

Sydney Metro – Western Sydney Airport

Independent Certification of the SSTOM Works
Independent Certifier Deed

Contract No: 00013-13062C

Parklife Metro Pty Ltd
ACN 657 249 682

in its personal capacity and in its capacity as trustee of
the Parklife Metro Unit Trust
ABN 50 667 445 077

OpCo

Sydney Metro
ABN 12 354 063 515
Principal

Systra
387 949 530 R.C.S. Paris

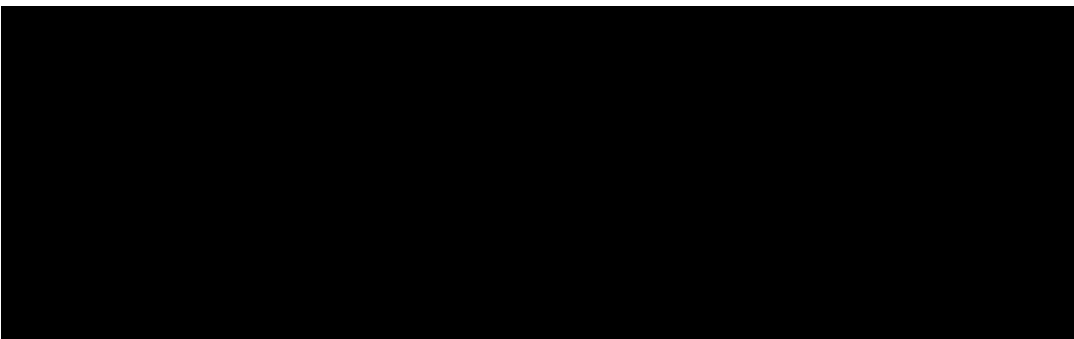
and

Kellogg Brown & Root Pty Ltd
ABN 91 007 660 317
Together the Independent Certifier

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Definitions in SSTOM Project Deed	7
1.3 Interpretation	7
1.4 Business Day	9
1.5 Ambiguous terms	9
1.6 No bias against drafter	9
1.7 Excluding liability	9
1.8 Joint and several liability	10
2. APPOINTMENT OF THE INDEPENDENT CERTIFIER	10
2.1 Appointment	10
2.2 Term	10
2.3 Payment	10
2.4 Nature of Services	10
2.5 Rights under the Project Agreements	11
2A. CONDITIONS PRECEDENT	11
2A.1 Commencement of obligations	11
2A.2 Satisfaction of conditions precedent	11
2A.3 Waiver of conditions precedent	11
2A.4 Condition Precedent Deadline Date	11
3. INDEPENDENT CERTIFIER'S OBLIGATIONS	12
3.1 Acknowledgement	12
3.2 General representations and warranties	12
3.3 Further acknowledgements and warranties	12
3.4 Personnel	14
3.5 Subcontracting	15
3.6 Quality Assurance	15
3.7 Information provided to Independent Certifier	15
3.8 Certification Plan	16
3.9 Revisions to Certification Plan	17
3.10 Progress Reports by the Independent Certifier	18
3.11 Audit and surveillance	18
3.12 Access to records	18
3.13 Copies of notices and documents	19
3.14 Co-operation with Other Independent Certifiers	19
3.15 Document management and transmission	19
3.16 Independent Certifier deed polls	20
3.17 Third Party Agreements	20
3.18 Health and Safety Management Plan	21
4. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY	21
4.1 Independent Certifier to be independent	21
4.2 Confidentiality	22
4.3 Exclusivity	23
5. OBLIGATIONS OF THE OTHER PARTIES	23
5.1 No interference or influence	23
5.2 Co-operation	24
5.3 Principal to have no liability	24

6.	ADDITIONAL SERVICES, CHANGES TO CORE SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER	24
6.1	Additional Services	24
6.2	Change to Core Services	27
6.3	Suspension of Services	27
6.4	Appointment of Substitute Certifier	27
7.	LIABILITY, INSURANCE AND INDEMNITY	27



8.	DISPUTE RESOLUTION	30
8.1	Procedure for resolving disputes	30
8.2	Negotiation	30
8.3	Continue to perform.....	31
9.	TERMINATION OF APPOINTMENT	31
9.1	Notice of termination	31
9.2	Termination	31
9.3	Delivery of documents	31
9.4	Reasonable assistance	32
9.5	Payment until date of termination	32
9.6	Termination without prejudice.....	32
9.7	Survive termination	32
9.8	Rights upon termination	32
10.	GST	32
11.	GENERAL.....	33
11.1	Notices	33
11.2	Appointment of a Process Agent	35
11.3	Governing Law	36
11.4	Jurisdiction	36
11.5	Principal as a public authority	36
11.6	Amendments.....	36
11.7	Waiver	36
11.8	Cost of performing obligations.....	37
11.9	Further acts and documents	37
11.10	Consents.....	37
11.11	Assignment.....	37
11.12	Transfer of functions or Public Transport Agency assets	38
11.13	Replacement body	39
11.14	Counterparts.....	39
11.15	No representation or reliance	39
11.16	Expenses	39
11.17	Entire agreement	39
11.18	Indemnities	39
11.19	No agency, partnership, joint venture or other fiduciary relationship	40

11.20 Severance	40
11.21 Moratorium legislation	40

Schedule

1	Core Services	41
2	Payment Schedule	64
3	Minimum resources commitment	75
4	Requirements for Certification Plan	103
5	Subcontractors	105
6	Certification Methodology	106
7	Third Party Agreements	118
8	Form of Independent Certifier Deed Poll - Penrith City Council Interface Agreement	120
9	Form of Independent Certifier Design Certificate – Penrith City Council Interface Agreement	123
10	Form of Independent Certifier Completion Certificate – Penrith City Council Interface Agreement	124
11	Form of Independent Certifier Deed Poll (Clause 5.2) – Sydney Roads Interface Agreement	125
12	Form of Design Documents Certification (Clause 12) – Sydney Roads Interface Agreement	130
13	Form of Certificate of Practical Completion (Roads Works (Clause 16.3)) – Sydney Roads Interface Agreement	134
14	Form of Certificate of Final Completion (Roads Works (Clause 17)) – Sydney Roads Interface Agreement	135
15	Form of Certificate of Construction Completion (Project Works (Clause 15.3)) – Sydney Roads Interface Agreement	136
16	Form of Independent Certifier Deed Poll – TFNSW (M12) Interface Agreement	137
17	Form of SSTOM Fencing Works Design Certificate – TFNSW (M12) Interface Agreement	140
18	Form of Certificate of SSTOM Fencing Works Completion – TFNSW (M12) Interface Agreement	141
19	Form of Independent Certifier Deed Poll – Water NSW Interface Agreement	143
20	Form of Independent Certifier Documents – Water NSW Interface Agreement	147

Exhibit

1	Indicative list of OpCo submissions
---	-------------------------------------

THIS INDEPENDENT CERTIFIER DEED is made on 15 DECEMBER 2022

BETWEEN:

- (1) **Parklife Metro Pty Ltd** in its personal capacity and in its capacity as trustee of the Parklife Metro Unit Trust ABN 50 667 445 077 of Rialto Tower South Level 43, 525 Collins Street, Melbourne VIC 3000 (**OpCo**);
- (2) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (3) **Systra** 387 949 530 R.C.S. Paris of 72 Rue Henry Farman, 75015, Paris, France and **Kellogg Brown & Root Pty Ltd** ABN 91 007 660 317 of 186 Greenhill Road, Parkside SA 5063,

(together the (**Independent Certifier**)).

RECITALS:

- (A) OpCo has entered into the SSTOM Project Deed with the Principal for the delivery of the SSTOM PPP.
- (B) The Independent Certifier represents that it is experienced generally in design, construction, installation, testing and commissioning and, in particular, in the design, construction, installation, testing and commissioning of works similar to the SSTOM Works and offers its expertise in those fields.
- (C) The Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1.
- (D) The Independent Certifier will perform its obligations on the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Additional Services means any additional services requested by the Principal from the Independent Certifier from time to time by the issue of an Additional Services Order, as those services are described in each Additional Services Order.

Additional Services Fee means the fee specified in any Additional Services Order for the Additional Services set out in that Additional Services Order, calculated in accordance with clause 6.1(b)(ii).

Additional Services Order means a written request from the Principal to the Independent Certifier to carry out Additional Services issued under clause 6.1(d)(iii)

Additional Services Proposal means a proposal submitted by the Independent Certifier under clause 6.1(b).

Additional Services Request has the meaning given to that term in clause 6.1(a).

Additional Third Party Agreement has the meaning given to that term in clause 3.17(d)(i).

Certification Methodology means the certification methodology set out in Schedule 6.

Certification Plan means the plan that the Independent Certifier is required to prepare in accordance with clause 3.8, and in respect of which the Principal has not issued a notice under clause 3.8(d), as that plan is updated from time to time in accordance with clause 3.9 of this deed.

Change in Control means, in respect of an entity, any event occurs such that a change occurs in the Control of that entity.

Completion Phase Services means all Core Services related to:

- (a) Test Procedures and Tests and the performance by OpCo of its obligations in respect of the Test Procedures and Tests;
- (b) First Passenger Service, Completion and Final Completion;
- (c) the performance by OpCo of its obligations in respect of First Passenger Service, Completion and Final Completion;
- (d) completion of the Local Area Works;
- (e) completion under the other Project Agreements;
- (f) the construction of the SSTOM Works;
- (g) the performance by OpCo of its construction obligations in respect of the SSTOM Works; and
- (h) construction under the other Project Agreements,

as described in Schedule 1.

Condition Precedent means each of the following:

- (a) The Independent Certifier has provided legal opinions in a form and substance satisfactory to the Principal and OpCo from:
 - (i) [REDACTED] in relation to the laws of New South Wales and the Commonwealth of Australia which confirms, amongst other things, that this deed constitutes legal, valid and binding obligations of Systra enforceable against Systra in the courts of New South Wales and the Commonwealth of Australia; and
 - (ii) [REDACTED] in relation to the laws of France, which confirms, amongst other things, that:
 - (A) Systra is incorporated and exists under the laws of France;
 - (B) Systra has the corporate power and authority to enter into this deed and to perform its obligations under this deed; and
 - (C) this deed has been duly executed by Systra.
- (b) The Independent Certifier has provided written evidence satisfactory to the Principal and OpCo that the process agent appointed by the Independent Certifier pursuant to clause 11.2(a)(i) has accepted its appointment.

Condition Precedent Deadline Date means the date which is 10 Business Days after the date of this deed or such later date as agreed between the Principal and OpCo.

[REDACTED]

[REDACTED]

Control has, as relevant:

- (a) the meaning given to that term in the Corporations Act; or
- (b) the meaning of article L.233-3 of the French *Code de Commerce*.

Core Services means the services set out in Schedule 1 to this deed, and includes the Design Phase Services and the Completion Phase Services.

Core Services Fee means the amount payable to the Independent Certifier for the performance of the Core Services, as calculated in accordance with paragraph 1(b) of the Payment Schedule.

Corporations Act means the *Corporations Act 2001 (Cth)*.

COVID Management Plan means the plan prepared by the Independent Certifier in accordance with clause 3.18(a)(iii).

[REDACTED]

Day 1 Clauses means clauses 1, 2A, 3.2, 3.3, 3.4, 3.11, 3.12, 3.13, 3.15, 3.18, 7.1, 7.2, 7.3, 7.10, 7.11, 8, 11 and any other clauses or schedules required to have commenced in order to give effect to those clauses.

Design Phase Services means all Core Services related to:

- (a) the review of IC Project Plans in accordance with the SSTOM Project Deed;
- (b) the design of the SSTOM Works;
- (c) the performance by OpCo of its design obligations in respect of the SSTOM Works;
- (d) the performance by OpCo of its design obligations under the other Project Agreements; and
- (e) design of works under the other Project Agreements,

as described in Schedule 1.

Dispute Representatives has the meaning given to that term in clause 8.2(c).

Draft Third Party Agreement has the meaning given to that term in clause 3.17(a)(ii).

Fee means the amount payable to the Independent Certifier for the performance of the Services in accordance with the Payment Schedule.

[REDACTED]

Government Agency means an authority, agency or department of the State, a minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State.



GST, GST law and other terms used in clause 10 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 10) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Health and Safety Management Plan means the management plan prepared by the Independent Certifier under clause 3.18.

Independent Certifier's Project Director means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 3.4(b)(ii).

Independent Certifier's Representative means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 3.4(b)(ii).

Interface Owner means:

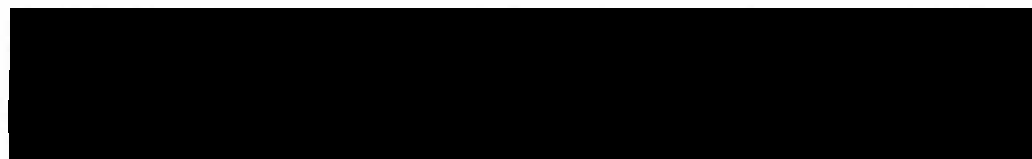
- (a) in respect of the Penrith City Council Interface Agreement: Penrith City Council;
- (b) in respect of the Water NSW Interface Agreement: Water NSW;
- (c) in respect of the TfNSW (M12) Interface Agreement: TfNSW; and
- (d) in respect of the Sydney Roads Interface Agreement: TfNSW.

Insolvency Event:

- (a) in relation to an entity incorporated in Australia, has the meaning ascribed to it in the SMWSA Framework Agreement; and
- (b) in relation to an entity registered in France means:
 - (i) any corporate action, legal proceedings or other procedure or step taken in relation to:
 - (A) the suspension of payments, a moratorium of any indebtedness, dissolution, the opening of proceedings for *sauvegarde* (including, for the avoidance of doubt, *sauvegarde accélérée* and *sauvegarde financière accélérée*), *redressement judiciaire* or *liquidation judiciaire* or *reorganisation* (in the context of a *mandat ad hoc* or of a conciliation or otherwise) other than a solvent liquidation or *reorganisation* of a person;
 - (B) a composition, compromise, assignment or arrangement with any creditor of a person;
 - (C) the appointment of a liquidator (other than in respect of a solvent liquidation of a person) receiver, administrator, administrative

receiver, provisional administrator, *mandataire ad hoc*, *conciliateur* or other similar officer in respect of a person or any of its assets; or

- (D) enforcement of any security over any assets of a person;
- (ii) the request for *mandat ad hoc* or conciliation in accordance with articles L.611-3 to L.611-15 of the French *Code de Commerce*;
- (iii) a judgement opening proceedings for *sauvegarde* (including, for the avoidance of doubt, *sauvegarde accélérée* and *sauvegarde financière accélérée*), *redressement judiciaire* or *liquidation judiciaire* or ordering a *cession totale ou partielle de l'entreprise* is entered in relation to a person under articles L.620-1 to L.670-8 of the French *Code de Commerce*; or
- (iv) any procedure, judgment or step taken in any jurisdiction which has effects similar to those referred to in paragraphs (i), (ii) or (iii) above.



Loss means any cost, expense, loss, damage, liability or other amount whether present, future, fixed, unascertained, actual or contingent.

Minimum Surveillance Commitment means the resources committed to surveillance set out in section 3 of Schedule 3.

NSW Trains means the body corporate constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

Other Parties means the Principal and OpCo.

Parent Company Guarantee means the parent company guarantee provided by a Parent Company Guarantor under the SMWSA Framework Agreement.



Payment Schedule means Schedule 2 to this deed.

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 11.1(b).

Penrith City Council Interface Agreement means the interface agreement titled "Sydney Metro Western Sydney Airport – Council Interface Agreement (Penrith City Council)" between the Principal and the Penrith City Council dated 23 November 2021.

Principal's Representative means 

Project Agreements means:

- (a) the SSTOM Project Deed;
- (b) the Third Party Agreements; and
- (c) any other agreement that the Principal informs the Independent Certifier constitutes a "Project Agreement".

Provider means an entity that the Independent Certifier will engage to be involved in the Services to be performed by the Independent Certifier pursuant to this deed.

Public Transport Agency means the Principal, TfNSW (and each of its divisions), Sydney Trains, TAHE and NSW Trains.

Reputable Insurer means an insurance company having the Required Rating.

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investor Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investor Services, Inc, an equivalent rating with another reputable rating agency.

Restructure Event means where there is one or more asset transfer or corporate restructure that:

- (a) results in a Parent Company Guarantor having a materially diminished financial capacity; or
- (b) adversely affects the ability of a Parent Company Guarantor to meet its obligations under the relevant Parent Company Guarantee.

Services means:

- (a) the Core Services; and
- (b) any Additional Services,

and includes all things necessary for, or incidental to, the proper and professional performance of those services.

Service Payment Loss means each and every loss of, or delay in receipt of, Service Payments under the SSTOM Project Deed caused by any conduct, act or omission of the Independent Certifier causing delay to OpCo satisfying the requirements for First Passenger Service or achieving Completion or Final Completion or preventing, hindering or affecting OpCo operating the Sydney Metro Western Sydney Airport and ETS during the Operations Phase.

SMWSA Framework Agreement means the deed entitled "Sydney Metro Western Sydney Airport Independent Certifier Framework Agreement" between the Principal and the Independent Certifier dated 25 January 2022.

SSTOM Project Agreements has the meaning given to the definition of "Project Agreements" in the SSTOM Project Deed.

SSTOM Project Deed means the deed titled "SSTOM Project Deed" between the Principal and OpCo dated on or about the date of this deed.

State Indemnified Party means:

- (a) the Principal; and
- (b) each other Public Transport Agency.

Substitute Certifier has the same meaning as in clause 6.4(a).

Sydney Roads Interface Agreement means the interface agreement titled "Roads Interface Agreement - Sydney Metro Western Sydney Airport – Stations, Systems, Trains, Operations and Maintenance (SSTOM) Works" between the Principal and TfNSW dated 14 November 2022.

Sydney Trains means Sydney Trains, the body corporate constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

TAHE means Transport Asset Holding Entity of New South Wales as constituted by Part 2 of the *Transport Administration Act 1988* (NSW).

Term means the term of this deed as set out in clause 2.2.

TfNSW means Transport for NSW, a NSW government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

TFNSW (M12) Interface Agreement means the interface agreement titled "Sydney Metro Western Sydney Airport – M12 Interface Deed" between the Principal and TfNSW dated 2 February 2022.

Third Party means a party to a Third Party Agreement other than the Principal.

Third Party Agreement means:

- (a) Penrith City Council Interface Agreement;
- (b) Water NSW Interface Agreement;
- (c) TFNSW (M12) Interface Agreement;
- (d) Sydney Roads Interface Agreement; and
- (e) any Additional Third Party Agreement.

Upper Limiting Fee means each upper limiting fee specified in paragraph 1(b) of the Payment Schedule, as adjusted in accordance with this deed.

Validity Period has the meaning given to that term in clause 6.1(c).

Water NSW Interface Agreement means the interface agreement titled "WaterNSW Interface Agreement - Sydney Metro Western Sydney Airport" between the Principal and Water NSW dated 24 August 2021.



1.2 Definitions in SSTOM Project Deed

Except as otherwise defined in clause 1.1, capitalised terms used in this deed that are defined in the SSTOM Project Deed will have the same meaning in this deed as in the SSTOM Project Deed.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

- (b) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other 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 substitutes and 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 deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented 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 any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any 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 part, clause, schedule, exhibit, attachment or annexure is a reference to a part, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed 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 other grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) where under this deed:
 - (i) a notice, certificate or direction is required to be given; or
 - (ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;
- (l) for all purposes other than as set out in clause 1.3(k), day means calendar day;
- (m) a reference to a **month** is a reference to a calendar month;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (p) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

Where it relates to an entity registered in France, a reference to:

- (q) **control** means a "*contrôle*" within the meaning of article L.233-3 of the French *Code de Commerce*;
- (r) a **court** or **tribunal** is to a French court or tribunal;

- (s) **corporate restructure** includes in relation to any company any contribution of part of its business in consideration of shares (*apport partiel d'actifs*) and any demerger (*scission*) implemented in accordance with articles L.236-1 to L.236-24 of the French *Code de Commerce*;
- (t) a **guarantee** includes any type of "*sûreté personnelle*";
- (u) **merger** includes any fusion implemented in accordance with articles L.236-1 to L.236-24 of the French *Code de Commerce*;
- (v) a **security** includes any type of security (*sûreté réelle*) and transfer by way of security; and
- (w) a **transfer** includes any means of transfer of rights and/or obligations under French law.

1.4 Business Day

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.5 Ambiguous terms

- (a) If the Principal considers, or if any of the Independent Certifier or OpCo notifies the Principal's Representative in writing that it considers that there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any schedules), subject to clauses 2.4(a)(ii), 3.7(d) and 3.8(a), the Principal's Representative must direct the interpretation of this deed which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.5(a), is not required to determine whether or not there is an ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.5(a):
 - (i) will not relieve the Independent Certifier or OpCo from or alter its liabilities or obligations under this deed or otherwise according to Law;
 - (ii) will not limit or otherwise affect the Principal's rights against any of the Independent Certifier or OpCo whether under this deed or otherwise according to Law; and
 - (iii) must, in respect of a notice given under clause 1.5(a) by the Independent Certifier or OpCo be given within 20 Business Days of receipt of that notice.

1.6 No bias against drafter

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.7 Excluding liability

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

1.8 Joint and several liability

Where the Independent Certifier or an Other Party comprises more than one entity, an obligation or a liability assumed by, or a right conferred on, the relevant Other Party or the Independent Certifier (as applicable) binds or benefits them jointly and severally.

2. APPOINTMENT OF THE INDEPENDENT CERTIFIER

2.1 Appointment

- (a) Each of the Other Parties appoint the Independent Certifier under this deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and the Project Agreements and, to the extent the Certification Plan is not inconsistent with the Project Agreements or the nature of the Services, it will carry out and perform the Services in accordance with the Certification Plan.

2.2 Term

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination in accordance with clause 9.

2.3 Payment

The Principal will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

2.4 Nature of Services

- (a) The Independent Certifier and the Other Parties acknowledge and agree that:
 - (i) the Certification Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under this deed; and
 - (ii) to the extent that any part (or parts) of the Certification Plan is inconsistent with or seeks to limit or otherwise affect the Services or the Independent Certifier's obligations under this deed, the Services or the Independent Certifier's obligations under this deed (as applicable) prevails over such part (or parts) of the Certification Plan.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then the Principal must, acting reasonably and after prior consultation with OpCo determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this deed which may affect the Other Parties, the Principal will take into account representations made by OpCo.

2.5 Rights under the Project Agreements

The Independent Certifier may exercise any of the rights granted to it under the Project Agreements for the purpose of performing the Services.

2A. CONDITIONS PRECEDENT

2A.1 Commencement of obligations

The rights and obligations of the parties under this deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under clause 2A.3), except for those under the Day 1 Clauses which will commence on the date of this deed.

2A.2 Satisfaction of conditions precedent

- (a) The Independent Certifier must use all reasonable endeavours to satisfy each Condition Precedent by the relevant Condition Precedent Deadline Date.
- (b) When the Independent Certifier is of the opinion that a Condition Precedent has been satisfied, it must give the Principal and OpCo notice of its opinion.
- (c) Upon receipt of the notice under clause 2A.2(b), each of the Principal and OpCo must promptly notify the Independent Certifier whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (d) If both the Principal and OpCo fail to give the Independent Certifier a notice under clause 2A.2(c) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.
- (e) Upon the satisfaction (or waiver under clause 2A.3) of all Conditions Precedent, the parties must promptly acknowledge in writing that all Conditions Precedent have been satisfied (or waived).

2A.3 Waiver of conditions precedent

A Condition Precedent is waived if, and only if the Principal and OpCo agree in writing to waive the Condition Precedent.

2A.4 Condition Precedent Deadline Date

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2A.3) by 5.00 pm on the relevant Condition Precedent Deadline Date, then the Principal (in consultation with OpCo) may give notice in writing to the Independent Certifier that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2A.3) within the period specified in its notice (which must not be less than 2 Business Days).
- (b) If the Principal gives notice under clause 2A.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2A.3) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) If this deed is terminated pursuant to this clause 2A.4, no party will have any Claim against any other party under or in respect of this deed or in respect of the reimbursement of costs or expenses or otherwise in connection with the procurement of the independent certifier for Sydney Metro - Western Sydney Airport, except for any Claim in relation to a breach of any Day 1 Clause.

3. INDEPENDENT CERTIFIER'S OBLIGATIONS

3.1 Acknowledgement

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of each Project Agreement (other than those Draft Third Party Agreements identified in clause 3.17(a)(ii) which it has received and reviewed in draft form) and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services;
- (b) it must continue performing the Core Services notwithstanding that the relevant Upper Limiting Fee may have been reached; and
- (c) it will not be entitled to payment of any amount in addition to the relevant Upper Limiting Fee (as adjusted in accordance with paragraph 4 of Schedule 2) for the performance of the Core Services.

3.2 General representations and warranties

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

3.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably, impartially and with the degree of professional care, knowledge, skill, expertise, experience and care which would be

reasonably expected of a professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;

- (c) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements (and, where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.3(a) and 3.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services;
 - (ii) it will make available for the performance of the Services, as a minimum, the levels of resources specified in Schedule 3; and
 - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification Plan is not inconsistent with:
 - (A) the Project Agreements;
 - (B) the nature of the Services; or
 - (C) without limiting subparagraphs (A) or (B), the requirements of clause 3.14,it will carry out and perform the Services in accordance with the Certification Plan;
- (f) will provide transport on site for the use of its site personnel;
- (g) will, in carrying out the Services, carry out physical inspections of the Construction Site and any Extra Land, the SSTOM Works and OpCo's Activities:
 - (i) when appropriate or necessary to do so in order to perform the Core Services including for the purpose of determining whether:
 - (A) the Tests have been passed;
 - (B) the requirements for First Passenger Service have been satisfied; and
 - (C) Completion or Final Completion has been achieved by OpCo;
 - (ii) when otherwise reasonably requested by the Principal; and
 - (iii) in a manner which satisfies the requirements of the Certification Plan,and will invite and permit the Principal and OpCo to accompany it on all such inspections;
- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including OpCo) except where it is the unavoidable consequence of performing the Services; and

- (i) in undertaking the Services, will comply with all the safe working requirements of OpCo including the reasonable instructions of OpCo in relation to safety and site security while on the Construction Site.

3.4 Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the nominated people referred to in Schedule 3:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Principal (which consent must not be unreasonably withheld or delayed), and if any of the people are removed:
 - (A) they must be replaced by people of at least equivalent skill, expertise and experience, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed;
 - (B) they must be approved in writing by the Principal, having regard to the indicative requirements set out in paragraph 2 of Schedule 3 to this deed; and
 - (C) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements and the Services; and
- (c) The Independent Certifier must ensure that the "core team" described in Schedule 3 are located in Sydney, and:
 - (A) attend the relevant Project Facilities (as identified in section 2.13.2 of the General Specification to the SSTOM Project Deed) (**Project Facilities**) in accordance with the requirements of Schedule 1 (and on those days generally work from the Project Facilities, subject to compliance with any Laws relating to COVID-19); and
 - (B) work from the Project Facilities as the Services require or as is appropriate in the circumstances.
- (d) The Principal may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply promptly with any such direction and nominate a replacement in accordance with clauses 3.4(b)(ii) and 3.4(c).
- (e) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.
- (f) The Independent Certifier must make available additional personnel to the extent required by the Principal.
- (g) The Independent Certifier must ensure that the persons appointed to the positions of:
 - (i) the Independent Certifier's Project Director; and

- (ii) the Independent Certifier's Representative,
including any replacements, at all times:
- (iii) have the authority to act on behalf of and to bind the Independent Certifier in respect of the Services;
- (iv) have full authority to promptly execute documents (including any certifications) and to promptly make decisions in relation to the Services; and
- (v) have authority to bind the Independent Certifier in relation to any matter arising out of or in connection with the Services.

3.5 Subcontracting

- (a) Subject to clause 3.5(c), the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.
- (c) Unless the Principal otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

3.6 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification Plan or any audit under clause 3.11.

3.7 Information provided to Independent Certifier

- (a) Subject to clause 3.7(b), the Independent Certifier is entitled to rely on information provided to it in accordance with the SSTOM Project Deed by either of the Principal or OpCo as being true and correct in all material respects unless:
 - (i) such information is:
 - (A) manifestly incorrect;
 - (B) provided on a qualified basis; or
 - (C) actually known or ought to reasonably have been known by the Independent Certifier to be untrue or incorrect as a result of it carrying out the Services in accordance with, and to the standards acknowledged, required by, or warranted in this deed; or

- (ii) the Principal or OpCo (as the case may be) subsequently informs the Independent Certifier of any change to the information provided to it.
- (b) The Independent Certifier agrees that:
 - (i) the Principal may (but is not obliged to) provide the Independent Certifier with information in relation to any surveillance of OpCo's Activities carried out by the Principal; and
 - (ii) any information provided to the Independent Certifier under clause 3.7(b)(i) is provided on a 'for information only' basis, is not entitled to be relied upon as true and correct in all material respects, and does not reduce or limit the surveillance activities the Independent Certifier must undertake under section 1(f) of Schedule 1.
- (c) OpCo must provide to the Independent Certifier (with a copy to the Principal):
 - (i) the proposed design package structure, including the number of packages and associated description/naming, and a milestone program for staged submission of each design package in accordance with Schedule 11 of the SSTOM Project Deed (**Design Submission Program**) within 5 Business Days of the date OpCo submits the updated Assurance and Governance Plan and Design Management Plan in accordance with clause 9.3(c) of the SSTOM Project Deed; and
 - (ii) an updated Design Submission Program each week during the period that OpCo is carrying out design activities under the SSTOM Project Deed.
- (d) To the extent that any information provided to the Independent Certifier under this clause 3.7 is inconsistent, ambiguous or has a discrepancy with the various documents comprising this deed, this deed will prevail.

3.8 Certification Plan

- (a) The Independent Certifier acknowledges that in the event of any ambiguity, discrepancy or inconsistency between the Services, Certification Methodology and Certification Plan, the highest scope, quantum, quality, standard or other requirement on the Independent Certifier or the more onerous obligation specified will prevail.
- (b) The Independent Certifier must prepare and submit to the Other Parties within 25 Business Days of the date of this deed a Certification Plan which must:
 - (i) be consistent with the Services;
 - (ii) be based on the Certification Methodology contained in Schedule 6;
 - (iii) meet or exceed the requirements of Schedule 4;
 - (iv) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the Certification Methodology contained in Schedule 6; and
 - (v) comply with the requirements for the Certification Plan in Schedule 4 of this deed.
- (c) The Other Parties may review the Certification Plan submitted under clause 3.8(b).
- (d) The Principal may, if the Certification Plan does not comply with this deed or if the Principal believes (after prior consultation with OpCo) that the Certification Plan does

not provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.

- (e) If the Independent Certifier receives a notice under clause 3.8(d), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties, after which clause 3.8(c) will reapply.
- (f) If the Independent Certifier does not receive a notice under clause 3.8(d) within 15 Business Days after the submission of the relevant Certification Plan, the relevant Certification Plan submitted by the Independent Certifier will be the Certification Plan with which the Independent Certifier must comply (as it is updated under clause 3.9).

3.9 Revisions to Certification Plan

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the SSTOM Works, any Modifications or Pre-Agreed Options and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification Plan under clause 3.9(a)(i) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification Plan to the Other Parties for their review and comment.
- (b) The Other Parties may review the Certification Plan submitted under clause 3.9(a)(iii).
- (c) The Principal may, if the Certification Plan does not comply with this deed or the Principal believes (after prior consultation with OpCo) that the revised Certification Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification Plan, notify the Independent Certifier of that non-compliance or reduction.
- (d) If the Independent Certifier receives a notice under clause 3.9(c), the Independent Certifier must promptly submit an amended Certification Plan to the Other Parties after which clause 3.9(b) will reapply.
- (e) The Other Parties:
 - (i) owe no duty to the Independent Certifier to review the Certification Plan for errors, omissions or compliance with this deed; and
 - (ii) are not responsible for the accuracy, completeness or the contents of, and make no representation and assume no duty of care in respect of, the Certification Plan.
- (f) Without limiting clauses 2.1(c) or 3.3(e), the Independent Certifier must not, either in the preparation of the Certification Plan required by clause 3.8 or the amending, updating and development of the Certification Plan required by clauses 3.9(a) and 3.9(d), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the Certification Methodology contained in Schedule 6 or the then existing Certification Plan without the written approval of the Principal's Representative (after prior consultation with OpCo).

- (g) The Independent Certifier may not amend the Certification Plan other than in accordance with this clause 3.9.

3.10 Progress Reports by the Independent Certifier

The Independent Certifier must provide a monthly progress report to the Principal's Representative and OpCo no later than 5 Business Days after the end of the month and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) an executive summary of the Services undertaken by the Independent Certifier during the reporting period, which must include a summary and status of the key issues identified by the Independent Certifier in connection with the performance of OpCo's Activities by OpCo, including actions taken to address the issues in the reporting period and proposed future actions;
- (b) a high level summary of the Services proposed to be undertaken by the Independent Certifier in the forthcoming reporting period;
- (c) the Independent Certifier's current and predicted resourcing structure for the performance of the Services;
- (d) a summary of the Core Services Fee paid to date;
- (e) the forecast effort to complete the Design Phase Services and the Completion Phase Services (as applicable) and the estimated Core Services Fee that would be payable in respect of that effort based on the assumption that there is no applicable Upper Limiting Fee;
- (f) an estimated accrual amount (both with respect to the Design Phase Services and the Completion Phase Services) for the next reporting period;
- (g) details of any actual or potential Defects or other non-compliances in the SSTOM Works that it has identified during the reporting period; and
- (h) any additional information requested by the Other Parties from time to time.

3.11 Audit and surveillance

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system under this deed by the Principal or a third party at, in the case of a third party, the request of the Other Parties or any one of the Other Parties; and
 - (ii) fully co-operate with the Principal or the relevant third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
 - (i) give to the Principal or the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
 - (ii) permit the Principal or the third party to inspect applicable information relevant to the quality assurance audit.

3.12 Access to records

The Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the

Independent Certifier in the course of carrying out the Services. For the avoidance of doubt, OpCo is entitled to have access to such records and documents.

3.13 Copies of notices and documents

All notices and documents:

- (a) provided by the Independent Certifier to an Other Party must be copied to the other parties (and if the Independent Certifier is required to provide a notice or document to an Other Party within a specified time period, that notice or document must be provided to the other parties within the same time period); and
- (b) provided by an Other Party to the Independent Certifier must be provided by the Independent Certifier to the other parties.

3.14 Co-operation with Other Independent Certifiers

- (a) The parties acknowledge and agree that:
 - (i) OpCo's Activities interface with the Other Contractors' Activities and FSM Works; and
 - (ii) another independent certifier may be engaged by the Principal (**Other Independent Certifier**) to certify that any Other Contractors' Activities or FSM Works have been designed and constructed in accordance with the requirements of the relevant contract.
- (b) Without limiting or otherwise affecting any of the Independent Certifier's obligations under this deed, the Independent Certifier must co-operate with Other Independent Certifiers, and do everything reasonably necessary to facilitate Other Independent Certifiers to certify the design and construction of Other Contractors' Activities and FSM Works, including providing Other Independent Certifiers with such assistance or information as may be directed by the Principal's Representative.
- (c) The Independent Certifier must ensure that the Principal is provided with a copy of any written communication given by the Independent Certifier to an Other Independent Certifier within 2 Business Days of providing the same to that Other Independent Certifier.

3.15 Document management and transmission

- (a) Without limiting clause 11.1, the Independent Certifier must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the SSTOM Specification or as otherwise required by the Principal's Representative.
- (b) Documents supplied to the Independent Certifier will remain the property of the Principal and must be returned by the Independent Certifier to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Services.
- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the Services in a secure and fire proof storage.
- (d) The Independent Certifier will not be entitled to make, and the Principal or OpCo will not be liable upon, any claim arising out of or in any way in connection with complying with its obligations under this clause 3.15.

- (e) The Independent Certifier must ensure that any documentation that it provides to the Principal or OpCo in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

3.16 Independent Certifier deed polls

- (a) The Independent Certifier must in respect of each Third Party Agreement executed by or on the date of this deed, on or within 5 Business Days of the date of this deed, deliver to the Principal's Representative deed polls in favour of each of the relevant Interface Owners duly executed by the Independent Certifier in the form required by the relevant Third Party Agreement.
- (b) The Independent Certifier and the Principal agree that the deed poll to be executed by the Independent Certifier in accordance with:
 - (i) the Penrith City Council Interface Agreement will be in the form of the deed poll in Schedule 8;
 - (ii) the Sydney Roads Interface Agreement will be in the form of the deed poll in Schedule 11;
 - (iii) the TFNSW (M12) Interface Agreement will be in form of the deed poll in Schedule 16; and
 - (iv) the Water NSW Interface Agreement will be in the form of the deed poll in Schedule 19.
- (c) The Independent Certifier must deliver to the Principal's Representative such further deed polls in favour of any applicable Third Party as may be required under the terms of any executed Draft Third Party Agreement or Additional Third Party Agreement within 5 Business Days of being provided with a copy of any executed Draft Third Party Agreement or Additional Third Party Agreement.

3.17 Third Party Agreements

- (a) The Independent Certifier acknowledges and agrees that:
 - (i) the Principal will enter into the Third Party Agreements;
 - (ii) as at the date of this deed the terms of the Third Party Agreements identified in Part B of Schedule 8 have not been finalised between the Principal and the relevant Third Party (each a **Draft Third Party Agreement**);
 - (iii) the Independent Certifier has reviewed the Draft Third Party Agreements; and
 - (iv) following execution of any Draft Third Party Agreement, after the date of this deed, the Principal must promptly give the Independent Certifier a copy of the execution version of the Draft Third Party Agreement.
- (b) The Independent Certifier must carry out its obligations under this deed on the basis of the execution version of the Draft Third Party Agreement.
- (c) If compliance with the terms of the execution version of any Draft Third Party Agreement, including any obligation to provide an additional deed poll contemplated

by clause 3.16(c), causes the Independent Certifier to incur costs which are additional to those that it would otherwise have incurred in complying with the terms of this deed, the Independent Certifier must notify the Principal's Representative of such additional costs and the Principal's Representative will then determine the amount of additional costs in accordance with paragraph 4 of Schedule 2.

- (d) The parties acknowledge and agree that:
 - (i) as at the date of this deed there may be additional Third Party Agreements which the Principal may, in its absolute discretion, enter into (each an Additional Third Party Agreement); and
 - (ii) if compliance with the terms of the Additional Third Party Agreement, including any obligation to provide an additional deed poll contemplated by clause 3.16(c), causes the Independent Certifier to incur costs which are additional to that it would otherwise have incurred in complying with the terms of this deed, the Principal may issue to the Independent Certifier an Additional Services Order under clause 6.1 to comply with the terms of the Additional Third Party Agreement as if it were an Additional Service.

3.18 Health and Safety Management Plan

- (a) The Independent Certifier must prepare and submit within 25 Business Days of the date of this deed, for approval by the Principal, a Health and Safety Management Plan which must:
 - (i) identify all inherent and introduced health and safety risks for all phases of the Services;
 - (ii) assess and evaluate identified risks using the methods documented in the Sydney Metro Principal Contractor Health and Safety Standard (SM-20-00100838), which are relevant to the Services;
 - (iii) include a COVID Management Plan that complies with:
 - (A) Infrastructure NSW's "Covid-19 work, health and safety guidance for NSW Construction sites"; and
 - (B) Other guidance as published by both state and federal departments of health and health and safety regulatory authorities; and
 - (iv) addresses:
 - (A) the requirements of AS/NZS ISO4801 and ISO 45001;
 - (B) OpCo's safe working requirements; and
 - (C) any other requirements of the Principal which are relevant to the Services, including under the Sydney Metro Principal Contractor Health and Safety Standard (SM-20-00100838) v6.
- (b) The Independent Certifier must comply with and implement the strategies set out in the Health and Safety Management Plan at no additional cost to the Principal.

4. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY

4.1 Independent Certifier to be independent

- (a) The Independent Certifier warrants to the Other Parties that in performing the Services, it will act:

- (i) independently of the Other Parties, OpCo Contractors and any beneficiary to a deed poll executed by the Independent Certifier in accordance with clause 3.16;
 - (ii) honestly and reasonably;
 - (iii) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design, construction, operation and maintenance of railways or rapid transit services of major engineering works in particular; and
 - (iv) within the times prescribed under the Project Agreements or as anticipated by the Delivery Program, or such other programs that become relevant to the performance of the Services during the Term.
- (b) Without limiting clause 4.3(a):
- (i) the Independent Certifier has been engaged by the Principal and the FIW Contractors prior to OpCo having been engaged by the Principal;
 - (ii) the parties acknowledge that the Independent Certifier may (after receiving the prior written consent of the Principal which may be withheld or granted (after consultation with the Other Parties) in its absolute discretion) be engaged by OpCo as independent certifier (downstream), but not in any other role, in relation to the SSTOM PPP but must demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to perform the Services independently of OpCo, notwithstanding its engagement by OpCo as independent certifier (downstream) in relation to the SSTOM PPP;
 - (iii) OpCo may not make any claim against the Principal or (to the extent that the Independent Certifier complies with this deed) the Independent Certifier arising out of or in any way in connection with the Independent Certifier being engaged by the FIW Contractors in relation to the FIW Works; and
 - (iv) neither the Principal nor OpCo may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence solely because it is engaged by the FIW Contractors in relation to the FIW Works.

4.2 Confidentiality

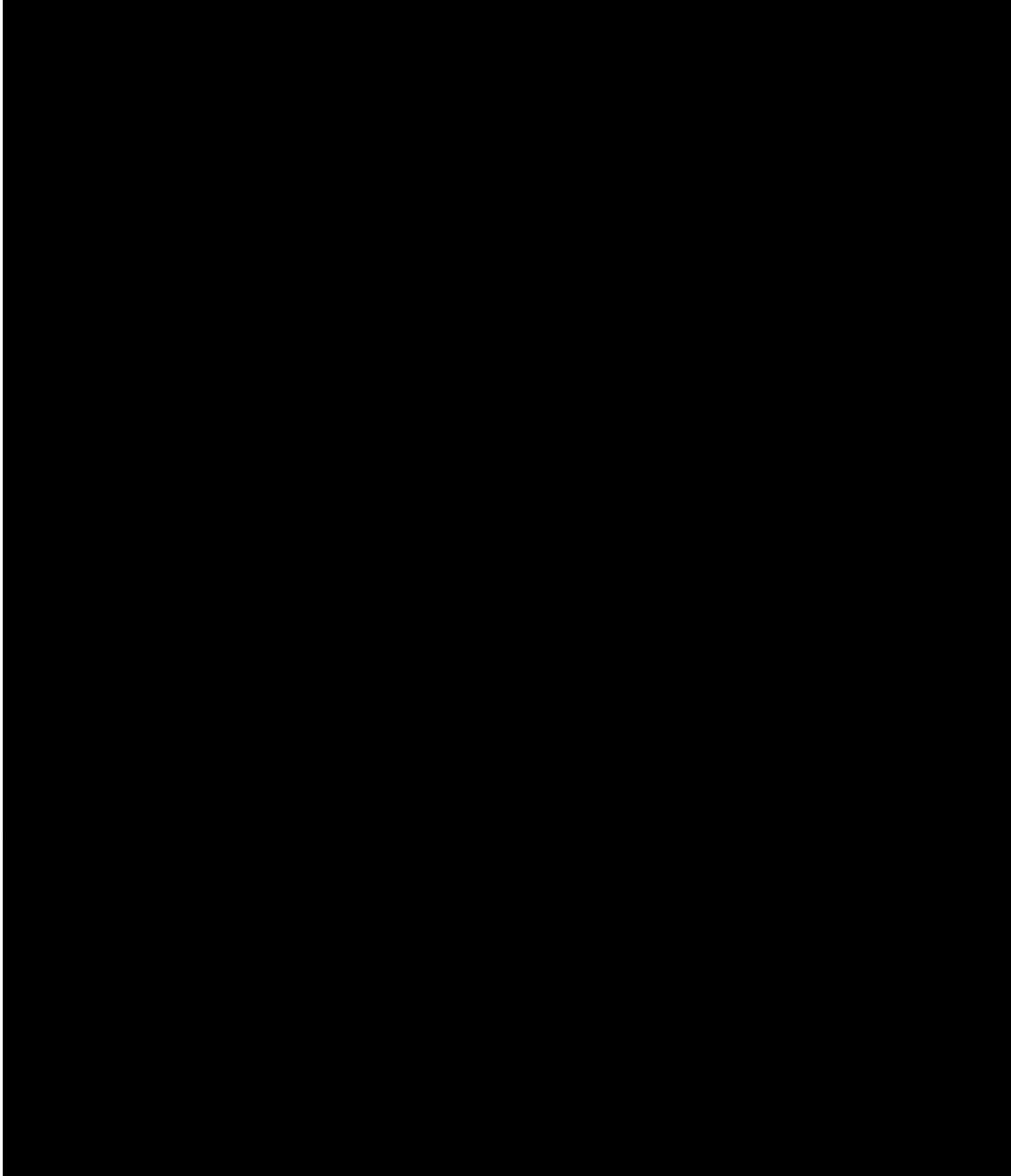
The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, OpCo's Activities, the SSTOM Works, this deed, the Project Agreements or the Sydney Metro – Western Sydney Airport project and not provide, disclose or use the information or documents except:
 - (i) to disclose them to the Other Parties;
 - (ii) for the purposes of performing the Services;
 - (iii) where required by Law or to obtain legal advice on this deed; or
 - (iv) with the prior written consent of the Other Parties; and

- (b) ensure that its subcontractors comply, and that any other person to whom it discloses any information or documents referred to in clause 4.2(a) for the purposes of performing the Services complies, with the terms of clause 4.2(a).

This obligation will survive completion of the Services or the termination of this deed.

4.3 Exclusivity



5. OBLIGATIONS OF THE OTHER PARTIES

5.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause.

- (b) Clause 5.1(a) will not prevent the Other Parties from providing written comments in accordance with the Project Agreements to the Independent Certifier in respect of the Design Documentation, IC Project Plans or any other aspect of OpCo's Activities (including in connection with the Independent Certifier's determination of whether a Test Procedure complies with the SSTOM Project Deed, whether a Test has been passed, whether the requirements for First Passenger Service have been satisfied or whether Completion and Final Completion has been achieved by OpCo) and the Independent Certifier must consider any such comments received from the Other Parties.

5.2 Co-operation

- (a) Without limiting or otherwise affecting any of OpCo's obligations under this deed or the Project Agreements, OpCo must:
 - (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise reasonably requested by the Independent Certifier or directed by the Principal;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to all premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as reasonably requested by the Independent Certifier or directed by the Principal, including allowing the Independent Certifier to have safe, convenient and unimpeded access to the Construction Site and any Extra Land and all areas where OpCo's Activities are being performed, from the date on which OpCo is provided with access under the SSTOM Project Deed; and
 - (iii) ensure that Hold Points and Witness Points are included in the Delivery Program as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services.
- (b) OpCo must ensure that the Principal is provided with a copy of any written communication given by OpCo to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

5.3 Principal to have no liability

Each party acknowledges that the Principal is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable:

- (a) to any party to this deed by reason of the Principal being a party to this deed; or
- (b) for the performance of any obligation of OpCo or the Independent Certifier under this deed or under any Project Agreement.

6. ADDITIONAL SERVICES, CHANGES TO CORE SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER

6.1 Additional Services

- (a) The Principal may at any time during the Term, issue a notice to the Independent Certifier setting out details of a proposed Additional Services Order that the Principal is considering (**Additional Services Request**).
- (b) As soon as practicable, and in any event within 10 Business Days after the issue of the Additional Services Request, the Independent Certifier must provide the Principal with an Additional Services Proposal setting out:

- (i) a description of the Additional Services to be performed by the Independent Certifier under the Additional Services Request, including:
 - (A) the program for carrying out the Additional Services;
 - (B) the personnel required to perform the Additional Services; and
 - (C) the estimated number of hours or days (as applicable) required to be performed by each personnel; and
- (ii) the proposed Additional Services Fee and the Upper Limiting Fee for the performance of the Additional Services the subject of the Additional Services Request, which must be:
 - (A) calculated by reference to the schedule of rates set out in the Payment Schedule; or
 - (B) if the nature of the services are such that the schedule of rates set out in the Payment Schedule is not applicable, based on reasonable rates and prices.
- (c) The Additional Services Proposal must remain valid for acceptance by the Principal for the period stated in the proposal which must be not less than 30 Business Days after the date of the proposal (**Validity Period**).
- (d) Within the Validity Period, the Principal may by written notice to the Independent Certifier, do one of the following:
 - (i) advise the Independent Certifier that the Principal:
 - (A) requires further information or clarification with respect to the Additional Services Proposal; or
 - (B) has altered the scope of the Additional Services Request,

in which case the Independent Certifier must provide the Principal with an updated Additional Services Proposal within 5 Business Days of receiving the Principal's notice under this clause 6.1(d)(i) and this clause 6.1(d) will reapply to the updated Additional Services Proposal;
 - (ii) withdraw the proposed Additional Services Request, in which case the Independent Certifier must not carry out the Additional Services; or
 - (iii) issue an Additional Services Order setting out:
 - (A) a description of the Additional Services to be performed by the Independent Certifier; and
 - (B) the Upper Limiting Fee for the performance of the Additional Services.
- (e) The Independent Certifier must, within 5 Business Days of receipt of the Additional Services Order, provide the Principal with a notice either:
 - (i) accepting the Additional Services Order; or
 - (ii) subject to clauses 6.1(f) and 6.1(g), containing detailed written reasons why it cannot accept the Additional Services Order (acting reasonably).
- (f) For the purpose of clause 6.1(e), the Independent Certifier must accept and comply with any Additional Services Order issued by the Principal in accordance with clause

- 6.1(a), unless the Independent Certifier can demonstrate, to the Principal's reasonable satisfaction, that the Independent Certifier:
- (i) would be in breach of this deed as a consequence of performing the Additional Services contemplated under the Additional Services Order; or
 - (ii) does not have the expertise or experience required to perform the Additional Services contemplated under the Additional Services Order in accordance with this deed.
- (g) Without limiting clause 6.1(f), the Independent Certifier acknowledges and agrees that it would be acting unreasonably by not accepting an Additional Services Order due to a disagreement in relation to the proposed Upper Limiting Fee for the performance of Additional Services subject to an Additional Services Order, and in these circumstances the Independent Certifier must:
- (i) accept the Additional Services Order in accordance with clause 6.1(e)(i);
 - (ii) provide a written notice of disagreement to the Principal with respect to the proposed Upper Limiting Fee; and
 - (iii) perform the Additional Services in accordance with the Additional Services Order.
- (h) If the Principal and the Independent Certifier do not agree to the applicable Upper Limiting Fee within 5 Business Days after the issue of the Independent Certifier's written notice under clause 6.1(g)(ii), the Principal's Representative (acting reasonably and independently) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in accordance with clause 8 and/or any subsequent court proceedings.
- (i) An Additional Services Order is deemed accepted for all purposes under this deed if no notice is received by the Principal from the Independent Certifier in accordance with clause 6.1(e).
- (j) If an Additional Services Order is accepted or deemed to be accepted by the Independent Certifier under this clause 6.1:
- (i) the Additional Services set out in that Additional Services Order become part of the Services and must be performed in accordance with this deed; and
 - (ii) the Additional Services Fee (if any) set out in that Additional Services Order becomes part of the Fee and must be paid in accordance with this deed.
- (k) The Principal is not obliged to:
- (i) issue any Additional Services Request to the Independent Certifier under clause 6.1(a); or
 - (ii) proceed with any Additional Services Proposal issued under clause 6.1(b).
- (l) The Independent Certifier acknowledges that:
- (i) the Principal has made no representations as to the amount of work (if any) which the Principal may request the Independent Certifier to perform under Additional Services Orders;
 - (ii) the Independent Certifier may not make any claim against the Principal on the basis that the Principal has not requested or engaged the Independent

Certifier to perform any or sufficient work under Additional Services Orders;
and

- (iii) the Principal is entitled to engage other contractors to perform services similar to the Services.

6.2 Change to Core Services

Without limiting clause 6.1, the Principal (after prior consultation with OpCo) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Core Services (including an addition or omission) and the Independent Certifier must comply with that direction.

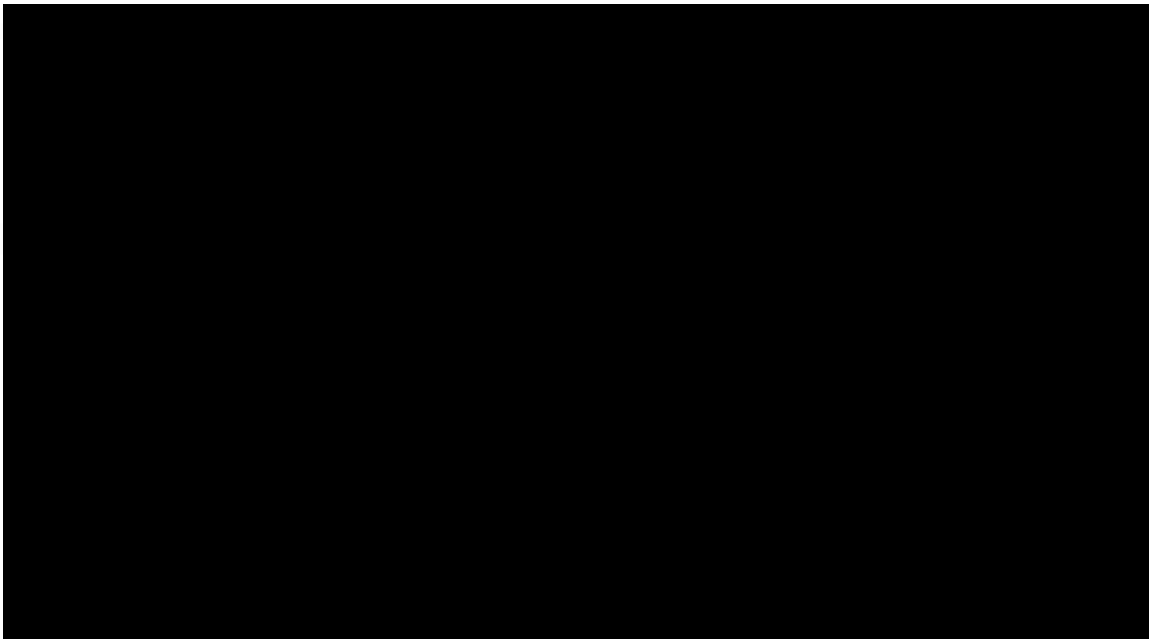
6.3 Suspension of Services

The Principal (after prior consultation with OpCo) may, by written notice to the Independent Certifier (copied to OpCo), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

6.4 Appointment of Substitute Certifier

- (a) The Independent Certifier acknowledges and agrees that the Principal may, after consultation with the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Core Services directed under clause 6.2, and any decision of a Substitute Certifier appointed will be treated (between the Principal, OpCo and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier will have all of the rights, powers and obligations of the Independent Certifier under the Project Agreements in connection with those Services.
- (b) Notwithstanding a change to the Core Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 6, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

7. LIABILITY, INSURANCE AND INDEMNITY



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

7.9 [Redacted text block]

[Redacted text block]

8.3 Continue to perform

Notwithstanding the existence of a dispute, each of the Other Parties and the Independent Certifier must continue to perform their obligations under this deed.

9. TERMINATION OF APPOINTMENT

9.1 Notice of termination

Following consultation with the Other Parties, the Principal may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier (copied to OpCo) if:

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Principal;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Principal of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier;
- (d) a Change in Control of any entity that comprises the Independent Certifier or of a Parent Company Guarantor occurs without the prior written consent of the Principal (other than a Change in Control permitted under the SMWSA Framework Agreement);
- (e) a Restructure Event occurs without the prior written consent of the Principal; or
- (f) the Principal in its absolute discretion for any reason whatsoever serves on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

9.2 Termination

Where a notice is served on the Independent Certifier under clause 9.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 9.1; or
- (b) the appointment of a replacement for the Independent Certifier.

9.3 Delivery of documents

Upon the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Services, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services;
- (b) may retain a copy of those books, records, drawings, specifications and other documents referred to in clause 9.3(a) for the sole purpose of business record keeping, insurance and quality assurance, subject to the Independent Certifier complying with its confidentiality obligations under clause 4.2; and
- (c) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the Sydney Metro – Western Sydney Airport project, the SSTOM PPP, OpCo's Activities or the Project Agreements, provided that the

Independent Certifier will have no liability to the Other Parties in relation to any documents handed over pursuant to clause 9.3(a) unless such documents have been formally issued and marked as final by the Independent Certifier.

9.4 Reasonable assistance

Where the Other Parties give a notice under clause 9.1 of termination of the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

9.5 Payment until date of termination

Where the appointment of the Independent Certifier is terminated under clause 9.1(f), the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for Services performed up to the date of the termination.

9.6 Termination without prejudice

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Other Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

9.7 Survive termination

This clause 9 will survive the termination of this deed by the Other Parties under clause 9.1.

9.8 Rights upon termination

If the appointment of the Independent Certifier is terminated pursuant to clauses 9.1(a) to 9.1(e), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the deed had the Independent Certifier repudiated the deed and the Other Parties elected to treat the deed as at an end and recover damages.

10. GST

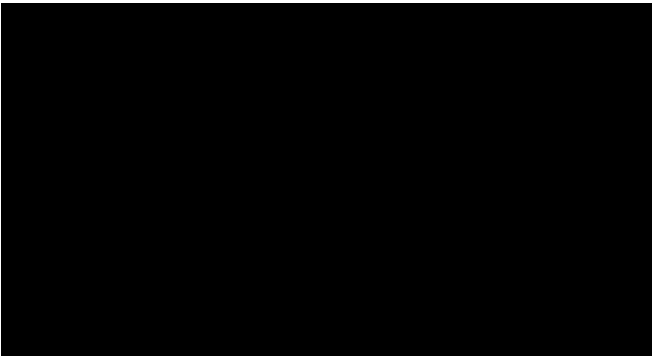
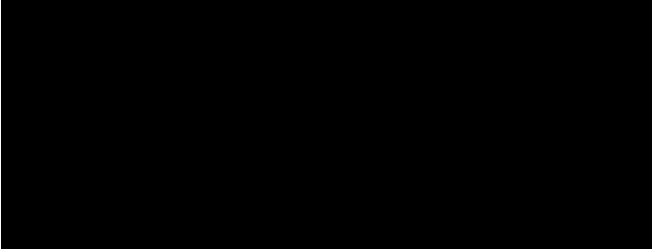
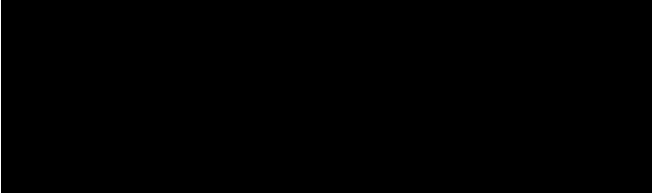
- (a) Except where the context suggests otherwise, terms used in this clause 10 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 10) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 10.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to

the amount of that GST at the same time as any other consideration is to be first provided for that supply.

- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 10(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 10(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 10(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

11. GENERAL

11.1 Notices

- (a) Wherever referred to in this clause 11.1, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the Principal's Representative may notify the Independent Certifier that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Independent Certifier to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
 - (i) before the date referred to in clause 11.1(b):
 - (A) be in writing;
 - (B) be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (aa) to the Principal's Representative:
Address: 
Email: 
Attention: 
 - (bb) to the Independent Certifier:

Address:

Email:

Attention:

(cc) to OpCo:

Address:

Email:

Attention:

(dd) to the Process Agent:

Address:

Email:

Attention:

(ii) on and from the commencement date for use of the PDCS referred to in clause 11.1(b):

- (A) be sent through the PDCS in accordance with the requirements set out in clause 11.1(e); and
- (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 11.1(c)(i).

(d) A communication is taken to be received by the addressee:

- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
- (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
- (iii) (in the case of international post) 7 Business Days after the date of posting; and
- (iv) (in the case of delivery by hand) on delivery; and
- (v) (in the case of email):
 - (A) if it is transmitted by 5:00 pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5:00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

(e) With respect to Notices sent through the PDCS:

- (i) all Notices must be submitted 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;
 - (ii) only the text in any Notice, or subject to clause 11.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The Independent Certifier warrants that it will:
- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the Independent Certifier from time to time;
 - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (v) advise the Principal's Representative of which personnel require access to the PDCS;
 - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 11.1(c)(ii)(B) to the Principal's Representative through the PDCS.
- (g) The Principal has no liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Independent Certifier will not be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with the Independent Certifier's access to or use of the PDCS or any failure of the PDCS.

11.2 Appointment of a Process Agent

- (a) Without prejudice to any mode of service allowed under any relevant law, the Independent Certifier:
 - (i) irrevocably appoints [REDACTED] in relation to proceedings in the State of New South Wales as its process agent to receive any document in an action in connection with this deed;

- (ii) agrees that service of documents on its process agent at the address set out above (or any new address notified to other parties in writing) is sufficient service on it; and
 - (iii) agrees that failure by a process agent to notify it of any document in an action in connection with this deed, will not invalidate the action concerned.
- (b) If for any reason the person named above as process agent ceases to be able to act as process agent, the Independent Certifier must promptly appoint another person as its process agent in Australia, ensure that the replacement process agent accepts its appointment, and promptly provides the Principal with notice of the appointment of the replacement process agent.

11.3 Governing Law

This deed is governed by and must be construed according to the law applying in New South Wales.

11.4 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 11.4(a).

11.5 Principal as a public authority

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier and OpCo acknowledges and agrees that, without limiting clause 11.5(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle any of the Independent Certifier or OpCo to make any claim against the Principal.
- (c) The parties agree that clauses 11.5(a) and 11.5(b) are taken not to limit any liability which the Principal would have had to the Independent Certifier or OpCo under this deed as a result of a breach by the Principal of a term of this deed but for clauses 11.5(a) and 11.5(b) of this deed.

11.6 Amendments

This deed may only be varied by a deed executed by or on behalf of each of the parties.

11.7 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 deed 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 deed.

- (b) A waiver or consent given by a party under this deed 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 deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

11.8 Cost of performing obligations

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

11.9 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 deed.

11.10 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

11.11 Assignment

- (a) Assignment by the Independent Certifier

The Independent Certifier cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

- (b) Assignment by OpCo

OpCo cannot assign, novate or otherwise transfer any of its rights, interests or obligations under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

- (c) Assignment and novation by the Principal

- (i) Without limiting clause 11.12, the Principal may:

- (A) assign, novate or otherwise transfer all or any part of this deed, its interest in the subject matter of this deed or any right under this deed to a Government Agency without the Independent Certifier or OpCo's prior approval, provided that the assignee, novatee or transferee (as applicable) is also the party to whom the Principal is assigning, novating or transferring its rights under the SSTOM Project Deed in accordance with the terms of the SSTOM Project Deed; and

- (B) not otherwise assign, novate or otherwise transfer all or any part of this deed, its interest in the subject matter of this deed or any right under this deed without each of the Other Parties' prior written consent (which must not be unreasonably withheld or delayed),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the Independent Certifier or OpCo.

- (ii) The Independent Certifier and OpCo:

- (A) agree to such assignment, novation or transfer referred to in clause 11.11(c)(i)(A) such that no further consent is required; and
 - (B) must promptly do all further acts and execute and deliver all further documents (in form and content satisfactory to the Principal) required to give effect to any assignment, novation or transfer of this deed.
- (iii) In the case of a novation by the Principal under this clause:
- (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal, the Independent Certifier and OpCo against one another under this deed will cease;
 - (B) the novated agreement will be on the same terms as this deed, such that the incoming party, the Independent Certifier and OpCo will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 11.11(c)(iii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
 - (C) the Independent Certifier and OpCo consent to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

11.12 Transfer of functions or Public Transport Agency assets

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Independent Certifier and OpCo acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Independent Certifier and OpCo will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 11.12.

- (d) For the purposes of this clause 11.12, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

11.13 Replacement body

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

11.14 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.
- (b) Either party may electronically sign a soft copy of this deed through DocuSign and in doing so will bind itself to the terms and conditions of this deed. The parties agree that electronic signing of this deed by a party to it will satisfy any statutory or other requirements for this deed to be in writing and signed by that party.

11.15 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

11.16 Expenses

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

11.17 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed:

- (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.

11.18 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

11.19 No agency, partnership, joint venture or other fiduciary relationship

Subject to clause 1.8, nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

11.20 Severance

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

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

11.21 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this deed or otherwise, are expressly waived.

SCHEDULE 1

Core Services

1. GENERAL

- (a) The Independent Certifier is engaged to certify that OpCo has designed and constructed the SSTOM Works in accordance with the requirements of the SSTOM Project Deed.
- (b) The Independent Certifier must:
 - (i) at all times:
 - (A) act independently of the Other Parties, the OpCo Contractors and any beneficiary to a deed poll executed by the Independent Certifier in accordance with clause 3.16; and
 - (B) be familiar with its role, functions, obligations, duties and services (express or implied) under this deed;
 - (ii) in carrying out its obligations under this deed, review and have regard to all:
 - (A) subject to clause 3.7(b), documents and information made available to the Independent Certifier by the Principal and OpCo; and
 - (B) comments provided by the Principal's Representative in respect of OpCo's Activities; and
 - (iii) provide no lesser levels of resourcing than that detailed in Schedule 3.
- (c) Without limiting paragraph 1(b)(ii)(A), the documents and information that the Principal may make available to the Independent Certifier include:
 - (i) Design Documentation, including design packages including design drawings, design reports and associated specifications;
 - (ii) Project Plans;
 - (iii) requirements verification and traceability matrices;
 - (iv) minutes in respect of each meeting referred to in paragraph 2.2;
 - (v) monthly reports submitted by OpCo;
 - (vi) reports submitted by OpCo in relation to any Defects that it detects (including all action proposed to correct that Defect);
 - (vii) reports or results of any on-site or off-site inspection, testing and audits regarding quality or compliance; and
 - (viii) any other reports, notices, correspondence and other documents in relation to any actual or potential non-compliance with the SSTOM Project Deed.
- (d) The Core Services include:
 - (i) all the functions, obligations, duties and services set out in this Schedule 1; and
 - (ii) all things which would be reasonably expected of a professional performing those functions, obligations, duties and services.

- (e) In performing the Design Phase Services set out in paragraph 2.3:
 - (i) the Independent Certifier is not required to carry out "first principles" calculations or "proof engineering" in connection with the Design Documentation;
 - (ii) the scope of Design Documentation that the Independent Certifier will be required to certify under the SSTOM Project Deed will be Design Stage 3 Design Documentation under the SSTOM Project Deed (including the Third Party Agreements as defined under the SSTOM Project Deed);
 - (iii) the Independent Certifier will determine the required extent of review applied to the Design Documentation using a risk based approach that considers factors including:
 - (A) the quality of evidence provided;
 - (B) complexity of the design;
 - (C) the assessed risk and consequence of failure;
 - (D) potential impact to system wide engineering outcomes and operational performance of the Sydney Metro – Western Sydney Airport project; and
 - (E) the degree of standardisation or industry experience with the design;
 - (iv) to the extent it is required to review and comment on Design Documentation, the Independent Certifier will limit its comments to:
 - (A) for Design Documentation that is not RID Design Documentation, whether the Design Documentation is compliant, or non-compliant with the requirements of the SSTOM Project Deed or observations (with detailed reasons); and
 - (B) for the RID Design Documentation, any:
 - (aa) RID Design Documentation Issue (whether raised in a RID Non-Compliance Statement, or otherwise); or
 - (bb) actual or potential non-compliances with the SSTOM Project Deed or observations (with detailed reasons);
 - (v) to the extent it is required to review comments from the Principal or third parties on Design Documentation, take reasonable steps to:
 - (A) rationalise and reconcile those comments (including any potential inconsistencies between them);
 - (B) differentiate between comments in respect of compliance with the requirements of the SSTOM Project Deed and other extraneous comments; and
 - (C) only have regard to comments in respect of compliance with the SSTOM Project Deed (subject to the Independent Certifier's obligations to consider comments from Third Parties under the Third Party Agreements as defined under the SSTOM Project Deed); and
 - (vi) the Independent Certifier must, in performing the Design Phase Services for Third Party Design Documentation, comply with the specific requirements of the relevant Third Party Agreement.

- (f) The Independent Certifier has the principal obligation to carry out all surveillance activities necessary to perform the Services in accordance with the SSTOM Project Deed, including to undertake the surveillance and provide the surveillance resources set out in:
 - (i) the Certification Plan;
 - (ii) the Minimum Surveillance Commitment; and
 - (iii) the Certification Methodology.
- (g) The Independent Certifier acknowledges and agrees that nothing in this Schedule 1 is intended to limit any other provision of the SSTOM Project Deed under which the Independent Certifier will or may receive documents or comments including, but not limited to, under clauses 9.2(b), 9.3(c), 9.5(a)(i)(B), 9.6, 11.6(a), (c) and (h), 11.8(a) and (g), 11.9(d), (e), (g), (i), 11.10(c) and (e), 16.8(d)(ii) and (g), 20.3(b)(vii), 21.2(b) and(c), 21.3(a), (c), and (d), 21.5(b) and (c), 21.8(d), 22.1(a)(iv) and (v), 22.2(a) and (b), 22.7(b), 22.8(a) and (b), 22.10(b)(v) and (vi) and (c) and clauses 2.1(c)(i)(B), 3.1(b) and (d), 3.4(e) and 3.7(a) of Schedule 11 of the SSTOM Project Deed.

2. CORE SERVICES UNDER THE SSTOM PROJECT DEED

2.1 Defined terms

Defined terms in this section 2 have the meaning set out in the SSTOM Project Deed, unless otherwise defined in this deed.

2.2 General Services

- (a) The Independent Certifier is required to perform the functions set out in the SSTOM Project Deed which includes, amongst other things, independently certifying in accordance with the SSTOM Project Deed:
 - (i) that the IC Project Plans which are provided to the Independent Certifier in accordance with clause 9 of the SSTOM Project Deed comply with the requirements of the SSTOM Project Deed;
 - (ii) that the Design Stage 3 Design Documentation which is provided to the Independent Certifier in accordance with the Design Review Process complies with the requirements of the SSTOM Project Deed;
 - (iii) that the Test Procedures comply with the requirements of the SSTOM Project Deed;
 - (iv) the outcome of the Tests;
 - (v) the completion of Local Area Works;
 - (vi) that the requirements for First Passenger Service on Sydney Metro – Western Sydney Airport have been satisfied;
 - (vii) the achievement of Completion; and
 - (viii) the achievement of Final Completion.
- (b) The Independent Certifier must be provided with all information and documents by the Principal and OpCo and be allowed:
 - (i) to attend meetings (including any Senior Project Group meetings); and

- (ii) access to all premises,
as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under this deed.
- (c) The Independent Certifier must, throughout the Term:
 - (i) ensure that a representative attends:
 - (A) a monthly progress meeting with the Principal's Representative within 5 Business Days of the submission of each monthly progress report to the Principal's Representative in accordance with clause 3.10 of this deed; and
 - (B) in respect of the submission of Design Documentation for each key design pack (an indicative list of which is set out in Exhibit 1 (Indicative list of OpCo submissions)), a design presentation workshop delivered by OpCo within 5 Business Days of submitting the Design Documentation for each design stage;
 - (ii) promptly notify the Other Parties of:
 - (A) elements of the Design Documentation that do not (or may not) comply with the SSTOM Project Deed;
 - (B) actual or potential Defects no later than 2 Business Days after the end of the month; or
 - (C) other non-compliances with the SSTOM Project Deed,
that it identifies when attending meetings and performing its surveillance and other functions; and
 - (iii) make a determination as to whether:
 - (A) a Defect is a Defect that OpCo has reasonable grounds for not promptly rectifying and is therefore a Minor Defect; or
 - (B) a minor error, minor omission or minor non-compliance is an error, omission or non-compliance that OpCo has reasonable grounds for not promptly correcting prior to the certification required to be obtained under the SSTOM Project Deed and is therefore a Minor Non-Compliance; and
 - (iv) if it makes a determination under section 2.2(c)(iii) notify the Other Parties of the existence of any Minor Defect or Minor Non-Compliance.

2.3 Design Phase Services

- (a) **Clause 9.3(f):** The Independent Certifier may, during the Delivery Phase only, acting reasonably, insert Hold Points or Witness Points in the IC Project Plans and designate the authority to release the Hold Points.
- (b) **Clause 9.5(a):** During the Delivery Phase, in relation to the IC Project Plans, the Independent Certifier must:
 - (i) review each IC Project Plan submitted under clause 9 of the SSTOM Project Deed;
 - (ii) within 20 Business Days following submission of the IC Project Plan to the Principal's Representative and Independent Certifier by OpCo and taking into

account any comments received from the Principal's Representative in accordance with clause 9.5(a)(i)(B) of the SSTOM Project Deed, determine whether the IC Project Plan complies with the requirements of the SSTOM Project Deed and either:

- (A) if the Independent Certifier considers that the IC Project Plan does not comply with the requirements of the SSTOM Project Deed, notify OpCo of the non-compliances (with detailed reasons);
 - (B) if the Independent Certifier considers that one or more sub-plans comprising the IC Project Plan does not comply with the requirements of the SSTOM Project Deed:
 - (aa) certify the compliant sub-plans in the IC Project Plan by providing to OpCo a certificate (with a copy to the Principal's Representative) in the form of Part A of Schedule 34 (*Certificates*) of the SSTOM Project Deed; and
 - (bb) notify OpCo (with a copy to the Principal's Representative) of the non-compliances in the sub-plans in the IC Project Plan (with detailed reasons); or
 - (C) if the Independent Certifier considers that the IC Project Plan complies with the requirements of the SSTOM Project Deed, certify the IC Project Plan by providing to OpCo a certificate in the form of Part A of Schedule 34 (*Certificates*).
- (c) **Clause 9.5(d):** If the certificate provided by the Independent Certifier pursuant to clauses 9.5(a)(i)(C)(II)(1) or 9.5(a)(i)(C)(III) of the SSTOM Project Deed lists any Minor Non-Compliance the Independent Certifier determines that OpCo has reasonable grounds for not promptly correcting prior to the certification, the Independent Certifier:
- (i) may, in the certificate, identify the action that must be taken by OpCo to address the Minor Non-Compliance and specify a time frame within which OpCo must complete the required action; and
 - (ii) will, following receipt from OpCo of a copy of the corrected IC Project Plan or other reasonable evidence in such detail that the Independent Certifier may require to confirm that the Minor Non-Compliance has been addressed, determine if the Minor Non-Compliance has been addressed.
- (d) **Clause 9.6:** If any IC Project Plan does not comply with the requirements of the SSTOM Project Deed or OpCo has not updated any IC Project Plan in accordance with the requirements of clause 9.3(a) of the SSTOM Project Deed, the Independent Certifier may by written notice request that OpCo amend or update the IC Project Plan specifying:
- (i) the reasons why such updating is required (or why the IC Project Plan does not comply with the SSTOM Project Deed); and
 - (ii) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required).
- (e) **Schedule 11, Clause 2.1(c)(iii):** The Independent Certifier may consult with relevant Third Parties in considering Design Documentation submitted by OpCo in accordance with clause 3.1(b) of Schedule 11 of the SSTOM Project Deed.
- (f) **Schedule 11, Clause 3.3:** Whenever OpCo submits Design Stage 1 Design Documentation, Design Stage 2 Design Documentation or Design Stage 3 Design Documentation pursuant to clause 3.1 of Schedule 11 of the SSTOM Project Deed:

- (i) the Independent Certifier must attend the design presentation workshop, along with the Principal's Representative and any nominees of the Principal, delivered by OpCo within 5 Business Days of OpCo's submission; and
 - (ii) the Independent Certifier may require OpCo to make available the appropriate design personnel to:
 - (A) explain the Design Documentation; and
 - (B) provide such information regarding the Design Documentation as the Independent Certifier reasonably requests.
- (g) **Schedule 11, Clause 3.4(a)** The Independent Certifier must, within 20 Business Days of OpCo's submission of Design Stage 1 Design Documentation or Design Stage 2 Design Documentation in accordance with clause 3.1(b) of Schedule 11 of the SSTOM Project Deed:
- (i) review the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, and, in so doing consider:
 - (A) for RID Design Documentation, any:
 - (aa) RID Design Documentation Issue; and
 - (bb) any actual or potential non-compliances with the SSTOM Project Deed or observations raised by any Authorities; and
 - (B) for Design Documentation that is not RID Design Documentation, any actual or potential non-compliances with the SSTOM Project Deed or observations raised by any Authorities;
 - (ii) address the comments (if any) received by it from the Principal's Representative under clause 3.1(d) of Schedule 11 of the SSTOM Project Deed and any Third Party; and
 - (iii) notify OpCo in writing of:
 - (A) for RID Design Documentation, any:
 - (aa) RID Design Documentation Issue (whether raised in a RID Non-Compliance Statement, or otherwise); or
 - (bb) actual or potential non-compliances with the SSTOM Project Deed or observations (with detailed reasons); or
 - (B) for Design Documentation that is not RID Design Documentation, any actual or potential non-compliances with the SSTOM Project Deed or observations (with detailed reasons).
- (h) **Schedule 11, Clause 3.4(b)**: If the Independent Certifier provides a notice to OpCo under clause 3.4(a)(iii) of Schedule 11 of the SSTOM Project Deed and OpCo disagrees with the Independent Certifier's opinion, OpCo must, within 20 Business Days of OpCo receiving that notice, give the Principal's Representative a written response in accordance with clause 3.4(b)(i)(A) of the Schedule 11 of the SSTOM Project Deed, and following the receipt of such notice from OpCo under clause 3.4(b)(i)(A) of Schedule 11 of the SSTOM Project Deed, the Independent Certifier, the Principal and OpCo may meet to discuss and attempt, in good faith, to resolve the difference of opinion.

- (i) **Schedule 11, Clause 3.4(c):** The Independent Certifier must, within 20 Business Days of OpCo's submission of Design Stage 3 Design Documentation in accordance with clause 3.1(b) of the SSTOM Project Deed:
- (i) review that Design Stage 3 Design Documentation, and in doing so consider:
 - (A) for RID Design Documentation, the comments received by it from the Principal's Representative, the Airport Lessee, the Commonwealth and any relevant Third Parties; or
 - (B) for Design Documentation that is not RID Design Documentation, the comments received by it from the Principal's Representative and any relevant Third Parties; and
 - (ii) determine whether or not that Design Documentation complies with the requirements of the SSTOM Project Deed and either:
 - (A) reject the Design Documentation (which rejection must be in writing, with detailed reasons, to OpCo with a copy to the Principal's Representative) if the Independent Certifier considers that the Design Documentation:
 - (aa) does not comply with the requirements of the SSTOM Project Deed, including if the Airport Lessee has issued a RID Non-Compliance Statement in accordance with the RID (Minor Non-Compliances excepted); or
 - (bb) is not sufficiently complete to enable the Independent Certifier to form a view on whether the Design Documentation is compliant,and if the Independent Certifier considers that some elements of the Design Documentation are not compliant and some elements of the Design Documentation are compliant, the Independent Certifier must specifically identify those elements that it considers are not compliant; or
 - (B) if the Independent Certifier considers that the Design Documentation complies with the requirements of the SSTOM Project Deed, certify the Design Documentation by:
 - (aa) including a notation on each document forming part of the Design Documentation;
 - (bb) providing to the Principal's Representative and OpCo a certificate in the form of Part Q of Schedule 34 of the SSTOM Project Deed (*Certificates (Independent Certifier's design certificate)*); and
 - (cc) if the Design Documentation is Third Party Design Documentation, providing any certification required by the relevant Third Party Agreement for such Third Party Design Documentation.
- (j) **Schedule 11, Clause 3.4(d):** If the Independent Certifier rejects any element of the Design Stage 3 Design Documentation under clause 3.4(c)(ii)(A) of Schedule 11 of the SSTOM Project Deed, and OpCo amends and re-submits the Design Stage 3 Design Documentation in accordance with clause 3.4(d) of Schedule 11 of the SSTOM Project Deed, then the process in clause 3.4(c) of Schedule 11 of the SSTOM Project Deed will reapply to the re-submitted Design Stage 3 Design Documentation.

(k) **Schedule 11, Clause 3.4(f):** If OpCo exercises its right under clause 3.4(d) of Schedule 11 of the SSTOM Project Deed and either:

- (i) in relation to Design Stage 3 Design Documentation that is re-submitted as required by clause 3.4(d)(i) of Schedule 11 of the SSTOM Project Deed, the Independent Certifier makes a determination under clause 3.4(c)(ii)(A) of Schedule 11 of the SSTOM Project Deed that, as a consequence of the amendments made by OpCo to the non-compliant elements of the Design Stage 3 Design Documentation prior to re-submission, any part of the Proceed at Own Risk Elements are now non-compliant;
- (ii) amendments are subsequently required to any part of the Proceed at Own Risk Elements in connection with the non-compliant elements of the relevant Design Documentation referred to in clause 3.4(e)(ii)(C) of Schedule 11 of the SSTOM Project Deed; or
- (iii) there has been any non-compliance with the requirements of clause 3.6(a) of Schedule 11 of the SSTOM Project Deed other than clause 3.6(a)(iii) of Schedule 11 of the SSTOM Project Deed,

then, (unless otherwise approved in writing by the Principal):

- (iv) OpCo must immediately cease any construction being carried out in respect of that part of the Proceed at Own Risk Elements;
- (v) the process in clause 3.4(d) of the Schedule 11 of the SSTOM Project Deed will apply in relation to that part as though it was a non-compliant element.

(l) **Schedule 11, Clause 3.4(g):** If OpCo gives a notice under clause 3.4(d)(ii) of Schedule 11 of the Project Deed, the Independent Certifier:

- (i) must meet in good faith with the Principal and OpCo to seek to resolve the disagreement within 10 Business Days of the date of the notice;
- (ii) may, in considering OpCo's notice given under clause 3.4(d)(ii) of Schedule 11 of the SSTOM Project Deed:
 - (A) for RID Design Documentation, consult further with the Principal's Representative, the Airport Lessee, the Commonwealth and any relevant Third Party on the matter which is the subject of the disagreement; or
 - (B) otherwise, consult further with the Principal's Representative and any relevant Third Party on the matter which is the subject of the disagreement; and
- (iii) must, within 10 Business Days of OpCo's notice, determine and notify the parties as to whether or not that notice satisfactorily addresses its concerns together with its reasons for forming that opinion and:
 - (A) if the Independent Certifier considers that OpCo's notice satisfactorily addresses the Independent Certifier's concerns, the Independent Certifier must provide the certification under clause 3.4(c)(ii)(B) of Schedule 11 of the SSTOM Project Deed as part of its notice; or
 - (B) if the Independent Certifier considers that the notice does not satisfactorily address the Independent Certifier's concerns, OpCo must amend and re-submit the relevant element of the Design Documentation in accordance with clause 3.4(d)(i) of Schedule 11 of the SSTOM Project Deed and the process in clause 3.4(c) of Schedule

11 of the SSTOM Project Deed will be reapplied to the amended element of the Design Documentation.

- (m) **Schedule 11, Clause 3.4(j):** If the certificate provided by the Independent Certifier pursuant to clause 3.4(c)(ii)(B)(II) of Schedule 11 of the SSTOM Project Deed lists any Minor Non-Compliances, the Independent Certifier:
 - (i) may, in the certificate, recommend the action that could be taken by OpCo to address the Minor Non-Compliance and specify a time frame within which OpCo must complete the recommended action,; and
 - (ii) must, following receipt from OpCo of a copy of the corrected Design Documentation or a statement in such detail that the Independent Certifier may require to confirm to OpCo and the Principal's Representative that the Minor Non-Compliance has been addressed, determine if the Minor Non-Compliance has been addressed.
- (n) **Schedule 11, Clause 3.4(k):** Within 5 Business Days of the Independent Certifier taking the action referred to in clause 3.4(k)(i), 3.4(k)(ii) or 3.4(k)(iii) of Schedule 11 of the SSTOM Project Deed (as applicable), the Independent Certifier must provide the Principal's Representative with detailed written reasons as to why it did not include the actual non-compliances or potential non-compliances identified by the Principal's Representative, or changed the categorisation of those non-compliances from that provided by the Principal's Representative, in the comments, rejection or certification (as applicable).
- (o) **Schedule 11, Clause 3.7(a):** If OpCo wishes to amend Final Design Documentation prior to the Date of Final Completion and submits the amended Design Documentation to the Independent Certifier in accordance with clause 3.7(a) of Schedule 11 of the SSTOM Project Deed, the process in clause 3.4 of Schedule 11 of the SSTOM Project Deed will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (p) **Schedule 11, Clause 3.7(c):** The Independent Certifier must, within 5 Business Days of receipt of the details referred to in clause 3.7(a)(iv) of Schedule 11 of the SSTOM Project Deed, notify OpCo (with a copy to the Principal's Representative) if it considers that the amendments to the Final Design Documentation are not Minor Final Design Documentation Amendments.
- (q) **Schedule 11, Clause 3.7(d):** The Independent Certifier must certify the amended Final Design Documentation submitted by OpCo in accordance with clause 3.7(a) of Schedule 11 of the SSTOM Project Deed under clause 3.4(c)(ii)(B) of Schedule 11 of the SSTOM Project Deed prior to the relevant SSTOM Works being covered up or becoming inaccessible for inspection.
- (r) **Schedule 11, Clause 3.7(e):** If OpCo exercises its right under clause 3.7(c) of Schedule 11 of the SSTOM Project Deed, the Independent Certifier may reject the amended Final Design Documentation in accordance with clause 3.4(c)(ii)(A) of Schedule 11 of the SSTOM Project Deed (and regardless of whether the relevant amendments are Minor Final Design Documentation Amendments), then (unless otherwise approved in writing by the Principal's Representative):
 - (i) OpCo must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but OpCo may commence or continue construction in accordance with any element of the amended Final Design Documentation that the Independent Certifier has not identified as being non-compliant with the SSTOM Project Deed; and

- (ii) the processes in clauses 3.4(c) and 3.4(d) of Schedule 11 of the SSTOM Project Deed will reapply in relation to the non-compliant element of the amended Final Design Documentation.
- (s) **Schedule 11, Clause 3.7(f):** Notwithstanding clause 3.7(c) of Schedule 11 of the SSTOM Project Deed, the Independent Certifier must certify the Final Design Documentation (including any amended Final Design Documentation) which is directly related to the conduct of a Performance Test prior to OpCo commencing any part of that Performance Test.

2.4 Completion Phase Services

- (a) **Clause 11.5(g):** The Independent Certifier is provided with the documents under clauses 11.6 to 11.9 of the SSTOM Project Deed are for information purposes only and only the Principal's Representative has the authority to review any such document.
- (b) **Clause 17.3(e):** If there is a dispute between the Principal and the relevant FIW Contractor during the Defects Correction Period (as defined and interpreted in accordance with the relevant FIW Contract) under the relevant FIW Contract as to whether an alleged defect the subject of a notice under clause 17.3(b)(i) of the SSTOM Project Deed constitutes an FIW Defect, the Independent Certifier acknowledges and agrees that it must determine whether an alleged defect constitutes a FIW Defect in accordance with the dispute resolution process in the FIW Contract.
- (c) **Clause 18.1(b)(i):** The Independent Certifier must certify each of the following IC Project Plans under clause 9.5 of the SSTOM Project Deed prior to OpCo commencing any work upon the Construction Site:
 - (i) Project Management Plan;
 - (ii) Risk Management Plan;
 - (iii) Health and Safety Plan – Delivery Phase;
 - (iv) Sustainability Plan – Delivery Phase;
 - (v) Safety Accreditation Plan;
 - (vi) Assurance and Governance Plan;
 - (vii) Construction Management Plan;
 - (viii) Incident Management Plan covering the Delivery Phase; and
 - (ix) Human Resources Plan.
- (d) **Clause 20.3(b)(ii)(C)(III):** The Independent Certifier may request OpCo to update the Delivery Program.
- (e) **Clause 21.2(d):** The Independent Certifier must, within 20 Business Days of the date on which it receives the Test Procedure under clause 21.2(b) of the SSTOM Project Deed:
 - (i) review each Test Procedure and, in doing so, must consider any comments received from the Principal's Representative under clause 21.2(c)(ii) of the SSTOM Project Deed; and
 - (ii) determine whether such Test Procedure complies with the requirements of the SSTOM Project Deed and either:

- (A) if the Independent Certifier considers that the Test Procedure does not comply with the requirements of the SSTOM Project Deed, notify OpCo and the Principal of the non-compliances (with detailed reasons); or
 - (B) certify the Test Procedure by providing to OpCo and the Principal's Representative a certificate in the form of Part C of Schedule 34 (*Certificates*) of the SSTOM Project Deed.
- (f) **Clause 21.2(e):** If OpCo receives a notice from the Independent Certifier in accordance with clause 21.2(d)(ii)(A) and re-submits a revised Test Procedure to the Independent Certifier, the Independent Certifier must satisfy its obligations under clause 21.2 of the SSTOM Project Deed .
- (g) **Clause 21.2(h):** The Independent Certifier must, within 5 Business Days of:
- (i) giving a notice under clause 21.2(d)(ii)(A) of the SSTOM Project Deed, to the extent that the Independent Certifier did not include in its notice to OpCo any comments received from the Principal's Representative under clause 21.2(c)(ii) of the SSTOM Project Deed regarding actual or potential non-compliances in OpCo's Test Procedure, provide the Principal with detailed written reasons of why it did not include such comments; and
 - (ii) certifying a Test Procedure under clause 21.2(d)(ii)(B) of the SSTOM Project Deed, to the extent that the Independent Certifier received comments from the Principal under clause 21.2(c)(ii) of the SSTOM Project Deed regarding non-compliances in OpCo's Test Procedure, provide the Principal with detailed written reasons of why it certified the Test Procedure despite the Principal's comments.
- (h) **Clause 21.2(i):** If the certificate provided by the Independent Certifier pursuant to clause 21.2(d)(ii)(B) of the SSTOM Project Deed lists any Minor Non-Compliances, the Independent Certifier:
- (i) may, in the certificate, recommend the action that could be taken by OpCo to address the Minor Non-Compliance and specify a time frame within which OpCo must complete the recommended action; and
 - (ii) will, following receipt from OpCo of a statement or other reasonable evidence in such detail that the Independent Certifier may require to confirm that the Minor Non-Compliance has been addressed, determine whether the Minor Non-Compliance has been addressed.
- (i) **Clause 21.4(b):** The Independent Certifier may (but is not obliged to) attend and witness the conduct of all Tests.
- (j) **Clause 21.5(d):** The Independent Certifier must, within 10 Business Days of the date on which it receives the Test Report, determine (including with consideration of any comments received from the Principal's Representative under clause 21.5(c) of the SSTOM Project Deed) whether or not the Test has been passed or failed and either:
- (i) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form of Part D of Schedule 34 (*Certificates*) of the SSTOM Project Deed; or
 - (ii) notify OpCo and the Principal that:
 - (A) the Test has been failed; and / or
 - (B) the Test Report does not comply with the requirements of the SSTOM Project Deed (Minor Non-Compliances excepted).

- (A) lists the items which remain to be completed to satisfy the requirements for First Passenger Service; or
 - (B) states that OpCo is so far from satisfying the requirements for First Passenger Service that it is not practicable to provide the list referred to in clause 22.3(a)(ii)(A) of the SSTOM Project Deed.
- (q) **Clause 22.3(b):** If the Independent Certifier issues a notice under clause 22.3(a)(ii) of the SSTOM Project Deed, OpCo must continue to satisfy the Delivery Activities under clause 22.1(a) and clause 22.2 of the SSTOM Project Deed and the Independent Certifier must satisfy its obligations under clause 22.3 of the SSTOM Project Deed.
- (r) **Clause 22.4(b):** The Independent Certifier must, within 5 Business Days of receipt from OpCo of a notice under clause 22.4(b) of the SSTOM Project Deed, jointly with the Principal's Representative the representative of any relevant Authority, inspect the relevant Local Area Works at a mutually convenient time.
- (s) **Clause 22.4(c):** Following the joint inspection under clause 22.4(b) of the SSTOM Project Deed and subject to clause 22.4(d) of the SSTOM Project Deed, the Independent Certifier must determine whether the discrete part of the Local Area Works has been completed in accordance with the SSTOM Project Deed and the Third Party Agreements (as that term is defined under the SSTOM Project Deed) referred to in clauses 2.1, 2.3, 2.4, 2.7, 2.8(a)(i)(B) and 2.10 of Schedule 18 (*Requirements of Third Party Agreements*) (if applicable) and must, within 5 Business Days of the date of the inspection either:
- (i) if the discrete part is complete, execute and provide a certificate in the form of Part G of Schedule 34 (*Certificates*) of the SSTOM Project Deed to the Principal's Representative and OpCo stating the date on which OpCo has completed the discrete part of the Local Area Works in accordance with the SSTOM Project Deed, which, subject to clause 22.4(e) of the SSTOM Project Deed, will be the relevant date for the purposes of clause 22.4(f)(i) of the SSTOM Project Deed; or
 - (ii) if the discrete part is not complete, notify OpCo and the Principal in writing of the items which remain to be completed (after which the procedure in clauses 22.4(b) and 22.4(c) of the SSTOM Project Deed will reapply).
- (t) **Clause 22.4(d):** The Independent Certifier must execute and provide to the Principal's Representative a certificate in the form of Part G of Schedule 34 (*Certificates*) of the SSTOM Project Deed with respect to the discrete part of the Local Area Works and each discrete part of the Local Area Works will not be regarded as complete unless this has occurred.
- (u) **Clause 22.7(a):** Completion will not be achieved until the Independent Certifier has certified the Test Report for the Final Performance Test.
- (v) **Clause 22.9(a):** The Independent Certifier must, within 1 Business Day of receipt of the request under clause 22.8(b) of the SSTOM Project Deed, determine whether Completion has been achieved and either:
- (i) if Completion has been achieved, issue a Certificate of Completion to OpCo and the Principal:
 - (A) stating as the Date of Completion, the date on which Completion was achieved;
 - (B) specifying any Minor Defects; and
 - (C) specifying any Minor Non-Compliances; or

- (ii) if Completion has not been achieved, issue a notice to OpCo and the Principal which:
 - (A) lists the items which remain to be completed before Completion can be achieved; or
 - (B) states that the SSTOM Works are so far from achieving Completion that it is not practicable to provide the list referred to in clause 22.9(a)(ii)(A) of the SSTOM Project Deed.
- (w) **Clause 22.9(b):** If the Independent Certifier issues a notice to OpCo under clause 22.9(a)(ii) of the SSTOM Project Deed, OpCo must continue to satisfy the Delivery Activities to achieve Completion under clause 22.8 of the SSTOM Project Deed and the Independent Certifier must satisfy its obligations under clause 22.9 of the SSTOM Project Deed.
- (x) **Clause 22.10(d):** The Independent Certifier must, within 15 Business Days of OpCo's request under clause 22.10(c) of the SSTOM Project Deed, determine whether Final Completion has been achieved and either:
 - (i) if Final Completion has been achieved, issue to the Principal and OpCo a Certificate of Final Completion stating as the Date of Final Completion the date on which Final Completion was achieved; or
 - (ii) if Final Completion has not been achieved, issue a notice to the Principal and OpCo listing the work remaining to be performed to achieve Final Completion.
- (y) **Clause 22.10(e):** If the Independent Certifier issues a notice to OpCo under clause 22.10(d)(ii) of the SSTOM Project Deed, OpCo must continue with the Delivery Activities to achieve Final Completion and the Independent Certifier must satisfy its obligations under clause 22.10(d) of the SSTOM Project Deed.
- (z) **Clause 22.10(f):** The Independent Certifier, in making a determination as to whether Final Completion has been achieved:
 - (i) will not be restricted by any:
 - (A) certification, notice, list or opinion already provided under the SSTOM Project Deed; or
 - (B) obligation of OpCo under the SSTOM Project Deed to correct any Defects which may be discovered after Final Completion; and
 - (ii) will be entitled to raise any items of work as a ground for determining that Final Completion has not been achieved.

3. CORE SERVICES UNDER THE PENRITH CITY COUNCIL INTERFACE AGREEMENT

3.1 Defined terms

Defined terms in this section 3 have the meaning set out in the Penrith City Council Interface Agreement, unless otherwise defined in clause 1.1 of this deed.

3.2 Services

- (a) **Clause 8.1:** The Independent Certifier engaged by the Principal to provide the Services must be a person who:
 - (i) is an independent consultant engineer suitably qualified to perform those services (as further described in Schedule 12 of the Penrith City Council Interface Agreement);

- [REDACTED]
- [REDACTED]
- [REDACTED]
- (iii) subject to clause 4.3 of this deed, is not acting for the Principal or the Package Contractor in any capacity in relation to the Sydney Metro - Western Sydney Airport Project (other than in the capacity of an independent certifier);
 - (iv) is able to give the representations, warranties and comply with the terms that clause 8.2(f) of the Penrith City Council Interface Agreement requires to be included in this deed;
 - (v) has a project director (or person in an equivalent position) with experience consistent with the requirements in clause 8 of Schedule 12 of the Penrith City Council Interface Agreement; and
 - (vi) holds any accreditations and certifications that are required by Law or to fulfil its functions and roles as contemplated by the Penrith City Council Interface Agreement.

- (b) **Clause 8.2(c):** The Independent Certifier must perform the Services and attend any part of the Licensed Areas on which the Handover Works are undertaken.
- (c) **Clause 8.2(d):** The Independent Certifier must act independently of Council, the Principal and the Package Contractor.
- (d) **Clause 8.2(e):** The Independent Certifier must hold and maintain the insurances referred to in clause 8.1(b) of the Penrith City Council Interface Agreement.
- (e) **Clause 9.2(a):** The Independent Certifier must, in respect Design Stage 3, be provided a copy of the Design Documentation for review in accordance with clause 9 of the Penrith City Council Interface Agreement.
- (f) **Clause 9.4(c):** The Independent Certifier must, within 20 Business Days of receipt of the Design Documentation for Design Stage 3, review that Design Documentation and either:
 - (i) if the Independent Certifier considers that the Design Documentation does not comply with the requirements of the Penrith City Council Interface Agreement or is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant, reject a part or all of the Design Documentation by giving the Principal and Council notice of that rejection in writing; or
 - (ii) if the Independent Certifier considers that the Design Documentation complies with the requirements of the Penrith City Council Interface Agreement, certify that the Design Documentation complies with the requirements of the Penrith City Council Interface Agreement by issuing a certificate in the form of Schedule 9 to the Principal and Council.
- (g) **Clause 9.4(d):** Subject to clause 9.4(e) of the Penrith City Council Interface Agreement, the Independent Certifier must when issuing a notice or certificate under clause 9.4(c) consider any comment made by Council under clause 9.4(a)(i) of the Penrith City Council Interface Agreement in respect of the Design Stage 3 Design Documentation.

- (k) **Clause 21.5(e):** The Independent Certifier must, within 10 Business Days of the date on which the action referred to in clause 21.5(d) of the SSTOM Project Deed was undertaken, provide detailed reasons to the Principal (with a copy to OpCo) as to why those comments were not adopted, if:
 - (i) the comments provided under clause 21.5(c)(ii) of the SSTOM Project Deed identify one or more actual or potential non-compliances; and
 - (ii) the Independent Certifier's decision under clause 21.5(d) of the SSTOM Project Deed has not adopted those comments (to the extent they identify actual or potential non-compliances).
- (l) **Clause 21.5(f):** If the certificate provided by the Independent Certifier pursuant to clause 21.5(d)(i) of the SSTOM Project Deed lists any Minor Non-Compliance, the Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the Minor Non-Compliance and specify a time frame within which OpCo must complete the recommended action.
- (m) **Clause 21.6:** If the Independent Certifier notifies OpCo that a Test has been failed (or that a Test has been failed and the Test Report is non-compliant), OpCo must carry out all necessary rectification work and when it believes it has completed all necessary rectification work, the Independent Certifier will receive from OpCo a notice of the date, time and place of each Test in accordance with clause 21.3(a) of the SSTOM Project Deed and the Independent Certifier must satisfy its obligations under clauses 21.4 and 21.5 of the SSTOM Project Deed.
- (n) **Clause 21.7:** If the Independent Certifier notifies OpCo that a Test Report is non-compliant (Minor Non-Compliances excepted), and OpCo re-submits an amended Test Report, the Independent Certifier must satisfy its obligations under clause 21.5 of the SSTOM Project Deed.
- (o) **Clause 22.1(a):** Before OpCo provides the First Passenger Services the Independent Certifier must:
 - (i) provide the Principal's Representative with the certificates referred to in clause 22.4(d)(i) of the SSTOM Project Deed; and
 - (ii) certify that:
 - (A) the SSTOM Works have passed the Tests referred to in sections 12.6.2 and 12.6.3 of Particular Specification 12 (*Testing and Commissioning*);
 - (B) all of the Trains have passed the Tests referred to in section 5.4 of Particular Specification 5 (*Rolling Stock*); and
 - (C) the Trial Operations Tests have been passed in accordance with section 12.6.1 of Particular Specification 12 (*Testing and Commissioning*).
- (p) **Clause 22.3(a):** The Independent Certifier must, within 5 Business Days of receipt of a request under clause 22.2(b) of the SSTOM Project Deed, determine whether or not the requirements for First Passenger Service referred to in clause 22.1(a) of the SSTOM Project Deed have been satisfied and either:
 - (i) if the requirements for First Passenger Service referred to in clause 22.1(a) of the SSTOM Project Deed have been satisfied, issue a Certificate of Readiness for First Passenger Service to OpCo and the Principal; or
 - (ii) if the requirements for First Passenger Service referred to in clause 22.1(a) of the SSTOM Project Deed have not been satisfied, issue a notice to OpCo and the Principal which:

- (h) **Clause 9.4(e):** The Independent Certifier is not obliged to consider any comments on the Design Stage 3 Design Documentation from Council which:
 - (i) do not concern a non-compliance of the Design Documentation with the requirements of the Penrith City Council Interface Agreement (including any comments provided by Council under clause 9.4(a)(ii) of the Penrith City Council Interface Agreement); or
 - (ii) are provided after expiry of the period referred to in clause 9.4(a) of the Penrith City Council Interface Agreement.
- (i) **Clause 9.4(g):** If:
 - (i) any Design Documentation for Design Stage 3 is rejected by the Independent Certifier in accordance with clause 9.4(c)(i) of the Penrith City Council Interface Agreement; or
 - (ii) the Principal chooses to resubmit any component of the Design Documentation for Design Stage 3 to address any comments by Council under clause 9.4(f) of the Penrith City Council Interface Agreement (without limiting the Principal's rights under that clause);

then

 - (iii) clause 9.4 of the Penrith City Council Interface Agreement will reapply in respect of the non-complying or amended element of the Design Stage 3 Design Documentation and the Independent Certifier must fulfil its obligations under clause 9.4 of the Penrith City Council Interface Agreement.
- (j) **Clause 9.6:** The Independent Certifier must review any amended or updated Design Documents provided in accordance with clause 9.6 of the Penrith City Council Interface Agreement as if they were submitted in accordance with clause 9.4 of the Penrith City Council Interface Agreement.
- (k) **Clause 15.1(b):** The Independent Certifier may, in issuing a certificate under Schedule 11 of this deed determine that the Works are complete in accordance with the Penrith City Council Interface Agreement, but that there are Defects in the Handover Works which the Independent Certifier determines the relevant Metro Contractor has reasonable grounds for not promptly correcting prior to hand over of the relevant Handover Works to Council.
- (l) **Clause 15.2(b):** Promptly after the date on which the Works have achieved Practical Completion, the Independent Certifier must provide to the Principal a certificate of completion in respect of the Handover Works from the Independent Certifier in the form of Schedule 10.

4. CORE SERVICES UNDER THE SYDNEY ROADS INTERFACE AGREEMENT

4.1 Defined terms

Defined terms in this section 4 have the meaning set out in the Sydney Roads Interface Agreement, unless otherwise defined in clause 1.1 of this deed.

4.1A Project Works

The Independent Certifier acknowledges and agrees that:

- (a) as at the date of this deed, there are no Project Works contemplated to be performed under the Sydney Roads Interface Agreement; and

- (b) to the extent the Independent Certifier is required to carry out any services in respect of the Project Works under the Sydney Roads Interface Agreement (including as set out in sections 4.2(e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (w), (x) and (y) of this Schedule 1 and provisions of the Sydney Roads Interface Agreement referred to therein) the Principal will issue a notice to the Independent Certifier to perform these services as Additional Services in accordance with clause 6 of the operative provisions of this deed.

4.2 Services

- (a) **Clause 5.1:** The Independent Certifier engaged by the Principal must be a suitably qualified independent consultant engineer to perform the Services, being a person who:
- (i) is familiar with and experienced in using the TfNSW QA Specifications; and
 - (ii) holds professional indemnity insurance (or is insured under professional indemnity insurance held by the Principal) that provides for a limit of indemnity that is satisfactory to TfNSW (acting reasonably).
- (b) **Clause 5.2(a):** The Independent Certifier must:
- (i) execute and deliver to the Principal the deed poll set out in Schedule 11;
 - (ii) hold professional indemnity insurance that provides for a limit of indemnity that is satisfactory to TfNSW (acting reasonably).
- (c) **Clause 5.2(d):** The Independent Certifier must:
- (i) perform the Services;
 - (ii) attend any meetings in connection with the Works;
 - (iii) attend any part of the Site; and
 - (iv) inspect the records of the Principal and its contractors.
- (d) **Clause 5.2(e):** The Independent Certifier must act independently of the Principal, TfNSW and any of their respective contractors.
- (e) **Clause 12.3(a):** Subject to section 4.1A of this Schedule 1, the Independent Certifier must review the Design Documents for Design Stage 1 and Design Stage 2 and make comments in writing to TfNSW and the Principal in relation to the compliance of the Design Documents with the Sydney Roads Interface Agreement.
- (f) **Clause 11.2(d), 12.3(b):** Subject to section 4.1A of this Schedule 1, in respect of the Design Documents for Design Stage 3, the Independent Certifier must review the Design Documents and, within:
- (i) where the set of Design Documents includes the installation, erection, alteration, operation or removal of traffic control signals on any road or road related area, 35 Business Days;
 - (ii) where the set of Design Documents includes the construction, erection, affixing, marking, repair, alteration or removal of a traffic control facility or road work, 25 Business Days; and
 - (iii) in any other case, 15 Business Days,
- of receipt of the Design Documents for Design Stage 3, in writing to TfNSW and the Principal, either:

- (iv) if the Design Documents are non-compliant with the requirements of the Sydney Roads Interface Agreement, reject the Design Documents and specify the non-compliances; or
- (v) if the Design Documents are compliant with the requirements of the Sydney Roads Interface Agreement, certify that the Design Documents comply with the requirements of the Sydney Roads Interface Agreement (including issuing a certificate to the Principal and TfNSW) in the form of:
 - (A) Part 1 of Schedule 12 in respect of any Design Documents for the Project Works; and
 - (B) Part 2 of Schedule 12 in respect of any Design Documents for the Road Works,

provided that the Independent Certifier must not provide the certificates referred to in paragraph (v) above in respect of any Design Documents in respect of which TfNSW has issued a notice under clause 12.8(a) of the Sydney Roads Interface Agreement until the Dispute is resolved.
- (g) **Clause 12.3(c):** Subject to section 4.1A of this Schedule 1, in formulating any notice to TfNSW and the Principal under clause 12.3(a) or 12.3(b) of the Sydney Roads Interface Agreement, the Independent Certifier must consider any comment made by TfNSW, and if the Independent Certifier does not give full effect to any TfNSW comment in the notice to the Principal, the Independent Certifier must give detailed written reasons for this to TfNSW (with a copy to the Sydney Metro Representative):
 - (i) in the case of all Review Stages except Design Stage 3 at the same time as serving the notice; and
 - (ii) in the case of Design Stage 3 not less than 10 Business Days before serving the notice (subject to clause 12.8 of the Sydney Roads Interface Agreement).
- (h) **Clause 12.3(e):** Subject to section 4.1A of this Schedule 1, the Independent Certifier must, if any Design Document is rejected in accordance with clause 12.3 of the Sydney Roads Interface Agreement, review the amended Design Document in accordance with clause 12.3 of the Sydney Roads Interface Agreement.
- (i) **Clause 12.4:** The Independent Certifier will receive written comments from TfNSW on each set of Design Documents within the following periods calculated from the date TfNSW receives each set of Design Documents (including all the things required under clause 12.2(b) of the Sydney Roads Interface Agreement):
 - (i) where the set of Design Documents includes the installation, erection, alteration, operation or removal of traffic control signals on any road or road related area, 30 Business Days;
 - (ii) where the set of Design Documents includes the construction, erection, affixing, marking, repair, alteration or removal of a traffic control facility or road work, 20 Business Days; and
 - (iii) in any other case, 10 Business Days.
- (j) **Clause 12.6(b):** If required by TfNSW under clause 12.6(a) of the Sydney Roads Interface Agreement, the Independent Certifier must attend a Risk Management Workshop to determine hazards and associated risks surrounding any aspect of the design and construction of any part of the Works.
- (k) **Clause 12.8(a), (c):** Subject to section 4.1A of this Schedule 1, the Independent Certifier may receive a notice from TfNSW that a Dispute exists, following TfNSW

receiving reasons from the Independent Certifier under clause 12.3(c) of the Sydney Roads Interface Agreement in the circumstances of clause 12.3(c)(ii) of the Sydney Roads Interface Agreement and the Independent Certifier may be required to attend a meeting held by the parties to resolve the Dispute within 48 hours of the service of the notice under clause 12.8(a) of the Sydney Roads Interface Agreement.

- (l) **Clause 12.8(d):** The Independent Certifier must not provide a document in the form of Part 1 or Part 2 of Schedule 12 in respect of any Design Documents in respect of which TfNSW has issued a notice under clause 12.8(a) of the Sydney Roads Interface Agreement until the Dispute is resolved.
- (m) **Clause 13.2:** Subject to section 4.1A of this Schedule 1, the Independent Certifier must review any amended Design Documents provided in accordance with clause 13.2 of the Sydney Roads Interface Agreement and the processes in clauses 12.3, 12.4, 12.6, 12.7 and 12.8 of the Sydney Roads Interface Agreement will apply as applicable to the Independent Certifier as if they were submitted at Design Stage 3.
- (n) **Clause 13.11(b):** Subject to section 4.1A of this Schedule 1, the Independent Certifier must attend the inspections and testing in accordance with clause 13.11 of the Sydney Roads Interface Agreement.
- (o) **Clause 15.2:** Subject to section 4.1A of this Schedule 1, except to the extent that Item 11 of the Contract Particulars of the Sydney Roads Interface Agreement specifies that TfNSW is responsible for the design of a Package of the Project Works, the Independent Certifier must, prior to the commencement of construction of a Package of the Project Works, provide to the Principal a certificate in the form of Part 1 of Schedule 12 in respect of the Design Stage 3 Design Documents for the relevant Package of Project Works.
- (p) **Clause 15.3(b):** Subject to section 4.1A of this Schedule 1, following the achievement of Construction Completion of each Associated Portion under the Project Contract, the Independent Certifier must promptly provide the Principal with a certificate in the form of Schedule 15.
- (q) **Clause 16.1(c):** The Independent Certifier must confirm that the documents, certifications and information required under the Sydney Roads Interface Agreement, in its opinion, are essential for the use, operation and maintenance of the Road Works have been supplied including:
 - (i) all original manufacturers' or suppliers' warranties required by the Technical and Other Requirements;
 - (ii) all Statutory Approvals required to be obtained have been obtained from relevant Government Agencies as defined in the Sydney Roads Interface Agreement; and
 - (iii) a Technical Maintenance Plan.
- (r) **Clause 16.1(d):** The Independent Certifier must determine that the commissioning of the Road Works including all plant incorporated into the Road Works and any traffic signalling equipment has been successful.
- (s) **Clause 16.3(a):** The Independent Certifier must promptly, and in any event no later than 5 Business Days after receiving the Principal's written notice under clause 16.2(b) of the Sydney Roads Interface Agreement or a notice under clause 16.3(b) of the Sydney Roads Interface Agreement inspect the Road Works, and:
 - (i) if satisfied that Practical Completion has been achieved issue a certificate in the form set out in Schedule 13, which:

- (A) states the date upon which the Independent Certifier determines Practical Completion was achieved;
 - (B) contains a list of any minor Defects and minor omissions of the type described in paragraph (a) of the definition of Minor Non-Compliance; and
 - (C) states the timeframe within which those Defects and omissions identified must be rectified; or
- (ii) if not satisfied that Practical Completion has been achieved, issue a notice to the Principal and TfNSW containing a comprehensive list of all items that the Independent Certifier considers necessary to be completed to achieve Practical Completion.
- (t) **Clause 16.4:** If at any time a notice required to be given by the Principal to the Independent Certifier under either of clauses 16.2 or 16.3 of the Sydney Roads Interface Agreement is not given by the Principal, yet the Independent Certifier is of the opinion that Practical Completion of the Road Works has been achieved, the Independent Certifier may issue a Notice of Practical Completion under clause 16.3(a)(i) of the Sydney Roads Interface Agreement for the Road Works.
- (u) **Clause 17.1(a):** At the end of the Defects Liability Period for the Road Works, the Principal must give notice to the Independent Certifier once all Defects have been rectified. Once the Independent Certifier is satisfied that all Defects have been rectified, the Independent Certifier must issue a certificate in the form set out in Schedule 14.
- (v) **Clause 17.3(a):** The Independent Certifier must issue a certificate in the form set out in Schedule 14 prior to TfNSW issuing the Final Certificate.
- (w) **Clause 24(a):** Subject to section 4.1A of this Schedule 1, the Independent Certifier must certify and verify compliance of the Works and the design, construction and testing of the Works and the Temporary Works in accordance with this deed and the Sydney Roads Interface Agreement.
- (x) **Clause 24(b):** Subject to section 4.1A of this Schedule 1, and without limiting clause 24(a) of the Sydney Roads Interface Agreement or any other provision of the Sydney Roads Interface Agreement, the Independent Certifier must:
- (i) continually monitor the integrity and efficiency of the Quality System of the Contractor; and
 - (ii) continually monitor the compliance of the design and construction of the Works and the Temporary Works with the Sydney Roads Interface Agreement.
- (y) **Annexure A (Technical and Other Requirements), clause 7.4(j)(ii), (iv):** Subject to section 4.1A of this Schedule 1, the Independent Certifier must, in accordance with the Technical and Other Requirements to the Sydney Roads Interface Agreement, attend the daily monitoring review meetings which are held under the Settlement Monitoring and Management Plan if it is anticipated that the alert limits in the Settlement Monitoring and Management Plan will be exceeded. The purpose of the daily monitoring meetings is for the Principal to communicate to the Independent Certifier and TfNSW on:
- (i) the need, if any, for changes to the construction methods appropriate for the ground conditions encountered, to address the ground movements;
 - (ii) early warning of potentially adverse behaviour; and

- (iii) advise the likely cause of adverse behaviour.

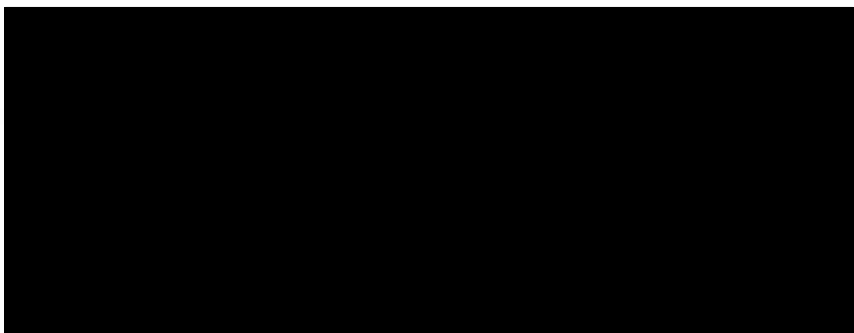
5. CORE SERVICES UNDER THE TFNSW (M12) INTERFACE AGREEMENT

5.1 Defined terms

Defined terms in this section 5 have the meaning set out in the TFNSW (M12) Interface Agreement, unless otherwise defined in clause 1.1 of this deed.

5.2 Services

- (a) **Clause 7.2(b)(ii):** The Independent Certifier must certify the SMWSA Design Documentation for the SSTOM Fencing Works by providing to TfNSW and the SMWSA Contractor for the SSTOM Fencing Works a certificate in the form set out in Schedule 17 at Design Stage 3 of the SSTOM Fencing Works.
- (b) **Clause 7.2(c)(i)(A), (B):** The Independent Certifier must take into account any comments provided by TfNSW under clause 7.2(a)(i)(B) of the TFNSW (M12) Interface Agreement and, subject to clause 7.2(c)(i)(C) and 7.4 of the TFNSW (M12) Interface Agreement, if satisfied that the SMWSA Design Documentation for the SSTOM Fencing Works for Design Stage 3 complies with the requirements of the TFNSW (M12) Interface Agreement, issue a certificate in the form set out in Schedule 17.
- (c) **Clause 7.2(c)(i)(C):** If, in determining whether to issue a certificate in the form set out in Schedule 17, the Independent Certifier does not give full effect to any comment provided by TfNSW:
 - (i) within the timeframe required by clause 7.2(a)(i)(B) of the TFNSW (M12) Interface Agreement; and
 - (ii) in accordance with the requirements of clause 7.3 of the TFNSW (M12) Interface Agreement,the Independent Certifier must give detailed written reasons for this to TfNSW (with a copy to the Principal) not less than 5 Business Days before issuing a certificate in the form set out in Schedule 17.
- (d) **Clause 7.4(c)(ii):** If a Dispute arises under clause 7.4 of the TFNSW (M12) Interface Agreement, the Independent Certifier must not issue a certificate in the form set out in Schedule 17 under clause 7.4(c)(i)(B) of the TFNSW (M12) Interface Agreement in respect of any SMWSA Design Documentation in respect of which TfNSW has issued a notice under clause 7.4(a) of the TFNSW (M12) Interface Agreement until the Dispute is resolved.
- (e) **Clause 7.5:** The Independent Certifier must perform its obligations under clauses 7.2 and 7.4 of the TFNSW (M12) Interface Agreement in respect of any SMWSA Design Documentation which is amended by the Principal and provided to TfNSW under clause 7.5 of the TFNSW (M12) Interface Agreement.
- (f) **Clause 8.1(a):** The Independent Certifier engaged by the Principal to provide the SMWSA Independent Certifier's Services must be a person who:
 - (i) the Principal considers to be a suitability qualified independent consultant engineer to perform those services;
 - (ii) holds:
 - (A) professional indemnity insurance with:



- (B) workers' compensation insurance in accordance with the requirements of Law; and
- (C) public liability insurance with:
 - (aa) a limit of indemnity of [REDACTED] for any one occurrence and unlimited in the annual aggregate in respect of legal liability for third party property damage, personal injury or death arising from the performance of the SMWSA Independent Certifier's Services; and
 - (bb) a deductible of not more than [REDACTED]
- (g) **Clause 8.2(a):** The Independent Certifier must act independently of each party and their respective contractors.
- (h) **Clause 8.2(b):** The Independent Certifier must:
 - (i) perform the SMWSA Independent Certifier Services;
 - (ii) attend any meetings in connection with the SMWSA Activities;
 - (iii) attend any site upon which the SMWSA Activities are carried out; and
 - (iv) inspect any records of TfNSW and the Principal which the Independent Certifier considers are required for the performance of the SMWSA Independent Certifier's Services.
- (i) **Clause 14.3(a)(ii):** The Independent Certifier must certify Completion of the SSTOM Fencing Works by issuing a certification in the form provided in Schedule 18 confirming that the construction of the SSTOM Fencing Works complies with all requirements of the TFNSW (M12) Interface Agreement, including the SMWSA Design Documentation for the SSTOM Fencing Works referred to in clause 7.6 of the TFNSW (M12) Interface Agreement, subject to minor defects which do not prevent the Sydney Metro Western Sydney Airport from being fit for its intended purpose and the Independent Certifier determines the SMWSA Contractor has reasonable grounds for not promptly correcting (**SSTOM Fencing Works Minor Defect**).
- (j) **Clause 14.3(b)(ii):** The Independent Certifier, the Principal and TfNSW must jointly inspect the SSTOM Fencing Works at a mutually convenient time after the Principal notifies the Independent Certifier and TfNSW in writing that it considers the SMWSA Works are complete.
- (k) **Clause 14.3(c):** Following the joint inspection under clause 14.3(b)(ii), the Independent Certifier must determine whether the SSTOM Fencing Works have been Completed in accordance with the TFNSW (M12) Interface Agreement and will, within 5 Business Days of the date of the inspection:
 - (i) if the SSTOM Fencing Works are Complete, execute and provide a certificate to the Principal and TfNSW in the form provided in Schedule 18 stating the date on which the Principal has Completed the relevant SSTOM Fencing Works

in accordance with the TFNSW (M12) Interface Agreement and listing any SMWSA Minor Defects; or

- (ii) if the SSTOM Fencing Works are not Complete, notify the Principal and TfNSW in writing of the items which remain to be Completed (after which the procedure in clause 14.3(b) of the TFNSW (M12) Interface Agreement and clause 14.3(c) of the TFNSW (M12) Interface Agreement will reapply).

6. CORE SERVICES UNDER THE WATER NSW INTERFACE AGREEMENT

6.1 Defined terms

Defined terms in this section 6 have the meaning set out in the WaterNSW Interface Agreement, unless otherwise defined in clause 1.1 of this deed.

6.2 Services

- (a) **Clause 5.1(e):** Prior to commencement of construction of any part of the Works (excluding the Early Access Activities), the Independent Certifier must certify that the Documentation that is indicated in Schedule 3 of the Water NSW Interface Agreement as requiring independent certification for those Works complies with the Water NSW Interface Agreement by issuing a certificate in the form of Part 1 of Schedule 20.
- (b) **Clause 5.6(b):** The Independent Certifier must certify the plans and drawings showing the Works as executed as complying with the Water NSW Interface Agreement by issuing a certificate in the form of Part 2 of Schedule 20.
- (c) **Clause 5.13(a):** The Independent Certifier appointed by the Principal must be a person who the Principal considers to be a suitably qualified independent consultant engineer to provide any independent certification required under the Water NSW Interface Agreement.
- (d) **Clause 5.13(d):** The Independent Certifier is to act independently of WaterNSW, WaterNSW's Employees and Agents, the Principal and the Principal's Employees and Agents.
- (e) **Clause 15.3(e):** Subject to clause 5.13(f) of the Water NSW Interface Agreement, the Independent Certifier must be provided with all relevant information and documents and allow the Independent Certifier:
 - (i) to perform the services for which they are engaged, including but not limited to any certification required under the agreement;
 - (ii) to attend any meetings in connection with the Works or the SMWSA Project; and
 - (iii) access to the Land and any other site upon which the Works or the SMWSA Project are being carried out.

SCHEDULE 2

Payment Schedule

SCHEDULE 3

Minimum resources commitment

SCHEDULE 4

Requirements for Certification Plan

The Certification Plan must, as a minimum, address and detail:

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the Independent Certifier's internal processes for ensuring all documents and supporting evidence have been completed and approved (where required) by persons with appropriate delegated authority and competency and are available as supporting evidence;
- (f) all compliance records to be maintained;
- (g) a description of the risk based assessment process that the Independent Certifier will apply in accordance with clause 1(e)(iii) of Schedule 1 to determine the required extent of design review of the Design Documentation. The Independent Certifier is also required to provide a table documenting its initial risk rating for each design package;
- (h) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews of aspects of OpCo's Activities;
- (i) Hold Points and Witness Point requirements, in the form of a schedule, including the identification of all witness points and hold points required by the Independent Certifier;
- (j) the Independent Certifier's comprehensive plans for (as applicable):
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of OpCo's Activities;
 - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the SSTOM Works to determine and ensure OpCo's compliance with the requirements of the SSTOM Project Deed; and
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey;
- (k) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) addressing environmental monitoring and protection;
 - (ii) audit, surveillance and monitoring of OpCo's design and construction activities, including the processes used for determining the levels and scope of surveillance of construction activities;

- (iii) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
- (iv) providing comments to OpCo in respect of its carrying out of OpCo's Activities, whether by participation in design workshops, monitoring of design progress or otherwise;
- (v) ensuring that OpCo has addressed all issues of review, comment and consultation with the Principal in respect of the Design Documentation and OpCo's Activities; and
- (vi) risk management of the work covered by sub-paragraphs (i) and (ii) above;
- (l) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
 - (i) the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier as set out in Schedule 1;
 - (ii) certification of the IC Project Plans (Part A, Schedule 34, SSTOM Project Deed);
 - (iii) certification of Test Procedure (Part C, Schedule 34, SSTOM Project Deed);
 - (iv) certification of Test Result (Part D, Schedule 34, SSTOM Project Deed);
 - (v) certification of Readiness for First Passenger Services (Part F, Schedule 34, SSTOM Project Deed);
 - (vi) certification of Local Area Works completion (Part G, Schedule 34, SSTOM Project Deed);
 - (vii) certification of Completion (Part J, Schedule 34, SSTOM Project Deed);
 - (viii) certification of Final Completion (Part K, Schedule 34, SSTOM Project Deed);
 - (ix) certification of Design Documentation (Part Q, Schedule 34, SSTOM Project Deed); and
 - (x) determination of any matters required by the Project Agreements;
- (m) the Independent Certifier's proposed standards including:
 - (i) committed surveillance activities; and
 - (ii) committed resources; and
- (n) the basis of the Certification Methodology contained in Schedule 6 in terms of the assumptions relating to OpCo's Activities including:
 - (i) number of design lots developed; and
 - (ii) program durations; and
 - (iii) how the Independent Certifier will address the reporting requirements set out in clause 3.10 of this deed and otherwise advise the Principal of issues that it identifies in carrying out the Services, and considers may impact on or delay the ability of OpCo to design and construct the SSTOM Works in accordance with the requirements of the SSTOM Project Deed.

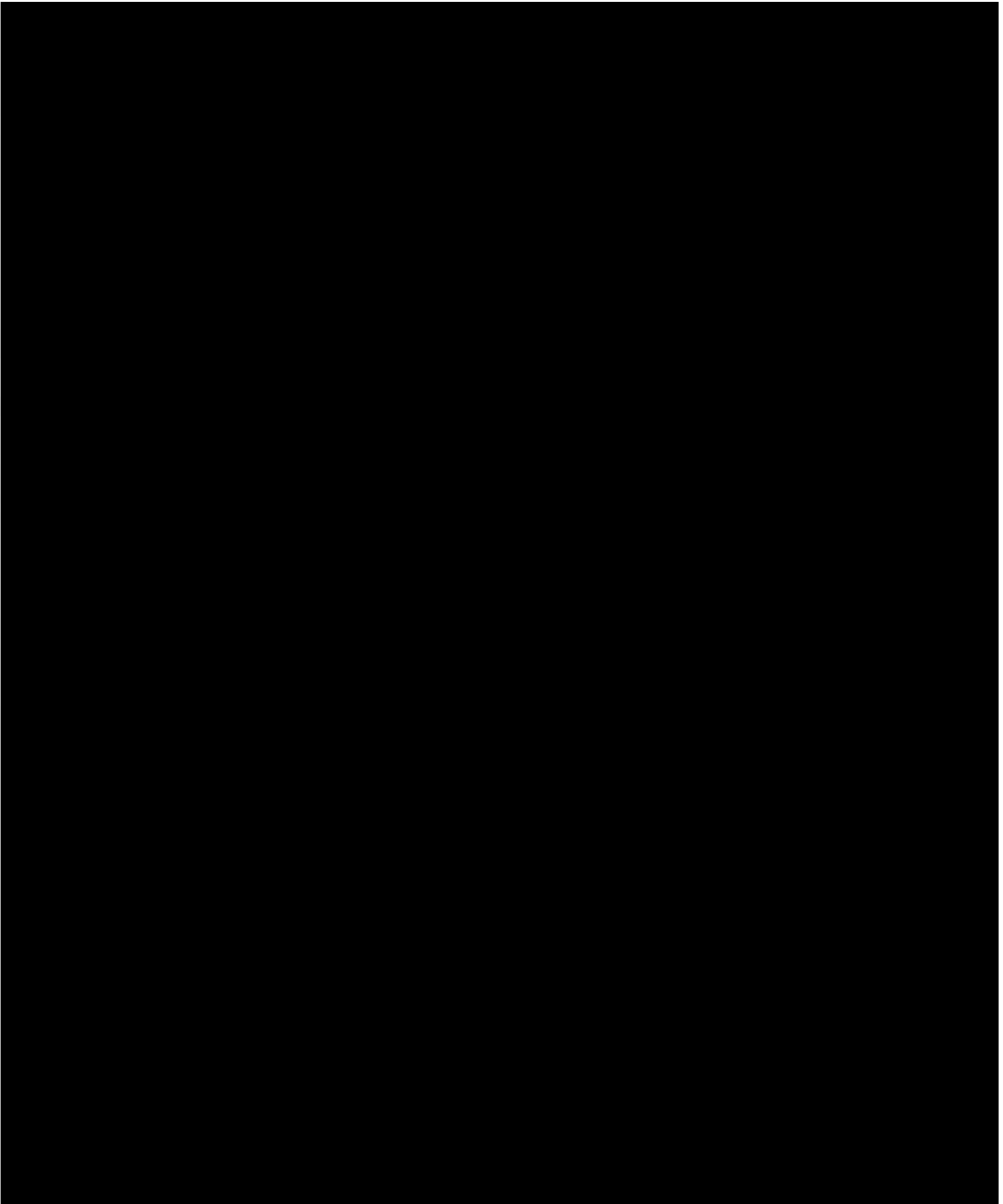
SCHEDULE 5

Subcontractors

Name of subcontractor	Part of the Services
N/A	N/A

SCHEDULE 6

Certification Methodology



SCHEDULE 7

Third Party Agreements

Part A. Third Party Agreements

- Penrith City Council Interface Agreement
- Water NSW Interface Agreement
- TfNSW (M12) Interface Agreement
- Sydney Roads Interface Agreement

Part B. Draft Third Party Agreements

None.

SCHEDULE 8

Form of Independent Certifier Deed Poll - Penrith City Council Interface Agreement

SCHEDULE 9

Form of Independent Certifier Design Certificate – Penrith City Council Interface Agreement

To: [Council's Representative]

From: [insert name of Independent Certifier] (ABN [Insert] (**Independent Certifier**))

This certificate is given in accordance with the "Sydney Metro - Western Sydney Airport Council Interface Agreement (Penrith City Council)" dated [**Insert**] (**Penrith City Council Interface Agreement**). Words defined in the Interface Agreement have the same meaning in this certificate.

In accordance with the terms of clause 9.4(c)(ii) of the Penrith City Council Interface Agreement, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed the attached Design Documentation for Design Stage 3 complies with all the requirements of the Penrith City Council Interface Agreement.

.....

Signed for and on behalf of

[insert name of Independent Certifier]

SCHEDULE 10

Form of Independent Certifier Completion Certificate – Penrith City Council Interface Agreement

To: [Council's Representative]

From: [insert name of Independent Certifier] (ABN **[Insert]** (**Independent Certifier**))

This certificate is given in accordance with the "Sydney Metro - Western Sydney Airport Council Interface Agreement (**Penrith City Council**)" dated **[Insert]** (**Penrith City Council Interface Agreement**). Words defined in the Interface Agreement have the same meaning in this certificate.

In accordance with the terms of clause 15.2 of the Penrith City Council Interface Agreement, we hereby certify that, in relation to the part of the Handover Works described in the Schedule, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, as at **[Insert date]** (**Date of Practical Completion**) Sydney Metro has achieved Practical Completion on **[Insert date]**.

Schedule – Handover Works

[Insert as required]

.....

Signed for and on behalf of

[insert name of Independent Certifier]

SCHEDULE 11

Form of Independent Certifier Deed Poll (Clause 5.2) – Sydney Roads Interface Agreement

SCHEDULE 12

Form of Design Documents Certification (Clause 12) – Sydney Roads Interface Agreement

Part 1 - Certificate for the Project Works

**[Insert Project] ("Project")
Design Documents Certification
Design Stage 3**

To: Sydney Metro and TfNSW

From: [] (ABN [])

This certificate is given in accordance with the agreement between TfNSW and Sydney Metro entitled the "Roads Interface Agreement – [Insert Project]" dated [insert date] with respect to the Project (RIA). Words defined in the RIA have the same meaning in this certificate.

In accordance with the terms of clause 12 of the RIA, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, the Design Documents comply with all the requirements of the RIA (including in respect of the Works other than the Project Works, the Technical and Other Requirements and in the case of the Project Works, section 7 (Settlement Monitoring and Management Plan) of the Technical and Other Requirements) except for the Minor Non-Compliances identified in the attached list.

.....

Signed for and on behalf of

[Insert name of Independent Certifier]

ATTACHMENT A

List of Minor Non-Compliances

No.	Minor Non-Compliance	Recommended action to be taken by Sydney Metro to address Minor Non-Compliance

Part 2 - Certificate for the Road Works

**[Insert Project] ("Project")
Design Documents Certification
Design Stage 3**

To: Sydney Metro and TfNSW

From: [] (ABN [])

This certificate is given in accordance with the agreement between TfNSW and Sydney Metro entitled the "Roads Interface Agreement – [Insert Project]" dated [insert date] with respect to the Project (RIA). Words defined in the Sydney Roads Interface Agreement have the same meaning in this certificate.

In accordance with the terms of clause 12 of the RIA, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, the attached Design Documents comply with all the requirements of the RIA except for the Minor Non-Compliances identified in the attached list.

.....

Signed for and on behalf of

[Insert name of Independent Certifier]

[Design Documents to be attached]

ATTACHMENT A

List of Minor Non-Compliances

No.	Minor Non-Compliance	Recommended action to be taken by Sydney Metro to address Minor Non-Compliance

SCHEDULE 13

Form of Certificate of Practical Completion (Roads Works (Clause 16.3)) – Sydney Roads Interface Agreement

**[Insert Project] ("Project")
Certificate of Practical Completion - Road Works**

To: Sydney Metro and TfNSW

From: [] (ABN [])

This certificate is given in accordance with the agreement between TfNSW and Sydney Metro entitled the "Roads Interface Agreement – [Insert Project]" dated [insert date] with respect to the Project (RIA). Words defined in the Sydney Roads Interface Agreement have the same meaning in this certificate.

In accordance with the terms of clause 16.3 of the RIA, we hereby certify that, in relation to the part of the Road Works described in Schedule 1, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, as at [insert date] (**Date of Practical Completion**) :

- (a) Sydney Metro has achieved Practical Completion on [insert date] in accordance with the Design Documents it was entitled to use for construction purposes under clause 12 of the RIA, except for the Minor Non-Compliances listed in Schedule 2; and
- (b) the construction complies with all requirements of the RIA, including the requirements of Annexure A of the RIA and all documentation has been recorded and submitted to TfNSW in accordance with the RIA.

Schedule 1

[Insert description of Road Works as relevant]

Schedule 2

[Insert list of Minor Non-Compliances and time for rectification]

.....

Signed for and on behalf of
[Insert name of Independent Certifier]

SCHEDULE 14

Form of Certificate of Final Completion (Roads Works (Clause 17)) – Sydney Roads Interface Agreement

**[Insert Project] ("Project")
Certificate of Final Completion - Road Works**

To: Sydney Metro and TfNSW

From: [] (ABN [])

This certificate is given in accordance with the agreement between TfNSW and Sydney Metro entitled the "Roads Interface Agreement – [Insert Project]" dated [insert date] with respect to the Project (RIA). Words defined in the RIA have the same meaning in this certificate.

In accordance with the terms of clause 17 of the RIA, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, as at the date of expiration of the last "Defects Liability Period" as defined in the RIA being [insert date] the Road Works satisfy the requirements of the RIA for the issue of a certificate of Final Completion including:

- (a) all design, construction, inspection, repairs and monitoring by Sydney Metro has been undertaken in accordance with the RIA;
- (b) all documentation has been recorded and submitted to TfNSW in accordance with the RIA; and
- (c) all Defects have been rectified.

.....
Signed for and on behalf of

[Insert name of Independent Certifier]

SCHEDULE 15

Form of Certificate of Construction Completion (Project Works (Clause 15.3)) – Sydney Roads Interface Agreement

**[Insert Project] ("Project")
Certificate of Construction Completion - Project Works**

To: Sydney Metro and TfNSW

From: [] (ABN [])

This certificate is given in accordance with the agreement between TfNSW and Sydney Metro entitled the "Roads Interface Agreement – [Insert Project]" dated [insert date] with respect to the Project (RIA). Words defined in the RIA have the same meaning in this certificate.

In accordance with the terms of clause 15.3 of the RIA, we hereby confirm that Construction Completion of Associated Portion [insert number] has been achieved. The Date of Construction Completion of Associated Portion [insert number] is [insert date].

A list of Minor Non-Compliances is **attached**.

This Certificate of Construction Completion does not relieve the Contractor of its obligation to rectify defects (including Minor Non-Compliances in this certificate) under the Project Contract and to complete any other outstanding obligations under the Project Contract.

Schedule 1

[Insert description of relevant Package of the Project Works]

.....

Signed for and on behalf of

[Insert name of Independent Certifier]

[Insert summary of the results of all inspections and tests]

SCHEDULE 16

Form of Independent Certifier Deed Poll – TFNSW (M12) Interface Agreement

SCHEDULE 17

Form of SSTOM Fencing Works Design Certificate – TfNSW (M12) Interface Agreement

To: **Transport for NSW** ABN 18 804 239 602 a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (**TfNSW**)

[Insert name of SMWSA Contractor for the SSTOM Fencing Works] ABN **[Insert ABN]** (**SMWSA Contractor**)

From: **[Insert name of SMWSA Independent Certifier for the SSTOM Fencing Works]** (ABN **[To be inserted]**) (**SMWSA Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Metro Western Sydney Airport – M12 Interface Deed " dated **[Insert]** between SM and TfNSW (**Interface Deed**). Words defined in the Interface Deed have the same meaning in this certificate.

In accordance with the terms of clause 7.2(c)(i)(B)(bb) of the Interface Deed, we hereby certify that, having performed all relevant SMWSA Independent Certifier's Services in accordance with the requirements of the Interface Deed:

- (a) The attached SMWSA Design Documentation for the SSTOM Fencing Works:
 - (i) complies with all of the requirements of the Interface Deed including the TfNSW's SMWSA Technical Requirements in Exhibit 1 to the Interface Deed; and
 - (ii) is documented to enable construction in compliance with the Interface Deed (including to the extent applicable in respect of correction of defects); and
- (b) SM has addressed all issues of review, comment and consultation with TfNSW and the SMWSA Independent Certifier in respect of the SMWSA Design Documentation.

Signed for and on behalf of the SMWSA Independent Certifier by:

Signature:	
Name:	
Position: (SMWSA Independent representative) Certifier's	
Date:	

SCHEDULE 18

Form of Certificate of SSTOM Fencing Works Completion – TfNSW (M12) Interface Agreement

To: **Transport for NSW** ABN 18 804 239 602 a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (**TfNSW**)

Sydney Metro ABN 12 354 063 515 a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (**SM**)

From: **[Insert name of SMWSA Independent Certifier for the SSTOM Fencing Works]**
(ABN **[To be inserted]**) (**SMWSA Independent Certifier**)

This certificate is given in accordance with the deed titled "Sydney Metro Western Sydney Airport – M12 Interface Deed" dated **[Insert]** between SM and TfNSW (**Interface Deed**). Unless otherwise defined in this certificate, words defined in the Interface Deed have the same meaning in this certificate.

In accordance with the terms of clause 14.3 of the Interface Deed, we hereby certify that, in relation to the SSTOM Fencing Works described below, having performed all relevant SMWSA Independent Certifier's Services in accordance with the requirements of the Interface Deed, as at **[insert date]** the construction of the SSTOM Fencing Works comply with all requirements of the Interface Deed, including the SMWSA Design Documentation for the SSTOM Fencing Works referred to in clause 7.6 of the Interface Deed, subject to minor defects which do not prevent the Sydney Metro Western Sydney Airport from being fit for its intended purpose and the SMWSA Independent Certifier determines the SMWSA Contractor has reasonable grounds for not promptly correcting.

SSTOM Fencing Works

[SM to insert description of SSTOM Fencing Works]

Signed for and on behalf of the SMWSA Independent Certifier by:

Signature:	
Name:	
Position: (SMWSA Independent representative) Certifier's	
Date:	

Attachment - List of minor defects

No.	Minor defect	Action to be taken by the SMWSA Contractor to address minor defect
1.	[to be inserted]	[to be inserted]

SCHEDULE 19

Form of Independent Certifier Deed Poll – Water NSW Interface Agreement

SCHEDULE 20

Form of Independent Certifier Documents – Water NSW Interface Agreement

Schedule 20, Part 1 – Independent Certifier's Form of Design Certification

To: WaterNSW's Representative

From: *[insert name of Independent Certifier]* (ABN *[Insert]*) (**Independent Certifier**)

This certificate is given in accordance with the "Water NSW Interface Agreement - Sydney Metro Western Sydney Airport" dated *[Insert]* (**Water NSW Interface Agreement**). Words defined in the WaterNSW Interface Agreement have the same meaning in this certificate.

In accordance with the terms of clause [5.1(d)] of the Water NSW Interface Agreement, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed the attached [Design Stage 3 Design Documentation] complies with all the requirements of the Water NSW Interface Agreement.

.....

Signed for and on behalf of

[insert name of Independent Certifier]

Schedule 20, Part 2 – Independent Certifier's Form of Practical Completion Certification

To: WaterNSW's Representative

From: *[insert name of Independent Certifier]* (ABN *[Insert]*) (**Independent Certifier**)

This certificate is given in accordance with the "WaterNSW Interface Agreement - Sydney Metro Western Sydney Airport" dated *[Insert]* (**WaterNSW Interface Agreement**). Words defined in the WaterNSW Interface Agreement have the same meaning in this certificate.

In accordance with the terms of clause 5.6(d) of the WaterNSW Interface Agreement, we hereby certify that, having performed all relevant Services (as defined in the Independent Certifier Deed) in accordance with the requirements of the Independent Certifier Deed, the attached [drawings and plans showing the Works as executed] comply with the requirements of the WaterNSW Interface Agreement.

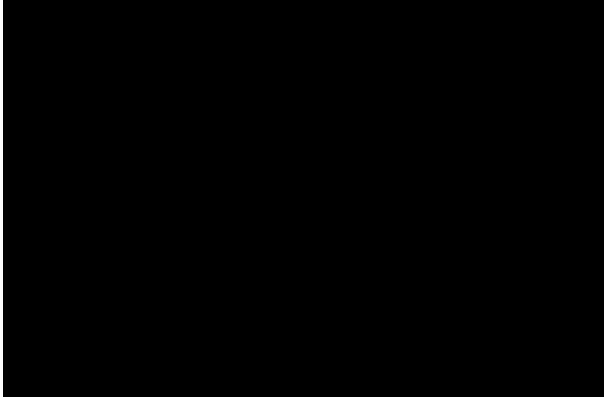
.....

Signed for and on behalf of

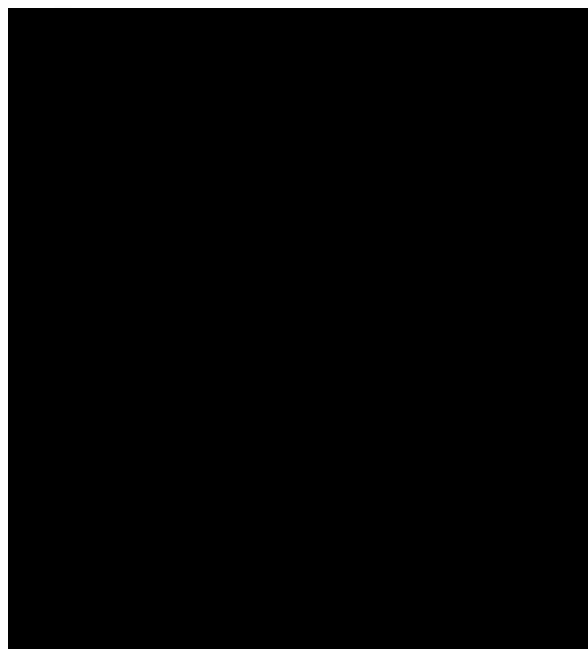
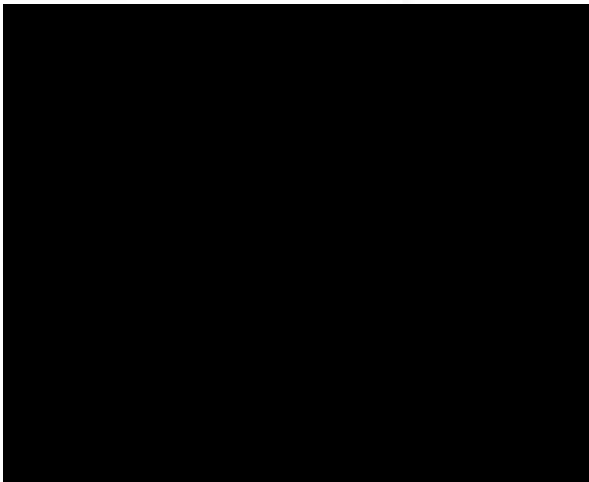
[insert name of Independent Certifier]

EXECUTED as a deed.

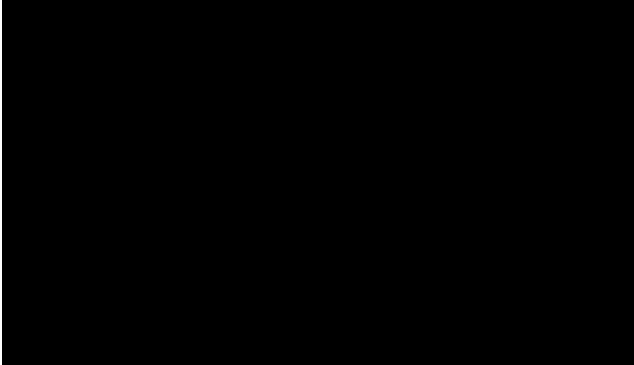
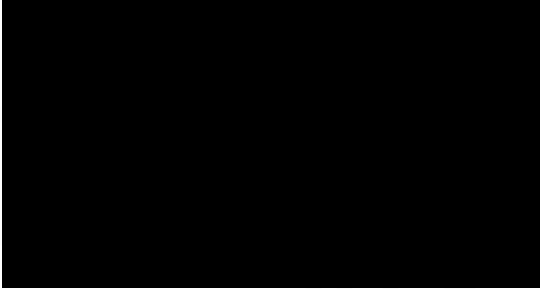
Executed by Sydney Metro (ABN 12 354 063 515) by its authorised delegate in the presence of:



**SIGNED, SEALED and DELIVERED for
PARKLIFE METRO PTY LTD ACN 657 249 682
in its personal capacity and in its capacity
as trustee of the PARKLIFE METRO UNIT
TRUST (ABN 50 667 445 077) by its
attorneys under power of attorney in the
presence of:**



SIGNED, SEALED AND DELIVERED BY SYSTRA (387 949 530 R.C.S PARIS) by its Attorney under a Power of Attorney dated 14 January 2022, and the Attorney declares that the attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



**SIGNED, SEALED AND DELIVERED BY
KELLOGG BROWN & ROOT PTY LTD**
(ABN 91 007 660 317) by its Attorney
under a Power of Attorney dated 3 October
2022, and the Attorney declares that the
attorney has not received any notice of the
revocation of such Power of Attorney, in
the presence of:

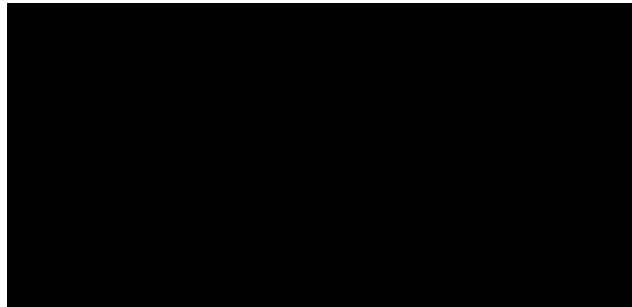
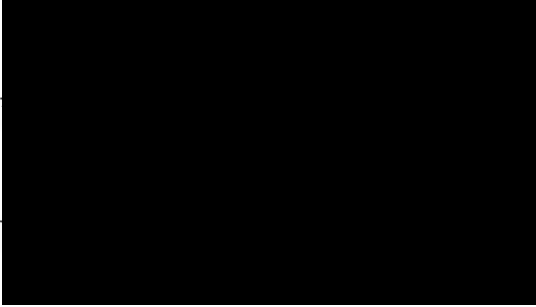


EXHIBIT 1 THE 2008-2009 BUDGETARY PROCESS

