

CLAYTON UTZ

Planning Agreement

The Minister for Planning

ABN 38 755 709 681

Minister

Australasian Conference Association Ltd

ACN 000 003 930

and

Avondale Greens Pty Ltd

ABN 33 099 742 542

and

Avondale Greens Developments Pty Ltd

ABN 27 106 910 598

and

Johnson Property Group Pty Limited

ABN 58 102 465 814

Collectively, the Land Owners

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Agreement made at _____ **on** _____

Parties **The Minister for Planning ABN 38 755 709 681** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 ("Minister")

Australasian Conference Association Ltd ACN 000 003 930 of 148 Fox Valley Road Wahroonga NSW 2076

AND **Avondale Greens Pty Ltd ABN 33 099 742 542** of Level 3, 338 Kent Street Sydney NSW 2000

AND **Avondale Greens Developments Pty Ltd ABN 27 106 910 598** of Level 3, 338 Kent Street Sydney NSW 2000

AND **Johnson Property Group Pty Limited ABN 58 102 465 814** of Level 3, 338 Kent Street Sydney NSW 2000 ("**Developer**"),

 (Collectively, the "**Land Owners**")

Background

- A. The Land Owners (other than the Developer and Avondale Greens Developments Pty Ltd) are or will be the owners of the Developer Controlled Land.
- B. The Developer and Avondale Greens Developments Pty Ltd control the Developer Controlled Land and have certain arrangements in place with most of the owners of the balance of the Land that is not Developer Controlled Land.
- C. The Land Owners intend to develop the Developer Controlled Land.
- D. A Concept Plan Approval Application has been lodged on behalf of the Land Owners in relation to the Developer Controlled Land.
- E. The Land Owners seek a change to an environmental planning instrument (being the Major Projects SEPP) in respect of the Land.
- F. By way of this deed, the Land Owners offer to enter into a planning agreement on the terms and conditions of this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms and the provisions relating to the interpretation of the Documents are as follows:

Act means the Environmental Planning and Assessment Act, 1979 (NSW).

Allotment means a lot in a Plan of Subdivision where that plan comprises the whole or any part of the Land (whether or not that land is Developer Controlled Land) which lot is intended to be developed, subject to Development Consent, by construction of residential premises.

Application means an application for any Approval.

Approval means any approvals, consents, Modifications, Part 4A Certificates, Part 3A of the Act approvals, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by Law for the Development or for the commencement or carrying out of works contemplated by this deed.

ASX Listing Rules means the listing rules established by ASX Limited ACN 008 624 691 to, inter alia, govern the admission of entities to the official list, quotation of securities, suspension of securities from quotation and removal of entities from the official list.

Assignment and Dealing Terms means the obligations imposed on the relevant Parties under, and by virtue of Schedule 10.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 109T of the Act.

Authorised Officer means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this deed.

Avondale School Site means the area of land that is hatched (in black ink) and identified as the "Avondale School Site" in the plan attached to this deed at Annexure B.

Bank Bill Rate means, the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Minister calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Minister which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Minister is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Minister in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Minister may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the Bank Bill Rate under this deed despite any calculation by the payee under paragraph (a) or (b).

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to the Minister, in the Minister's absolute and unfettered discretion, to pay the face value of that undertaking on demand.

Bank Guarantee Delivery Date (Environmental Contribution) means any day prior to the date of issue of a Subdivision Certificate which relates to the 101st Allotment in respect of the Land.

Bill means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991*.

Compliance Certificate means a certificate referred to in section 109C(1)(a) of the Act.

Complying Development Certificate means a complying development certificate referred to in section 85 of the Act.

Construction Certificate means a certificate issued under section 109C(1)(b) of the Act.

Concept Plan Approval means an Approval by the Minister to the Concept Plan pursuant to section 75O of the Act, in respect of the Concept Plan Approval Application, including any Modification of it.

Concept Plan Approval Application means an Application pursuant to section 75M of the Act made by the Land Owners on 16 August 2007 to the Minister for Approval.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Contribution Amount means the amount set out in Item 1 in Column 1 in Table 1 in Schedule 3.

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

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

Council means the Lake Macquarie Council.

DECC means the NSW Department of Environment and Climate Change or any similar department that may be established from time to time.

DET means the NSW Department of Education and Training or any similar department that may be established from time to time.

Designated State Public Infrastructure has the same meaning given to that term in clause 62 of the Lake Macquarie Local Environmental Plan 2004.

Developer means Johnson Property Group Pty Limited ABN 58 102 465 814.

Developer Controlled Land means the land described in Part B of Schedule 2 and, for the avoidance of doubt, forms part of the Land.

Development means the development of the Land for (approximately) 2,500 Allotments pursuant to an approval to carry out that development to be granted under the Act.

Development Application has the meaning given to that term in the Act.

Development Consent has the meaning given to that term in the Act.

Development Contributions means the payment of the Contribution Amount and the provision of those other contributions specified in Tables 1 and 2 of Schedule 3.

Development Contributions Procedures means the development contribution procedures set out in Schedule 4 of this deed.

Development Contributions Schedule means the schedule for the Development Contributions set out in Schedule 3 of this deed.

Development Contributions Timetable means the timetable and milestones for each Development Contribution described in the table in Schedule 5 of this deed.

Dispute Resolution Procedures means the procedures imposed on the relevant Parties under Schedule 8.

Dora Creek Road Improvement Works means an upgrade of the Newport Road connection to Macquarie Street/Wangi Road (MR 217) at Dora Creek to provide for the additional North Cooranbong traffic generated through the area. As a minimum, this upgrade must incorporate the following design requirements:

- (a) safe and efficient access from Newport Road to and from MR217;
- (b) construction of traffic control signals or roundabout at the intersection on MR217;
- (c) adequate dual approach and departure lanes to the MR217 intersection; and
- (d) provision for pedestrians and on road cyclists,

and such other road works as may be agreed by the RTA and the Land Owners, such road works to be expressly detailed in a Road Works Agreement, and where the RTA and the Land Owners are unable to agree in respect of such other road works then such other road works as determined by the Minister.

Education Contribution Land means the site comprising approximately 3 hectares of Developer Controlled Land and identified as the "Proposed Primary School Location" in the plan attached to this deed as Annexure B.

Environmental Contribution means either:

- (a) the Development Contribution set out at Item 1 of Table 1 in Schedule 3; or
- (b) if the Land Owners so elect pursuant to paragraph 3.1(a) of Schedule 4, the dedication of the Environmental Contribution Land to the Minister (or, if the Minister so directs, to the Minister of Environment and Climate Change) for environmental purposes.

Environmental Contribution Land means the site that may be dedicated to the Minister (or, if the Minister so directs, to the Minister of Environment and Climate Change) pursuant to paragraph 4 of Schedule 4.

Explanatory Note means the note exhibited with a copy of this deed, when this deed is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

Gazettal Date means the date that the amendment to the Major Projects SEPP, as contemplated by clause 2(b)(ii) of this deed, is gazetted.

General Register of Deeds means the land registry so entitled and maintained under the *Conveyancing Act 1919* (NSW).

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Part A of Schedule 2.

Law means:

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

presently applying or as they may apply in the future.

Legislation means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

LPI means Land and Property Information NSW or any similar department that may be established from time to time.

Major Projects SEPP means State Environmental Planning Policy (Major Projects) 2005.

Major Projects SEPP Amendment (North Cooranbong) means the proposed amendment to be made to the Major Projects SEPP, such amendment to be known as the "*State Environmental Planning Policy (Major Projects - North Cooranbong) Amendment 2008*".

Minister means the New South Wales Minister for Planning.

Modification means a "modification" of the Concept Plan Approval or the Project Application Approval within the meaning of section 75W of the Act.

Morisset Road Improvement Works means each of the following road works:

- (a) an upgrade of the roundabout intersection of Mandalong Road/Freemans Drive/Wyee Road/Dora Street, Morisset to traffic control signals which, as a minimum, must incorporate the following design requirements:
 - (i) adequate dual approach and departure through lanes on all legs, with the departure side of the eastern leg of the intersection (Dora Street) to be extended for a minimum length of 200 metres, excluding tapers;
 - (ii) dual separate right turn lanes on all legs;
 - (iii) separate left turn slip lanes on all legs;
 - (iv) pedestrian crossings on all legs;
 - (v) provision for on-road cyclists on all legs; and
 - (vi) allowance and provision for 'double diamond' signal phasing; and
- (b) the duplication of Mandalong Road between the F3 Freeway and Freemans Drive/Wyee Road, Morisset, to provide two lanes in both directions between the F3 Freeway and Dora Street,

and such other road works as may be agreed by the RTA and the Land Owners, such road works to be expressly detailed in a Road Works Agreement, and where the RTA and the Land Owners are unable to agree in respect of such other road works then such other road works as determined by the Minister.

NSW means the State of New South Wales.

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109C(2) of the Act.

Part 4A Certificate means a certificate referred to in section 109C(1)(a), (b), (c) or (d) of the Act.

Party means a party to this deed, including their respective successors and assigns.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Planning Agreement means the planning agreement that comes into operation upon satisfaction of the requirements set out in clause 2(c), comprising the form and content of this deed.

Practical Completion means either:

- (a) where the expression "Practical Completion" is defined in a Road Works Agreement, the definition of "Practical Completion" in that agreement; or
- (b) where the expression "Practical Completion" is not defined in a Road Works Agreement, that stage in the execution of the Road Improvement Works under the relevant Road Works Agreement when:
 - (i) the Road Improvement Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation, except for minor omissions and minor defects which:
 - A. do not impede use of the Road Improvement Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - B. will not prejudice the convenient and safe use of the Road Improvement Works during rectification; and
 - C. the RTA's authorised representative determines that the Land Owners have reasonable grounds for not rectifying prior to public use and occupation;
 - (ii) the Inspection and Testing Plan has been complied with and any other tests necessary to be carried out and passed before the Road Improvement Works, or a part thereof, is used and occupied by the public have been carried and passed and all test results and conformance data identified in the Inspection and Testing Plan has been provided to the RTA;
 - (iii) all relevant Legislative Requirements in respect of the Road Improvement Works have been carried out or satisfied;

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

on the basis that any expression used in this paragraph (b) that is not otherwise defined in this deed shall have that meaning usually given to that expression by the RTA in a Road Works Agreement.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens Title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

Release and Discharge Terms means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

Review or Replacement Procedures means the procedures set out in Schedule 7.

Road Improvement Works means each of the Dora Creek Road Improvement Works and the Morisset Road Improvement Works.

Road Works Agreement means a works authorisation deed or other legally binding agreement between the Land Owners (or, if the RTA agrees, the Developer) and the RTA which governs the carrying out of the Road Improvement Works.

RTA means the Roads and Traffic Authority of NSW or any similar department that may be established from time to time.

Security Arrangements means those security arrangements set out in Schedule 9.

State means the State of New South Wales.

Subdivision Certificate means a certificate issued under section 109C(1)(d) of the Act.

1.2 Interpretation

In the Documents:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:

- (b) if more than one person is identified as the Minister, that expression refers to them, and the obligations of the Minister under this deed bind them, jointly and severally;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (f) 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;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **"includes"** in any form is not a word of limitation;
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (l) the Schedules and Annexures to this deed form part of this deed; and
- (m) if a party to this deed is made up of more than one person:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

2. Status of this Agreement

- (a) This deed applies to the Development.
- (b) Until the Planning Agreement operates, this deed constitutes an irrevocable offer from the Land Owners to enter into the Planning Agreement if
 - (i) Concept Plan Approval is granted; and
 - (ii) the Major Projects SEPP is amended by the Major Projects SEPP Amendment (North Cooranbong).
- (c) The Planning Agreement operates only if:

- (i) the Concept Plan Approval is subject to a condition imposed under section 93I(3) of the Act requiring the Planning Agreement to be entered into;
 - (ii) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
 - (iii) the Minister executes this deed.
- (d) The Minister must notify the Land Owners immediately after the Minister executes this deed and promptly provide the Land Owners with the deed as executed by the Minister.

3. Planning Agreement under the Act

The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

4. Application of the Planning Agreement

The Planning Agreement applies to:

- (a) the Land; and
- (b) the Development.

5. Development Contributions

The Land Owners will provide, or procure the provision of, the Development Contributions in accordance with:

- (a) the Development Contributions Schedule;
- (b) the Development Contributions Timetable; and
- (c) the terms of this deed.

6. Acknowledgements

The Parties agree that:

- (a) the Minister acknowledges to the Land Owners that it is the Minister's present intention that those parts of the Development Contributions which the Land Owners pay to the Minister in cash will be made available for use or expenditure for the purposes set out in Column 2 of Table 1 of Schedule 3; and
- (b) to the extent that a Development Contribution may be described in, or implied by this deed, including clause 6(a), as having a particular use (intended or otherwise), the Land Owners acknowledge and agree that the Minister:
 - (i) has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose;
 - (ii) has no obligation to use or expend a Development Contribution for a particular purpose;

- (iii) is not required to repay to the Land Owners, and the Land Owners are not entitled to a repayment of, any Development Contribution;
- (iv) has no obligation to monitor or follow up the use or expenditure of such a Development Contribution including if the Minister transmits a Development Contribution to any Authority.

7. Security and enforcement

7.1 Security

The Land Owners have agreed to provide security to the Minister for performance of the Land Owners' obligations under this deed on the terms and conditions of the Security Arrangements.

7.2 Enforcement

- (a) This deed may be enforced by any Party in any court of competent jurisdiction.
- (b) The Land Owners covenant with the Minister that no Land Owner will rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because a condition of a Concept Plan Approval requires the Land Owners to enter into a planning agreement on the terms of this deed.
- (c) The Land Owners indemnify the Minister against any liability, loss, Claim, damages, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) arising from or incurred in connection with any breach of the Land Owners' obligations under clause 7.2(b).
- (d) This indemnity is a continuing obligation, separate and independent from the Land Owners' other obligations and survives completion, rescission or termination of this deed.
- (e) It is not necessary for the Minister to incur expense or to make any payment before enforcing this indemnity.
- (f) The Land Owners must pay on demand any amount they must pay under this indemnity.

7.3 No prevention to enforcement

For the avoidance of doubt, nothing in this deed prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this deed or any matter to which this deed relates; and
- (b) the Minister from exercising any function under any Legislation, including the Act, or any other Act or Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

8. Application of sections 94, 94A and 94EF of the Act to the Development

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

9. Interests in the Developer Controlled Land

9.1 Ownership

The Land Owners represent and warrant to the Minister that, on the date of this deed, one or more of them is the legal and beneficial owner of the Developer Controlled Land.

9.2 Registration of the Planning Agreement

- (a) The Land Owners agree to procure the registration of the Planning Agreement entered into pursuant to clause 2(c), under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Developer Controlled Land in accordance with section 93H of the Act;
- (b) The Land Owners, at their own expense, will, promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Developer Controlled Land registered under the *Real Property Act 1900* (NSW); or
 - B. is seized or possessed of an estate or interest in the Developer Controlled Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of the Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Developer Controlled Land in accordance with section 93H of the Act;
- (c) The Land Owners, at their own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires:
 - (i) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 60 Business Days after that date; and
 - (ii) to procure the registration of the Planning Agreement by the Registrar-General either in the relevant folios of the register for the Developer Controlled Land (or in the General Register of Deeds if the Planning Agreement relates to land not under the *Real Property Act 1900* (NSW)) as soon as reasonably practicable after the Planning Agreement is lodged for registration but, in any event, no later than 20 Business Days after the date on which the Land Owners procure the lodgement of the Planning Agreement with the Registrar-General.

9.3 Release and discharge of this deed

The Minister agrees to release and discharge the Planning Agreement on the Release and Discharge Terms.

9.4 Caveat

The Land Owners acknowledge and agree that:

- (a) when this deed is executed by the Land Owners, the Minister is deemed to have acquired, and the Land Owners are deemed to have granted, an equitable estate and interest in the Developer Controlled Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Minister has a sufficient interest in the Developer Controlled Land in respect of which to lodge with the LPI a caveat notifying that interest;
- (b) they will not object to the Minister lodging a caveat in the relevant folio of the Register for the Developer Controlled Land nor will it seek to remove any caveat lodged by the Minister, except following registration of the Planning Agreement in the relevant folios of the Register for the Developer Controlled Land; and
- (c) they will indemnify and keep indemnified the Minister against all Claims made against the Minister (including, without limitation, Claims made by the Land Owners or any other person who has an estate or interest in any part of the Developer Controlled Land registered under the Real Property Act), by virtue of or in connection to the Minister lodging a caveat in the relevant folio of the Register for the Developer Controlled Land prior to the registration of the Planning Agreement in the relevant folios of the Register for the Developer Controlled Land.

10. Review or replacement of this deed

The Parties agree that this deed will be reviewed or modified in the circumstances, and in accordance with, the Review or Replacement Procedures.

11. Dispute resolution

The Parties agree that any disputes under or in relation to this deed will be resolved in accordance with the Dispute Resolution Procedures.

12. GST

12.1 Interpretation

In this clause 12:

- (a) except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (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; and
- (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 Intention of the parties

Without limiting the operation of this clause 12, the parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this deed;

- (b) no tax invoices will be exchanged between the parties; and
- (c) no additional amounts will be payable on account of GST.

12.3 Reimbursement

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

12.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 12.

12.5 Additional amount of GST payable

Subject to clause 12.7, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this deed:

- (a) 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 GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) 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 12.5(a).

12.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.5 and clause 12.7), varies from the additional amount paid by the Recipient under clause 12.5, 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 12.6(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12.5.
- (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.