

North West Rail Link Independent Certification of the SVC Works

Independent Certifier Deed

Impregilo S.p.A
ABN 83 159 573 896

Salini Australia Pty Ltd
ABN 86 158 955 885

SVC Contractor

Transport for NSW
TfNSW

Hyder Consulting Pty Ltd
ABN 76 104 485 289
Independent Certifier

(From the Accession Date) the person who accedes to this deed under clause 2
OpCo



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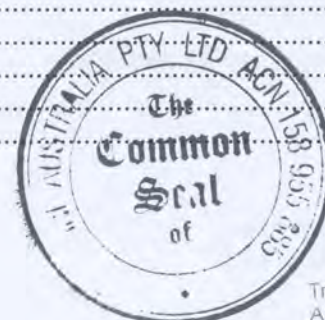


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Transport for NSW
ABN 18 804 239 602

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Independent Certifier Deed dated 17 DECEMBER 2013

Parties **Impregilo S.p.A (ABN 83 159 573 896)** of Suite 1 Level 7, 100 Walker Street, North Sydney NSW 2060

Salini Australia Pty Ltd (ABN 86 158 955 885) of Level 9, 97 Creek Street, Brisbane QLD 4000

(together the **SVC Contractor**)

Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted under section 3C of the Transport Administration Act 1988 (NSW) of Level 6, 18 Lee Street, Chippendale NSW 2008 (**TfNSW**)

Hyder Consulting Pty Ltd (ABN 76 104 485 289) of Level 5, 141 Walker Street, North Sydney NSW 2060 (**Independent Certifier**)

(From the Accession Date) the person who accedes to this deed under clause 2, being the person defined as the "Acceding Party" in the Accession Deed that TfNSW requires the Independent Certifier and OpCo to execute under clause 2(a) (OpCo)

Background

- A. On or about the date of this deed, the SVC Contractor entered into the SVC Project Deed with TfNSW in respect of the SVC Works.
- B. The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the SVC 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 and conditions of this deed.
- E. When completed, the SVC Contractor will progressively hand control of the Project Works to TfNSW, so that TfNSW may hand control of the Project Works to OpCo in order to allow it to undertake the OTS Project Works and to commence operation of the North West Rail Link.
- F. The Independent Certifier will issue a Notice of Construction Completion in respect of each Portion of the Project Works and OpCo will be bound by the Independent Certifier's certification as set out in each Notice of Construction Completion for the purposes of taking possession of the Construction Site.
- G. The tender process for OpCo has not been completed as at the date of this deed however, once it is complete and OpCo has been engaged by TfNSW, OpCo will execute the Accession Deed substantially in the form included in Schedule 6 and will thereby accede to the terms of this deed.



This deed provides

1. Definitions and interpretation

1.1 Definitions

In this deed:

Accession Date has the same meaning as given to the term "Effective Date" in the Accession Deed, being the date from which OpCo accedes to this deed.

Accession Deed means the deed in substantially the same form as Schedule 6 (with relevant details duly completed) which is to be executed by the Independent Certifier, the SVC Contractor, TfNSW and OpCo in accordance with clause 2.

Certification and Monitoring Plan means the plan that the Independent Certifier is required to prepare in accordance with clause 4.7, and in respect of which TfNSW has not issued a notice under clause 4.7(b)(ii), as that plan is updated from time to time in accordance with clause 4.8 of this deed.

Completion Phase Services means all Services related to the Construction Completion of each Portion and the performance by the SVC Contractor of its obligations in respect of Construction Completion of the Project Works, including those specified in clause 11 of the SVC Project Deed.

Construction Phase Services means all Services directly related to the construction of the SVC Works and the performance by the SVC Contractor of its construction obligations in respect of the SVC Works, including those specified in clause 7 of the SVC Project Deed and in the Third Party Agreements.

Defects Phase Services means the Services related to Defects, and the performance by the SVC Contractor of its obligations to correct Defects, during the Defects Correction Period.

Design Phase Services means all Services related to the design of the SVC Works and the performance by the SVC Contractor of its design obligations in respect of the SVC Works, including those specified in clause 5 of the SVC Project Deed and in the Third Party Agreements.

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

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.

Independent Certifier's Representative means Alan Clover or any other person holding that position in accordance with clause 4.4(b)(ii).

Interface Owners means RMS and The Hills Shire Council.

Other Parties means TfNSW, the SVC Contractor and, from the Accession Date, OpCo.

Payment Schedule means Schedule 2 to this deed.

Project Agreements means:



- (a) the SVC Project Deed;
- (b) the SVC-OTS Cooperation and Integration Deed;
- (c) from the Accession Date, the OTS Project Deed;
- (d) the WAD; and
- (e) The Hills Shire Council SVC Interface Agreement.

Services means the services listed in Schedule1 to this deed.

Substitute Certifier has the same meaning as in clause 7(d).

TfNSW's Representative has the same meaning as the "Principal's Representative" in the SVC Project Deed.

Term means the term of this deed as set out in clause 4.13.

SVC Project Deed means the deed titled "North West Rail Link - Design and construction of station and viaduct civil works: SVC Project Deed" between TfNSW and the SVC Contractor dated on or about the date of this deed.

SVC Works means the Project Works and the Temporary Works.

1.2 Definitions in SVC Project Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the SVC Project Deed will have the same meaning in this deed as in the SVC 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) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (c) **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;
 - (d) 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;
 - (e) 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;
 - (f) 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;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) 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;

- (m) for all purposes other than as set out in clause 1.3(l), **day** means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) 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
- (q) 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.



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 TfNSW considers, or if any of the Independent Certifier, SVC Contractor or OpCo notifies TfNSW'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), TfNSW's Representative must direct the interpretation of this deed which the parties must follow.
- (b) TfNSW'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 TfNSW's Representative gives in accordance with clause 1.5(a):





- (i) will not relieve the Independent Certifier, the SVC Contractor or OpCo from or alter its liabilities or obligations under this deed or otherwise according to Law;
- (ii) will not limit or otherwise affect TfNSW's rights against any of the Independent Certifier, the SVC Contractor 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, the SVC Contractor 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.

2. Accession by OpCo

- (a) The SVC Contractor and the Independent Certifier must, upon being requested by TfNSW, execute four counterparts of the Accession Deed in accordance with TfNSW's instructions and provide such copies to TfNSW, notwithstanding that the counterparts of the Accession Deed may not have been signed by TfNSW or OpCo.
- (b) The SVC Contractor and the Independent Certifier may not object to the identity of the person selected by TfNSW to be OpCo.
- (c) OpCo and the obligations owed to OpCo under this deed will only become effective upon the accession of OpCo to this deed in accordance with this clause 2 and the executed Accession Deed.
- (d) Upon accession of OpCo to this deed as referred to in clause 2(c), the rights and liabilities of the parties to this deed will be as set out in this deed as amended in accordance with the requirements of the Accession Deed.
- (e) TfNSW will provide each of the Independent Certifier and the SVC Contractor with a copy of the Accession Deed duly executed by TfNSW and OpCo.

3. Appointment of the Independent Certifier

3.1 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 3.1(a).
- (c) The Independent Certifier must carry out the Services in accordance with the requirements of this deed and, to the extent the Certification and Monitoring 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 and Monitoring Plan.

3.2 Payment

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

3.3 Nature of Services

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the deed.
- (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 TfNSW must 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, TfNSW may take into account representations made by the SVC Contractor and OpCo.



4. Independent Certifier's obligations

4.1 Acknowledgement

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of each of the SVC Project Deed, the SVC-OTS Cooperation and Integration Deed, the WAD and the Hills Shire Council SVC Interface Agreement and an advanced draft of the OTS Project Deed and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the Independent Certifier under the Project Agreements.

4.2 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;

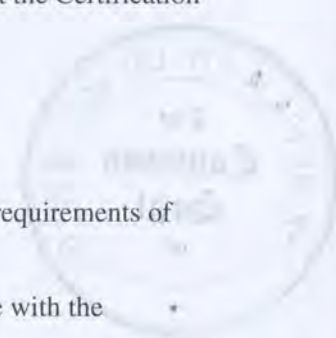


- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative 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.

4.3 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 and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert 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) warrants to the Other Parties that, at all times, it will 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 4.3(a) and 4.3(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) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3; and
 - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification and Monitoring 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 5,
 it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;
- (f) must provide transport on site for the use of its site personnel;





- (g) must, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the SVC Works and the SVC Contractor's Activities when appropriate or necessary to do so (including for the purpose of determining whether Construction Completion has been achieved by the SVC Contractor), and when reasonably requested by TfNSW or the SVC Contractor, in a manner which satisfies or exceeds the requirements ascertainable from Schedule 3 and the Certification and Monitoring Plan (including surveillance levels and resources) and will invite and permit TfNSW and OpCo to accompany it on all such inspections;
- (h) must 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 the SVC Contractor and 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 the SVC Contractor and OpCo.

4.4 Key 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 TfNSW (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
 - A. they must be replaced by people of at least equivalent skill, expertise and experience; and
 - B. 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
 - (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) TfNSW 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 with any such direction.
- (d) 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.



4.5 Subcontracting

- (a) Subject to clause 4.5(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, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request to subcontract).
- (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 TfNSW 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.

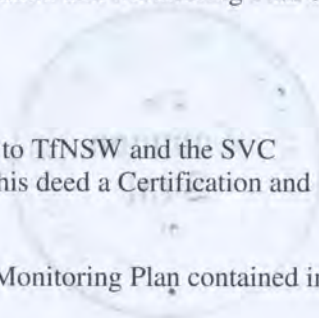
4.6 Quality Assurance

- (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 and Monitoring Plan or any audit under clause 4.10.



4.7 Certification and Monitoring Plan

- (a) The Independent Certifier must prepare and submit to TfNSW and the SVC Contractor within 25 Business Days of the date of this deed a Certification and Monitoring Plan which must:
 - (i) be based on the initial Certification and Monitoring Plan contained in Exhibit A;
 - (ii) meet or exceed the requirements of Schedule 3;
 - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the initial Certification and Monitoring Plan; and
 - (iv) comply with the requirements for the Certification and Monitoring Plan in Schedule 4 of this deed.
- (b) TfNSW may:
 - (i) review the Certification and Monitoring Plan submitted under clause 4.7(a); and
 - (ii) if the Certification and Monitoring Plan does not comply with this deed, or if TfNSW believes that the Certification and Monitoring Plan does not



provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.

- (c) If the Independent Certifier receives a notice under clause 4.7(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to TfNSW and the SVC Contractor, after which clause 4.7(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 4.7(b)(ii) within 15 Business Days after the submission of the relevant Certification and Monitoring Plan, the relevant Certification and Monitoring Plan submitted by the Independent Certifier will be the Certification and Monitoring Plan with which the Independent Certifier must comply (as it is updated under clause 4.8).

4.8 Revisions to Certification and Monitoring Plan

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the SVC Works, any Changes and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under clause 4.8(a) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification and Monitoring Plan to the Other Parties for their review and comment.



- (b) TfNSW may:
 - (i) review the Certification and Monitoring Plan submitted under clause 4.8(a)(iii); and
 - (ii) if the Certification and Monitoring Plan does not comply with this deed or TfNSW believes that the revised Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the Independent Certifier of that non-compliance or reduction.



- (c) If the Independent Certifier receives a notice under clause 4.8(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties after which clause 4.8(b) will reapply.
- (d) TfNSW owes no duty to the Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed.
- (e) Without limiting clauses 3.1(c) or 4.3(e), the Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 4.7 or the amending, updating and development of the Certification and Monitoring Plan required by clauses 4.8(a) and 4.8(c), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan or the then existing Certification and Monitoring Plan without the written approval of TfNSW's Representative.

- (f) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 4.8.

4.9 Progress Reports by the Independent Certifier

Throughout the Term of this deed, the Independent Certifier must provide a monthly progress report to TfNSW's Representative, the SVC Contractor and OpCo by the seventh day of the following month and in such format as is required by TfNSW's Representative, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (c) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
- (d) a summary of key risks and issues relating to the Services;
- (e) details of any SVC Contractor non-conformances raised by the Independent Certifier or TfNSW and details on the verification of the rectification by the SVC Contractor of non-conformances;
- (f) details of the surveillance, monitoring and auditing proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities; and
- (g) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period.



4.10 Audit and surveillance

- (a) The Independent Certifier must:
- (i) allow any audit of its quality assurance system under this deed by a third party, at the request of the Other Parties or any one of the Other Parties; and
- (ii) fully co-operate with that 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 third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
- (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.



4.11 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, including such records and documents

as may have been created prior to OpCo acceding to this deed in accordance with clause 2 and the Accession Deed.

4.12 Independent Certifier deed polls

On or within 5 Business Days of the date of this deed, the Independent Certifier must deliver to TfNSW's Representative deed polls in favour of each of the Interface Owners duly executed by the Independent Certifier, each of which must be in the form of Schedule 7 and Schedule 8.

4.13 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.

4.14 Independent Safety Assessor

- (a) The Independent Certifier acknowledges that TfNSW:
 - (i) has engaged an independent safety assessor to review the SVC Contractor's engineering safety management activities (**Independent Safety Assessor**); and
 - (ii) may make available to the Independent Safety Assessor any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services.
- (b) The Independent Certifier must cooperate with the Independent Safety Assessor.



5. Independence, confidentiality and exclusivity

5.1 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;
 - (ii) honestly and reasonably;
 - (iii) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
 - (iv) within the times prescribed under the Project Agreements or as anticipated by the Overall D&C Program.
- (b) Without limiting clause 5.3(a), the parties acknowledge that:
 - (i) the Independent Certifier has been engaged by TfNSW and the SVC Contractor prior to OpCo having been engaged by TfNSW;
 - (ii) once OpCo has been engaged by TfNSW, OpCo will accede to this deed;
 - (iii) the Independent Certifier is obliged to act independently of OpCo;



- (iv) the Independent Certifier may be engaged by OpCo in relation to the OTS Project Works but must demonstrate to the satisfaction of TfNSW and the SVC Contractor that it has sufficient separation procedures in place to permit it to act independently of OpCo;
- (v) the SVC Contractor may not make any Claim against the TfNSW or the Independent Certifier arising out of or in any way in connection with the Independent Certifier being engaged by OpCo in relation to the OTS Project Works; and
- (vi) neither TfNSW nor the SVC Contractor may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence because it is engaged by OpCo in relation to the OTS Project Works.

5.2 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, the SVC Works, this deed, the Project Agreements or the North West Rail Link 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 with the terms of clause 5.2(a).

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

5.3 Exclusivity

- (a) The Independent Certifier must not, and must procure that:
 - (i) any related body corporate (as defined by sections 9 and 50 of the Corporations Act 2001 (Cth)) of the Independent Certifier; and
 - (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,

do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 4.13:

 - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - A. with the SVC Contractor or any of its contractors, consultants or providers, or OpCo or any of its contractors, consultants or providers; or
 - B. in the Project Agreements; or



- (iv) provide services to or advise any other person in relation to the Project Agreements,

other than the provision of the Services under this deed, except with the prior written consent of TfNSW which may be withheld or granted in its absolute discretion.

- (b) The Independent Certifier agrees that:

- (i) having regard to the Project Agreements and the Services, clause 5.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project Agreements and to ensure the best value for money of the Project Agreements; and
- (ii) damages may not be a sufficient remedy for a breach of clause 5.3 and TfNSW may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.



6. Obligations of the Other Parties

6.1 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 6.1(a) will not prevent the Other Parties from providing written comments to the Independent Certifier in respect of the Design Documentation or any other aspect of the SVC Contractor's Activities (including in connection with the Independent Certifier's determination of whether Construction Completion has been achieved by the SVC Contractor) and the Independent Certifier must consider any comments received from the Other Parties.

6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the SVC Contractor's obligations under this deed or the Project Agreements, the SVC Contractor 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 requested by the Independent Certifier or directed by TfNSW;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by TfNSW, including allowing access to the Construction Site and any Extra Land and all areas where the SVC Works are being performed; and
 - (iii) ensure that Hold Points and Witness Points are included in the Overall D&C Program as required by the Independent Certifier to enable the Independent Certifier to perform the Services.



- (b) The SVC Contractor and OpCo must ensure that TfNSW is provided with a copy of any written communication to the Independent Certifier within 2 Business Days of providing the same to the Independent Certifier.

6.3 TfNSW to have no liability

Each party acknowledges that TfNSW 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 TfNSW being a party to this deed; or
- (b) for the performance of any obligation of the SVC Contractor, OpCo or the Independent Certifier under this deed or under any Project Agreement.

7. Change to Services, suspension of Services and appointment of Substitute Certifier

- (a) TfNSW may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Services referred to in clause 7(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by TfNSW.
- (c) TfNSW may, by written notice to the Independent Certifier (copied to the SVC Contractor and OpCo), direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.
- (d) The Independent Certifier acknowledges and agrees that TfNSW may, with or without the Other Parties, appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 7(a), and any decision of a Substitute Certifier appointed shall be treated (between TfNSW, the SVC Contractor, OpCo and the Independent Certifier) as if it is a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Project Agreements in connection with those Services.
- (e) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, 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.



8. Liability, insurance and indemnity

8.1 Limitation of liability

Subject to clause 8.2, the Independent Certifier's total liability to TfNSW, any Other Party and the Interface Owners under, arising out of or in connection with this deed and the deed polls provided by the Independent Certifier in favour of the Interface Owners, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited to:

- (a) for claims in relation to which the Independent Certifier is entitled to be indemnified (or would have been entitled to be indemnified but for any act or omission of the Independent Certifier) under the professional indemnity insurance required to be held by the Independent Certifier under clause 8.3(a), \$20 million; and
- (b) for all other claims, the higher of:
 - (i) \$20 million; and
 - (ii) any amount for which the Independent Certifier is indemnified under an insurance policy required to be held by the Independent Certifier under clauses 8.3(b) to 8.3(d).

8.2 Exclusions

The limitation of liability in clause 8.1 does not apply to any claims arising out of or in connection with any of the following on the part of the Independent Certifier or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct, being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this deed or the rights or welfare of, or foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence, being any negligent act or omission which the Independent Certifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by another party to the deed.



8.3 Insurances

The Independent Certifier must, from the later of the date of the SVC Project Deed and the date of this deed, hold and maintain:

- (a) professional indemnity insurance with:
 - (i) a limit of indemnity of not less than \$20 million for any single claim and in the aggregate in respect of legal liability (including, without limitation, in connection with property damage, personal injury or death) arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents or consultants; and
 - (ii) a deductible of not more than \$500,000;
- (b) workers compensation insurance in accordance with the requirements of Law;
- (c) public liability insurance with:
 - (i) a limit of indemnity of not less than \$50 million for any one claim in respect of legal liability for third party property damage, personal injury or death arising from the performance of the Services under this deed; and
 - (ii) a deductible of not more than \$50,000; and
- (d) such other insurance as may reasonably be required by the Other Parties.



8.4 Notice of matter affecting insurance

The Independent Certifier must notify the Other Parties 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.

8.5 Provision of information

The Independent Certifier must provide to the Other Parties:

- (a) certified copies of the insurance policies apart from the professional indemnity insurance and workers compensation insurance; and
- (b) certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 8,

at any time and from time to time on request by any party and prior to the renewal of each policy.

8.6 Periods for insurance

The Independent Certifier must maintain:

- (a) the project specific professional indemnity insurance for a period of 7 years (whether annually renewable or a single project policy) after the Date of Construction Completion of the last Portion to achieve Construction Completion or the date of termination of this deed, whichever is earlier;
- (b) the workers compensation insurance until it ceases to perform the Services;
- (c) the public liability insurance until it ceases to perform the Services; and
- (d) any other insurances for such time as may reasonably be required by the Other Parties.



8.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 8 does not limit the liability or other obligations of the Independent Certifier under this deed.

8.8 Indemnity

Subject to clause 8.1, the Independent Certifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of:

- (a) any damage to or loss of property; or
- (b) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants.

9. Termination of appointment

9.1 Notice of termination

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

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of TfNSW;
- (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 TfNSW of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) TfNSW 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; and
- (b) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the North West Rail Link, the SVC Works, the SVC Contractor's Activities or the Project Agreements.

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(d), the Independent Certifier is only entitled to be paid by the SVC Contractor the proportion of the Fee for Services performed up to the date of the termination.

9.6 Termination without payment

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(c), the parties' remedies, rights and liabilities shall 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

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

- (a) must be in writing;

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

Name: **Transport for NSW**
Address: 8-12 Castlereagh Street
Sydney
NSW 2000
Fax no: (02) 8265 6470
For the attention of: Rodd Staples

Name: **SVC Contractor**
Address: Level 7
100 Walker Street
North Sydney
NSW 2060
Fax no: (02) 8404 4155
For the attention of: Sam Turnbull



Name: **Hyder Consulting Pty Ltd**
Address: Level 5
141 Walker Street
North Sydney NSW 2060
Fax no: (02) 8907 9001
For the attention of: Alan Clover

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

(d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 11.1(b); and

(e) is taken to be received by the addressee:

- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.



11.2 Governing Law

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

11.3 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 11.3(a).

11.4 TfNSW as a public authority

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the SVC Contractor and OpCo acknowledges and agrees that, without limiting clause 11.4(a), anything which TfNSW 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 TfNSW under this deed and will not entitle any of the Independent Certifier, the SVC Contractor or OpCo to make any claim against TfNSW.
- (c) The parties agree that clauses 11.4(a) and 11.4(b) are taken not to limit any liability which TfNSW would have had to the Independent Certifier, the SVC Contractor or OpCo under this deed as a result of a breach by OpCo of a term of this deed but for clauses 11.4(a) and 11.4(b) of this deed.



11.5 Amendments

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

11.6 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.



11.7 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.

11.8 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.

11.9 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.

11.10 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.

11.11 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.

11.12 Counterparts

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.

11.13 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.



11.14 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.

11.15 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed (together with the Accession Deed from the time of accession by OpCo):

- (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.

11.16 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.

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

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.

11.18 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.

11.19 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 - Services

1. General

The Services include all the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier including providing various certificates required under the SVC Project Deed and the agreements between TfNSW and the Interface Owners.

2. Initial Certification and Monitoring Plan

The Independent Certifier must provide the Services to no lesser effort, quality or standard than that detailed in Schedule 3 and the initial Certification and Monitoring Plan included as Exhibit A.



Schedule 2 - Payment Schedule

1. Payment claim

At the end of each month or quarter (as applicable) after the later of the date of the SVC Project Deed and the date of this deed, the Independent Certifier must submit to TfNSW (copying the SVC Contractor) an account for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this deed during the relevant month or quarter;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as TfNSW and the SVC Contractor may reasonably require (which may include details of the time expended by the Independent Certifier in performing the Services).

2. Payment and notification of disputed amounts

- (a) The parties agree that:
 - (i) TfNSW will pay 100% of the Fee; and
 - (ii) pursuant to the SVC Project Deed, the SVC Contractor will be liable to TfNSW for any amounts payable to the Independent Certifier under paragraphs 3(b) or 3(e) of this Payment Schedule where the fact, matter or thing which gives rise to the liability to pay such amounts arises out of, or in connection with, an act or omission of the SVC Contractor.



- (b) Subject to paragraph 5 of this Payment Schedule TfNSW must, within 30 days after receipt of the account for the month (submitted in accordance with paragraph 1), pay the Independent Certifier any portion of the Fee attributable to the Services performed during the month which is not disputed. If TfNSW or the SVC Contractor (as applicable) disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, TfNSW or the SVC Contractor (as applicable) must notify the Independent Certifier in writing of the reasons for any amount which is disputed (which in the case of notification by the SVC Contractor must be copied to TfNSW).



- (c) If the parties do not resolve the matter within 10 Business Days after the issue of TfNSW's or the SVC Contractor's written notice, TfNSW's Representative (acting reasonably and independently) must determine the dispute. Any determination by TfNSW'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 any subsequent court proceedings.

3. The Fee

- (a) The Fee consists of the following components:
 - (i) a lump sum of [REDACTED] exclusive of GST for the Design Phase Services, subject to adjustment in accordance with this paragraph 3;

- (ii) a lump sum payment of [REDACTED] exclusive of GST for the Construction Phase Services, subject to adjustment in accordance with this paragraph 3;
 - (iii) a lump sum payment of [REDACTED] exclusive of GST for the Completion Phase Services, subject to adjustment in accordance with this paragraph 3; and
 - (iv) a schedule of rates exclusive of GST for the Defects Phase Services, subject to adjustment in accordance with paragraph 4.
- (b) Adjustments will be made to the lump sums referred to in paragraphs 3(a)(i), 3(a)(ii) and 3(a)(iii) by TfNSW in accordance with the appropriate rates set out in the schedule of rates in paragraph 4 of this Payment Schedule for reasonable increases or decreases in the cost to the Independent Certifier of performing the Design Phase Services, Construction Phase Services and/or Completion Phase Services as a result of:

- (i) a Change directed by TfNSW's Representative under the SVC Project Deed;
- (ii) re-certification of Design Documentation packages due to changes in Design Documentation (including resubmission of Design Documentation under clause 5.2(e) of the SVC Project Deed including as required by TfNSW's Representative). In relation to the re-certification of any Design Documentation packages during the provision of the Construction Phase Services, adjustments will be made to the lump sum for the Construction Phase Services referred to in clause 3(b) only to the extent that the time involved in undertaking the re-certification work, and addressing non-conformances, by the Independent Certifier exceeds 700 hours in total;
- (iii) significant delay to the performance of the Design Phase Services, Construction Phase Services and/or Completion Phase Services having regard to the Overall D&C Program, but only to the extent that:
 - A. in the case of Design Phase Services, the Design Phase Services are required to be carried out for longer than 12 months;
 - B. in the case of Construction Phase Services, the Construction Phase Services are required to be carried out past 21 January 2017; and
 - C. in the case of Completion Phase Services, the Construction Completion inspections by the Independent Certifier exceed 200 hours in total;
- (iv) the review and certification of more than 50 design packages in total; or
- (v) any additional Services directed by TfNSW.

In this clause a "design package" means each submission of the Design Documentation to the Independent Certifier and the information required by clauses 5.2(c) and 5.2(i) of the SVC Project Deed relating to each discrete design component or part or element of it, of the SVC Contractor's Activities and includes



the Design Documentation that is produced for the Developed Concept Design Stage, the Substantial Detailed Design Stage and the Final Design Documentation.

- (c) Payments for Defects Phase Services will be in accordance with the appropriate rates set out in the schedule of rates in paragraph 4 of this Payment Schedule.
- (d) The Independent Certifier acknowledges that (except as described in and payable under paragraph 3(e)) it has allowed in the lump sums and schedules of rates referred to in paragraph 3(a) for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from Sydney, but excluding Independent Certifier site facilities provided by the SVC Contactor in accordance with Appendix 6 of the SWTC), disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sum and schedule of rates, whether or not expressly mentioned in this deed or the SVC Project Deed.



- (e) The Independent Certifier will be entitled to reimbursement of its costs for travel and accommodation outside of the Greater Sydney metropolitan area (which incorporates Newcastle and Wollongong) incurred in the course of carrying out the Services if the costs:



- (i) have been reasonably and properly incurred for the sole purpose of performing the Services;
- (ii) were approved in writing by TfNSW (and, where the SVC Contractor is liable for the disbursements pursuant to paragraph 2(a)(ii), by the SVC Contractor) prior to being incurred; and
- (iii) are supported by documentation provided to TfNSW which is satisfactory to TfNSW (and, where the SVC Contractor is liable for the disbursements pursuant to paragraph 2(a)(ii), by the SVC Contractor).

4. Schedule of Rates

Design Phase Services - adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Independent Certifier's Representative - Design	Iain Hespe	
Retaining Walls, Viaduct & Bridge Structure	Mark Bramley	
Geotechnical and Earthworks	Simon Yau	
OTS Integration	Luke Palmer	
Utilities	David Robertson	
Drainage, Hydrology and Flooding	Luiz Segundo	
Roadworks	Mark Kelleher	

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Alignment	Andrew Frith	
Temporary Traffic Management	Damien Chee	
Durability	Michael Cope	
Earthing and Electrolysis	Colin Binfield	
Environmental Review	Peter Rand	
Air Quality, Noise & Vibration	Craig Beyers	
Urban Design (incl. Architecture and Landscape)	Andy Homewood	
Quality Review and Audit	Davinder Sidhu	
Safety Review and Audit	James Hart	
Environmental Review / Audit	Gillian Lehn	
Document Controller and site Administration assistant	Amara Talan	
Technical Director – Cable Stayed Bridges	Phil Tindall	
Senior / Principal Design Engineer	Hari Pokharel	



Construction Phase Services and Completion Phase Services - adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Independent Certifier's Representative - Construction	Wallace Lorimer	
Senior Project Engineer – Civil and Structural Works Construction	James Stagg	
Geotechnical Engineer	Anthony Succar	
Project Engineer - Structural Works Construction	Peter Ai	
Surveillance Officer – Structural Works Construction	Kevin Tressider	

Surveillance Officer – Structural Works Construction - Concrete Precast	Mick Marshall	
Project Engineer - Civil and Structural and traffic staging Works Construction	George Nissan	
Surveillance Officer - Civil and Structural and traffic staging Works Construction	Geoff Rossington	

Defects Phase Services - rates

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Independent Certifier's Representative	Wallace Lorimer	
Defects Phase - Project Engineer	Peter Ai	
Defects Phase - Surveillance	Kevin Tressider	



These rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements (other than as described in and payable under paragraph 3(e)) and other costs necessary for and arising out of or in connection with the Services for which the Independent Certifier is to be paid on a schedule of rates basis under this deed.

The rates will be increased every 12 months with the first adjustment to occur on the date which is 12 months after the date of this deed. On each occasion on which the rates are to be adjusted the rates will be increased by 4%.

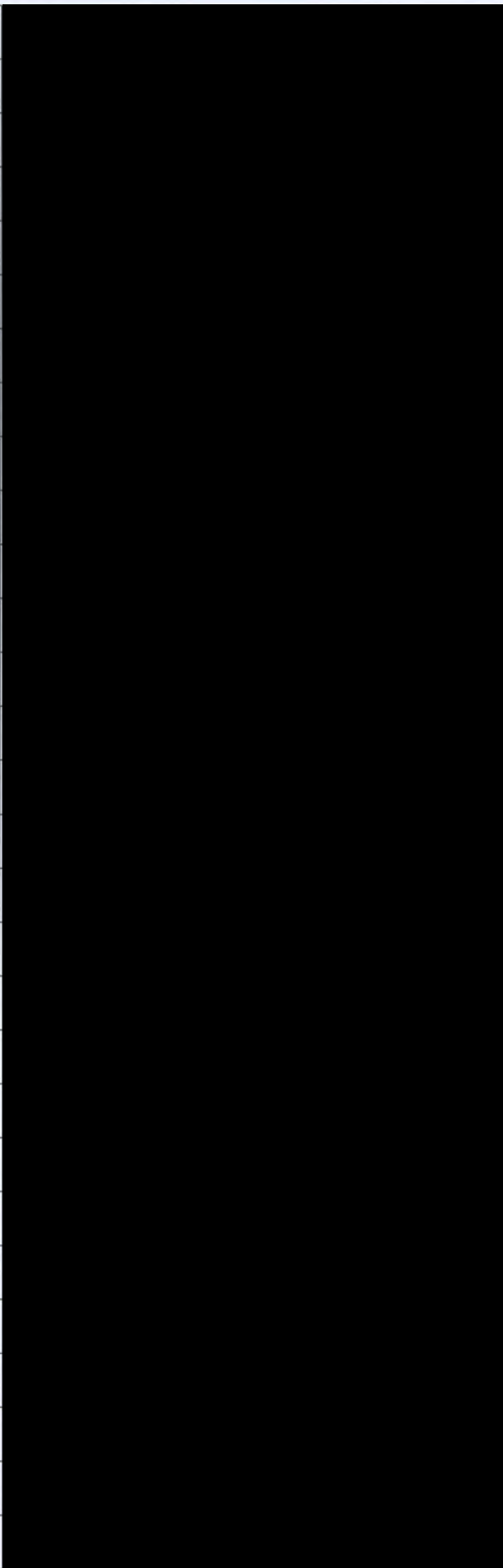
When claiming payment for any Services for which the Independent Certifier is to be paid on a schedule of rates basis the Independent Certifier must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid on a schedule of rates basis together with such further evidence as may be requested by TfNSW or the SVC Contractor.

5. Monthly payment schedule for lump sums

The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to paragraphs 1 and 2 of this Payment Schedule, the indicative monthly payment to be made is set out in the following table:

Month after date of the SVC Project Deed	Payment (\$ excluding GST)
1	

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6. GST

All lump sums, rates and amounts in this Payment Schedule exclude GST.

7. Pre-Agreed Change

If TfNSW directs the SVC Contractor to carry out the Pre-Agreed Change (as described in Schedule 38 of the SVC Project Deed):

(a) before 30 September 2014, the Construction Phase Services fee in clause 3(a)(ii) is increased by [REDACTED];

and:

(b) before 28 February 2014, the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED];

(c) between 1 March 2014 and 31 March 2014 (inclusive), the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED];

(d) between 1 April 2014 and 30 April 2014 (inclusive), the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED];

(e) between 1 May 2014 and 30 June 2014 (inclusive), the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED];

(f) between 1 July 2014 and 31 July 2014 (inclusive), the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED];

(g) between 1 August 2014 and 31 August 2014 (inclusive), the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED]; or

(h) between 1 September 2014 and 30 September 2014 (inclusive), the Design Phase Services fee in paragraph 3(a)(i) is increased by [REDACTED].



Schedule 3 - Minimum resources and surveillance levels

1. Minimum resources commitment

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Overall D & C Program as working days.

1.1 Design Phase Services

The Independent Certifier must provide at least the following key personnel to perform the Design Phase Services with the minimum days to be committed to the SVC Works at each phase as set out below:

Position	Name	Minimum commitment	
		During performance of the SVC Contractor's Activities relating to design, until all discrete design elements/components have passed Final Design Documentation Stage	During performance of the SVC Contractor's Activities relating to construction, until the expiry of the Defects Correction Period
Independent Certifier's Representative-Design	Iain Hesse	Full time/part time 173 days	Part time 60 days full time equivalent + as required
Retaining Walls, Viaduct & Bridge Structure	Mark Bramley	Part time 75 days	Part time 25 days full time equivalent + as required
Geotechnical and Earthworks	Simon Yau	Part time 83 days	Part time 20 days full time equivalent + as required
OTS Integration	Luke Palmer	Part time 38 days	Part time 20 days full time equivalent + as required
Utilities	David Robertson	Part time 33 days	Part time 15 days full time equivalent + as required
Drainage, Hydrology and Flooding	Luiz Segundo	Part time 49 days	Part time 15 days full time equivalent + as required
Roadworks	Mark Kelleher	Part time 30 days	Part time As required



Alignment	Andrew Frith	Part time 29 days	Part time As required
Temporary Traffic Management	Damien Chee	Part time 52 days	Part time 20 days full time equivalent + as required
Durability	Michael Cope	Part time 42 days	As required
Earthing and Electrolysis	Colin Binfield	Part time 12 days	As required
Environmental Review	Peter Rand	Part time 10 days	As required
Air Quality, Noise & Vibration	Craig Beyers	Part time 19 days	As required
Urban Design (incl. Architecture and Landscape)	Andy Homewood	Part time 11 days	As required
Quality Review and Audit	Davinder Sidhu	Part time 27 days	Part time 11 days full time equivalent + as required
Safety Review and Audit	James Hart		Part time 11 days full time equivalent + as required
Technical Director – Cable Stayed Bridges	Phil Tindall	Part time 32 days	
Senior / Principal Design Engineer	Hari Pokharel	Part time 80 days	
Environmental Review / Audit	Gillian Lehn		Part time 11 days full time equivalent + as required
Document Controller and site Administration assistant	Amara Talan	Part time 108 days	Part time 550 days full time equivalent

1.2 Construction Phase Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Construction Phase Services:

Role/Position	Name(s)	Minimum Attendance and Location
Independent Certifier's Representative - Construction	Wallace Lorimer	Full time during the performance of the SVC Contractor's Activities and based on the Construction Site for 674 days.



Senior Project Engineer - Civil and Structural Works Construction	James Stagg	Full time and based on the Construction Site for 560 days.
Geotechnical Engineer	Anthony Succar	Based on the Construction Site, as required for 560 days.
Project Engineer - Structural Works Construction	Peter Ai	Full time and based on the Construction Site for 541 days.
Surveillance Officer - Structural Works Construction	Kevin Tressider	Full time and based on the Construction Site for 399 days.
Surveillance Officer - Structural Works Construction - Concrete Precast	Mick Marshall	Full time and based on the Construction Site for 418 days.
Project Engineer - Civil and Structural and traffic staging Works Construction	George Nissan	Full time and based on the Construction Site for 560 days.
Surveillance Officer - Civil and Structural and traffic staging Works Construction	Geoff Rossington	Full time and based on the Construction Site for 532 days.

Note: In the table above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday.

1.3 Defects Phase Services

The Independent Certifier must provide the following personnel, as a minimum, set out below to perform the relevant aspects of the Defects Phase Services:

Position	Name	Minimum man-days to be committed to the SVC Works
Project Engineer - Structural Works Construction	Peter Ai	Part time, 6 days full time equivalent
Surveillance Officer - Structural Works Construction	Kevin Tressider	Part time, 6 days full time equivalent



1.4 Pre-Agreed Change

If TfNSW directs the SVC Contractor to carry out the Pre-Agreed Change (as described in Schedule 38 of the SVC Project Deed), this Schedule 3 is amended as follows:

- (a) delete the table in paragraph 1.1 in its entirety and replace with the following:

Position	Name	Minimum commitment	
		During performance of the SVC Contractor's Activities relating to design, until all discrete design elements/components have passed Final Design Documentation Stage	During performance of the SVC Contractor's Activities relating to construction, until the expiry of the Defects Correction Period
Independent Certifier's Representative-Design	Iain Hespe	Full time/part time 173 days	Part time 60 days full time equivalent + as required
Retaining Walls, Viaduct & Bridge Structure	Mark Bramley	Part time 75 days	Part time 25 days full time equivalent + as required
Geotechnical and Earthworks	Simon Yau	Part time 83 days	Part time 20 days full time equivalent + as required
OTS Integration	Luke Palmer	Part time 38 days	Part time 20 days full time equivalent + as required
Utilities	David Robertson	Part time 33 days	Part time 15 days full time equivalent + as required
Drainage, Hydrology and Flooding	Luiz Segundo	Part time 49 days	Part time 15 days full time equivalent + as required
Roadworks	Mark Kelleher	Part time 30 days	Part time As required
Alignment	Andrew Frith	Part time 29 days	Part time As required
Temporary Traffic Management	Damien Chee	Part time 52 days	Part time 20 days full time equivalent + as required
Durability	Michael Cope	Part time 42 days	As required
Earthing and Electrolysis	Colin Binfield	Part time 12 days	As required



Environmental Review	Peter Rand	Part time 10 days	As required
Air Quality, Noise & Vibration	Craig Beyers	Part time 19 days	As required
Urban Design (incl. Architecture and Landscape)	Andy Homewood	Part time 11 days	As required
Quality Review and Audit	Davinder Sidhu	Part time 27 days	Part time 11 days full time equivalent + as required
Safety Review and Audit	James Hart		Part time 11 days full time equivalent + as required
Technical Director – Cable Stayed Bridges	Phil Tindall	Part time 44 days	Part time 24 days full time equivalent + as required
Senior / Principal Design Engineer	Hari Pokharel	Part time 120 days	Part time 96 days full time equivalent + as required
Environmental Review / Audit	Gillian Lehn		Part time 11 days full time equivalent + as required
Document Controller and site Administration assistant	Amara Talan	Part time 108 days	Part time 550 days full time equivalent

2. Minimum ability, knowledge, skill, expertise and experience of Independent Certifier's personnel

2.1 Independent Certifier's project director

- (a) The Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to the SVC Works and the SVC Contractor's Activities.
- (b) The Independent Certifier's project director must at all times have authority to act on behalf of the Independent Certifier in respect of the Services.

2.2 Independent Certifier's Representative for the Design Phase Services

The Independent Certifier's Representative for the Design Phase Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design certification of large projects similar to the SVC Works and the SVC Contractor's Activities and at least 20 years of experience in the design of major infrastructure projects.



2.3 Independent Certifier's Representative for the Construction Phase Services

The Independent Certifier's Representative for the Construction Phase Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the construction certification of large projects similar to the SVC Works and the SVC Contractor's Activities and at least 20 years of experience in construction including strong experience in infrastructure construction.

2.4 Senior Project Engineer - Civil and Structural Works Construction

The Project Engineer - Civil and Structural Works Construction must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the SVC Works and the SVC Contractor's Activities and at least 15 years of experience in construction including strong experience in civil and structural construction.

2.5 Geotechnical Engineer

The Geotechnical Engineer must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the SVC Works and the SVC Contractor's Activities and at least 15 years of experience in construction including strong experience in piling, foundations, earthworks and batter construction.

2.6 Project Engineer - Civil Works Construction

The Project Engineer - Civil Works Construction must possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the SVC Works and the SVC Contractor's Activities and at least 10 years of experience in civil construction including in traffic management and environmental management.

2.7 Project Engineer - Structural Works Construction

The Project Engineer - Structural Works Construction must possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the SVC Works and the SVC Contractor's Activities and at least 10 years of experience in the construction of structures including piling, concrete work, pre-casting, pre-stressing, steel fabrication and erection.

2.8 Surveillance Officer - Civil Works Construction

The Surveillance Officer - Civil Works Construction must have at least 15 years of experience in the civil engineering industry and at least 10 years in surveillance of roadworks, traffic management and environmental management.

2.9 Surveillance Officer - Structural Works Construction

The Surveillance Officer - Structural Works Construction must have at least 15 years of experience in the civil engineering construction industry and at least 10 years in surveillance of the construction of structures, including piling, concrete work, pre-casting, pre-stressing, steel fabrication and erection.



2.10 Document Controller/Site Administrative Assistant



The Document Controller/Site Administrative Assistant must have experience in document control and site administration on major civil engineering projects.

3. Minimum surveillance commitment

The Independent Certifier acknowledges and agrees that the minimum surveillance levels set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.





The Independent Certifier must carry out, as a minimum, the following surveillance activities at the frequencies set out below:

<i>Surveillance Activity</i>	<i>Frequency during the SVC Contractor's Activities</i>
<p><i>Environmental Observation</i></p> <ul style="list-style-type: none"> • Observe the implementation of physical environmental controls, in accordance with the SVC Contractor's Construction Environmental Management Plan and sub-plans including: <ul style="list-style-type: none"> • <i>noise and vibration;</i> • <i>air quality;</i> • <i>mud, dirt and debris on roadways;</i> • <i>water quality;</i> • <i>stormwater;</i> • <i>soil erosion;</i> • <i>acid sulphate soil;</i> • <i>Contamination;</i> • <i>property accesses;</i> • <i>temporary pedestrian pathways and cycleways;</i> • <i>working within the approved hours;</i> • <i>spoil stockpiling and disposal;</i> • <i>waste management and disposal;</i> • <i>heritage management;</i> • <i>landscape maintenance; and</i> • <i>report to TfNSW, the SVC Contractor and the independent Environmental Representative.</i> 	<p style="text-align: right;">} <i>Twice weekly</i></p> <p style="text-align: right;">} <i>Twice weekly</i></p> 
<p><i>Traffic and Transport Surveillance</i></p> <ul style="list-style-type: none"> • Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, including: <ul style="list-style-type: none"> • <i>layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation;</i> 	<p style="text-align: right;"><i>Daily</i></p> 

<i>Surveillance Activity</i>	<i>Frequency during the SVC Contractor's Activities</i>
<ul style="list-style-type: none"> • <i>provisions for bicyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic;</i> • <i>timing and duration of road occupancies;</i> • <i>qualifications of traffic control personnel; and</i> • <i>truck haulage routes off the Construction Site.</i> 	<p>Daily</p> <p>} Weekly</p>
<p>Work Health and Safety Observation</p> <ul style="list-style-type: none"> • In conjunction with provision of the other Services, advise the SVC Contractor and TfNSW of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property. 	As required
<p>Quality Management Surveillance</p> <ul style="list-style-type: none"> • Inspect the SVC Contractor's Activities for compliance with the requirements of the SVC Project Deed. 	Twice weekly
<ul style="list-style-type: none"> • Inspect circumstances where significant non-conformances are or will be reported. 	Each occurrence
<ul style="list-style-type: none"> • Check compliance with the Quality Plans, process control plans and work processes. 	Each method statement
<ul style="list-style-type: none"> • Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> • <i>testing frequencies;</i> • <i>test methods;</i> • <i>test result verifications; and</i> • <i>release of Hold Points.</i> 	<p>} Weekly</p> <p>All Hold Points</p>
<ul style="list-style-type: none"> • Monitor the rectification of non-conforming product or work. 	All rectifications
<p>Construction Surveillance</p> <ul style="list-style-type: none"> • Monitor the SVC Contractor's obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses; 	Monthly
<ul style="list-style-type: none"> • Check that the SVC Contractor's Activities including in relation to the bridge and viaduct construction work is within each relevant design tolerance; 	Weekly



<i>Surveillance Activity</i>	<i>Frequency during the SVC Contractor's Activities</i>
<ul style="list-style-type: none"> Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with the SVC Project Deed including clause 5.2(m) of the SVC Project Deed. 	Weekly
<ul style="list-style-type: none"> Check that durability requirements of the Project Works are being addressed and applied; 	Weekly
<ul style="list-style-type: none"> Witness construction trials and commissioning tests, including: <ul style="list-style-type: none"> <i>use of any materials, plant and equipment that differs from accepted industry standards;</i> <i>concrete including in-situ concrete and precast elements;</i> <i>sprayed concrete;</i> <i>waterproofing systems;</i> <i>water collection, treatment and discharge systems;</i> <i>rock bolts/ground anchors;</i> <i>blasting; and</i> <i>Utility Service diversions.</i> 	 <p>Each trial and test</p>
<ul style="list-style-type: none"> Record photographically and catalogue general and detailed work in progress. 	20 digital photographs/day
<ul style="list-style-type: none"> Witness the construction of the Project Works and Temporary Works including: <ul style="list-style-type: none"> <i>ground support and treatment;</i> <i>slope protection and retaining structures;</i> <i>soil and rock bolts and anchors;</i> <i>earthing and electrolysis protection, including earthing and bonding of reinforcement and monitoring points;</i> <i>haulage roads;</i> <i>provisions to access, secure, support and hand over the Rail Works, Local Area Works and Utility Service Works;</i> <i>Utility Service diversions; and</i> 	 <p>Daily</p>

<i>Surveillance Activity</i>	<i>Frequency during the SVC Contractor's Activities</i>
<ul style="list-style-type: none"> • <i>adjustments to or demolition of existing infrastructure and buildings.</i> 	<p>} Daily</p>
Quality Product Surveillance Monitoring	
<ul style="list-style-type: none"> • Monitor structure foundation and subgrade preparation and treatments; 	<i>Initial preparation and treatment</i>
<ul style="list-style-type: none"> • Monitor compaction of earthworks and spoil; 	<i>Weekly</i>
<ul style="list-style-type: none"> • Monitor manufacture of off-site precast units. 	<i>Weekly</i>
<ul style="list-style-type: none"> • Monitor: <ul style="list-style-type: none"> • <i>preparation and testing of grout test specimens; and</i> • <i>bolt anchorage testing of rock bolts</i> • <i>Monitor preparation of sprayed concrete test specimens;</i> • <i>Monitor concrete supply, including:</i> • <i>audits of each batch plant;</i> • <i>reviews of grout, mortar, concrete, precast concrete and sprayed concrete mix designs (including off-site work); and</i> • <i>monitoring of supplied mixes compared with mix designs.</i> 	<p>} <i>Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.</i></p> <p><i>Monthly</i></p> <p><i>Weekly</i></p> <p><i>Each mix</i></p> <p><i>Weekly</i></p>
<ul style="list-style-type: none"> • Monitor concreting and associated works including: <ul style="list-style-type: none"> • <i>preparation;</i> • <i>formwork;</i> • <i>bracing;</i> • <i>reinforcement;</i> • <i>placing;</i> • <i>stressing;</i> • <i>finishing;</i> • <i>curing; and</i> • <i>stripping formwork.</i> 	<p>} <i>Initial activity and twice weekly thereafter</i></p> <p>} <i>Initial activity and twice weekly thereafter</i></p>



<i>Surveillance Activity</i>	<i>Frequency during the SVC Contractor's Activities</i>
<ul style="list-style-type: none"> • Sprayed concrete, including: <ul style="list-style-type: none"> • <i>Batching and mixing</i> • <i>Application</i> • <i>Depth control</i> • <i>Curing</i> • <i>Production tests</i> • Monitor steel fabrication, including: <ul style="list-style-type: none"> • <i>reviews of welding procedures; and</i> • <i>monitoring of the fabrication and welding processes for major members (off-site).</i> • Monitor protective treatment systems (off-site). • Monitor ground movement equipment monitors including: <ul style="list-style-type: none"> • <i>audits of equipment; and</i> • <i>review of results.</i> 	<p><i>Each procedure</i></p> <p><i>Twice weekly</i></p> <p><i>Twice weekly</i></p> <p><i>Monthly</i></p> <p><i>Daily</i></p> <p><i>Each procedure</i></p> <p><i>Twice weekly</i></p> <p><i>Twice Weekly</i></p> <p><i>Monthly</i></p> <p><i>Daily</i></p>



Schedule 4 - Requirements for Certification and Monitoring Plan

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

- (a) the detailed schedule of functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier;
- (b) 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;
- (c) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (d) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (e) 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;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews, audits of Project Plans and other aspects of the SVC Contractor's Activities;
- (h) 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;
- (i) the Independent Certifier's comprehensive plans for:
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the SVC Contractor's Activities;
 - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the SVC Works to determine, verify and ensure the SVC Contractor's compliance with the requirements of the SVC Project Deed;
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
 - (iv) off-site surveillance of critical activities, including precasting yards, concrete production plants and steel fabrication;
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) reviewing the Project Plans;
 - (ii) addressing environmental monitoring and protection;
 - (iii) audit, surveillance and monitoring of the SVC Contractor's design and construction activities, including the processes used for determining the levels and scope of surveillance of activities;



- (iv) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
 - (v) ensuring that the SVC Contractor has addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation and the SVC Contractor's Activities; and
 - (vi) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (k) 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) certification of the Design Documentation;
 - (ii) certification of the construction of the SVC Works including constructability and durability issues;
 - (iii) verification of the quality and quantum of work the subject of progress claims made by the SVC Contractor in order to provide the certificate in the form of Schedule 31 of the SVC Project Deed;
 - (iv) certification of Construction Completion of each Portion;
 - (v) certification of the rectification by the SVC Contractor of non-conformances and Defects (if required); and
 - (vi) determination of any matters required by the Project Agreements;
- (l) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
 - (ii) committed surveillance resources; and
- (m) the basis of the initial Certification Monitoring Plan in terms of the assumptions relating to the SVC Contractor's Activities including:
- (i) number of design lots developed; and
 - (ii) program durations.



Schedule 5 - Subcontractors

Name of subcontractor	Part of the Services
APP Corporation Pty Limited (ABN 29 003 764 770)	Any part of the Services



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CONFIDENTIAL



Schedule 6 - Form of Accession Deed

This Accession Deed made at _____ on _____

Parties **Transport for NSW (ABN 18 804 239 602)** a New South Wales Government agency constituted under section 3C of the Transport Administration Act 1988 (NSW) of Level 6, 18 Lee Street, Chippendale NSW 2008 (**TfNSW**)

Impregilo S.p.A (ABN 83 159 573 896) of Suite 1 Level 7, 100 Walker Street, North Sydney NSW 2060

Salini Australia Pty Ltd (ABN 86 158 955 885) of Level 9, 97 Creek Street, Brisbane QLD 4000

 (together the **SVC Contractor**)

Hyder Consulting Pty Ltd (ABN 76 104 485 289) of Level 5, 141 Walker Street, North Sydney NSW 2060

 (together the **Continuing Parties**)

[insert name of OpCo] (ABN [insert]) of *[insert address]* (**Acceding Party**)

Background

- A. The Continuing Parties are each party to the Independent Certifier Deed.
- B. Each of the Continuing Parties and the Acceding Party has agreed that the Acceding Party will accede to the Independent Certifier Deed on or about the date of execution of the OTS Project Deed, on the terms of this deed.
- C. The Continuing Parties and the Acceding Party have agreed to amend the Independent Certifier Deed on the terms set out in this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

In this deed:

Accession Deed means this deed.

Effective Date means the date of this deed.

Independent Certifier Deed means the deed titled "North West Rail Link Independent Certification of the SVC Works: Independent Certifier Deed" which was originally entered into between the Continuing Parties on *[insert date]*.

OpCo means the entity or person that enters into the OTS Project Deed with TfNSW.

OTS Project Deed means the deed entitled *[insert full title of the OTS Project Deed]* entered into between TfNSW and OpCo on or about the date of this deed.



1.2 Definitions in SVC Project Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the SVC Project Deed will have the same meaning in this deed as are provided for in the SVC 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) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) 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;

(m) for all purposes other than as set out in clause 1.3(l), **day** means calendar day;

(n) a reference to a **month** is a reference to a calendar month;

(o) a reference to a court or tribunal is to an Australian court or tribunal;

(p) 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

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.

1.4 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.

2. Consideration

In consideration of the Acceding Party executing this deed, each Continuing Party agrees to pay the Acceding Party \$1 upon the Acceding Party's request.

3. Covenant

3.1 Covenant by Acceding Party

The Acceding Party confirms that it has been supplied with a copy of the Independent Certifier Deed as originally executed by the Continuing Parties and covenants with each of the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of OpCo's obligations under, the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

3.2 Covenant by Continuing Parties

Each Continuing Party covenants with the Acceding Party, with effect from the Effective Date, to be bound by the provisions of, and to perform all its obligations under the Independent Certifier Deed (as amended by Schedule 1 to this deed) in so far as they may remain to be observed and performed as at the date of this Accession Deed.

3.3 Amendment to Independent Certifier Deed

Each Continuing Party and the Acceding Party agree that the Independent Certifier Deed is amended as set out in Schedule 1 to this deed.

4. Representations and Warranties

The Acceding Party represents and warrants to each of the Continuing Parties that the obligations in this deed are valid and binding obligations of the Acceding Party.

5. General

5.1 Notices

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

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

Name: Transport for NSW
Address: 8-12 Castlereagh Street
Sydney
NSW 2000
Fax no: (02) 8265 6470
For the attention of: [TfNSW's Representative]



Name: Impregilo Salini Joint Venture
Address: 100 Walker Street
North Sydney
NSW 2060
Fax no: (02) 8404 4155
For the attention of: Sam Turnbull



Name: Hyder Consulting Pty Ltd
Address: Level 5
141 Walker Street
North Sydney NSW 2060
Fax no: (02) 8907 9001
For the attention of: Alan Clover

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 5.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;



- (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

5.2 Governing Law

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

5.3 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 5.3(a).

5.4 TfNSW as a public authority

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Independent Certifier, the SVC Contractor and OpCo acknowledges and agrees that, without limiting clause 5.4(a), anything which TfNSW 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 TfNSW under this deed and will not entitle any of the Independent Certifier, the SVC Contractor or OpCo to make any claim against TfNSW.
- (c) The parties agree that clauses 5.4(a) and 5.4(b) are taken not to limit any liability which TfNSW would have had to the Independent Certifier, the SVC Contractor or OpCo under this deed as a result of a breach by TfNSW of a term of this deed but for clauses 5.4(a) and 5.4(b) of this deed.



5.5 Amendments

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

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.

5.11 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.

5.12 Counterparts

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.

5.13 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.

5.14 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.

5.15 Stamp duties

TfNSW:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnifies each other party against any liability arising from failure to comply with clause 5.15(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

5.16 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed (together with the Accession Deed from the time of accession by OpCo):

- (a) embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) supersede any prior written or other agreement of the parties.

5.17 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.

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

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.



5.19 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.

5.20 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

The Independent Certifier Deed is deemed to be amended by:

- 1. immediately after the definition of "Independent Certifier's Representative" in clause 1.1, insert the following definition:

"OpCo" means *[insert full name of OpCo]* (ABN *[insert]*) of *[insert]*.

- 2. inserting the following details at the end of clause 11.1(b):

Name: *[insert name of OpCo]*

Address: []
[]

Fax no: []

For the attention of: []

Executed as a deed.

Executed by Transport for NSW (ABN 18 804 239 602) by its authorised representative in the presence of:

Signature of Authorised Representative

Signature of witness

Name of Authorised Representative

Name of witness in full



Executed by Impregilo S.p.A ABN 83 159 573 896 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of company secretary/director

Signature of director

Full name of company secretary/director

Full name of director



Executed by Salini Australia Pty Ltd ABN 86 158 955 885 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by Hyder Consulting Ptd Ltd ABN 76 104 485 289 in accordance with section 127 of the Corporations Act 2001 (Cth)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by [OpCo] ABN [insert ABN] in accordance with section 127 of the Corporations Act 2001 (Cth)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full



Schedule 7 - Form of Independent Certifier Deed Poll - RMS

Independent Certifier's deed poll

This deed poll is made by:

Hyder Consulting Ptd Ltd 76 104 485 289 of Level 5, 141 Walker Street, North Sydney NSW 2060
(the **Independent Certifier**)

Background

- A. RMS is party to the WAD with TfNSW.
- B. It is a term of the WAD that TfNSW require the Independent Certifier to execute this deed poll.
- C. The Independent Certifier has agreed to provide RMS with certain rights on the terms and conditions of this deed poll.

This deed poll witnesses:



1. Interpretation

1.1 Definitions

The defined terms in clause 1.1 of the Independent Certifier Deed have the same meaning in this deed poll unless a term is defined in this deed poll, in which case the meaning given in this deed poll will prevail.

Independent Certifier Deed means the deed between TfNSW, the Independent Certifier and the SVC Contractor (and OpCo from the date of its accession to that deed) entitled the "Independent Certifier Deed" and dated on or about *[insert]*.

RMS means Roads and Maritime Services ABN 76 236 371 088.

RMS Works has the meaning given to the term "Works" in the WAD.

TfNSW means Transport for NSW (ABN 18 804 239 602), a New South Wales Government agency constituted by the Transport Administration Act 1988 (NSW) as amended from time to time.

SVC Contractor means Impregilo S.p.A (ABN 83 159 573 896) and Salini Australia Pty Ltd (ABN 86 158 955 885).

SVC Project Deed has the meaning of that term in the WAD.

WAD means the deed between RMS and TfNSW entitled the "Works Authorisation Deed - North West Rail Link – Surface and Viaduct Civil (SVC) Works" dated on or about 28 November 2013.

1.2 Interpretation

The following apply in the interpretation of this deed poll, unless the context requires otherwise:

- (a) a reference to this deed poll, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires;



Handwritten signature/initials

- (b) a reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;
- (c) a reference to the singular includes the plural number and vice versa;
- (d) a reference to a gender includes a reference to each gender;
- (e) a reference to a party means a person who is named as a party to this deed poll;
- (f) person includes a firm, corporation, body corporate, unincorporated association and a governmental authority;
- (g) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed poll, their substitutes and assigns;
- (h) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally;
- (i) includes means includes but without limitation;
- (j) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (l) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed poll;
- (m) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (n) headings in this deed poll shall not form part of this deed poll and shall not be used in the interpretation of this deed poll.



2. Benefit of deed poll

- (a) The Independent Certifier acknowledges and agrees that this deed poll is for the benefit of RMS.
- (b) This document operates as a deed poll and is enforceable against the Independent Certifier in accordance with its terms by RMS, even though RMS is not a party to this deed poll.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of RMS.

3. Services

3.1 Services under the SVC Project Deed for the benefit of RMS

Without limiting any other clause of this deed poll, where the Independent Certifier carries out the Services in respect of:

- (a) clause 4.2(a)(i);
- (b) clause 4.2(a)(ii);
- (c) clause 4.3(a)(ii);
- (d) clause 4.3(a)(iii);
- (e) clause 5.2(a);
- (f) clause 5.2(c);
- (g) clause 5.2(i)(ii);
- (h) clause 5.2(j)(i); and
- (i) clause 8.6(d),



of the SVC Project Deed, those Services are also carried out for the benefit of RMS (insofar as they relate to the RMS Works).

3.2 Services under the WAD for the benefit of RMS

- (a) Without limiting any other clause of this deed poll the Independent Certifier must carry out the Independent Certifier Services under the WAD for the benefit of RMS including those referred to or required under-
 - (i) Clauses 11 and 12,
 - (ii) Clause 15.2,
 - (iii) Clause 16,
 - (iv) Clause 17.1; and
 - (v) Clauses 13.9 and 24.
- (b) Without limiting paragraph (a) the Independent Certifier must provide RMS with all certificates required from the Independent Certifier under the WAD within the time frames required by the WAD (including those set out in Schedules 3, 4, 5, 6 and 7 of the WAD).

4. Warranties

- (a) The warranties, covenants and acknowledgments set out in clauses 4.3, 4.4, 4.5, 4.6 and 5.1 of the Independent Certifier Deed are repeated for the benefit of RMS.
- (b) Without limiting any other clause of this deed poll the Independent Certifier covenants with RMS that the Independent Certifier Deed operates as if the WAD were a Project Agreement within the meaning of that term in the Independent Certifier Deed.



5. Indemnities

5.1 Indemnity

The Independent Certifier is liable for and indemnifies RMS against any liability, loss, claim, expense or damage which it may pay, suffer or incur in respect of:

- (a) any damage to or loss of property; or
- (b) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants in respect of or in relation to the Services referred to in clause 3.1.

The Independent Certifier's liability under this clause will be reduced proportionally to the extent that a negligent act or omission of RMS may have contributed to the loss or damage.

5.2 Indemnity survives

Each indemnity contained in this deed poll:

- (a) is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full;
- (b) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
- (c) survives the termination of this deed poll.

6. Limit of liability

The Independent Certifier's liability under this deed poll:

- (a) is limited to the same amount as under clause 8.1 of the Independent Certifier Deed; and
- (b) is reduced to the extent that the Independent Certifier has made payment to TfNSW in respect of the same loss or damage.

7. No payment by RMS

For the avoidance of doubt, the Independent Certifier acknowledges and agrees that RMS will have no obligation to make any payments whatsoever to the Independent Certifier caused by, arising out of or in connection with the Services.

8. Severability

If any provision of this deed poll is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.



Executed as a deed poll on

Signed, sealed and delivered by
Hyder Consulting Ptd Ltd ABN 76 104 485 289 by:

Signature of director/company secretary

Signature of director

Print name

Print name



Schedule 8 - Form of Independent Certifier Deed Poll - The Hills Shire Council

This deed poll is made by:

Hyder Consulting Pty Ltd 76 104 485 289 of Level 5, 141 Walker Street, North Sydney NSW 2060 (the **Independent Certifier**)

Background

- A. The Council is party to the Interface Agreement with TfNSW.
- B. It is a term of the Interface Agreement that TfNSW require the Independent Certifier to execute this deed poll.
- C. The Independent Certifier has agreed to provide the Council with certain rights on the terms and conditions of this deed poll.

This deed poll witnesses:

1. Interpretation

1.1 Definitions

The defined terms in clause 1.1 of the Independent Certifier Deed have the same meaning in this deed poll unless a term is defined in this deed poll, in which case the meaning given in this deed poll will prevail.

Council means The Hills Shire Council ABN 25 034 494 656.

Independent Certifier Deed means the deed between TfNSW, the Independent Certifier and the SVC Contractor (and OpCo from the date of its accession to that deed) entitled the "Independent Certifier Deed" and dated on or about *[insert]*.

Interface Agreement means the agreement between the Council and TfNSW entitled the "North West Rail Link: Interface Agreement - surface and civil viaduct works" dated on or about 20 November 2013.

Works has the meaning given to the term "Works" in the Interface Agreement.

SVC Contractor means Impregilo S.p.A ABN 83 159 573 896 and Salini Australia Pty Ltd ABN 86 158 955 885.

SVC Project Deed has the meaning of that term in the Interface Agreement.

TfNSW means Transport for New South Wales ABN 18 804 239 602.

1.2 Interpretation

The following apply in the interpretation of this deed poll, unless the context requires otherwise:

- (a) a reference to this deed poll, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires;
- (b) a reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;

- (c) a reference to the singular includes the plural number and vice versa;
- (d) a reference to a gender includes a reference to each gender;
- (e) a reference to a party means a person who is named as a party to this deed poll;
- (f) person includes a firm, corporation, body corporate, unincorporated association and a governmental authority;
- (g) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed poll, their substitutes and assigns;
- (h) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally;
- (i) includes means includes but without limitation;
- (j) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (l) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this deed poll;
- (m) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (n) headings in this deed poll shall not form part of this deed poll and shall not be used in the interpretation of this deed poll.



2. Benefit of deed poll

- (a) The Independent Certifier acknowledges and agrees that this deed poll is for the benefit of the Council.
- (b) This document operates as a deed poll and is enforceable against the Independent Certifier in accordance with its terms by the Council, even though the Council is not a party to this deed poll.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of the Council.

3. Services

- (a) Without limiting any other clause of this deed poll the Independent Certifier must carry out the Independent Certifier Services under the Interface Agreement for the benefit of the Council including those referred to or required under:
 - (i) clause 6.3;
 - (ii) clause 10.3; and



- (iii) clause 10.7.
- (b) Without limiting paragraph (a) the Independent Certifier must provide the Council with all certificates required from the Independent Certifier under the Interface Agreement within the time frames required by the Interface Agreement (including those set out in Schedules 3, 4, 5 and 6 of the Interface Agreement).

4. Warranties

- (a) The warranties, covenants and acknowledgments set out in clauses 4.3, 4.4, 4.5, 4.6 and 5.1 of the Independent Certifier Deed are repeated for the benefit of the Council and are enforceable by the Council against the Independent Certifier.
- (b) Without limiting any other clause of this deed poll the Independent Certifier covenants with the Council that the Independent Certifier Deed operates as if the Interface Agreement were a Project Agreement within the meaning of that term in the Independent Certifier Deed.

5. Indemnities

5.1 Indemnity

- (a) The Independent Certifier is liable for and indemnifies the Council against any liability, loss, claim, expense or damage which it may pay, suffer or incur in respect of:
 - (i) any damage to or loss of property; or
 - (ii) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants in respect of or in relation to the Services referred to in clause 3.

- (b) The Independent Certifier's liability under this clause will be reduced proportionally to the extent that a negligent act or omission of the Council may have contributed to the loss or damage.

5.2 Indemnity survives

Each indemnity contained in this deed poll:

- (a) is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full;
- (b) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
- (c) survives the termination of this deed poll.

6. Limit of liability

The Independent Certifier's liability under this deed poll:

- (a) is limited to \$20 million; and



- (b) is reduced to the extent that the Independent Certifier has made any payment resulting from a claim arising under the Independent Certifier Deed or any deed poll provided to RMS.

7. No payment by the Council

For the avoidance of doubt, the Independent Certifier acknowledges and agrees that the Council will have no obligation to make any payments whatsoever to the Independent Certifier caused by, arising out of or in connection with the Services.

8. Severability

If any provision of this deed poll is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement will, to the maximum extent permitted by law, be and continue to be valid and enforceable.

Executed as a deed poll on

Signed, sealed and delivered by

Hyder Consulting Ptd Ltd ABN 76 104 485 289 by:

Signature of director/company secretary

Signature of director



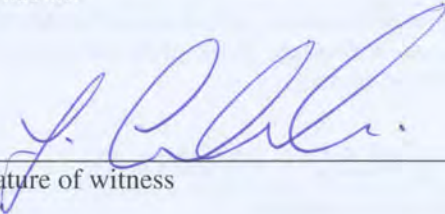
Print name

Print name



Executed as a deed.

Executed by Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:



Signature of witness

JAMES HOOKER

Name of witness in full

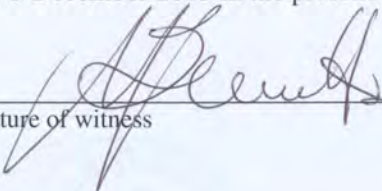


Signature of NWRL Project Director

Radd Style

Name of NWRL Project Director

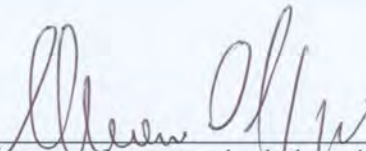
Signed, sealed and delivered for and on behalf of **Impregilo S.p.A ABN 83 159 573 896** by its attorney under a power of attorney dated 5 December 2013 in the presence of:



Signature of witness

ALBERIO BENVENUTI

Full name of witness

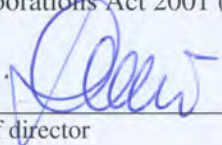


Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

MARCO ALPINI

Full name of attorney

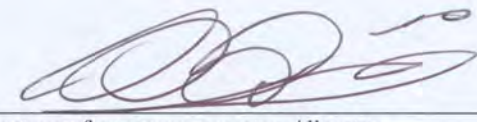
Executed by Salini Australia Pty Ltd ABN 86 158 955 885 in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

ENRICO LA CIVITA

Full name of director



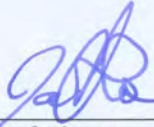
Signature of company secretary/director

Noe' Vicca

Full name of company secretary/director



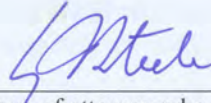
Signed, sealed and delivered for and on behalf of **Hyder Consulting Pty Ltd ABN 76 104 485 289** by its attorneys under a power of attorney dated 28 November 2013 in the presence of:



Signature of witness

IAN HOSPE

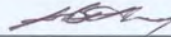
Full name of witness



Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

GREG STEELE

Full name of attorney



Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

ANDREW BETHUNE

Full name of attorney

