

MULTIPLEX

Other Contractor's Deed

Multiplex Constructions Pty Ltd
(ABN 70 107 007 527)
(Builder)

***[insert name of Other Contractor – this should be the same
as the name in Item 2 of Schedule 1]***

(ABN ***[insert ABN of Other Contractor – this should be the
same as the ABN in item 2 of Schedule 1]***)
(Other Contractor)

Other Contractor's Deed

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Details

Parties

Name	Multiplex Constructions Pty Ltd (ABN 70 107 007 527)
Short form name	Builder
Address	Level 22, 135 King Street, Sydney NSW 2000
Notice details	As stated in Item 1 of Schedule 1

Name	The Other Contractor named in Item 2 of Schedule 1
Short form name	Other Contractor
Address	As stated in Item 3 of Schedule 1
Notice details	As stated in Item 4 of Schedule 1

Background

- A The Builder is appointed the builder under a contract ("**D&C**") dated the date stated in Item 6 of Schedule 1 with the Principal named in Item 5 of Schedule 1 (**Principal**) to carry out the works for the project described in Item 7 of Schedule 1 (**Works**).
- B The Principal has entered into a lease agreement with **[insert]** ("Tenant") to lease **[insert]** to the Tenant.
- C The Other Contractor has been appointed under a contract (**Other Contract**) with the Tenant to undertake certain works on the Site (**Other Contractor Works**).

Agreed terms

1. Defined terms and interpretation

1.1 Definitions

In this deed, the following words have the following meanings:

Authority means any government, semi-government, local government, statutory, public, ministerial, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

business day means any day other than a Saturday, Sunday or public holiday in the capital city of the state or territory indicated in Item 8 of Schedule 1.

construction project has the same meaning given to that term in the WHS Law.

main contractor has the same meaning given to that term in the *Occupational Safety and Health Regulation 1996* (WA), as amended from time to time.

Model Work Health and Safety Act and Regulations means the model Work Health and Safety Act developed by Safe Work Australia (**SWA**) as part of the national harmonisation of work health and safety law and published by SWA on 23 June 2011 in the case of the Act and 10 November 2011 in the case of the Regulations.

Other Contractor's Employees means each of the Other Contractor's employees, agents, contractors, subcontractors, consultants, suppliers and authorised officers.

principal contractor has the same meaning given to that term in the WHS Law.

Project Site means the area identified in the plan attached at Schedule 2 and at all times excluding the Site.

Site means the area identified in the plan attached at Schedule 3 being the site where the Other Contractor is engaged by the Tenant to carry out the Other Contractor Works and at all times excluding the Project Site.

WHS Law means the legislation and codes of practices relating to work health and safety including:

- (a) where the Site is located in the Australian Capital Territory, the *Work Health and Safety Act 2011* (ACT) and the *Work Health and Safety Regulation 2011* (ACT);
- (b) where the Site is located in New South Wales, the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW);
- (c) where the Site is located in the Northern Territory, the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) and the *Work Health and Safety (National Uniform Legislation) Regulation 2011* (NT);
- (d) where the Site is located in Queensland, the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld);
- (e) where the Site is located in South Australia, the *Work Health and Safety Act 2012* (SA) and the *Work Health and Safety Regulation 2012* (SA);

- (f) where the Site is located in Tasmania, the *Work Health and Safety Act 2012* (Tas) and the *Work Health and Safety Regulations 2012* (Tas);
- (g) where the Site is located in Victoria, the Occupational Health and Safety Act 2001 (Vic) and the Occupational Health and Safety Regulation 2007 (Vic);
- (h) where the Site is located in Western Australia, the Occupational Health and Safety Act 1984 (WA) and the Occupational Safety and Health Regulation 1996 (WA),
- (i) as amended or replaced from time to time.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule, information table or annexure is to a clause or paragraph of, or schedule or information table or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to "**A\$**", "**\$A**", "**dollar**" or "**\$**" is to Australian currency;
- (f) a specific time for complying with an obligation is to that time in the place where that obligation is to be complied with;
- (g) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by "**including**", "**for example**", or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur by the next business day;

- (o) headings are for ease of reference only and do not affect interpretation;
- (p) any provision of this deed which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective only to the extent of that prohibition or unenforceability and does not invalidate the remaining provisions of this deed or affect the validity or enforceability of the provisions in any other jurisdiction. This clause 1.2(p) will not apply if its application would materially affect the legal or commercial arrangements intended to operate; and
- (q) each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the party indemnifying and continues after completion or termination. It is not necessary for the other party to incur expense or make payment before enforcing a right or indemnity under this deed.

2. Access

2.1 Access to Project Site

- (a) The Other Contractor acknowledges that the Builder has access to, and management and control of, the Project Site to carry out the Works pursuant to the D&C.
- (b) Subject to reasonable notice being given to the Builder by the Other Contractor prior to the date on which the Other Contractor requires access to the Project Site, the Builder must give the Other Contractor access through those parts of the Project Site which are necessary for access to and egress from the Site.

2.2 Access conditions

- (a) In circumstances where the Other Contractor's Employees are required to pass through the Project Site for access to and egress from the Site, or are otherwise required to access the Project Site, the Other Contractor will and will procure that the Other Contractor's Employees will:
 - (i) use only the entrances, exits and paths in the Project Site allocated from time to time by the Builder, having regard to the requirements of the Works and the Other Contractor Works;
 - (ii) not unreasonably impede or prevent the Builder's or any other party's use of these entrances, exits and paths;
 - (iii) comply with all relevant and appropriate site management requirements of the Builder including any work health and safety plans relevant to the Project Site;
 - (iv) comply in a timely manner with all directions of the Builder so that the Builder discharges its obligations as principal contractor or main contractor, as the case may be, of the Project Site; and
 - (v) consult, cooperate and coordinate activities with the Builder at all times so that access to and passage through the Project Site may be conducted in a safe manner.
- (b) The Other Contractor acknowledges and agrees that:
 - (i) the Builder may exclude the Other Contractor or any Other Contractor's Employees from the Project Site (including for the purposes of passing through the Project Site to access the Site) for work health and safety reasons; and

- (ii) the Builder may direct the Other Contractor or any Other Contractor's Employees to perform or not perform certain acts on the Project Site for work health and safety reasons.

2.3 Builder's access to the Site

If the Builder requires access to the Site, the Builder must comply with all relevant and appropriate site management requirements of the Other Contractor including its work health and safety requirements relevant to the Site.

3. Co-operation and co-ordination

3.1 Co-operation

Each party must do everything necessary or appropriate to:

- (a) co-operate with each other;
- (b) not unreasonably interfere with or disrupt, delay or hinder each other or prevent each other from carrying out its respective works or cause each other to incur additional cost;
- (c) ensure that its consultants, subcontractors, suppliers, agents, contractors, authorised officers and employees comply with clauses 3.1(a) and 3.1(b); and
- (d) co-ordinate its works with the other's works to ensure that the other party's right to access or use the Project Site is not impeded or prevented.

3.2 Other contractors

- (a) The Other Contractor acknowledges that there will be other contractors carrying out works on the Project Site from time to time. The Other Contractor must do everything necessary or appropriate to:
 - (i) co-operate with the other contractors;
 - (ii) not unreasonably interfere with or disrupt, delay or hinder the other contractors or prevent them from carrying out works or performing services or cause them to incur additional cost;
 - (iii) ensure that the Other Contractor Employee's comply with clauses 3.2(a)(i) and 3.2(a)(ii); and
 - (iv) co-ordinate the Other Contractor Works with the works and activities of other contractors to ensure that the other contractor's right to access or use of the Project Site is not impeded or prevented.
- (b) The Builder must use its reasonable endeavours to ensure that other contractors which it admits to the Project Site do everything necessary or appropriate to:
 - (i) co-operate with the Other Contractor;
 - (ii) not unreasonably delay the Other Contractor or prevent or hinder the Other Contractor from carrying out the Other Contractor Works or performing services or cause the Other Contractor to incur additional cost;
 - (iii) ensure that their consultants, subcontractors, suppliers, agents, contractors, authorised officers and employees comply with clauses 3.2(b)(i) and 3.2(b)(ii); and

- (iv) co-ordinate their works with the Other Contractor Works and the activities of the Other Contractor to ensure that the Other Contractor's access to the Project Site is not impeded or prevented.

4. Site co-ordination meetings

4.1 Meetings

The Builder may:

- (a) convene and chair Project Site co-ordination meetings;
- (b) record minutes at the Project Site co-ordination meetings; and
- (c) distribute those minutes as soon as practicable after the Project Site co-ordination meeting.

4.2 Objectives

The objectives of the Project Site co-ordination meetings include the exchange of information on the progress and programming of the Other Contractor Works to ensure that the Builder has sufficient notice of the times and periods in which the Other Contractor will require access to the Project Site.

4.3 Attendance

- (a) The Builder must give the Other Contractor reasonable notice of any Project Site co-ordination meeting that the Other Contractor is required to attend.
- (b) Subject to clause 4.3(a), each party must:
 - (i) attend the Project Site co-ordination meetings at the times required by the Builder; and
 - (ii) arrange for its relevant subcontractors to attend the Project Site co-ordination meetings. .

5. Delay

5.1 Reasonable steps

Each party must take reasonable steps to avoid causing delay to the other.

6. Site establishment and requirements

6.1 Employee registration

- (a) The Other Contractor must provide the Builder with written notification of the names of all Other Contractor's Employees attending the Site and requiring access to the Project Site.
- (b) No Other Contractor's Employees will be permitted on the Project Site until they have attended and satisfactorily completed a formal site specific induction prior to their access to the Project Site. No Other Contractor's Employees will be permitted to attend a site induction until the following have been submitted to the Builder:
 - (i) details for each and every Other Contractor's Employee of satisfactory completion of a course in safety awareness training supplied by a training provider registered pursuant to the WHS Law;
 - (ii) evidence of the insurances required under clause 12; and

- (iii) payment of fees to the Builder and reimbursement of costs for security passes provided by the Builder.
- (c) The items referred to in clause 6.1(b) must be prepared and supplied at the Other Contractor's cost.
- (d) All operators of equipment referred to in clause 2.3 of the National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment [NOHSC:1006 (2001)], and those otherwise required by law to be certified, must produce the relevant certificate as prescribed by the relevant law or standard as a condition precedent to access to the Project Site.

6.2 Temporary services and Builder's plant

The Builder has no obligation to provide to the Other Contractor any services, site accommodation, facilities or plant or equipment.

6.3 Rubbish

- (a) The Other Contractor must:
 - (i) provide its own bins for use at the Site (**Site Bins**);
 - (ii) place all rubbish and materials into the Site Bins;
 - (iii) not place any rubbish and materials in the bins provided for the Project Site;
 - (iv) not abandon, discard or dispose of any rubbish or materials on the Project Site;
 - (v) arrange for the Site Bins to be emptied and all rubbish and materials to be removed from the Site on a weekly basis and prior to completing the Other Contractor Works on the Site; and
 - (vi) maintain the Site to a standard sufficient for the requirements of the WHS Law.
- (b) If the Other Contractor fails to comply with this clause 6.3 the Builder may rectify this default which will result in corrective action being taken by the Builder at the Other Contractor's cost.

7. Work health and safety

7.1 Principal contractor arrangements for Sites in the ACT, NSW, NT, QLD, SA, TAS and any other model WHS jurisdiction

- (a) This clause 7.1 applies if the Site is in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania or any other State that has enacted work health and safety legislation that relevantly reflects the Model Work Health and Safety Act and Regulations at the relevant time.

Other Contractor as principal contractor of Site where the Other Contractor Works is worth \$250,000 or more

- (b) The Other Contractor warrants to the Builder that:
 - (i) the Tenant has engaged the Other Contractor as principal contractor in respect of the Other Contractor Works and the Site;
 - (ii) the Tenant has authorised the Other Contractor to have management and control of the Site and to discharge the duties of a principal contractor under the WHS Law; and

- (iii) the Other Contractor has accepted the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Law in respect of the Other Contractor Works and the Site.
- (c) The parties acknowledge and agree that:
 - (i) the Builder is engaged as principal contractor in respect of the Works and the Project Site only;
 - (ii) the Other Contractor is engaged as principal contractor in respect of the Other Contractor Works and the Site only;
 - (iii) the Works and the Other Contractor Works are separate construction projects for the purpose of the WHS Law; and
 - (iv) the Other Contractor is solely responsible for:
 - (A) all work health and safety matters relating to the Other Contractor Works and the Site; and
 - (B) compliance with the WHS Law in respect of the Other Contractor Works and the Site.

Engagement of Other Contractor where the Other Contractor Works is worth less than \$250,000

- (d) The Other Contractor warrants to the Builder that:
 - (i) the Tenant has engaged the Other Contractor as a contractor in respect of the Other Contractor Works and Site;
 - (ii) the Tenant and Other Contractor will have management and control of the Site and must discharge their obligations under WHS Law; and
 - (iii) The Tenant and Other Contractor will consult, cooperate and coordinate about WHS matters with the Builder and Principal while the Other Contractor is performing the Other Contractor Works.
- (e) The parties acknowledge and agree that:
 - (i) the Other Contractor and Tenant are solely responsible for:
 - (A) all work health and safety matters relating to the Other Contractor Works and Site; and
 - (B) compliance with the WHS Law in respect of the Other Contractor Works and Site.

Builder as principal contractor of Project Site

- (f) The Other Contractor acknowledges and agrees that:
 - (i) it will comply with the Builder's policies and procedures with regards to workplace health and safety, in so far as such policies and procedures are not inconsistent with the relevant WHS Law
 - (ii) the Builder is engaged and authorised by the Principal to control all access to, and egress from, the Project Site; and

- (iii) the Builder as principal contractor of the Project Site, may impose such controls on access to, and egress from, the Project Site as the Builder reasonably considers appropriate to ensure its compliance with:
 - (A) the law, including the WHS Law;
 - (B) any Authority requirements; and
 - (C) any reasonable requirements imposed by the Builder's insurers.

7.2 Principal contractor arrangements for Sites in Victoria

Unless clause 7.1 applies, this clause 7.2 applies if the Site is in Victoria.

Other Contractor as principal contractor of Site

- (a) The Other Contractor warrants to the Builder that:
 - (i) the Principal has (or if the Principal is not the registered proprietor of the Site, the registered proprietor of the Site has) appointed the Other Contractor as principal contractor in respect of the Other Contractor Works and the Site;
 - (ii) the Principal has (or if the Principal is not the registered proprietor of the Site, the registered proprietor of the Site has) authorised the Other Contractor to have management or control of the Site and to discharge the duties of a principal contractor under the WHS Law; and
 - (iii) the Other Contractor has accepted the appointment as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Law in respect of the Other Contractor Works and the Site.
- (b) The parties acknowledge and agree that:
 - (i) the Builder is appointed as principal contractor in respect of the Works and the Project Site only;
 - (ii) the Other Contractor is appointed as principal contractor in respect of the Other Contractor Works and the Site only;
 - (iii) the Works and the Other Contractor Works are separate construction projects for the purpose of the WHS Law; and
 - (iv) the Other Contractor is solely responsible for:
 - (A) all work health and safety matters relating to the Other Contractor Works and the Site; and
 - (B) compliance with the WHS Law in respect of the Other Contractor Works and the Site.

Builder as principal contractor of Project Site

- (c) The Other Contractor acknowledges and agrees that:
 - (i) the Builder is appointed by the Principal (or if the Principal is not the registered proprietor of the Site, by the registered proprietor of the Site) to control all access to, and egress from, the Project Site; and
 - (ii) the Builder as principal contractor of the Project Site, may impose such controls on access to, and egress from, the Project Site as the Builder reasonably considers appropriate to ensure its compliance with:
 - (A) the law, including the WHS Law;

- (B) any Authority requirements; and
- (C) any reasonable requirements imposed by the Builder's insurers.

7.3 Main contractor arrangements for Sites in Western Australia

Unless clause 7.1 applies, this clause 7.3 applies if the Site is in Western Australia.

Other Contractor as main contractor of Site

- (a) The Other Contractor warrants to the Builder that:
 - (i) the Principal has engaged the Other Contractor as main contractor in respect of the Other Contractor Works and the Site;
 - (ii) the Principal has authorised the Other Contractor to have control of the Site and to discharge the duties of a main contractor under the WHS Law; and
 - (iii) the Other Contractor has accepted the engagement as main contractor and agrees to discharge the duties imposed on a main contractor by the WHS Law in respect of the Other Contractor Works and the Site.
- (b) The parties acknowledge and agree that:
 - (i) the Builder is engaged as main contractor in respect of the Works and the Project Site only;
 - (ii) the Other Contractor is engaged as main contractor in respect of the Other Contractor Works and the Site only;
 - (iii) the Works and the Other Contractor Works are separate construction projects for the purpose of the WHS Law; and
 - (iv) the Other Contractor is solely responsible for:
 - (A) all work health and safety matters relating to the Other Contractor Works and the Site; and
 - (B) compliance with the WHS Law in respect of the Other Contractor Works and the Site.

Builder as main contractor of Project Site

- (c) The Other Contractor acknowledges and agrees that:
 - (i) the Builder is engaged and authorised by the Principal to control all access to, and egress from, the Project Site; and
 - (ii) the Builder as main contractor of the Project Site, may impose such controls on access to, and egress from, the Project Site as the Builder reasonably considers appropriate to ensure its compliance with:
 - (A) the law, including the WHS Law;
 - (B) any Authority requirements; and
 - (C) any reasonable requirements imposed by the Builder's insurers.

7.4 General obligations

The Other Contractor must:

- (a) in carrying out the Other Contractor Works, or causing the Other Contractor Works to be carried out, comply with the WHS Law;

- (b) do all things necessary to assist the Builder and refrain from doing anything that may impede the Builder in discharging its obligations under all WHS Law, in relation to the Works and the Project Site; and
- (c) notify the Builder immediately (and in any event, within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with, the Other Contractor's activities, the Other Contractor Works or the Site which has or may have an effect on the Project Site, the Works or the Builder's obligations under the WHS Law.

7.5 Indemnity

To the full extent permitted by law, the Other Contractor indemnifies the Builder, and agrees to keep the Builder always indemnified, against all claims for costs, expenses, fines, losses or damages, which the Builder may become liable for, suffer or incur, in connection with or arising from any breach by the Other Contractor or the Other Contractor's Employees of:

- (a) this deed (including the obligations under this clause 7);
- (b) their contractual or legislative work health and safety obligations,

and any failure by the Other Contractor or the Other Contractor's Employees to comply with any direction given by the Builder in respect of the Project Site.

8. Protection of works

- (a) The Other Contractor is, in carrying out the Other Contractor Works, responsible for ensuring that neither it nor the Other Contractor's Employees cause damage to the Works on the Project Site or the Works on the Site.
- (b) The Other Contractor will be charged the reasonable costs of rectification of damage which it or the Other Contractor's Employees cause to the Works.
- (c) The Other Contractor shall not alter the Works.

9. Materials handling

The Other Contractor shall make all deliveries as reasonably directed by the Builder.

10. Security

This clause applies if Item 9 of Schedule 1 states that it applies.

If, acting reasonably, the Builder determines that security is required from the Other Contractor in connection with performance of the Other Contractor's obligations under this deed, then prior to commencement of the Other Contractor Works and access to the Project Site, the Other Contractor must provide to the Builder security in the amount stated in Item 9 of Schedule 1 in a form, and from an institution, acceptable to the Builder, acting reasonably. The Builder shall be entitled to have recourse to the security:

- (a) to satisfy any debt or amount owing from the Other Contractor to the Builder under this deed; or
- (b) to satisfy any bona fide claim the Builder may have against the Other Contractor.

Unless the Builder has a right to recourse, it will release the security within 5 business days of the Other Contractor providing to the Builder evidence that the Other Contractor Works have achieved practical completion under the Other Contract and that the Other Contractor does not require any further access to the Project Site or the Site.

11. Indemnity

The Other Contractor indemnifies the Builder against all costs, losses, expenses and damages arising out of or in connection with actions of the Other Contractor or the Other Contractor's Employees, including anything which may affect the Builder in executing the Works.

The Builder will not be liable for any loss, claim or proceeding in respect of any injury, loss or damage to any person or property (real or personal), insofar as such injury, loss or damage arises out of or in connection with the execution of the Other Contractor Works (except to the extent that such injury, loss or damage is caused or contributed to by the wilful or negligent act or omission of the Builder or as a result of the Other Contractor complying with instructions or directions issued by the Builder (other than instructions or directions issued by the Builder arising from the Other Contractor's breach or default under this deed)), and the Other Contractor indemnifies the Builder in this respect.

The Other Contractor warrants that:

- (a) it has inspected the Project Site, the Site and their surroundings and made due allowance to complete the Other Contractor Works without damaging the Works or delaying the Builder in the performance of the Works; and
- (b) the Other Contractor's Employees will comply at all times with all instructions and directions issued by the Builder in accordance with this deed.

12. Insurance

Prior to the commencement of the Other Contractor Works and the Other Contractor's access to the Project Site, the Other Contractor must:

- (a) have in place:
 - (i) broad form public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in Item 10 of Schedule 1 for any one occurrence (and also in the aggregate for all occurrences in any one 12 month policy period with respect to products liability), which covers the liability of the Other Contractor and the Other Contractor's Employees, whether owed in contract or otherwise, in respect of:
 - (A) loss of, damage to, or loss of use of, any real or personal property; and
 - (B) personal injury to, disease or illness (including mental illness) of, or death of, any person,arising out of, or in connection with, the performance of the Other Contractor Works;
 - (ii) insurance with a limit of indemnity of not less than the amount specified in Item 11 of Schedule 1 for any one occurrence, which covers third party property damage related to any plant or vehicles (registered or unregistered) used in connection with the Other Contractor Works and which also covers injury to, illness of, or death of, any person related to any unregistered plant or vehicles used in the performance of the Other Contractor Works;
 - (iii) compulsory third party motor vehicle insurance as required by law in respect of all registered vehicles used in connection with the Other Contractor Works; and
 - (iv) workers compensation insurance as required by law; and
- (b) provide to the Builder's satisfaction, evidence of such insurance.

13. Dispute resolution

13.1 First stage

If a dispute arises between the parties in relation to any matter under this deed, the parties agree that they must use their best endeavours to resolve the dispute as follows:

- (a) any party seeking resolution of a dispute must give written notice to the other party and the parties' representatives must meet within 3 business days after that notice is given to attempt to resolve the dispute;
- (b) if, by the expiry of the 3 business day period referred to in clause 13.1(a), the dispute is not resolved or the parties do not meet as required by clause 13.1(a), then the chief executive officers of the parties must meet and use their best endeavours to resolve the dispute within a further 3 business day period commencing on the date of expiry of the period referred to in clause 13.1(a); and
- (c) if the dispute is not resolved or if the chief executive officers have not met within the time contemplated by and otherwise in accordance with clause 13.1(b), any party may, by giving written notice to the other party, refer the dispute for determination under clause 13.2.

13.2 Expert determination

Clauses 13.2(a) to 13.2(h) apply in the case of any dispute referred for determination under this clause 13.2.

- (a) The dispute must be referred to a person agreed on by the parties but if the parties do not agree within 5 business days after the dispute is referred for determination in accordance with clause 13.113.1(c), then to a person appropriately qualified to deal with the dispute appointed at the request of either party by the president of the Law Society of the state or territory stated in Item 8 of Schedule 1 (**Expert**).
- (b) A person will be appropriately qualified as an Expert for the purposes of this clause 13.2 if he or she:
 - (i) has the requisite professional or academic qualifications;
 - (ii) is a principal or partner of a major firm in the CBD of the capital city of the state or territory stated in Item 8 of Schedule 1 dealing with matters the subject of the dispute; and
 - (iii) has had not less than 10 years experience in dealing with matters the subject of the dispute.
- (c) The Expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner he or she thinks fit;
 - (iii) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
 - (iv) examine such documents, and interview such persons, as he or she may require; and
 - (v) make such directions for the conduct of the determination as he or she considers necessary.

- (d) The Expert must:
 - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the determination without the knowledge of the other.
- (e) Each party will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay the expert's costs in accordance with his or her direction as to such payment.
- (f) Unless otherwise agreed between the parties, the Expert must notify the parties of his or her decision regarding an expert determination conducted under this clause 13.2 within 20 business days from the acceptance by the expert of his or her appointment.
- (g) The Expert will not be liable to the parties for any loss, cost, expense or damage arising out of or in connection with the expert determination process, except in the case of fraud.
- (h) The determination of the Expert:
 - (i) must be in writing; and
 - (ii) will be final and binding.

13.3 Running of time

Where it has been determined pursuant to clause 13.2 that actions taken by a party were not in compliance with its obligations under this deed, that party must thereupon take action which is in compliance with its obligations under this deed and any time limits applicable to any response to that action by another party shall apply as from the date such actions were taken in compliance with this deed.

14. GST

- (a) If any party (**Supplier**) makes a supply under or in connection with this deed upon which GST is payable:
 - (i) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient must also pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**); and
 - (ii) the recipient must pay the GST Amount to the Supplier at the same time as the GST exclusive consideration, provided that the Supplier has issued a tax invoice to the recipient for the relevant supply.
- (b) If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled in respect of the acquisition to which that loss, cost or expense relates.
- (c) Words or expressions used in this clause 14 which are defined in the *A New Tax System (Goods and Services Tax) Act* (Cth) 1999 have the same meaning in this clause.

- (d) If a payment to be made under or in connection with this deed is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of any GST component.
- (e) If, following the payment of an additional amount pursuant to clause 14(a) in relation to a supply made by the Supplier, the GST payable by the Supplier in respect of that supply (taking into account any increasing and/or decreasing adjustments relevant to that supply) varies from the additional amount paid by the Recipient under clause 14(a) in respect of that supply such that:
 - (i) the Supplier is required to pay a further amount of GST in respect of that supply; or
 - (ii) the Supplier receives a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply,then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient (as appropriate). For the purposes of calculating variations under this clause 14(e), any additional amount payable pursuant to clause 14(a) shall be adjusted to take account of an earlier variation made pursuant to this clause.

15. General

15.1 Governing law

- (a) This deed is governed by the law applicable in the state or territory where the Project Site is located.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the state or territory where the Project Site is located.

15.2 Counterparts

This deed may consist of a number of counterparts and all those counterparts taken together are regarded as one document.

15.3 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.

15.4 Amendment

The deed may be amended only by another deed executed by all parties who may be affected by the amendment.

15.5 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15.6 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this deed:

- (a) must be in writing; and
- (b) must be signed by the sender, or if a company, by an authorised officer,

- (c) and will be taken to be duly given or made (in the case of delivery in person or by post) when delivered, received or left at the address of the recipient shown in this deed or to any other address which it may have notified the sender, but if delivery or receipt is on a day which is not a business day or is later than 4pm (local time), it will be taken to have been duly given or made on the next business day.

15.7 Further action

Each party must use reasonable efforts to do all things necessary or desirable to give full effect to this document.

15.8 Stamp duty

All stamp duty on this deed must be paid by the Other Contractor.

Schedule 1 – Particulars

Item No.	Clause	Information
1.	Builder's Notice Details:	Phone: <i>[insert]</i> Email: <i>[insert]</i>
2.	Other Contractor:	<i>[insert name and ABN of Other Contractor]</i>
3.	Other Contractor's Address:	<i>[insert]</i>
4.	Other Contractor's Notice Details:	Phone: <i>[insert]</i> Email: <i>[insert]</i>
5.	Principal:	<i>[insert name and ABN of Principal]</i>
6.	Date of Contract between Builder and Principal:	<i>[insert date]</i>
7.	Project:	<i>[insert description of Project]</i>
8.	Location of Works and Other Contractor Works: (clause 1.1 and 13.213.2(b))	<i>[tick the applicable location of Works and Other Contractor Works]</i> <input type="checkbox"/> Australian Capital Territory <input type="checkbox"/> New South Wales <input type="checkbox"/> Northern Territory <input type="checkbox"/> Queensland <input type="checkbox"/> South Australia <input type="checkbox"/> Tasmania <input type="checkbox"/> Victoria <input type="checkbox"/> Western Australia
9.	Security (clause 10)	<input type="checkbox"/> Applies (in which case clause 10 applies) \$ <i>[insert]</i> per day <input type="checkbox"/> Does not apply (in which case clause 10 does not apply)
10.	Value of public and products liability insurance (clause 1212(a)(i))	\$ <i>[insert]</i> (\$20 million unless otherwise stated)
11.	Value of insurance to cover third party property damage related to any plant or vehicles (clause 12(a)(ii))	\$ <i>[insert]</i> (\$20 million unless otherwise stated)

Schedule 2 – Project Site plan (clause 1.1)

[Insert plan of Project Site, which should not include the Site where the Other Contractor will carry out the Other Contractor Works.]

Schedule 3 – Site plan (clause 1.1)

[Insert plan of Site where the Other Contractor will carry out the Other Contractor Works.]

Signing page

EXECUTED as a deed on _____ (*insert date*).

Executed by Multiplex Constructions Pty Ltd
ABN 70 107 007 527 in accordance with Section
127 of the *Corporations Act 2001*

Signature of director ←

Name of director (print)

Signature of director/company secretary ←
(Please delete as applicable)

Name of director/company secretary (print)

Executed by the Other Contractor in accordance
with Section 127 of the *Corporations Act 2001*

Signature of director ←

Name of director (print)

Signature of director/company secretary ←
(Please delete as applicable)

Name of director/company secretary (print)