

Agreement



Agreed Form

Advisory Agreement – Macquarie Atlas Roads International Limited

Macquarie Atlas Roads International Limited

**Macquarie International Advisory Services Pty
Limited**

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Advisory Agreement

Date ►

Between the parties

Company

Macquarie Atlas Roads International Limited

Registered No. 43828 of Rosebank Centre, 11 Bermudiana Road,
Pembroke HM 08 Bermuda

Adviser

Macquarie International Advisory Services Pty Limited

ACN 127 735 960 of Level 11, 1 Martin Place, Sydney NSW 2000

Recitals	<ol style="list-style-type: none">1 The Adviser has skills and expertise in the performance of management services.2 The Company has requested the Adviser, and the Adviser has agreed with the Company, to provide the Management Services to the Company with effect as and from the date of this Agreement on the terms and conditions set out in this Agreement.
The parties agree as follows:	

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Actuary	means any actuary or other person suitably qualified to calculate the daily closing combined accumulation indices in paragraph (2) or (3) of the definition of "Annual Return" as determined by the Adviser.
AFSL	an Australian financial services licence as defined in section 761A of the Corporations Act.
Agreement	this management services agreement between the Company and the Adviser.
Annual Return	<p>1 the amount calculated by the Adviser in respect of a Financial Year in accordance with the following formula</p> $AR = A \times \frac{B - C}{C}$ <p>Where</p> <p>AR = the Annual Return for the Financial Year;</p> <p>A = in respect of each Financial Year is the average number of Securities on issue during the last ten Trading Days in the previous Financial Year multiplied by the volume weighted average trading price of all Securities traded on the ASX during that ten Trading Days period or in the case of the initial Financial Year using the thirty Trading Days following Listing for the calculations;</p> <p>B = the average of the daily closing accumulation indices for the Securities over the last ten Trading Days of the Financial Year as calculated by a person reasonably approved or selected by the Adviser and reported by Bloomberg; and</p> <p>C = the average of the daily closing accumulation indices for the Securities over the last ten Trading Days of the previous Financial Year as calculated by a person reasonably approved or selected by the Adviser and reported by Bloomberg, or in the case of the initial Financial Year over the thirty Trading Days following Listing.</p>

Term	Meaning
Application Price	means the price of the Stapled Securities calculated in accordance with the Bye-Laws, the constitution of the Australian Company (where applicable) and any other Stapled Entity (if any) and the Co-operation Deed.
ASIC	the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.
Assets	the assets of the Company and its Controlled Entities from time to time, including any investments of the Company and its Controlled Entities.
Associate	has the meaning ascribed to the term in sections 10 to 17 of the Corporations Act and includes without limitation any Macquarie Group Company.
Attached Security	a Australian Company Share and any other security or securities which are from time to time stapled or to be stapled to a Share.
ASX	ASX Limited or the market operated by it as the context requires.
Auditor	the auditor from time to time appointed to audit the Company.
Australian Company	Macquarie Atlas Roads Limited ACN 141 075 201.
Australian Company Base Payment	an amount payable by the Australian Company as a base fee pursuant to the Australian Company Management Agreement.
Australian Company Management Agreement	the agreement under which the Adviser agrees to provide management services to the Australian Company (as varied or replaced from time to time).
Australian Company Performance Payment	an amount payable by the Australian Company as a performance fee pursuant to the Australian Company Management Agreement.
Australian Company Share	an ordinary share in the capital of the Australian Company.

Term	Meaning
Authorised Person	each officer identified in Schedule 1 and any other person named as an authorised person of a party from time to time.
Bloomberg	means Bloomberg Financial Markets or if it ceases to publish or report the S&P/ASX 300 Industrials Accumulation Index or the accumulation index for the Securities on ASX such other person which publishes or reports that information as selected by the Adviser.
Board	the board of directors of the Company from time to time.
Business Day	a day on which the Adviser is open for business in Sydney, but excluding Saturday and Sunday.
Bye-Laws	means the bye-laws of the Company from time to time.
Calendar Quarter	each 3 month period ending on 31 March, 30 June, 30 September and 31 December or such shorter period of time if the period ends on the date of termination of this Agreement or the date of resignation or removal of the Adviser or the date of delisting of the Company or removal of the Securities from quotation and for the first quarter of the period commences on the date of commencement of the Company and for the purpose of the Base Fee the Listing Date will be deemed to be the first day of the quarter.
Corporate Governance Framework	means the corporate governance framework adopted and disclosed by the Company in accordance with the ASX Corporate Governance Principles and Recommendations from time to time.
Co-operation Deed	the deed so entitled between the Company, the Australian Company and the Adviser dated on or about the date of this Agreement.
Corporations Act	the Corporations Act 2001 (Cth).
Costs	includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of them.
Disclosure Document	any prospectus, product disclosure statement, information memorandum or offer document issued by the Company from time to time in respect of the transfer or issue of Shares or units of Shares of the Company or the listing of the Company on any stock exchange.

Term	Meaning
Financial Instruments	any other interest, rights or instruments relating to the Company (including derivatives, debentures, convertible notes or other instruments of debt, equity, quasi-debt, quasi-equity or hybrid nature).
Financial Year	<p>(a) for the initial financial year, the period from Listing to the next 30 June;</p> <p>(b) for the last financial year, the period ending on the date of termination of this Agreement or the date of resignation or removal of the Adviser or the date of delisting of the Company or removal of the Securities from quotation and commencing from 1 July immediately before such date; and</p> <p>(c) in all other circumstances, the 12 month period ending on 30 June in each year.</p>
GST	has the meaning given in clause 21.1.
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Infrastructure Assets	<p>means an infrastructure asset including in the following areas:</p> <ol style="list-style-type: none"> 1 road, rail, air and sea transportation; 2 generation, transmission and distribution of electricity; 3 telecommunications; 4 supply, treatment, distribution or disposal of water, sewerage, waste and other materials; 5 production and distribution of gas or oil; 6 pipelines for the transmission of oil, gas or other materials; 7 hospital and education services; 8 administration facilities.
Investment	an investment made or proposed to be made in accordance with the Investment Policy.
Investment Policy	<p>of the Company is to invest in Infrastructure Assets in OECD and OECD equivalent countries; and non-infrastructure assets where ancillary to a major infrastructure investment or acquisitions but with focus on tollroad investments, both greenfield and mature.</p> <p>Investments may be either by way of controlling or non controlling equity interests and may also be by way of acquiring debt instruments from entities involved in the relevant investment and asset class.</p> <p>The investment policy may be varied from time to time on reasonable notice to Stapled Securityholders.</p>

Term	Meaning
Liquidation	includes liquidation, official management, compromise, receivership, administration, arrangement, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.
Listed	<p>1 in the case of the Company, the Company being listed on the ASX; and</p> <p>2 in the case of Stapled Securities, the Stapled Securities being officially quoted by ASX,</p> <p>and Listing has a corresponding meaning.</p>
Listing Date	the date on which the Company is first Listed.
Listing Rules	the listing rules published by the ASX from time to time.
Macquarie Atlas Roads	the Company, any Stapled Entity and any subsidiary of any such entity.
Macquarie Atlas Roads Group	Macquarie Atlas Roads and its controlled entities and any investments of Macquarie Atlas Roads and its controlled entities.
Macquarie Managed Funds	any fund or investment vehicle, excluding the Company and the Stapled Entities, managed or advised on a day to day basis by any Macquarie Group Company or jointly with a third party.
Management Duties	the Adviser's duties and obligations under this Agreement.
Management Services	those investment and financial services as set out in clause 3.
Market Value of Macquarie Atlas Roads	at the end of a Calendar Quarter means the aggregate of the market value of the Securities calculated on the basis of the average number of Securities in issue during the last 10 Trading Days of the ASX in the relevant Calendar Quarter multiplied by the volume weighted average trading price of all Securities traded on the ASX during those 10 Trading Days.
Macquarie Group Company	Macquarie Group Limited ABN 94 122 169 279 and its Associates.
Net Assets	the net assets of a Stapled Entity, adjusted for the market value of its investments.

Term	Meaning
Performance Fee	<p>to be calculated in respect of any given Financial Year means:</p> <ol style="list-style-type: none"> 1 subject to paragraph 3, 15% of the amount (if any) by which the Annual Return for the Financial Year exceeds the Benchmark Return for the Financial Year; or 2 nil if the Annual Return for the Financial Year does not exceed the Benchmark Return for the Financial Year; but 3 subject to paragraph 4, if the Annual Return in any prior Financial Year is less than the Benchmark Return for that Financial Year the deficit is to be carried forward on a cumulative basis until offset on a dollar for dollar basis against a surplus or surpluses of the Annual Return over the Benchmark Return in any succeeding Financial Year or Financial Years; 4 if: <ol style="list-style-type: none"> (i) the Shares are Stapled to an Attached Security at any time during the Financial Year; and (ii) they are not stapled to such Attached Security at the end of the Financial Year; and (iii) the Annual Return for that Financial Year is less than the Benchmark Return for that Financial Year or there is a carry forward deficit under paragraph 3 of this definition at the end of that Financial Year, <p>the Adviser must allocate the deficit (whether for that Financial Year or carried forward) between the Company and the Stapled Entity based on the net assets of the Stapled Entity and the Company, where the value in each case of the net assets in the accounts is adjusted to reflect the net market value of the assets if such accounts do not already do so and the amount of the deficit for that Financial Year or the carried forward deficit at the end of the Financial Year will be reduced by the amount of such allocation. If the Adviser believes that allocation of the deficit on the basis of market value of the net assets is unfair, the Adviser must cause the allocation to be determined by an independent expert, chosen by the Adviser, in consultation with the Adviser.</p>
Portfolio	all of the Assets, liabilities and rights of the Company, including all income and accretions thereof.
Pricing Service	means any service which publishes or reports on prices of securities which the Adviser determines.
S&P/ASX 300 Industrials Accumulation Index	means the index with that name calculated by or on behalf of Standard & Poor's and reported by Bloomberg or if that index ceases to be calculated and published the nearest equivalent available index reasonably selected by the Adviser.
Security	while the Shares are Stapled, a Stapled Security and while the Shares are not Stapled, a Share.

Term	Meaning
Securityholders	a holder of Securities.
Share	an ordinary share in the capital of the Company.
Shareholder	a holder of ordinary Shares in the Company.
Staff	staff employed by any Macquarie Group Company and seconded to the Adviser to perform the Adviser's duties and obligations under this Agreement.
Stapled	the linking together of Shares and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which are quoted on the ASX jointly as "Stapled Security" or such other term as the ASX permits.
Stapled Entity	the Australian Company and any other corporation, trust or managed investment scheme whose securities are Stapled to the Shares.
Stapled Security	one Share and each Attached Security which are Stapled together and registered in the name of the member.
Stapled Securityholders	a holder of Stapled Securities.
Stapling	the process that results in Shares and Attached Securities being and remaining Stapled to each other.
Taxes	all taxes of whatever nature lawfully imposed including income tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, corporation tax, interest tax, GST, property tax, undistributed profits tax, withholding tax, municipal rates, financial institutions duty, bank account debit tax, stamp duties and other taxes, charges, duties and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority (other than any such tax, charge, duty or levy payable in respect of the Adviser's own income, operations or assets), including (except where such occurs as a result of the Adviser's breach of this Agreement or its negligence) any interest, penalty or fee imposed in connection with any tax, rates, duties, charges or levies.
Trading Day	those Business Days on which buying and selling occurs through the ASX Stock Exchange Automated Trading System.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. In this Agreement, unless the context otherwise requires:

- (a) The singular includes the plural and vice versa.
- (b) A reference to a person includes a reference to a body corporate, a government organisation, body or instrumentality, an unincorporated body and any other entity.
- (c) Each recital and schedule of this Agreement and direction and instruction under this Agreement forms part of this Agreement.
- (d) A reference to this Agreement includes a reference to any variation, replacement or novation of it.
- (e) A reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (f) A reference to a thing includes a reference to any part of that thing.
- (g) A reference to any party to this Agreement where relevant includes a reference to the party's successors and permitted assigns.
- (h) A reference to dollars or \$ is a reference to Australian dollars.
- (i) Where a word or phrase is defined, its other grammatical terms have corresponding meanings.
- (j) A reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing.
- (k) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

1.3 Condition precedent to appointment of Adviser

The obligation of the Company to appoint the Adviser in accordance with clause 2 is subject to the Company being admitted to listing on the ASX and, in the case of the Securities, the Securities being quoted on the ASX.

2 Appointment of Adviser

Subject to clause 4.1(b), the Company, with effect from the date on which the condition precedent in clause 1.3 is satisfied or waived, appoints the Adviser as the Adviser of the Company:

- (a) to make recommendations to the Company with respect to dealings in the Portfolio;
- (b) provide the Management Services to the Company;

- (c) to advise on the financing of the Company and fundraising by the Company;
- (d) to assist the Company with meeting its financial reporting and other continuous disclosure obligations; and
- (e) any other services as agreed between the Company and the Adviser from time to time,

on the terms contained in this Agreement.

The Adviser accepts the appointment on the terms contained in this Agreement.

3 Duties of the Adviser

3.1 Adviser's obligations

- (a) The Adviser must conduct its activities in a manner consistent with the provisions of any Disclosure Document, the Bye-Laws, the Corporate Governance Framework and, while Stapling applies, the Co-operation Deed and for that purpose the Adviser must:
 - (1) having regard generally to the Portfolio and the Investment Policy, identify, evaluate and recommend Investments and, if the Board approves the Investment, acquire and manage the Investment on behalf of the Company, with a view to maintaining and enhancing the value, performance and profitability of the Investment;
 - (2) attend to all matters necessary to ensure the professional management of the Investments referred to in (1) above;
 - (3) having regard generally to the Portfolio and the Investment Policy, identify, evaluate and recommend the sale of Investments and, if the Board approves the sale, manage the sale on behalf of the Company;
 - (4) make available suitably qualified senior staff to act as nominees of the Company as directors of Portfolio companies;
 - (5) when appropriate recommend and in consultation with the Board, appoint non Adviser nominees of the Company as directors of Portfolio companies;
 - (6) recommend, and if approval is given by the Board, use its reasonable endeavours to procure, the raising of funds whether by way of debt hybrid or equity including the issue of options or fully or partly paid Shares or otherwise but without any obligation to provide such amounts;
 - (7) recommend to the Board changes to the Bye-Laws;
 - (8) recommend to the Board capital reductions including buy-backs of Shares;
 - (9) recommend to the Board the appointment, hiring and dismissal (including all material terms) of key officers, staff and consultants to any of the Company and its controlled entities;

- (10) make staff available to be the Chief Executive Officer and Chief Financial Officer for the Company and make recommendations to the Board in relation to persons to be selected by the Board as the Chief Executive Officer and Chief Financial Officer in accordance with clause 3.4;
- (11) provide a suitably qualified person for approval by the Board to act as Company Secretary for the Company and if requested by the Board at any time provide an acceptable replacement;
- (12) recommend to the Board the payment of dividends and distributions and interim dividends and distributions to its Shareholders;
- (13) prepare all necessary budgets for the Company;
- (14) assist in developing strategic plans and annual business plans for the Company and its controlled entities;
- (15) recommend and assist in the engagement by the Company any necessary securities registrar, accountants, auditors, solicitors, barristers and other accounting, financial or legal advisers and technical, commercial, marketing or other independent experts necessary, usual or desirable for the purpose of allowing the Adviser to exercise its powers and perform its obligations under this Agreement;
- (16) make recommendations in relation to the exercise of the voting rights to which the Company is entitled in respect of its investments in securities;
- (17) do all things reasonably necessary on its part to enable compliance by the Company with:
 - A. the requirements of applicable law and the Listing Rules including the preparation and lodgement or filing of documents (in particular, in respect of its continuous disclosure obligations) and reports, and the holding of all meetings;
 - B. any contractual obligations by which the Company is bound;
- (18) attend to all matters necessary for any reconstruction proposal or the eventual winding up of the Company;
- (19) attend to the timely calculation of Taxes payable by the Company and arrange the filing of all Tax returns due by the Company;
- (20) attend to the opening, closing and operation and management of all the Company's bank accounts and the Company's accounts held with other financial institutions, including making any deposits and withdrawals reasonably necessary for the management of the Company's day to day operations;
- (21) where required by law cause to be prepared and audited a balance sheet of the Company at 30 June each year and a profit and loss account for the 12 month period ending on the day to which the balance sheet is made up and also cause to be prepared a balance sheet of the Company at 31 December each year and a profit and loss account for the 6 month period ending on the day to which the balance sheet is made up and where required by law cause the same

to be sent to Shareholders in every such case within such period as required by law and where appropriate, consolidated accounts of the Company and its subsidiaries and consolidated accounts of the Company and the Stapled Entities;

- (22) recommend the arrangements for the holding and safe custody of the Company's property including, if required, the appointment of custodians or nominees if required by the Board;
 - (23) manage litigation in which the Company is sued or commence litigation after consulting with the Board;
 - (24) carry out valuations of the assets of the Company in accordance with valuation methodology approved by the Board or arrange for such valuation to occur;
 - (25) assist with arranging appropriate insurances for the Company and its Investments including directors and officers insurance as the Adviser and the Board may from time to time agree;
 - (26) prepare detailed papers and agendas for scheduled meetings of the Board which, where applicable, must contain such information as is reasonably available to the Adviser to enable the directors to base their opinion;
 - (27) in conjunction with the papers referred to in paragraph (26) prepare or cause to be prepared detailed reports to be considered by the Board on the Adviser's Investment and sale of Investment recommendations, management of Investments and otherwise in respect of the performance of the Adviser's obligations under this Agreement that the Company may reasonably require and in such form that the Board and the Adviser agree;
 - (28) liaise with, and monitor, any registry provider appointed by the Company;
 - (29) undertake all secretarial, administrative and investor relations matters for the Company;
 - (30) organise Shareholder meetings and arrange for the preparation of shareholder notices of meeting and other disclosure documents for approval by the Board; and
 - (31) provide all such other services as may from to time be agreed by the Adviser, including all other duties reasonably related to the day to day operations of the Company.
- (b) In addition, the Adviser must:
- (1) effect and maintain professional indemnity insurance, fraud and other insurances as are reasonable having regard to the nature and extent of the Adviser's obligations under this Agreement;
 - (2) exercise all due care, skill and diligence in carrying out its duties under this Agreement;
 - (3) hold an AFSL, with the appropriate authorisations required for it to perform the Management Duties;

- (4) ensure that a Macquarie Group Company employs staff with appropriate qualifications and sufficient industry expertise to enable the Adviser to competently fulfil its duties under this Agreement;
- (5) maintain adequate records of all transactions and other matters in relation to the Portfolio and retain such records for not less than 7 years;
- (6) provide the Board with any information in relation to the performance of the Adviser's obligations under this Agreement, as the Board may reasonably request;
- (7) promptly deposit all moneys payable to the Company to a bank account held in the name of the Company;
- (8) use its reasonable endeavours to ensure all property of the Company is clearly identified as such, held separately from property of the Adviser and, where applicable, in safe custody;
- (9) cooperate with the Company and its agents whenever requested to reconcile reports within an agreed timetable;
- (10) promptly give the Company copies of any correspondence with any regulatory authority which refers to the occurrence of any matters which may result in the termination of this Agreement; and
- (11) maintain management systems, policies and procedures that reasonably ensure the Adviser will observe its duties and obligations under this Agreement.

3.2 Compliance with applicable laws

The Adviser must comply with applicable laws to the extent that they concern the functions, powers and duties of the Adviser under this Agreement. However, the Company acknowledges that:

- (a) despite anything to the contrary in this Agreement, it retains day to day control of the Company's operations;
- (b) the Adviser may act on specific instructions given by the Board without investigating whether the act will comply with applicable laws but must not comply with any direction which it is aware will cause a breach of the applicable laws; and
- (c) the Adviser has no obligation to ensure that it complies with any law applicable to the Company or any constitutional documents or legislation regulating the Company to the extent it does not directly concern the functions, powers and duties of the Adviser under this Agreement.

3.3 Investment policy

The Adviser acknowledges that:

- (a) the Company is required to comply with the Investment Policy; and

- (b) for the purpose of giving effect to the Investment Policy, but without limiting any other provision of this Agreement, the Company may ask the Adviser to arrange to:
- (1) invest any part of the Portfolio in cash and cash equivalents, interests, securities or other instruments issued by any Stapled Entity;
 - (2) lend any part of the Portfolio or provide any other financial accommodation to any other Stapled Entity or Subsidiary of the Company; and
 - (3) enter into hedging contracts in connection with any actual or prospective investment by the Company or any borrowing by the Company.

The Investment Policy may be varied from time to time by the Board, with appropriate notice to the holders of Securities.

3.4 Chief Executive Officer and Chief Financial Officer

In fulfilling its obligations under clause 3.1(a), the Adviser must nominate "suitably qualified personnel" for the roles of Chief Executive Officer and Chief Financial Officer of Macquarie Atlas Roads for the approval of the Board. For the purposes of this clause 3.4, "suitably qualified personnel" means persons who have investment banking or funds management experience in a relevant sector or appropriate industry, commercial or general management experience in order to fulfill the job descriptions of Chief Executive Officer and Chief Financial Officer.

The Board must approve any person nominated by the Adviser for the role of Chief Executive Officer or Chief Financial Officer unless, in the Board's opinion, the nominated person is not "suitably qualified" and does not meet the needs of the Board.

If the Board rejects any nomination by the Adviser, the Adviser must nominate another person for the position of Chief Executive Officer or Chief Financial Officer as the case may be and the Board may similarly reject any such nominated person but only on the basis that the nominated person is not suitably qualified applying the criteria set out in this clause 3.4 and does not meet the needs of the Board.

If the Board consecutively rejects three persons nominated by the Adviser as not being suitably qualified for the position of Chief Executive Officer or Chief Financial Officer and not meeting the needs of the Board, then the Board may appoint a person of the Board's choosing to that position.

3.5 Staff

The Adviser may at the request of the Company, perform its duties and obligations under this Agreement by providing Staff to the Company on a secondment basis.

When the Adviser secondments Staff to the Company:

- (a) the Staff must act only in accordance with the directions of the Company;
- (b) the Company, and not the Adviser, is responsible for the acts of the Staff as if they were employees of the Company; and
- (c) Notwithstanding the provisions of paragraphs (a) and (b) above, the Staff shall remain the employees of the relevant Macquarie Group Company for all purposes including any contract of employment or other rights and liabilities as between the relevant Macquarie Group Company and Staff, the payment of

PAYG income tax, fringe benefits tax or other taxes, employer and employee national insurance contributions or any similar payments to the appropriate authorities in respect of the Staff.

The Adviser will ensure that all Staff seconded to the Company to perform a task for the Company for which a licence, authorisation, experience level or qualification is required by law, have and maintain the appropriate licence, authorisation, experience level or qualification.

If Staff seconded to the Company by the Adviser cause the Company to breach a law, regulation, licence condition, contractual arrangement or other obligation, or fail or refuse after reasonable notice to carry out the reasonable directions of the Company in connection with the performance of the Adviser's duties and obligations under this Agreement, the Adviser must as soon as practicable after a request by the Company provide replacement Staff to the Company on a secondment basis.

The Adviser will not in any circumstance be liable to the Company for any action taken or omitted by Staff who are seconded to the Company in connection with performing the Adviser's duties and obligations under this Agreement.

4 Powers of the Adviser

4.1 Powers and Limitations

- (a) Notwithstanding anything to the contrary contained in this Agreement, but without limiting any of the Company's rights as may otherwise be specified in this Agreement:
- (1) the Adviser shall be subject to the Board's supervision with respect to the Adviser's activities pursuant to this Agreement and shall take reasonable steps to ensure that its staff act in accordance with any management delegations put in place by the Board from time to time;
 - (2) for the avoidance of doubt, all actions taken by the Adviser with respect to any entity in which the Company has any interest shall be deemed to be as agent for the Company, and the Company in this Agreement appoints the Adviser to act in such capacity for these purposes only, subject to the Board's direction; and
 - (3) the Adviser must act at the reasonable direction of the Board where such directions are necessary in order for the directors to properly discharge their duties as directors or to avoid the Company contravening any law or provision of the ASX Listing Rules or any obligation under a contract binding on it.
- (b) The Adviser must not enter into any contract in the name of the Company for the making of any Investment or divestment without the prior approval of the Board.

4.2 Power of attorney

The Company may from time to time appoint the Adviser as its attorney to execute instruments (including deeds) and do things necessary for the purpose of performing its rights, duties and obligations under this Agreement.

4.3 Delegation

- (a) The Adviser may subject to clause 4.3(c) only delegate or appoint an agent (which may be an Associate) in respect of all or any of its duties and obligations under this Agreement and provided, in the case of non Associates, the Board first approves the particular delegation or appointment and (provided that the Adviser acknowledges that the provisions of clause 4.3(b) will apply at all times) such delegation or appointment is on the basis that such delegate or agent will act as agent for the Company and not the Adviser.
- (b) No delegation or appointment of an agent under this clause 4.3 shall relieve the Adviser of its obligations under this Agreement and, without limiting clause 4.3(a), the terms of all delegations and appointments (other than delegations to or appointment of Associates) must be in writing.
- (c) Clause 4.3(a) does not restrict the Adviser appointing from time to time suitably qualified individuals who are employees or officers of the Adviser or its Associates to assist the Adviser to carry out the Management Duties.

4.4 Pledging of Assets

The Adviser must not pledge any asset of the Company as security for any future investments of the Company.

4.5 Adviser's duties non-exclusive

The Adviser acknowledges that during the term of this Agreement its appointment is not exclusive and the Company may, through the exercise of the powers of its employees, Board or its Shareholders in general meeting or otherwise, perform the functions to be performed by the Company and/or appoint an additional Adviser or advisor.

4.6 Common investment of funds

- (a) The Portfolio may be invested with portfolios managed by the Adviser and its Associates on behalf of other persons including by the Adviser or its Associates as the responsible entity, Adviser or advisor of another Macquarie Managed Fund, or as Adviser or trustee of any other Stapled Entity.
- (b) The Company consents to the Adviser acting on the acquisition and disposal of assets on behalf of other persons.
- (c) The Company consents to the Adviser advising both on the Portfolio and any other portfolios advised by the Adviser.

4.7 Adviser's rights

The Adviser may from time to time perform services for itself and other persons the same as or similar to services performed for the Company under this Agreement. The Company acknowledges that:

- (a) the Adviser has no obligation to recommend for purchase or sale, for the account of the Company, any investment which the Adviser purchases or sells for its own account or for the account of any other client of the Adviser;

- (b) the Adviser may give advice and take action in the performance of its duties for other clients which differ from advice given and action taken in relation to the Portfolio; and
- (c) the personnel provided by the Adviser including persons to fulfil the Company roles specified in 3.5 will only be required to provide services for such proportion of their normal working hours as is reasonably required and may also provide services to the Adviser and its Associates.

4.8 Investment Opportunities

There is no obligation on the Adviser to recommend an acquisition or investment opportunity to the Company in preference to any Macquarie Group Company, any existing or proposed Macquarie Managed Fund or any entity in which the Adviser or any Associate has an interest, with the allocations of investments to be at the sole discretion of the Adviser or any of its Associates. However, in the event that an acquisition or investment opportunity is recommended to the Company by the Adviser and the Company determines that it does not wish to pursue the acquisition or investment opportunity either at all or in full, any portion of the opportunity which the Company does not wish to pursue may be offered to any other person, including any Macquarie Group Company, any existing or proposed Macquarie Managed Fund or any entity in which the Adviser or any Associate has an interest, in the sole discretion of the Adviser or any of its Associates, without reference to or approval of the Company.

5 Obligations of the Company

5.1 Company to do all things necessary

The Company must do all things reasonably necessary on its part to the extent it is reasonably able to do so to enable the Adviser to fulfil its obligations under this Agreement and to ensure that it retains day to day control over the operation of the Company's operations.

5.2 Company's officers

The Company must ensure that:

- (a) each of its officers and employees, each of its subsidiaries and each of its subsidiaries' officers and employees acts in accordance with this Agreement in fulfilling its obligations and exercising its powers under this Agreement; and
- (b) the Company and its subsidiaries provide to the Adviser all reports (including monthly management reports and all reports received from entities in which the Company and its subsidiaries have an interest) which the Adviser may reasonably require and on such dates as the Adviser may reasonably require.

5.3 Board's powers

Subject to the provisions of the Companies Act, 1981 of Bermuda and the Bye-Laws, the Adviser acknowledges that the Board has the sole power to:

- (a) manage the business of, and control the day to day operation of, the Company and its controlled entities;
- (b) pay all Costs incurred in promoting and incorporating the Company; and
- (c) exercise all the powers of the Company which are not by the Companies Act, 1981 of Bermuda or the Bye-Laws required to be exercised by the Company in general meeting,

and the Adviser undertakes not to do any of the above except in accordance with this Agreement or as expressly authorised so to do by the Board.

6 Indemnities

6.1 Adviser

The Adviser must indemnify the Company and its employees, officers, delegates, agents and contractors (except its employees, officers, delegates, agents or contractors who are also employees, officers, delegates, agents, or contractors of the Adviser), against any direct Costs (including legal expenses on a full indemnity basis) reasonably incurred by the Company arising out of, or in connection with any gross negligence, fraud, wilful misconduct or dishonesty of the Adviser or any employee, officer, delegate, agent, or contractor of the Adviser, except insofar as any Cost is caused by the gross negligence, fraud, wilful misconduct or dishonesty of the Company or its employees, officers, delegates, agents or contractors (except its employees, officers, delegates, agents or contractors who are also employees or officers of the Adviser or delegates, agents or contractors engaged by the Adviser in respect of the Adviser's duties under this Agreement).

6.2 Company

The Company must indemnify the Adviser and its employees, officers, delegates, agents and contractors against any direct Costs (including legal expenses on a full indemnity basis) reasonably incurred by or in connection with its activities in the performance of its duties and obligations pursuant to this Agreement except insofar as any Cost is caused by the gross negligence, fraud, wilful misconduct, or dishonesty of the Adviser or its employees, officers, delegates, agents or contractors. The Company is not otherwise liable to the Adviser for any loss or liability. For the avoidance of doubt, this indemnity excludes:

- (a) any Costs in respect of which any amount may be payable to the Adviser under clause 9.1;
- (b) any Costs specified in clause 9.2; and
- (c) any liability of the Adviser under clause 6.1.

6.3 Continuing obligation

The indemnities contained in clauses 6.1, 6.2 and 9.1 are continuing obligations separate and independent from the other obligations of the parties and survive the termination of this Agreement.

6.4 Action against agents

Without prejudice to the provisions of clause 4.3(c), the Adviser must provide reasonable assistance to the Company in any action of the Company against an employee, officer, delegate, agent or contractor of the Adviser arising out of, or in connection with any gross negligence, default, fraud, wilful misconduct or dishonesty of such person. This obligation continues after the termination of this Agreement.

7 Conflicts of interest

7.1 Use of related bodies corporate

- (a) The Company acknowledges that the Adviser may in connection with this Agreement, deal with or engage the services of the Adviser's Associates engaged in separate business activities which are entitled to charge fees, brokerage and commissions provided that they are in the ordinary course of business, on an arm's length commercial basis and approved by the Board either generally or specifically (who may seek the review of the terms and conditions of any agreement, arrangement or transaction by an independent third party appointed by the Board). Services provided within the terms of a general approval by the Board do not require specific approval by the Board.
- (b) Without limiting clause 7.1(a), any Associate of the Adviser may be appointed as a financial adviser to the Company and any Associate of the Adviser, may be appointed to underwrite and/or lead manage the offer of any Shares or Stapled Securities.
- The non-executive directors of the Company may take whatever measures they deem prudent to confirm the appointment is on an arms-length basis, including as to any fees payable to any Associate of the Adviser, and those measures may include obtaining quotes for such services from third parties or seeking the review of the terms and conditions of any agreement, arrangement or transaction by an independent third party appointed by the Board.
- (c) Any fees payable to any Associate of the Adviser for such services are in addition to all amounts owing under clause 8.

7.2 Conflicts of interest

Nothing in this Agreement restricts the Adviser (or its Associates or any Macquarie Managed Fund) from:

- (a) dealing with any holder of Shares or any option or warrant in respect of Shares;
- (b) being interested in any contract or transaction with the Company or any of its controlled entities for the provision of services or finance or otherwise on an arm's length commercial basis and subject to the approval of the Board (which may seek the review of the fees or consideration in respect of, or payable under, that contract or transaction by an independent third party appointed by the Board);

- (c) investing and being invested in any holder of Shares or any warrant in respect of Shares or investing and being invested in any of the Company's controlled entities;
- (d) undertaking co-investments with the Company or its controlled entities and putting in place co-investment arrangements that may include pre-emption and tag along or drag along rights in favour of each other or third party co-investors, including rights which are triggered on a removal of the Adviser or an Associate as Adviser of the Company or any co-investment vehicle, subject to the approval of the Board; or
- (e) putting in place financing arrangements for proposed or existing Investments which are required by the financiers to contain removal of Adviser trigger events, subject to the approval of the Board.

7.3 No avoidance of contracts

No contract or transaction referred to in clauses 7.1 and 7.2 in which the Adviser or any Associate is interested in any way, whether directly or indirectly, will be avoided and neither the Adviser nor any Associate will be liable, by reason of the Adviser's appointment as Adviser under this Agreement or the fiduciary relationships established by such appointment, to account to the Company or any other person for any profit or benefits arising from such contracts or transactions and it may retain such profits or benefits. Any fees paid or payable in relation to such contracts or transactions are to be retained by the person to whom those fees are paid or payable.

7.4 Holding shares

The Adviser and its Associates may hold Securities in any capacity.

8 Fees

8.1 Base Fee

- (a) Subject to clause 8.1(b), in consideration of the Adviser carrying out its obligations in accordance with this deed, the Adviser is entitled to a fee calculated at the rate of 2% per annum of the Market Value of Macquarie Atlas Roads (**Base Fee**).
- (b) The parties acknowledge (for the purposes of this Agreement) that the Adviser and the Company may agree from time to time to a Base Fee which is less than the amount determined in accordance with clause 8.1(a). At the date of this Agreement, the Adviser and the Company have agreed to a Base Fee calculated as follows:
 - (1) 2.00% per annum of the Market Value of Macquarie Atlas Roads at the end of each Calendar Quarter up to or equal to \$A1 billion; plus
 - (2) 1.25% per annum of the Market Value of Macquarie Atlas Roads at the end of each Calendar Quarter in excess of \$A1 billion but less than or equal to A\$3 billion; plus

- (3) 1.00% per annum of the Market Value of Macquarie Atlas Roads at the end of each Calendar Quarter in excess of \$A3 billion.
- (c) The Base Fee is payable to the Adviser at the end of each Calendar Quarter and is to be paid, subject to clause 8.4, promptly after determination by the Adviser of the Base Fee for that Calendar Quarter.
- (d) The Base Fee payable under clause 8.1(a) accrues from, and including, the Listing Date until this Agreement terminates.
- (e) Subject to the Corporations Act, the Listing Rules and the legislation (if any) regulating the issuance of shares in the jurisdiction of incorporation of the Company, the Adviser and its Associates, if approved by the non-executive directors of the Company, and while Stapling applies any other Stapled Entity acting in the interest of the Securityholders, shall be entitled to subscribe for that number of Securities equal to the amount of the Base Fee divided by the volume weighted average trading price of all Securities traded on the ASX during the last 10 Trading Days of the Calendar Quarter in respect of which the Base Fee is payable, taking into account any relevant historical security price adjustment made by the ASX for the purposes of its price information service, and apply the Base Fee in payment of the Application Price of those Securities. The Securities subscribed for must be issued as soon as reasonably practicable after the Base Fee becomes payable in accordance with this clause 8.1. To the extent that the Base Fee to which the Adviser is entitled under this clause is not applied to a subscription for Securities, it must be paid in cash to the Adviser. It is recognized that the Adviser and its Associates may receive part of the Base Fee from a Stapled Entity and may aggregate the Base Fee payable by a Stapled Entity for the purpose of applying the Base Fee to acquire Securities in accordance with this clause 8.1(e).

8.2 Performance Fee

- (a) In consideration of the Adviser carrying out its obligations in accordance with this Agreement, the Adviser is entitled to the Performance Fee to be paid in accordance with this clause 8.2.
- (b) The Performance Fee, which is calculated on the basis of the financial performance for a Financial Year (the **Relevant Year**), is to be divided into three equal amounts (called respectively the First Instalment, Second Instalment and Third Instalment). The First Instalment is payable as at the last day of the Relevant Year. The Second Instalment accrues and is payable as at the last day of the next succeeding Financial Year (Second Year), only if the aggregate Annual Return for the period comprising the Relevant Year and the Second Year equals or exceeds the aggregate Benchmark Return for that period. The Third Instalment accrues and is payable as at the last day of the Second Financial Year after the Relevant Year (Third Year), only if the aggregate Annual Return for the period comprising the Relevant Year, the Second Year and the Third Year equals or exceeds the aggregate Benchmark Return for that period. If the Adviser ceases to be the Adviser of the Company (other than due to voluntary retirement) prior to the date upon which a Second Instalment or Third Instalment becomes payable, the Adviser will be entitled to receive that or those payments on the date of its ceasing to be the Adviser notwithstanding that performance requirements for the Second Year or Third Year may not be satisfied.
- (c) The Performance Fee payable under clause 8.2(a) accrues from Listing until this Agreement terminates. This clause 8.2(c) is to be disregarded for the

purposes of determining whether any Second Instalment or Third Instalment is payable for a Relevant Year.

- (d) If an instalment of the Performance Fee is payable as at the last day of a Financial Year in accordance with clause 8.2(b) then, subject to the Corporations Act, the Listing Rules and the legislation (if any) regulating the issuance of shares in the jurisdiction of incorporation of the Company, the Adviser and its Associates, if approved by the non-executive directors of the Company, and while Stapling applies and any other Stapled Entity, acting in the interest of Securityholders, shall be entitled to subscribe for that number of Securities equal to the amount of the instalment of the Performance Fee divided by the volume weighted average trading price of all Securities traded on the ASX during the last 10 Trading Days of that Financial Year, taking into account any relevant historical security price adjustment made by the ASX for the purposes of its price information service, and apply the instalment of the Performance Fee in payment of the Application Price of those Securities. The Securities relating to an instalment of the Performance Fee must be issued as soon as reasonably practicable after the instalment of the Performance Fee becomes payable in accordance with clause 8.2(b). To the extent that any of the instalment of the Performance Fee to which the Adviser is entitled under this clause is not applied in a subscription for Securities, it must be paid in cash to the Adviser. It is recognized that the Adviser and its Associates may receive part of the Performance Fee from a Stapled Entity and may aggregate the instalment of the Performance Fee payable by a Stapled Entity for the purpose of applying that instalment of the Performance Fee to acquire Securities in accordance with this clause 8.2(d).

8.3 Waiver of fees

The Adviser may accept lower fees than it is entitled to receive under this Agreement, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

8.4 Apportionment of Fees

- (a) The Adviser acknowledges that in respect of the Base Fees and Performance Fees determined under this clause 8 of the Agreement, for the relevant period and while Stapling applies the amount of the base fees and performance fees payable to the Adviser under clause 8 of the Australian Company Management Agreement and any other similar provision in any other Stapled Entity management agreement with the Adviser or an Associate are representative of the aggregate fees payable to the Adviser in respect of Macquarie Atlas Roads.
- (b) Unless agreed in writing to the contrary, the allocation of fees between the Company and the Australian Company and any other Stapled Entity is as set out in Schedule 2, and the Adviser acknowledges and agrees to this allocation. The Company, the Adviser, the Australian Company and any other Stapled Entity may only vary this allocation in writing.

8.5 General

- (a) All determinations in respect of the fees payable to the Adviser under this clause 8 are to be made in Australian dollars.

- (b) The parties acknowledge that while the Australian Company Management Agreement continues, reference in clause 8.2(d) to a Performance Fee will include a reference to any Australian Company Performance Payment and a reference in clause 8.1(e) to a Base Fee will include a reference to any Australian Company Base Payment and in both cases to any other similar payments under any management or advisory agreement between the Adviser or Associates with any other Stapled Entity.

9 Expenses

9.1 Company liable for expenses

In addition to any other right of indemnity which it may have under this Agreement or at law, the Adviser and its employees, officers, delegates, agents and contractors shall, except as provided in clause 9.2, be indemnified and entitled to be reimbursed for, or have paid by the Company on demand, all reasonable and documented Costs incurred in relation to the proper performance of its powers and duties under this Agreement (whether by the Adviser or any employee, officer, delegate, agent or contractor of the Adviser). This includes but is not limited to reasonable Costs as incurred in connection with:

- (a) this Agreement and the formation of the Company;
- (b) the preparation, review, distribution and promotion of any Disclosure Document in respect of Shares, other shares, options or Financial Instruments issued by the Company and/or Stapled Securities and other promotion of the Company or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an Investment;
- (e) the administration or management of the Company or its Assets and liabilities including expenses in connection with the register of Shares or Stapled Securities, custody arrangements or the valuation of any Asset or the Company as a whole;
- (f) borrowing arrangements on behalf of the Company or guarantees in connection with the Company, including hedging costs;
- (g) underwriting of any subscription or purchase of Shares, other shares, options or Financial Instruments issued by the Company and/or Stapled Securities including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for gross negligence, fraud or breach of duty) by the Adviser of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Shareholders, the implementation of any resolutions and communications with Shareholders and attending any meeting of the Stapled Entities;

- (i) Taxes, including any amount charged by a supplier of goods or services, or both, to the Adviser by way of or as a reimbursement for GST;
- (j) financial institution fees;
- (k) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are Associates of the Adviser;
- (l) preparation and audit of the taxation returns, accounting records and accounts of the Company;
- (m) termination of this Agreement and the retirement or removal of the Adviser and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning the Company including proceedings against the Adviser, except to the extent that the Adviser is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 9.1(n) must be repaid;
- (o) all damages, expenses, payments, legal and other costs and disbursements incurred by the Adviser in relation to or in connection with any claim, dispute or litigation (Claim) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any Investment by the Company including any project document in connection with the Investment and any Disclosure Document or borrowing document in connection with the Company except where the Claim arises out of the fraud or wilful default of the Adviser;
- (p) the preparation, implementation, amendment and audit of any compliance plan of the Adviser in respect of the Company's activities;
- (q) the appointment of any compliance officer to undertake compliance work for the Company;
- (r) the preparation of reports including compliance reports;
- (s) the promotion of the Company generally;
- (t) recording, responding to and dealing with any enquiries or complaints from Shareholders in connection with the Company;
- (u) complying with any law, and any request or requirement of ASIC or ASX or any other relevant stock exchange or any other regulator; and
- (v) the admission of the Company to any stock exchange, the official quotation of Shares, other shares, options or Financial Instruments issued by the Company or Stapled Securities and compliance with the rules of such an exchange,

and the Adviser may cause them to be deducted from the Portfolio. The Adviser shall allocate expenses incurred in connection with an Investment acquired or to be acquired on behalf of the Company and other clients between the Company and those clients proportionately to their respective interests in the Investment.

9.2 Adviser not indemnified for certain expenses

- (a) The Adviser is not indemnified for and is not entitled to be reimbursed for, or to have paid, by the Company:
- (1) in-house administration costs of the Adviser (in the nature of rent for Adviser's premises, computer charges, salaries, research costs and like overhead and general operating expenses); and
 - (2) costs, commissions, charges, fees, expenses and Taxes arising as a result of any gross negligence, fraud, wilful misconduct, or dishonesty by the Adviser or any officer, employee, delegate, agent or contractor of the Adviser.
- (b) The Adviser is not entitled to recover costs from the Company to the extent that such costs are paid by any of the companies or entities in which the Company invests.

9.3 Regulatory Costs

The Company must bear any costs associated with the provision of information and other assistance required in relation to the Company under any applicable law or regulation.

10 Reports

10.1 Reports and instructions

The Adviser must provide the Company with the reports and papers specified in clauses 3.1(a)(26) and (27) and must take reasonable steps to ensure that those reports are complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Adviser. The Adviser will also provide, upon reasonable request by the Company, additional information which is complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Adviser.

10.2 Recommendations and instructions

If the Adviser makes a recommendation to the Company pursuant to clause 3.1(a)(1), then the Company will promptly consider that recommendation and instruct the Adviser as to the chosen course of action.

Instructions from the Company will be acknowledged by the Adviser acting upon them unless the Company is promptly advised that the Adviser believes such action may not be practicable or might involve any party in a breach of any law, rule or regulation.

11 Termination

11.1 Term

This Agreement commences as of and from the date of this Agreement and continues until terminated in accordance with this Agreement.

11.2 Resignation by the Adviser

The Adviser may, by giving to the Company not less than 90 days written notice, resign from its appointment as Adviser.

11.3 Removal of the Adviser

- (a) The Adviser's appointment under this Agreement may only be terminated by the Board if:
- (1) except under clause 11.3(a)(2), the Adviser ceases to carry on business;
 - (2) the Adviser ceases to hold any authorisation necessary to lawfully perform its obligations under this Agreement;
 - (3) the Adviser commits a material breach of this Agreement which cannot be remedied; or
 - (4) the Adviser is placed in Liquidation.
- (b) The Adviser's appointment under this Agreement will automatically terminate if Shareholders who together hold at least 50% of the total votes that may be cast by Shareholders at a general meeting of the Company to approve a resolution terminating the Adviser's appointment be terminated and if Stapling applies, a similar resolution has been passed by the Stapled Securityholders to terminate any management arrangements in place between the other Stapled Entities and the Adviser and its Associates. The Company acknowledges and agrees that the Adviser and its Associates are entitled to vote on any resolution to terminate the Adviser's appointment.
- (c) If the Adviser's appointment is terminated pursuant to clause 11.3(a) or (b), all directors, executives, employees, representatives, assignees and delegates of the Adviser and its Associates will cease work under this Agreement at the date of the Adviser's termination or at any other time as determined by the Company.
- (d) If the Adviser's appointment is terminated in accordance with this clause 11.3, the Adviser must at the Company's expense immediately deliver to the new Adviser (if any) any books or records held by the Adviser under this Agreement and must execute and deliver such instruments and do such things as may reasonably be required to more fully and effectually vest in any new Adviser all rights, duties, responsibilities, obligations and liabilities of the Agreement under this deed.

11.4 Claims and transactions

The termination of this Agreement does not affect:

- (a) any transaction properly entered into prior to termination;
- (b) any claim by the Adviser in respect of accrued base fees and performance fees and expenses incurred in respect of the period to termination;
- (c) any other claim which either party may have against the other; or
- (d) clauses 7.3 and 11.5, which survive the termination of this Agreement together with such other clauses specifically identified in this Agreement as surviving its termination and any other clause which, by its nature, survives termination of this Agreement.

11.5 Discharge of obligations

Upon termination of this Agreement, the Board may give directions to the Adviser to undertake any actions reasonably necessary:

- (a) to deal with any aspect of the ownership or control of the Assets; and
- (b) to do all other things in each case as are reasonably necessary to bring the appointment of the Adviser to an end and, where appropriate, assist in the appointment of a replacement Adviser for the Company, and the Adviser will comply with all such reasonable directions.

12 Warranties and acknowledgment by the parties

12.1 Warranties of Parties

Each party to this Agreement warrants and represents to the other party that:

- (a) it has the power to enter into and perform this Agreement;
- (b) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (c) this Agreement is legal, valid and binding on the party;
- (d) the entry into and performance of this Agreement by the party does not constitute:
 - (1) a breach of any obligations (including but not limited to any statutory, contractual or fiduciary obligations); or
 - (2) a default under any agreement or undertaking,
 by which the party is bound; and
- (e) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so.

12.2 Acknowledgment

The Company acknowledges that neither the Adviser nor any Associate guarantees the repayment of capital or the performance of the Portfolio or the Company or makes any representation concerning any of these matters.

13 Exclusion of liability of the Adviser

13.1 Liability of Adviser

Without prejudice to clause 6.1, neither the Adviser nor any of its officers, employees, delegates, agents or contractors will be liable to the Company for any loss or liability incurred by the Company as a result of the Adviser's or any of its officers, employees, delegates, agents or contractors exercise or performance (or failure of the Adviser or any of its officers, employees, delegates, agents or contractors to exercise or perform or any error of judgement in respect thereof) of any of the obligations under this Agreement, or loss of opportunity as a result of which the value of the Company would have increased, or for any decline in value of the Company, howsoever arising, except to the extent that such liability is caused by the gross negligence, fraud, wilful misconduct or dishonesty by the Adviser or any officer, employee, delegate, agent or contractor of the Adviser.

13.2 Adviser may rely

The Adviser may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether instructed by the Adviser or the Company, in relation to the interpretation of this Agreement or any other document (whether statutory or otherwise) or generally in connection with the Company;
- (b) advice, opinions, statements or information from bankers, accountants, auditors, valuers and other persons consulted by the Adviser who are in each case believed by the Adviser in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Adviser believes in good faith to be the original or a copy of an appointment by a Shareholder or the holder of an option in respect of a share of a person to act as their agent for any purpose connected with the Company; and
- (d) any other document provided to the Adviser in connection with the Company upon which it is reasonable for the Adviser to rely,

and the Adviser will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

14 Regulatory issues

- (a) The Company's Investment Policy is that specified in clause 3.3.

- (b) The Adviser will not acquire any Investment except upon the instructions of the Company. Subject to clauses 3.3 and 4.1(b), there are no restrictions on the categories of Investment which the Adviser may acquire as agent for the Company.
- (c) The Company will ensure that a custodian (if any) appointed by it is obliged to comply with the instructions of the Adviser given on the Company's behalf, in accordance with the Company's instructions.
- (d) The Adviser's services under this Agreement are not covered by a compensation scheme.

15 Legal actions

15.1 Third party claims

- (a) The Adviser must notify the Company promptly of any claim made by any third party in relation to the Assets of which it is aware or has notice and will send to the Company any notice, claim, summons or writ served on the Adviser concerning the Company.
- (b) The Adviser will not without the express written consent of the Board purport to accept or admit any claims or liabilities of which it receives notification pursuant to clause 15.1(a) on behalf of the Company or make any settlement or compromise with any third party in respect of the Company.

15.2 Litigation

If legal action is initiated against the Adviser by any third party in respect of any matter connected with this Agreement and in respect of which the Adviser has the benefit of an indemnity from the Company under this Agreement, the Company shall be entitled at its election to take over from the Adviser the conduct and the defence of any such action and to prosecute any claim for indemnity or damages or other entitlement against any third party in the name of the Adviser.

16 Obligation of good faith and compliance with law

16.1 Good faith

The Adviser must exercise its duties under this Agreement in good faith and for the benefit of the Company.

16.2 Compliance

- (a) The Adviser and the Company must (and must ensure that each of their respective employees, officers, delegates, agents and contractors) comply with any law and the terms of this Agreement to the extent that they concern the

functions or obligations of either the Company or the Adviser (as applicable) under this Agreement or the exercise of those functions by any such person.

- (b) The Company and Adviser must each maintain management systems, policies, procedures and internal contracts that reasonably ensure that they observe their respective duties and obligations under this Agreement.

17 Notices

Any notice given under this Agreement:

- (a) must be sent to the address, facsimile number or email address of the Authorised Person as set out in Schedule 1 (or as amended from time to time) or to any other address, facsimile number or email address that either party may specify in writing to the other; and
- (b) will be taken to have been given:
- (1) (in the case of delivery in person or by post) when delivered, received or left at the party's address;
 - (2) (in the case of delivery by facsimile) on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the number of the recipient;
 - (3) (in the case of delivery by email address) on production of an email receipt from the recipient to the sender which indicates that the email was sent to the email address of the recipient and has been opened by the recipient,

but if delivery or receipt occurs on a day which is not a Business Day or is later than 2pm (local time) it will be taken to have been duly given at the commencement of the next Business Day.

18 No waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

19 Assignment

A party may not assign any of its rights and obligations under this Agreement without the prior written consent of the other party except to an Associate in the case of the Adviser provided the Adviser has demonstrated to the reasonable satisfaction of the Company that the relevant Associate has or has access to all necessary expertise, experience and resources for it to perform the Adviser's obligations under this Agreement in accordance with its terms.

20 Confidentiality

All information exchanged between the parties, in connection with the Company or under, or as a consequence of, this Agreement, or during the negotiations preceding this Agreement is confidential to them and may not be disclosed to any person except:

- (a) to employees, legal advisers, auditors and other consultants of the party or its Associates requiring the information for the purposes of this Agreement;
- (b) with the consent of the party who supplied the information;
- (c) if the information is, at the date of this Agreement, lawfully in the possession of the recipient of the information (without an obligation of confidentiality) through sources other than the party who supplied the information or a person acting on its behalf;
- (d) if required by law (including under the Listing Rules and regulations of the ASX), or if required by any regulatory authority;
- (e) if strictly and necessarily required in connection with legal proceedings relating to this Agreement;
- (f) if the information is generally and publicly available other than as a result of breach of confidence or confidentiality by the person receiving the information; or
- (g) any disclosure by the Company to its Shareholders (and if any Shareholder is a collective investment scheme or managed investment scheme, to its investors) as is envisaged by this Agreement.

This clause 20 shall survive termination of this Agreement.

21 GST

21.1 Definitions

For the purposes of this clause:

Acquisition, Consideration, GST, GST Law, Input Tax Credit, Supply, Tax Invoice and Taxable Supply have the meaning given by section 195-1 of the GST Act.

GST Amount, Recipient and Supplier have the meanings attributable to those terms as set out in clause 21.3 of this Agreement.

GST Rate means the GST rate from time to time provided for in the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999*, which rate is 10% as at the date of this Agreement.

Primary Payment has the meaning attributable to that term as set out in clause 21.2 of this Agreement.

21.2 Payments exclude GST

All payments or other Consideration (but excluding the GST Amount) to be provided to either party under this Agreement (**Primary Payment**) are exclusive of GST.

21.3 Payment of GST

If any Primary Payment is for, or is in connection with, a Supply made by a party (**Supplier**) to the other party (**Recipient**) under this Agreement which is a Taxable Supply on which the Supplier is liable to pay GST in accordance with the GST Law:

- (a) in addition to that Primary Payment the Supplier is also entitled to an amount on account of GST (GST Amount);
- (b) the GST Amount is to be calculated by multiplying the Primary Payment by the GST Rate; and
- (c) the GST Amount shall be paid to the Supplier by the Recipient at the same time and in the same manner as the relevant Primary Payment is otherwise required to be paid or given, as long as a Tax Invoice has first been provided.

21.4 Reduction for Input Tax Credit

If the Recipient is required to pay, reimburse or contribute to any amount actually paid or incurred by the Supplier in respect of Acquisitions from third party suppliers, the amount the Recipient must pay, reimburse or contribute is to be the GST inclusive Consideration for the relevant Acquisition by the Supplier less an amount equal to any Input Tax Credit to which the Supplier is entitled in respect of that Acquisition.

22 Dispute Resolution

- (a) If a dispute arises under this Agreement, the parties will use their best endeavors to resolve the dispute promptly and amicably and, if through their own efforts such resolution cannot be reached, the parties will seek to resolve the dispute in accordance with the provisions of this clause 22.
- (b) If the dispute relates to the construction or interpretation of the terms and conditions of this deed or if either party is seeking urgent interlocutory relief, the dispute must be dealt with by a court.
- (c) If the provisions of clause 22(b) do not apply and if the dispute arises from or involves a technical matter, the valuation of investments or the calculation of fees payable to the Adviser, the parties must refer the dispute for determination by the auditor of the Company or to such other independent expert as the parties may agree. The decision of the auditor or such other independent expert in relation to the dispute will be deemed to be the decision of an expert, not an arbitrator, and the decision will be final and binding on both parties in the absence of manifest error. The parties must share equally the costs of such expert determination of a technical dispute unless the auditor or the other independent expert determining the dispute decides otherwise.
- (d) The parties agree that, unless a court or the auditor or other independent expert appointed to determine the dispute determines otherwise, each party shall, throughout the dispute resolution process, continue to perform its obligations under this Agreement.

23 Further assurances

Each party agrees to do, sign, execute and deliver and shall procure that its officers, employees and agents sign, execute and deliver all deeds, documents and instruments and acts reasonably necessary to effectively carry out and give full effect to this Agreement.

24 Entire agreement

- (a) This Agreement contains the entire agreement between the parties with respect to its subject matter. It supersedes all earlier conduct by the parties or prior agreement between the parties with respect to its subject matter.
- (b) Each party acknowledges that it has not relied on or been induced to enter this Agreement by a representation, warranty or undertaking other than those expressly set out in this Agreement or any document referred to in this Agreement.
- (c) A party is not liable to any other party for a representation, warranty or undertaking that is not set out in this Agreement or any document referred to in this Agreement.
- (d) Nothing in this clause shall have the effect of limiting or restricting any liability of a party arising as a result of any fraud.

25 Amendment

A variation of this Agreement:

- (a) that is material must be approved by a resolution of Shareholders who together hold at least 50% of the total votes that may be cast by Shareholders at a general meeting of the Company; and
- (b) is valid only if it is in writing and signed by or on behalf of each party to this Agreement.

26 Governing law and jurisdiction

- (a) This Agreement is governed by the laws of Bermuda.
- (b) The courts of Bermuda have non-exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement (respectively, Proceedings and Disputes) and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of Bermuda.
- (c) Each party irrevocably waives any objection which it might at any time have to the courts of New South Wales, Australia being nominated as the forum to hear

and decide any Proceedings and to settle any Disputes and agrees not to claim that the courts of New South Wales, Australia are not a convenient or appropriate forum.

- (d) The Company appoints the Adviser as its authorised agent for the purpose of accepting service of process for all purposes in connection with this Agreement.
- (e) This clause 26 shall survive termination of this Agreement.

27 Severance

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

28 Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original. All counterparts taken together will be deemed to constitute one document.

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Notice details

Company	Macquarie Atlas Roads International Limited
Address	Rosebank Centre, 11 Bermudiana Road, Pembroke HM 08 Bermuda
Attention	The Company Secretary
Fax	+1 (441) 295-6759

Adviser	Macquarie International Advisory Services Pty Limited
Address	Level 11, 1 Martin Place, Sydney NSW 2000
Attention	The Company Secretary
Fax	+612 8232 4713

Fee apportionment provisions

The allocation of the Base Fee and the Performance Fee between the Company and the Australian Company and any other Stapled Entity is to be at the ratio of that amount of the aggregate net assets (adjusted for the net market value of its investments) of the Company at the end of the relevant period bears to the amount of the aggregate net assets of the Macquarie Atlas Roads Group (adjusted for the net market value of its investments) at the end of the relevant period and on the basis that in respect of the Performance Fee, the allocation made in respect of the "First Instalment" will then apply to the "Second Instalment" and "Third Instalment" in the same ratio, and whether or not that "Second Instalment" or "Third Instalment" is payable after the termination of this Agreement.

Executed as an agreement

Signed sealed and delivered for
Macquarie Atlas Roads International Limited
by its attorneys

sign here ▶ _____
Attorney Attorney

print name _____

in the presence of

sign here ▶ _____
Witness Witness

print name _____

Signed sealed and delivered for
Macquarie International Advisory Services Pty Limited
by its attorneys

sign here ▶ _____
Attorney Attorney

print name _____

in the presence of

sign here ▶ _____
Witness Witness

print name _____
