# Annexure S - Builder's Side Deed









# Central Barangaroo Builder's Side Deed Stage

Barangaroo Delivery Authority

Authority

Grocon (CB) Developments Pty Limited

Developer

[Builder] Builder

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Our reference 18637/16133/80128948

# Table of contents

1.	Interpretation			<u></u>		
	1.1 1.2 1.3 1.4 1.5	Definitions		6		
2.	Warran	Warranty				
	2.1 2.2 2.3	Warranty as to Standard of Care Warranty as to Equipment supply Rectification		6		
3.	Assignment					
	3.1 3.2	Assignment by the BuilderAssignment by the Authority		7		
4.	Develo	Developer's Undertaking				
5.	Other a	agreements		7		
	5.1 5.2 5.3 5.4 5.5	CENDA  Access Terms of access  Limitation of Authority's obligations  Builder's obligations		7 3		
6.	Representations and warranties					
d	6.1 6.2 6.3 6.4	By Builder and Developer		10		
7.	©Costs1					
	7.1 7.2 7.3 7.4 7.5	Builder  Developer Interest on overdue amounts  Rate of interest  Compounding		10 10		
8.	Limitat	ion of Authority's liability	***************************************	11		
9.	Indemr	nity		11		
	9.1 9.2 9.3	Damage to persons and property indemnity .  Exclusions to indemnity		12		
10.	Notices	100 CON 1000		7.0		
	10.1 10.2 10.3 10.4 10.5 10.6	Form.  Delivery		12 13 13		
11.	Novatio	on		14		
12.	GST		***************************************	15		
	12.1 12.2 12.3	InterpretationReimbursementsAdditional amount of GST payable		15		

	10.1	Variation Variation	15
	12.4		15
	12.5	Exchange of non-monetary consideration	16
	12.6	Indemnities	16
	12.7	No merger	16
13.	Miscella	aneous	16
10.	mooon		
	13.1	Prompt performance	16
	13.2	Certificates	16
	13.3	Exercise of rights	
	13.4	Partial exercise of rights	16
	13.5	Delay in exercising rights	17
	13.6	Conflict of interest	17
	13.7	Remedies cumulative	17
	13.8	Rights and obligations are unaffected	17
	13.9	Continuing breaches	17
	13.10	Antecedent obligations	17
	13.11	Inconsistent law	.17
	13.12	Waiver and variation	
	13.13	Supervening Legislation	
	13.14	Approvals and consent	17
	13.15	Indemnifies	
	13.16	Confidentiality	
	13.17	Inconsistency	
	13.18	Several liability	
	13.19	Severability	
	13.20%	Further steps	10
	13.21	Terms	10
	13.22	Construction	10
	13.23	Effect of maratarium	10
( maria		Effect of moratorium	10
- Lylin	13.24	Applicable law	
	13.25	Serving documents	
The same of the sa	3.20	Counterparts	. 19
Annex	ure A - Plar	1	1
Annov	uro P. Nov	ration Dood	2



#### Builder's Side Deed made at

on

#### **Parties**

Barangaroo Delivery Authority ABN 94 567 807 277 of 21/201 Kent Street, Sydney NSW 2000 being a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (Authority)

Grocon (CB) Developments Pty Limited ACN 614 118 642 of 3 Albert Coates Lane Melbourne VIC 3000 (Developer)

[Builder] ABN [number] (Builder)

#### Background

- A. The Authority, the Developer, the General Guarantor and the Office Land Payment Guarantor have entered into the CENDA under which the Developer has agreed to carry out the Works in respect of the Developer's Project on the Project Site.
- B. The CENDA provides that the Developer will carry out or procure the carrying out of the Works on the Project Site.
- C. The Developer and the Builder have entered into the Building Contract to carry out the Works on the Project Site.
- D. The Builder has agreed to provide the Authority with the warranties set out in this deed.

# Operative provisions

# 1. Interpretation

#### 1.1 Definitions

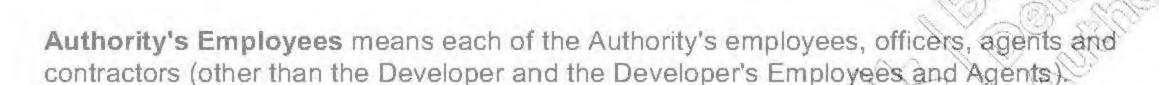
The following words have these meanings in this deed unless the contrary intention appears:

#### Authorised Officer means:

- (a) in the case of the Developer, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them; and
- (b) in the case of the Authority, the Chief Executive Officer of the Authority or a person performing the functions of that position or any other person appointed by the Authority and notified in writing to the parties to act as an Authorised Officer for the purposes of this deed; and
- (c) in the case of each other party, a person appointed by that party to act as an Authorised Officer for the purposes of this deed.

#### Authorisation includes:

- any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be prohibited or restricted in whole or in part by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of such period without such intervention or action.



Building Contract means the building contract between the Builder and the Developer to carry out the Works.

Business Day means a day other than:

- (a) a Saturday, Sunday or public holiday in Sydney; or
- (b) the days between 24 December and 2 January in each year; or
- (c) any days during the Christmas closedown period for the NSW government sector as described in the Premier's Memorandum M2016-01 and each replacement memorandum.

**CENDA** means the Central Barangaroo Development Agreement between the Authority, the Developer and others dated [date].

Claim means any claim, notice, demand, debt, account, action, expense, cost, lien, liability, proceeding, litigation, (including reasonable legal costs), investigation, judgement of any nature.

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Defects means any defect, deficiency, fault, error, omission, cracking, shrinkage, movement or expansion in the Works carried out under the Building Contract.

Defects Liability Period has the meaning it has in the CENDA.

Developer's Employees and Agents means each of the Developer's employees, officers, agents, contractors, licensees, and those persons who are on the Project Site because of the Works or the Developer's use of the Project Site under this deed.

Equipment means the materials, plant, equipment and other goods used in carrying out the Works.

**GST** has the meaning it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

Input Tax Credit has the meaning it has in the ANew Tax System (Goods and Services Tax)
Act 1999 (Cwlth).

Interest Rate means the rate of interest set out in clause 7.4.

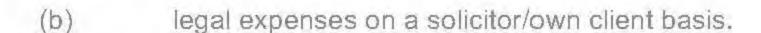
Law means:

- (a) the common law (including equity); and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, approvals, consents or certificates issued by any Authority,

present or future.

Loss means any damage, loss, cost, expense or liability whether direct, indirect, consequential, present or future, fixed or unascertained, actual or contingent including:

(a) any fines or penalties; and



Plan means the plan comprising Annexure A.

Prohibited Entity means any person or entity which:

- (a) is a "terrorist organisation" as defined in Part 5.3 of the Criminal Code Act 1995; or
- (b) is listed by the Minister for Foreign Affairs in the Government Gazette pursuant to Part 4 of the Charter of the United Nations Act 1945 which list as at the date of this agreement is available from the website of the Australian Department of Foreign Affairs and Trade or such other person or entity on any other list of terrorist or terrorist organisations maintained pursuant to the rules and regulations of the Australian Department of Foreign Affairs and Trade or pursuant to any other Australian legislation.

Project Site means the land hatched on the Plan being part [insert description of project site].

Security Interest means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

Works means the relevant part of the works specified in "Schedule FF - Staging Plan" of the CENDA.

# 1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature.

# 1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

# 1.4 Capitalised terms in the CENDA

Capitalised terms not defined, but used in this deed, have the same meaning as in the CENDA.

#### 1.5 Inconsistency with CENDA

If there is inconsistency between the provisions of this deed and the CENDA, the provisions of the CENDA prevail.

# 2. Warranty

#### 2.1 Warranty as to Standard of Care

The Builder represents and warrants to the Authority that:

- (a) it will:
  - (i) perform its obligations under the Building Contract to a standard of care, skill, judgment and diligence; and
  - ii) provide suitably qualified staff to a standard,

commensurate with a competent design and construction contractor experienced in work of a similar nature to the work under the Building Contract; and

- it will perform its obligations under the Building Contract in accordance with the Building Contract and all applicable legislative requirements; and
- the Works will at the end of the defects liability period under the Building Contract, be free from Defects.

# 2.2 Warranty as to Equipment supply

Where the Building Contract requires the Builder to supply equipment, in addition to the warranties in clause 2.1, the Builder warrants to the Authority that any Equipment:

- (a) is of good and merchantable quality;
- (b) is free from defects or faults in composition and manufacture;
- (c) conforms with the Building Contract;
- (d) conforms with any relevant Australian standard;
- (e) where selected or designed by the Builder, is fit for its purpose;
- (f) meets the requirements under the CENDA in relation to the Works;
- (g) is free from all liens, charges and encumbrances of any kind; and
- (h) is capable of safe and reliable operation.

#### 2.3 Rectification

Any Defects in the Works under the Building Contract, which are notified in writing by the Authority to the Builder during the Defects Liability Period must be made good by the Builder:

- (a) within the time stipulated by the Authority, such time to be reasonable having regard to the nature and scope of the work to rectify such defect; or
- (b) if no time is stipulated, then as soon as reasonably practicable,

and at no cost to the Authority.

# 3. Assignment

# 3.1 Assignment by the Builder

Except as set out in this deed the Builder may not assign or transfer its rights or obligations under this deed without the prior written consent of the Authority (which may be given or withheld in its absolute discretion and with or without conditions).

# 3.2 Assignment by the Authority

The Authority may at any time assign (in whole or part) its rights and obligations under this deed at any time to any entity which succeeds to the rights of the Authority under the CENDA and must promptly give the Builder written notice of any such assignment.

# 4. Developer's Undertaking

The Developer agrees not to do anything which may cause the Builder to breach this deed.

# 5. Other agreements

#### 5.1 CENDA

The parties acknowledge and agree that the rights granted to the Authority by the Builder under, and by virtue of this deed, are in addition to the rights of the Authority against the Developer under, and by virtue of, the CENDA.

#### 5.2 Access

- (a) The Builder and the Developer must (or must procure the relevant party to) during normal working hours (except in the case of an emergency) permit the Authority (including the Authority's Employees) full and free access to:
  - (i) inspect the Project Site, the Works, any place where the Works are being carried out and any materials intended to be incorporated in the Works but which are not on the Project Site; and
  - (ii) take copies or extracts of all relevant documents and records which the Developer is entitled access to under the Building Contract,

provided that the Authority complies with the Builder's site safety and security requirements, known to the Authority.

- (b) In exercising its rights of access under this clause 5.2, the Authority must:
  - (i) comply with the safety requirements of the Builder and Developer; and



(ii) ensure as far as reasonably practicable that the Authority's actions do not cause any unreasonable disruption of the Works.

#### 5.3 Terms of access

If the Authority (including the Authority's Employees) requires access to the Project Site, it must first give reasonable prior notice and details of its requirements (and in any event at least 2 Business Days) liaise with the site manager or Developer or such other representative as notified from time to time by the Developer in order to minimise disruption to the Works.

# 5.4 Limitation of Authority's obligations

The Builder acknowledges that:

- subject to the provisions of this deed and notwithstanding the execution of the CENDA, the Authority assumes no risk for liability arising of itself from the Authority's ownership of the Project Site (except where, and to the extent that, such liability arises as a result of the Authority's wrongful or reckless act or omission after the date of this deed), the suitability of the Project Site for the Developer's Project including the conditions that affect the Project Site and the suitability of the Project Site for construction of the Works contemplated under the Building Contract;
- (b) despite the execution of the CENDA and this deed, the Authority assumes no liability whatsoever to the Builder in connection with the Building Contract;
- c) nothing in this deed constitutes an obligation on the Authority to:
  - provide funding in connection with the Building Contract;
  - (ii) take any action to complete the Works; or
  - (iii) take any action to remedy, or take action which would be deemed to remedy, a default under the Building Contract, or procure that any of these things occur; and
- (d) the Authority is not liable to pay the Builder or procure payment to the Builder, of any money under this deed.

#### 5.5 Builder's obligations

The Builder must:

- (a) comply with its obligations under the Building Contract as and when they fall due;
- (b) not take any Security Interest over the Developer's interest in the Project Site or any of the Developer's other assets; and
- (c) not lodge a caveat against the Project Site.

# 6. Representations and warranties

# 6.1 By Builder and Developer

The Builder and Developer each represent and warrant (in respect of themselves only and not each other) to the Authority that:

(a) it has been incorporated as a company limited by shares in accordance with its place of incorporation, is validly existing under those Laws and has power and authority to carry on its business as it is now being conducted;

- (b) it has the power to enter into and comply with its obligations under this deed;
- (c) it has full power and authority to enter into and perform its obligations (if any) under:
  - (i) this deed
  - (ii) the Building Contract;
  - (iii) supply agreements;
  - (iv) consultancy agreements; and
  - (v) any other document to which it is expressed to be a party

connected to or arising out of those deeds or agreements or the transactions contemplated by any one or more of them;

- (d) it has taken or, in respect of documents not executed as at the date of this deed, will promptly take, all necessary action to authorise the execution, delivery and performance of the documents referred to in clause 6.1(c) to which it is expressed to be a party in accordance with their terms;
- (e) the documents referred to in clause 6.1(c) to which it is expressed to be a party constitute its legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms;

the execution, delivery and performance by it of the documents referred to in clause 6.1(c) to which it is expressed to be a party do not and will not violate, breach, or result in a contravention of:

- (i) any Law, regulation or Authorisation;
- (ii) its memorandum and articles of association or other constituent documents; or
- (iii) any encumbrance or document which is binding upon it or any of its assets; and
- (g) the Building Contract is not void, voidable by the Builder or unenforceable by the Developer;
- (h) the Builder has no right, without the Developer's consent, which is now exercisable or which with the giving of notice, lapse of time or fulfilment of any other condition will or may become exercisable, to:
  - (i) terminate, rescind, repudiate, vary or determine the Builder's employment under the Building Contract; or
  - (ii) refuse to perferm or observe any of the Builder's obligations under the Building Contract;
- (i) the Building Contract and this deed set out all the terms, conditions and warranties of the agreement, arrangements and understandings between the Developer and the Builder in respect of the subject matter of the Building Contract;
- the Developer has not granted the Builder a Security Interest over the Developer's interest in the Project Site or any of the Developer's other assets;
- (k) it is solvent and there are reasonable grounds to expect that it will continue to be able to pay its debts as and when they fall due; and

(I) it benefits by entering into this deed.

# 6.2 By Builder

The Builder represents and warrants to the Authority that:

- it has not entered into this deed in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of the Authority (including any advice, warranty, representation or undertaking); and
- it is not a Prohibited Entity and is not owned or controlled by, or acts on behalf of, any Prohibited Entity; and
- (c) it will ensure that it complies with all anti-terrorism legislation in Australia including, without limitation, Part 4 of the Charter of the United Nations Act 1945 and Part 5.3 of the Criminal Code Act 1995.

#### 6.3 Further assurances

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

### 6.4 Authority relies on warranties

Each of the Developer and the Builder acknowledge that the Authority will enter into this deed and that the Authority will make available the Project Site in reliance on the accuracy of the representations and warranties in this deed.

#### 7. Costs

#### 7.1 Builder

The Builder agrees to pay its own Costs under this deed.

#### 7.2 Developer

The Developer agrees to pay or reimburse the Authority on demand for:

- (a) its own and its Authorised Officer's and consultant's reasonable costs in enforcing or exercising its rights under this deed including, without limitation, legal costs on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this deed or a payment, receipt or other transaction contemplated by it.

#### 7.3 Interest on overdue amounts

The Developer agrees to pay interest on any amount payable by the Developer under this deed which is not paid on the due date for payment. Interest:

- (a) accrues daily from (and including) the due date to (but excluding) the date of actual payment;
- (b) is payable before and after any judgement; and

(c) is calculated on actual days elapsed and a year of 365 days.

#### 7.4 Rate of interest

The rate of interest applying to each daily balance is the rate 4% per annum above the 90 day Bank Bill Rate last published on or before that day in The Australian Financial Review (or if no such rate has been published, another rate set by the Authority in good faith).

## 7.5 Compounding

Interest payable under clause 7.3 which is not paid when due for payment may be added to the overdue amount by the Authority monthly on the last day of each calendar month. Interest is payable on the increased overdue amount at the Interest Rate in the manner set out in clause 7.4.

# 8. Limitation of Authority's liability

The Authority:

- (a) is not obliged to exercise any of its rights under this deed; and
- (b) is not liable to the Developer or the Builder:

Authorised Officers (except to the extent that such liability is caused or contributed to by the Authority's or its consultants' or Authorised Officers' negligent, wrongful or reckless act or omission provided that any such act did not arise out of a breach by the Developer or Builder of any of its obligations under this deed) or otherwise in respect of anything referred to in this deed; and

in respect of the performance of any of the Developer's obligations under the Building Contract (including the payment of any progress claims).

# 9. Indemnity

(ii)

# 9.1 Damage to persons and property indemnity

The Builder agrees to indemnify and keep indemnified the Authority and the Authority's Employees against any liability or Loss arising from, and any Costs incurred in connection with:

- (a) Loss of or damage to property of the Authority and the Authority's Employees including existing property in or upon the Project Site which the work under the Building Contract is being carried out; and
- (b) Claims by any person against the Authority or the Authority's employees, agents, officers and contractors in respect of personal injury or death or Loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Builder of the work under the Building Contract, but the Builder's liability to indemnify the Authority and the Authority's Employees shall be reduced proportionally to the extent that the wrongful or reckless act or omission of the Authority or its employees or agents contributed to the Loss, damage, death or injury.

# 9.2 Exclusions to indemnity

Clause 9.1 shall not apply to:

- (a) the extent that the liability of the Builder is limited by another provision of this deed;
- (b) exclude any other right of the Authority to be indemnified by the Builder;
- (c) things for the care of which the Builder is responsible under the Building Contract; and
- (d) claims in respect of the right of the Developer to have the work under the Building Contract carried out.

# 9.3 Maximum liability

Despite any other provision of the Building Contract, or this deed:

- (a) the Builder's maximum aggregate liability to the Authority under or in connection with this deed is no greater than, or different to, the Builder's maximum liability to the Developer under the Building Contract (where that liability arises under a specific provision of the Building Contract, this deed, for breach of contract, by way of indemnity, in negligence or otherwise);
- (b) if the Builder has a liability to the Developer under or in connection with the Building Contract (whether that liability arises under a specific provision of the Contract, for breach of contract, by way of indemnity, in negligence or otherwise) payment by or on behalf of the Builder:
  - (i) to the Developer of an amount in respect of the Builder's liability under or connection with the Building Contract, also satisfies, to the same extent, any claim by the Authority against the Builder for a breach of this deed; and
  - (ii) to the Authority of an amount in respect of the Builder's liability under or connection with this deed also satisfies, to the same extent, any claim by the Developer under the Building Contract.
- (c) Clauses 9.3(a) and 9.3(b) do not apply to any claim made pursuant to clause 9.1.

#### 10. Notices

#### 10.1 Form

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 an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

Authority

Name: Address: Barangaroo Delivery Authority

21/201 Kent Street

SYDNEY NSW 2000

Email:

[insert email address of the responsible person for receipt of notices] and [insert general mailbox if required]

For the attention of: [insert]

#### Developer

Name: Grocon (CB) Developments Pty Limited ACN 614 118 642

Address: 3 Albert Coates Lane Melbourne VIC 3000

Email: [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

#### Builder

Name: Grocon Constructors (NSW) Pty Ltd
Address: 3 Albert Coates Lane Melbourne VIC 3000

Email: [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

#### 10.2 Delivery

Notices must be:

(a) left at the addresses referred to in clause 10.1; or

(b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in

clause 10.1; or

c) sent by email to the email address (or addresses) referred to in clause 10.1.

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

#### 10.3 When effective

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

#### 10.4 Receipt - postal

If sent by post, notices are taken to be received 2 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside Australia).

#### 10.5 Communications by email

With respect to communications sent by emails

- (a) only the letter in .pdf format attached to the email and, subject to clause 10.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 10.5. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email will only form part of a communication under this clause 10.5 if it is in \* pdf, \*.xls, \*.doc, \*.vsd, \*.mpp, \*.mdb, \*.xer or \*.ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this Agreement:

- (i) to ensure that their respective firewall and/or mail server (as applicable):
  - A. allows messages of up to 20 MB (or such greater capacity as may be agreed between the parties from time to time) to be received;
  - B. does not trap any messages in the spam filter which:
    - in the case of notices sent by the Authority to the Developer, the General Guarantor or the Office Land Payment Guarantor, have been sent from '\*.nsw.gov.au'; and
    - in the case of notices sent by the Developer to the Authority, have been sent from [insert Developer domain details]; and
  - C. automatically sends a receipt notification to the sender upon receipt of a message; and
- (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

#### 10.6 Receipt - email

If notices are sent by email they are taken to be received:

- by 5:00pm (local time in the place of receipt) on a Business Day at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; or
- (b) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party sending the email from the recipient.

# 10.7 Receipt - general

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

#### 11. Novation

In each circumstance where under this deed a party is entitled to cause or require the rights and obligations of a party (**Original Party**) under a Project Document (**Relevant Project Document**) to be novated to another party (**New Party**), the following provisions apply:

- (a) each of the parties will do all things and execute all documents that are reasonably necessary in connection with the novation of the Relevant Project Document;
- (b) the form of deed of novation to the New Party is appended to Annexure B;
- (c) the Original Party irrevocably and for valuable consideration appoints the party having the right to cause or require the novation of the Relevant Project Document (Enforcing Party) and each Authorised Officer of the Enforcing Party severally as its attorney in its name and on its behalf to do all things and execute all documents

which are necessary to be done or to be executed by the Original Party in connection with the novation of the Relevant Project Document if the Original Party has not done so within 10 Business Days of receipt of a written request from the Enforcing Party to do so; and

(d) if because of the occurrence of an Insolvency Event or for any other reason the Relevant Project Document cannot be novated, each party other than the Original Party will do all things and execute all documents that are reasonably necessary so as to enter into a binding contract with the New Party which will have the effect of all relevant parties being placed in substantially the same position that they would have been in if the rights and obligations of the Original Party under the Relevant Project Document had been novated to the New Party.

# 12. GST

#### 12.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

#### 12.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost or amount relates.

#### 12.3 Additional amount of GST payable

Subject to clause 12.5, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this deed:

- any amount payable or consideration to be provided under any provision of this deed (other than this clause 12), for that supply is exclusive of GST;
- (b) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12.3(b).

#### 12.4 Variation

(a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.3 and clause 12.5), varies from the additional amount paid by the Recipient under clause 12.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this

- clause 12.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

# 12.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 12.3 applies is a taxable supply made by the Recipient in the same tax period (Recipient Supply), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 12.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 12.3 (or the time at which such GST Amount would have been payable in accordance with clause 12.3 but for the operation of clause 12.5(a)).

#### 12.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

#### 12.7 No merger

This clause will not merge on completion or termination of this deed.

#### 13. Miscellaneous

#### 13.1 Prompt performance

If this deed specifies when a party agrees to perform an obligation, that party agrees to perform it by the time specified. The parties agree to perform all other obligations promptly.

#### 13.2 Certificates

Each party may give another party a certificate about an amount payable or other matter in connection with this deed. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

#### 13.3 Exercise of rights

Each party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

#### 13.4 Partial exercise of rights

A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or an exercise of any other right, power or remedy by that party.

# 13.5 Delay in exercising rights

Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

#### 13.6 Conflict of interest

The Authority's right and remedies under this deed may be exercised even if this involves a conflict of duty or the Authority has a personal interest in their exercise.

#### 13.7 Remedies cumulative

The rights and remedies of a party under this deed are in addition to other rights and remedies given by law independently of this deed.

#### 13.8 Rights and obligations are unaffected

Rights given to a party under this deed and the liabilities of that party, under it are not affected by anything which might otherwise affect them at law.

# 13.9 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

# 13.10 Antecedent obligations

The expiry or termination date of this deed does not affect a party's obligations:

- to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to another party to enable it to calculate those payments.

#### 13.11 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

#### 13.12 Waiver and variation

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

#### 13.13 Supervening Legislation

Any present or future legislation which operates to vary the obligations of a party to this deed with the result that that party's rights, powers or remedies are adversely affected (including, without limitation, by way of delay of postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### 13.14 Approvals and consent

The Authority may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

#### 13.15 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Developer and survives termination, discharge or performance of this deed.

#### 13.16 Confidentiality

All information provided by one party to another party under this deed or the CENDA and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person except:

- (a) with the consent of the party providing the information; or
- (b) if allowed or required by law or required by any stock exchange; or
- in connection with any legal proceedings relating to this deed or any Project Document, or
- (d) if the information is generally and publicly available; or
- to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed.

# 13.17 Inconsistency

Nothing in the Project Documents affects the rights of the parties under this deed which shall prevail over the Project Documents to the extent of any inconsistency.

# 13.18 Several liability

The liability of each party to this deed is several. Unless otherwise expressly stated, no party is liable for any obligations with the other parties to this deed.

#### 13.19 Severability

- (a) A construction of this deed that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- (b) If, despite the application of clause 13.19(a), a provision of this deed is illegal or unenforceable:
  - (i) and it will be legal and enforceable if a word or words were omitted, that word or those words are severed; and
  - (ii) in any other case, the whole provision is severed,

and the remainder of this deed continues in force. This paragraph (b) has no effect if the severance alters the basic nature of this deed.

# 13.20 Further steps

The parties agree to do anything another party reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind the parties and any other person intended to be bound under this deed.

#### 13.21 Term

- (a) This deed remains in effect until the Authority certifies that the Builder has discharged its obligations under the Building Contract by performance.
- (b) The Authority will not unreasonably withhold or delay certification in accordance with clause 13.21(a).

#### 13.22 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.

#### 13.23 Effect of moratorium

To the extent permitted by law the application to this deed of any moratorium or other Act whether State or Federal having the effect of extending the term, reducing or postponing the payment of any moneys payable under this deed, or otherwise affecting the operation of the terms of this deed is expressly excluded and negatived.

# 13.24 Applicable law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

#### 13.25 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 10.

#### 13.26 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.



Executed as a deed.  The seal of Barangaroo Delivery Authority is affixed in the presence of:	
Signature of witness	Signature of Chief Executive Officer
Full name of witness	Full name of Chief Executive Officer
Executed by Grocon (CB) Developments Pty Limited ACN 614 118 642 in accordance with section 127 of the Corporations Act 2001 (Cth):	
Signature of director	Signature of company secretary/director
Executed by [Builder] ABN [number] in accordance with section 127 of the Corporations Act by or in the presence of:	Full name of company secretary/director
Signature of Secretary/other Director	Signature of Director or Sole Director and Secretary
Name of Secretary/other Director in full	Name of Director or Sole Director and Secretary in full







#### Annexure B - Novation Deed



# **Novation Deed**





# CLAYTON UTZ

# Details

#### Date

#### **Original Party**

Name: [insert]
ABN: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

#### **New Party**

Name: [insert]
ABN: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

# Continuing Party

Name: [insert]
ABN: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

# Background

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- A. The Original Party and the Continuing Party are parties to the [insert name of Project Document].
- B. In accordance with the terms of this deed:
  - (i) the New Party has agreed to accept all of the Original Party's liabilities and obligations under the [insert]; and
  - (ii) the Continuing Party has agreed to accept the New Party in place of the Original Party for the performance of the obligations of the Original Party and to release completely and discharge the Original Party from all of its liabilities and obligations under the [insert name of Project Document].





# **Agreed Terms**

1. In this Deed:

[insert name of Project Document] means [insert].

Novation Date means [insert].

- 2. With effect from and including the Novation Date:
  - (a) the New Party must perform all of the obligations and assume all of the liabilities of the Original Party under the [insert name of Project Document] which are not performed or discharged at the Novation Date;
  - (b) the New Party replaces the Original Party under the [insert name of Project Document];
  - (c) the New Party accepts the liability of the Original Party in place of the Original Party; and
  - (d) the New Party must perform its obligations under the [insert name of Project Document] which have not yet been performed rather than the Original Party.
- The Continuing Party releases and forever discharges the Original Party from its liabilities and obligations under the [insert name of Project Document] and from all claims and demands in respect of the [insert name of Project Document].
- 4. The Original Party agrees that it has complied with its obligations under the [insert name of Project Document] before the Novation Date.
- Each party is to pay its own costs, charges and expenses (including, without limitation, legal expenses) in entering into this Deed except that the New Party agrees to pay or reimburse the other parties for all stamp duties or other taxes of a similar nature.
- 6. Each party to this Deed must, at its own expense and at another party's request execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the New Party and the Continuing Party and their successors in accordance with the intention expressed in clauses 2 and 3.
- 7. This deed is governed by the laws in force in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia and courts of appear from them.

Executed as a deed.

[Note: Execution blocks to be added.]

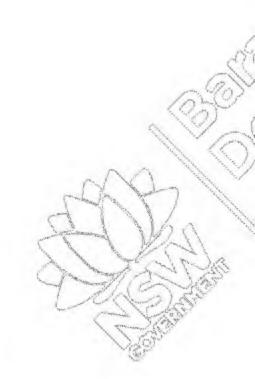
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# **Annexure T - Agreement with Expert**











# Agreement with Expert

Barangaroo Delivery Authority
The Authority

Grocon (CB) Developments Pty Limited
Developer

Grocon Constructions Pty Ltd
General Guarantor



[#Expert's full name#]
Expert

Clayton Utz
Lawyers
Level 15 1 Bligh Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

www.claytonutz.com

Our reference 104/18637/80128948



#### Agreement with Expert made at

on

**Parties** 

Barangaroo Delivery Authority of 21/201 Kent Street, Sydney NSW 2000 (Authority)

Grocon (CB) Developments Pty Limited ACN 614 118 642 of 3 Albert Coates
Lane Melbourne VIC 3000 (Developer)

Grocon Constructors Pty Ltd ACN 006 703 091 of 3 Albert Coates Lane Melbourne VIC 3000 (General Guarantor)

[Expert's name] of [Expert's address] (Expert)

#### Recitals

- A. The Authority, the Developer, the General Guarantor and the into the CENDA which provides that certain disputes between the Authority, the Developer, the General Guarantor and the (or any two or more of those parties) are to be resolved by expert determination.
- B. The Authority, the Developer, the General Guarantor and the refer the Dispute for determination by the Expert.

# Operative provisions

# 1. Definitions and interpretation

#### 1.1 Definitions

#### Authorised Officer means:

- (a) in the case of the Authority, the Chief Executive Officer of the Authority or a person performing the functions of that position or any other person appointed by the Authority and notified in writing to the parties to act as an Authorised Officer for the purposes of this deed; and
- (b) in the case of each other party, a person appointed by that party to act as an Authorised Officer for the purposes of this deed.

Cost include reasonable costs, charges and expenses, including those incurred in connection with external advisers and consultants.

CENDA means the document entitled "Central Barangaroo Development Agreement" between the Authority, the Developer, the General Guarantor and the Office Guarantor dated [insert] as varied from time to time a copy of which is attached and marked A.

Dispute means the dispute described in Schedule 1.

Dispute Resolution Provision means clause 46 ('Dispute Resolution') of the CENDA.

GST and GST Law have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Amount** means, in relation to a Payment, an amount arrived by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is consideration for a taxable supply) by the appropriate rate of GST.



#### Payment:

- (a) means:
  - (i) the amount of any monetary consideration (other than a GST Amount payable under clause 15); or
  - (ii) the GST exclusive market value of any non-monetary consideration paid or provided by a party to another for any supply made under or in connection with this agreement; and
- (b) includes any amount payable by way of offset, indemnity, reimbursement, compensation or damages.

Project Parties means the Authority, the Developer, the General Guarantor and the Office Guarantor.

#### 1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) unless the context indicates a contrary intention:
  - an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
  - i) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (iii) a reference to a party (other than to the Expert) includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (iv) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
  - a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
  - a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (vii) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
  - (viii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (ix) includes in any form is not a word of limitation;
  - (x) a reference to \$ or dollar is to Australian currency;



- (xi) words that have a capital letter and are defined in the CENDA and are not defined in this agreement have the same meaning as in the CENDA; and
- (xii) the following terms have the same meanings as those terms in the GST Law:
  - A. adjustment event:
  - B. adjustment note;
  - C. increasing adjustment;
  - D. decreasing adjustment;
  - E. GST;
  - F. GST Group;
  - G. input tax credit;
  - H. representative member;
  - supply;
  - J. taxable supply; and
  - K. tax invoice.

No provision of this agreement is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

# 2. Determination

The Expert must:

- (a) determine the Dispute and not any other matter; and
- (b) in complying with the Expert's obligations under this agreement, adhere to the Dispute and the CENDA, so far as relevant.

# 3. Procedures

- (a) Subject to clause 5, the Expert must determine the Dispute in accordance with the procedures set out in the Dispute Resolution Provision, unless they are changed by agreement between the Authority, the Developer, the General Guarantor, the Office Guarantor, and the Expert.
- (b) The Project Parties must promptly give the Expert all information, submissions and assistance which the Expert may reasonably require.

# 4. Liability

(a) Unless the Expert has engaged in fraud or has made a manifest error, the Expert is not liable to the Project Parties jointly or to any of them separately in any way in connection with the Expert complying with its obligations in accordance with this agreement.



- (b) The Expert must not bring any action, claim or proceeding against the Authority, the Developer, the General Guarantor or the Office Guarantor in the event that any information provided by these parties under clause 3(b) or otherwise is inaccurate, incomplete or misleading, but may raise such allegations as a defence to a claim by the Authority, the Developer, the General Guarantor or the Office Guarantor against the Expert.
- (c) Neither the Authority, the Developer, the General Guarantor nor the Office Guarantor is liable to the other party for any act or omission of the Expert whether under or purportedly under:
  - (i) this agreement; or
  - (ii) the CENDA; or
  - (iii) otherwise.

# 5. Expert's powers

In complying with the Expert's obligations under this agreement, the Expert must:

- (a) act honestly and fairly, independently and impartially;
- (b) act as an expert and not as an arbitrator;
- (c) proceed in any manner the Expert thinks fit without being bound to observe the rules of evidence;
  - consider all material, written or oral, that the Authority, the Developer, the General Guarantor and the Office Guarantor or any of them place before the Expert (including material relating to the facts, arguments or submissions on the matters the subject of the Dispute and materials from additional parties where there is a consolidation of dispute in accordance with clause 48.17 ('Consolidation of disputes') of the CENDA) without being expected or required to obtain or refer to any other material but the Expert may refer to other material if the Expert wishes;
- make a decision, in the form the Expert considers appropriate, stating the determination of the Dispute, giving reasons; and
- (f) act expeditiously with a view to making a decision within 10 Business Days after being appointed and otherwise in accordance with the Dispute Resolution Provision.

# 6. Meeting

If the Expert meets with the Project Parties as part of the procedures under clause 3:

- (a) the Project Parties may be accompanied by their legal representatives; and
- (b) the Project Parties agree to be bound by all procedural directions the Expert gives in preparation for, and during the course of, the meeting.

A meeting under this clause is not, and is not to be regarded as, a formal hearing.

# 7. Decision binding

Subject to the Dispute Resolution Provision, the Expert's determination of the Dispute is final and binding.



# 8. Remuneration

- 8.1 Subject to the Dispute Resolution Provision, in consideration of the Expert complying with the Expert's obligations under this agreement, the relevant Project Parties involved in the Dispute will each pay:
  - (a) all or part of the Expert's costs (as shall be determined by the Expert) of making the determination calculated in accordance with Schedule 2; and
  - (b) in the absence of a direction by the Expert, the Expert's costs of making the determination calculated in accordance with Schedule 2 divided by the number of relevant Project Parties involved in the Dispute.
- 8.2 If any of the relevant Project Parties involved in the Dispute fail to pay the Expert's costs as determined under clause 8.1, each other relevant Project Party will only be liable for their portion of the Expert's costs and the Expert may pursue the defaulting party for its costs as a debt due.

# 9. Confidentiality

#### 9.1 Non-Disclosure

The Expert must not, at any time, without the consent of all the Project Parties, disclose, or allow or permit the Expert's employees, officers, consultants or agents to disclose, to any person:

- (a) any details about the subject matter of the Dispute;
- any of the contents or the commercial bases of, or any information about the negotiations in connection with, the CENDA, this agreement or any agreements collateral or supplemental to them; or
- (c) any other information that may come to the Expert's knowledge in the course of negotiating this agreement or in determining the Dispute including information about the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Authority, the Developer, the General Guarantor or the Office Guarantor.

## 9.2 Storage and handling of documents

The Expert must ensure that:

- (c) any document that it creates, or they creation of which they authorise, which contains information in clause 9.1, is filed in and stored in a secure location; and
- (d) all emails and other electronic or written documents they send or receive in respect of clause 9.1, is promptly filed in a secure location that can only be accessed by the Expert.

# 10. Expert's role

#### 10.1 Expert independent

- (a) The Expert:
  - (i) is to be independent from all the Project Parties; and



- (ii) warrants that the Expert has no conflict of interest in acting under this agreement; and
- (iii) warrants that the Expert is not an employee or partner or former employee or partner of the Authority, the Developer, the General Guarantor or the Office Guarantor.
- (b) The Expert must not accept a role in relation to the project that is the subject of the CENDA other than as expressly set out in this agreement, or as approved in writing by the Project Parties.
- (c) Nothing in this agreement is to be taken to make the Expert an agent, employee or partner of the the Authority, the Developer, the General Guarantor or the Office Guarantor.

#### 10.2 Taxes

The Expert is responsible for paying all taxes payable on money the Expert receives under this agreement.

# 11. Termination

The Project Parties, or any of them, may terminate this agreement if the Expert:

- (a) is declared of unsound mind or mentally ill;
- (b) is declared bankrupt;
  - commits a proven act of dishonesty or, by wilful act or omission or by gross neglect, behaves in a manner clearly prejudicial to the interests of the Authority, the Developer, the General Guarantor or the Office Guarantor;
- (d) does not comply with any substantive provision of this agreement; or
- (e) is prevented by prolonged illness or incapacity from complying with the Expert's obligations under this agreement.

#### 12. Notices

#### 12.1 Form

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 an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

Authority

Name: Barangaroo Delivery Authority

Address: 21/201 Kent Street SYDNEY NSW 2000

motices] and [insert general mailbox if required]

For the attention of: [insert]



#### Developer

Name: Grocon (CB) Developments Pty Limited ACN 614 118 642

Address: 3 Albert Coates Lane Melbourne VIC 3000

Email: [insert email address of the respensible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

#### **General Guarantor**

Name: Grocon Constructors Pty Ltd ACN 006 703 091
Address: 3 Albert Coates Lane Melbourne VIC 3000

Email: [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

Name: Address:

Email: [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

Expert

Name: [insert]
Address: [insert]

Email. [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [inser

# 12.2 Delivery

Notices must be:

- (a) left at the addresses referred to in clause 12.1;
- (b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause
   12.1; or
- (c) sent by email to the email address referred to in clause 12.1.

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

#### 12.3 When effective

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

# 12.4 Receipt - postal

If sent by post, notices are taken to be received 5 Business Days after posting (or 10 Business Days after posting if sent to or from a place outside Australia).

#### 12.5 Communications by email

With respect to communications sent by email:



- only the letter in .pdf format attached to the email and, subject to clause 12.4(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 12. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email will only form part of a communication under this clause 12 if it is in \*.pdf, \*.xls, \*.doc, \*.vsd, \*.mpp, \*.mdb, \*.xer or \*.ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this deed:
  - (i) to ensure that their respective firewall and/or mail server (as applicable):
    - A. allows messages of up to 20 MB (or such greater capacity as may be agreed between the parties from time to time) to be received; and
    - B. automatically sends a receipt notification to the sender upon receipt of a message; and
    - to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient

# 12.6 Receipt email

If notices are sent by email they are taken to be received:

- by 5:00pm (local time in the place of receipt) on a Business Day at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; or
- (e) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party sending the email from the recipient.

#### 12.7 Receipt - general

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

# 12.8 Novation following step-in

If required by the Authority or a Step-in Party (as that term is defined in the Multi-party Investor Side Deed), the Expert must, within [10] Business Days after being requested in writing, enter into a deed of novation with the Authority and the Step-in Party on such terms as the Authority and the Step-in Party may reasonably require which must be consistent with the Multi Party Investor Deed.

# 13. Governing law

This agreement is governed by and must be construed according to the law applying to the CENDA.



# 14. Inconsistency and interpretation

- (a) If there is inconsistency between a provision of this agreement and either a provision of the CENDA or the Multi-Party Investor Side Deed, the provisions of the CENDA or Multi-Party Investor Side Deed, as applicable, prevail.
- (b) Capitalised terms not defined, but used in this deed, have the same meaning as in the CENDA or the Multi-Party Investor Side Deed.

## 15. GST

## 15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

## 15.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost or amount relates plus any amount payable under clause 15.3.

# 15.3 Additional amount of GST payable

- (a) Subject to clause 15.5, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this deed:
- any amount payable or consideration to be provided under any provision of this deed (other than this clause 15), for that supply is exclusive of GST;
- (c) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply calculated by reference to the then ascertainable consideration for that supply (GST Amount). The GST Amount must be paid at the same time as the first part of the consideration for that supply; and
- the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 15.3(b).

#### 15.4 Variation

(a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 15.3 and clause 15.5), varies from the additional amount paid by the Recipient under clause 15.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 15.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 15.3.



(b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

## 15.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 15.3 applies is a taxable supply made by the Recipient in the same tax period (Recipient Supply), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 15.3 must be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 15.3 (or the time at which such GST Amount would have been payable in accordance with clause 15.3 but for the operation of clause 15.5(a).

#### 15.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) It a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
  - A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

## 15.7 No merger on termination

This clause 15 will not merge on completion or termination of the Agreement.

## 16. Entire agreement

This agreement, including its schedules:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

## 17. Further acts and documents

Each party must promptly do 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 another party to give effect to this agreement.

#### 18. Amendments

This agreement may only be varied by an agreement executed by or on behalf of each party.

#### 19. Severance

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



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

# 20. Counterparts

This agreement 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.

# 21. Relationship of the parties

- (a) The relationship between and among the Project Parties will not be that of partners or joint venturers and nothing contained in this agreement is to be taken to constitute a partnership or joint venture between or among them and no party has authority or power to act unilaterally as agent for the other except as set out in this agreement.
- (b) The Expert acts as an independent contractor for the Project Parties and is not authorised to enter into any binding obligations on behalf of the Project Parties.





# Schedule 1

## **Details of dispute**

[insert details]







## Schedule 2

## **Expert's remuneration**

[insert details]







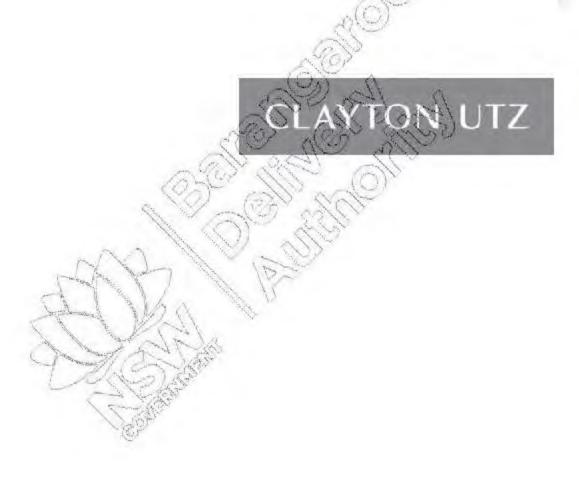
Signed as an agreement. The seal of Barangaroo Delivery Authority is affixed in the presence of: Signature of Chief Executive Officer Signature of witness Full name of witness Full name of Chief Executive Officer Executed by Grocon (CB) Developments Pty Limited ACN 614 118 642 in accordance with section 127 of the Corporations Act 2001 (Cth): Signature of director Signature of company secretary/director Full name of director. Full name of company secretary/director **Executed by Grocon Constructors Pty Ltd** ACN 006 703 091 in accordance with section 127 of the Corporations Act 2001 (Cth): Signature of director Signature of company secretary/director Full name of director Full name of company secretary/director Executed by in accordance with section 127 of the Corporations Act 2001 (Cth): Signature of director Signature of company secretary/director

L\319626106.11

Full name of company secretary/director

Full name of director

[insert execution block for Expert]







# Annexure A

## Central Barangaroo Development Agreement





## Annexure U - Quantity Surveyor Deed









# Central Barangaroo Quantity Surveyor's Deed

Barangaroo Delivery Authority

Authority

Grocon (CB) Developments Pty Limited
Developer

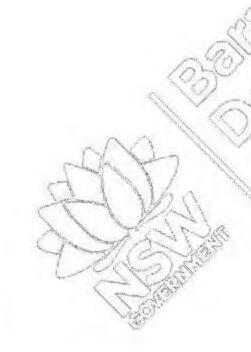
Grocon Constructors Pty Ltd
General Guarantor

[Quantity Surveyor's name]

Quantity Surveyor

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## Table of contents

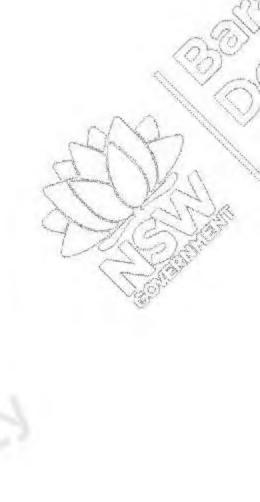
1.	Definition	ons and interpretation	1			
	4 4	ons and interpretation  Definitions  Interpretation	4			
	1.1	Interpretation				
	1.3	Headings	აე			
	1.4	Capitalised terms in the CENDA	3			
	1.5	Inconsistency with the CENDA	3			
2.						
۷.		tment of Quantity Surveyor				
	2.1	Terms of appointment				
	2.2	Consent	4			
	2.3	Acknowledgements	4			
	2.4	Novation following step-in				
3.	Term and direction to carry out Work Order					
	3.1	Term of appointment	4			
	3.2	Issue of a Work Order	4			
	3.3	Performance of Services	5			
4.	Relation	nship	5			
	4.1	Standard of performance				
	4.2	Conflict of interest				
	4.3	Nature of relationship	· make			
	4.40	Independence				
	4.5	Co-operation and assistance				
	4.6	Information provided to Quantity Surveyor	6			
5-1	4.7	Reliance	6			
Lyl-	4.8	Decision Final and binding				
	4.9	Subcontracting	7			
	4.10	No interference or influence	7			
	4.11	Project Parties not liable				
5.	General Rights and Obligations					
	5.1	Quantity Surveyor's right to enter and inspect	7			
	5.2	Developer's Obligations	8			
6.	Reporti	ing & Communication	8			
7.	Quality	***************************************	8			
	7.1					
	7.2	Quality assurance system	۸			
	7.3	Quality assurance not to relieve Quantity Surveyor				
8.		200				
0.	8.1 Properly qualified 8.2 List of personnel 8.3 Removal of personnel					
	8.1	Properly qualified	9			
	8.2	List of personnel	9			
	8.3					
9.	Notifica	Notifications9				
10.	Fees		10			
	10.1	Payment by Developer	10			
	10.1	Authority not to pay.				
4.4	7 - 7 - 7	The state of the s				
11.	Repres	entations and Warranties				
	11.1	Representations and warranties	10			
12.	Insuran	nce	11			
	12.1	Own Risk	11			

	12.2	Undertakings Failure to produce proof of insurance		11	
	12.3	Failure to produce proof of insurance		13	
13.	Terminati	ion		13	
	13.1	Surveyor Default		10	
		Tarriadian due to Currente Default		10	
	13.2	Termination due to Surveyor Default		13	
	13.3	remination due to termination of CENDA		.14	
	13.4	Termination by joint direction of Project Parties			
	13.5	Rights on termination		.14	
	13.6	Appointment of successor		.14	
	13.7	Return of records			
14.	Assignment				
	14.1	Assignment by Quantity Surveyor		15	
	14.2	Assignment by Authority			
15.	Costs	······································		15	
16.	Notices				
	16.1	Form		16	
	16.2	Deliver			
	16.3	When effective			
	16.4	Receipt Apostal			
	16.5	Communications by email			
	16.6	The Control of the Co		man and a	
	1000	Receipt - email			
	16.7	Receipt general		The state of	
17.	GST				
The Same	4771	Interpretation		17	
Symmetry )	17.2	Reimbursements		18	
11/3	17.3	Additional amount of GST payable		18	
The second of the second	17.4	Variation			
Comment of the commen	17.5	Exchange of non-monetary consideration		18	
	17.6	Indemnities			
	17.7	No merger			
18.	Ratification	on by guarantors		.19	
	18.1	Status of this deed		19	
	18.2	Guaranteed Obligations		1 17	
	18.3	Ratification by Guarantors			
19.	General			10	
13.				13	
	19.1	Prompt performance			
	19.2	Consents			
	19.3	Set-off		19	
	19.4	Discretion in exercising rights.		20	
	19.5	Partial exercising of rights 2		20	
	19.6	No liability for loss		.20	
	19.7	Conflict of interest		20	
	19.8	Remedies cumulative		.20	
	19.9	Other encumbrances or judgments			
	19.10	Inconsistent law			
	19.11	Supervening legislation		20	
	19.12	Variation and waiver			
	19.13	Confidentiality		21	
	19.14	Further steps		21	
	19.15	Counterparts		21	
	19.16	Applicable Law		21	
Annexure	A - Quant	tity Surveyor's scope of Services		.22	
Annexure	B - Insura	ances (clause 12)	***************************************	23	



Annexure C - Fees	24
Annexure D - Form of Work Order	25







# Quantity Surveyor's Deed made at

on

#### **Parties**

Barangaroo Delivery Authority of 21/201 Kent Street, Sydney NSW 2000 (Authority)

Grocon (CB) Developments Pty Limited ACN 614 118 642 of 3 Albert Coates Lane Melbourne VIC 3000 (Developer)

Grocon Constructors Pty Ltd ACN 006 703 091 of 3 Albert Coates Lane Melbourne VIC 3000 (General Guarantor)

[#Quantity Surveyor's name#] of [#address#] (Quantity Surveyor)

#### Recitals

- A. The Authority, the Developer the General Guarantor and the have entered into the Central Barangaroo Development Agreement under which the Developer will carry out or procure the carrying out of the Developer's project under the CENDA within Central Barangaroo.
- B. By this deed, the Authority and the Developer appoint the Quantity Surveyor to undertake quantity surveying services in accordance with the terms of this deed.
- C. The Quantity Surveyor accepts its appointment and agrees to perform the Services and its functions on the terms of this deed.

#### Operative provisions

# 1. Definitions and interpretation

## 1.1 Definitions

These meanings apply unless the contrary intention appears:

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in Sydney; or
- (b) the days between 24 December and 2 January in each year; or
- (c) any days during the Christmas closedown period for the NSW government sector as described in the Premier's Memorandum M2016-01 and each replacement memorandum.

CENDA means the document entitled "Central Barangaroo Development Agreement" between the Authority, the Developer and others dated [insert] as varied from time to time.

Insolvency Event means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property;



- (c) a body corporate 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 Authority);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 40 Business Days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that body corporate, which:
  - (i) is preparatory to or could result in any of (a), (b) or (c) above; or
  - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- a body corporate is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act;
- (g) a body corporate is otherwise unable to pay its debts when they fall due;
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- with that person under the Law of any jurisdiction.

Insurances means the insurances required to be effected and maintained under clause 12.

Fee means the amount payable to the Quantity Surveyor for performing the Services as specified in a Work Order and in accordance with the schedule of fees set out in Annexure C as adjusted from time to time in accordance with clause 10.

GST and GST Law have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Amount** means, in relation to a Payment, an amount arrived by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is consideration for a taxable supply) by the appropriate rate of GST.

#### Loss means:

- (a) any cost, expense, loss, damage or liability whether direct, indirect, present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a), and only to the extent not prohibited by law, any fine or penalty.

Project Parties means the Authority and the Developer.

Replacement Quantity Surveyor has the meaning given in clause 13.6(b).

**Services** means the services set out in Annexure A which the Quantity Surveyor is engaged to undertake, perform or provide for the Project Parties from time to time as specified in a Work Order.

Surveyor Default means each of the events described in clause 13.1(b).



Work Order means an order issued by a Project Party in accordance with clause 3.2 and in the form attached as Annexure D.

## 1.2 Interpretation

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

- a group of persons is a reference to any two or more of them jointly and to each of them individually;
- an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a document (including this deed) includes any variation or replacement of it;
- (f) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (g) Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia
- (h) a time of day is a reference to Sydney time;
- the singular includes the plural and vice versa;
- the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (I) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) an exhibit, annexure or schedule is a reference to an exhibit, annexure or schedule to this deed.

## 1.3 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

#### 1.4 Capitalised terms in the CENDA

Capitalised terms not defined, but used in this deed, have the same meaning as in the CENDA.

#### 1.5 Inconsistency with the CENDA

If there is inconsistency between the provisions of this deed and the CENDA, the provisions of the CENDA prevail.



# 2. Appointment of Quantity Surveyor

## 2.1 Terms of appointment

- (a) The Project Parties appoint the Quantity Surveyor to perform the Services on the terms of this deed.
- (b) The Quantity Surveyor's appointment commences on the date of this deed and terminates on the date determined pursuant to clause 13.
- (c) Each Project Party confirms and approves the appointment of the Quantity Surveyor as the independent quantity surveyor for the purposes of the CENDA to do those things provided in this deed.

#### 2.2 Consent

The Quantity Surveyor accepts its appointment under clause 2.1 and agrees that it will perform the Services.

## 2.3 Acknowledgements

The Quantity Surveyor acknowledges and confirms that it will be deemed to have informed itself fully of:

- (a) the nature of the work necessary for the performance of the Services;
- (b) the accuracy and completeness of the description of the Services;
- the fees payable to it which are to cover completely the costs of providing the Services; and
- (d) all matters and things necessary or ancillary to the due and proper performance of the Services.

## 2.4 Novation following step-in

If required by the Authority or a Step-in Party (as that term is defined in the Multi-party Investor Side Deed), the Quantity Surveyor must, within [10] Business Days after being requested in writing, enter into a deed of novation with the Authority and the Step-in Party on such terms as the Authority and the Step-in Party may reasonably require which must be consistent with the Multi-Party Investor Side Deed.

# 3. Term and direction to carry out Work Order

# 3.1 Term of appointment

The Project Parties' rights under this deed to require the Quantity Surveyor to perform the Services remain in effect until terminated in accordance with clause 13.

## 3.2 Issue of a Work Order

A Project Party may at any time during the term of this deed issue a Work Order to the Quantity Surveyor requiring the Quantity Surveyor to perform such Services as specified in the Work Order.



#### 3.3 Performance of Services

If a Project Party issues a Work Order, the Quantity Surveyor must perform the Services as specified in the Work Order in accordance the terms of the Work Order and pursuant to the Quantity Surveyor's obligations under this deed.

## 4. Relationship

#### 4.1 Standard of performance

- (a) In performing the Services, the Quantity Surveyor agrees:
  - (i) to act in good faith, impartially, diligently, reasonably and with a high degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of project management consultants experienced in the performance of the same or similar services as are required to be performed by the Quantity Surveyor under this deed; and
  - (ii) to perform the Services within the times specified in a Works Order.
- (b) The Quantity Surveyor warrants that it has the capability, expertise and experience to perform Services.

## 4.2 Conflict of interest

The Quantity Surveyor acknowledges and warrants to each Project Party that:

- it owes a duty of care and professional responsibility to each Project Party in connection with the performance of the Services;
- at the date of this deed, no conflict of interest arises out of its appointment by the Project Parties under this deed;
- (c) each Project Party is relying on the Quantity Surveyor's independence;
- (d) if it becomes aware of the existence or possibility of a conflict of interest during the term of this deed, it will immediately:
  - (i) notify the Project Parties of that conflict of interest or possible conflict of interest; and
  - (ii) take any steps to avoid or mitigate the conflict of interest or possible conflict of interest that the Project Parties reasonably require; and
- (e) unless the CENDA is terminated, it must not accept any role in relation to the Project Parties other than set out in, or contemplated by, this deed. The Project Parties must promptly notify the Quantity Surveyor if the CENDA is terminated.

#### 4.3 Nature of relationship

- (a) The Quantity Surveyor is an independent contractor and is not an employee or partner or former employee or partner of any of the Project Parties.
- (b) The Quantity Surveyor's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of the Project Parties. The Quantity Surveyor assumes full responsibility for the acts and omissions of each of its employees and agents.



## 4.4 Independence

The Project Parties and the Quantity Surveyor agree that the Quantity Surveyor will act independently of all parties in connection with the performance of the Services.

## 4.5 Co-operation and assistance

- (a) The Project Parties will co-operate with each other and the Quantity Surveyor and use their reasonable endeavours (without being obliged to pay money) to assist the Quantity Surveyor to enable it to perform the Services.
- (b) Subject to any law or duty of confidentiality and without limiting clause 4.5(a), each Project Party will provide to the Quantity Surveyor any information reasonably necessary to enable the Quantity Surveyor to perform the Services and agrees to provide the Quantity Surveyor with any such information within the time required by this deed and as reasonably necessary in order to enable the Quantity Surveyor to perform the Services in accordance with a Work Order.
- (c) The Quantity Surveyor will co-operate with the Project Parties and any agent, consultant, contractor or employee of the Project Parties in relation to the Developer's project under the CENDA and will co-ordinate the performance of the Services with the activities being performed by the Project Parties and other occupiers and users of Central Barangaroo.

## 4.6 Information provided to Quantity Surveyor

- The Quantity Surveyor is entitled to rely on information provided to it by any of the Project Parties as being true and correct in all material respects unless:
  - (i) such information is:
    - manifestly incorrect;
    - B. provided on a qualified basis; or
    - C. actually known or ought to have been known by the Quantity Surveyor to be untrue or incorrect; or
  - (ii) the relevant Project Party subsequently informs the Quantity Surveyor of any change to the information provided to it.
- (b) A Project Party may, at any time, provide such information and make such submissions as it believes relevant to enable the Quantity Surveyor to carry out the Services.
- (c) The Quantity Surveyor must take into account any information or submissions provided by a Project Party in respect of any matter, item or thing in connection with the thing when carrying out the Services.
- (d) The Quantity Surveyor acknowledges that it shall not bring any action, claim or proceeding against any Project Party in the event that any information provided by these parties under this clause 4.6 or otherwise is inaccurate, incomplete or misleading, except as a defence to a claim by a Project Party against the Quantity Surveyor.

#### 4.7 Reliance

The Quantity Surveyor acknowledges and agrees that:



- (a) it will perform the Services in accordance with this deed for the benefit of each of the Project Parties and that each Project Party will be relying on the performance of the Services as if the Quantity Surveyor were separately performing them for each Project Party directly;
- (b) the Project Parties are relying on the skill and expertise of the Quantity Surveyor in the performance of the Services and may suffer Loss if it does not perform the Services in accordance with this deed; and
- (c) the Project Parties are entitled to, and will, rely on any certificate the Quantity Surveyor signs or gives with the provisions of this deed.

#### 4.8 Decision Final and binding

The Quantity Surveyor's decisions and determinations under this deed, in the absence of manifest error in fact or law, are final and binding on the Project Parties under this deed.

#### 4.9 Subcontracting

The Quantity Surveyor:

- (a) may not subcontract the performance of any of the Obligations without the prior consent of each Project Party; and
- (b) remains responsible for performing the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Quantity Surveyor.

## 4.10 No interference or influence

- The Project Parties must not interfere with, or attempt to influence, the Quantity Surveyor in performing the Services. A communication allowed by this deed or a notice given under this deed does not, of itself, constitute a breach of this clause.
- (b) Clause 4.10(a) does not prevent the Project Parties giving written comments to the Quantity Surveyor in respect of any item, matter or thing the subject of the Services and the Quantity Surveyor must pay due regard to all such comments in carrying out the Services.

#### 4.11 Project Parties not liable

No Project Party is liable to any other Project Party for any act or omission of the Quantity Surveyor whether under or purportedly under this deed or otherwise.

# 5. General Rights and Obligations

## 5.1 Quantity Surveyor's right to enter and inspect

The Quantity Surveyor may, for the purposes of carrying out the Services and/or any of its obligations under this deed;

- (a) inspect any parts of Central Barangaroo as necessary in order to perform the Services after having given the Developer and the Authority at least 2 Business Days' notice;
- (b) inspect and test materials used in connection with the Developer's project under the CENDA or any matter, item or thing being the subject of a Work Order;



(c) require the Developer to produce any evidence of any pricing, quotes, costings, invoices, financial models, tests or other documents in relation to the design and construction of the Developer's project under the CENDA (subject to any confidentiality obligations) and which may reasonably be required by the Quantity Surveyor with respect to the carrying out of the Services.

## 5.2 Developer's Obligations

The Developer:

- (a) acknowledges the Quantity Surveyor's right to enter and inspect any parts of Central Barangaroo under clause 5.1;
- (b) must not do anything to limit the Quantity Surveyor's rights under clause 5.1; and
- (c) must do all things reasonable to assist the Quantity Surveyor to exercise its rights under clause 5.1.

# 6. Reporting & Communication

- (a) The Quantity Surveyor must submit a written report to each Project Party:
  - at such times and in a form that the Project Parties reasonably require;
  - (ii) containing details of those matters in respect of the Services that the Project Parties reasonably request from time to time.
  - The Quantity Surveyor must ensure that a copy of each written communication between the Quantity Surveyor and a Project Party relating to the Project or this deed is given promptly to each other Project Party.

# 7. Quality

#### 7.1 Quality assurance system

The Quantity Surveyor must implement a quality assurance system:

- (a) in accordance with Australian Standard AS/NZS ISO 9001:2000 Quality

  Management System Requirements or such other standard as nominated by the

  Quantity Surveyor and agreed by the Project Parties; and
- (b) otherwise in a form reasonably acceptable to the Project Parties,

to ensure that the Services are performed and provided in accordance with this deed.

#### 7.2 Audit

The Quantity Surveyor must

- (a) allow immediately any audit of its quality assurance system under this deed by a third party that the Project Parties request; and
- (b) co-operate fully with that third party in respect of it carrying out the quality assurance audit, including by giving the third party access to premises occupied by the Quantity Surveyor where the Services are being undertaken and permitting the third party to inspect information relevant to the quality assurance audit at all times.



## 7.3 Quality assurance not to relieve Quantity Surveyor

The Quantity Surveyor is not relieved of any of its responsibilities or obligations under this deed because:

- (a) it complies with this clause 7; or
- (b) of any acts or omissions of the Project Parties in respect of the requirements of this clause 7, including:
  - (i) the review of, comments on, or notice in respect of, the quality assurance system; and
  - (ii) any audit under clause 7.2.

# 8. Quantity Surveyor's personnel

## 8.1 Properly qualified

The Quantity Surveyor must at all times provide adequately competent, experienced and qualified personnel to perform the Services.

#### 8.2 List of personnel

Upon the request at any time by any Project Party, the Quantity Surveyor must promptly provide a list of the personnel which it will use or will be using to perform the obligations and detailing the qualifications and experience of each person.

## .3 Removal of personnel

If at any time during the term of this deed, a Project Party considers that the conduct of the Quantity Surveyor's personnel is prejudicial to the interest of the Developer's Project under the CENDA or that the Quantity Surveyor has not engaged personnel who are sufficiently competent, experienced and qualified to perform the Services, that Project Party may, after consultation with the Quantity Surveyor, by written notice to the Quantity Surveyor require the removal of that person from any involvement in the Developer's project under the CENDA. The Quantity Surveyor shall within 10 Business Days replace the person named in that notice with the person approved by the Project Parties.

## 9. Notifications

The Quantity Surveyor agrees to promptly notify the Project Parties if it becomes aware in the course of performing the Services:

- (a) that any matter stated or certified or certificate provided under this deed is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
  - (i) it considers to be, in the context of the Developer's project under the CENDA or the carrying out of the Services, of material interest to a Project Party; or
  - (ii) may involve a material breach of any law.



## 10. Fees

#### 10.1 Payment by Developer

The Developer agrees to pay to the Quantity Surveyor, such Fees and expenses required under this deed, as specified in a Work Order (and determined in accordance with this deed) or as separately agreed between the Developer and the Quantity Surveyor.

## 10.2 Authority not to pay

The Authority has no obligation to pay fees and expenses to the Quantity Surveyor for work carried out under this deed.

# 11. Representations and Warranties

## 11.1 Representations and warranties

The Quantity Surveyor represents and warrants that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into and to comply with the terms of this deed;
  - this deed and the transactions under it which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- it has in full force and effect the authorisations necessary for it to enter into this deed and to perform the Services;
- (e) it benefits by entering into this deed;
- (f) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (g) unless stated in this deed, it does not enter into this deed as trustee;
- (h) there is no pending or threatened proceeding affecting it or any of assets before a court, governmental agency, commission or arbitrator except those in which a decision against it would be insignificant;
- (i) it does not have immunity from the jurisdiction of a court or from legal process;
- (j) it has the appropriate qualifications to undertake all of the certification requirements forming part of the Services; and
- (k) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Services possesses, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Services.



## 12. Insurance

#### 12.1 Own Risk

The Quantity Surveyor undertakes to carry out the Services entirely at its own risk.

#### 12.2 Undertakings

The Quantity Surveyor undertakes as follows:

- (a) it will obtain and maintain the Insurances;
- (b) it will obtain and maintain such additional insurances, and make such variations to existing Insurances, as may reasonably be requested by the Project Parties, promptly after that request;
- (c) each Insurance policy will comply with the following requirements:
  - (i) the policy must contain provisions which are reasonably standard in the market for insurance of the type covered by the policy;
  - (ii) the insurers must be reputable, and approved by the Project Parties;
  - the named insured on the policy (except where the policy is for professional indemnity insurance) must be the Project Parties or such other persons as the Project Parties reasonably require; and
  - (iv) the Insurance must at all times cover liability for an amount stated in Annexure B;

each insurance policy must contain the following:

- the insurer must waive its right to set-off or reduce by way of counterclaim, or make any deduction or withholding, in relation to any payment to be made by it under any Insurances;
- the insurer must waive its right to claim from the Project Parties any insurance premiums, fees, commissions or the like;
- (iii) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;
- (iv) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Quantity Surveyor has an obligation to do so:
- (v) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability);
- (vi) the insurer must undertake to promptly notify the Project Parties of:
  - A. cancellation or avoidance of any Insurances;
  - B. any change whatsoever of a restrictive nature which affects any Insurances;



- C. any act or omission or any event which might invalidate an Insurance policy or render it unenforceable; or
- D. any failure to pay an amount on account of premiums when due;
- (vii) the insurer must undertake to notify each named insured of non-receipt of any renewal instructions no later than 5 Business Days prior to the due date for expiry of any Insurance;
- (viii) despite the occurrence of an event referred to in clauses 12.2(d)(vi) and 12.2(d)(vii), the Insurances must continue unaltered for the benefit of the Project Parties for a period of at least of 20 Business Days after notice is given to the Project Parties under either of those clauses;
- there must be no reduction of limits or coverage without the prior consent of the Project Parties; and
- (x) the insurer's obligations must be primary obligations, without right of contribution in respect of any other indemnity or insurance cap.
- (e) it will provide the Project Parties with:
  - a true and complete copy of each Insurance policy, promptly after receipt of the policy by or on behalf of the Quantity Surveyor;
  - ii) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;
  - it will give the Project Parties a copy of any notice received by the Quantity Surveyor from any insurer in respect of Insurances, promptly after receipt; and
  - (iv) such other details in respect of Insurances as the Project Parties may from time to time reasonably request, promptly after the request;
- (f) it will pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances, and give evidence of that payment to the Project Parties;
- (g) it will do all things necessary or desirable to maintain the Insurances in full force;
- (h) not, without the Project Parties consent, vary, cancel or allow to lapse any Insurances;
- (i) it will do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;
- (j) it will not, without the consent of the Project Parties do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured under Insurances, or extinguish, qualify or limit any obligations of the insurer in respect of any Insurances;
- (k) it will immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;
- it will not, without the consent of the Project Parties, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;



- (m) it will not, without the consent of the Project Parties:
  - (i) consent to any reduction in limits or coverage; or
  - (ii) enforce, conduct, settle or compromise any claims,

in respect of any Insurances, whether or not any of them cover other property; and

- (n) it will notify the Project Parties immediately when:
  - an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or
  - (ii) any one of the Insurances is cancelled.

## 12.3 Failure to produce proof of insurance

If after being requested in writing by the Authority to do so, the Quantity Surveyor fails to comply with its obligations under clause 12.2 to effect any of the insurances required to be effected and maintained pursuant to clause 12.2 the Authority may (acting in good faith and reasonably) (after giving the Quantity Surveyor 20 Business Days' prior notice of its intention to do so) effect and maintain the Insurances and pay the premiums. The Quantity Surveyor must pay to the Authority on demand a sum equal to the amount paid by the Authority.

## 13. Termination

## 13.1 Surveyor Default

(a) The Quantity Surveyor must ensure that no Surveyor Default occurs.

Each of the following is a Surveyor Default:

- the Quantity Surveyor does not perform any of the Services or does not perform the Services in accordance with this deed and any Work Order given under this deed;
- (ii) the Quantity Surveyor becomes the subject of an Insolvency Event;
- (iii) a representation or warranty made by or for the Quantity Surveyor in connection with this deed is found to have been incorrect or misleading when made;
- (iv) the Quantity Surveyor ceases to carry on its business or material part of it; or
- (v) a person is appointed under legislation to manage any part of the affairs of the Quantity Surveyor.

## 13.2 Termination due to Surveyor Default

Subject to clause 13.6, if a Surveyor Default occurs and the default is not remedied by the Quantity Surveyor within 10 Business Days of notice of that default being given by any of the Project Parties to the Quantity Surveyor, either of the Project Parties may terminate the appointment of the Quantity Surveyor by giving not less than 10 Business Days' notice in writing to the Quantity Surveyor and each other Project Party and the Project Parties' obligations under this deed are terminated.



#### 13.3 Termination due to termination of CENDA

- (a) If the CENDA is terminated for the default of a Project Party, the Project Party not in default may elect in writing to the other parties to this deed either to terminate this deed or to continue with it (and if it has not made an election within one month of the date of termination of the CENDA, is taken to have elected to terminate this deed).
- (b) If the Project Party not in default under the CENDA:
  - elects to terminate this deed under clause 13.3, that termination does not disturb any existing rights of the parties arising prior to the date of termination; and
  - (ii) elects to continue with this deed under clause 13.3, it does so on the basis that it accepts the obligation to pay the Quantity Surveyor for work done after the date of the election pursuant to this deed.

## 13.4 Termination by joint direction of Project Parties

- Subject to clause 13.6, without limiting any other rights available to the Project Parties under this deed or at law, the Project Parties may at any time and for whatever reason (including its convenience) terminate this deed by giving 10 Business Days' notice issued jointly by the Project Parties.
  - For the avoidance of doubt, the right to terminate this deed under this clause 13.4 may be exercised only by agreement between the Project Parties and cannot be exercised severally or unilaterally by any one Project Party acting on its own accord.

## 13.5 Rights on termination

If the appointment of the Quantity Surveyor is terminated pursuant to clauses 13.2, 13.3 or 13.4 the Quantity Surveyor is entitled to be paid any outstanding Fees due to the Quantity Surveyor for any Services which have been performed and which have not been paid for, and to the extent that any Services have been partly performed, the Quantity Surveyor is entitled to Fees determined on a pro-rata cost recovery basis having regard to the work completed in respect of those Services as at the date on which notice is given terminating this deed.

#### 13.6 Appointment of successor

- (a) The termination of the appointment of the Quantity Surveyor under clause 13.2 or clause 13.4 will not be effective until the successor to the Quantity Surveyor is appointed by the Project Parties in accordance with this clause 13.6.
- (b) Except where Project Practical Completion has occurred or the Project Parties otherwise agree in writing that the Quantity Surveyor is not required to provide any further Services pursuant to the CENDA, the Project Parties must, prior to giving the notice of termination under clause 13.2 or clause 13.4, appoint a "Replacement Quantity Surveyor" as the successor to the Quantity Surveyor.
- (c) The Replacement Quantity Surveyor must:
  - be acceptable to the Project Parties (acting reasonably);
  - (ii) enter into a deed with the Project Parties on substantially the same terms and conditions as this deed; and



- (iii) be a person who is able, in the reasonable opinion of the Project Parties, to fully and properly perform the Services.
- (d) The Project Parties agree to enter into the deed with the Replacement Quantity Surveyor as contemplated under clause 13.6(c)(ii).
- (e) In the event that the Project Parties do not agree on the identity of the Replacement Quantity Surveyor within 10 Business Days of the decision to terminate the appointment of the Quantity Surveyor, the Replacement Quantity Surveyor will be:
  - (i) [insert] of [insert];
  - (ii) [insert] of [insert]; or
  - (iii) [insert] of [insert].

#### 13.7 Return of records

(a) Within 10 Business Days of the termination of its appointment, the Quantity Surveyor must:

deliver to the relevant Project Party or, at the direction of the relevant Project Party, to the Replacement Quantity Surveyor, all books, records, plans, specifications and other documents relating to the Services or the Project in the possession or control of the Quantity Surveyor (with the Quantity Surveyor being entitled to retain copies but only for insurance purposes); and

use its reasonable endeavours to ensure the representative of the Quantity Surveyor, its agents and sub contractors deliver such material to the relevant Project Party or, at the direction of the relevant Project Party, to the Replacement Quantity Surveyor.

The Quantity Surveyor may not exercise any lien against any of the documentation referred to in this clause.

(b) In the event that its appointment is terminated, the Quantity Surveyor agrees that it will co-operate with and assist the Replacement Quantity Surveyor to ensure an effective and smooth transition of its duties and obligations under this deed to the Replacement Quantity Surveyor.

# 14. Assignment

## 14.1 Assignment by Quantity Surveyor

Except as set out in this deed the Quantity Surveyor may not assign or transfer its rights or obligations under this deed without the prior written consent of the Authority (which may be given or withheld in its absolute discretion and with or without conditions).

## 14.2 Assignment by Authority

The Authority may at any time assign (in whole or part) its rights and obligations under this deed at any time to any entity which succeeds to the rights of the Authority under the CENDA and must promptly give the Quantity Surveyor written notice of any such assignment.

## 15. Costs

Each Project Party agrees to pay for anything that it agrees to do under this deed.



#### 16. Notices

#### 16.1 Form

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 an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

#### **Authority**

Name: Barangaroo Delivery Authority

Address: 21/201 Kent Street
Sydney NSW 2000

[insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

Developer

Email:

Name: Grocon (CB) Developments Pty Limited ACN 614 118 642

Address: 3 Albert Coates Lane Melbourne VIC 3000

Email: [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

Quantity Surveyor

Name: [insert]
Address: [insert]

Email: [insert email address of the responsible person for receipt of

notices] and [insert general mailbox if required]

For the attention of: [insert]

## 16.2 Delivery

Notices must be:

- (a) left at the addresses referred to in clause 16.1;
- (b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause 16.1; or
- (c) sent by email to the email address (or addresses) referred to in clause 16.1.

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

#### 16.3 When effective

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

## 16.4 Receipt - postal

If sent by post, notices are taken to be received 2 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside Australia).



## 16.5 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 16.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 16. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email will only form part of a communication under this clause 16 if it is in \*.pdf, \*.xls, \*.doc, \*.vsd, \*.mpp, \*.mdb, \*.xer or \*.ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this Agreement:
  - (i) to ensure that their respective firewall and/or mail server (as applicable):

allows messages of up to 20 MB (or such greater capacity as may be agreed between the parties from time to time) to be received; and

automatically sends a receipt notification to the sender upon receipt of a message; and

to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

## 16.6 Receipt - email

If notices are sent by email they are taken to be received:

- (a) by 5:00pm (local time in the place of receipt) on a Business Day at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; or
- (b) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party sending the email from the recipient.

# 16.7 Receipt - general

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

## 17. GST

## 17.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 17 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 17.



(c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

#### 17.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost or amount relates.

#### 17.3 Additional amount of GST payable

Subject to clause 17.5, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this deed:

- any amount payable or consideration to be provided under any provision of this deed (other than this clause 17), for that supply is exclusive of GST;
- (b) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 17.3(b).

#### 17.4 Variation

- If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 17.3 and clause 17.5), varies from the additional amount paid by the Recipient under clause 17.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 17.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 17.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

# 17.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 17.3 applies is a taxable supply made by the Recipient in the same tax period (Recipient Supply), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 17.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 17.3 (or the time at which such GST Amount would have been payable in accordance with clause 17.3 but for the operation of clause 17.5(a)).

#### 17.6 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.



- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

#### 17.7 No merger

This clause will not merge on completion or termination of this deed.

## 18. Ratification by guarantors

#### 18.1 Status of this deed

For the purposes of the CENDA and the definition of 'Project Document', the parties acknowledge and agree that this deed constitutes a 'Project Document'.

#### 18.2 Guaranteed Obligations

As from the date of this deed, each of the parties to this deed acknowledges and agrees that the Developer's obligations under this deed as a Project Document form part of the 'General Guaranteed Obligations' and the 'Office Land Payment Guaranteed Obligations' for the purposes of the CENDA.

## 18.3 Ratification by Guarantors

The General Guarantor separately confirms and ratifies each of its obligations under the guarantee and indemnity contained in clause 46 ('General Guarantee and indemnity') of the CENDA including the obligations under this deed.

The separately confirms and ratifies each of its obligations under the guarantee and indemnity contained in clause 47 (
Guarantee and indemnity') of the CENDA including the obligations under this deed.

#### General

#### 19.1 Prompt performance

If this deed specifies when the Quantity Surveyor agrees to perform an obligation, the Quantity Surveyor agrees to perform it by the time specified. The Quantity Surveyor agrees to perform all other obligations promptly.

#### 19.2 Consents

The Quantity Surveyor agrees to comply with all conditions in any consent the Project Parties give in connection with this deed.

#### 19.3 Set-off

The Project Parties may set off any amount due for payment by the Project Parties to the Quantity Surveyor against any amount due for payment by the Quantity Surveyor to the Project Parties under this deed.



## 19.4 Discretion in exercising rights

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

## 19.5 Partial exercising of rights

If the Project Parties do not exercise a right or remedy fully or at a given time, the Project Parties may still exercise it later.

## 19.6 No liability for loss

The Project Parties are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any negligence or fraud by any Project Party.

#### 19.7 Conflict of interest

The Project Parties rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Project Parties have a personal interest in their exercise.

#### 19.8 Remedies cumulative

The Project Parties rights and remedies under this deed are in addition to other rights and remedies given by law independently of this deed.

## 19.9 Other encumbrances or judgments

- This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
  - any encumbrance or other right or remedy to which the Project Parties are entitled; or
  - (ii) a judgment which the Project Parties obtain against the Quantity Surveyor in connection with this deed.
- (b) Notwithstanding clause 19.9(a), the Project Parties may still exercise their rights under this deed as well as under the judgment, the encumbrance or the right or remedy.

#### 19.10 Inconsistent law

To the extent permitted by any law, this deed prevails to the extent it is inconsistent with any law.

## 19.11 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Quantity Surveyor in connection with this deed with the result that the Project Parties' rights, powers or remedies are adversely affected (including by way of delay or postponement) are excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### 19.12 Variation and waiver

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



## 19.13 Confidentiality

All information provided by one party to another party under this deed and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person except:

- (a) with the consent of the party providing the information;
- (b) if allowed or required by law or required by any stock exchange;
- (c) in connection with any legal proceedings relating to this deed;
- (d) if the information is generally and publicly available; or
- to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed.

The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and not disclosed it to any person.

## 19.14 Further steps

The Quantity Surveyor agrees to do anything the Project Parties ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to bind the Quantity Surveyor and any other person intended to be bound under this deed; or
- (b) to show whether the Quantity Surveyor is complying with this deed.

### 19.15 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document.

## 19.16 Applicable Law

This deed is governed by the law in force in New South Wales. The Quantity Surveyor and the Project Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.



## Annexure A - Quantity Surveyor's scope of Services

[Completion note: insert scope of all works which the Quantity Surveyor may be required to carry out pursuant to a Work Order. The scope of works should be sufficiently broad to describe all tasks, skills and qualifications required of the Quantity Surveyor]







## Annexure B - Insurances (clause 12)

# 1. Third Party Legal Liability

Coverage: The legal liabilities of the Quantity Surveyor, the Project Parties and their employees and agents to third parties for bodily injury and property damage and resulting loss of use arising from the or in connection with the Quantity Surveyor's performance or provision of Services under this deed.

The policy must permit the making of claims both during and at any time after the expiration of this deed.

Limit: A minimum of \$50 million for any one occurrence, (unlimited in any period of insurance) arising out of or in the course of or caused by the Quantity Surveyor performing any Services or doing any thing pursuant to, in connection with or arising from this deed.

## 2. Professional Indemnity

Coverage: The professional activities and duties of the Quantity Surveyor and its employees and agents in respect of the performance or provision of the Services.

The policy must permit the making of claims both during and at any time after the expiration of this deed.

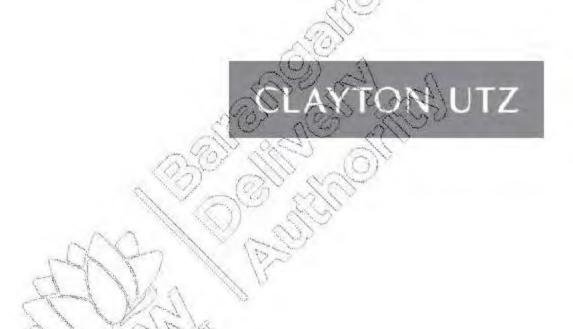
Limit: A minimum of \$20 million for any one occurrence and in the aggregate subject to an automatic reinstatement.

# 3. Workers' Compensation Insurance

Coverage: A suitable policy against any liability, loss, claim, demand, suit or proceeding, Costs and expenses arising at common law or under any statute (including the Workers Compensation Act 1987 (NSW)) or other legislative provision relating to workers compensation, as a result of personal injury or death of any person employed or taken to be employed by the Quantity Surveyor.

#### 4. Other Insurances

Such other insurances as may be reasonably required by the Project Parties from time to time which are obtainable with a reasonable premium (having regard to the nature of the risk to be insured against) including, without limitation, motor vehicle insurance covering third party property damage for all vehicles for a minimum of \$20,000,000 for any one occurrence.



# Annexure C - Fees

[Insert schedule of fees and terms of payment]







#### Annexure D - Form of Work Order

# **WORK ORDER**

This Work Order is given pursuant to clause 3.2 of the Quantity Surveyor's Deed entered into between the Barangaroo Delivery Authority (Authority), Grocon (CB) Developments Pty Limited (Developer), Grocon Constructors Pty Ltd, General Guarantor and [insert details]

of the Quantity Surveyor] (Quantity Surveyor) dated [insert].

Date of Work Order: [insert date of Work Order]

Brief for Services to be performed:

The Project Parties hereby direct and instruct the Quantity Surveyor to perform the following Services:

[insert brief for particular Services to be performed by the Quantity Surveyor having regard to the requirements of the CENDA and the scope of Works which the Quantity Surveyor has warranted it is qualified to undertake in Annexure A

Fee for performance of Services set out in this Work Order:

Pursuant to clause 10.1 of the Quantity Surveyor's Deed, the Developer must pay the Fee as set out below to the Quantity Surveyor in accordance with the Quantity Surveyor's Deed (including any terms for payment set out in Annexure A to the Quantity Surveyor's Deed)

[insert Fee payable in respect of Services, determined in accordance with Annexure C]

Date for completion of Services set out in this Work Order:

insert date by which Services are required to be completed

This Work Order is given and authorised by the Project Party specified below:

Grocon (CB) Developments Pty Limited ACN 614 118 642 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

[Alternately insert execution of Authority or other relevant Project Party if Work Order is given by a Project Party other than the Developer]



Executed as a deed.

The seal of Barangaroo Delivery Authority is affixed by authority of the Chief Executive Officer in the presence of:

Signature of authorised person	Signature of authorised person
Name of authorised person	Name of authorised person
Office held	Office held
Executed by Grocon (CB) Developments P Limited ACN 614 118 642 in accordance with section 127 of the Corporations Act 2001 (Cth	h
Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director
Executed by Grocon Constructors Pty Ltd ACN 006 703 091 in accordance with section of the Corporations Act 2001 (Cth):	127
Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director
in accordance with section 127 of the Corporations Act 2001 (Cth):	
Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director
L\320116744.9	



Executed by #Quantity Surveyor# ABN # in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director





# **Annexure V - Formal Notice**









#### Annexure V - Formal Notice

TO: Barangaroo Delivery Authority (Authority)

[insert date]

Pursuant to [insert relevant clause under which the Authority's approval/consent is sought] of the Central Barangaroo Development Agreement dated [insert date] made between [insert Developer Details] (Developer), [insert Guarantor details] (Guarantor) and the Authority, the Developer [<select one of the following Option A: Request or Option B: Notice>]

#### <OPTION A>

requests [insert details of request; e.g. 'that the Authority gives its approval for the attached Application to be lodged with the Consent Authority]. The Developer asks that the Authority responds to this request within [insert time period] [select <in accordance with the requirements of clause [insert clause]> or <in order to satisfy the requirements of [insert any statutory time period or external time requirement]>.]

#### <OPTION B>

hereby gives notice to the Authority that [insert particulars notified].

Pursuant to this Formal Notice, and in accordance with the requirements of the Central Barangaroo Development Agreement, the Developer attaches the following items:

Attachment Description No.	Purpose of attachment
[insert description of item - e.g. Drawing No 123 prepared on x date]	[insert purpose for attachment of item by reference to relevant clause within the PDA, other Project Document or requirement at law]
2	1000
3	033, 311, 001
4	

[Completion note: all items provided with this Formal Notice must be numbered and attached as listed above]

In [select <making this request> or <giving this notice>], the Developer certifies to the Authority that it has complied with all of the requirements of the Central Barangaroo Development Agreement and warrants that all information, documents, items and any representations made or provided to the Authority by or on behalf of the Developer are accurate and correct and have been prepared using due skill, care and diligence.

Signed by [insert Developer details] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

# **Annexure W - Checklist**









# Annexure W - Checklist

Requi	red item		Comp	liant?
(a)	749	ant Application in the identical form it is proposed to be lodged with the tauthority is attached;	YES	□ No
(b)	the Dev Applica	eloper confirms to the Authority that the proposed Significant tion:	Land Market	
	(i)	is developed to a standard suitable for, and compliant with, the requirements for submission to the Consent Authority for the relevant Approval;	YES	□ No
	(ii)	has incorporated so far as is reasonably practicable or otherwise addressed the requirements of the Authority or any Government Agency consulted in accordance with clause 8.3;	YES	□ No
	(iii)	meets accepted industry standards;	☐ YES	□ No
	(iv)	has been prepared by consultants with appropriate professional qualifications and membership of appropriate professional association	☐ YES	□ No
	(v)	is consistent with:		
		<ul> <li>A. the Concept Plan (or if the Concept Plan no longer exists, an replacement planning instrument governing Central Barangaroo);</li> </ul>	y TES	□ No
		B. the Final Bid;	☐ YES	□ No
		C. the Developer's Staging Plan;	YES	☐ No
		D. the Concept Design Drawings;	YES	□ No
	1	E. the Schematic Design Drawings;	YES	□ No
	W	(once they exist) the Approved Design Documents;	YES	□ No
	AP)	G. (once they exist) the Design Review Documentation approve by the Authority pursuant to clause 7.9; and	ed YES	□ No
C. Marie		H. any other Approvals relevant to the Developer's Project,	☐ YES	□ No
		and to the extent that any aspect of a proposed Significant Application submitted for approval is not consistent with the above requirements, disclose to the Authority each inconsistency and provide clear and detailed reasons explaining the reason for not complying with the relevant requirements;	☐ YES	□ No
	(vi)	complies with all Environmental Laws; and	☐ YES	□ No
	(vii)	is consistent, compatible and integrated with the External Infrastructure and any other infrastructure or Services servicing Central Barangaroo		□ No
	(viii)	reflects the final agreed form of Application which has been resolved the Developer and each of the Investors (as relevant) to be submitted for lodgement with the Consent Authority; and		□ No
(c)		s the Authority's approval as landowner of Central Barangaroo for the ent of that Application with the Consent Authority.	YES	□ No
		I, [insert name] [select: <head business="" development="" it="" of="">] hereby of and all attachments to it are correct.  Signature  Print name</head>	onfirm that the ab	
		Date		
\3246	29069.2			

Annexure X - Notice of Acceptance of Call Offer









### Annexure X - Notice of Acceptance of Call Offer

TO: Barangaroo Delivery Authority

[insert date]

#### Acceptance of Call Offer

Premises: [insert details of premises] (Premises)
Landlord: Barangaroo Delivery Authority (Authority)

Tenant: [insert Developer/Nominee details] (Developer)/(Nominee)

The [Developer]/[Nominee] accepts the Authority's offer to lease the Premises to the Developer (or the Developer's Nominee) made under clause 37.1 of the Central Barangaroo Development Agreement dated [insert date] made between the Authority, the Developer and

and Grocon Constructors Pty Limited ACN 006 703 091 (as the Guarantor).

000	
Executed by Grocon (CB) Developments Limited ACN 614 118 642 in accordance w section 127 of the Corporations Act 2001 (C	ith
Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director
Executed by [Nominee] in accordance with section 127 of the Corporations Act 2001 (C	
Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

Annexure Y - Notice of Acceptance of Put Offer









### Annexure Y - Notice of Acceptance of Put Offer

TO: Grocon (CB) Developments Pty Limited ACN 614 118 642

[insert date]

#### Acceptance of Put Offer

Premises: [insert details of premises] (Premises)
Landlord: Barangaroo Delivery Authority (Authority)

Tenant: Grocon (CB) Developments Pty Limited (Developer)

The Authority accepts the Developer's offer made under clause 38.1 of the Central Barangaroo

Development Agreement dated [insert date] made between the Authority, the Developer and

and Grocon Constructors Pty Limited ACN 006 703 091

(as the Guarantor) to require the Developer to lease the Premises.

The seal of Barangaroo Delivery Authority is affixed in the presence of:

Signature of witness

Signature of Chief Executive Officer

Full name of witness

Full name of Chief Executive Officer

# Annexure Z - Hickson Road Program









### Annexure Z - Hickson Road Program

# Scope of Works for the Hickson Road/Sussex Street Re-Levelling Works

The area of Hickson Road / Sussex Street covered in the scope of the re-levelling works are as per the following stages:

#### Stage 1

 Sussex Street - from the southern side of the Shelley Street intersection in the south to the northern side of the Napoleon Street intersection in the North.

#### Stage 2

 Hickson Road from the northern side of the Napoleon Street intersection in the south to the northern side of the Globe Street intersection in the north, and

#### Stage 3

 Hickson Road from the northern side of the Globe Street intersection in the south to the northern boundary of the Barangaroo South Stage 1B site.

The works are known as the Hickson Road/Sussex Street re-levelling works.

The scope of works excludes any design services and construction works in Napoleon Street.

#### Stage 1;

The Stage I works include the removal of the existing kerbs, footpaths and road pavement to allow the road level to be raised (maximum 900mm) to meet the level of the Barangaroo South Stage 1A buildings and public domain and to ensure that the road complies with the City of Sydney Council road standard and landscaping requirements.

#### **Demolition Works**

- The works include the demolition of the existing kerb and gutter and footpaths to both sides of Sussex Street, removal of the existing road pavement, road blisters and pedestrian islands in Napoleon Street.
- Removal of the existing trees on both sides of Sussex Street and removal of existing street furniture.

#### **Utility Works**

Adjustments to the existing utility infrastructure subsurface and surface structures including:

- Reducing the length of the existing pedestrian blister island in front of the Sussex Hotel to match the proposed TfNSW Wynyard Walk works
- Adjust the existing stormwater pits and pit covers to suit the new road alignment and levels.
- Raising of the existing sewer maintenance chamber lids where there is a level difference less than 300mm.
- Reconstruction of the existing sewer maintenance chambers where there is a level difference greater than 300mm.
- Adjust the existing fire hydrants and water main stop valves.
- Adjust the existing Ausgrid pit covers to suit the raised road levels.
- Adjust the existing Telstra/Optus pits to suit the raised road levels.
- Adjust the levels of the existing kerb inlet pits to suit the raised road levels.
- Adjust the existing gas valves and covers to suit the raised road levels.



#### Stormwater

Construct the stormwater drainage management system including the pipelines and stormwater structures including:

- Pipelines excavate, bed, supply and lay pipes and backfill.
- Pits excavate, construct form/reo/pour in situ pits or supply and install precast pits where suitable. Install lintels, pit lids, grates and frames.
- Construct a large capture pit in the centre of Sussex St consisting of 17 x 900mm lintels below the southbound carriageway.
- Construct a capture pit on the western side of Sussex St in front of the KPMG building consisting of 10 x 900mm lintels.
- Construct a capture pit in the centre of Sussex St adjacent to the Wynyard Walk Bridge consisting of 3 x 900mm lintels below the northbound carriageway.
- Install subsoil drainage and flushing points to tree pits and kerbs.

#### Road works

- Kerbs reuse the existing trachyte kerb where possible. Supply and install new granite kerb to
  the footpaths, supply and lay new granite kerb and paver infill to the cycle way dividing strip on
  the eastern side of Sussex Street.
- Footpaths build up footpath levels on western side of the road.
- Construct new pavements to the footpaths, pram ramps/vehicular crossings, to both sides of Sussex Street.
- Construct the southbound cycle way from Napoleon Street to the pedestrian blister in front of the Sussex Hotel
- Line marking and signage to the shared cycle and pedestrian footpath zones at the crossing below the Wynyard Walk Bridge.
- Road pavement trim the existing subgrade, supply and place fill material to build up levels to the new road level, supply and place pavement material.
- Construct a new median strip with hard paving surface.
- Line marking and signage.

#### Landscaping works

- Excavation for new tree pits.
- Supply and place topsoil to the tree pits.
- Supply and install 3 Urbanite Ash trees south of the proposed City Walk Bridge.
- Supply and install 5 American Tulip trees north of the proposed City Walk Bridge.
- Supply and install City of Sydney approved tree grates to the tree pits.
- Supply and install street furniture including bins, bicycle racks and bench seats.

#### Street-lighting

Provide Smart Poles and street lighting to meet the City of Sydney Council guidelines.

 The works include the design and approvals for street lighting and provision of electricity/metering, construction of footings, supply and installation of the smart poles and light fittings.

#### Traffic signals

Provide the permanent traffic signals at the

- Sussex Street/Napoleon Street/ Hickson Road/basement entry intersection.
- Provide mid-block pedestrian traffic signals below the Wynyard Walk Bridge

The scope includes design and obtain RMS approvals, civil works, traffic signals equipment, detector loops, controller, electrical and communication service, RMS fees.



#### Sydney Water Potable Water main

Install a new 300mm diameter potable water main on the western side of Sussex St

The scope includes saw cutting of the pavement, demolition of road pavement, excavation, existing pipe exhumation, supply and lay new pipe material and fittings, backfill, commissioning and handover.

#### Stage 2:

The Stage 2 works include the removal of the western kerb, western footpaths and road pavement to allow the road level to be raised (maximum 300mm) to meet the level of the Stage 1A buildings and public domain and to ensure that the road complies with the City of Sydney Council road standard and landscaping requirements.

#### **Demolition Works**

- The works include the demolition of the existing western kerb and gutter and western footpath to Hickson Road, removal of the existing road pavement, road blisters and pedestrian islands and crossing in Hickson Road.
- Removal of the existing trees on the western side of Hickson Road and removal of existing street furniture.

#### **Utility Works**

Adjustments to the existing utility infrastructure subsurface and surface structures including:

- Adjust the existing stormwater pits and pit covers to suit the new road alignment and levels.
- Raising of the existing sewer maintenance chamber lids.
- Adjust the existing fire hydrants and water main stop valves.
- Adjust the existing Ausgrid pit covers to suit the raised road levels.
- Adjust the existing Telstra/Optus pits to suit the raised road levels.
- Adjust the levels of the existing kerb inlet pits to suit the raised road levels.
- Adjust the existing gas valves and covers to suit the raised road levels.

#### Stormwater

Construct the stormwater drainage management system including the pipelines and stormwater structures including:

- Pipelines excavate, bed, supply and lay pipes and backfill.
- Pits excavate, construct form/reo/pour in situ pits or supply and install precast pits where suitable. Install lintels, pit lids, grates and frames.
- Install subsoil drainage and flushing points to tree pits and kerbs

#### Road works

- Kerbs supply and install new granite kerb to the western footpath, supply and lay new granite kerb and paver infill to the cycle way dividing strip on the eastern side of Hickson Road.
- Footpaths build up footpath levels on western side of the road.
- Construct new pavements to the footpaths, pram ramps/vehicular crossings, to both sides of Hickson road.
- Construct the southbound cycle way on the eastern side of Hickson Road.
- Road pavement trim the existing subgrade, supply and place fill material to build up levels to the new road level, supply and place pavement material.
- Construct a new median strip with hard paving surface and tree pits.
- Line marking and signage.



#### Landscaping works

- Excavation for the tree pits.
- Supply and place topsoil to the tree pits.
- Supply and install 4 American Tulip trees.
- Supply and install 5 Cabbage Palms to the centre medium strip.
- Supply and install City of Sydney approved tree grates to the new and existing tree pits.
- Supply and install street furniture including bins, bicycle racks and bench seats.

#### Street-lighting

Provide Smart Poles and street lighting to meet the City of Sydney Council guidelines.

 The works include the design and approvals for street lighting and provision of electricity/metering, construction of footings, supply and installation of the smart poles and light fittings.

#### Traffic signals

Provide the permanent traffic signals at the:

Hickson Road/ Globe Street intersection.

The scope includes design and obtain RMS approvals, civil works, traffic signals equipment, detector loops, controller, electrical and communication service, RMS fees.

#### Sydney Water Potable Water main

Install a new 300mm diameter potable water main on the western side of Hickson road.

The scope includes saw cutting of the pavement, demolition of road pavement, excavation, existing pipe exhumation, supply and lay new pipe material and fittings, backfill, commissioning and handover.

#### Stage 3:

The Stage 3 works include the removal of the western kerb in the vicinity of the Globe Street intersection to allow a transition to the existing levels and construction of the medium strip and landscaping.

#### **Demolition Works**

- The works include the demolition of the existing western kerb and gutter in the vicinity of the Globe Street intersection to allow the transition to the existing road level and make good.
- Removal of the existing trees on the western side of Hickson Road and removal of existing street furniture.

#### Stormwater

Construct the stormwater drainage management system including the pipelines and stormwater structures including:

- Pipelines excavate, bed, supply and lay pipes and backfill.
- Pits excavate, construct form/reo/pour in situ pits or supply and install precast pits where suitable. Install lintels, pit lids, grates and frames.
- Install subsoil drainage and flushing points to tree pits and kerbs

#### Road works

 Kerbs - supply and install new granite kerb to the western footpath, supply and lay new granite kerb and paver infill to the cycle way dividing strip on the eastern side of Hickson Road.



- Footpaths build up footpath levels on western side of the road in the vicinity of the Globe Street intersection and construct a new footpath along the western side of Hickson Road.
- Construct new pavements to the footpaths, pram ramps/vehicular crossings, to both sides of Hickson Road.
- Construct the southbound cycle way on the eastern side of Hickson Road.
- Construct a new median strip with hard paving surface and tree pits.
- Line marking and signage.

#### Landscaping works

- Excavation for the tree pits.
- Supply and place topsoil to the tree pits.
- Supply and install 8 American Tulip trees.
- Supply and install 10 Cabbage Palms to the centre medium strip.
- Supply and install City of Sydney approved tree grates to the new and existing tree pits.
- Supply and install street furniture including bins, bicycle racks and bench seats.

#### Street-lighting

Provide Smart Poles and street lighting to meet the City of Sydney Council guidelines.

 The works include the design and approvals for street lighting and provision of electricity/metering, construction of footings, supply and installation of the smart poles and light fittings.

#### **Program of Works**

The construction of the works will be undertaken in phases to maintain a minimum of three traffic lanes (two for northbound traffic and one for southbound traffic), the construction activities are to be delivered in two main phases for each stage/section:

- Phase 1 Western side of the road including the medium strip and drainage works and
- Phase 2 Eastern side of the road.

#### Schedule of drawings:

#### Civil Engineering Drawings

B10 CD0000410 06	STAGE 1A, PREFERRED HICKSON ROAD, ROADWORKS PLAN SHEET 1
B10 CD0000411 06	STAGE 1A, PREFERRED HICKSON ROAD, ROADWORKS PLAN SHEET 2

#### Hickson Road Landscape Drawings

B10 LD0000400 05	COVER SHEET AND DRAWING INDEX
B10 LD0000410 06	HICKSON ROAD SITE PLAN
B10 LD0000411 03	HICKSON ROAD LANDSCAPE PLAN SHEET 1
B10 LD0000412 03	HICKSON ROAD LANDSCAPE PLAN SHEET 2
B10 LD0000413 04	HICKSON ROAD LANDSCAPE PLAN SHEET 3
B10 LD0000414 04	HICKSON ROAD LANDSCAPE PLAN SHEET 4
B10 LD8800000 02	TYPICAL PAVING DETAILS
B10 LD8800001 02	TYPICAL PAVING SETOUTS
B10 LD8800002 02	TYPICAL FURNITURE DETAILS
B10 LD8800003 02	TYPICAL FURNITURE DETAILS
B10 LD8800004 02	TYPICAL TREE PIT DETAILS

Annexure AA -



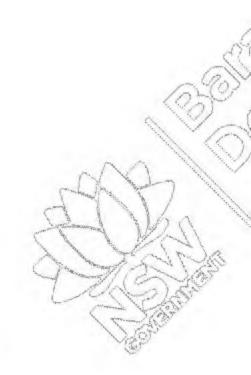
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# Annexure BB - Roads Authority area



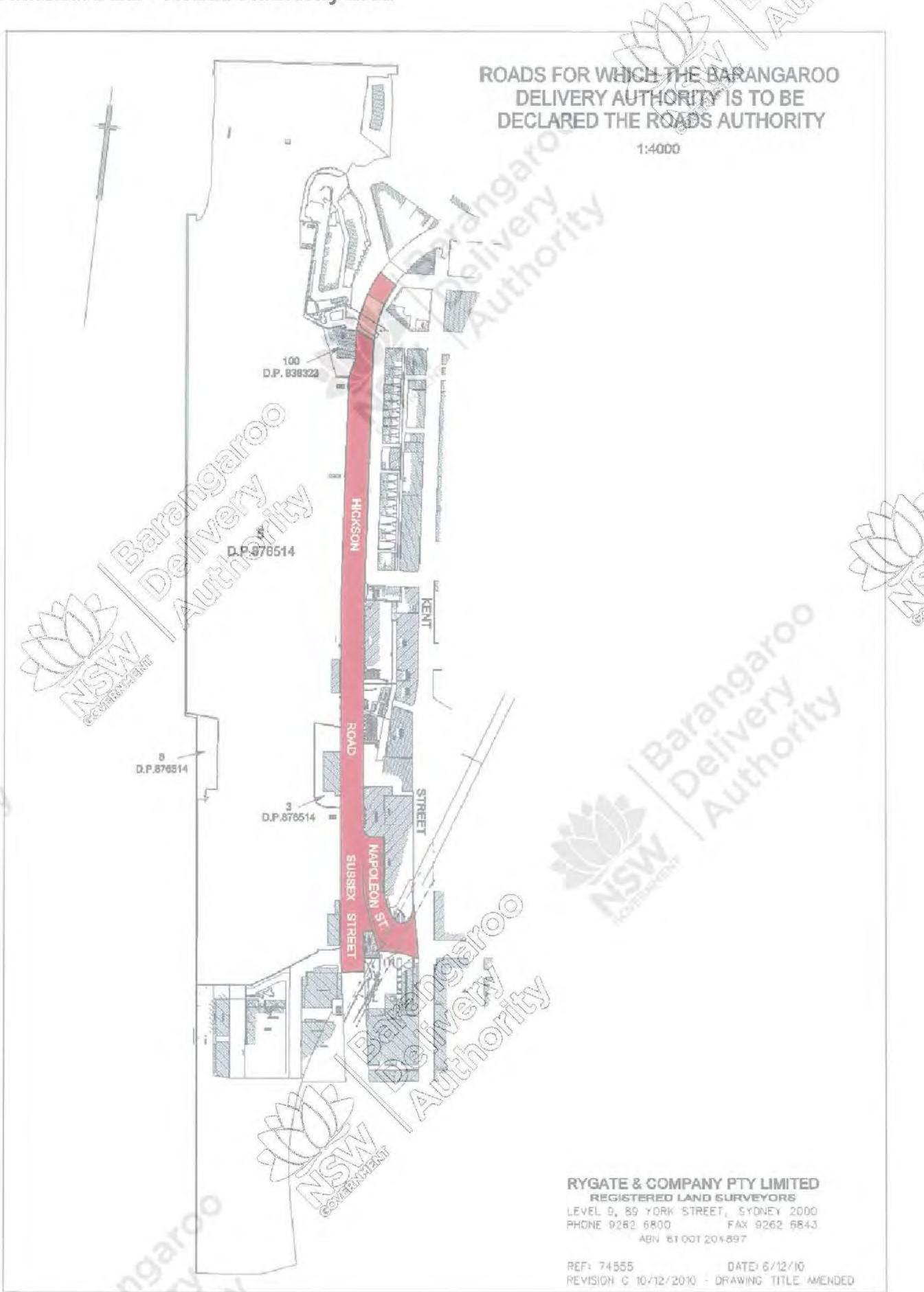






# CLAYTON UTZ

# Annexure BB - Roads Authority area



Annexure CC -







**Annexure DD** 







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Annexure EE -





















Annexure FF





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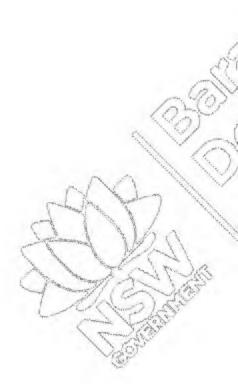


# **Annexure GG - Declaration Area Plan**



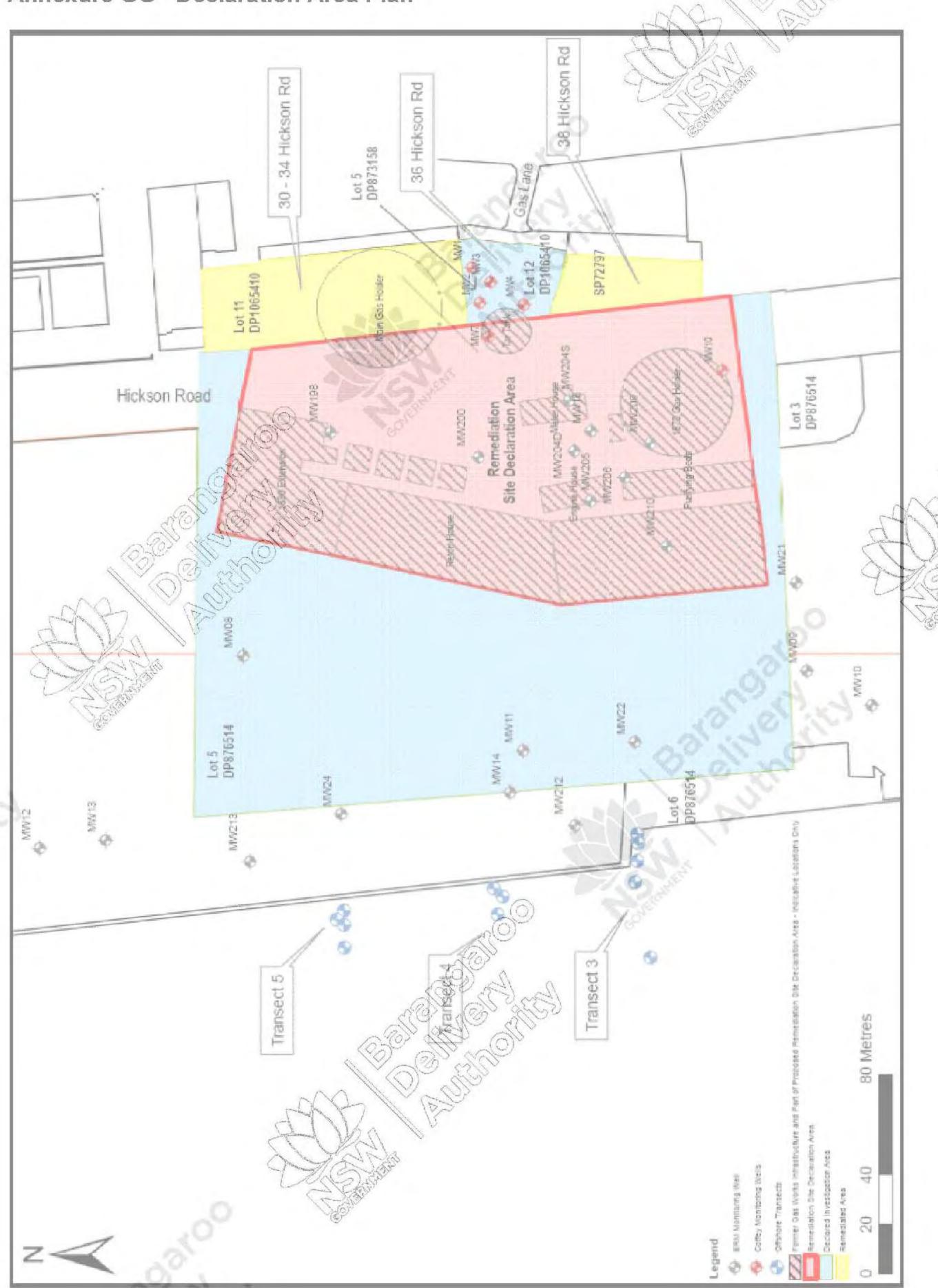








# Annexure GG - Declaration Area Plan



Annexure HH -







Annexure II







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Annexure JJ







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