



**MAJOR
WORKS AUTHORISATION DEED –
PRIVATE FINANCING &
CONSTRUCTION**

**Roads & Traffic Authority of New South Wales
("RTA")**

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

[This is a Legal Branch precedent document which must only be modified with the approval of the Manager, Environment & Property, Legal Branch]

Legal Branch, Roads and Traffic Authority of New South Wales, DX 13 SYDNEY
Ph: 9218 6875 Fax: 9218 6509

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SCHEDULE

ATTACHMENT A - PROJECT REQUIREMENTS

ATTACHMENT B - DESCRIPTION OF WORKS AND DRAWINGS

ATTACHMENT C – NOT USED

ATTACHMENT D- NOT USED

ATTACHMENT E - INSURANCE

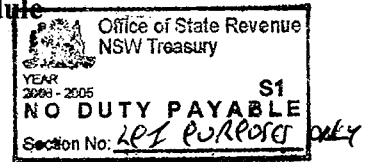
ATTACHMENT F - STATUTORY DECLARATION AND SUBCONTRACTOR STATEMENT REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION

Works Authorisation Deed - Private Financing and Construction

Parties

RTA Roads and Traffic Authority of New South Wales
ABN 64 480 155 255
Constituted by the *Transport Administration Act 1988* (NSW) of 260
Elizabeth Street, Surry Hills NSW 2010

Developer The party identified in Item 1 of the Schedule



Background

1. The RTA is the decision making authority under the Act in relation to the Works and has the statutory right to undertake the Works or authorise the Works to be carried out.
2. The Developer has entered into this Deed pursuant to and in accordance with clause 13.2 of the Development Agreement and has agreed to finance, design and construct the Works on the terms of this Deed.
3. The RTA authorises the Developer to carry out the Works subject to the terms of this Deed.

Deed

1. Definitions and Interpretation

1.1 Definitions

In this document:

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

'Amended Design Document' has the meaning given to that expression in **clause 6.2**;

'Approval' means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by law, including by a Legislative Requirement and any RTA condition or approval including those under this Deed, required for the commencement, execution or completion of the Works;

'Approved Security' means an irrevocable and unconditional undertaking by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;

- (d) National Australia Bank Limited;
- (e) St George Bank Limited; or
- (f) Westpac Banking Corporation,

or other financial institution approved by the RTA in its absolute discretion to pay an amount or amounts of money to RTA on demand and containing terms and conditions reasonably acceptable to the RTA;

'As-Built Drawings' means the Design Documents which are the final as-executed drawings of the Works and which are endorsed with a certificate by an independent person, who is suitably qualified and holds appropriate professional indemnity insurance to the reasonable satisfaction of the RTA's authorised representative, stating that the Works as constructed comply with all Approvals, Legislative Requirements and the requirements of this Deed;

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

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

'Construction Programme' means a programme (as may be updated in accordance with this Deed) showing the order of progress of the construction of the Works, to be prepared by the Developer and provided to the RTA under **clause 7.1(e)**;

'Date for Practical Completion' means the date of Release of Subdivision Plan for land which includes the 200th Residential Allotment forming part of the Release Area;

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

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

'Design Document' means:

- (a) a drawing, specification, construction document, design calculation, software, sample, model, pattern and the like required by this Deed or created for the construction of the Works;
- (b) a schedule setting out particulars of all notices, tests, hold points and materials as required by the individual sections of the Project Requirements, identifying all notification periods; and
- (c) any geotechnical investigation relating to the Works;

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

'Developer's Project Manager' means the person appointed by the Developer under **clause**

16.2(a);

'Development Agreement' means the deed titled "Colebee Release Area State Development Agreement" between the Minister, the RTA and the Developer dated on or about the date of this Deed;

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

'Estimated Cost of the Works' means the cost estimate at the date of this Deed for completing the Works and satisfying all of the Developer's obligations under this Deed, as specified in **Item 2** of the **Schedule**;

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

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

'Legislative Requirements' include:

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

'Minister' means The Minister Assisting the Minister for Infrastructure and Planning (Planning Infrastructure);

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

'Notice of Practical Completion' means a notice under **clause 10.2(b)** by the RTA stating that Practical Completion of the Works has been achieved;

'OH&S Plan' means a detailed plan setting out the procedures and practices put in place to manage all occupational, health and safety and industrial issues that arise during construction of the Works and to ensure compliance with this Deed;

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

- (a) the Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation, except for minor omissions and minor defects which:
 - (i) have been so identified on a list issued to the Developer by the RTA under **clause 10.2(b)(ii)**;

- (ii) do not impede use of the Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - (iii) will not prejudice the convenient and safe use of the Works during rectification; and
 - (iv) the RTA's authorised representative determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;
- (b) the Inspection and Testing Plan has been complied with and any other tests necessary to be carried out and passed before the Works, or a part thereof, is used and occupied by the public have been carried and passed and all test results and conformance data identified in the Inspection and Testing Plan has been provided to the RTA;
 - (c) all relevant Legislative Requirements in respect of the Works have been carried out or satisfied;
 - (d) all documents, certifications and information required under this Deed which, in the opinion of the RTA, are essential for the use, operation and maintenance of the Works have been supplied including all shop drawings and draft As-Built Drawings, all original manufacturers' or suppliers' warranties required by this Deed, all Approvals required to be obtained have been obtained from relevant Authorities and all other material as requested by the RTA; and
 - (e) with the approval of the RTA, the Developer has commissioned into operation the Works including all plant incorporated into the Works and any traffic signalling equipment and demonstrated to the RTA that the commissioning has been successful;

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

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

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

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

'REF' means a review of environmental factors required to assist the determining authority in discharging its obligations under Part 5 of the Environmental Planning and Assessment Act 1979 (NSW);

'Release Area' has the meaning given to it in the Development Agreement;

'Release of Subdivision Plan' has the meaning given to it in the Development Agreement;

'Residential Allotment' has the meaning given to it in the Development Agreement;

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

'RTA Costs' means the GST exclusive costs and expenses reasonably incurred by the RTA in connection with this Deed, as set out in **clause 12**;

'RTA's authorised representative' means the person named as such in **Item 7** of the **Schedule** who may be substituted from time to time in accordance with **clause 16.4**;

'Traffic Control Plan' means a detailed plan in accordance with the RTA's Traffic Control at Works Sites Manual;

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

'Trust Deed' has the meaning given to it in the Development Agreement; and

'Works' mean the works described in **Attachment B**, as modified following any assessment or determination under **clause 2** or **clause 6** or any other modification agreed between the parties, to be designed and constructed in accordance with this Deed.

1.2 Interpretation

- (a) clause headings are for convenience only and will be ignored in the interpretation of this Deed;
- (b) references to a party include the successors and permitted assigns of that party;
- (c) words importing the singular include the plural and words importing the plural include the singular;
- (d) words importing a person include a corporation, firm or body corporate;
- (e) nothing contained in this Deed will be deemed or construed as creating the relationship of partnership or agency;
- (f) references to a month mean a calendar month;
- (g) references to any document include any permitted amendment, supplement to or replacement or novation of the document;
- (h) references to any legislation or to any section or provision of any legislation includes any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision;
- (i) no waiver of any breach of this Deed or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach;
- (j) other grammatical forms of defined words or expressions have corresponding

meanings;

- (k) 'including' and similar expressions are not words of limitation;
- (l) documents which are hyperlinked to this Deed do not form part of this Deed; and
- (m) hyperlinks are included for ease of reference only and may become lost or be inaccurate.

2. Approvals

2.1 Developer to obtain

Subject to this **clause 2**, the Developer must obtain all Approvals required to carry out the Works in accordance with this Deed.

2.2 EPA Act requirements

The RTA is required to meet its obligations under the Environmental Planning and Assessment Act 1979 (NSW) as well as other Legislative Requirements in relation to the review and assessment procedures required to be satisfied as to likely environmental impacts where the Works are being carried out in or on a road reserve, on a classified road or involving traffic control signals or in or on any private land required for the Works and proposed to be part of the classified road or declared to be a public road. The Developer must assist the RTA to meet the RTA's obligations under the Environmental Planning and Assessment Act 1979 (NSW) and other Legislative Requirements, as directed by RTA from time to time.

2.3 Assistance

The Developer must, at the RTA's request, prepare the REF and arrange community consultation required to reasonably assist the RTA to satisfy the obligations under **clause 2.2**, which must include the prompt provision to the RTA of suitable review and draft assessment documentation.

2.4 EIS

If the RTA is required to obtain an environmental impact statement under section 112 of the Environmental Planning and Assessment Act 1979 (NSW) in respect of the Works, the RTA will engage all necessary consultants to prepare the required reports to prepare the environmental impact statement and the Developer must provide reasonable assistance as required from time to time including paying the RTA's reasonable costs, as required under **clause 12**.

2.5 Commission of inquiry

If an Authority directs that a commission of inquiry be held under the Environmental Planning and Assessment Act 1979 (NSW) or Approval is refused or is approved subject to conditions not acceptable to the RTA:

- (a) the Developer must use its best endeavours to assist the RTA to overcome the refusal or the unacceptable condition;
- (b) the RTA will lodge all necessary papers for the conduct of a commission of inquiry or to appeal against any such refusal or unacceptable condition;

- (c) the RTA will prosecute any appeal with due diligence; and
- (d) the Developer must pay the RTA's reasonable costs, as required under **clause 12**.

3. RTA authorisation under Roads Act

Subject to **clause 2**, the RTA authorises the Works under the Act and consents to the Developer and its authorised employees and contractors carrying out the Works within, over or across the Road and road reserves applicable to the Road in accordance with the Act subject to the terms of this Deed.

4. Security

4.1 Purpose

At least 20 Business Days prior to commencing the Works, the Developer must lodge with the RTA the Approved Security for the amount stated in **Item 9** of the Schedule for the purpose of ensuring the due and proper performance of the Developer's obligations under this Deed.

4.2 Increase in Approved Security

- (a) If at any time the RTA considers that the cost of performing the Works and the other obligations of the Developer under this Deed is likely to be greater than the Estimated Cost of the Works:
 - (i) the RTA's authorised representative may revise the Estimated Cost of the Works and give the Developer a written request to increase the security provided under **clause 4.1** by the difference between the amount of security provided under **clause 4.1** and the revised Estimated Cost of the Works; and
 - (ii) the Developer must within 10 Business Days after receiving that request provide the RTA with such increased security by lodging a replacement Approved Security or an additional Approved Security so that the total of security held by the RTA is for an amount not less than the revised Estimated Cost of the Works.
- (b) The Developer must if requested provide prompt assistance to the RTA's authorised representative to allow the RTA to review the Estimated Cost of the Works for the purposes of **paragraph (a)**.

4.3 Security for Defects Liability

The RTA will be entitled to retain the Approved Security as security for rectification of defects during the Defects Liability Period.

5. Nature of Contract

5.1 General

The Developer and RTA acknowledge that the Developer has certain obligations under the Development Agreement which are owed to, and enforceable by, the Minister, and these

include the supply of the Works in accordance with this Deed. The Developer must finance, design and construct the Works and perform its other obligations under the Development Agreement and this Deed at its own cost and without contribution from the RTA.

5.2 All risks

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

6. Design

6.1 Design Obligations

The Developer must:

- (a) provide the RTA with a detailed design for the Works for consideration and acceptance with the REF and other documentation under **clause 2.3**;
- (b) perform the Design Obligations and produce the Design Documents to accord with the Project Requirements and Approvals, including those required by **clause 2**;
- (c) ensure that the Design Obligations are performed with due skill, care and diligence and by personnel who are suitably qualified and experienced;
- (d) ensure that each Design Document which is a drawing or a specification is endorsed with a certificate by an independent person, who is suitably qualified and holds appropriate professional indemnity insurance to the reasonable satisfaction of the RTA's authorised representative, stating that the Works if constructed in accordance with the Project Requirements and the relevant drawing or specification will comply with all Approvals, Legislative Requirements and requirements of this Deed; and
- (e) ensure that the Design Documents are fit for the construction of the Works.

6.2 Review Process

- (a) The Developer must:
 - (i) following satisfaction of all of the obligations under **clause 2**, provide to the RTA for review at least four copies of Design Documents produced by the Developer, in a form acceptable to the RTA, before they are issued to tenderers or proposed contracting parties and in any event, not less than 21 Business Days before the work contained in those documents is proposed to be commenced;
 - (ii) where a document submitted by the Developer to the RTA is amended after being considered by the RTA ('**Amended Design Document**'), submit four copies of the Amended Design Document to the RTA for the RTA's consideration; and
 - (iii) submit an Amended Design Document to the RTA for consideration no later than 15 Business Days, or such other time as the parties may agree

in writing, prior to the date that the Developer proposes that the Works or any part of the Works to which the Amended Design Document relates will be issued to tenderers or proposed contracting parties.

- (b) The RTA must notify the Developer within 20 Business Days of receipt of Design Documents under **paragraph (a)** whether the RTA considers that the Design Documents comply with this Deed and are acceptable to the RTA. If the RTA considers that the Design Documents do not comply with this Deed and are not acceptable to the RTA, the RTA must so advise the Developer and give reasons.
- (c) The RTA must notify the Developer within 10 Business Days of receipt of any Amended Design Document whether the RTA considers that the Amended Design Document complies with this Deed and is acceptable to the RTA. If the RTA considers that the Amended Design Document does not comply with this Deed and is not acceptable to the RTA, the RTA must so advise the Developer and give reasons.

6.3 RTA not liable for checking

The RTA is not responsible or liable for checking or not checking Design Documents for errors, omissions or compliance with this Deed even if the Design Documents are acceptable to the RTA.

6.4 Obligations unaffected

The Developer acknowledges that the obligations in **clause 6.1** and the Design Obligations will remain unaffected despite:

- (a) the Developer carrying out preliminary design or specification work which may be included in the Project Requirements;
- (b) any receipt, review, comment or direction on a Design Document (including an Amended Design Document) by the RTA;
- (c) any information given by the RTA to the Developer; or
- (d) any change to Works necessary to comply with this Deed.

7. Commencement of the Works

7.1 Preconditions to commencement

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

- (a) obtained all Approvals necessary to start construction of the Works including those required under **clause 2** and the issue of an authorisation letter, including a road occupancy approval, from the RTA;
- (b) obtained the relevant notices from the RTA under **clause 6.2** that the RTA considers that the Design Documents and Amended Design Documents (as the case may be) comply with this Deed and are satisfactory to the RTA;
- (c) complied with any other conditions required by the RTA, including the provision

of an Environmental Management Plan, OH&S Plan, Quality Plan, Inspection and Testing Plan, Traffic Control Plan and Traffic Management Plan to the RTA for its prior written approval together with certifications from a suitably qualified person with appropriate professional indemnity insurance cover that each of the plans comply with this Deed;

- (d) provided the requisite Approved Security to the RTA in accordance with clause 4 and anything else required to be provided under this Deed prior to commencement of the Works;
- (e) prepared and provided to the RTA for its prior written approval, a Construction Programme which must include the Date for Practical Completion as the date by which the Developer is required to achieve Practical Completion of the Works; and
- (f) given to the RTA's authorised representative at least 10 Business Days written notice of the Developer's intention to start construction.

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

7.2 Appointment of Contractor

The Developer must ensure that:

- (a) traffic signal works are only constructed by a contractor that, at the time of engagement, is prequalified for those works under the RTA's Prequalification Scheme for Construction Industry Contractors current at that time, unless otherwise agreed in writing by the RTA;
- (b) to the extent requested by the RTA, other work is constructed by a contractor that, at the time of engagement, is prequalified at a level and class appropriate for that work under such prequalification scheme;
- (c) such contractors are suitably experienced in constructing similar works;
- (d) the Developer and such contractors comply with the NSW Government Code of Practice for the Construction Industry and associated Implementation Guidelines;
- (e) the names of proposed contractors and subcontractors are submitted to the RTA for prior written approval;
- (f) in the case of work constructed by a non-prequalified contractor, the work is not commenced until the RTA has approved the contractor under paragraph (e);
- (g) all requisite insurances have been effected by the proposed contractor; and
- (h) the proposed contractor is engaged by the Developer under terms and conditions that ensure the contractor will satisfy the Developer's obligations to the RTA under this Deed.

7.3 Principal contractor

- (a) For the purposes of Chapter 8 of the Occupational Health and Safety Regulation 2001 (NSW) (OH&S Regulation) the RTA:
 - (i) as and when the Developer engages its main contractor to carry out the Works, appoints the Developer's main contractor as the principal contractor for executing the Works; and
 - (ii) authorises the Developer's main contractor to exercise such authority of the RTA as is necessary to enable the Developer's main contractor to discharge the responsibilities imposed on a principal contractor by Chapter 8 of the OH&S Regulation.
- (b) The Developer must ensure that its main contractor acknowledges its appointment as principal contractor under the OH&S Regulation and must also ensure that its main contractor complies with its duties as principal contractor under the OH&S Regulation.
- (c) If the Developer's main contractor fails to comply with any of its duties referred to in paragraph (b), the RTA may have those duties carried out by the RTA or by others and the cost incurred by the RTA in having those obligations carried out will be a debt due from the Developer to the RTA.
- (d) The Developer indemnifies the RTA from and against any damage, expense, loss, liability or claim by or against the RTA arising out of or in connection with a failure by the Developer's main contractor to comply with its duties referred to in paragraph (b).
- (e) The Developer must, when requested by the RTA, provide the RTA with a copy of the site specific occupational health and safety management plan, subcontractors' safe work method statements and other registers, records and documents that the Developer's main contractor is required to prepare and maintain in connection with its obligations as the principal contractor under the OH&S Regulation.
- (f) If at any time during the construction of the Works, the Developer's main contractor is no longer the principal contractor under the OH&S Regulation for any reason, the RTA appoints the Developer as the principal contractor and authorises the Developer to exercise such authority of the RTA as is necessary to enable the Developer to discharge the responsibilities imposed on a principal contractor by Chapter 8 of the OH&S Regulation. The preceding provisions of this clause 7.3 will apply to the Developer as if the words "Developer's main contractor" are replaced with the word "Developer".

8. Construction

8.1 Carrying out the Works

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

- (a) the Project Requirements are complied with at all times;
- (b) the Works are carried out in accordance with the Design Documents which the RTA has notified the Developer to comply with under this Deed and are acceptable to the RTA pursuant to **clause 6**;

- (c) the Works are carried out in compliance with:
 - (i) all Legislative Requirements affecting the Works, including environmental, workers' compensation and occupational health and safety legislation;
 - (ii) all requirements of other relevant Authorities;
 - (iii) the conditions of all Approvals for the Works; and
 - (iv) the Quality Plan, OH&S Plan, Environmental Management Plan, Inspection and Testing Plan, Traffic Control Plan and Traffic Management Plan;
- (d) the directions and additional requirements of the RTA given from time to time (including a direction to immediately stop work) are complied with;
- (e) water, debris or silt is prevented from collecting in or adjacent to the Works as a result of any activity associated with the Works;
- (f) it does not disturb traffic flow at the site of the Works, except in accordance with the Traffic Management Plan or with the prior approval of the RTA's authorised representative;
- (g) the RTA is kept fully informed of progress and of any event that may affect traffic movements or other activities within or adjacent to the Works;
- (h) all safety devices, traffic control, barricades, signs and warnings required by the RTA or which are necessary or desirable for the protection of people or property are provided;
- (i) people authorised by the RTA are freely allowed to inspect the Works and access all information and records relating to the Works, including traffic control arrangements and test and survey results;
- (j) noise, vibration and dust is minimised or avoided;
- (k) no explosives are used in relation to any part of the Works without the prior written approval of the RTA;
- (l) delay to the RTA in providing the completed Works to the public to RTA's satisfaction is minimised;
- (m) the Works are carried out expeditiously and proceed continuously until Practical Completion in accordance with the Construction Programme approved by the RTA prior to commencement of construction of the Works under **clause 7.1(e)**;
- (n) the Works achieve Practical Completion by the Date for Practical Completion;
- (o) at all times it acts in a lawful manner in the performance of the Works;
- (p) the safety and welfare of all people, including members of the public and road

users, who may be affected by the Works or the Developer's undertaking of the Works are maintained;

- (q) it fully co-operates and liaises with the RTA and its contractors, employees and agents working in the vicinity of the Works;
- (r) it carefully coordinates and interfaces the Works with any works being carried out by the RTA or another Authority and their contractors, employees and agents;
- (s) it carries out the Works so as to avoid interference with or disruption to or delay of the work of the RTA or another Authority and their contractors, employees and agents;
- (t) it monitors the progress of work being performed by the RTA, another Authority and their contractors, employees and agents and notifies the RTA of any interface or sequence activities which may affect the commencement, progress or completion of any aspect of the Works;
- (u) a report is immediately sent to the RTA's authorised representative of any injury to a person suffered while carrying out the Works or while being on the Road and of any claims made pursuant to workers' compensation insurance while carrying out the Works or while being on the Road and assist the RTA to promptly investigate and monitor the incident with a view to potential future claims being made against the RTA;
- (v) all subcontractors and workers engaged by the Developer on the Works are fully paid money properly due and payable to them in connection with the Works under relevant awards, contracts and enterprise agreements; and
- (x) the RTA is provided with any additional information and material relevant to the performance of the Developer's obligations under this **clause 8.1**, if requested in writing by the RTA's authorised representative, including information relating to traffic control, records, test, survey results for the Works and any other relevant information held or received by the Developer from time to time.

8.2 Testing

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

8.3 Defects rectification

The Developer must promptly and in any event within the time frame referred to in **clause 10.2(b)(iii)** rectify defects or other non conforming work which become apparent during construction of the Works or before the end of the Defects Liability Period in accordance with the requirements of this Deed.

9. Modifications

9.1 Modifications Only by Agreement

- (a) The Developer must not make any modifications to the Works without the prior written agreement of the RTA's authorised representative and the RTA agrees not to unreasonably delay a decision in relation to a proposed modification of the Works.
- (b) Neither the RTA nor the RTA's authorised representative may request any modifications to the Works without the prior written agreement of the Developer and the Developer agrees not to unreasonably delay or withhold a decision in relation to a requested modification of the Works.
- (c) For the purposes of **clause 4.2**, the estimated value of a modification may be taken into account by the RTA's authorised representative in revising the Estimated Cost of the Works.

10. Practical Completion

10.1 Developer to Notify

The Developer must:

- (a) give the RTA written notice not less than 20 Business Days, unless **Item 8** of the **Schedule** states otherwise, before it anticipates achieving Practical Completion of the Works. The RTA and the Developer will then jointly inspect the Works and the RTA must, within 5 Business Days, identify and notify the Developer of any defects in the Works which may prevent the issue of the Notice of Practical Completion; and
- (b) provide notice to the RTA when it considers Practical Completion has been achieved, such notice to include the following details in relation to each item of the Works:
 - (i) any defects in the Works identified to date but not rectified;
 - (ii) reports on preliminary commissioning of the services and installations;
 - (iii) compliance with the Inspection and Testing Plan and the provision of all required test results and conformance data;
 - (iv) Approvals;
 - (v) a certificate from an independent engineer reasonably acceptable to the RTA's authorised representative that the item of the Works complies with all requirements of this Deed and is fit for occupation and use; and
 - (vi) a comprehensive list of all items that require rectification or completion to achieve Practical Completion.

10.2 RTA to Inspect and Give Notice

The RTA must:

- (a) promptly, and in any event no later than 5 Business Days after receiving the Developer's written notice under **clause 10.1(b)** or a notice under the final paragraph of this **clause 10.2** (as the case may be), inspect the Works; and
- (b) if satisfied that Practical Completion has been achieved, issue a notice to the Developer:
 - (i) stating the date upon which the RTA determines Practical Completion was achieved;
 - (ii) containing a list of any minor defects and minor omissions of the type described in paragraph (a) of the definition of 'Practical Completion' in **clause 1.1**; and
 - (iii) stating the time frame, which must be reasonable, within which those defects and omissions identified must be rectified; or
- (c) if not satisfied that Practical Completion has been achieved, issue a notice to the Developer containing a comprehensive list of all items that the RTA considers necessary to be completed to achieve Practical Completion.

If the RTA issues a notice under paragraph (c) the Developer must proceed to bring the Works to Practical Completion and thereafter when it considers it has achieved Practical Completion it will give the RTA written notice to that effect after which this **clause 10.2** will reapply.

10.3 Unilateral Issue of Practical Completion Notice

If at any time a notice required to be given by the Developer to the RTA under either of **clauses 10.1** or **10.2** is not given by the Developer yet the RTA is of the opinion that Practical Completion of the Works has been achieved, the RTA may issue a Notice of Practical Completion under **clause 10.2(b)** for the Works.

10.4 Take Over Upon Practical Completion

Upon the issue of a Notice of Practical Completion:

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

10.5 Effect of Notice of Practical Completion

A Notice of Practical Completion:

- (a) will not constitute approval by the RTA of the Developer's performance of its obligations under this Deed;
- (b) will not be taken as an admission or evidence that the Works comply with this

Deed;

- (c) will not prejudice any rights or powers of the RTA; or
- (d) is only issued for the purposes of this Deed and is not a notice of practical completion of the Works as may be required to be issued under the contract entered into with the Developer's contractor to construct the Works.

10.6 As Builts

The Developer must ensure that:

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

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

10.7 Intellectual Property Warranty and Indemnity

The Developer warrants that the RTA's use of the Design Documents or As-Built Drawings will not infringe the Intellectual Property Rights of any person. The Developer agrees to indemnify the RTA, and keep the RTA indemnified from and against any loss, costs, expenses, demands or liability, arising out of a claim by a third party against the RTA alleging that the Design Documents or As-Built Drawings, or part of the Design Documents or As-Built Drawings, infringes any Intellectual Property Rights.

10.8 Moral Rights

The Developer must:

- (a) obtain in writing from its contractors, employees, subcontractors and licensees all necessary, unconditional and irrevocable:
 - (i) consents permitted by applicable law, to any alterations to, or use of the existing intellectual property or intellectual property for the purpose of the Works that would otherwise infringe their respective Moral Rights in such intellectual property, whether occurring before or after the consent is given; and
 - (ii) waivers permitted by applicable law of their respective Moral Rights outside Australia,

for the benefit of the RTA.

- (b) provide the RTA, at its request, with copies of each written consent and waiver obtained under this clause, within 15 Business Days of the RTA's request; and
- (c) use its best endeavours to ensure that none of its contractors, employees, subcontractors or licensees institutes, maintains or supports any claim or proceeding for infringement of their Moral Rights by the RTA.

10.9 Dedication of Land

If requested by the RTA the Developer must:

- (a) grant an easement in favour of the RTA or its nominee in relation to any area of land surrounding the Road as identified in the Design Documents or as reasonably required by the RTA; and
- (b) dedicate land owned or to be acquired in connection with the Works by the Developer, as identified in **Item 10 of the Schedule** or in the Design Documents, that is required by the RTA to be dedicated as public road or road reserve for the relevant part of the Works,

without any cost to the RTA.

10.10 Traffic signal works

Upon Practical Completion of the Works, title in any traffic signalling work that has been incorporated into the Works will pass to an authority nominated by the RTA or if directed by the RTA, in favour of the RTA.

11. Practical Completion Claim and Final Completion Claim

11.1 Claims

Within 45 Business Days after the issue of a Notice of Practical Completion for the Works the Developer must give the RTA notice of all liability, cost or expense which the Developer claims from the RTA in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed which occurred up to the date of issue of the Notice of Practical Completion.

11.2 Release after Practical Completion

After the date for submitting the claim and notice under **clause 11.1** has passed, the Developer releases the RTA from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed which occurred prior to the Date of Practical Completion of the Works except for any claim included in a claim or notice under **clause 11.1** which is given to the RTA within the time required by, and in accordance with the terms of, **clause 11.1**.

11.3 Final Claim and Notice

Within 21 Business Days after the end of the Defects Liability Period for the Works, the Developer must give the RTA a final claim which must be for the Approved Security held and all other amounts retained by the RTA and which must include notice of all liability, cost or expense which the Developer claims from the RTA in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed which occurred during the Defects Liability Period for the Works.

The final claim and notice required under this **clause 11.3** are in addition to the other notices which the Developer must give to the RTA under this Deed in order to preserve its entitlements to make any such claims.

11.4 Release after Final Claim and Notice

After the date for submitting the final claim and notice under **clause 11.3** has passed, the Developer releases the RTA from any claim, liability, cost or expense in respect of any fact, matter or thing arising out of, or in any way in connection with this Deed which occurred during the Defects Liability Period for the Works except for any claim included in a final claim or notice under **clause 11.3** which is given to the RTA within the time required by, and in accordance with the terms of, **clause 11.3**.

11.5 Final Certificate and Release of Approved Security

- (a) The RTA must issue a final certificate within 21 Business Days after receipt of the final claim and notice under **clause 11.3** if:
 - (i) the Developer has lodged with the RTA a statutory declaration in the form set out in **Attachment F**;
 - (ii) the Developer has procured from each contractor engaged by the Developer to carry out any part of the Works:
 - (A) a statutory declaration that all subcontractors and workers engaged by the contractor have been paid all monies due and payable and received all entitlements accrued; and
 - (B) a written statement in the form approved under Part 5B of the Pay-Roll Tax Act 1971, for the purposes of section 31G of that Act and section 175B of the Workers Compensation Act 1987;
 - (iii) the Developer has completed all its obligations under this Deed;
 - (iv) the Defects Liability Period under this Deed has expired; and
 - (v) there are no outstanding claims or disputes between the Developer and the RTA.
- (b) The final certificate must set out the amount of the Approved Security determined by the RTA as the amount finally due from the RTA to the Developer less any set-off by the RTA under this Deed.
- (c) If the final certificate shows money owing from the RTA to the Developer, the RTA must within 21 Business Days after the date of the final certificate:
 - (i) pay that money to the Developer; and
 - (ii) release the Approved Security and any other security then held for this Deed.
- (d) If the final certificate shows money owing from the Developer to the RTA:
 - (i) the Developer must pay the RTA the amount certified as payable by the

Developer within 21 Business Days after the date of the final certificate;
and

- (ii) the RTA has no obligation to release the Approved Security or any other security held for this Deed until the Developer has paid the money due.

11.6 Right of Set-Off

The RTA may deduct from moneys or security otherwise due to the Developer:

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

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

12. RTA Costs

12.1 Developer liable to pay

The Developer must pay the RTA Costs, including:

- (a) the RTA's costs (internal and external) in reviewing Design Documents and providing Approvals and any other consents, conditions or directions under this Deed;
- (b) the RTA's project management costs for co-ordinating activities associated with the Works and liaising with the Developer;
- (c) the cost of surveillance and associated administration of surveillance of the Works;
- (d) legal costs and expenses (on a solicitor own client basis) associated with the preparation, administration, enforcement and termination of this Deed;
- (e) costs associated with any review of the likely environmental impact of the Works required under the Environmental Planning and Assessment Act 1979 (NSW), assessment reports, determinations and any environmental impact statement required under the Environmental Planning and Assessment Act 1979 (NSW) and costs associated with community consultation, participating in a commission of inquiry, complying with other Legislative Requirements, appealing or prosecuting any appeal and any other costs payable to an Authority to discharge the obligations under the Environmental Planning and Assessment Act 1979 (NSW);
- (f) the replacement cost of any material, equipment, stock or other item used or supplied by the RTA;
- (g) the cost of repairs or replacement of any road or associated infrastructure damaged:
 - (i) by the Developer or its employees, contractors or persons under the control of any of them; or
 - (ii) attributed to damage caused by performance by the Developer of its obligations under this Deed,

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

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

12.2 Invoice

An itemised Tax Invoice of RTA Costs together with a certification from RTA's authorised representative that the RTA Costs incurred are true and accurate is sufficient evidence of RTA Costs unless a clear error has been made.

12.3 Payment

Subject to **clause 12.5**, a Tax Invoice for RTA Costs and interest accrued will be sent by the RTA to the Developer at not less than four weekly intervals. The Developer must pay the full amount of the invoice within 20 Business Days from the date of the invoice, including any interest payable under **clause 12.4**.

12.4 Interest

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

12.5 Deferral of capitalised maintenance costs

Payment of the RTA Costs referred to in **clause 12.1 (j)** must be paid by the Developer prior to the issue of the Notice of Practical Completion.

13. Liability and Indemnity

13.1 Indemnity

The Developer:

- (a) must defend and hold harmless, indemnify and keep indemnified the RTA and its employees, officers, agents and contractors from and against all claims, expenses, losses including consequential losses, damages and costs (including costs on a solicitor and client basis and whether incurred by or awarded against the RTA) that the RTA may sustain or incur as a result, whether directly or indirectly, of:
 - (i) any breach of this Deed by or act or omission of the Developer;
 - (ii) any injury or death to any person including any injury or death to the employees, officers, agents and contractors of the Developer or the RTA;
or
 - (iii) damage to or loss of any property including any damage to or loss of the

Works or property of the Developer or the RTA,

arising out of performance by the Developer of its obligations under this Deed including claims by a person who is not a party to this Deed, except to the extent caused or contributed to by the RTA, its contractors, employees and agents; and

- (b) acknowledges that:
 - (i) it, and not RTA, is responsible and liable for the carrying out of the Works, management of construction and programming of the Works in compliance with the provisions of this Deed; and
 - (ii) RTA is relying on the advice, skill and judgment of the Developer and its consultants and contractors in:
 - (A) the correctness and suitability of the Design Documents;
 - (B) the performance of the Developer's obligations under this Deed;
 - (C) the carrying out of the Works; and
 - (D) the adequacy of the plant and equipment to be used in the Works for the purposes of this Deed.

13.2 No limitation

Without limiting the generality of **clause 13.1(b)(ii)**, the Developer must ensure that:

- (a) the processes and methods to be used for carrying out the Works will be completely suitable for the purposes for which they are required;
- (b) the Works are carried out in accordance with this Deed;
- (c) it will furnish efficient business administration, supervision and an adequate supply of workers and materials and perform its obligations in the best way and in the most expeditious and economical manner consistent with the terms of this Deed; and
- (d) it will obtain for the benefit of the RTA all available product and work warranties from any suppliers, contractors and subcontractors in respect of equipment and materials used in the Works or assign such benefit to the RTA where the warranty is not in favour of the RTA.

13.3 RTA may remedy

The Developer agrees that:

- (a) if its fails to remedy any breach of this Deed within 10 Business Days or as otherwise agreed by the parties after receiving a notice from the RTA requiring the Developer to remedy the breach, the RTA may remedy the breach at the cost of the Developer and will be entitled to set-off the cost of remedying the breach under **clause 11.6**; and
- (b) if remedial, protective or repair work, traffic management or traffic control work is urgently required to prevent loss of or damage to the Works or to the site of or property adjacent to the Works or to prevent injury or death to any person, the

RTA may undertake that work at the cost of the Developer and will be entitled to set-off the cost under **clause 11.6**. The RTA will, if practical, give notice to the Developer of the work urgently required.

13.4 Provision of proceedings

If the RTA receives or is served with any written notice of claim, summons, written complaint or any legal process from any person or entity in respect of which an indemnity is provided to the RTA by the Developer under this Deed, then the RTA must, within 10 Business Days of receipt, provide to the Developer a copy of such claim, summons, complaint or legal process. Within 20 Business Days of receipt of the claim, summons, complaint or legal process, the RTA must provide to the Developer all particulars and full details of all the circumstances and events pertaining to the claim, summons, complaint or legal process. The RTA must not consent to any matter or thing contained or referred to in any such document nor take any action in relation thereto without first obtaining the written consent of the Developer.

13.5 Appearance in proceedings

The Developer, by its solicitors or counsel, shall be entitled at its cost to appear in and have the conduct of every such matter and proceedings referred to in clause 13.4 in the name and on behalf of the RTA and notwithstanding that the RTA may also appear in any such matter or proceedings. The Developer may at its cost defend or prosecute and appeal against any decision of any court or other Authority in such manner as the Developer in its discretion may think fit.

14. Insurance

14.1 Effect and maintain

The Developer must ensure that the policies of insurances listed in **Attachment E**, on the terms, for the risks identified and for the periods of time set out in **Attachment E** are effected and maintained.

14.2 Proof

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

14.3 RTA may effect insurances

If the Developer does not comply with **clause 14.2**, the RTA may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt due from the Developer.

15. Termination

15.1 Default by Developer

If the Developer:

- (a) without reasonable cause and/or without the RTA's prior written approval

suspends carrying out of the Works;

- (b) fails to proceed with the Works promptly and diligently;
- (c) fails to lodge the Approved Security under **clause 4.1**;
- (d) fails to proceed with work in a competent manner;
- (e) fails to use or incorporate materials or work standards required by this Deed;
- (f) fails to remedy defects or non-conforming work or loss, damage, default or failure in accordance with this Deed;
- (g) is unable to pay its creditors within the meaning of section 460 of the Corporations Act 2001 or has proposed or made a composition with any or all of its creditors or has proceedings commenced against it or order or resolution made for its winding up or which may have the object of or result in its winding up;
- (h) has a judgment debt against it outstanding for more than 7 days;
- (i) commits any material breach of this Deed, or
- (j) has a receiver or liquidator (including provisional) of any of its assets or business or any official manager or administrator appointed;

and fails to remedy such event within 10 Business Days of a written request by the RTA to do so, then the RTA may, at its option and without prejudice to its other rights, by notice in writing to the Developer:

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

without prejudice to the accrued rights under this Deed.

15.1A Termination of Deed

If the Works Authorisation Deed for Item 1 of the Transport Works (as defined in the Development Agreement) is terminated for any reason, this Deed will automatically terminate at the same time. The remaining provisions in this clause 15 will apply to such termination.

15.2 Take over the Works

If the RTA exercises its rights under **clause 15.1** or if this Deed is terminated under **clause 15.1A**:

- (i) ownership of, and the Intellectual Property Rights and Moral Rights in, the Design Documents and the Amended Design Documents will pass to and be vested in the

RTA as at the date of termination;

- (ii) the RTA may complete the whole or any part of the Works remaining to be completed and may engage contractors, including contractors of the Developer and subcontractors for that purpose; and
- (iii) the RTA may take possession of and permit other persons to use any materials or equipment to be incorporated into the Works.

The Developer shall have no right to any compensation or allowance for any action taken by the RTA pursuant to this **clause 15.2**.

15.3 Termination of Contract

- (a) If this Deed is terminated under **clause 15.1** or under any other provision of this Deed (except **clause 15.1A**) it will be deemed terminated as from the date when notice of termination in writing under the hand of the RTA is served upon the Developer, or upon any official receiver, administrator, trustee in bankruptcy, liquidator, official or provisional liquidator, official manager of the Developer or of the business of the Developer.
- (b) If this Deed is terminated under **clause 15.1A**, it will be deemed terminated as from the date when the Works Authorisation Deed for Item 1 of the Transport Works (as defined in the Development Agreement) is terminated.
- (c) On termination of this Deed by the RTA, all or any sums of money which may be in the hands of the RTA in respect of this Deed and are not then payable to the Developer under or pursuant to any provision of this Deed, and the whole or part of the Approved Security, including cash lodged or retained for the due and proper performance of this Deed may be declared by the RTA to be forfeited and all sums and the whole or part of any security that are so declared to be forfeited shall be forfeited and shall be retained by or become payable to or vested in the RTA.
- (d) On termination of this Deed, all moneys which have been previously paid together with all moneys then payable under or pursuant to any provision of this Deed to the Developer shall be deemed to be in full satisfaction of all claims of the Developer of any kind or description whatsoever under or in respect of this Deed.

15.4 Adjustment of costs on completion

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

15.5 No release

Termination by the RTA or under **clause 15.1A** will not release the Developer from liability in respect of any breach of, or non-performance of any obligation pursuant to this Deed.

16. Authorised Representatives

16.1 Representatives to Perform Functions

The authorised representative of the Developer as stated in **Item 1** of the **Schedule** and the

authorised representative of the RTA as stated in **Item 7** of the **Schedule** may perform any function of the Developer and the RTA, respectively, under this Deed.

16.2 Developer's Project Manager

The Developer must:

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

16.3 Communications

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

16.4 Substitution

A party may substitute an authorised representative after first giving written notice to the other party.

17. Dispute Resolution

17.1 Notice of Dispute

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

17.2 Response to Notice

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

17.3 Negotiation

The nominated representatives must:-

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

17.4 Further Notice if not Settled

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

17.5 Reference to Expert

Within 10 Business Days of receiving a Dispute Notice submitted by a party pursuant to **clause 17.4** in relation to a Technical Dispute, the parties shall seek to agree upon and if agreed upon appoint an expert. In the event that the parties cannot agree on an expert to be appointed, the appointment of the expert is to be referred to the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).

For all Technical Disputes, the expert must:

- (a) have reasonable qualifications and practical experience in road and safety matters; and
- (b) have no interest or duty which conflicts or may conflict with his function as expert he being required to fully disclose any such interest or duty before his appointment.

The parties must refer the Technical Dispute to the expert for determination within 5 Business Days of the expert's appointment.

17.6 Rules

The expert must determine the dispute in accordance with RTA's Rules for the Expert Determination Process and the Code of Conduct for an Expert, a copy of which RTA must make available to the Developer on request.

17.7 Assistance

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

17.8 Expert not an Arbitrator

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

17.9 Mediation

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

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the mediator appointed pursuant to this **clause 17.9** ('Mediator') must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and

- (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

17.10 Litigation

If the dispute is not finally resolved in accordance with **clauses 17.5 to 17.9**, either party is at liberty to litigate the dispute.

17.11 Continue to Perform obligations

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

18. General

18.1 No Representations by RTA

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

18.2 No Restriction on Rights

Nothing in this Deed is deemed to:

- (a) prejudice or affect the rights of the public to free passage upon or along the site of the Works;
- (b) authorise any nuisance to or permanent obstruction of the site of the Works or public places;
- (c) confer upon the Developer any right or title to any part of the Works; or
- (d) in any way restrict or limit the powers of the RTA or other relevant Authority or fetter the RTA in the exercise of its statutory functions and in the event such

exercise is undertaken in accordance with the law, such exercise cannot and does not constitute a breach of this Deed.

18.3 Notices

- (a) A party notifying or giving notice under this Deed must do so in writing sent by prepaid registered post or facsimile and the original by post to the Representative at the address or facsimile number specified in **Item 1** or **Item 7** of the **Schedule**.
- (b) A notice given in accordance with **clause 18.3** will be deemed to have been given and received:
 - (i) if delivered, on receipt;
 - (ii) if posted, 3 Business Days after posting; and
 - (iii) if sent by facsimile on confirmation of the correct transmission of the facsimile.
- (c) Any notice received after 5.00pm or on a day not a Business Day shall be deemed to have been received at 9.00am on the next Business Day.

18.4 Assignment

The Developer must not assign, transfer or encumber any right, obligation or interest under this Deed unless the Development Agreement is to be assigned, transferred or encumbered in accordance with clause 9.3 of the Development Agreement, in which case, this Deed will be assigned, transferred or encumbered at the same time and on the same terms as the assignment or transfer of, or encumbrance under, the Development Agreement.

18.5 Waiver

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

18.6 Joint and Several Liability

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

18.7 Governing Law

This Deed is governed by New South Wales law.

18.8 Stamp duty

The Developer will be liable to pay any stamp duty payable on any transfer or easement required under **clause 10.9** to effect the RTA's requirements under this Deed.

18.9 Prior agreements superseded

This Deed and the Development Agreement contain the entire agreement between the

Developer and the RTA with respect to the Works. The Development Agreement and this Deed wholly replace and exclude all prior agreements, correspondence, negotiations, representations, explanations and statements between the Developer and the RTA concerning or in connection with the Works.

18.10 Modification of Deed

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

18.11 Media releases and enquiries

If requested by the RTA's authorised representative, the Developer must:

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

19. GST

(a) GST Payable

If anything supplied under or in connection with this Deed constitutes a "taxable supply", the supplier may, subject to issuing a "tax invoice", recover from the recipient of the supply an amount on account of the "GST" payable in respect of that "taxable supply" (**GST Amount**).

The GST Amount shall be:

- (i) equal to the "value" of the supply calculated in accordance with the GST Act multiplied by the prevailing "GST rate"; and
- (ii) be payable within 15 Business Days of receipt of a "tax invoice" for the "taxable supply".

The supplier of a taxable supply made under or in connection with this Deed must issue to the recipient of the supply a "tax invoice" for the supply in accordance with the GST Act.

The liability of the RTA under this clause is limited to the amount of the benefit of any input tax credit that the RTA receives and retains in respect of that taxable supply. Within 15 Business Days of the RTA providing evidence to the Developer that it has not been able to receive or retain part or all of the benefit of any input tax credit in respect of an amount paid to the Developer under this clause, the Developer must refund to the RTA an amount equal to the amount paid by the RTA under this clause less the input tax credit received or retained by the RTA (if any).

(b) Adjustment Event

If in relation to a "taxable supply" under or in connection with this Deed an "adjustment event" occurs that gives rise to an "adjustment", then the GST

Amount will be adjusted accordingly and, where necessary, but subject to clause 19(a), a payment will be made to reflect the change in the GST Amount (by the recipient to the supplier in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 Business Days of the issue of an "adjustment note" by the payee who must issue an "adjustment note" immediately upon becoming aware of the "adjustment event" concerned.

(c) **Reimbursement**

Notwithstanding any other provision of this Deed, any amount payable under or in connection with this Deed, which is calculated by reference to a cost, expense or amount paid or incurred by a party to this Deed, will be reduced by an amount equal to any input tax credit to which that party is entitled in respect of that cost, expense or amount.

(d) **Defined GST Terms**

In this clause, the GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*. Terms in this clause in quotation marks shall have the meaning ascribed to them in the GST Act.

(e) **GST obligations to survive termination**

This clause will continue to apply after expiration or termination of this Deed.

20. **Trustee's Limitation of Liability**

- (a) The parties acknowledge that the obligations of the Developer under this Deed are incurred by the Developer solely as trustee of the Medallist Schofields Trust (ABN 59 838 162 881) and that the Developer will not be liable to pay or satisfy any of the obligations under this Deed except out of the assets of the Medallist Schofields Trust from which it is entitled to be indemnified in respect of any liability incurred by it as trustee of the Medallist Schofields Trust.
- (b) The provisions of this clause do not apply to any obligation or liability of the Developer to the extent that it is not satisfied because under the trust deed establishing the Medallist Schofields Trust or by operation of law there is a reduction in the extent of the Developer's indemnification from the assets of the Medallist Schofields Trust or as a result of the Developer's negligence, fraud or failure to properly perform its duties as trustee.
- (c) The Developer, as trustee of the Medallist Schofields Trust and in its own right, makes the following representations and warranties.
 - (i) **(Trust power)** It is empowered by the Trust Deed:
 - (A) to enter into and perform its obligations under this Deed and to carry on the transactions contemplated by this Deed; and
 - (B) to carry on its business as now conducted or contemplated and to own its assets,

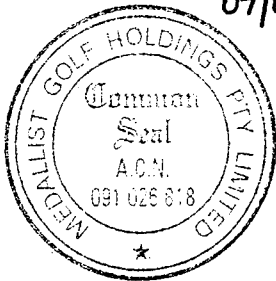
in its capacity as trustee of the Medallist Schofields Trust. There is no restriction on or condition of its doing so.

- (ii) **(Trust authorisations)** All necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the Trust Deed for it to enter into and perform its obligations under this Deed.
- (iii) **(Sole trustee)** It is the sole trustee of the Medallist Schofields Trust.
- (iv) **(No resettlement)** No property of the Medallist Schofields Trust has been re-settled or set aside or transferred to any other trust.
- (v) **(No termination)** The Medallist Schofields Trust has not been terminated, nor has any event for the vesting of the assets of the Medallist Schofields Trust occurred.
- (vi) **(No conflict)** Neither this Deed nor any other document contemplated under this Deed to which the Developer is a party conflicts with the operation or terms of the Trust Deed.
- (vii) **(Proper administration)** It enters into this Deed and the transactions evidenced by this Deed or the proper administration of the Medallist Schofields Trust and for the benefit of all of the beneficiaries of the Medallist Schofields Trust.
- (viii) **(Right of indemnity)** Its right of indemnity out of, and lien over, the assets of the Medallist Schofields Trust have not been limited in any way. Without limitation, it has no liability which may be set off against that right of indemnity.
- (ix) **(Compliance with law)** The Trust Deed complies with all applicable laws.
- (x) **(Compliance with Trust Deed)** It has complied with its obligations and duties under the Trust Deed and at law. No one has alleged that it has not complied.

Executed as a deedDate: 6th April 2005

THE COMMON SEAL OF MEDALLIST
GOLF HOLDINGS PTY LIMITED
 WAS HEREUNTO AFFIXED IN ACCORDANCE
 WITH THE COMPANY'S CONSTITUTION:

SIGNED, SEALED AND DELIVERED by)
MEDALLIST GOLF HOLDINGS PTY)
LIMITED in accordance with section 127 of)
 the Corporations Act 2001)



Signature of director

ANTHONY PHILIP FEHON

Name of director (print)

Signature of director / secretary

TIMOTHY JAMES DODD

Name of director / secretary

SIGNED, SEALED AND DELIVERED by)
ROADS AND TRAFFIC AUTHORITY OF)
NEW SOUTH WALES by its authorised)
 delegate in the presence of)

)
 Witness

Sally Bock)
 Name of witness (print)

)
 Delegate

M J Najem
 GENERAL MANAGER
 LEGAL BRANCH

Name of delegate (print)

Schedule

Item 1	Name of Developer: (Parties and clause 16.1)	Medallist Golf Holdings Pty Limited (ABN 14 091 026 818) as trustee for the Medallist Schofields Trust
	Address:	Level 16, 1 Martin Place, Sydney, New South Wales
	Authorised Representative:	Stewart Nettleton
	Address:	Level 16, 1 Martin Place, Sydney, New South Wales
	Telephone:	(02) 8232 3829
	Fax:	(02) 8232 6043
Item 2	Estimated Cost of the Works: (clause 1.1)	\$460,000
Item 3	Defects Liability Period: (clause 1.1)	12 months after the Date of Practical Completion
Item 4	Agreed Capitalised Maintenance Costs: Period: (clause 12.1(j))	Nil Not Applicable
Item 5	Road: (clause 1.1)	Richmond Road, Colebee
Item 6	Rate of Interest on overdue payments: (clause 12.4)	7% per annum
Item 7	Authorised Representative of RTA: (clause 16.1)	Shibree Samy
	Address:	81 - 85 Flushcombe Road, Blacktown NSW 2148
	Telephone:	(02) 8814 2335
	Fax:	(02) 8814 2146
Item 8	Notice of estimate of Date of Practical Completion: (clause 10.1)	Not Applicable
Item 9	Approved Security: (clause 4.1)	An amount equal to the Estimated Cost of the Works
Item 10	Land to be Dedicated: (clause 10.9(b))	Nil

Attachment A - Project Requirements

In carrying out the Works, the Developer must take into consideration, incorporate and otherwise comply with the following documents.

ENVIRONMENT

Environmental Impact Assessment

- Environmental Impact Assessment Policy, Guidelines and Procedures RTA – Version 4, April 2001

Environmental Management System

- Environmental Management System Manual (EMS) - RTA - June 2000
- Guidelines for Consultants Reporting on Contaminated Sites – EPA – November 1997

Heritage

- Heritage Guidelines - RTA - Version 2 - 2003
- RTA Aboriginal Heritage Guidelines, July 2002
- NPWS Aboriginal Cultural Heritage Standards

Noise

- RTA Environmental Noise Management Manual, December 2001
- Environmental Criteria for Road Traffic Noise, EPA May 1999
- Noise Wall Design Guidelines - Draft for Discussion - May 2003

Erosion, Sediment and Water Quality

- Code of Practice for Water Management - Road Development and Management - RTA - April 1999
- Urban Erosion and Sediment Control Handbook - DLWC - 1992
- Managing Urban Stormwater: Soils and Construction, "The Blue Book" - Dept of Housing - 1998

Air Quality

- RTA's Plan for Reducing Vehicle Emissions - RTA - 1995

Environmental Planning

- Environmental Risk Assessment Guidelines - DUAP - 1994
- Road Development and Impacts on Habitat Amelioration Measures, Compensatory Habitat Draft 6 - November 1998
- Hazardous Industry Planning Advisory Paper No. 3 - Environmental Risk Impact Assessment Guidelines - June 1996 - DUAP
- National Environmental Protection Measure 1999 - National Environmental Health Forum
- Waste Minimisation & Management Guidelines - RTA - 2003

GEOTECHNICAL

Geotextiles

- AUSTROADS Guide to Geotextiles Technical Report - Jan 1990

PAVEMENTS

- Concrete Pavement Manual Design and Construction - RTA - Edition 2 - 1991
- Pavement Design - A Guide to the Structural Design of Road Pavements (AUSTROADS 1992)
- RTA Form 76 Supplement to the AUSTROADS Guide to the Structural Design of Road Pavements (RTA 1992)
- CIRCLY - Computer Program for the analysis of Multiple Complex Circular Loads on Layered Anisotropic Media (Wardle 1977) Geomechanics Computer Program Number 2, Update 23 dated 27 January 1994 (or later version)
- Sprayed Sealing Guide - RTA - February 1997 (including Section 4 Design Edition 2 – April 2002 (Interim))
- RTA Technical Direction: 2000/7 dated 19 May 2000 titled "Pavement – Additions/Amendments to RTA Form 76"
- RTA Technical Direction: 96/15 dated 24 January 1997 titled "Pavement – Additions/Amendments to RTA Form 76"
- RTA Technical Direction: 99/7 dated 2 July 1999 titled "Treatments of Moisture in Cuttings"

SAFETY

- Road Safety Audits 2nd Edition – RTA – January 1995 #
- Road Safety Audits 2nd Edition – AUSTROADS – 2002 Δ
- Occupational Health & Safety Manual - RTA - (Reissue 1999 including updates to January 2004)
- Traffic Control at Work Sites - RTA - Version 3 September 2003

SUB-SURFACE DRAINAGE

- Sub-Surface Drainage of Road Structures - Special Report 35 - ARRB 1987
- Guide to Geotextiles Technical Report - AUSTROADS - Jan 1990

TRAFFIC

- Traffic Management Policies and Guidelines - RTA
- Specification – Installation and Reconstruction of Traffic Light Signals SI/TCS/8 – RTA – December 2003
- Traffic Signals Practice, Design – RTA – 1992
- Traffic Signal Design Standards (RTA-TC-189) - RTA - 1994

ROAD DESIGN

Geometry/Drainage

- Road Design Guide including Draft Section 7 - Drainage - RTA (Draft, July 1998)
- Standard Drawings (Road and Bridge) - RTA (single file 28mb)
- Guide to the Design of Road Surface Drainage - AUSTRROADS - 1986
- Guide to the Geometric Design of Rural Roads - AUSTRROADS 2003
- Guide to the Geometric Design of Major Urban Roads – AUSTRROADS 2002
- Stormwater Drainage Design in Small Urban Catchments Special Report 34 - ARRB - 1987
- Road Medians - NAASRA - 1984
- Concrete Pipe Selection and Installation (Concrete Pipe Association 1990)
- Australian Rainfall and Runoff - The Institute of Engineers, Aust - 1987
- Model Analysis to determine Hydraulic Capacities of Kerb Inlets and Gully Pit Gratings - DMR - 1979 (including types SO and SH).
- Guide to Traffic Engineering Practice Part 5 – Intersections at Grade – AUSTRROADS - 1991
- Guide to Traffic Engineering Practice Part 7 – Traffic Signals – AUSTRROADS - 2003
- Guide to Traffic Engineering Practice Part 13 – Pedestrians – AUSTRROADS - 1995
- Guide to Traffic Engineering Practice Part 14 – Bicycles – AUSTRROADS - 1993
- Guide to Traffic Engineering Practice Part 15 – Motorcycle Safety – AUSTRROADS – 1993
- NSW Bicycles Guidelines

Signage

- Regulatory Signs Manual Version 1.2, Sept 2002
- Tourist Signposting Version 2.0, July 2003 - RTA
- Interim Guide to Signs and Markings - DMR – September 1986
- AS 1742 Manual of uniform traffic control devices (Parts 1 to 14)
- AS 1743 Road Sign Specification
- AS 1742.9 Manual of Uniform Traffic Control Devices, Part 9 – Bicycle Facilities, Standards Australia

URBAN DESIGN AND LANDSCAPING

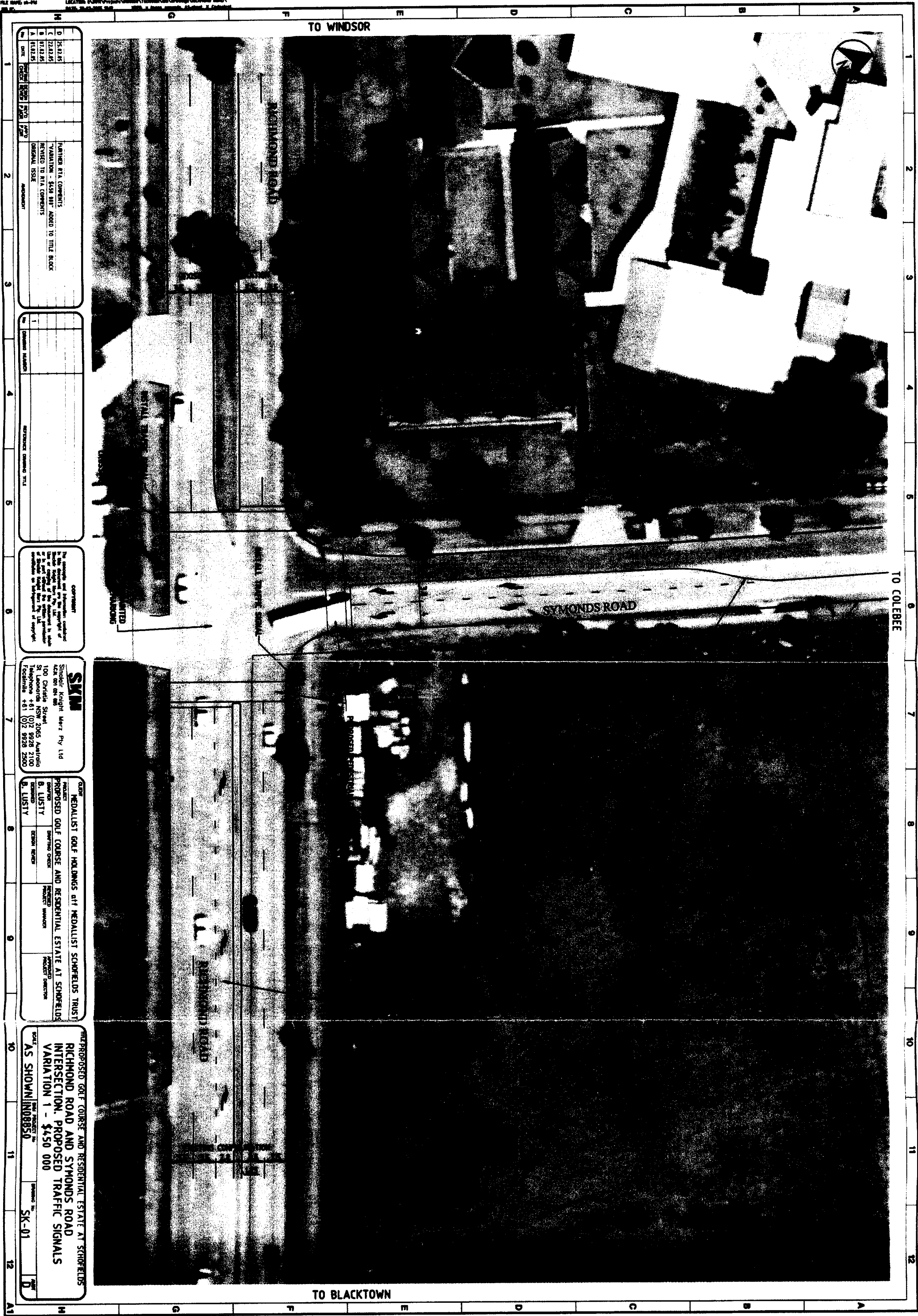
- Roadscape Guidelines - RTA - 1998
- Beyond the Pavement, Urban Design Practice Notes - RTA - September 1999
- Beyond the Pavement – RTA -2004 Update
- Urban Design Advice Notes – RTA
- Noise Wall Design Guidelines - Draft for Discussion - May 2003

RTA CORPORATE POLICIES

- Community Involvement - Practice Notes and Resource Manual - RTA - July 1998
- Technical Directions – RTA
- Quality Assurance Technical Specifications

Attachment B – Description of Works and Drawings

See attached Sinclair Knight Merz Description of the Works dated 9 March 2005 and attached Concept Drawing of the Works being Drawing Number SK-01, Amendment D, dated 25 March 2005.



DATE	10/10/01	BY	SK-01
REVISION		BY	
DATE		BY	
DATE		BY	
DATE		BY	

NO.	1	DESCRIPTION	REFERENCE DRAWING TITLE

COMPONENT
The drawings and the title block are the property of SKM. They are not to be used for any other purpose without the written consent of SKM. The drawings are not to be used for any other purpose without the written consent of SKM. The drawings are not to be used for any other purpose without the written consent of SKM.

SKM
Skeel Knight Merz Pty Ltd
ACN 001 001 001
100 Christie Street
St Leonards NSW 2065 Australia
Telephone +61 (0)2 9928 2100
Facsimile +61 (0)2 9928 2500

PROJECT	MEDALLIST GOLF HOLDINGS AT MEDALLIST SCHOIELDS TRUST
PROPOSED	PROPOSED GOLF COURSE AND RESIDENTIAL ESTATE AT SCHOIELDS
DRAWN	B. LUSTY
CHECKED	B. LUSTY
DESIGN REVIEW	
PROJECT MANAGER	
PROJECT DIRECTOR	

PROPOSED GOLF COURSE AND RESIDENTIAL ESTATE AT SCHOIELDS
RICHMOND ROAD AND SYMONDS ROAD
INTERSECTION. PROPOSED TRAFFIC SIGNALS
VARIATION 1 - \$450 000
SCALE: AS SHOWN
PROJECT NO: 100850
DRAWN BY: SK-01
DATE: 10/10/01

Sinclair Knight Merz Description of Works dated 9 March 2005

Proposed Richmond Road & Symonds Road Traffic Signals

Upgrade of Richmond Road and Symonds Road intersection from a sign posted to a signalised intersection as proposed in the sketch plan SK-01 Amendment D. On the approach provide a 3.0m right turn bay in Symonds Road for 50m plus taper and a 4.0m wide left turn lane. The intersection is to make provisions to cater for cyclists as necessary. The departure lane to be of a minimum width of 4m.

Right turn from Richmond Rd into the shop is not permitted and the Developer is to coordinate with Council in order to advise the shop owner in regards to the change of traffic arrangement at the site.

Cycleway and footpath to be provided in accordance with RTA's standards.

Any land acquisitions and associated costs of acquiring that land would be by the RTA.

Symonds Road pavement is to be constructed to Council's standards.

Street lighting upgrade to be provided to reflect the intersection signalisation.

Attachment C – Not used

Attachment D – Not used

Attachment E – Insurance

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
i	Broadform Public and Products Liability effected with an approved insurer as defined in Definitions and Notes clause 1 below. * If products are not involved in performance of the Services, it will be acceptable not to obtain Products Liability.	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences. The total aggregate liability during any one period of insurance for all claims arising out of the Developer's and Contractor's Products shall not exceed \$20 million.	From the earlier of the Works commencing or time construction contract is awarded to the end of each Defects Liability Period.	<ul style="list-style-type: none"> (a) lists the Developer and all contractors for their respective rights, interests and liabilities as named insureds. (b) lists RTA as an additional named insured as defined in Definitions and Notes clause 2 below. (c) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below. (d) liability arising out of the use of hoists, cranes, unregistered vehicles, boilers and pressure vessels. (e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below. 	
ii	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below.	\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences.	From the earlier of the Works commencing or time construction contract is awarded to completion of this Deed including any warranty / maintenance / service period.	<ul style="list-style-type: none"> (a) all plant, equipment and motor vehicles owned or used by the Developer or contractors directly or indirectly engaged in performance of the Works. (b) lists the Developer and all contractors for their respective rights, interests and liabilities as named insureds. (c) lists RTA as an additional named insured as defined in Definitions and Notes clause 2 below. (d) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below. (e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below. 	

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
iii	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below.	As per the Act.	From the earlier of the Works commencing or time construction contract is awarded to completion of this Deed including any warranty / maintenance / service period.	To cover all persons directly or indirectly engaged in performance of the Works under this Deed for loss, damage, claims and all direct and associated costs and expenses arising under any statute relating to workers or accident compensation or at common law.	
iv	Professional Indemnity* effected with an approved insurer as defined in Definitions and Notes clause 1 below.	\$10 million per occurrence and in the aggregate annually.	From the earlier of the design of the Works commencing or time construction contract is awarded to completion of this Deed plus up to 7 years following completion of the contract. The insurance can be taken out as annual covers where the cover is to include a retroactive date being the commencement date of this contract.	<ul style="list-style-type: none"> (a) is effected by the contractor and each consultant providing design services. (b) a description of the risk covered by the policy. (c) cancellation clause requiring not less than 30 days notice to be given by the insurer of an intent to cancel. (d) one automatic restatement per period of insurance. (e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below. 	
v	Contract, works, plant and equipment insurance	To cover the replacement value of Works, including any RTA supplied materials.	From the earlier of the Works commencing or time construction contract is awarded to the end of each Defects Liability Period.	<ul style="list-style-type: none"> (a) material damage in relation to Works, temporary works, form works and all other material as supplied in the construction contract. (b) includes Architect, Engineer's and Surveyor's fees. (c) includes owner supplied materials, equipment, temporary buildings and the like, including all additional costs of reconstruction, rectification or repair. (d) lists the Developer and all contractors and subcontractors for their respective rights, interests and liabilities as named insureds. (e) lists RTA as an additional named insured as defined in Definitions and Notes clause 2 below. 	

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

Definitions and Notes:

1. Approved insurer means:

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

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

- (a) for injury to any RTA employee;
- (b) arising from work undertaken away from the Developer's / Contractor's premises;
- (c) for damage to the RTA's property not in the Developer's / Contractor's physical or legal control.

3. Cross Liability and Waiver of Subrogation Clause

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

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

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

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

Contract Document Number:	
RTA:	Roads and Traffic Authority of New South Wales
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

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

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

.....

.....

.....

Signed Insurance Company Stamp

Dated

Note:

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

The following COC's are deemed to be acceptable:

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

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

Contract Document Number:	
RTA:	Roads and Traffic Authority of New South Wales
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

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

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

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

Signed Insurance Company Stamp

Dated

Notes:

- # *If contractors and subcontractors are not covered under this insurance as per item 2 above, the Insured is to obtain a separate set of Certificates of Currency from contractors and subcontractors as evidence of contractor's and subcontractor's insurance covers.*
- (i) *If the Insured does not have a motor vehicle fleet policy but instead has a single motor vehicle insurance policy, a Certificate of Currency (COC) will not be required, instead copies of the following documents are required:*
- (a) *current registration paper;*
 - (b) *paid current renewal or new business certificate for motor vehicle insurance;*
 - (c) *motor vehicle policy.*
- (ii) *The following COC's are deemed to be acceptable:*
- (a) *RTA's printed COC as above, signed and stamped by the insurer;*
 - (b) *RTA's printed COC as above, signed and stamped by the Insurance Broker with a written authority from the respective insurer/s;*
 - (c) *Insurer issuing their own COC which incorporates all the RTA extensions as listed above.*

CERTIFICATE OF CURRENCY (PROJECT SPECIFIC)
NSW WORKERS COMPENSATION INSURANCE

A Certificate of Currency issued by the insurer for WorkCover New South Wales is acceptable. The COC must clearly state the contractor's name and occupation and, if during the period of insurance for workers compensation specified in the table above in this Attachment E, a COC has expired, the Developer must provide a replacement and current COC to the RTA.

Note: *A COC issued by an insurance broker is not acceptable.*

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

Contract Document Number:	
RTA:	Roads and Traffic Authority of New South Wales
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

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

Specifically the policy

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

Signed Insurance Company Stamp

Dated

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

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

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

Contract Document Number:	
RTA:	Roads and Traffic Authority of New South Wales
The Insured:	
General Description of the Services:	
Contract Period:	
Commencement of the Services:	

Policy No.

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

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

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

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

.....

.....
- Signed Insurance Company Stamp
- Dated

Note:

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

The following COC's are deemed to be acceptable:

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

Attachment F - Statutory Declaration and Subcontractor Statement regarding Workers Compensation, Pay-Roll Tax and Remuneration

RTA Form No 592		Schedule
Statutory Declaration		
I, _____ of _____		Insert name of Declarant
_____ do solemnly and sincerely		Insert address
declare that:		
1. I am a representative of _____ ("Developer") in the Office Bearer capacity of _____		Insert name of Developer and ABN if applicable
2. The Developer has a contract with the Roads & Traffic Authority to carry out certain works for _____ _____ ("Contract").		Insert position title of Declarant
3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the Developer in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-roll Tax Act 1971 and Industrial Relations Act 1996) which is a written statement:		Insert name of Contract
a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;		
b. under the Pay-roll Tax Act 1971, section 31H, in the form and providing the detail required by that legislation; and		
c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.		
4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.		
5. The obligations of the Developer under the Contract relating to Security of Payment, if any, including payment of employees, workers and Subcontractors of the Developer have been complied with by the Developer.		
6. If the Developer has contractors, the Developer has received from each of those subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).		Insert the relevant payment period
7. All statutory declarations and Subcontractor's Statements received by the Developer from contractors referred to in clause 6 were:		
(a) given to the Developer in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Pay-roll Tax Act 1971 and the Industrial Relations Act 1996 ('Acts'); and		
(b) given by the contractors in their capacity as 'Subcontractors' as defined in the Acts.		
8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the Developer by its Subcontractors.		
9. The period of the Contract covered by this declaration and the attached Subcontractor's		

Statement is from _____ to _____.

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

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

Declared at _____ (place where declaration made) on

_____ (date of declaration) by

Signature of person making the declaration

before me: _____

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

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

- Signature _____ Full Name _____
(please print)

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Part 5B section 31G-31J of the *Pay-roll Tax Act 1971* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates.

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

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

4. Payment claim details - Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the *Industrial Relations Act 1996*.

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Pay-roll Tax Act 1971* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.