

---

The Minister for Planning

---

Goodman Property Services (Aust) Pty Limited

---

The Trust Company Limited as custodian for the  
Carter Street Trust

---

The Trust Company Limited as custodian for the  
Hill Road Trust

---

The Trust Company Limited as custodian for the  
IBC Trust

---

Tallina Pty Ltd as trustee for the Carter Street Trust

---

Tallina Pty Ltd as trustee for the Hill Road Trust

---

Tallina Pty Ltd as trustee for the IBC Trust

---

# Planning Agreement

Section 93F of the Environmental Planning  
and Assessment Act, 1979 (NSW)



## Contents

<b>1</b>	<b>Planning agreement under the Act</b>	<b>2</b>
<b>2</b>	<b>Application of this document</b>	<b>2</b>
<b>3</b>	<b>Operation and commencement of this document</b>	<b>2</b>
<b>4</b>	<b>Definitions</b>	<b>2</b>
<b>5</b>	<b>Development Contributions to be made under this document</b>	<b>9</b>
5.1	Developer and Landowners to provide Development Contributions	9
5.2	Acknowledgement	9
5.3	Special Infrastructure Contributions	9
<b>6</b>	<b>Interest for late payment</b>	<b>10</b>
<b>7</b>	<b>Application of sections 94, 94A and 94EF of the Act to the Development</b>	<b>10</b>
<b>8</b>	<b>Registration</b>	<b>10</b>
8.1	Registration of this document	10
8.2	Evidence of Registration	12
8.3	Right to lodge caveat	12
8.4	Release and discharge of document	14
8.5	Landowner's interest in Land	14
<b>9</b>	<b>Dispute Resolution</b>	<b>15</b>
9.1	Reference to dispute	15
9.2	Notice of dispute	15
9.3	Representatives of Parties to meet	15
9.4	Mediation	15
9.5	Court proceedings	15
9.6	Not use information	15
9.7	No prejudice	16
<b>10</b>	<b>Enforcement</b>	<b>16</b>
10.1	Developer and Landowners to provide security	16
10.2	Enforcement by any Party	16
<b>11</b>	<b>Notices</b>	<b>16</b>
11.1	Delivery	16
11.2	Change of details	18
11.3	Giving of notice	18
11.4	Delivery outside of business hours	18
<b>12</b>	<b>Approvals and consent</b>	<b>18</b>
<b>13</b>	<b>Assignment and dealings</b>	<b>18</b>
13.1	Restriction on assignment and novation	18
13.2	Restriction on Dealings	19

<b>14</b>	<b>Capacity</b>	<b>22</b>
<b>15</b>	<b>Reporting requirement</b>	<b>22</b>
<b>16</b>	<b>Limitation of liability for the Carter Street Trust</b>	<b>23</b>
16.1	Definitions	23
16.2	Limitation of the First Landowner's Liability	24
16.3	Limitation of Trustee's Liability	25
<b>17</b>	<b>Limitation of liability for the Hill Road Trust</b>	<b>26</b>
17.1	Definitions	26
17.2	Limitation of the Second Landowner's Liability	27
17.3	Limitation of Trustee's Liability	28
<b>18</b>	<b>Limitation of liability for the IBC Trust</b>	<b>29</b>
18.1	Definitions	29
18.2	Limitation of the Third Landowner's Liability	30
18.3	Limitation of Trustee's Liability	31
<b>19</b>	<b>Trustee's representations and warranties</b>	<b>32</b>
19.1	Definitions	32
19.2	The Trustee's representations and warranties	33
19.3	Trustee's additional obligations	35
19.4	The Landowners' representations and warranties	36
19.5	The Landowners' and Trustees' additional obligations	36
19.6	Non Merger	37
<b>20</b>	<b>GST</b>	<b>37</b>
20.1	Construction	37
20.2	Consideration GST exclusive	37
20.3	Payment of GST	37
20.4	Timing of GST payment	38
20.5	Tax invoice	38
20.6	Adjustment event	38
20.7	Reimbursements	38
20.8	Calculations based on other amounts	38
20.9	No merger	38
<b>21</b>	<b>General provisions</b>	<b>39</b>
21.1	Costs, expenses and stamp duty	39
21.2	Entire agreement	39
21.3	Variation	39
21.4	Further acts	40
21.5	Governing law and jurisdiction	40
21.6	Joint and individual liability and benefits	40
21.7	No fetter	40
21.8	Representations and warranties	40
21.9	Severability	40
21.10	Waiver	41

21.11 Effect of Schedules	41
21.12 Relationship of parties	41
21.13 Further steps	41
21.14 Counterparts	41
21.15 Rights cumulative	41
21.16 Liability	41
21.17 Interpretation	41
21.18 Headings	42
21.19 Effect of execution	42
<b>Schedule 1 - Section 93F Requirements</b>	<b>43</b>
<b>Schedule 2 - Land</b>	<b>45</b>
<b>Schedule 3 - Development Contributions</b>	<b>47</b>
<b>Schedule 4 - Security</b>	<b>54</b>
<b>Schedule 5 - Explanatory Note</b>	<b>57</b>
<b>Execution</b>	<b>61</b>
<b>Annexure A – Novation Deed/Assignment Deed</b>	<b>65</b>
<b>Annexure B - Plan</b>	<b>66</b>
<b>Annexure C - Education Land</b>	<b>67</b>
<b>Annexure D - Form of Bank Guarantee</b>	<b>68</b>
<b>Annexure E - Form of Caveat</b>	<b>69</b>

Date 18 November 2015

## Parties

**The Minister for Planning** ABN 38 755 709 681 of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**)

**Goodman Property Services (Aust) Pty Limited** ABN 40 088 981 793 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Developer**)

**The Trust Company Limited** ABN 59 004 027 749 of Level 12, 123 Pitt Street Sydney NSW 2000 as custodian for the Carter Street Trust ABN 12 909 843 665 (**First Landowner**)

**The Trust Company Limited** ABN 59 004 027 749 of Level 12, 123 Pitt Street Sydney NSW 2000 as custodian for the Hill Road Trust ABN 54 244 152 320 (**Second Landowner**)

**The Trust Company Limited** ABN 59 004 027 749 of Level 12, 123 Pitt Street Sydney NSW 2000 as custodian for the IBC Trust ABN 30 476 081 229 (**Third Landowner**)

**Tallina Pty Ltd** ACN 090 716 895 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 as trustee for the Carter Street Trust ABN 12 909 843 665

**Tallina Pty Ltd** ACN 090 716 895 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 as trustee for the Hill Road Trust ABN 54 244 152 320

**Tallina Pty Ltd** ACN 090 716 895 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 as trustee for the IBC Trust ABN 30 476 081 229

---

## Background

- A The First Landowner owns part of the Land as custodian for the Carter Street Trust.
- B The Second Landowner owns part of the Land as custodian for the Hill Road Trust.
- C The Third Landowner owns part of the Land as custodian for the IBC Trust.
- D The Land is located in the Carter Street Priority Precinct.
- E The Developer has requested that the Department progress the Planning Proposal seeking to rezone the Land.
- F The Landowners and the Developer have offered to enter into this document to make Development Contributions towards the Public Purpose following the operation of this Agreement.

## Operative provisions

### 1 Planning agreement under the Act

The Parties agree that this document is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

### 2 Application of this document

This document applies to:

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

### 3 Operation and commencement of this document

This document will commence from the later of:

- (a) commencement of the Proposed SEPP within the meaning of section 34(5) of the Act; and
- (b) this document being entered into in accordance with clause 25C(1) of the Regulation.

### 4 Definitions

In this document the following terms have the following meanings:

<b>Act</b>	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>ALEP</b>	The <i>Auburn Local Environmental Plan 2010</i> , as amended from time to time.
<b>Allowable GFA</b>	The maximum GFA permitted to be developed under the ALEP on the relevant land.
<b>Authority</b>	Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
<b>Bank Guarantee</b>	An irrevocable and unconditional undertaking which is substantially in the form of the undertaking attached at <b>Annexure D</b> and issued by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time.

<b>Business Day</b>	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
<b>Carter Street Priority Precinct</b>	The 52ha precinct in the Auburn local government area that adjoins Sydney Olympic Park, as described in the Planning Proposal and the Planning Report.
<b>Chemical Substance</b>	<p>Without limitation:</p> <ul style="list-style-type: none"> <li>(a) any chemical substance or mixture, including any pollutant, contaminant, chemical, raw material or intermediate whether solid, liquid, gaseous or otherwise;</li> <li>(b) industrial solid, toxic or hazardous substance, material or waste;</li> <li>(c) petroleum or any fraction thereof;</li> <li>(d) asbestos or asbestos-containing material (including asbestos in structures);</li> <li>(e) persistent organic pollutants and chlorinated hydrocarbons;</li> <li>(f) heavy metals, such as mercury, cadmium and lead;</li> <li>(g) radionuclides;</li> <li>(h) volatile organic compounds;</li> <li>(i) solvents; and</li> <li>(j) pesticides,</li> </ul> <p>and includes by-products and derivatives of the above and all substances, materials or wastes that are identified in or regulated under any Environmental Law.</p>
<b>Claim</b>	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 Just Terms Act.
<b>Complying Development Certificate</b>	Has the same meaning as in the Act.
<b>Construction Certificate</b>	Has the same meaning as in the Act.
<b>Contamination</b>	Has the meaning given to that term in the <i>Contaminated Land Management Act 1997</i> (NSW).

	<b>Contaminate</b> and <b>Contaminated</b> have corresponding meanings.
<b>Contribution Amount</b>	The amount of the monetary contribution to be paid by the Developer or relevant Landowner as described in <b>Schedule 3</b> .
<b>Contribution Area</b>	Contribution Area 1, Contribution Area 2, Contribution Area 3, Contribution Area 4 or Contribution Area 5, as each of those lots is identified in the Plan.
<b>Contribution Areas</b>	Contribution Area 1, Contribution Area 2, Contribution Area 3, Contribution Area 4 and Contribution Area 5, as each of those lots is identified in the Plan.
<b>Contribution Area 1</b>	That part of the Land described at Item 1 of <b>Schedule 2</b> and identified as 'Contribution Area 1' on the Plan.
<b>Contribution Area 2</b>	That part of the Land described at Item 2 of <b>Schedule 2</b> and identified as 'Contribution Area 2' on the Plan.
<b>Contribution Area 3</b>	That part of the Land described at Item 3 of <b>Schedule 2</b> and identified as 'Contribution Area 3' on the Plan.
<b>Contribution Area 4</b>	That part of the Land described at Item 4 of <b>Schedule 2</b> and identified as 'Contribution Area 4' on the Plan.
<b>Contribution Area 5</b>	That part of the Land described at Item 5 of <b>Schedule 2</b> and identified as 'Contribution Area 5' on the Plan.
<b>CPI</b>	The Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics or, if that index no longer exists, any similar index which the Minister may determine in its sole discretion.
<b>Dealing</b>	Means: <ul style="list-style-type: none"> <li>(a) in relation to the Education Land, without limitation, selling, transferring, assigning, charging, encumbering or otherwise dealing with the Education Land; and</li> <li>(b) in relation to any part of the Land or any Contribution Area other than the Education Land, selling, transferring or assigning the relevant part of the Land or relevant Contribution Area.</li> </ul>
<b>Department</b>	The Department of Planning and Environment, formerly the Department of Planning & Infrastructure, or any other department replacing it from time to time.
<b>Developer-Related Entity</b>	The following parties: <ul style="list-style-type: none"> <li>(a) Tallina Pty Ltd ABN 68 090 716 895;</li> <li>(b) Goodman Limited ABN 69 000 123 071;</li> </ul>



	<ul style="list-style-type: none"> <li>(c) Goodman Funds Management Limited ABN 067 796 641;</li> <li>(d) Goodman Funds Management Australia Limited ABN 13 113 249 595; and</li> <li>(e) any other Related Body Corporate of the Developer.</li> </ul>
<b>Development</b>	<p>Subdivision and development of the Land for residential, retail and commercial purposes, and any further subdivision of the Contribution Areas once they are created as separate parcels, but excluding:</p> <ul style="list-style-type: none"> <li>(a) the subdivision of the Land for the purpose of creating parcels comprising the whole of each Contribution Area as identified on the Plan and any roads which are required to be created for the purpose of creating each Contribution Area; and</li> <li>(b) the subdivision of Contribution Area 3 for the purpose of creating a separate title for the Education Land as identified on the Plan; and</li> <li>(c) Remediation of the Education Land in accordance with the terms of this document.</li> </ul>
<b>Development Contribution</b>	<p>To dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.</p>
<b>Education Land</b>	<p>The minimum 2 hectare parcel of land intended to be used for the purposes of a primary school and for public sports and playing fields, shown as Lots 131 and 132 on the plan prepared by Cardno dated 18 September 2015 (Drawing no. 117424518_01) attached at <b>Annexure C</b>.</p>
<b>EnergyAustralia Land</b>	<p>Lot 200 in DP1160458, being part of the Land, which, as at the date of commencement of this document, is owned by EnergyAustralia.</p>
<b>Environment</b>	<p>Has the meaning given to that term in the <i>Contaminated Land Management Act 1997</i> (NSW).</p>
<b>Environmental Laws</b>	<p>Any law (including statute, policies and regulations enforceable by statute) concerning the Environment, including, without limitation, laws concerning:</p> <ul style="list-style-type: none"> <li>(a) emissions of Chemical Substances into the atmosphere, waters and land;</li> <li>(b) pollution or Contamination of the atmosphere,</li> </ul>

	waters and land; and
	(c) production, use, handling, storage, transportation and disposal of: <ul style="list-style-type: none"> <li>(i) waste;</li> <li>(ii) Hazardous Materials;</li> <li>(iii) dangerous goods; and</li> <li>(iv) Chemical Substances.</li> </ul>
<b>Explanatory Note</b>	The Explanatory Note attached at <b>Schedule 5</b> .
<b>First Landowner</b>	The Trust Company Limited as custodian for the Carter Street Trust.
<b>GFA</b>	Gross floor area, as that term is defined in the Standard Instrument LEP.
<b>Goodman</b>	Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793, the Developer.
<b>GST</b>	Has the same meaning as in the GST Law.
<b>GST Law</b>	Has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Hazardous Material</b>	Any substance, gas, liquid, chemical, mineral or other physical or biological matter that is: <ul style="list-style-type: none"> <li>(a) or may become toxic, flammable or inflammable;</li> <li>(b) otherwise dangerous, harmful to the Environment or any life form or which may cause pollution, Contamination or any hazard or increase in toxicity in the Environment or may leak or discharge or otherwise cause damage to any person, property or the Environment; or</li> <li>(c) a material or compound controlled, prohibited or regulated from time to time by any Environmental Law.</li> </ul>
<b>Just Terms Act</b>	The <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Land</b>	The whole or any part of the land comprising Contribution Area 1, Contribution Area 2, Contribution Area 3, Contribution Area 4 and Contribution Area 5 as described in <b>Schedule 2</b> , but excluding the Sydney Water Lot.
<b>Landowner</b>	The First Landowner or the Second Landowner or the Third Landowner as applicable to the relevant part of

	the Land, as set out in <b>Schedule 2. Landowners</b> means the First Landowner, the Second Landowner and the Third Landowner.
<b>Loss</b>	Any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which the Minister pays, suffers or incurs or is liable for, including: <ul style="list-style-type: none"> <li>(a) liabilities on account of Tax;</li> <li>(b) interest and other amounts payable to third parties; and</li> <li>(c) legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts paid in settlement of any claim or action.</li> </ul>
<b>LPI</b>	NSW Land and Property Information or any other government agency replacing it.
<b>Novation Deed</b>	The deed attached at <b>Annexure A</b> .
<b>Party</b>	A party to this document, including their successors and assigns, but only to the extent that assignment is permitted under <b>clause 13</b> .
<b>Permitted Lease</b>	A new lease over any part of the Land which includes a term requiring the lessee to consent to the Registration of this document on the title to the relevant part of the Land subject to the lease.
<b>Plan</b>	The plan of the Land and the Contribution Areas, attached at <b>Annexure B</b> .
<b>Planning Agreement</b>	Has the same meaning as in the Act.
<b>Planning Application</b>	A development application in respect of any part of the Land made under Part 4 of the Act.
<b>Planning Approval</b>	The determination by approval of a Planning Application.
<b>Planning Proposal</b>	The Carter Street Lidcombe Urban Activation Precinct Proposal prepared by the Department exhibited in March/April 2014 and dated February 2014 for the rezoning of the Carter Street Priority Precinct by means of the Proposed SEPP and associated development control plan.
<b>Planning Report</b>	The Carter Street Lidcombe Urban Activation Precinct Planning Report prepared by the Department and

	dated February 2014.
<b>Proposed SEPP</b>	Any State Environmental Planning Policy to amend the ALEP that is made generally in accordance with the Planning Proposal.
<b>Public Purpose</b>	Any purpose that benefits the public or a section of the public, including those specified in section 93F(2) of the Act.
<b>Register</b>	Means the Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW). Registration has the corresponding meaning.
<b>Regulation</b>	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
<b>Related Body Corporate</b>	Has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
<b>Remediation</b>	Of Contaminated land includes: <ul style="list-style-type: none"> <li>(a) the preparation of a long term management plan for the land;</li> <li>(b) investigating, treating, removing, disposing, destroying, reducing, mitigating, dispersing, remediating or containing the Contamination of the land; and/or</li> <li>(c) eliminating or reducing any hazard arising from the Contamination of the land (including by preventing the entry or persons or animals onto the land).</li> </ul> <p><b>Remediate</b> has a corresponding meaning.</p>
<b>Satisfactory Arrangements Certificate</b>	A certificate issued by the Secretary confirming that the satisfactory arrangements provisions included in the Proposed SEPP pursuant to section 93D of the Act have been satisfied.
<b>Second Landowner</b>	The Trust Company Limited as custodian for the Hill Road Trust.
<b>Secretary</b>	The Secretary of the Department of Planning and Environment, from time to time
<b>SIC Determination</b>	A determination by the Minister of a Special Infrastructure Contribution for a special contributions area which includes the Land.
<b>Site Audit Statement</b>	A site audit statement prepared by a Site Auditor in accordance with Part 4 of the <i>Contaminated Land Management Act 1997</i> .
<b>Site Auditor</b>	A suitably qualified site auditor duly qualified under the

	<i>Contaminated Land Management Act 1997 (NSW).</i>
<b>Special Infrastructure Contribution</b>	A contribution determined in accordance with section 94EE of the Act which applies to development on any part of the Land.
<b>Standard Instrument LEP</b>	The <i>Standard Instrument – Principal Local Environmental Plan</i> .
<b>Subdivision Certificate</b>	Has the same meaning as in the Act.
<b>Sydney Water Lot</b>	Lot 1 in DP 234801.
<b>Tax</b>	A tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.
<b>Third Landowner</b>	The Trust Company Limited as custodian for the IBC Trust.

## 5 Development Contributions to be made under this document

### 5.1 Developer and Landowners to provide Development Contributions

The Developer and the Landowners agree to provide to the Minister or the Minister's nominee the Development Contributions in accordance with the provisions of **Schedule 3**.

### 5.2 Acknowledgement

The Developer and the Landowners acknowledge and agree that:

- (a) the Minister must comply with section 93E of the Act, but the Minister:
  - (i) does not make any representation or warranty that the Development Contributions must be used for a particular purpose; and
  - (ii) has no obligation to repay the Development Contributions; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, the Minister has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

### 5.3 Special Infrastructure Contributions

- (a) The Minister agrees that the Development Contributions in this document, to be made by the Developer and the Landowners, wholly fulfil each of the Developer's and the Landowners' obligations to make

contributions towards State infrastructure arising from the Development of the Land.

- (b) The Parties further agree that if the Minister makes a SIC Determination after the commencement of this document that applies to the whole or any part of the Land, the Landowners will have no obligation to pay any Special Infrastructure Contributions as a consequence of that SIC Determination, nor will they be entitled to any credits or offsets as a consequence of that SIC Determination.
- (c) Nothing about this **clause 5.3** restricts, offsets, gives rise to credits or otherwise reduces any local infrastructure contributions that may be made or be required to be made in conjunction with the Development. However, the Development Contributions under this document may be taken into consideration in determining the local contributions to be made in conjunction with the Development.

## 6 Interest for late payment

- (a) If the Developer and the Landowners fail to pay a Contribution Amount due to the Minister on the due date for payment, the Developer and the Landowners will be jointly liable to pay the Minister interest on the Contribution Amount, in addition to the Contribution Amount, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

## 7 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**.

## 8 Registration

### 8.1 Registration of this document

- (a) The Developer and the Landowners agree that they will procure the Registration of this document on the relevant folios of the Register for the Land that is owned by each Landowner in accordance with section 93H of the Act and the terms of this document.
- (b) The Developer and the Landowners will:
  - (i) at the Developer's and the Landowners' expense; and

- (ii) subject to **clause 8.1(d)** and **clause 8.1(e)**, within 90 Business Days of receiving a copy of this document executed by the Minister,

take all practical steps and otherwise do all things necessary to procure, in relation to the Land, with the exception of the EnergyAustralia Land:

- (iii) the consent of each person who:
    - (A) has an estate or interest in the Land registered on the Register; and
    - (B) is seized or possessed of an estate or interest in the Land;
  - (iv) the execution of any documents;
  - (v) the production of the relevant certificates of title; and
  - (vi) the lodgement of this document on the relevant folios of the Register relating to the Land.
- (c) The Developer and the Landowners must use all reasonable endeavours to procure Registration of this document on the relevant folios of the Register relating to the Land as soon as possible following lodgement.
  - (d) Where the Developer and the Landowners are unable to procure Registration in relation to any part of the Land within 90 Business Days of receiving a copy of this document executed by the Minister, because a consent required from a third party has not been given, the relevant Party must:
    - (i) continue to use all reasonable endeavours to procure Registration of this document until it is Registered on all of the relevant folios of the Register relating to the Land;
    - (ii) in the event that the document has not been lodged over a particular Lot comprising part of the Land pending expiration of termination of a lease, lodge the document for Registration over any such Lot within 5 Business Days of the expiration or termination of that lease over that Lot; and
    - (iii) provide a written report to the Minister:
      - (A) on the date that is 90 Business Days after the Developer and the Landowners receive a copy of this document executed by the Minister; and
      - (B) thereafter monthly, on the first day of each month, as to the steps which have been taken by the Developer and the Landowners to secure any required consents and to procure Registration of this document on title in respect of that Land.
  - (e) With respect to the EnergyAustralia Land, the First Landowner will, at the Developer or the First Landowner's expense, promptly take all practical steps and otherwise do all things necessary to procure the matters in **clauses 8.1(b)(iii) to (vi)** within 10 Business Days of the completion of

the purchase of the EnergyAustralia Land by the First Landowner or any Developer-Related Entity.

- (f) The Developer and the Landowners agree that they will not enter into any new lease over any part of the Land unless that lease is a Permitted Lease. This clause does not prevent the Developer and the Landowners from entering into variations of lease (including by way of exercise of option) or transfers of lease, over any part of the Land, provided that any variation of lease for any part of the Land on which this document is not registered does not extend the term of that lease (including any options) beyond its existing term, other than where either:
  - (i) the variation includes the clause contained in Permitted Leases; or
  - (ii) where the relevant land parcel is the subject of other leases, the variation would not extend the term of the lease in question beyond the term of the lease (including any options) with the longest lease period for that parcel of land.
- (g) Where there is a failure to Register this document on the title to any part of the Land within 90 Business Days of receiving a copy of this document executed by the Minister:
  - (i) the Developer and Landowners must comply with the obligation under **clause 8.1(d)** to continue to use all reasonable endeavours to procure Registration of the document on that part(s) of the Land as soon as possible;
  - (ii) the Minister may require provision of a Bank Guarantee or Bank Guarantees of up to \$1 million per Lot comprising the Land; and
  - (iii) the Developer must provide that Bank Guarantee or the Bank Guarantees to the Minister within 5 Business Days of any such request.

The Minister will return any Bank Guarantee or Bank Guarantees provided under this clause on confirmation of the Registration of this document on the title to the relevant part of the Land and **clause 1** of **Schedule 4** will apply to any Bank Guarantee provided under this clause.

## **8.2 Evidence of Registration**

In respect of each part of the Land, the Developer and the Landowners must provide the Minister with a copy of the relevant folios of the Register and a copy of the Registered dealing within 10 Business Days of Registration of this document.

## **8.3 Right to lodge caveat**

- (a) Subject to **clause 8.3(b)**, until such time as this document is registered on the title of the Land, the Developer and the Landowners acknowledge that:



- (i) this document confers on the Minister, on and from the date of execution by the Parties, an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land; and
  - (ii) upon execution of this document, the Minister will lodge a caveat on the title to the Land, substantially in the form of the caveat attached at **Annexure E**.
- (b) If the Minister lodges a caveat in accordance with **clause 8.3(a)**, then the Minister:
  - (i) must do all things reasonably necessary to:
    - (A) ensure that the caveat does not prevent or delay the Registration of this document over any part of the Land;
    - (B) withdraw the caveat from the title to the relevant part of the Land promptly and within 5 Business Days of being provided with evidence of Registration of this document over that part of the Land in accordance with **clause 8.1** and **clause 8.2**; and
  - (ii) must, without delay after being requested to do so, provide such consent or other documentation (such as a withdrawal of caveat) required to permit the Registration of:
    - (A) any easements to burden or benefit the Land;
    - (B) any variations of lease (including by way of exercise of option) subject to compliance with **clause 8.1(f)**, or transfers of lease, over any part of the Land;
    - (C) any Permitted Lease;
    - (D) the subdivision of the Land for the purpose of creating parcels comprising the whole of each Contribution Area as identified on the Plan and any roads which are required to be created for the purpose of creating each Contribution Area; and
    - (E) the subdivision of Contribution Area 3 for the purpose of creating a separate title for the Education Land as identified on the Plan,
  - (iii) may, after being requested to do so, provide such consent or other documentation (such as a withdrawal of caveat) required to permit the Registration of any instrument recording Dealings in respect of any part of the Land. The Minister may reasonably refuse to provide such consent or other documentation to permit the Registration of any instrument recording Dealing until such time as either:

- (A) this document is Registered on the title to the relevant part of the Land, in which case the Minister will be required to withdraw the caveat under **clause 8.3(b)(i)(B)**; or
- (B) all the Development Contributions have been provided in accordance with this document in respect of the relevant part of the Land.
- (c) The Developer and the Landowners must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under **clause 8.3(a)** to lodge a caveat(s) and withdraw caveat(s) and any associated costs.

#### **8.4 Release and discharge of document**

The Minister agrees to do all things reasonably required by the Developer and the Landowners to, following a request by the Developer or a relevant Landowner:

- (a) release and discharge this document with respect to the Land or any Contribution Area forming the subject of the request; and
- (b) execute the relevant documents to enable the relevant Landowner or Landowners to remove the notation of this document from the relevant folios of the Register in respect of the Land or relevant Contribution Area forming the subject of the request,

upon the Minister being satisfied that:

- (c) the Developer and the relevant Landowner or Landowners have satisfied all of their obligations under this document in respect of the Land or relevant Contribution Area forming the subject of the request;
- (d) the Developer and the relevant Landowner or Landowners are not otherwise in default of their obligations under this document in respect of any part of the relevant Contribution Area forming the subject of the request; and
- (e) if a request is made in respect of a Contribution Area that is owned by a Party that is a Landowner as at the date of execution of this document, the Developer and the relevant Landowner or Landowners are not in default of their obligations under this document in respect of the Education Land.

#### **8.5 Landowner's interest in Land**

Each Landowner represents and warrants separately that the relevant Landowner is:

- (a) the owner of the Land shown in **Schedule 2** other than the EnergyAustralia Land; and
- (b) legally entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by **clause 8.1(b)(iii)** to assist, cooperate and otherwise do all things necessary for each Landowner to comply with its obligations under **clause 8**.

## **9 Dispute Resolution**

### **9.1 Reference to dispute**

If a dispute arises between the Parties in relation to this document, then either Party must resolve that dispute in accordance with this clause.

### **9.2 Notice of dispute**

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

### **9.3 Representatives of Parties to meet**

On receipt of notice under **clause 9.2**, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

### **9.4 Mediation**

If the Parties do not agree within 20 Business Days of receipt of the notice under **clause 9.2** (or any further period agreed in writing by them) as to:

- (a) the dispute resolution techniques and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

### **9.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under **clause 9.2** then any Party which has complied with the provisions of this **clause 9** may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

### **9.6 Not use information**

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 9** is to attempt to settle the dispute. No Party may use information or documents obtained through any dispute resolution process undertaken under this **clause 9** for any purpose other than in an attempt to settle the dispute.

## **9.7 No prejudice**

This **clause 9** does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this document.

# **10 Enforcement**

## **10.1 Developer and Landowners to provide security**

The following constitutes the security for the purposes of this document:

- (a) the registration of this document on the title to the Lots comprising the Land and the other security arrangements in **clause 8**;
- (b) **clauses 3.2(c), 3.3 and 3.4 of Schedule 3**; and
- (c) the security set out in **Schedule 4**.

## **10.2 Enforcement by any Party**

- (a) Without limiting any other remedies available to the Parties, this document may be enforced by any Party in any court of competent jurisdiction. Nothing in this document prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this document or any matter to which this document relates; and
  - (ii) the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this document or any matter to which this document relates.
- (b) The Developer and the Landowners indemnify the Minister from any Loss suffered or incurred in exercising the Minister's enforcement rights under **clause 10.2(a)**, other than Loss that is suffered or incurred:
  - (i) as a result of the Minister bringing proceedings against another Party or Parties in a court of competent jurisdiction to enforce any aspect of this document or any matter to which this document relates; and
  - (ii) in circumstances where, and to the extent that, the court makes orders for the Minister to pay the other Party's or Parties' costs of those proceedings.

# **11 Notices**

## **11.1 Delivery**

Any notice, consent, information, application or request that must or may be given or made to a Party under this document is only given or made if it is in writing and:

- (a) delivered or posted to that Party at its address set out below;
- (b) faxed to that Party at its fax number set out below; or
- (c) emailed to that Party at its email address set out below.

**The Minister for Planning**

Attention: The Secretary  
Address: Department of Planning and Environment  
23-33 Bridge Street  
Sydney NSW 2000  
Fax Number: 02 9228 6455  
Email: information@planning.nsw.gov.au

**Goodman Property Services (Aust) Pty Limited**

Attention: Jason Little, General Manager  
Address: Level 17, 60 Castlereagh Street  
Sydney NSW 2000  
Fax Number: 02 9230 7444  
Email: Jason.Little@goodman.com

**The Trust Company Limited**

Attention: Jason Little, General Manager  
Address: C/- Goodman Property Services (Aust) Pty  
Limited  
Level 17, 60 Castlereagh Street  
Sydney NSW 2000  
Fax Number: 02 9230 7444  
Email: Jason.Little@goodman.com

**Tallina Pty Ltd**

Attention: Jason Little, General Manager  
Address: C/- Goodman Property Services (Aust) Pty  
Limited  
Level 17, 60 Castlereagh Street  
Sydney NSW 2000  
Fax Number: 02 9230 7444  
Email: Jason.Little@goodman.com

## **11.2 Change of details**

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, emailed or faxed to the latest address, email address or fax number.

## **11.3 Giving of notice**

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.
- (d) If it is emailed, at the time the email was sent, provided the email was received by the recipient.

## **11.4 Delivery outside of business hours**

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

# **12 Approvals and consent**

Except as otherwise set out in this document, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this document in the Minister's absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give reasons for giving or withholding consent or for giving consent subject to conditions.

# **13 Assignment and dealings**

## **13.1 Restriction on assignment and novation**

- (a) Neither the Developer nor the Landowners may:
  - (i) assign the rights or benefits; or
  - (ii) novate the burdens or obligations,of this document to any person, unless the requirements of **clause 13.1(b)** are met.
- (b) The parties to any assignment or novation of any rights, benefits, burdens or obligations under this document must enter into a document

with the Minister substantially in the form of the Novation Deed. As a condition of entering into such a Novation Deed the Minister may require:

- (i) the provision of additional security required in addition to that identified in **clause 10**, provided that such additional security amount is no more than 10% of the Contribution Amount payable for the relevant Contribution Area and which amount is capped at \$1 million per Contribution Area; and
  - (ii) an indemnity in favour of the Minister in respect of any breach of this document by the Developer or relevant Landowner.
- (c) The Minister may assign the rights and benefits of this document in the Minister's absolute discretion, without the need for consent from the Developer or the relevant Landowner.
- (d) For the avoidance of doubt and subject to this **clause 13.1**, a Landowner and the Developer may assign their respective rights and benefits and novate their respective burdens and obligations under this document as they relate to a Contribution Area. In such a case and subject to the terms of the Novation Deed, those rights, benefits, burdens and obligations will be severed as they relate to that Contribution Area. The rights, benefits, burdens and obligations of that Landowner and the Developer relating to the balance of the Land will not be affected.

### **13.2 Restriction on Dealings**

- (a) This **clause 13.2** applies to any part of the Land where there has not been a release and discharge of this document under **clause 8.4**.
- (b) Neither the Developer nor the Landowners may complete any Dealing with any third party (**Transferee**) relating to their interests in the Land or any Contribution Area unless the Developer and Landowners have complied with:
- (i) in relation to Contributions Areas 1, 2, 4 and 5, **clauses 13.2(c) to (h)** (as may be modified by **clause 13.2(i)** insofar as they relate to any Dealing in respect of Contribution Area 1); and
  - (ii) in relation to Contribution Area 3, **clause 13.2(j)**.
- (c) Within 30 days of entering into any such Dealing, the Developer or relevant Landowner must give written notice to the Minister of:
- (i) the existence of the Dealing;
  - (ii) the identity of the Transferee, and
  - (iii) the anticipated date of completion of the Dealing.
- (d) At least 50 days prior to the date proposed for completion of the Dealing, the Developer and the relevant Landowner must give to the Minister:
- (i) written notice of their intention to complete the Dealing and of the proposed completion date (**Completion Date**);

- (ii) written notice of the identity of the Transferee (and whether that has changed from the Transferee identified in the notice given under **clause 13.2(c)**); and
  - (iii) the completed novation deed substantially in the form of the Novation Deed which the parties to the Dealing intend to execute under which the Transferee agrees to comply with those obligations of the Developer or relevant Landowner (as applicable) under this document which relate to the relevant part of the Land the subject of the Dealing (**Required Obligations**) as if the Transferee were the Developer or relevant Landowner (as applicable) (**Prepared Novation Deed**).
- (e) At least 30 days prior to the Completion Date, the Minister must give to the Developer or relevant Landowner (as applicable) written notice of whether the Minister requires:
  - (i) any amendments to be made to the Prepared Novation Deed, provided that any such amendments must remain substantially in the form of the Novation Deed; and
  - (ii) as a condition of entering into such a Novation Deed, the provision of additional security required in addition to that identified in **clauses 10 and 13**, provided that such additional security amount is no more than 10% of the Contribution Amount payable for the relevant Contribution Area and which amount is capped at \$1 million per Contribution Area.
- (f) At least 20 days prior to the Completion Date, the Developer or relevant Land owner (as applicable) must give to the Minister the final form of the Prepared Novation Deed, incorporating the Minister's requested amendments under **clause 13.2(e)**, for the Minister's final review and approval, to which the Minister must respond within 7 days.
- (g) At least 5 Business Days prior to the Completion Date, the Developer or Landowner (as applicable) must deliver to the Minister the Novation Deed (incorporating any amendments required by the Minister under **clause 13.2(e)**) duly executed by the Developer, relevant Landowner, relevant Trustee and the Transferee.
- (h) Prior to the Completion Date:
  - (i) any default by the Developer or the relevant Landowner (as applicable) in relation to the relevant Contribution Area the subject of the proposed Dealing must be remedied by the Developer or the relevant Landowner (as applicable) unless that default has been waived expressly by the Minister; and
  - (ii) the Developer or the relevant Landowner (as applicable) and the Transferee must pay all costs reasonably incurred by the Minister in relation to that Dealing, including, without limitation, legal and administrative costs.



- (i) In the case of any Dealing in respect of Contribution Area 1, the application of this **clause 13.2** is modified such that, in **clause 13.2(d)**, the time specified in that clause shall be 14 days prior to the date for completion of the Dealing.
- (j) In relation to Contribution Area 3:
  - (i) until such time as Contribution Area 3 is subdivided to create a separate title for the Education Land, prior to entering into any Dealing with any Transferee relating to their interests in the Land relating to Contribution Area 3, the Developer, the relevant Landowner and the Transferee must enter into a Novation Deed in the form of **Annexure A** on terms acceptable to the Minister; and
  - (ii) at any time after a separate title has been created for the Education Land, the Developer, the relevant Landowner and the Transferee must comply with:
    - (A) **clause 13.2(j)(i)** in relation to any Dealing relating to their interests in the Education Land; and
    - (B) **clause 13.2(c)** to **clause 13.2(h)** in relation to any Dealing with any Transferee relating to their interests in the Land comprising the remainder of Contribution Area 3.
- (k) No later than one Business Day prior to the Completion Date, the Developer and relevant Landowner must provide to the Minister a Bank Guarantee for any additional security required by the Minister as specified in **clause 13.2(e)**.
- (l) As soon as reasonably practicable after receiving the executed Novation Deed and any Bank Guarantee referred to in **clause 13.2(e)** or any executed Novation Deed pursuant to **clause 13.2(j)**, the Minister must:
  - (i) execute the Novation Deed and deliver counterparts to the Developer or Landowner (as applicable);
  - (ii) return to the Developer and relevant Landowner their Bank Guarantee or Bank Guarantees referred to in **clause 1.2(a) of Schedule 4** in relation to each Contribution Area which is the subject of the Dealing; and
  - (iii) if requested by the Developer and relevant Landowner:
    - (A) accept in exchange for the Bank Guarantee referred to in **clause 13.2(e)** a substitute Bank Guarantee provided by the Transferee for the same amount; and
    - (B) return the Bank Guarantee referred to in **clause 13.2(e)** to the Developer and relevant Landowner.
- (m) If the Developer or a Landowner enters into any Dealing and fully satisfies the requirements of **clause 13.2(b)** to **clause 13.2(j)**, as relevant with respect to that Dealing, the Developer or the relevant Landowner (as applicable) will be released from its obligations under this

document with respect to the Required Obligations as they relate to the Land the subject of that Dealing.

- (n) For the avoidance of doubt and subject to this **clause 13.2**, the Developer or a Landowner may novate its obligations under this document as they relate to a Contribution Area. In such a case and subject to the terms of the Novation Deed, those obligations will be severed as they relate to that Contribution Area. The obligations of the Developer or a Landowner relating to the balance of the Land will not be affected.

## 14 Capacity

- (a) Each Party warrants to each other Party that this document creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms.
- (b) If an attorney executes this document on behalf of any Party, the attorney declares that it has no notice of the revocation of that power of attorney.

## 15 Reporting requirement

- (a) The relevant Landowner must provide at least 20 Business Days notice to the Minister of any application made by the Landowner or any other third party (including the Developer) in relation to the Land for Planning Approval, a Complying Development Certificate, a Construction Certificate or a Subdivision Certificate which triggers any obligation under this document.
- (b) If any part of the Development is to be carried out without the need for Planning Approval and which triggers any obligation under this document, then the relevant Landowner must provide at least 20 Business Days notice to the Minister of the date of the proposed commencement of the relevant part of the Development.
- (c) On each anniversary of the date of this document or as otherwise agreed with the Secretary, the Landowners must deliver to the Secretary a report which must include those matters set out in **clause 15(d)** and **clause 15(e)**, as applicable.
- (d) If neither the Developer nor the relevant Landowner has provided a Contribution Amount in the 12 month period immediately preceding the relevant anniversary of this document, the report must include:
  - (i) a description of the status of the Development;
  - (ii) a forecast in relation to the anticipated progression and completion of the Development; and

- (iii) an estimated date for when the Developer, the relevant Landowner or any other third party (as applicable) expects to lodge the first Planning Application and any application for a Complying Development Certificate, Construction Certificate or Subdivision Certificate for the relevant part of the Land.
- (e) If the Developer and the Landowners have provided one or more Contribution Amounts under this document, the report must include:
  - (i) details of all Planning Approvals, Complying Development Certificates, Construction Certificates and Subdivision Certificates granted in relation to the Development;
  - (ii) a schedule that details all Contribution Amounts provided under this document as at the date of the report; and
  - (iii) an estimated date for when the Developer, the relevant Landowner or any other third party (as applicable) expects to lodge the next Planning Application and application for any Complying Development Certificate, Construction Certificate or Subdivision Certificate for the relevant part of the Land.
- (f) Upon the Secretary's request, the Developer and the relevant Landowner must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the Development.

## 16 Limitation of liability for the Carter Street Trust

The provisions of this **clause 16** apply despite anything to the contrary in this document.

### 16.1 Definitions

In this **clause 16**:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the Carter Street Custody Agreement dated 11 February 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Landowner under or in respect of this document.
- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.
- (f) **Trust** means the Carter Street Trust ABN 12 909 843 665.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity, which on the making of this document is Tallina.

- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

## **16.2 Limitation of the First Landowner's Liability**

- (a) The First Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the First Landowner acknowledge that the Obligations are incurred by the First Landowner solely in its capacity as custodian of the Assets and that the First Landowner will cease to have any Obligation under this document if the First Landowner ceases for any reason to be owner of the Assets.
- (c) The First Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
  - (i) by the Trustee; or
  - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the First Landowner may enforce their rights against the First Landowner arising from non-performance of the Obligations only to the extent of the First Landowner indemnities referred to in **clause 16.2(c)**.
- (e) Subject to **clause 16.2(e)(i)**, if any party other than the First Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
  - (i) bringing proceedings against the First Landowner in its personal capacity; or
  - (ii) applying to have the First Landowner wound up or proving in the winding up of the First Landowner.
- (f) The provisions of this **clause 16.2** do not apply to any obligation or liability of the First Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the First Landowner's indemnification from the Trustee or out of the Assets as a result of the First Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the First Landowner under its custody agreement with the Trustee, the parties other than the First Landowner waive their rights and release the First Landowner from any personal liability whatsoever, in respect of any Loss or damage which they may suffer as a result of any:
  - (i) breach by the First Landowner of any of its Obligations; or
  - (ii) non-performance by the First Landowner of the Obligations but only to the extent to which the liability cannot be paid or satisfied

by the indemnities set out above in **clause 16.2(c)** in respect of any liability incurred by it.

The parties other than The First Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the First Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the First Landowner for the purposes of **clause 16.2(e)(i)** to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the First Landowner in a way which exposes the First Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the First Landowner for the purposes of **clause 16.2(e)(i)**.

### **16.3 Limitation of Trustee's Liability**

(a) **Capacity**

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

(b) **Limitation**

Subject to **clause 16.3(d)**, the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

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

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

(c) **Acknowledgment of limitations**

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

- (i) subject to **clause 16.3(d)**, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) **Exception**

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

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

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee will be personally liable.

## 17 Limitation of liability for the Hill Road Trust

The provisions of this **clause 17** apply despite anything to the contrary in this document.

### 17.1 Definitions

In this **clause 17**:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the Hill Road Trust Custody Agreement dated 30 October 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Second Landowner under or in respect of this document.

**Tallina** means Tallina Pty Ltd ACN 090 716 895.

- (e) **Trust** means the Hill Road Trust ABN 54 244 152 320.

- (f) **Trustee** means the entity from time to time acting in the Trustee's Capacity which on the making of this document is Tallina.
- (g) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

## **17.2 Limitation of the Second Landowner's Liability**

- (a) The Second Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the Second Landowner acknowledge that the Obligations are incurred by the Second Landowner solely in its capacity as custodian of the Assets and that the Second Landowner will cease to have any Obligation under this document if the Second Landowner ceases for any reason to be owner of the Assets.
- (c) The Second Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
  - (i) by the Trustee; or
  - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the Second Landowner may enforce their rights against the Second Landowner arising from non-performance of the Obligations only to the extent of the Second Landowner indemnities referred to in **clause 17.2(c)**.
- (e) Subject to **clause 17.2(e)(i)**, if any party other than the Second Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
  - (i) bringing proceedings against the Second Landowner in its personal capacity; or
  - (ii) applying to have the Second Landowner wound up or proving in the winding up of the Second Landowner.
- (f) The provisions of this **clause 17.2** do not apply to any obligation or liability of the Second Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the Second Landowner's indemnification from the Trustee or out of the Assets as a result of the Second Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Second Landowner under its custody agreement with the Trustee, the parties other than the Second Landowner waive their rights and release the Second Landowner from any personal liability whatsoever, in respect of any Loss or damage which they may suffer as a result of any:
  - (i) breach by the Second Landowner of any of its Obligations; or

- (ii) non-performance by the Second Landowner of the Obligations, but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in **clause 17.2(c)** in respect of any liability incurred by it.

The parties other than The Second Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the Second Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Second Landowner for the purposes of **clause 17.2(e)(i)** to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Second Landowner in a way which exposes the Second Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Second Landowner for the purposes of **clause 17.2(e)(i)**.

### **17.3 Limitation of Trustee's Liability**

- (a) **Capacity**

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

- (b) **Limitation**

Subject to **clause 17.3(d)**, the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

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

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



(c) **Acknowledgment of limitations**

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

- (i) subject to **clause 17.3(d)**, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) **Exception**

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

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

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee will be personally liable.

## 18 Limitation of liability for the IBC Trust

The provisions of this **clause 18** apply despite anything to the contrary in this document.

### 18.1 Definitions

In this **clause 18**:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the IBC Trust Custody Agreement dated 11 May 2005.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Third Landowner under or in respect of this document.

- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.
- (f) **Trust** means the IBC Trust ABN 30 476 081 229.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

## **18.2 Limitation of the Third Landowner's Liability**

- (a) The Third Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the Third Landowner acknowledge that the Obligations are incurred by the Third Landowner solely in its capacity as custodian of the Assets and that the Third Landowner will cease to have any Obligation under this document if the Third Landowner ceases for any reason to be owner of the Assets.
- (c) The Third Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
  - (i) by the Trustee; or
  - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the Third Landowner may enforce their rights against the Third Landowner arising from non-performance of the Obligations only to the extent of the Third Landowner indemnities referred to in **clause 18.2(c)**.
- (e) Subject to **clause 18.2(e)(i)**, if any party other than the Third Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
  - (i) bringing proceedings against the Third Landowner in its personal capacity; or
  - (ii) applying to have the Third Landowner wound up or proving in the winding up of the Third Landowner.
- (f) The provisions of this **clause 18.2** do not apply to any obligation or liability of the Third Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the Third Landowner's indemnification from the Trustee or out of the Assets as a result of the Third Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Third Landowner under its custody agreement with the Trustee, the parties other than the Third Landowner waive their rights and release the Third Landowner from any personal liability

whatsoever, in respect of any Loss or damage which they may suffer as a result of any:

- (i) breach by the Third Landowner of any of its Obligations; or
- (ii) non-performance by the Third Landowner of the Obligations but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in **clause 18.2(c)** in respect of any liability incurred by it.

The parties other than The Third Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the Third Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Third Landowner for the purposes of **clause 18.2(e)(i)** to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Third Landowner in a way which exposes the Third Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Third Landowner for the purposes of **clause 18.2(e)(i)**.

### **18.3 Limitation of Trustee's Liability**

#### **(a) Capacity**

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

#### **(b) Limitation**

Subject to **clause 18.3(d)**, the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

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

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover any amount from the Trustee in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or

exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally in respect of the outstanding amount.

(c) **Acknowledgment of limitations**

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

- (i) subject to **clause 18.3(d)**, bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

(d) **Exception**

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

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

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee will be personally liable.

## 19 Trustee's representations and warranties

### 19.1 Definitions

In this **clause 19**:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trusts.
- (b) **Beneficiaries** means the beneficiaries of the Trusts.
- (c) **Custody Agreements** means the following:
  - (i) the IBC Trust Custody Agreement dated 11 May 2005;
  - (ii) the Hill Road Trust Custody Agreement dated 30 October 2002; and
  - (iii) the Carter Street Custody Agreement dated 11 February 2002.

- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Landowner, the Second Landowner and the Third Landowner under or in respect of this document.
- (e) **Trusts** means the Carter Street Trust ABN 12 909 843 665, the Hill Road Trust ABN 54 244 152 320 and the IBC Trust 30 476 081 229.
- (f) **Trust Deeds** means:
  - (i) the IBC Trust Constitution dated 11 May 2005 between the Trustee and the relevant unit holders;
  - (ii) the Hill Road Trust Constitution dated 30 October 2002 between the Trustee and the relevant unit holders; and
  - (iii) the Carter Street Trust Constitution dated 11 February 2002 between the Trustee and the relevant unit holders.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity, which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.
- (i) **Trustee Documents** means this document and any documents created under or in connection with this document.

## 19.2 The Trustee's representations and warranties

The Trustee represents and warrants to the Minister that:

- (a) **powers of Trustee and custodian:**
  - (i) the Trustee has power as trustee of the Trusts to execute the Trustee Documents; and
  - (ii) each Landowner has power as custodian of the relevant Trusts to execute the Trustee Documents;
- (b) **due performance:** in executing the Trustee Documents, the Trustee and its representatives have properly performed their obligations to the Beneficiaries;
- (c) **Trustee action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with the Trustee's obligations under, the Trustee Documents has been taken;
- (d) **custodian action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with each of the Landowner's obligations under, the Trustee Documents has been taken;
- (e) **Trustee instructions** the Trustee will give all necessary instructions to all Landowners to enable the Landowners to execute and deliver, and comply with all of their obligations under, the Trustee Documents;

- (f) **sole Trustee and custodian:**
  - (i) the Trustee is the only trustee of the Trusts; and
  - (ii) the Landowners are the only custodians of the relevant Trusts;
- (g) **no removal of Trustee:** no action has been taken to remove the Trustee as trustee of the Trusts or to appoint an additional trustee of the Trusts;
- (h) **no removal of custodian:** no action has been taken to remove any or all of the Landowners as custodians of the relevant Trusts or to appoint any additional custodian of the relevant Trusts;
- (i) **Trustee's right of indemnity:**
  - (i) the Trustee has a right to be fully indemnified out of the Assets;
  - (ii) the Trustee has not released or disposed of the Trustee's equitable lien over the Assets which secures that indemnity;
  - (iii) the Trustee has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its rights of indemnity or equitable lien; and
  - (iv) the Assets are sufficient to satisfy that indemnity;
- (j) **custodian's right of indemnity:**
  - (i) each Landowner has a right to be fully indemnified from the Assets and by the Trustee for all liabilities under the Trustee Documents;
  - (ii) the Landowners have not released or disposed of the Landowners' equitable lien over the Assets which secures that indemnity;
  - (iii) the Landowners have not committed any breach of the Custody Agreement or done or omitted to do anything which has prejudiced or limited their rights of indemnity or equitable lien; and
  - (iv) the Assets are sufficient to satisfy that indemnity;
- (k) **no default:**
  - (i) the Trustee has not defaulted in the performance and observance of its obligations as trustee of the Trusts; and
  - (ii) so far as the Trustee is aware, the Landowners have not defaulted in the performance and observance of their obligations as custodians of the Trusts or under the Custody Agreement so far as the Trustee is aware, the Landowners have not defaulted in the performance and observance of their obligations as custodians of the Trusts or under the Custody Agreement;
- (l) **Trusts or Custody Agreement not terminated:** no action has been taken or, so far as the Trustee is aware, is contemplated to terminate the Trusts or the Custody Agreement;
- (m) **full disclosure:** the Trustee has disclosed to the Minister full particulars of the Trusts, the Custody Agreement and any other trust or fiduciary relationship affecting the Assets and, without limitation, has given to the

Minister copies of any instruments creating or evidencing the Trusts and the Custody Agreement;

- (n) **Trusts duly constituted:** the Trusts are duly constituted and are not void, voidable or otherwise unenforceable;
- (o) **custodian duly appointed:** each Landowner has been duly appointed as custodian of the relevant Trusts;
- (p) **capacity of Trustee:** the Trustee:
  - (i) is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as trustee of the Trusts; and
  - (ii) is not insolvent.

### 19.3 Trustee's additional obligations

- (a) The Trustee must:
  - (i) ensure the Assets are not mixed with any other property;
  - (ii) comply with the Trustee's obligations as trustee of the Trusts;
  - (iii) not release, dispose of or otherwise prejudice the Trustee's right of indemnity against, and equitable lien over, the Assets and the Trustee's right of indemnity (if any) against the Beneficiaries;
  - (iv) at the Minister's request, exercise the Trustee's right of indemnity against, and equitable lien over, the Assets and the Trustee's right of indemnity (if any) against the Beneficiaries; and
  - (v) not, without obtaining the Minister's prior written approval:
    - (A) terminate any or all of the Trusts;
    - (B) resettle the Assets; or
    - (C) vary the terms of the Trust if to do so would adversely affect the Trustee's right of indemnity against, or equitable lien over, the Assets or the Trustee's right of indemnity (if any) against the Beneficiaries.
- (b) The Trustee covenants that it will not retire or be replaced as trustee of any or all of the Trusts unless:
  - (i) another entity has been appointed in its place for the relevant Trusts;
  - (ii) the new entity agrees to be bound by the Trustee Documents, the Trust Deeds and the Custody Agreements (as applicable) as trustee for the relevant parcel of Land; and
  - (iii) unless the new entity is a Developer-Related Entity, the Trustee obtains the Minister's prior written consent, which must not be unreasonably withheld, to the appointment of the new entity.

#### 19.4 The Landowners' representations and warranties

Each Landowner represents and warrants to the Minister that:

- (a) **custodian's power:** the Landowner has power as custodian of the relevant Trusts to execute the Trustee Documents;
- (b) **due performance:** in executing the Trustee Documents, the Landowner and its representatives have properly performed their obligations to the Beneficiaries and Trustee;
- (c) **custodian action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with the Landowner's obligations under, the Trustee Documents has been taken;
- (d) **no removal of custodian:** so far as the Landowner is aware, no action has been taken to remove the Landowner as custodian of the relevant Trusts or to appoint an additional custodian of the relevant Trusts;
- (e) **custodian duly appointed:** each Landowner has been duly appointed as custodian of the relevant Trusts;
- (f) **capacity of custodian:** the Landowner:
  - (i) is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as custodian of the Trusts; and
  - (ii) is not insolvent.

#### 19.5 The Landowners' and Trustees' additional obligations

- (a) Each Landowner must:
  - (i) ensure the Assets are not mixed with any other property;
  - (ii) comply with the its obligations under the Custody Agreements as custodian of the relevant Trusts;
  - (iii) not release, dispose of or otherwise prejudice the Landowner's right of indemnity against, and equitable lien over, the Assets and the Landowner's right of indemnity (if any) against the Beneficiaries;
  - (iv) at the Minister's request, exercise the Landowner's right of indemnity against, and equitable lien over, the Assets and the Landowner's right of indemnity (if any) against the Beneficiaries;
- (b) Each Landowner covenants that it will not retire or be replaced (and each Trustee covenants that it will not remove the Landowner or cause the Landowner to retire) as custodian of any or all of the Trusts unless:
  - (i) another entity has been appointed in its place for the relevant Trusts; and



- (ii) the new entity agrees to be bound by the Trustee Documents, the Trust Deeds and the Custody Agreements (as applicable) as Landowner for the relevant parcel of Land.
- (c) No Landowner may take any action to amend the Trust Deeds or the Custody Agreements without the prior written consent of the Minister, acting reasonably.

#### **19.6 Non Merger**

This **clause 19** does not merge on the completion, rescission or other termination of this document or on the provision of any Development Contributions under this document.

## **20 GST**

### **20.1 Construction**

In this **clause 20**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
  - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
  - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

### **20.2 Consideration GST exclusive**

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided to the Minister under or in connection with this document is exclusive of GST (**GST- exclusive consideration**).

### **20.3 Payment of GST**

If GST is payable on any supply made by:

- (a) a party; or
  - (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,
- (**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

#### **20.4 Timing of GST payment**

The amount referred to in **clause 20.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

#### **20.5 Tax invoice**

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 20.3**.

#### **20.6 Adjustment event**

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 20.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

#### **20.7 Reimbursements**

- (a) Where a Party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 20.7** does not limit the application of **clause 20.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 20.7(a)**.

#### **20.8 Calculations based on other amounts**

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

#### **20.9 No merger**

This **clause 20** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

## 21 General provisions

### 21.1 Costs, expenses and stamp duty

- (a) The Developer and the Landowners must pay their own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this document.
- (b) The Developer and the Landowners must pay all reasonable costs and expenses associated with the giving of public notice of this document and the Explanatory Note in accordance with the Regulation.
- (c) The Developer and the Landowners must pay all Taxes assessed on or in respect of this document and any instrument or transaction required or contemplated by or necessary to give effect to this document (including, but not limited to, stamp duty and Registration fees, if applicable, on any transfer of the Education Land).
- (d) The Developer and the Landowners must provide the Minister with bank cheques in respect of any costs incurred by the Minister pursuant to **clauses 21.1(a), 21.1(b) and 21.1(c)**:
  - (i) where the Minister has provided the Developer or relevant Landowner written notice of the sum of such costs prior to execution, on the date of execution of this document; or
  - (ii) where the Minister has not provided the Developer or relevant Landowner with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

### 21.2 Entire agreement

- (a) This document contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this document was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this document.

### 21.3 Variation

- (a) This document must not be varied except by a later written document executed by all Parties.
- (b) Subject to **clause 21.3(c)**, the Parties agree that the requirements of **clause 21.3(a)** will be satisfied where the Minister, in the Minister's absolute discretion, agrees to the Developer or the relevant Landowner making minor amendments relating to the delivery of the Development and those amendments, and the consequences of those amendments under this document, have been agreed by the Parties through an

exchange of letters signed by or on behalf of the contact for each Party specified in **clause 11** of this document.

(c) **Clause 21.3(b):**

- (i) does not apply where the Act requires public notification of any amendment to this document;
- (ii) is subject to the Developer or the relevant Landowner obtaining all required approvals including any Planning Approval or modification to a Planning Approval; and
- (iii) is subject to **clause 21.7** of this document.

**21.4 Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this document and all transactions incidental to it.

**21.5 Governing law and jurisdiction**

This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

**21.6 Joint and individual liability and benefits**

Except as otherwise set out in this document, any agreement, covenant, representation or warranty under this document by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

**21.7 No fetter**

Nothing in this document will be construed as requiring the Minister to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**21.8 Representations and warranties**

The Parties represent and warrant that they have power to enter into this document and comply with their obligations under this document and that entry into this document will not result in the breach of any law.

**21.9 Severability**

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

#### **21.10 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **21.11 Effect of Schedules**

The Parties agree to comply with any terms contained in Schedules to this document as if those terms were included in the operative part of the document.

#### **21.12 Relationship of parties**

This document is not intended to create a partnership, joint venture or agency relationship between the Parties.

#### **21.13 Further steps**

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this document and to perform its obligations under it.

#### **21.14 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

#### **21.15 Rights cumulative**

Except as expressly stated otherwise in this document, the rights of a Party under this document are cumulative and are in addition to any other rights of that Party.

#### **21.16 Liability**

An obligation of two or more persons binds them separately and together.

#### **21.17 Interpretation**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) a reference in this document to a Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;

- (f) if the day on or by which any act, must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (g) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this document are payable in Australian dollars;
- (h) a reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (i) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (j) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (k) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (l) a reference to a Party to this document includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns; and
- (m) any schedules, annexures and attachments form part of this document.

## **21.18 Headings**

Headings do not affect the interpretation of this document.

## **21.19 Effect of execution**

This document is not binding on any Party unless it or a counterpart has been duly executed by each Party.