencement Date and, unless terminated earlier under clause 3.2, continues until the Independent Certifier has completed and discharged all of its duties and functions under this document.

3.2 Termination

This document will terminate immediately on:

- (a) the termination of the D&C Contract and the Interface Deed (in which case this document terminates automatically); or
- (b) termination of this document in accordance with clause 14,

save in relation to any matter which remains outstanding and in progress as at the date of termination, which will continue to be subject to, and be completed in accordance with, the terms of this document.

4 Independent Certifier's acknowledgements

The Independent Certifier acknowledges that:

- (a) it has received a copy of the D&C Contract and the Interface Deed;
- (b) its obligations under this document extend to and include the obligations, functions, duties and services of the 'independent certifier' arising under the D&C Contract and the Interface Deed; and
- (c) ED Operator, RMS, AGNSW, the Principal and the D&C Contractor:
 - (i) are entitled to, and will, rely on:
 - (A) the skill and expertise of the Independent Certifier in performing the Services; and
 - (B) any certificate or determination that the Independent Certifier signs or gives; and
 - (ii) may suffer loss if the Independent Certifier does not perform the Services in accordance with this document.

5 Representations and warranties

5.1 Authority to act

The Independent Certifier represents and warrants to each of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that:

- (a) it is validly existing under the Laws of its place of incorporation or registration;
- (b) its obligations under this document are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (c) other than as expressly set out in this document it has no right or authority to give any directions to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor; and
- (d) it has no authority to waive any terms or conditions of the D&C Contract or the Interface Deed, or to amend or vary those terms or conditions or discharge or release:
 - (i) the Principal or the D&C Contractor from any of their respective obligations under the D&C Contract; or
 - (ii) the ED Operator, RMS, or AGNSW from any of their respective obligations under the Interface Deed.

5.2 Conflicts of interest

The Independent Certifier represents and warrants to each of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that:

- (a) it has disclosed all contractual relationships that it has in connection with the Works to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor;

- (b) at the date of its execution and delivery of this document, no conflict of interest exists or is likely to arise in connection with the performance of its obligations and the discharge of its duties and functions under this document; and
- (c) if, during the term of this document, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify ED Operator, RMS, AGNSW, the Principal and the D&C Contractor immediately in writing of that conflict or risk of conflict and comply with all reasonable requests or directions of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor jointly in relation to such conflict or risk of conflict.

5.3 Knowledge of requirements

The Independent Certifier represents and warrants to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor that:

- (a) it has the skill, experience and ability to perform the Services;
- (b) it has read, and is familiar with, the terms of the D&C Contract and the Interface Deed in so far as they relate to the Services;
- (c) without limiting clause 5.3(a), it has informed itself of all time limits and other requirements for any function that the Independent Certifier must perform under the D&C Contract and the Interface Deed;
- (d) it has informed itself of the nature of the work necessary to perform the Services and (so far as possible) the means of access to and facilities on the land on which the Works are to be carried out, including any restrictions on that access; and
- (e) it has satisfied itself that the fee payable under this document is sufficient having regard to the costs that it will incur in complying with its obligations under this document.

6 Variation and suspension

6.1 Variation

- (a) ED Operator, RMS, AGNSW, the Principal and the D&C Contractor may give the Independent Certifier a notice jointly instructing the Independent Certifier:
 - (i) to vary a Service;
 - (ii) not to carry out a Service; or
 - (iii) to carry out a Service that is not listed in Schedule 3 ("Services") at the date of this document.
- (b) The Independent Certifier must comply with that notice.

6.2 Meeting with other parties

- (a) If any of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor is of the opinion that the Independent Certifier is not performing any of the Services in accordance with this document, that party may call a meeting with the other parties (other than the Independent Certifier) by giving a notice of the meeting (to be held at least 2 Business Days after the notice is given to the other party) to decide on appropriate action to resolve the issue and duly authorised

representatives of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor ("Representatives") must attend the meeting.

- (b) Without limiting the discussion or the decision made, the Representatives must consider at that meeting whether to resolve the issue referred to in clause 6.1(a) by any one or more of the following:
 - (i) requesting the Independent Certifier to comply with this document;
 - (ii) changing the Services in accordance with clause 6.1(a)(i);
 - (iii) asking the Independent Certifier not to carry out a Service under clause 6.1(a)(ii);
 - (iv) appointing a substitute Independent Certifier in connection with those Services in accordance with clause 6.4;
 - (v) suspending all or any of the Services in accordance with clause 6.2; and
 - (vi) terminating the appointment of the Independent Certifier in accordance with clause 14.

6.3 Suspension of Services

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor may give the Independent Certifier a notice jointly instructing the Independent Certifier to suspend its performance of any or all of the Services until ED Operator, RMS, AGNSW, the Principal and the D&C Contractor give the Independent Certifier a notice instructing the Independent Certifier to recommence performing those Services. The Independent Certifier cannot make any claim against ED Operator, RMS, AGNSW, the Principal or the D&C Contractor if any or all of the Services are suspended under this clause 6.3.

6.4 Substitute Independent Certifier appointed

- (a) Subject to clause 6.2(b)(iv), ED Operator, RMS, AGNSW, the Principal and the D&C Contractor may appoint another independent certifier to carry out Services that they have instructed the Independent Certifier not to carry out under clause 6.1(a)(ii).
- (b) As between ED Operator, RMS, AGNSW, the Principal and the D&C Contractor (but not as between ED Operator, RMS, AGNSW, the Principal and the D&C Contractor and the Independent Certifier) decisions of the substitute Independent Certifier are to be treated as if they are decisions of the Independent Certifier.
- (c) Subject to any claim that ED Operator, RMS, AGNSW, the Principal or the D&C Contractor may have in respect of the Independent Certifier's performance, the Independent Certifier is not responsible for the substitute Independent Certifier's performance.

6.5 Independent Certifier must continue to perform

Despite any action by ED Operator, RMS, AGNSW, the Principal or the D&C Contractor under this clause 6, the Independent Certifier must continue to perform the Services, as varied under clause 6.1(a)(i), in accordance with this document.

7 Insurance

- (a) At least 10 Business Days before commencing the carrying out of the Services, the Independent Certifier must effect and maintain the insurances:
 - (i) on terms as set out in Schedule 4 ("Insurance") and as are acceptable to ED Operator, RMS, AGNSW and the Principal, acting reasonably;
 - (ii) with insurer(s) that are regulated by the Australian Prudential Regulation Authority and maintain an external financial security rating of not less than A- Standard and Poors (or equivalent other ratings agency), or are acceptable to ED Operator, RMS, AGNSW and the Principal, acting reasonably;
 - (iii) with a limit of indemnity of not less than the amount (if any) stated in Schedule 4 ("Insurance"); and
 - (iv) for the period of time stated in Schedule 4 ("Insurance").
- (b) At least 5 Business Days prior to commencing the carrying out of the Services, and as and when otherwise required by ED Operator, RMS, AGNSW, the Principal or the D&C Contractor, the Independent Certifier must produce for inspection documentary evidence that the insurances in sub-clause (a) have been effected and are being maintained in accordance with this document. The effecting of insurance under this clause 7 shall not in any way limit the obligations and liabilities of the Independent Certifier under the provisions of this document.

8 Indemnity

- (a) The Independent Certifier indemnifies ED Operator, RMS, AGNSW, the Principal and the D&C Contractor from and against any Claim or Loss which ED Operator, RMS, AGNSW, the Principal and the D&C Contractor or any one of them suffers, incurs or becomes liable for or may suffer, incur or become liable for arising out of or in any way in connection with a breach by the Independent Certifier of this document or any wrongful or negligent act or wrongful or negligent omission of the Independent Certifier.
- (b) The Independent Certifier's liability to indemnify the Principal will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of the Principal directly contributed to the relevant Loss or Claim.
- (c) The Independent Certifier's liability to indemnify ED Operator will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of ED Operator directly contributed to the relevant Loss or Claim.
- (d) The Independent Certifier's liability to indemnify the D&C Contractor will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of the D&C Contractor directly contributed to the relevant Loss or Claim.
- (e) The Independent Certifier's liability to indemnify RMS will be reduced proportionally to the extent that any wrongful or negligent act or wrongful or negligent omission of RMS directly contributed to the relevant Loss or Claim.

- (f) The Independent Certifier's liability to indemnify AGNSW will be reduced proportionally to the extent that any act or omission of AGNSW directly contributed to the relevant Loss or Claim.

9 Payment

9.1 Fees

AGNSW is liable to pay the fees set out in Schedule 2 ("Fees") for the performance of the Services by the Independent Certifier.

9.2 Invoices

At the end of each calendar month, the Independent Certifier must submit to AGNSW a detailed payment claim, in a form approved by AGNSW, showing:

- (a) the total amount previously paid to the Independent Certifier in respect of the performance of the Services;
- (b) the amount claimed by the Independent Certifier for that month or period in relation to the Services; and
- (c) such other information as may be reasonably required by AGNSW.

9.3 Payment

Within 20 Business Days after receipt of a claim under clause 9.2, AGNSW must assess and pay to the Independent Certifier the amount properly payable to the Independent Certifier for that month or period in respect of the Services.

10 Goods and services tax

10.1 Interpretation

For the purposes of this clause 10:

- (a) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 10 unless the contrary intention appears;
- (c) unless expressly stated otherwise in this document, all consideration to be provided under this document is exclusive of GST; and
- (d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it were a separate supply.

10.2 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this document, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.

- (c) This clause 10.2 does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

10.3 Adjustment events

If an adjustment event arises for a supply made under or in connection with this document, the GST Amount must be recalculated to reflect that adjustment, the supplier or the recipient (as the case may be) must make any payments necessary to reflect the adjustment and the supplier must issue an adjustment note.

10.4 Reimbursements

Any payment, reimbursement, indemnity or similar payment that is required to be made under this document which is calculated by reference to an amount paid by another party shall be reduced by 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. If the reduced payment is consideration for a taxable supply, clause 10.2 will apply to the reduced payment.

10.5 Calculation of payments

If an amount payable under this document is to be calculated by reference to:

- (a) the amount payable for a taxable supply then, for the purposes of that calculation, the amount is to be calculated by reference to the GST-exclusive amount payable for the taxable supply; and
- (b) the amount payable for an acquisition then, for the purposes of that calculation, the amount payable is calculated by reference to the GST-exclusive amount payable for the acquisition.

10.6 Survival

Clause 10.1 to clause 10.5 inclusive do not merge on the rescission, termination or expiration of this document.

11 Dispute resolution

11.1 Determination of Disputes

Any Dispute will be resolved in accordance with the requirements and procedures set out in this clause 11.

11.2 Negotiation

- (a) If any party considers that there is a Dispute, then:
- (i) that party may notify the other parties in writing of the Dispute, setting out full particulars of the Dispute ("**Dispute Notice**");
- (ii) within 10 Business Days after the Dispute Notice is given under clause 11.2(a)(i), the Representatives of each party will meet and use reasonable endeavours to resolve the Dispute by joint discussions;
- (iii) if the Dispute has not been resolved within 20 Business Days after the date on which the Dispute Notice was given under clause 11.2(a)(i), any party may refer the Dispute to senior representatives of each other party (who must have authority to settle the Dispute and who must not be a Representative under this document) who will meet within 5 Business Days and use

reasonable endeavours to resolve the Dispute by joint discussions; and

- (iv) if the Dispute has not been resolved within 20 Business Days after the date on which the Dispute was referred to senior representatives under clause 11.2(a)(i), any party may refer the Dispute to the chief executive officers (or equivalent personnel) of each party who will meet within 5 Business Days and use reasonable endeavours to resolve the Dispute by joint discussions.

- (b) Each meeting under clause 11.2(a) will be without prejudice except to the extent of any agreements made, recorded and signed by the attendees.

11.3 Failure to resolve Dispute by negotiation

If the Dispute is not settled by negotiation under clause 11.2, then any party may commence court proceedings in relation to the Dispute.

11.4 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has complied with the procedures in this clause 11, unless the party seeks injunctive or other interlocutory relief.

11.5 Continuation of rights and obligations

Despite the existence of a Dispute or difference each party will continue to perform its obligations under this document.

12 Assignment and subcontracting

12.1 Independent Certifier

The Independent Certifier:

- (a) must not assign this document or subcontract any part of the Services without the prior written consent of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor; and
- (b) remains responsible for performing the Services in accordance with this document, despite any subcontracting.

12.2 ED Operator, RMS, AGNSW and the Principal

ED Operator, RMS, AGNSW or the Principal may assign this document where, at the same time of the assignment, ED Operator, RMS or AGNSW (as applicable) assigns to the assignee the Interface Deed and in the case of the Principal, the D&C Contract.

12.3 D&C Contractor

The D&C Contractor may not assign, transfer or otherwise deal with its rights under this document without the prior written consent of the Principal.

13 Information, access and assistance

13.1 Information

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor must each provide such information and documentation to the Independent Certifier as:

- (a) is required to be provided under this document, the Interface Deed or the D&C Contract and at the times that information and documentation is required to be provided under this document, the Interface Deed or the D&C Contract; and
- (b) otherwise is reasonably required by the Independent Certifier to enable it to perform its obligations and discharge its duties and functions under this document and as soon as reasonably practicable after the Independent Certifier requests that information and documentation.

13.2 Access

- (a) The Principal, AGNSW and the D&C Contractor must provide such access to the Works as may be required by the Independent Certifier, or as is necessary, from time to time, to enable the Independent Certifier to perform its obligations and discharge its duties and functions under this document.
- (b) The Independent Certifier must, when accessing the Works under clause 13.2(a):
 - (i) comply with any reasonable access requirements and procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) stipulated by the Principal, AGNSW or the D&C Contractor, and ensure that its officers, employees, agents and contractors also comply with such requirements and procedures; and
 - (ii) not, and must use its reasonable endeavours to ensure that its officers, employees, agents and contractors also do not, unreasonably obstruct or interfere with the carrying out of the Works.
- (c) If the Independent Certifier requires access to Zone 2B or Zone 3 to enable it to perform its obligations and discharge its duties and functions under this document, then it may only access that land with ED Operator's prior written consent (not to be unreasonably withheld) and it must, when accessing that land:
 - (i) comply with any reasonable access requirements and procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) stipulated by ED Operator, and ensure that its officers, employees, agents and contractors also comply with such requirements and procedures; and
 - (ii) not, and must ensure that its officers, employees, agents and contractors also do not:
 - (A) access Zone 3 other than during Planned ED Lane Occupancy Periods agreed between AGNSW and ED Operator under the Interface Deed;
 - (B) interfere with the operation and use of Zone 2B and Zone 3 and other property (including infrastructure) on those areas; or
 - (C) cause any traffic adjustment on Zone 3 or impact on Zone 2B and Zone 3 and other property (including infrastructure) on those areas.

13.3 Assistance

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor agree to:

- (a) promptly provide the Independent Certifier with whatever other assistance the Independent Certifier may reasonably require in connection with the performance of its obligations and the discharge of its duties and functions under this document;
- (b) not interfere or attempt to influence the Independent Certifier so that the Independent Certifier breaches its obligations under clause 2.2(c); and
- (c) provide to the Independent Certifier on request such information as the Independent Certifier reasonably requires in order to assist the Independent Certifier in carrying out and performing the Services.

13.4 Specialist advice

- (a) In carrying out the Services, the Independent Certifier will, if it is necessary to obtain consultant or specialist advice, obtain that advice from sub-consultants and contractors independent of ED Operator, RMS, AGNSW, the Principal and the D&C Contractor, unless ED Operator, RMS, AGNSW, the Principal and the D&C Contractor agree otherwise.
- (b) If ED Operator, RMS, AGNSW, the Principal and the D&C Contractor do not approve the appointment of the sub-consultant or contractor requested by the Independent Certifier, such approval not to be unreasonably withheld or delayed, then the issue of the appointment of the subcontractor or contractor will be treated as a dispute and dealt with in accordance with clause 11
- (c) If ED Operator, RMS, AGNSW, the Principal and the D&C Contractor agree with the Independent Certifier's request or appointment of the sub-consultant or contractor determined under clause 11, then the Independent Certifier must engage that sub-consultant or contractor on terms reasonably approved by the ED Operator, RMS, AGNSW, the Principal and the D&C Contractor at the cost of AGNSW.

14 Termination

14.1 Termination by ED Operator, RMS, AGNSW, the Principal and the D&C Contractor

ED Operator, RMS, AGNSW, the Principal and the D&C Contractor jointly may terminate this document:

- (a) immediately by written notice to the Independent Certifier if a Termination Event occurs; or
- (b) upon 30 Business Days written notice to the Independent Certifier.

14.2 Termination by the independent Certifier

The Independent Certifier may terminate this document upon 30 Business Days' notice to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor if there are persistent material breaches of the payment obligations of AGNSW under clause 9 and such breaches are not promptly remedied or cured after notice from the Independent Certifier.

14.3 Accrued rights or remedies not affected

Termination of this document does not affect any accrued rights or remedies of any party.

14.4 Return of records

- (a) Within 5 Business Days after the termination of the engagement of the Independent Certifier, the Independent Certifier must deliver to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor jointly all books, records, plans, specifications and other documents relating to the obligations, functions or duties of the Independent Certifier under this document which are in its possession or under its control. The Independent Certifier may keep for its own records a copy of any such books, records, plans, specifications, or other documents so delivered to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor.
- (b) The Independent Certifier acknowledges that ED Operator, RMS, AGNSW, the Principal and the D&C Contractor have the right to use, for the purposes of the works, all books, records, plans, specifications and other documents the Independent Certifier has delivered to ED Operator, RMS, AGNSW, the Principal and the D&C Contractor.

15 Confidential Information and privacy

15.1 Confidential Information

Subject to clauses 15.4 and 15.5, no Confidential Information may be disclosed by the Receiving Party to any person except:

- (a) to Representatives of the Receiving Party or its Related Bodies Corporate requiring the information for the purposes of this document;
- (b) with the prior written consent of the Disclosing Party;
- (c) if the Receiving Party is required to do so by law, a stock exchange or any regulatory authority; or
- (d) if the Receiving Party is required to do so in connection with legal proceedings relating to this document.

15.2 Disclosure of Confidential Information

If the Receiving Party discloses information under clause 15.1(a) or (b) the Receiving Party must use its reasonable endeavours to ensure that recipients of the Confidential Information do not disclose the Confidential Information except in the circumstances permitted in clause 15.1.

15.3 Use of Confidential Information

The Receiving Party must not use any Confidential Information except for the purpose of performing its obligations under this document.

15.4 Excluded Information

Clauses 15.1, 15.2 and 15.3 do not apply to Excluded Information.

15.5 Privacy

The Independent Certifier agrees:

- (a) to comply with all relevant Privacy Laws in connection with Personal Information;
- (b) not to disclose Personal Information outside of Australia without written consent from the Principal;

- (c) not to do anything with Personal Information that may cause the Principal to be in breach of any relevant Privacy Law; and
- (d) not to give access to, or copies of, Personal Information to anyone unless required to do so under a Privacy Law.

This clause 15.5 prevails over the balance of this clause 15 to the extent of any inconsistency in respect of Personal Information which is also Confidential Information.

15.6 Use of Personal Information

If a party is required or authorised by this document or by Law to retain any Personal Information which is part of the Confidential Information, that party may use and disclose that Personal Information for the purpose for which it is required or authorised to be retained under this document or as required by that other Law.

15.7 Survival on termination

This clause 15 will survive termination of this document.

16 Announcements

16.1 Public announcements

Subject to clause 16.2, the Independent Certifier may not make or send a public announcement, communication or circular concerning the matters referred to in this document unless it has first obtained the written consent of ED Operator, RMS, AGNSW and the Principal which consent is not to be unreasonably withheld or delayed.

16.2 Public announcements required by law

Clauses 16.1 and 16.2 do not apply to a public announcement, communication or circular required by Law or a regulation of a stock exchange, if the party required to make or send it has:

- (a) provided the other party with sufficient notice to enable it to seek a protective order or other remedy; and
- (b) provided all assistance and co-operation that the other party considers necessary to prevent or minimise that disclosure.

17 Communications

17.1 Form

- (a) Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications ("**Communications**") in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.
- (b) All Communications (other than email Communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).
- (c) Email Communications must state the first and last name of the sender and are taken to be signed by the named sender.

17.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then Communications must be sent to the changed contact details.

17.3 Certain Communications not to be sent by email

Despite anything else in this clause 17, the following Communications must not be sent by email:

- (a) a notice terminating this document under clause 14; and
- (b) a Dispute Notice given under clause 11.

17.4 When effective

Communications take effect from the time they are received or taken to be received under clause 17.5 (whichever happens first) unless a later time is specified in the Communication.

17.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 5 days after posting (or 10 days after posting if sent from 1 country to another); or
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

17.6 Receipt outside business hours

Despite anything else in this clause 17, if Communications are received or taken to be received under clause 17.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

18 General

18.1 Prompt performance

If this document specifies when a party agrees to perform an obligation, the party agrees to perform it by the time specified. Each party agrees to perform all other obligations promptly.

18.2 Variation

A provision of this document may not be varied except in writing signed by each party.

18.3 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by Law independently of this document.

18.4 Consents, approvals or waivers

- (a) A provision of this document, or any right, power or remedy created under it, may not be waived except in writing signed by the party giving the waiver. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A party is not liable for any loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (b) By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

18.5 No reliance

No party has relied on any statement by any other party that has not been expressly included in this document.

18.6 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

18.7 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

18.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document given by the Independent Certifier:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

18.9 No Merger

The rights and obligations of the parties under this document do not merge after the expiry of this document.

18.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of this document.

18.11 Service of process

Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of Communications under this document.

18.12 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.13 Supervening Law

Any present or future Law which operates to vary the obligations of a party in connection with this document with the result that any other party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

18.14 Provisions prohibited by Law

If:

- (a) a Law would otherwise make a provision of this document illegal, void or unenforceable; or
- (b) a provision of this document would otherwise contravene a requirement of a law or impose an obligation or Loss which is prohibited by Law,

this document is to be read as if that provision were varied to the extent necessary to comply with that Law or, if necessary, omitted.

18.15 Relationship

Except where this document expressly states otherwise, it does not create a relationship of employment, trust, agency, partnership or joint venture between the parties.

18.16 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

18.17 Governing Law and jurisdiction

The Law in force in New South Wales governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

18.18 Inconsistent Law

To the extent the Law permits, this document prevails to the extent it is inconsistent with any Law.

18.19 No liability for Loss

Unless this document expressly states otherwise, ED Operator, RMS, AGNSW, the Principal and the D&C Contractor are not liable for any Loss, or Costs arising

in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

18.20 Survival

Clauses [insert] and any other clauses which are expressed to survive termination will survive rescission, termination or expiration of this document.

EXECUTED as a deed

Independent Certifier Deed

Schedule 1 Document Particulars

ITEM	DESCRIPTION	PARTICULARS
1	Key Personnel (clause 1)	<i>[insert]</i>
2	Independent Certifiers Representative (clause 1)	<i>[insert]</i>

Independent Certifier Deed

Schedule 2 Fees

1 Fixed fee

For Services under Item no. [#] in Schedule 3 Fixed fee of \$[#]

For Services under Item no. [#] in Schedule 3 Fixed fee of \$[#]

2 Schedule of rates

Hourly and daily rate and fixed fees for any work in performing the Services or any other work instructed by ED Operator, RMS, AGNSW, the Principal and the D&C Contractor under clause 6.1(a)(iii):

Person	Role	\$/hr	\$/day
[insert]			

Note: The above hourly and daily rates are inclusive of all disbursements and other expenses.

Independent Certifier Deed

Schedule 3 Services

1 Services

1.1 Scope of Services

- (a) The Independent Certifier must discharge the functions, obligations, duties and services which the D&C Contract, the Interface Deed and this document contemplate will be discharged by the Independent Certifier, including the following:
- (i) receive and review each revision of the Project Plans within [10] Business Days of submission of the plan from the D&C Contractor or AGNSW or the Principal (as applicable) and, if the Independent Certifier deems the Project Plans to be acceptable then, provide the relevant certification for each Project Plan;
 - (ii) receive and review all ED IFC Design Documentation and Design Documentation Amendments, 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 Independent Certifier;
 - (iii) receive and review the results of the Monitoring Regime as contemplated by item 7 of Schedule 3 to the Interface Deed;
 - (iv) certify that the ED IFC Design Documentation and each Design Documentation Amendment complies with the Interface Deed and the D&C Contract;
 - (v) review the Contractor's schedule of designated witness points as required by the Interface Deed and obtain RMS and ED Operator acceptance;
 - (vi) observe, monitor, review and assess the quality of the Works and the durability of the Works to verify the Contractor's compliance with the requirements of the Design Documentation and the ED IFC Design Documentation;
 - (vii) independently certify that the Works comply with, and are constructed in accordance with, the Design Documentation and the ED IFC Design Documentation; and
 - (viii) execute and provide Certificates in the form of:
 - (A) Project Plan certificates;
 - (B) Design Documentation certificates;
 - (C) Temporary Works certificates;
 - (D) monthly construction certificates;
 - (E) a Certificate of Works Completion;

- (b) During the period from the date of this document until the Date of Completion, the Independent Certifier must in accordance with clause 2.5 of this document, provide a monthly progress report within [7] days of the following month.

2 Certification Activities

2.1 Application of certification activities

- (a) The provision of certification services in respect of the Works undertaken by the D&C Contractor is the key process to be implemented by the Independent Certifier during the design and construction phases of the Project.
- (b) The Independent Certifier must implement and operate systems for undertaking the functions set out below in clauses 2.2, 2.3, 2.4, 2.5 and 2.6 of this Schedule 3.

2.2 Review and certification of Project Plans

- (a) The D&C Contractor is required by the D&C Contract to prepare and submit to the Principal, AGNSW, RMS and the ED Operator the Project Plans. The purpose of each Project Plan is for the D&C Contractor to describe in detail how the D&C Contractor intends to carry out the Works in accordance with the requirements of the D&C Contract;
- (b) Project Plans are controlled documents that will require ongoing development, amendment and updating throughout the duration of the Works.
- (c) The Independent Certifier must:
 - (i) maintain a register of all Project Plans received from the Contractor;
 - (ii) make itself familiar with all received Project Plans and raise comments where applicable; and
 - (iii) in accordance with clause 2.2(h) of this document, issue certificates and provide a copy of any certificate or determination made in the course of performing the Services to each of the ED Operator, RMS, AGNSW and the Principal.

2.3 Risk assessment

- (a) The Independent Certifier acknowledges that the level and scope of certification of the design and certification of the construction activity will be based on a continuous risk assessment process taking into account the importance of, without limitation:
 - (i) commercial, safety and community involvement elements (etc.);
 - (ii) results of previous audits and surveillance;
 - (iii) engineering, environmental constraints and difficulties;
 - (iv) effect on future work; and
 - (v) any other item identified during the Works.
- (b) The Independent Certifier will determine the extent and type of certification required for the Project having regard to the following:

- (i) complexity of the design;
- (ii) assessed risk and the likelihood and consequence of failure;
- (iii) requirements of the D&C Contract, the Interface Deed, the Design Documentation and the ED IFC Design Documentation;
- (iv) durability implications;
- (v) adequacy of documentation content; and
- (vi) compliance with this document, the Interface Deed and the D&C Contract.

2.4 Design certification

- (a) The D&C Contractor is required under the D&C Contract to prepare and submit to the Principal, AGNSW, RMS and the ED Operator the ED IFC Design Documentation and any Design Documentation Amendment.
- (b) The Independent Certifier will independently verify that the design of the Works (including any Temporary Works) complies with the requirements of the D&C Contract, the Design Documentation and the ED IFC Design Documentation.
- (c) Design certification 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

- (a) The D&C Contractor must provide to the Independent Certifier, ED Operator and RMS a copy of each Design Package.
- (b) The Independent Certifier will review, where appropriate, each Design Package (including, but not limited to, drawings, specifications and reports).
- (c) During the review process the Independent Certifier is to ensure that any comment by RMS, ED Operator, the Principal or AGNSW (as applicable) on a Design Package has been incorporated or determined before the issue of the certificate for any Design Package.
- (d) Following resolution of any outstanding qualifications and issues raised by the Independent Certifier, RMS, ED Operator, the Principal or AGNSW (as applicable), the Independent Certifier will certify that the Design Package complies with the D&C Contract and the Interface Deed.
- (e) 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 Design Package and the design output meets the requirements of the design criteria necessary to comply with the D&C Contract and the Interface Deed and all relevant Statutory Requirements and all relevant codes and standards.
- (f) If any of ED IFC Design Documentation or Design Documentation Amendment is rejected, then the design amendments will be subjected to the same certification process outlined above.

- (g) The Independent Certifier acknowledges that the response time for reviewing the Design Documentation will be [10] Business Days of receipt of the Design Documentation.

Other Outputs

- (h) The Independent Certifier must review and certify amended ED IFC Design Documentation that might arise during the course of construction, including any Design Documentation Amendments.

2.5 Construction works certification

General

- (a) The Independent Certifier must independently certify that the Works as constructed (including Temporary Works and product and processes) comply with the requirements of the D&C Contract, the Interface Deed, the Design Documentation and the certified ED IFC Design Documentation.

Works Completion

- (b) When Works Completion of the Works has been achieved, the Independent Certifier must issue the Certificate of Works Completion, verifying that the Works have been completed in accordance with the D&C Contract, the Interface Deed, the Design Documentation, and the certified ED IFC Design Documentation.

Independent Certifier Deed

Schedule 4 Insurance

Insurance Policy	Minimum Requirements
Public and Products Liability Insurance	<p>(a) Public and products liability policy that covers the liability of the Independent Certifier and indemnifies ED Operator, RMS, AGNSW, the Principal and the D&C Contractor and their Related Bodies Corporate and the Security Trustee, for:</p> <ul style="list-style-type: none"> (i) loss of or damage to property; and (ii) the death of or injury to any person. <p>(b) The limit of liability for public liability must be no less than \$20 million for any one occurrence</p> <p>(c) The limit of liability for products liability must be \$20 for each claim and in the aggregate for all occurrences in any one 12 month policy period.</p> <p>(d) The policy must be maintained from the Commencement Date until completion of the Services.</p>
Professional Indemnity	<p>(a) Professional indemnity insurance covering the civil liability of the Independent Certifier arising from a breach of duty owed in a professional capacity, by reason of any act or omission of the Independent Certifier or any of its employees or agents.</p> <p>(b) The limit of liability must be no less than \$10 million for any one claim and in the annual aggregate.</p> <p>(c) The policy must be maintained from the Commencement Date until the earlier of the expiry of 7 years after the date of completion of the Services or the expiry of 7 years after the termination of this document.</p>
Worker's Compensation Insurance	<p>(a) Workers' compensation insurance as required by Law.</p> <p>(b) The limit of liability provided by the insurance policy must be not less than that required by Law.</p> <p>(c) The policy must be maintained so as to be in force from the Commencement Date until completion of the Services.</p>

Independent Certifier Deed

Signing page

DATED: _____

ED Operator

EXECUTED by AIRPORT MOTORWAY LIMITED (ABN 28 057 283 093) in accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth) by authority of its directors:)	
.....)	
Signature of director)	Signature of director/company secretary
.....)	
Name of director (block letters))	Name of director/company secretary (block letters)

EXECUTED by AMT MANAGEMENT LIMITED as trustee of the Airport Motorway Trust (ABN 55 078 953 607 accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth) by authority of its directors:)	
.....)	
Signature of director)	Signature of director/company secretary
.....)	
Name of director (block letters))	Name of director/company secretary (block letters)

RMS

SIGNED SEALED AND DELIVERED)
for and on behalf of **ROADS AND**)
MARITIME SERVICES by its)
authorised delegate in the presence of:)

.....)
Signature of witness)

.....)
Authorised Delegate Signature)

.....)
Name of witness (block letters))

.....)
Print Name)

Attachments

Attachments 1, 2, 2A and 3 do not form part of the Contract.

- Attachment 1 GC21 Start-up Workshop**
- Attachment 2 Performance Evaluation (Example)**
- Attachment 2A Performance Evaluation**
- Attachment 3 Performance Evaluation Record**

Attachment 1 – The GC21 Start-up Workshop

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful contract. This Attachment 1 is intended as a guide for the participants.

The workshop takes place within 28 days after the Date of Contract. The workshop should take half a day, although large or complex contracts may require longer.

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

Agenda

The agenda should include:

- welcome by the facilitator;
- introduction of participants;
- workshop purpose and, guidelines;
- review of the proposed workshop agenda;
- overview of the Contract;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- identification of key concerns and solutions;
- opportunities for innovation;
- closing comments and feedback; and
- close of workshop.

A copy of the Procurement Practice Guide *GC21 meetings and workshops* may be obtained from the NSW Government Procurement System for Construction on the ProcurePoint website.

Attachment 2 – Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Evaluation and monitoring meetings should focus on achievable improvements in contract communication and management. Attachments 1 and 2 provide a structure for evaluation and discussion

Attachment 2 indicates topics that are suitable for assessing performance and monitoring progress as the Contract proceeds.

They are provided for guidance only, and the topics are suggestions only. Each evaluation team should choose its own topics to reflect issues specific to the Contract. Use Attachment 2A on the next page to develop a Contract-specific Performance Evaluation form

Contract name:
 Contract number:
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
Communication	<ul style="list-style-type: none"> co-operation between parties duty not to hinder performance early warning evaluation and monitoring 	<input type="checkbox"/>	<input type="checkbox"/>	
Time	<ul style="list-style-type: none"> issues affecting time extensions of time expected completion dates 	<input type="checkbox"/>	<input type="checkbox"/>	
Financial	<ul style="list-style-type: none"> issues affecting the budget extra work payments additional information required 	<input type="checkbox"/>	<input type="checkbox"/>	
Quality	<ul style="list-style-type: none"> quality standards design requirements fitness for purpose, innovation Faults, Defects rectification 	<input type="checkbox"/>	<input type="checkbox"/>	
Safety	<ul style="list-style-type: none"> issues affecting safety on the Site safety outside the Site. safety risks safety equipment 	<input type="checkbox"/>	<input type="checkbox"/>	
Relationships	<ul style="list-style-type: none"> open discussion actions effective working together attendance 	<input type="checkbox"/>	<input type="checkbox"/>	
Environment	<ul style="list-style-type: none"> issues affecting the environment noise and dust issues healthy environment waste management, 	<input type="checkbox"/>	<input type="checkbox"/>	
Contract Relations	<ul style="list-style-type: none"> Subcontractor and Supplier issues workplace relations and Site amenities interaction of workers with others 	<input type="checkbox"/>	<input type="checkbox"/>	

• **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for items needing improvement.

Attachment 2A – Performance Evaluation

Insert in the form below topics that are important to the Contract.

Contract name:
 Contract number:
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Topic	Objectives	Your rating (this period)	Team rating (this period)	Main Issue & Agreed Action
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	

Suggested topics are: Communication, Time, Relationships with others affected by the Works, Budget and Financial Issues, Scope Management, Quality, Safety, Environment, Contract Relations, Community Consultation, Aboriginal Participation, Maintenance of Asset Operation.

- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for topics needing improvement.

Evaluation trends: scenarios

The Team ratings for each topic are recorded here so that overall performance can be assessed.

Contract name:

Contract number:

Date:

Rating system

5 excellent

4 above expectation

3 meeting expectation

2 below expectation

1 unsatisfactory

Meetingnumber	1	2	3	4	5	6	7	8	9	10	11	12
month												
year												

Deteriorating Performance

Communication	5													
	4	■												
	3	■	■											
	2	■	■	■	■	■								
	1	■	■	■	■	■	■	■						

Steady Performance

Communication	5													
	4													
	3	■	■	■	■	■	■	■						
	2	■	■	■	■	■	■	■						
	1	■	■	■	■	■	■	■						

Improving Performance

Communication	5													
	4			■	■	■	■	■						
	3	■	■	■	■	■	■	■						
	2	■	■	■	■	■	■	■						
	1	■	■	■	■	■	■	■						