

1 July 2009

Second Amended and Restated Project Management Agreement

State of Queensland represented by the Department of Infrastructure and
Planning
"the State"

City North Infrastructure Pty Ltd
ABN 16 123 249 874
"CNI"

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Airport Link, Northern Busway & Airport Roundabout Upgrade Projects

Second Amended and Restated Project Management Agreement made on

Parties **State of Queensland represented by the Department of Infrastructure and Planning** of 100 George Street, Brisbane, Queensland
("the State")

City North Infrastructure Pty Ltd ABN 16 123 249 874 of Level 30, Comalco Place, 12 Creek Street, Brisbane, Queensland
("CNI")

Background

- A. The State is developing the Projects.
- B. CNI is a proprietary company limited by shares owned by or on behalf of the State of Queensland, established for the purpose of managing the procurement of the Projects on the State's behalf.
- C. The State has allocated funding for the use of CNI for coordinating and managing the procurement of the Projects and for providing ongoing management services in relation to the contracts awarded for the Projects.
- D. The parties entered into the Project Management Agreement dated 8 June 2007 to provide a framework under which CNI has managed the procurement of the Projects and will provide ongoing management services in relation to the contracts awarded for the Projects.
- E. The parties entered into the Amended and Restated Project Management Agreement dated 30 July 2008 (the "**Amended and Restated Project Management Agreement**") to reflect the amendments required to enable CNI to provide ongoing management services in relation to the contracts awarded for the Projects during the construction and ramp-up phases of the Projects.
- F. The parties entered into the Amended and Restated Project Management Agreement - First Deed of Variation dated 2 March 2009 (the "**First Deed of Variation**") to reflect changes to the composition of the Board of CNI.
- G. The parties have entered into this Second Amended and Restated Project Management Agreement to reflect changes to the composition of the Board of CNI and other minor administrative amendments.

Operative provisions

1. **Definitions and interpretations**

1.1 **Definitions**

In this Agreement:

"Airport Link" means the project known as "Airport Link" which is proposed to be a mainly underground toll road that generally follows Lutwyche Road and connects the North-South Bypass Tunnel, the Inner City Bypass and the local road network at Bowen Hills to the northern arterials of Gympie Road and Stafford Road at Kedron and Sandgate Road and the East-West Arterial in the north-east.

"Airport Roundabout Upgrade" means the road works associated with the upgrade of the intersection of Airport Drive, the Gateway Motorway and the East-West Arterial, also known as "EWAG".

"Amended and Restated Project Management Agreement" has the meaning given to that term in paragraph E of the Background.

"Approved Documentation" has the meaning given to that term in clause 7.

"Board" means the board of directors of CNI.

"Board Charter" has the meaning given to that term in clause 5.

"Budget" means the funding allocations and timings approved by the State linked to the scope of Services as set out in clause 3 and as revised from time to time (at the State's absolute discretion).

"Business Day" means a day other than a Saturday, Sunday or public holiday in Brisbane.

"CDIMP" means the Concept Design and Impact Management Plan for Northern Busway (Royal Children's Hospital to Kedron) and any governmental approval relating to that Concept Design and Impact Management Plan.

"CEO" means David Lynch or such other person who, from time to time, is appointed by the Board to the role of Chief Executive Officer, or acting Chief Executive Officer, of CNI.

"Claim" means any allegation, debt, cause of action, liability, proceeding, suit, claim or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

"Constitution" has the meaning given to that term in clause 5.

"Coordinator-General" means the Coordinator-General, a corporation sole constituted under s.8 of the SDPWO Act.

"Delegate's Nominees" has the meaning given to that term in clause 6.4.

"Department of Infrastructure and Planning" or **"DIP"** means the State Department created under *Public Service Departmental Arrangements Notice (No. 12) 2006*, approved by Governor in Council on 14 December 2006 and coming into effect on 15 January 2007, or any public sector unit designated under an Administrative Arrangements Order made under the Constitution of Queensland 2001 as the administrative unit responsible for the SDPWO Act.

"DIP Funding Drawdown Notice" has the meaning given to that term in clause 4.2.

"DIP Funding Drawdown Profile" means the quarterly funding profile agreed with DIP on a minimum one-year rolling basis, as set out in Schedule 1, consistent with the Budget approved by the State and as revised from time to time by mutual consent between the parties.

"EIS" means the Environmental Impact Statement (and any supplementary environmental impact statement) for Airport Link, the Coordinator-General's evaluation report (including conditions and recommendations) relating to that Environmental Impact Statement, any subsequent request to the Coordinator-General to evaluate a proposed change to the Airport Link project or a condition of the Coordinator-General's evaluation report, and any change report based on that request.

"Financial Close" means, in relation to the contracts awarded for the Projects, the date upon which the last condition precedent to commencement of the obligations of the relevant proponent to develop the Projects has been satisfied or waived.

"First Deed of Variation" has the meaning given to that term in paragraph F of the Background.

"Funding" represents the drawdown on the approved Budget in accordance with the Funding Drawdown Profiles, as set out in Schedule 1, and as revised from time to time by mutual consent between the parties.

"Funding Drawdown Notices" means the DIP Funding Drawdown Notice and/or the Translink Funding Drawdown Notice, whichever is applicable.

"Funding Drawdown Profiles" means the DIP Funding Drawdown Profile and/or the Translink Funding Drawdown Profile, whichever is applicable.

"Funding Quarter" has the meaning given to that term in clause 4.2.

"GST Act" has the meaning given to that term in clause 10.1.

"Independent Verifier" means the person or entity appointed as the independent verifier pursuant to the Independent Verifier Agreement.

"Independent Verifier Agreement" means an agreement so entitled proposed to be entered into between, among others, the State, the PPP Cos and the Independent Verifier.

"Indicative Timetable" has the meaning given to that term in clause 2.6.

"Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property.

"Net Amount" has the meaning given to that term in clause 10.4.

"Northern Busway" means all or part of the project known as "Northern Busway Royal Children's Hospital to Kedron" that involves the construction of a two lane, two-way dedicated roadway (primarily for the use of buses), busway stations and other traffic measures to provide bus priority between the Royal Children's Hospital and Kedron.

"Post-Construction Report" has the meaning given to that term in clause 2.13.

"Post-Financial Close Report" has the meaning given to that term in clause 2.11.

"PPP Cos" means the private sector vehicle that contracts with the State to deliver the Projects.

"Projects" means all or any of:

- (a) the financing, design, construction, commissioning, operation, maintenance, repair, levying and collection of tolls, maintaining public safety, network interfaces, traffic management, and handover of Airport Link;
- (b) the design, construction, commissioning, maintenance and handover of Northern Busway;
- (c) the design, construction, commissioning and handover of the Airport Roundabout Upgrade, and
- (d) any associated works.

"Reimbursable Expense" has the meaning given to that term in clause 10.4.

"Reporting Month" has the meaning given to that term in clause 2.8.

"SDPWO Act" means the *State Development and Public Works Organisation Act 1971* (Qld).

"Services" means:

- (a) managing the procurement of the Projects, including the following tasks:
 - (i) undertaking overall management responsibility for the effective procurement of the Projects;
 - (ii) coordinating the conduct of the procurement processes for the Projects;
 - (iii) evaluating bid proposals received for the delivery of the Projects;
 - (iv) development, evaluating, negotiating and recommending the project documents for the Projects;

- (v) providing recommendations to the State regarding the shortlisting of proponents and the awarding of contracts following a competitive bid process for the works to be undertaken in respect of the Projects;
 - (vi) negotiating with affected land owners on acquisition and compensation issues and managing the acquisition, resumption and compensation processes;
 - (vii) acquiring and disposing of any land associated with the Projects as agreed with the State;
 - (viii) assisting with finalising the requirements for the EIS and CDIMP processes and any governmental approvals relating to the Projects; and
 - (ix) doing all other things necessary to bring construction of the Projects to completion and commissioning the commencement of operations;
- (b) providing ongoing management services in relation to the contracts awarded by the State for the Projects;
 - (c) doing all things necessary or incidental to the above tasks as directed by the State; and
 - (d) any other services related to the Projects agreed by the State and CNI to be performed by CNI.

"Shareholders" means the shareholders of CNI from time to time.

"State" means the State of Queensland acting jointly through the Department of Infrastructure and Planning, Queensland Treasury and the Department of Transport and Main Roads.

"State's Delegate" has the meaning given to that term in clause 6.1.

"Translink" means the TransLink Transit Authority, a statutory body established under the *Transport Operations (TransLink Transit Authority) Act 2003 (Qld)*.

"Translink Funding Drawdown Notice" has the meaning given to that term in clause 4.2.

"Translink Funding Drawdown Profile" means the quarterly funding profile relating to Northern Busway agreed with Translink on a minimum one-year rolling basis, as set out in Schedule 1, consistent with the Budget approved by the State and as revised from time to time by mutual consent between Translink and CNI.

"Value for Money Framework" means the State's policy for public-private partnerships.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation; and
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency.

1.3 Amended and Restated Project Management Agreement and First Deed of Variation

This Agreement amends and restates the Amended and Restated Project Management Agreement (as that Agreement had been varied by the First Deed of Variation).

2. CNI Obligations

2.1 Role of CNI

CNI agrees to carry out the Services in accordance with the terms of this Agreement.

2.2 Scope of services to be performed by CNI

After the date of this Agreement, the parties may agree in writing to change the scope of the Services to be performed by CNI, on such terms and conditions as they see fit provided that nothing in this clause shall derogate from the rights and powers of the State under this Agreement or otherwise at law.

2.3 Cost, ownership and responsibility

Subject to the State complying with its obligation to provide Funding under clause 3, the parties agree and acknowledge that CNI is responsible for carrying out the Services.

2.4 CNI's general obligations

CNI must:

- (a) engage personnel for the performance of the Services;
- (b) carry out the Services:
 - (i) in a diligent and timely manner;
 - (ii) in accordance with the Indicative Timetable and Budget;
 - (iii) in a cost effective manner so that the costs do not exceed what would be reasonably expected to be incurred by a person adopting efficient work practices and standards in carrying out and completing the Services;
 - (iv) in a manner consistent with the requirements of the Value for Money Framework; and
 - (v) in accordance with the requirements of all laws;
- (c) apply the Funding provided under the Budget solely to the performance of the Services; and
- (d) comply with any other directions given from time to time by the State in connection with the Services.

2.5 Budget

- (a) CNI may from time to time submit a revised Budget seeking written approval by the State; and
- (b) CNI must not incur any expenditure which is in excess of the amount provided for in the Budget,

provided that if the State and CNI agree that additional Services are to be performed by CNI which are not contemplated by the Budget, funds for reimbursement of expenditure for those additional Services may be sourced from the State or other relevant parties.

2.6 Indicative Timetable

The Indicative Timetable set out in Schedule 2 outlines CNI's expected program for the procurement and delivery of the Projects.

2.7 Records

CNI must keep full and accurate records including records of CNI's costs and the conduct of the Services.

2.8 Monthly reporting obligations

CNI must, within 30 Business Days after the last day of a month ("**Reporting Month**"), submit to the Shareholders a written monthly activity report endorsed as a true representation of the status of CNI's activities by the CEO and by a resolution of the Board. The monthly activity report will outline the progress of the Services, and will include but not be limited to, details with respect to:

- (a) the progress of the Services as measured against the Indicative Timetable for completion of the Services, with reasonable details as to the reasons for any delays and any actions CNI proposes to take in response to any such delays;
- (b) the costs of the Services as measured against the current period Budget that may be agreed between the parties, with reasonable details as to the reasons for any variation from the agreed Budget;
- (c) the amounts sought from DIP and the Funding received from DIP within the Reporting Month, with reasonable details as to the reasons for any variations to the agreed DIP Funding Drawdown Profile;
- (d) the amounts sought from Translink and the Funding received from Translink within the Reporting Month, with reasonable details as to the reasons for any variations to the agreed Translink Funding Drawdown Profile;
- (e) the forecast budget;

- (i) for the procurement phase (outlining the cost to complete procurement), with reasonable details as to the reason for any changes to the agreed forecast budget and any consequential changes to the Funding Drawdown Profiles; and
 - (ii) for the construction and ramp-up phases (outlining the cost of contract management), with reasonable details as to the reason for any changes to the agreed forecast budget and any consequential changes to the Funding Drawdown Profiles;
- (f) any significant commitments to be met within the following Reporting Month, including any anticipated expenditure requiring authorisation by the Board;
 - (g) any matter which has or is likely to materially and adversely effect the delivery of the Services, the progress of matters detailed in the Indicative Timetable, the Budget or CNI;
 - (h) any material disputes, Claims, or public concerns in relation to the Services and/or in relation to CNI;
 - (i) any key risks and actions taken to manage and monitor risks associated with the performance of the Services;
 - (j) identification of consultants and contractors engaged, contracts let and the scope of the works, services and costs under those contracts and consultancies; and
 - (k) any other matters advised by the State to CNI from time to time.

2.9 Corporate governance

Without limiting any other provision of this Agreement, CNI must:

- (a) put in place and maintain systems for keeping proper financial records;
- (b) prepare accounts as required by law and applicable accounting standards;
- (c) establish procedures and practices to ensure good corporate governance;
- (d) act in a manner consistent with good corporate governance practices;
- (e) act at all times in a commercially prudent manner and establish an appropriate system of financial management including internal controls such as suitable financial expenditure authorities and payment approval processes; and

- (f) apply good commercial practice in its purchasing arrangements and take reasonable measures to achieve value for money, ensure probity and accountability of outcomes and appropriately document major purchasing.

2.10 Annual financial statements and report

- (a) The Queensland Audit Office will audit CNI's financial statements.
- (b) CNI will prepare its annual financial statements and report in accordance with the State's requirements of special purpose vehicles such as CNI.

2.11 CNI to assist the State and the Shareholders

- (a) Without limiting any other provision of this Agreement, the State or the Shareholders may, from time to time, request that CNI provide such information as reasonably required by the State or the Shareholders, including any information required:
 - (i) for the preparation of financial and status reporting (including annual financial statements);
 - (ii) for the setting of financial accounting policies;
 - (iii) for the State budget process (including updates of fiscal limited and information for budget papers) or the State borrowing program;
 - (iv) for public accountability purposes; or
 - (v) in accordance with established governmental policies, procedures or protocols.
- (b) CNI must use all reasonable endeavours to provide the information requested under clause 2.11(a) in such manner, in such form and by such time as the State or the Shareholders may specify, acting reasonably.
- (c) The parties acknowledge that the information referred to in this clause 2.11 may be required to enable the State or the Shareholders to comply with their obligations under relevant laws, accounting and financial management standards, or established governmental policies, procedures or protocols.

2.12 Post-Financial Close Report

CNI must, within 60 Business Days after Financial Close submit to the Shareholders a written report endorsed as a true representation of the status of CNI's activities by the CEO and by a resolution of the Board ("**Post-Financial Close Report**"). The Post-Financial Close Report will include details with respect to:

- (a) the Services carried out by CNI in the period to Financial Close, including the actual progress of the Services as measured against the Indicative Timetable;
- (b) the revenue received in the period up to the date of the Post-Financial Close Report, including amounts sought in any outstanding invoices, for Services carried out in the period up to Financial Close;
- (c) the costs and expenses incurred in the period up to Financial Close to carry out the Services, detailed by cross-reference to the Budget, with outstanding commitments clearly identified;
- (d) any surplus or deficit in the funding for the Services and an explanation of any such variation; and
- (e) any outstanding material disputes, Claims, or public concerns in relation to the Services and/or in relation to CNI.

2.13 Post-Construction Report

CNI must, within 60 Business Days after the construction of the Projects is completed submit to the Shareholders a written report endorsed as a true representation of the status of CNI's activities by the CEO and by a resolution of the Board ("**Post-Construction Report**"). The Post-Construction Report will include details with respect to:

- (a) the Services carried out by CNI during the construction phase of the Projects;
- (b) the revenue received in the period from Financial Close to the date of the Post-Construction Report, including amounts sought in any outstanding invoices, for Services carried out during the construction phase of the Projects;
- (c) the costs and expenses incurred during the construction phase of the Projects to carry out the Services, detailed by cross-reference to the Budget, with outstanding commitments clearly identified;
- (d) any surplus or deficit in the funding for the Services and an explanation of any such variation; and
- (e) any outstanding material disputes, Claims, or public concerns in relation to the Services and/or in relation to CNI.

2.14 Access to records

To the extent permitted by law and subject to any probity protocols developed for the Projects, CNI will provide the State and any of its representatives with unfettered access to inspect all books, records and documents of CNI upon reasonable notice and will provide copies of any such books, records and documents at CNI's cost upon request by the State.

2.15 Authority of CNI

CNI may represent that the Services are undertaken with the authority of the State for the purposes of managing the procurement of the Projects and providing ongoing management services in relation to the contracts awarded for the Projects.

3. Funding Obligations of the State

- (a) The State must provide Funding to CNI to allow CNI to meet the costs and expenses incurred, or to be incurred, by CNI in carrying out the Services where the costs and expenses are provided for in the Budget.
- (b) The Budget has been approved by the State and represents CNI's estimated costs necessary to carry out the Services.

PROCUREMENT (BINDING BID) PHASE BUDGET*				
	06/07 FY	07/08 FY	08/09 FY	Total
Airport Link				
Northern Busway			Sch. 3(1)	
CNI total procurement Budget				

* Only includes procurement costs up to Financial Close.

CONSTRUCTION AND RAMP-UP (CONTRACT MANAGEMENT) PHASES BUDGET						
	08/09 FY	09/10 FY	10/11 FY	11/12 FY	12/15 FYs	Total
Airport Link						
Northern Busway						
Airport Roundabout Upgrade				Sch. 3(1)		
CNI total construction and ramp-up Budget						

INDEPENDENT VERIFIER COSTS BUDGET STATE SHARE				
	08/09 FY	09/10 FY	10/11 FY	Total
Airport Link				Sch. 3(1)

Northern Busway	
Airport Roundabout Upgrade	Sch. 3(1)
CNI total Independent Verifier Budget	

- (c) The Funding Drawdown Profiles at Schedule 1 provide an upfront estimate of the timing of the Funding payments based on expected costs and expenses. The actual timing of Funding payments will be dependent on the progress of the Projects and adjustments to the Funding Drawdown Profiles may be required in accordance with clauses 4.2(e) and 4.2(f).
- (d) Following the awarding of contracts for the delivery of the Projects, the parties acknowledge and agree that CNI will provide ongoing management services in relation to such contracts, including any necessary administration, supervision, inspection and co-ordination activities. Preliminary funding for provision of these Services has been approved by the State, and a further funding application has been made to the State. It is expected there may be an overlap in time between the Services provided for the procurement stage and the delivery stage of the Projects.

4. Funding Arrangements

4.1 Specific sources of Funding

- (a) Funding for CNI will be sought from two sources as follows:
- (i) DIP will provide Funding on a quarterly basis, in advance, consistent with the agreed DIP Funding Drawdown Profile, and in accordance with the process outlined in clause 4.2; and
- (ii) prior to Financial Close Translink will provide Funding on a quarterly basis, in advance, consistent with the agreed Translink Funding Drawdown Profile, and in accordance with the process outlined in clause 4.2.
- (b) The parties agree to incorporate a working capital item into the first DIP Funding Drawdown Notice and the first Translink Funding Drawdown Notice, the amount of which will be maintained at an agreed level for the duration of the procurement process.

4.2 Payment process

- (a) CNI may apply for the Funding provided for in the Funding Drawdown Profiles for the performance of Services by giving notices endorsed by the CEO, within a period of 45 Business Days prior to

the commencement of each calendar quarter ("**Funding Quarter**"), to DIP and/or Translink for the Services to be performed in the Funding Quarter and the costs and expenses expected to be incurred by CNI during the Funding Quarter ("**DIP Funding Drawdown Notice**" and/or "**Translink Funding Drawdown Notice**"). The first such notices will be given for the Funding Quarter commencing 1 January 2007.

- (b) Each Funding Drawdown Notice must be consistent with the respective Funding Drawdown Profiles, it being the intention of the parties that any departure from the Funding Drawdown Profiles must be agreed by the parties in accordance with clause 4.3.
- (c) Subject to paragraph (b), the State must provide the Funding to CNI requested in a Funding Drawdown Notice within 45 Business Days of the receipt of the Funding Drawdown Notice.
- (d) Within 30 Business Days of the end of each Funding Quarter in which Services have been carried out, CNI must provide DIP and Translink (as applicable) with a letter by an authorised officer on behalf of CNI certifying:
 - (i) the Services carried out by CNI in the Funding Quarter;
 - (ii) the revenue received in the prior Funding Quarter from DIP and Translink for the performance of the Services in the current Funding Quarter;
 - (iii) the costs and expenses incurred in the Funding Quarter to carry out the Services, detailed by cross-reference to the Budget; and
 - (iv) any surplus or deficit in Funding for the Services and an explanation of any such variation.

If requested by the State, the certificate must be accompanied by reasonable supporting evidence of the expenditure incurred.

- (e) If CNI certifies to the State that in a Funding Quarter it has incurred costs and expenses in excess of the Funding drawn down under any Funding Drawdown Notices, then CNI may request a variation to the Budget under clause 4.3 and may include such amounts in any subsequent Funding Drawdown Notices. Under this circumstance, CNI may be required to vary the future Funding Drawdown Profiles by mutual consent in writing with DIP and/or Translink to reflect any sustained increases in costs and expenses, subject to clause 4.3.
- (f) If CNI certifies to the State that in a Funding Quarter it has incurred costs and expenses less than the Funding drawn under any Funding Drawdown Notices, then in the absence of any variation notices under clause 4.3, CNI may be required to reduce the Funding identified in any subsequent Funding Drawdown Notices, to the

extent that the minimum agreed working capital amount is maintained.

- (g) CNI must provide the State and the Auditor-General with reasonable access to its books, records and financial information and any necessary CNI personnel so as to enable the State to audit the accuracy of any certificate provided under paragraph (d).

4.3 Funding variations

- (a) The State in its absolute discretion will consider a request for variation of the Funding Drawdown Profile, through the relevant agency, and determine either:
 - (i) the varied allocation of Funding from DIP to CNI; and/or
 - (ii) the varied allocation of Funding, from Translink to CNI (prior to Financial Close only).
- (b) In any event, any anticipated one-off or sustained increase in costs and expenses that is expected to increase the total cost of provision of the Services, over the agreed Budget will require the approval of:
 - (i) DIP in relation to Funding from DIP to CNI; and/or
 - (ii) Translink in relation to Funding from Translink to CNI (prior to Financial Close only).

5. Board of CNI

- (a) CNI acknowledges and agrees with the State that unless otherwise approved by the State, CNI will remain constituted as a proprietary company limited by shares with a Board of Directors consisting of the following:
 - (i) Chair - representative of DIP;
 - (ii) Deputy Chair - representative of Department of Transport and Main Roads;
 - (iii) Two additional Directors - one nominated by each of the key State agencies - Queensland Treasury and Department of Transport and Main Roads; and
 - (iv) Up to three external board members, if appointed by the State.
- (b) The Board must operate consistently with:
 - (i) the document entitled "Constitution of City North Infrastructure Pty Ltd" that was effective on the date of

incorporation of CNI, being 22 December 2006 ("**Constitution**"); and

- (ii) the document entitled "City North Infrastructure Pty Ltd Board Charter" that was approved by the Board on 14 May 2007 ("**Board Charter**"),

or with such documents as they may be amended from time to time with the approval of:

- (iii) the Treasurer of the State of Queensland for the Constitution; or
- (iv) the Board for the Board Charter.

6. State's Delegate

6.1 Appointment of the State's Delegate

The State shall appoint a representative ("**State's Delegate**") to serve as the State's interface with CNI with respect to all aspects of the performance of the Services. The State may replace the State's Delegate at any time (and from time to time) with prior written notice to CNI, duly signed on behalf of each Shareholder. The Shareholders need to provide to CNI written advice that the State's Delegate has been agreed unanimously by all Shareholders.

6.2 Authority of the State's Delegate

Except to the extent otherwise stated in this Agreement or as otherwise notified by the State from time to time, the State's Delegate shall have full authority to act on behalf of the State for all purposes in connection with this Agreement, including issuance of certificates, decisions, instructions, and orders, reporting, and advisory matters specified in this Agreement to be carried out by the State, provided however, that any direction must be in writing and that the State's Delegate shall not have authority to amend or modify any of the provisions of this Agreement unless the State has given written notice to CNI of the State's Delegate's express authority. The State's Delegate shall be CNI's primary point of contact with the State in relation to performance of the Services.

6.3 State's responsibility

The State shall cause the State's Delegate to perform every act required under this Agreement to be performed by the State's Delegate, and any obligation stated under this Agreement to be an obligation of the State's Delegate shall be deemed to be an obligation of the State. The State shall be responsible to CNI for any act or omission of the State's Delegate in the performance of its duties under this Agreement as if it were an act or omission of the State.

6.4 Delegate's Nominees

The State's Delegate may from time to time appoint individuals ("**Delegate's Nominees**") to exercise any functions of the State's Delegate under the Agreement but not more than one Delegate's Nominee shall be delegated the same function at the same time. The appointment of a Delegate's Nominee shall not prevent the State's Delegate from exercising any function.

The State's Delegate shall forthwith notify CNI in writing of:

- (a) the appointment and the name of any Delegate's Nominees and the functions delegated to the Delegate's Nominees; and
- (b) the termination of the appointment of a Delegate's Nominee.

7. CNI activities

7.1 Procurement process

Without limiting the scope of the Services, the parties acknowledge that CNI may be required to carry out the following procurement activities for the Projects during the procurement phase of the Projects:

- (a) prepare documentation required for any expressions of interest or request for proposal processes which may be conducted in relation to the Projects;
- (b) liaise with the State to obtain the State's approval of the documentation required ("**the Approved Documentation**");
- (c) finalise the short list for proceeding to the request for proposals stage of the Projects in consultation with the State;
- (d) recommend to the State those consortia or entities that in CNI's reasonable opinion are suitable for inclusion in the short list for procurement of the Projects with accompanying information supporting the nomination of those persons;
- (e) call for proposals from the consortia or entities in the short list finalised with the State using the Approved Documentation in sufficient time to avoid, to the extent practicable, delays or disruption to the delivery of the Projects in accordance with any timetable specified in the expressions of interest documents;
- (f) examine and analyse all proposals received in accordance with the evaluation criteria set out in the Approved Documentation and conduct any necessary negotiations with any or all proponents;
- (g) provide to the State an evaluation report summarising the outcomes of the evaluation;

- (h) recommend a preferred proponent to the State on the basis of the evaluation criteria;
- (i) finalise contract documentation with the preferred proponent; and
- (j) comply with any reasonable tendering or purchasing requirements notified to CNI by the State from time to time.

7.2 Construction and ramp-up phases

Without limiting the scope of the Services, the parties acknowledge that CNI may be required to carry out the following contract management activities for the Projects during the construction and ramp-up phases of the Projects:

- (a) manage any risks, issues or disputes which arise;
- (b) monitor and evaluate the delivery of the Projects and the performance of the contractors;
- (c) review any contractual incentives and performance indicators to ensure they remain appropriate;
- (d) negotiate and coordinate any modifications, if any, to the delivery of the Projects;
- (e) appoint any personnel to manage the contracts during the construction and ramp-up phases;
- (f) acquire, hold and dispose of any land associated with the Projects as agreed with the State;
- (g) manage any land associated with the Projects which is owned by the State; and
- (h) liaise with the Independent Verifier for the Projects, including paying the Independent Verifier in accordance with the Independent Verifier Agreement.

8. Termination and Assignment of Agreement

8.1 Termination

This Agreement remains in full force and effect until terminated by written notice given by the State to CNI.

8.2 Effect of termination

If this Agreement is terminated under this clause 8, then:

- (a) each party is released from its obligations under this Agreement;

- (b) each party retains the rights it has against any other party in connection with any breach or Claim that has arisen before termination; and
- (c) CNI shall be entitled to be reimbursed for any costs and expenses incurred by CNI in relation to the Services prior to termination of this Agreement and any reasonable wind down costs associated with the termination of this Agreement but not claimed prior to the termination of this Agreement, and which have been provided for in the Budget, including taxes, statutory charges or payments made as tax equivalents.

8.3 Assignment

CNI may not assign or otherwise deal with its rights under this Agreement or allow any interest in them to arise or be varied in each case without the prior written consent of the State.

9. Intellectual and other property on termination or assignment of Agreement

9.1 Intellectual Property

In the event that:

- (a) CNI has Intellectual Property Rights, in respect of the Projects including the rights in any original works created for the purposes of the Projects; and
- (b) the State requires CNI to assign or otherwise authorise the use of Intellectual Property Rights created for the purpose of the Projects,

CNI will assign or otherwise authorise the use of such Intellectual Property Rights to such party and in such manner as may be directed by the State. CNI shall do all acts and execute all instruments necessary to effect the assignment or authorisation of use, required by the State.

9.2 Transfer of other rights in relation to the Projects

In the event that:

- (a) CNI has acquired any other rights, property or entitlements which do not fall within the scope of clause 9.1 for the purposes of the Projects; and
- (b) the State requires CNI to assign, or otherwise give the State the benefit of, any such rights, property or entitlements,

CNI will assign or otherwise give the State the benefit of any such rights, property or entitlements and in such manner as may be directed by the State. CNI shall do all acts and execute all instruments necessary to effect the assignment or giving of the benefit, required by the State.

9.3 No consideration payable for transfer of property

For the avoidance of doubt and in consideration of the State entering into and providing Funding in accordance with this Agreement, CNI agrees and acknowledges that it has no right to be paid consideration or compensation by the State or any other person (including the transferee) for the transfer or assignment of any Intellectual Property Rights or other rights, property or entitlements under clauses 9.1 or 9.2.

10. GST

10.1 GST Definitions

In this clause the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("**GST Act**").

10.2 GST Exclusive Amounts

Unless otherwise expressly stated to be "GST inclusive", all amounts under this Agreement are exclusive of GST.

10.3 Payment of GST

- (a) Notwithstanding any other provision in this Agreement, if GST is imposed on any supply made under this Agreement, the supplier may, where the consideration for that supply is not expressed to be "GST inclusive", in addition to the consideration, recover from the recipient an amount equal to the consideration multiplied by the GST rate (currently 10%).
- (b) Payment of the additional amount must be made at the same time as the consideration for the taxable supply is provided to the recipient, subject to the supplier delivering a valid tax invoice to the recipient at or before that time.

10.4 Reimbursements

If this Agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("**Reimbursable Expense**") the amount required to be paid by the first party will be the sum of:

- (a) the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense ("**Net Amount**"); and
- (b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

10.5 Tax Invoices

- (a) The supplier must provide a tax invoice to the recipient as required by the GST Act.
- (b) If a GST inclusive price is changed or varied, the recipient can withhold payment of the GST until the supplier provides to the recipient a valid tax invoice or adjustment note as appropriate.

11. General

11.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

To the State:

Name: Department of Infrastructure and Planning
Street Address: Executive Building, Level 12, 100 George Street,
Brisbane, Queensland, 4000
Postal Address: PO Box 15009, City East, 4002
Fax: 322 44683
For the attention of: Director-General

and to:

Name: Department of Transport and Main Roads
Street Address: Capital Hill Building, Level 13, 85 George Street,
Brisbane, Queensland, 4000
Postal Address: GPO Box 1549, Brisbane, Queensland, 4001
Fax: 3306 7122
For the attention of: Director-General

To CNI:

Name: City North Infrastructure Pty Ltd
Address: Level 30 Comalco Place, 12 Creek Street,
Brisbane, Queensland, 4000
Fax: 3237 7499
For the attention of: Chief Executive Officer

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 11.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting,
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

11.2 Governing law

This Agreement is governed by and must be construed according to the law applying in Queensland.

11.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 11.3(a).

11.4 Amendments

This Agreement may only be varied by a document signed by or on behalf of each party.

11.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not

preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

11.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement.

11.7 Expenses

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

11.8 Severance

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

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

11.9 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

11.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one agreement.

12. Confidentiality and legal professional privilege

12.1 Confidential information

Subject to clause 12.2, the State must ensure that all information that is provided by CNI to any person within the State ("**Confidant**") in relation to the Projects on a confidential basis must be kept confidential by the Confidant.

12.2 Exceptions

The State may authorise the Confidant under standard protocols and procedures to disclose information that is received on a confidential basis:

- (a) to a senior executive or Minister of the Crown for the purposes of briefing the Government in respect of matters to which the confidential information relates;
- (b) to a person within an agency of the State to whom it is necessary to disclose the information for official purposes if that person is obliged to keep the information disclosed confidential;
- (c) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to obtain the consent of a third party to a term of, or to an act under, this Agreement;
- (f) to enforce its rights or to defend a claim or action under this Agreement; or
- (g) if the information disclosed has come into the public domain through no fault of the party making the disclosure.

12.3 Legal professional privilege

If CNI obtains any legal advice relating to any aspect of the Projects, and CNI subsequently provides such legal advice to any agency of the State, the legal advice is provided to such agency on the basis that:

- (a) the advice is confidential;
- (b) the advice is provided to assist in dealing with the common interest or purpose CNI and the relevant agency have in the Projects;
- (c) legal professional privilege is not waived by the giving of a copy of the advice;

- (d) the recipient agrees that the advice remains confidential and is held only for the common interest or purpose and will not be copied or distributed; and
- (e) if the recipient does not agree with any of the conditions in (a)-(d), the advice must be immediately returned to CNI.

RTI RELEASE

Executed as an Agreement

Executed for and on behalf of the State of Queensland by Colin Jensen, Director-General Department of Infrastructure and Planning and David Stewart, Director-General Department of Transport and Main Roads in the presence of:

Signature

Colin Jensen

Signature

David Stewart

Signature of Witness

KATHERINE SCHAEFER

Name of Witness

Signature of Witness

Name of Witness

Executed by City North Infrastructure Pty Ltd ABN 16 123 249 874 in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary

Name of Secretary

Signature of Director

Name of Director