



Transport  
for NSW

# M6 Stage 1 Independent Certifier Deed

Transport for New South Wales  
ABN 18 804 239 602

CPB Contractors Pty Limited  
ABN 98 000 893 667

Ghella Pty Ltd  
ABN 85 142 392 461

UGL Engineering Pty Limited  
ABN 96 096 365 972

SMEC Australia Pty Limited  
ABN 47 065 475 149

2021

**M6 Stage 1 Independent Certifier Deed**

**THIS DEED** is made on

22 May  
~~21 May~~

2021

**BETWEEN:**

- (1) **Transport for New South Wales** (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**Principal**);
- (2) **CPB Contractors Pty Limited** (ABN 98 000 893 667) of Level 18, 177 Pacific Highway, North Sydney, New South Wales 2060;  
**Ghella Pty Ltd** (ABN 85 142 392 461) of Level 12, 2 Elizabeth Plaza, North Sydney, New South Wales 2060; and  
**UGL Engineering Pty Limited** (ABN 96 096 365 972) of Level 10, 40 Miller Street, North Sydney, New South Wales 2060,  
(together, the **Contractor**)
- (3) **SMEC Australia Pty Limited** (ABN 47 065 475 149) of Level 10, 71 Queens Road, Melbourne Victoria 3004 (**Independent Certifier**).

**RECITALS:**

- (A) On or about the date of this deed the Contractor entered into the D&C Deed with the Principal in respect of the Works.
- (B) The Independent Certifier represents that it is experienced in providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular and offers its expertise in those fields.
- (C) The D&C Deed and WestConnex Interface Agreement 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.

**1. INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this deed.

**Certification and Monitoring Plan** means the plan prepared by the Independent Certifier in accordance with clause 3.10 as that plan is updated from time to time in accordance with clause 3.12.

**Commercially Sensitive Information** means:

- (a) any information relating to a Project Party's or the Independent Certifier's cost structure or profit margins;

- (b) any information relating to any of a Project Party's or the Independent Certifier's Intellectual Property Rights; or
- (c) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to a Project Party or the Independent Certifier or any of their shareholders, financiers or Subcontractors,

which, in respect of the information contained in this deed, is the information described in Schedule 5.

**Completion Phase Services** means all IC Services related to Completion and the rectification of Defects and the performance by the Contractor of its obligations in respect of Completion of the Works and the rectification of Defects, including those specified in clause 18 (*Defects Correction Periods*).

**Construction Phase Services** means all IC Services related to the construction of the Works and the performance by the Contractor of its construction obligations in respect of the Works, including those specified in clause 14 (*Construction*).

**D&C Deed** means the deed titled "M6 Stage 1 Design and Construction Deed" between the Project Parties dated on or about the date of this deed.

**Deed Poll** means the deed poll substantially in the form of Schedule 6 in favour of the beneficiaries from time to time.

**Design Phase Services** means all IC Services related to the design of the Works and the performance by the Contractor of its design obligations in respect of the Works, including those specified in clause 12 (*Design and Design Documentation*).

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

**GST, GST law** and other terms used in clause 11 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 11) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of the Nominated Authority.

**IC Services** means:

- (a) the services listed in Schedule 1;
- (b) all other things or tasks which are conferred on, or contemplated to be performed by, the Independent Certifier under the D&C Deed; and
- (c) all other things or tasks which are conferred on, or contemplated to be performed by, the Independent Certifier or similarly named role under the WestConnex Interface Agreement.

**Independent Certifier's Representative** means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 3.6.

**Key Personnel** means the key personnel referred to in section 2 of Schedule 3.

**Minimum Aboriginal Participation Spend** means [REDACTED] (excluding GST).

**Nominated Authority** means the Independent Certifier unless otherwise directed by the Principal.

**Payment Schedule** means Schedule 2.

**PDCS** means the web based project data and collaboration system nominated by the Principal under clause 12.1 for the purposes of this deed or any other communications system agreed by the parties from time to time.

**Project Parties** means the Principal and the Contractor.

**Substitute Certifier** has the same meaning as in clause 7.1(d).

**Technical Specialists** means the persons specified in Schedule 4.

**Term** means the term of this deed as set out in clause 3.15.

**WestConnex Interface Agreement** means the 'M6 Stage 1 Deed of Agreement' dated on or about the date of this deed between the Principal and:

- (a) WCX M4 PT Pty Ltd (ABN 59 614 741 436) in its personal capacity and in its capacity as trustee of the WCX M4 Project Trust (ABN 31 878 147 068);
- (b) WCX M4 AT Pty Ltd (ABN 61 614 741 445) in its personal capacity and in its capacity as trustee of the WCX M4 Asset Trust (ABN 30 972 117 496);
- (c) WCX M5 AT Pty Ltd (ABN 49 608 798 081) in its personal capacity and in its capacity as trustee of the WCX M5 Asset Trust (ABN 23 365 031 283);
- (d) WCX M5 PT Pty Ltd (ABN 36 608 798 465) in its personal capacity and in its capacity as trustee of the WCX M5 Project Trust (ABN 73 899 615 977);
- (e) WCX M4-M5 Link PT Pty Limited (ABN 81 624 153 788) in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Project Trust (ABN 67 667 191 375); and
- (f) WCX M4-M5 Link AT Pty Limited (ABN 85 624 153 742) in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Asset Trust (ABN 18 934 919 866).

**Witness Point** means a point in a work process where the Contractor must give prior notice to the Nominated Authority and the option of attendance may be exercised by the Nominated Authority.

**Works** means the Project Works and the Temporary Works

## 1.2 Definitions in D&C Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the D&C Deed will have the same meaning in this deed as in the D&C Deed.

### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation of this deed;
- and unless the context indicates a contrary intention:
- (b) person includes an individual, the estate of an individual, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
  - (d) includes in any form is not a word of limitation;
  - (e) a reference to any Authority, institute, association or body is:
    - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
    - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
  - (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or code and standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
  - (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a 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;
  - (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;
  - (i) a reference to this deed or a D&C Document includes all schedules, exhibits, attachments and annexures to it;
  - (j) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (l) a reference to a court or tribunal is to an Australian court or tribunal;

- (m) 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;
- (n) a reference to a month is a reference to a calendar month; and
- (o) a reference to \$ or dollar is to Australian currency.

#### 1.4 **Contra proferentem**

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

#### 1.5 **Business Day**

If the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done:

- (a) if it involves a payment other than a payment which is due on demand, on the preceding Business Day; and
- (b) in all other cases, no later than the next Business Day.

#### 1.6 **Approvals and consents**

Any consent or approval referred to in, or required under, this deed from the Principal may be given or withheld, or may be given subject to any condition as the Principal (in its absolute discretion) think fit, unless this deed expressly provides otherwise.

#### 1.7 **Ambiguous terms**

- (a) If the Principal considers, or the Independent Certifier or Contractor notifies the Principal in writing that it considers, that there is an omission, ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any Schedules), the Principal must direct the interpretation of this deed, which the parties must follow.
- (b) The Principal, in giving a direction in accordance with clause 1.7(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal gives in accordance with clause 1.7(a):
  - (i) will not relieve the Independent Certifier or the Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;
  - (ii) will not entitle the Independent Certifier or the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect the Principal's rights against the Independent Certifier or the Contractor, whether under this deed or otherwise according to Law; and
  - (iv) must, in respect of a notice given under clause 1.7(a) by the Independent Certifier or the Contractor, be given within 25 Business Days of receipt of that notice.

## 1.8 **Principal as an Authority**

- (a) Subject to clause 1.8(b), the Contractor and the Independent Certifier acknowledge and agree that:
  - (i) nothing in this deed or in any of the D&C Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any legislation; and
  - (ii) without limiting clause 1.8(a)(i), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by the Principal under this deed and will not entitle the Contractor or the Independent Certifier to make any Claim against the Principal arising out of the subject matter of this deed and the other D&C Documents to which the Principal is a party.
- (b) The parties agree that clause 1.8(a) is taken not to limit any liability which the Principal would have had to the Contractor or the Independent Certifier under this deed, or any other D&C Document to which the Principal is a party, as a result of a breach by the Principal of a term of this deed or any other D&C Document to which the principal is a party but for clause 1.8(a).

## 2. **APPOINTMENT OF THE INDEPENDENT CERTIFIER**

### 2.1 **Appointment**

- (a) Each of the Project Parties appoints the Independent Certifier under this deed to perform the IC Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).
- (c) The Independent Certifier must perform the IC Services in accordance with the requirements of this deed.

### 2.2 **Payment**

Subject to the Independent Certifier performing the IC Services in accordance with this deed, the Principal will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

### 2.3 **Nature of IC Services**

The Independent Certifier and the Contractor acknowledge and agree that the Principal may from time to time direct the Independent Certifier to carry out additional IC Services in respect of the Contractor's Activities or the Works (including for the benefit of any existing or prospective debt financier) and, unless such additional IC Services are required as a result of a breach by the Contractor of the D&C Deed, the Principal will be solely liable to pay the Independent Certifier the Fee for any additional IC Services so directed, and will enter into separate arrangements directly with the Independent Certifier in respect of such payment which will be consistent with Schedule 2.

## 2.4 Deed Poll

The Independent Certifier must provide to the Principal on or before the date of this deed an executed Deed Poll.

## 3. INDEPENDENT CERTIFIER'S OBLIGATIONS

### 3.1 Acknowledgement

- (a) The Independent Certifier acknowledges that:
- (i) it has received a copy of the execution version of the D&C Deed and the WestConnex Interface Agreement;
  - (ii) it has read, and is familiar with, the terms of the D&C Deed and the WestConnex Interface Agreement to the extent they relate to the IC Services; and
  - (iii) its obligations under this deed extend to, and include, the obligations, functions, duties and services of the Independent Certifier referred to in the D&C Deed and the WestConnex Interface Agreement (as applicable).

### 3.2 Representations and warranties relating to enforceability

The Independent Certifier represents and warrants that:

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

### 3.3 Acknowledgements and warranties relating to the IC Services

- (a) The Independent Certifier acknowledges that each of the Project 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) The Independent Certifier warrants to the Project Parties that, in performing the IC Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a skilled professional providing services similar to the IC Services within the design and construction industries generally and the design and construction of major engineering works in particular.
- (c) The Independent Certifier warrants to the Project 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 D&C Deed and WestConnex Interface Agreement (and where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule.
- (d) Without limiting clauses 3.3(a) and 3.3(b), the Independent Certifier acknowledges that the Project 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, the D&C Deed or the WestConnex Interface Agreement.
- (e) Without limiting its obligations under any provision of this deed, the Independent Certifier warrants to the Project Parties that:
  - (i) it will carry out and perform the IC Services;
  - (ii) in performing the IC Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3; and
  - (iii) without limiting clauses 3.3(e)(i) and (ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
    - (A) the D&C Documents;
    - (B) the nature of the IC Services; or
    - (C) without limiting clauses 3.3(e)(iii)(A) and (B), the requirements of clause 4,it will carry out and perform the IC Services in accordance with the Certification and Monitoring Plan.
- (f) The Independent Certifier will provide transport on site for the use of its site personnel.
- (g) The Independent Certifier will, in carrying out the IC Services, carry out physical inspections of the Construction Site, any Extra Land, the Works and the Contractor's Activities when appropriate or necessary to do so (including for the purpose of determining whether Opening Completion and Completion have been achieved by the Contractor), and when reasonably requested by a Project Party, in a manner which satisfies or exceeds the requirements ascertainable from Schedule 3 and Schedule 4 and will invite and permit the Project Parties to accompany it on all such inspections.
- (h) The Independent Certifier warrants that, in performing the IC Services, it will keep itself informed of the progress of:

- (i) the development of the Project Plans and the Design Documentation; and
- (ii) the Works and the Contractor's Activities,

to the extent necessary to enable the Independent Certifier to provide timely reviews and timely and relevant comments in accordance with this deed.

- (i) The Independent Certifier will carry out the IC 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 Project Parties) except where it is the unavoidable consequence of performing the IC Services.
- (j) The Independent Certifier will co-operate with the Project Parties, their subcontractors and other third parties nominated by the Principal, and coordinate the IC Services with the Project activities and the Contractor's Activities.
- (k) In undertaking the IC Services, the Independent Certifier will comply with all the safe working requirements of the Project Parties.
- (l) To the extent the IC Services require the Independent Certifier to satisfy itself that the Contractor has performed obligations in accordance with the D&C Deed, the Independent Certifier must be satisfied that the Contractor has performed the relevant obligations in accordance with Good Industry Practice.

#### 3.4 **Acknowledgements and warranties relating to reliance**

The Independent Certifier acknowledges and agrees that the Project Parties are entitled to and will rely on any certificate, notice or other document signed or given by the Independent Certifier when acting in its capacity as Independent Certifier under or pursuant to this deed.

#### 3.5 **Access and Project Office**

- (a) The Contractor must provide for the Independent Certifier accommodation on the Construction Site and access to such premises as may be reasonably necessary to enable the Independent Certifier to discharge its' obligations under this deed.
- (b) The Independent Certifier must:
  - (i) establish a project office within the accommodation provided by the Contractor on the Construction Site (**Project Office**);
  - (ii) keep proper and complete written records of the performance of the IC Services at the Project Office; and
  - (iii) ensure that its Key Personnel and the Independent Certifier's Representative are located at the Project Office to the extent necessary to enable the Independent Certifier to perform the IC Services.

#### 3.6 **Key Personnel**

- (a) The Independent Certifier must provide experienced and skilled personnel, including Key Personnel, to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the Key Personnel:
  - (i) perform all of the services required of their respective positions;

- (ii) are located in Sydney for the performance of the IC Services; and
- (iii) are available for consultation as reasonably required by a Project Party from time to time.
- (c) Except as required by clause 3.6(f), the Independent Certifier must ensure that the Key Personnel are not removed without the prior written consent of the Project 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 the Project Parties within 10 days of the request for removal).
- (d) If any of the Key Personnel are removed, the Independent Certifier must ensure that they are replaced by another person that has:
  - (i) at least equivalent skill, expertise and experience;
  - (ii) been approved by the Project Parties.
- (e) Prior to the Key Personnel's removal and replacement, the Independent Certifier must ensure there is a proper handover so that the new personnel have a reasonable understanding of the D&C Deed, the WestConnex Interface Agreement and the IC Services.
- (f) The Project Parties may jointly direct the Independent Certifier to remove from the performance of the IC Services any of the people referred to in Schedule 3 and the Independent Certifier must comply with any such direction.
- (g) The Independent Certifier must notify the Project 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 IC Services, and must ensure that these certificates and documents are signed by the person or persons so notified.

### 3.7 **Subcontracting**

- (a) Subject to clause 3.7(c) and with the exception of the Technical Specialists, the Independent Certifier may not subcontract or permit the subcontracting of the performance of any of the IC Services without the prior written consent of the Project Parties.
- (b) The Independent Certifier remains responsible for the performance of the IC Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.
- (c) Unless the Principal otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 4 for the performance of the relevant parts of the IC Services.

### 3.8 **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 Project Parties to ensure compliance of the IC 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 a Project Party with respect to the quality assurance requirements of this deed, including any audit under clause 3.13.

### 3.9 **Documentation management and transmission**

- (a) Without limiting clause 12.1, the Independent Certifier must, if required by the Principal:
  - (i) implement and use the PDCS to manage and transmit all documentation connected with the Project in accordance with the processes and procedures required by the Principal;
  - (ii) align its document management and quality processes to complement and utilise the functions and features of the PDCS;
  - (iii) use the PDCS mail module for all correspondence relating to the Project between the Independent Certifier and the Project Parties;
  - (iv) upload all documentation required for the performance of the IC Services to the PDCS; and
  - (v) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (b) Documents supplied to the Independent Certifier by the Principal will remain the property of the Principal and must be returned by the Independent Certifier to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the IC Services.
- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the IC Services in secure and fireproof storage.
- (d) The Independent Certifier will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 3.9.
- (e) The Independent Certifier must ensure that any documents and materials that it provides to a Project Party in computer readable form contain no virus or computer software code which is intended or designed to:
  - (i) permit access to or use of a computer system by a third person not authorised by the project Party; or
  - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

### 3.10 **Certification and Monitoring Plan**

- (a) The Independent Certifier must prepare and submit to the Project Parties within 30 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 Attachment A to Schedule 8;
  - (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;
  - (iv) be fit for the purposes of enabling the Independent Certifier to perform the IC Services in accordance with this deed; and
  - (v) comply with the requirements for the Certification and Monitoring Plan in Schedule 8.
- (b) The Project Parties may:
- (i) review the Certification and Monitoring Plan submitted under clause 3.10(a); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed, or if the Project Parties believe that the Certification and Monitoring Plan does not provide the information required by Schedule 8, notify the Independent Certifier of the non-compliance.
- (c) If the Independent Certifier receives a notice under clause 3.10(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Project Parties, after which clause 3.10(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 3.10(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 3.10).

### 3.11 Progress Reports by the Independent Certifier

Throughout the Term of this deed, the Independent Certifier must provide a monthly progress report to each of the Project Parties by the seventh day of the following month and in such format as is required by the Principal, containing, identifying or setting out:

- (a) a description of the IC Services undertaken during the reporting period;
- (b) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and a Project Party;
- (c) a summary of key risks and issues relating to the IC Services;
- (d) details of any Contractor non-conformances and details on the rectification by the Contractor of non-conformances;
- (e) details of any recurring Contractor non-conformances or emerging patterns in relation to Contractor non-conformances or work process issues that need to be addressed by the parties to remedy actual or potential Contractor 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;

- (g) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the IC Services and detailed particulars of how the Independent Certifier is addressing, or proposes to address, that act, matter or thing;
- (h) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (i) 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; and
- (j) details of potential work process improvements and proposed changes to those work processes.

### 3.12 **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 IC Services as necessary to reflect the commencement of new stages of the Contractor's Activities, any Changes and any changes in the manner of performing the IC Services;
  - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under this clause 3.12 are consistent with, and provide, the information set out in Schedule 8; and
  - (iii) submit each revision of the Certification and Monitoring Plan to the Project Parties for their review and comment.
- (b) The Project Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.12(a)(iii); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed or a Project Party 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 3.12(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Project Parties after which clause 3.12(b) will reapply.
- (d) Without limiting clause 3.3(e), the Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 3.10 or the amending, updating and development of the Certification and Monitoring Plan required by clauses 3.12(a) and 3.12(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 the Project Parties.

- (e) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 3.12.

### 3.13 **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 a Project Party; 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 IC Services are being undertaken; and
  - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

### 3.14 **Access to records**

The Independent Certifier must, within a reasonable time (and in any event within 2 Business Days) of any request, give a Project Party access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the IC Services.

### 3.15 **Term**

- (a) Subject to clause 3.15(b), the Term of this deed commences on D&C Close and continues until the earlier of:
  - (i) completion of the IC Services; or
  - (ii) termination in accordance with clause 9.
- (b) Clauses 1, 2.4, 3.2, 3.7(a), 3.7(c), 3.10, 3.15, 4.2, 4.3, 4.4, 6.3, 8.1, 8.2, 8.10, 9.1, 9.2, 9.3, 9.7, 9.8, 9.9, 9.10, 10, 11, 12 and 13 will commence on the date of this deed.

### 3.16 **Principal and Contractor not responsible**

The Project Parties:

- (a) owe no duty to the Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed; and
- (b) are not responsible for the accuracy, completeness or the contents of, and make no representation and assume no duty of care in respect of, the Certification and Monitoring Plan.

### 3.17 **NSW Government Policy on Aboriginal Participation in Construction**

- (a) Unless otherwise defined, capitalised terms used in this clause 3.17 have the meanings given in the APIC Policy.
- (b) The Contractor must comply with and must ensure its subcontractors comply with:

- (i) the Minimum Aboriginal Participation Spend;
- (ii) the APIC Policy; and
- (iii) any direction by the Principal in relation to the APIC Policy,

including by providing all things within the time frames required by the APIC Policy and the Principal (as relevant).

- (c) The Aboriginal Participation Plan and Aboriginal Participation Report (if any) must be prepared in accordance with the APIC Policy and in the format prescribed by the NSW Procurement Board. Templates are available at:  
<https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-procurement-policy/aboriginal-participation-construction-policy-apic>

#### 4. **INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY**

##### 4.1 **Independent Certifier to be independent**

The Independent Certifier warrants to the Project Parties that in performing the IC Services, it will:

- (a) act professionally and independently of each of the Project Parties and in a timely manner;
- (b) act honestly, reasonably and fairly;
- (c) exercise the standard of care, knowledge, skill, expertise, experience and diligence which would be expected of a skilled professional providing services similar to the IC Services within the design and construction industry generally and the design and construction of major engineering works in particular;
- (d) without limiting this clause 4.1, act within the times prescribed under the D&C Deed, the WestConnex Interface Agreement or as anticipated by the Overall D&C Program (if earlier); and
- (e) provide, as a minimum, the levels of surveillance and resources specified in Schedule 3.

##### 4.2 **Confidentiality**

- (a) The Independent Certifier must:
  - (i) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the IC Services, the Works, the Contractor's Activities, this deed, the D&C Documents or the Project and not provide, disclose or use the information or documents except:
    - (A) to disclose them to a Project Party;
    - (B) for the purposes of performing the IC Services;
    - (C) where required by Law or to obtain legal advice on this deed; or
    - (D) with the prior written consent of the Project Parties; and



- (ii) ensure that its subcontractors comply with the terms of clause 4.2(a)(i).
- (b) This obligation will survive completion of the IC Services or the termination of this deed.

#### 4.3 **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 IC Services,

do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.15:

- (iii) have any direct or indirect involvement (whether under contract or any other arrangement) with a Project Party or any of its contractors, consultants or providers in relation to the Project; or
- (iv) provide services to or advise any other person in relation to the Project, the D&C Documents or the WestConnex Interface Agreement,

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

- (b) The Independent Certifier agrees that:

- (i) having regard to the D&C Deed, the WestConnex Interface Agreement and the IC Services, this clause 4.3 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 requirements of the Project and to ensure the best value for money of the Project; and
- (ii) damages may not be a sufficient remedy for a breach of this clause 4.3 and the Project Parties 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.

- (c) The Independent Certifier warrants that:

- (i) at the date of signing this deed, no conflict of interest (either actual or perceived) exists or is likely to arise in the performance of its obligations under this deed, the D&C Deed or the WestConnex Interface Agreement; and
- (ii) if, during the Term, notwithstanding clause 4.3(a) or this clause 4.3(c), any conflict or risk of conflict of interest arises, the Independent Certifier will notify the Project Parties in writing immediately of that conflict or risk and take such action to avoid or mitigate the conflict or risk of conflict of interest as the Project Parties may reasonably require.

#### 4.4 Relationship with Project Parties

- (a) The Independent Certifier is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of a Project Party.
- (b) Each party acknowledges and agrees that the Independent Certifier has no authority to:
  - (i) give directions to a Project Party other than as expressly set out in this deed or any of the D&C Documents;
  - (ii) waive or alter any terms of the D&C Documents; or
  - (iii) discharge or release a party from any of its obligations pursuant to the D&C Documents.

#### 4.5 Set off under the D&C Deed

The Project Parties and the Independent Certifier each agree that to the extent the Principal directs the Independent Certifier to include an amount in a Payment Statement that the Principal is entitled to retain, deduct, withhold or set-off under the D&C Deed, the Independent Certifier must include that amount in the relevant Payment Statement.

### 5. NOTIFICATIONS

The Independent Certifier agrees to promptly notify the Project Parties if, in the course of performing the IC Services, it becomes aware:

- (a) that any matter stated or certified by a Project Party or certificate provided under the D&C Deed is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which, in its reasonable opinion:
  - (i) may materially or adversely affect the Contractor's ability to achieve:
    - (A) Opening Completion by the Date for Opening Completion; or
    - (B) Completion by the Date for Completion;
  - (ii) it considers to be, in the context of the Project, of material interest to a Project Party;
  - (iii) may involve a material breach of the D&C Deed or the WestConnex Interface Agreement; or
  - (iv) may involve a material dispute between any of the parties to any D&C Document and another party or the parties to any D&C Document or any other person in relation to a D&C Document or the Project.

### 6. OBLIGATIONS OF PRINCIPAL AND CONTRACTOR

#### 6.1 No undue interference or influence

- (a) The Project Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the IC Services under this deed. The parties acknowledge that any communication allowed by this deed, the D&C

Deed or the WestConnex Interface Agreement will not of itself constitute a breach of this clause.

- (b) Clause 6.1(a) will not prevent a Project Party from providing written comments to the Independent Certifier in respect of the Design Documentation or any other aspect of the Contractor's Activities (including in connection with whether Opening Completion or Completion have been achieved by the Contractor). The Independent Certifier must consider any comments received from a Project Party and provide a written response either accepting or rejecting the comments and the reasons for its decision.

## 6.2 Co-operation by Project Parties

- (a) Without limiting or otherwise affecting any of the Contractor's obligations under this deed or the D&C Documents, the 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 the Principal;
  - (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 IC Services or as requested by the Independent Certifier or directed by the Principal, including allowing access to the Construction Site, the Works Site, any Extra Land and all areas where the Contractor's Activities are being performed;
  - (iii) ensure that Hold Points and Witness Points are included in the Project Plans as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the IC Services in accordance with this deed; and
  - (iv) coordinate the Contractor's Activities with the IC Services.
- (b) A copy of any written communication to the Independent Certifier must be provided by the sending party to the other Project Party at the same time as or within 2 Business Days of providing the same communication to the Independent Certifier.

## 6.3 Principal to have no liability

Each party acknowledges that, other than in respect of its obligation to pay any Fee for additional IC Services under clause 2.3, the Principal is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable for the performance of any obligation of the Contractor or the Independent Certifier whether under or purportedly under this deed or under the D&C Deed or otherwise.

## 7. CHANGE TO IC SERVICES, SUSPENSION OF IC SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER

### 7.1 Changes to IC Services, suspension of IC Services and appointment of Substitute Certifier

- (a) The Project Parties may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to carry out a change to the IC 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 IC Services referred to in clause 7.1(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 IC Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by joint notice from the Project Parties.
- (c) The Project Parties may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to suspend any or all of the IC Services for the period of time specified in the notice.
- (d) The Independent Certifier acknowledges and agrees that the Project Parties may appoint another certifier (**Substitute Certifier**) to carry out those IC Services which are omitted as a result of a change to the IC Services as directed under clause 7.1(a), and any decision of a Substitute Certifier appointed will be treated (as between the Project Parties) as if it is a decision of the Independent Certifier, and the Substitute Certifier will have all of the rights and powers of the Independent Certifier under the D&C Deed and WestConnex Interface Agreement in connection with those IC Services.
- (e) Notwithstanding a change to the IC Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the IC Services, as varied in accordance with this clause 7.1, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

## 7.2 Meeting

- (a) If a Project Party is of the opinion that the Independent Certifier is not performing its duties in accordance with this deed, that Project Party may call a meeting of the Project Parties' duly authorised representatives who must attend within 2 Business Days (or such other period as is reasonably requested by the party calling the meeting) to decide an appropriate action to resolve the issue.
- (b) Without limiting the scope of the decision of the Project Parties, the Project Parties will consider at such a meeting whether to resolve the issue referred to in clause 7.2(a) by:
  - (i) requesting that the Independent Certifier comply with this deed;
  - (ii) changing the IC Services in accordance with clause 7.1(a);
  - (iii) suspending the IC Services in accordance with clause 7.1(c);
  - (iv) appointing a Substitute Certifier in accordance with clause 7.1(d); or
  - (v) terminating the appointment of the Independent Certifier in accordance with clause 9.

## 8. LIABILITY, INSURANCE AND INDEMNITY

### 8.1 Limitation of liability

(a) Subject to clause 8.2, the Independent Certifier's total aggregate liability arising out of, under or in connection with this deed (including under or in connection with any certificate in favour of an Interface Party issued by the Independent Certifier in connection with this deed), from all claims howsoever arising (including under tort (including negligence), contract (including under an indemnity or warranty), in equity, in restitution and breach of statutory duty) will be limited to the higher of:

- (i) [REDACTED] or
- (ii) all amounts for which:
  - (A) the Independent Certifier is indemnified under the insurance policies that are required under this deed; and
  - (B) the Independent Certifier would have been indemnified under such insurance policies but for the failure of any such insurance policy to respond due to the wrongful act, omission or misconduct of the Independent Certifier, or the failure of the Independent Certifier to effect and maintain an insurance policy required under this deed and but for this clause,

in each case up to the minimum insurance amount required by clause 8.3 in total.

(b) Any liability incurred by the Independent Certifier under the Deed Poll will, for the purpose of this clause 8.1 be deemed to be a liability under this deed.

### 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 the Independent Certifier is responsible:

- (a) fraud or criminal conduct;
- (b) wilful default, meaning an act or failure to act by the Independent Certifier that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgment; or
- (c) gross negligence, meaning an intentional act or failure to act by the Independent Certifier which seriously and substantially deviates from a diligent course of action which is done in reckless disregard of or indifference to the serious and avoidable harm it is likely to cause, but excludes mere negligence.

### 8.3 Insurances

From the later of D&C Close and the date of this deed, the Independent Certifier must hold and maintain:

- (a) project specific professional indemnity insurance with:

- (i) a limit of indemnity of [REDACTED] 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 [REDACTED];
- (b) workers compensation insurance as required by Law under any statute relating to workers' or accident compensation; and
- (c) such other insurance as may reasonably be required by the Project Parties.

#### 8.4 **Notice of matter affecting insurance**

The Independent Certifier must notify the Project 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.

The Independent Certifier must not, without the prior written consent of the Project Parties, either materially alter the terms of, risks covered by or sum insured under the professional indemnity insurance policy.

#### 8.5 **Provision of information**

The Independent Certifier must provide to the Project 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 Project Party and prior to the renewal of each policy.

#### 8.6 **Periods for insurance**

The Independent Certifier must maintain:

- (a) the professional indemnity insurance for a period of 7 years (whether annually renewable or a single project policy) after the Date of Completion or the date of termination of this deed, whichever is earlier;
- (b) the workers compensation insurance until it ceases to perform the IC Services; and
- (c) any other insurances for such time as may reasonably be required by the Project 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 in relation to property/persons

(a) Subject to clause 8.1, the Independent Certifier is liable for and indemnifies each Project Party against any liability, loss, claim, expense or damage which they 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.

(b) The Independent Certifier's obligation to indemnify a Project Party under this deed shall be reduced proportionately to the extent that the Project Party has caused or contributed to the liability, loss, claim, expense or damage or has failed to mitigate its loss.

## 8.9 Indemnity in relation to breach

The Independent Certifier is liable for and indemnifies each Project Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of any breach of this deed by the Independent Certifier (including any claim or loss which the Project Party may have to another party arising from such breach).

## 8.10 Limitations on Contractor's liability

Despite any other provision of this deed, the Contractor's maximum aggregate liability to the counterparties to this deed and any person to whom this deed is novated or assigned in accordance with the terms of this deed, in respect of any claim or liability under, arising out of or in connection with the Project:

- (a) will not exceed the liability which the Contractor would have had under the D&C Deed if the counterparties to this deed and any person to whom this deed is novated or assigned had been named in the D&C Deed, jointly and severally, as the Principal; and
- (b) is otherwise subject to the same limitations on and exclusions of liability, counterclaims and defences expressed for the benefit of the Contractor in the D&C Deed and the Contractor will not be liable to the counterparties to this deed, under this deed in circumstances where its liability is excluded, or the category of loss or liability suffered or incurred by the counterparties to this deed is excluded, by the terms of the D&C Deed.

## 9. TERMINATION OF APPOINTMENT

### 9.1 Notice of termination

The Project Parties may jointly terminate this deed by notice in writing served on the Independent Certifier if:

- (a) the Independent Certifier is in material breach of this deed and the breach is not remediable in the reasonable opinion of the Project Parties;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Project Parties, has not been remedied

within 7 days of the service by the Project Parties of a joint notice specifying the breach and requiring the breach to be remedied;

- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Project Parties in their absolute discretion for any reason whatsoever serve on the Independent Certifier a joint notice of termination of the appointment of the Independent Certifier in respect of the IC 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 of D&C Deed

If the D&C Deed is terminated for any reason, each Project Party must give the Independent Certifier written notice and this deed will terminate on receipt of such notice from either Project Party.

## 9.3 Termination

Where a notice is served on the Independent Certifier under clause 9.1, this deed 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.

## 9.4 Delivery of documents

Upon the earlier of the date of termination of this deed and the date of completion of the IC Services, the Independent Certifier:

- (a) must deliver up to the Principal or to such other person as the Principal may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the IC Services; and
- (b) acknowledges that the Project Parties have the right to use all such documents for any purposes in connection with the Project, the Works, the Principal's activities, the Contractor's Activities or any D&C Document.

## 9.5 Reasonable assistance

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

## 9.6 Payment until date of termination

Where this deed is terminated under clause 9.1(d) or 9.2, the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for IC Services performed up to the date of the termination.

## 9.7 Termination without payment

Termination of this deed will be without prejudice to any claim which any Project Party may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.



**9.8 Survive termination**

This clause 9 will survive the termination of this deed.

**9.9 Rights upon termination**

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

**9.10 Replacement deed**

If this deed is terminated pursuant to clause 9.2, the Principal wishes to continue with the Project and the Principal gives the Independent Certifier a written request to do so, the Independent Certifier must promptly execute and deliver to the Principal a replacement deed on the terms of this deed incorporating such changes as are reasonably required by the Principal to either remove or replace (at the Principal's discretion) the Contractor as a party.

**10. CONFIDENTIALITY AND PUBLICITY**

**10.1 General restriction**

Subject to clause 10.2, no party will, at any time, without the written consent of the other parties, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than its officers, employees, consultants, advisers and agents who require such reports, studies, information and data to enable them to properly carry out their duties):

- (a) any of the contents of this deed;
- (b) any information relating to the negotiations concerning the same; or
- (c) any information which may have come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Project Parties.

**10.2 Exceptions**

The restrictions imposed by clause 10.1 will not apply to the disclosure of any information:

- (a) which is now or hereafter comes into the public domain (other than by breach of this clause) or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by Law or the Listing Rules of the Australian Stock Exchange Limited (if applicable);
- (c) as required for any legitimate NSW Government purpose or process;
- (d) pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007 or the NSW Public Private Partnership Guidelines 2017 (TPP17-07) published by NSW Treasury;

- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party;
- (f) which, in the reasonable opinion of a party, is required to be disclosed to:
  - (i) any actual or prospective investor in or lender to (or assignee or novatee of a lender to) the Principal;
  - (ii) any actual or prospective insurer in respect of the Project;
  - (iii) any of the parties' officers, employees, professional advisers, auditors or consultants;
  - (iv) any person to whom disclosure is reasonably necessary to enable that person to comply with the D&C Documents to which it is a party; or
  - (v) any Subcontractors to whom disclosure is necessary to enable that Subcontractor to comply with the Subcontract to which it is a party for the Project;
- (g) by the Principal that is not Commercially Sensitive Information; or
- (h) without limiting this clause 10.2 or clause 10.3, any disclosure by the Principal relating to this deed and which the parties agree (acting reasonably) contains no Commercially Sensitive Information.

### 10.3 **Disclosure by the Principal**

- (a) Notwithstanding the other provisions of this clause 10.3 and without limiting clause 10.2, but subject to clause 10.3(b), the parties acknowledge that:
  - (i) this deed will be made available to the Auditor-General in accordance with the Public Finance and Audit Act 1983 (NSW);
  - (ii) information concerning this deed will be tabled in Parliament of the State of New South Wales by or on behalf of the Principal and will be published in accordance with applicable government policies and guidelines;
  - (iii) this deed and information concerning this deed will be published on the Principal's contracts register in accordance with the GIPA Act (subject to the prior redaction of Commercially Sensitive Information which is not required to be disclosed in the contracts register under the GIPA Act); and
  - (iv) the Principal may make this deed available to any person as required by any applicable Law.
- (b) The parties acknowledge that:
  - (i) the Principal has consulted with the Contractor and the Independent Certifier in relation to the disclosure of those parts of this deed that are not Commercially Sensitive Information;
  - (ii) the Principal will notify the Contractor and the Independent Certifier of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal

under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;

- (iii) following notification by the Principal in accordance with clause 10.3(b)(ii), the Principal will take reasonable steps to consult with the Contractor and the Independent Certifier before the Principal discloses the information referred to in clause 10.3(b)(ii), including under the GIPA Act; and
- (iv) if, following:
  - (A) notification by the Principal in accordance with clause 10.3(b)(ii); or
  - (B) consultation between the parties in accordance with clause 10.3(b)(iii),

the Contractor or the Independent Certifier objects to the disclosure of some or all of the information referred to in clause 10.3(b)(ii) on the basis that it is Commercially Sensitive Information, the Contractor or the Independent Certifier (as applicable) must provide details of any such objection within 3 Business Days of the date the Contractor or the Independent Certifier (as applicable) received notification from the Principal or the date on which the consultation process concluded (as relevant).

- (c) The Principal may take into account any objection received from the Contractor or the Independent Certifier pursuant to clause 10.3(b)(iv) in determining whether the information identified by the Contractor or the Independent Certifier as Commercially Sensitive Information should be disclosed.
- (d) Nothing in this clause 10.3 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

#### 10.4 **Obligations preserved**

Where disclosure is permitted under clause 10.2, other than clauses 10.2(a), 10.2(b), 10.2(c), 10.2(d), 10.2(e), 10.2(g) and 10.2(h), the party providing the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this deed.

#### 10.5 **Publicity**

- (a) The Independent Certifier must not issue any information, publication, document or article for publication concerning the Project or the IC Services to any media (or permit any third party to do so) without the prior written approval of the Principal's Representative (acting reasonably) and only in a manner approved by the Principal's Representative (acting reasonably).
- (b) If the Independent Certifier or any of its subcontractors receives a direct request from the media for comment in respect of any aspect of the Project or the IC Services, that party must promptly provide details of such request to the Principal's Representative.

#### 11. **GST**

- (a) Except where the context suggests otherwise, terms used in this clause 11 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 11.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) 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 11.
- (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 11(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 11(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(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.

## 12. NOTICES

### 12.1 How to give notice

A notice or consent required, permitted or given under a provision of this deed (**Notice**):

- (a) given before the date referred to in clause ~~12.2(a)(ii)~~12.2(a)(ii), is only effective if it is:
  - (i) in writing;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) either:
    - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
    - (B) subject to clause 12.1(c), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address;
- (b) given on and from the date referred to in clause ~~12.2(a)(ii)~~12.2(a)(ii), is only effective if it is:

- (i) subject to clause 12.1(c), sent through the PDCS in accordance with the requirements set out in clause ~~12.7~~12.7;
  - (ii) in writing;
  - (iii) addressed to the person to whom it is to be given; and
  - (iv) in circumstances where the PDCS is temporarily disabled or not operating, issued in accordance with clause 12.1(c); and
- (c) in the case of Notices which have been sent in accordance with clauses 12.1(a)(iii)(B) or 12.1(b) under clauses 7.1(a), 7.1(c), 8.4, 9.1, and 9.2, in addition to the Notice sent pursuant to clauses 12.1(a)(iii)(B) or 12.1(b), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 12.1(a)(iii)(A) or clause 12.1(a)(iii)(B).

## 12.2 PDCS

- (a) At any time and from time to time the Principal may notify the Independent Certifier and the Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's notice will set out:
- (i) the name of the relevant PDCS;
  - (ii) the commencement date for use of the PDCS;
  - (iii) any password, login details or similar information required for the Independent Certifier and the Contractor to use the PDCS; and
  - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (b) The Independent Certifier and the Contractor must:
- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
  - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
  - (iii) ensure all relevant personnel attend all necessary training required by the Principal;
  - (iv) advise the Principal of which personnel require access to the PDCS;
  - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
  - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 12.1(b)(iv) to the Principal through the PDCS.
- (c) The Principal has no liability for any losses the Independent Certifier or the Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Independent Certifier and the

Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Independent Certifier's or the Contractor's access to or use of the PDCS or any failure of the PDCS.

### 12.3 Effectiveness of notices

- (a) A Notice referred to in clause 12.1 will not be effective unless it is delivered in accordance with clause 12.1(a)(iii)(A) or clause 12.1(a)(iii)(B).
- (b) A Notice issued pursuant to clause 12.1(a)(iii)(A) and a Notice issued pursuant to 12.1(a)(iii)(B) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

### 12.4 When a notice is given

A Notice that complies with this clause 12 is regarded as given and received:

- (a) if it is delivered:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail:
  - (i) within Australia – 2 Business Days after posting; or
  - (ii) to or from a place outside Australia – 5 Business Days after posting;
- (c) subject to clause 12.4(e), if it is sent by email on the first to occur of:
  - (i) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
  - (ii) the time that the communication enters an information system which is under the control of the addressee; or
  - (iii) the time that the communication is first opened or read by the addressee, unless the result is that the communication would be taken to be given or made after 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent, in which case that communication is taken to be received at 9:00am on the following Business Day;
- (d) subject to clause 12.4(e), if it is sent through the PDCS, at the time recorded on the PDCS as being the time at which the Notice was sent, unless that delivery is made on a non-Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
- (e) where clause 12.4(c) applies, the relevant Notice will be taken to have been received on the later of:

- (i) the date determined in accordance with clause 12.4(c); and
- (ii) the date determined in accordance with clause 12.4(a) or 12.4(b) (as the case may be).

## 12.5 Address for notices

A person's address are those set out below, or as the person notifies the sender:

### Principal

Address: 20-44 Ennis Road, Milsons Point, NSW, 2061

Email address: [REDACTED]

Attention: Executive Director Commercial Services

### Contractor

Address: Level 18, 177 Pacific Highway, North Sydney, NSW  
2060

Email address: [REDACTED]

Attention: [REDACTED]

### Independent Certifier

Address: SMEC Australia, Level 5, 20 Berry Street, North Sydney,  
NSW, 2060, Australia

Email address: [REDACTED]

Attention: [REDACTED]

## 12.6 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 12.6(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 12. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 12.1(a) will only form part of a communication under this clause 12 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this deed:
  - (i) to ensure that their respective firewall and/or mail server (as applicable):
    - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received; and

- (B) automatically sends a receipt notification to the sender upon receipt of a message; and
- (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

## 12.7 **Communications by the PDCS**

With respect to Notices sent through the PDCS:

- (a) only the text in any Notice or, subject to clause 12.7(b), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
- (b) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
  - (i) .pdf format;
  - (ii) a format compatible with Microsoft Office; or
  - (iii) such other format as may be agreed between the parties in writing from time to time.

## 13. **GENERAL**

### 13.1 **Governing Law**

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

### 13.2 **Jurisdiction**

- (a) Each party irrevocably 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 proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 13.2(a).

### 13.3 **Cost**

- (a) A party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.
- (b) The Contractor must pay all stamp duties and any related fines and penalties and any other fees payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed other than the Fee.
- (c) The Contractor is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.



#### 13.4 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any right, power or remedy provided by Law or under this deed by any party does not in any way preclude, or operate as a waiver of, any 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) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver by a party of:
  - (i) a breach of any term of this deed; or
  - (ii) any other failure by a party to comply with a requirement of this deed, will operate as a waiver of:
    - (iii) another breach of that term or of a breach of any other term of this deed; or
    - (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

#### 13.5 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party or parties to give effect to this deed.

#### 13.6 **Provisions limiting or 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.

#### 13.7 **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.

#### 13.8 **Variation**

No modification, variation or amendment of this deed will be of any force unless such modification, variation or amendment is in writing and executed by each party.

#### 13.9 **Severability of provisions**

Any provision of this deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions hereof or thereof.

#### 13.10 **Joint and several liability**

- (a) The obligations of a party, if more than one person, under this deed are joint and several and each person constituting that party acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this

deed) of the other as if those acts or omissions were its own and the other parties to this deed may proceed against any one or all of them.

- (b) The rights of a party, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting that party (and not severally or jointly and severally).
- (c) Any payment by a party under this deed to any account nominated in writing by another party or, failing such nomination, to any one or more persons constituting that party, will be deemed to be payment to all persons constituting that party.
- (d) A party, if more than one person, may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting that party.

#### 13.11 **Exclusion of proportionate liability scheme**

To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of a party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the parties under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

#### 13.12 **Assignment and novation**

- (a) The Contractor and the Independent Certifier must not assign, novate or otherwise transfer any of their rights or obligations under this deed without the prior written consent of the Principal.
- (b) The Principal may, in its absolute discretion and without consent from the Contractor or the Independent Certifier, assign, novate or otherwise transfer any of its rights or obligations under this deed to any assignee, novatee or other beneficiary of the D&C Deed, where the assignment, novation or other transfer is in accordance with the terms of the D&C Deed. The Independent Certifier and the Contractor must, if requested, execute a deed of novation in the form set out at Schedule 7.

#### 13.13 **Entire Agreement**

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

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

#### 13.14 **Indemnities**

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.

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.

**13.15 No representation or reliance**

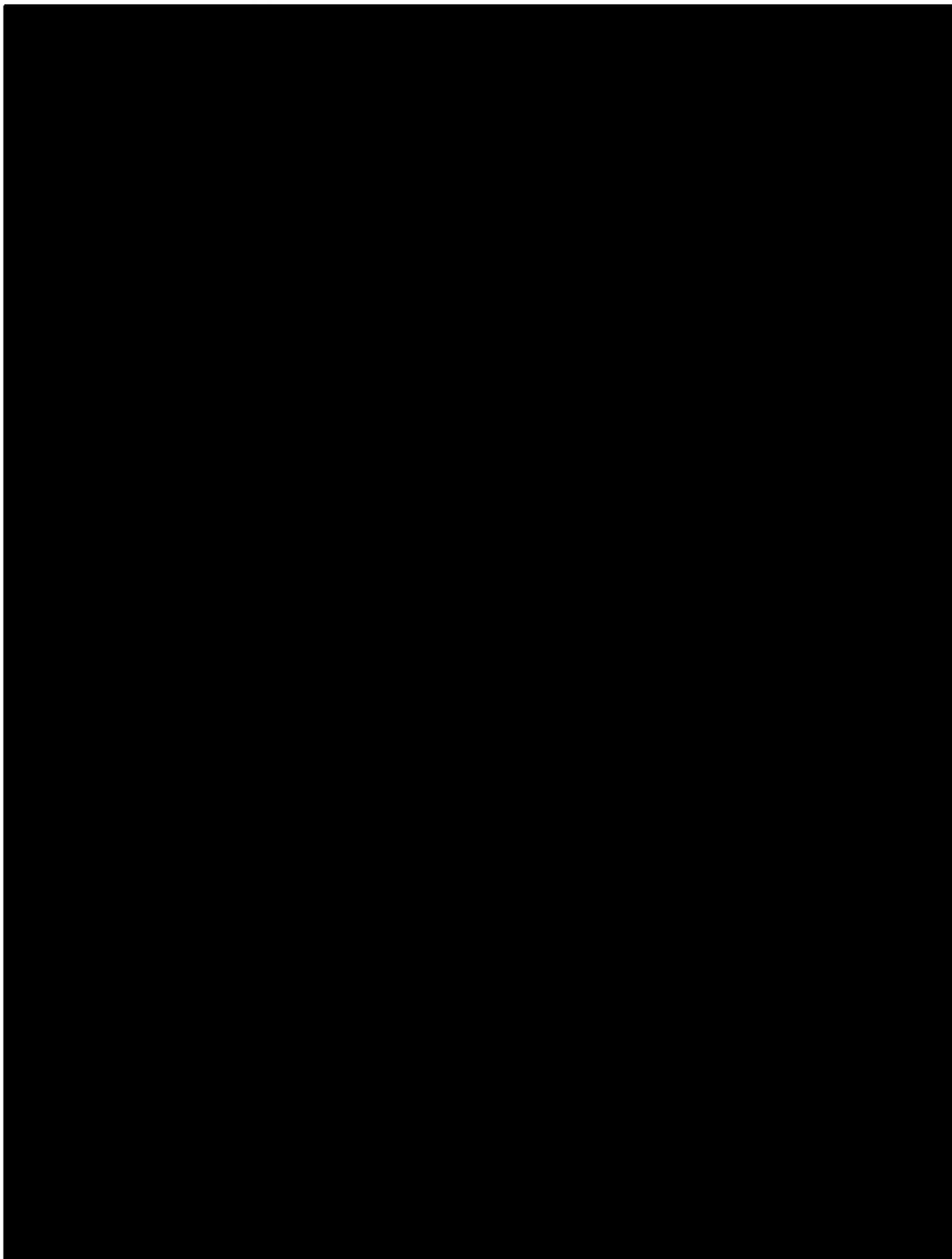
- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter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

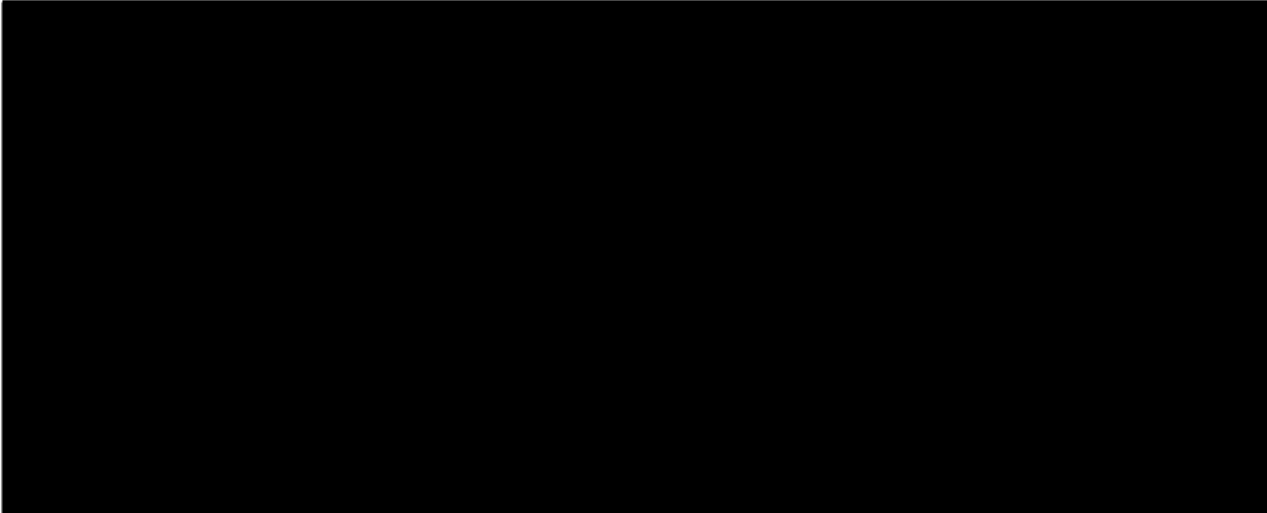
**13.16 Moratorium Legislation**

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.

**Executed** as a deed.







## Schedule 1

### IC Services

The IC Services include:

- (a) the Independent Certifier preparing a monthly progress report under clause 3.11 of a maximum of 8 A4 pages (plus attachments, if necessary) setting out:
  - (i) the tasks undertaken by the Independent Certifier during that month;
  - (ii) the visits made by the Independent Certifier to the Construction Site and elsewhere in connection with the Project during that month;
  - (iii) the documents reviewed by the Independent Certifier during that month and the current status of those documents;
  - (iv) the progress made by the Contractor in the development of the Design Documentation or the construction of the Works with reference to the current Overall D&C Program, and provision of the Independent Certifier's opinion on whether the Contractor will achieve Opening Completion by the Sunset Date;
  - (v) any issues identified by the Independent Certifier; and
  - (vi) the status of all Defects and non-conformances, including details of any corrective action plans, or corrective actions taken, by the Contractor in respect of them,and submitting that report to each of the Project Parties no later than 3 Business Days after the end of the month to which the report relates;
- (b) all the functions, obligations, duties and services which the D&C Deed and the SWTC contemplate will be discharged by the Independent Certifier including providing various certificates and Payment Statements required under the D&C Deed and the SWTC;
- (c) all the functions, obligations, duties and services which the WestConnex Interface Agreement contemplates will be discharged by the Independent Certifier, Independent Certifier or similarly named role including providing various certificates required under the WestConnex Interface Agreement;
- (d) without limiting sections (a), (b) and (c) above, all other things and tasks not described in this deed, the D&C Deed or the WestConnex Interface Agreement, if those things and tasks should have been reasonably anticipated by an experienced and competent professional provider of the IC Services as being necessary for the performance of the IC Services or that are otherwise capable of inference from this deed, the D&C Deed or the WestConnex Interface Agreement;
- (e) all other services directed by the Principal under clause 2.3;
- (f) the Independent Certifier carrying out the IC Services referred to in clause 12 of the D&C Deed and satisfying itself that the Design Documentation satisfies the requirements of the D&C Deed and the SWTC, including by:
  - (i) attending all design presentation workshops delivered by the Contractor, engaging with the Contractor's design personnel to obtain an explanation of

any Design Documentation, and requesting any review information necessary to explain the Design Documentation to assist certification of the compliance;

- (ii) attending meetings of the Contractor's design team and any other meetings at which design issues are discussed;
  - (iii) meeting with the Project Parties;
  - (iv) conducting audits of the Contractor's compliance with its Design Plan; and
  - (v) reviewing any Design Documentation that is amended by the Contractor or resubmitted by the Contractor.
- (g) certification of the correction of any Defects and any non-conformance by the Contractor (including during the Defects Correction Period);
- (h) providing guidance, assistance and coordination with the Principal's Surveillance Officer in the execution of the Principal's Surveillance Officer's duties;
- (i) reviewing the Contractor's Payment Claims including valuing and deducting any non-conformances or defect rectification work and taking into consideration any comments from the Project Parties;
- (j) promptly providing a written response to the Project Parties regarding their comments on the Contractor's Payment Claims or any other action or decision of the Independent Certifier in relation to the Contractor's Activities;
- (k) reviewing and commenting on the Contractor's Overall D&C Program and supporting information;
- (l) reviewing and commenting on any Contractor Change Notices provided by the Contractor, Change proposed by the Contractor or other details relating to a Change provided by the Contractor;
- (m) for every design stage, collating and checking all notified comments on Design Documentation, providing a consolidated register to the Project Parties of:
- (i) non-compliances with the D&C Deed with proposed actions for how and when each non-compliance will be resolved;
  - (ii) all other comments and observations with reasons why the comment is not considered to be a non-compliance with the D&C Deed; and
  - (iii) a record of the resolution of all comments provided on Design Documentation, including amended IFC Design Documentation.
- (n) meeting with the Contractor, each relevant designer and the Principal's Representative to review the registers of comments on Design Documentation and recording all actions to be taken by either the Contractor or Principal;
- (o) nominating Hold Points and Witness Points during the performance of the Contractor's Activities;
- (p) attending or witnessing Witness Points, and attending, witnessing and releasing Hold Points, in accordance with this deed and the D&C Deed;



- (q) witnessing any inspections and tests for a Witness Point or Hold Point;
- (r) undertaking surveillance, process quality audits, Quality Management System Audits and product quality audits of the Contractor's Activities;
- (s) issuing corrective action requests and non-conforming product notifications;
- (t) advising the Contractor of apparent non-conformances, receiving reports of non-conformances from the Contractor, reviewing and providing comments on corrective action plans submitted by the Contractor and reviewing corrective actions (taking all durability objectives, safety objectives and performance requirements into account);
- (u) if requested by the Principal, considering potential non-conformances raised by the Principal, the Principal's Representative, the Principal's Surveillance Officer, the Environmental Representative, the Acoustics Adviser or any other person who may review or approve any part of the Works or the Contractor's Activities;
- (v) reviewing and certifying the Project Plans in accordance with the D&C Deed and SWTC and monitoring the Contractor's Activities for compliance against those Project Plans; and
- (w) the Independent Certifier carrying out the IC Services including all equipment, furniture and fixtures required to carry out those services other than those provided by the Contractor under SWTC Appendix C.3.

## Schedule 2

### Payment Schedule

#### 1. PAYMENT CLAIM

At the end of each month after the later of the date of the D&C Deed and the date of this deed, the Independent Certifier must submit to the Principal an account for payment on account of the Fee:

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

#### 2. PAYMENT AND NOTIFICATION OF DISPUTED AMOUNTS

- (a) The parties agree that the Principal will pay [REDACTED] of the Fee, including any adjustments calculated in accordance with paragraph 4 of this Payment Schedule.
- (b) Subject to paragraph 6 of this Payment Schedule the Principal must, within 15 Business 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 IC Services performed during the month which is not disputed. If the Principal 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, the Principal must notify the Independent Certifier (with a copy to the Contractor) in writing of the reasons for any amount which is disputed.
- (c) If the parties do not resolve the matter within 10 Business Days after the issue of the Principal's written notice, the Principal's Representative (acting reasonably and independently) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

#### 3. THE FEE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

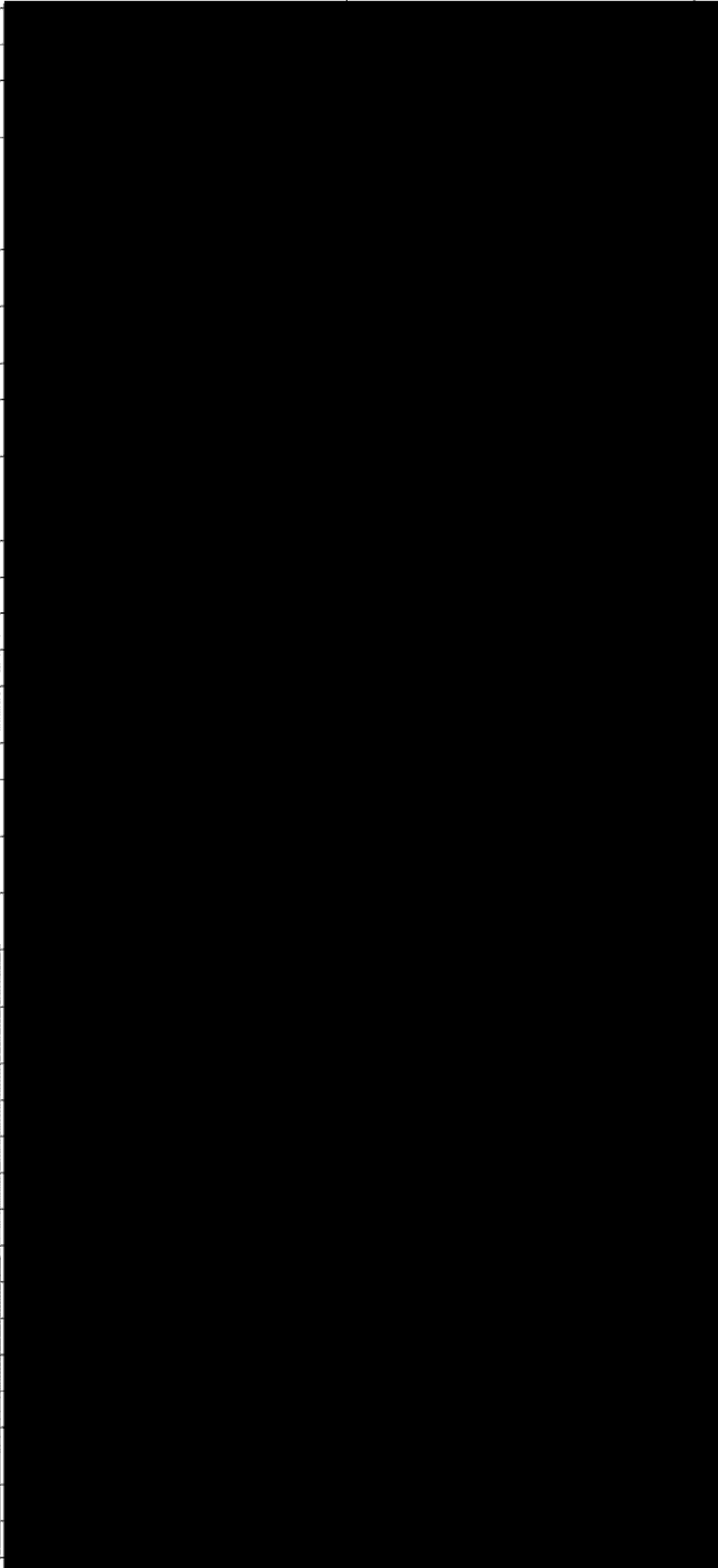
#### 4. SCHEDULE OF RATES

##### IC Services – adjustments

Role	Nominated Personnel	Key	Daily Rate (\$) (excluding GST)
<b>Design Phase Services</b>			
Independent Certifier's Project Director			
Independent Certifier's Representative			
Design Manager			
Assistant Design Manager / RMS Interface Manager			
Completion & Commissioning Lead			
Quality, Competency & Compliance Manager			
Project Controls (Cost and Progress) Lead / Cost Payment Assessment Engineer			
Document Controller / Site Admin Assistant			
Air Quality - Specialist			
Buildings - Architecture - Specialist			
Buildings - Services - Specialist			
Buildings - Structures - Specialist			
CEMP Review - Specialist			
Contamination - Specialist			
Contamination - Specialist			
Drainage - Tunnel / Permanent drainage Surface / Temp drainage Surface - Specialist			
Durability - Specialist			
Electrical - HV - Specialist			
Electrical - LV - Specialist			
Environmental Approvals - Specialist			
Fire & Life Safety - Specialist			
Fire Protection - Specialist			
Geotechnical / Settlement and instrumentation - Specialist			
Hydrology - Specialist			
Hydrology - Specialist			
Lighting - Specialist			
Noise and Vibration - Specialist			
O&M Adviser			
OMCS - Specialist			
Pavements - Specialist			

Role	Nominated Personnel	Key	Daily Rate (\$) (excluding GST)
Road Alignment - Tunnel / Surface / Temp Traffic staging designs - Specialist			
Road Furniture, signs and lines - Specialist			
Structures - Civil - Specialist			
Structures - Cut & Cover / Civil - Specialist			
Systems Engineer specialising in RAMS and SIL analysis			
Temporary Works - Specialist			
Tolling - Specialist			
Traffic / ITS and Signals design - Specialist			
Traffic Modelling Adviser - Specialist			
Tunnels - Engineering - Specialist			
Tunnels - Hydrogeological - Specialist			
Tunnels - Primary & Secondary Support - Specialist			
Tunnels - Structures - Specialist			
Tunnels - Y Junctions & Settlement Sensitive Areas - Specialist			
Tunnels - Space Proofing - Specialist			
Urban Design / Landscape - Specialist			
Utilities - Specialist			
Ventilation - Mechanical - Specialist			
Ventilation - Systems - Specialist			
Water Treatment - Specialist			
<b>Construction Phase Services</b>			
Independent Certifier's Project Director			
Independent Certifier's Representative			
Construction Manager			
Completion & Commissioning Lead			
CPS -Design Lead			
Assistant Design Manager / RMS Interface Manager			
Quality, Competency & Compliance Manager			

Role	Nominated Personnel	Key	Daily Rate (\$) (excluding GST)
Safety Assessor / Auditor			
Quality Assessor / Auditor			
Environmental Observation / Approvals - Specialist			
Project Controls (Cost and Progress) Lead / Cost Payment Assessment Engineer			
Program Monitoring - Specialist			
Document Controller / Site Admin Assistant			
Senior Engineer - Tunnelling			
Senior Geotechnical Engineer			
Systems Engineer specialising in RAMS and SIL analysis			
Tunnelling Engineers/SO			
Tunnelling Engineers/SO			
Tunnelling Engineers/SO			
Tunnelling Engineers/SO			
Senior Engineer - Civil / Structural			
Utility Manager			
Civil Surface Works Engineer/SO			
Civil Surface Works Engineer/SO			
Civil Surface Works Engineer/SO			
Structural Surface Works Engineer/SO			
Structural Surface Works Engineer/SO			
Buildings/SO			
M&E Senior Engineer			
M&E Engineers/SO			
M&E Engineers/SO			
Tunnels - Specialist			
M&E - Specialist			
Geotechnical - Specialist			
Contamination - Specialist			
Ventilation - Specialist			
Civil structures - Specialist			
Tunnel Structures - Specialist			
Hydrogeologist - Specialist			
Building Services - Specialist			



Role	Nominated Personnel	Key	Daily Rate (\$) (excluding GST)
Building Structures - Specialist			
Durability - Specialist			
Tolling - Specialist			
Noise and Vibration/Environmental - Specialist			
IC Management - Peer Reviewer			
Construction - Peer Reviewer			
Tunnels - Peer Reviewer			
Structural - Peer Reviewer			
Geotechnical - Peer Reviewer			
M&E - Peer Reviewer			
O&M Adviser			
<b>Completion Services</b>	<b>Phase</b>		
Completion & Commissioning Lead			
M&E Project Engineer			
M&E Engineers/SO			
O&M Project Engineer			
OMCS Systems & Services Manager			
Systems Engineer specialising in RAMS and SIL analysis			

These rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements and other costs necessary for and arising out of or in connection with the IC Services for which the Independent Certifier is to be paid on a schedule of rates basis under this deed, excluding disbursements described in and payable under paragraph 5 of this Payment Schedule.

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 [REDACTED]

When claiming payment for any IC 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 IC 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 the Principal.

**5. DISBURSEMENTS**

- (a) The Independent Certifier will only be entitled to reimbursement of disbursements for travel incurred in the course of carrying out the IC Services for which the Independent Certifier is to be paid on a schedule of rates basis under this deed if those travel disbursements:

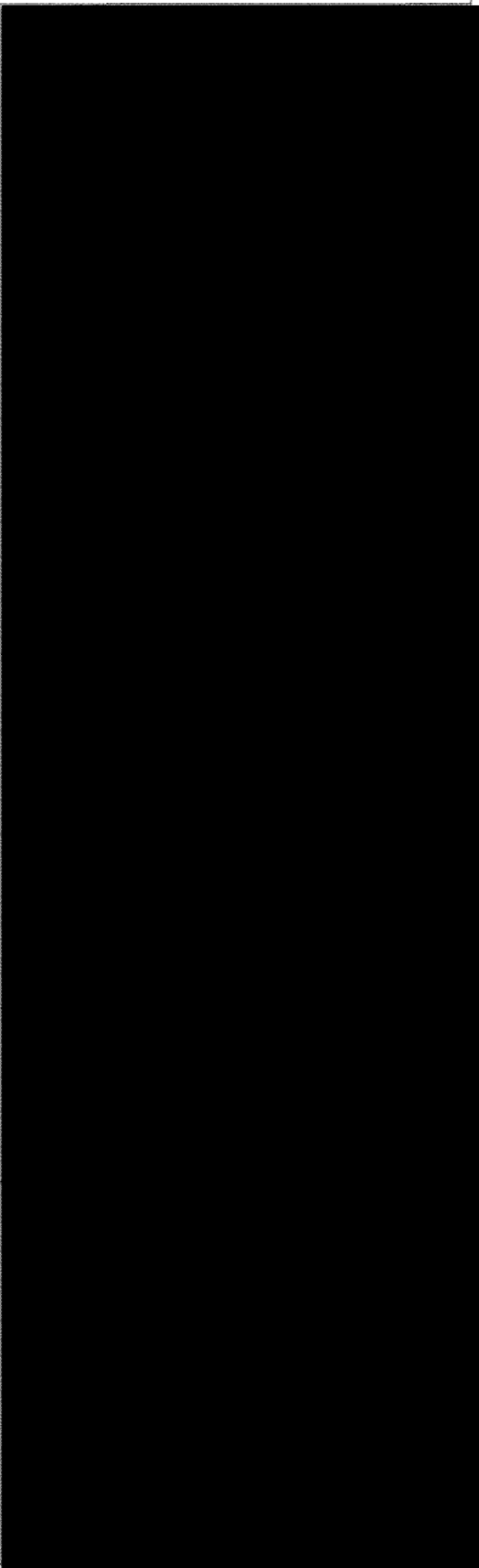
- (i) are direct costs which have been reasonably and properly incurred for the sole purpose of performing IC Services for which the Independent Certifier is to be paid on a schedule of rates basis in accordance with this deed and do not fall into the category of one of the disbursements described in paragraph 5(b) of this Payment Schedule;
  - (ii) were approved in writing by the Contractor and the Principal prior to being incurred where they exceed [REDACTED] and
  - (iii) are supported by documentation which is satisfactory to the Contractor and the Principal.
- (b) The Independent Certifier is not entitled to reimbursement of costs relating to vehicles, local transport (within New South Wales), car parking, computers, insurance, general office consumables and telecommunications.
- (c) The Independent Certifier will only be entitled to reimbursement of travel disbursements incurred in the course of carrying out the IC Services for which the Independent Certifier is to be paid on a lump sum basis under this deed if those disbursements:
- (i) were not possible to be identified at the tender stage;
  - (ii) are direct costs which have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits as part of the IC Services at locations outside New South Wales;
  - (iii) were approved in writing by the Contractor and the Principal prior to being incurred where they exceed [REDACTED] and
  - (iv) are supported by documentation which is satisfactory to the Contractor and the Principal.
- (d) The Independent Certifier will not be entitled to make any claim against the Contractor or the Principal arising out of or in connection with disbursements incurred in connection with the performance of the IC Services for margin and other than in accordance with paragraphs 5(a) and 5(c) of this Payment Schedule.

## 6. MONTHLY PAYMENT SCHEDULE

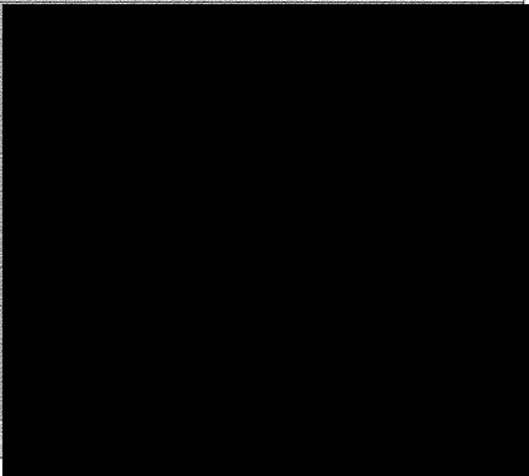
The portion of the Fee which will become payable to the Independent Certifier each month will be determined based on the rates in paragraph 4 of this Payment Schedule and the personnel time expended and disbursements incurred in the performance of the IC Services in accordance with this deed (provided the total amount payable is limited to the Fee).

The Independent Certifier must provide reasonable evidence of the personnel time expended and disbursements incurred in the performance of the IC Services during the relevant payment period with each account for payment provided under paragraph 1 of this Payment Schedule.

The indicative monthly payment to be made is set out in the following table. The Independent Certifier must, if requested by the Principal, promptly provide an updated table of indicative monthly payments based on the actual and reasonably forecast progress of the IC Services.

Month after date of the D&C Deed	Payment (\$ excluding GST)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
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14	
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Month after date of the D&C Deed	Payment (\$ excluding GST)
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<b>Total (excluding GST)</b>	

7. **GST**

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

### Schedule 3

#### Minimum resources and surveillance levels

##### 1. MINIMUM RESOURCES COMMITMENT

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including personnel-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 IC Services in accordance with this deed.



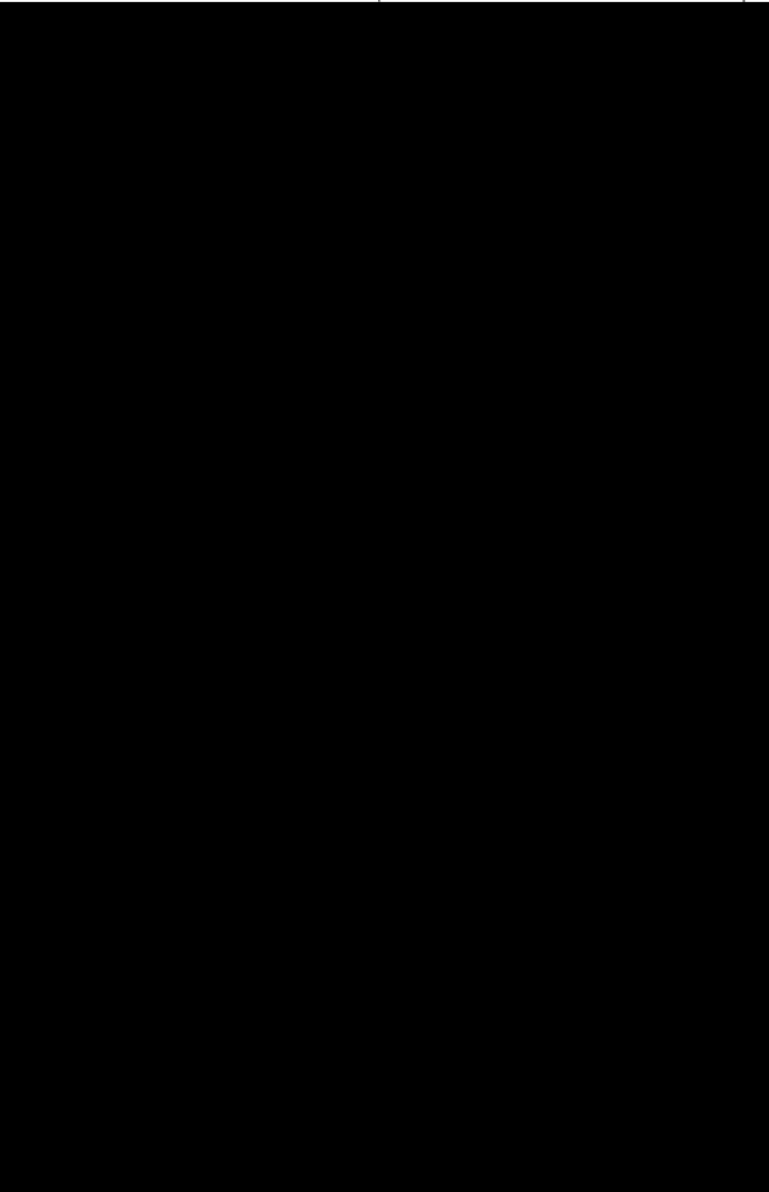
In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Overall D&C Program as working days.

The Independent Certifier must provide at least the following Key Personnel to perform the IC Services with the minimum days to be committed to the IC Services as set out below:

Role	Nominated Individual	Minimum commitment (Days)
<b>Design Phase Services</b>		
Independent Certifier's Project Director		
Independent Certifier's Representative		
Design Manager		
Assistant Design Manager / RMS Interface Manager		
Completion & Commissioning Lead		
Quality, Competency & Compliance Manager		
Project Controls (Cost and Progress) Lead / Cost Payment Assessment Engineer		
Document Controller / Site Admin Assistant		
Air Quality - Specialist		
Buildings - Architecture - Specialist		

Buildings - Services - Specialist	
Buildings - Structures - Specialist	
CEMP Review - Specialist	
Contamination - Specialist	
Contamination - Specialist	
Drainage - Tunnel / Permanent drainage Surface / Temp drainage Surface - Specialist	
Durability - Specialist	
Electrical – HV - Specialist	
Electrical – LV - Specialist	
Environmental Approvals - Specialist	
Fire & Life Safety - Specialist	
Fire Protection - Specialist	
Geotechnical / Settlement and instrumentation - Specialist	
Hydrology - Specialist	
Hydrology - Specialist	
Lighting - Specialist	
Noise and Vibration - Specialist	
O&M Adviser	
OMCS - Specialist	
Pavements - Specialist	

Road Alignment - Tunnel / Surface / Temp Traffic staging designs - Specialist	
Road Furniture, signs and lines - Specialist	
Structures – Civil - Specialist	
Structures - Cut & Cover / Civil - Specialist	
Systems Engineer specialising in RAMS and SIL analysis	
Temporary Works - Specialist	
Tolling - Specialist	
Traffic / ITS and Signals design - Specialist	
Traffic Modelling Adviser	
Tunnels - Engineering - Specialist	
Tunnels - Hydrogeological - Specialist	
Tunnels - Primary & Secondary Support - Specialist	
Tunnels - Structures - Specialist	
Tunnels - Y Junctions & Settlement Sensitive Areas - Specialist	
Tunnels - Space Proofing - Specialist	
Urban Design / Landscape - Specialist	

Utilities - Specialist	
Ventilation - Mechanical - Specialist	
Ventilation - Systems - Specialist	
Water Treatment - Specialist	
<b>Total Number of Days for the Design Phase Services</b>	
<b>Construction Phase Services</b>	
Independent Certifier's Project Director	
Independent Certifier's Representative	
Construction Manager	
Completion & Commissioning Lead	
CPS - Design Lead	
Assistant Design Manager / RMS Interface Manager	
Quality, Competency & Compliance Manager	
Safety Assessor / Auditor	
Quality Assessor / Auditor	
Environmental Observation / Approvals - Specialist	
Project Controls (Cost and Progress) Lead / Cost Payment Assessment Engineer	
Program Monitoring - Specialist	

Document Controller / Site Admin Assistant	
Senior Engineer – Tunnelling	
Senior Geotechnical Engineer	
Systems Engineer specialising in RAMS and SIL analysis	
Tunnelling Engineers/SO	
Tunnelling Engineers/SO	
Tunnelling Engineers/SO	
Tunnelling Engineers/SO	
Senior Engineer - Civil / Structural	
Utility Manager	
Civil Surface Works Engineer/SO	
Civil Surface Works Engineer/SO	
Civil Surface Works Engineer/SO	
Structural Surface Works Engineer/SO	
Structural Surface Works Engineer/SO	
Buildings/SO	
M&E Senior Engineer	
M&E Engineers/SO	
M&E Engineers/SO	

Tunnels - Specialist	
M&E - Specialist	
Geotechnical - Specialist	
Contamination - Specialist	
Ventilation - Specialist	
Civil structures - Specialist	
Tunnel Structures - Specialist	
Hydrogeologist - Specialist	
Building Services - Specialist	
Building Structures - Specialist	
Durability - Specialist	
Tolling - Specialist	
Noise and-Vibration/Environmental - Specialist	
IC Management - Peer Reviewer	
Construction - Peer Reviewer	
Tunnels - Peer Reviewer	
Structural - Peer Reviewer	
Geotechnical - Peer Reviewer	
M&E - Peer Reviewer	
O&M Adviser	

<b>Total number of Days for the Construction Phase Services</b>		[REDACTED]
<b>Completion Phase Services</b>		
Completion & Commissioning Lead	[REDACTED]	
M&E Project Engineer		
M&E Engineers/SO		
O&M Project Engineer		
OMCS Systems & Services Manager		
Systems Engineer specialising in RAMS and SIL analysis		
<b>Total number of Days for the Completion Phase Services</b>		[REDACTED]
<b>Total number of Days for the IC Services</b>		[REDACTED]

2. **MINIMUM ABILITY, KNOWLEDGE, SKILL, EXPERTISE AND EXPERIENCE OF INDEPENDENT CERTIFIER'S PERSONNEL**

**Independent Certifier's Project Director**

- (a) The Independent Certifier's Project Director must possess a recognised qualification relevant to the position and the IC Services and have extensive experience in the project certification of large projects similar to the Project and the 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 IC Services.

**Independent Certifier's Representative for the IC Services**

The Independent Certifier's Representative for the IC Services must possess a recognised qualification relevant to the position and the IC Services and have at least five years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in road tunnels or similar complex infrastructure.

**Design Manager**

The Design Manager must possess a recognised qualification relevant to the position and the IC Services and have at least ten years' experience in the design certification of large projects similar to the Project and the Contractor's Activities and at least 15 years'



experience in construction including strong experience in road tunnels or similar complex infrastructure

### **Construction Manager**

The Construction Manager must possess a recognised qualification relevant to the position and the IC Services and have at least 15 years' experience in construction including strong experience in road tunnels or similar complex infrastructure.

### **Completion Lead**

The Completion Lead must possess a recognised qualification relevant to the position and the IC Services and at least ten years of experience in testing and commissioning road tunnels or similar complex infrastructure.

### **Senior Engineer – Civil and Structure**

The Senior Engineer – Civil and Structure must possess a recognised qualification relevant to the position and the IC Services and have at least three years' experience in design and construction certification of large projects similar to the Project and the Contractor's Activities and at least ten years' experience in design and construction including strong experience in tunnelling civil and structural works design review.

### **Senior Engineer – Mechanical and Electrical**

The Senior Engineer – Mechanical and Electrical must possess a recognised qualification relevant to the position and the IC Services and have at least three years' experience in design and construction certification of large projects similar to the Project and the Contractor's Activities and at least ten years' experience in design and construction including strong experience in tunnelling mechanical and electrical works.

### **Systems and Services Manager**

The Systems and Services Manager must possess a recognised qualification relevant to the position and the IC Services and at least ten years' experience in the design and construction of road tunnel and tolling systems.

### **Senior Tunnelling Engineer**

The Senior Tunnelling Engineer must possess a recognised qualification relevant to the position and the IC Services and have at least three years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least ten years' experience in construction including strong experience in tunnelling construction.

### **Contamination Reviewer**

The Contamination Reviewer must have at least ten years' experience in the infrastructure design and certification industry, including contamination treatment.

### **Utilities Manager**

The Utilities Manager must have at least ten years' experience in the roads infrastructure industry and give years of experience with certification.

### **Geotechnical and Hydrology Reviewer**

The Geotechnical & Hydrology Reviewer must possess a recognised qualification relevant to the position and the IC Services and have at least three years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in geotechnical review.

**Project Controls (Cost and Progress) Lead**

The Project Controls (Cost and Progress) lead must possess a recognised qualification relevant to the position and the IC Services and have at least three years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in project controls.

**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.

**Cost/Payment Assessment Engineer**

The Cost/Payment Assessment Engineer must possess a recognised qualification relevant to the position and the IC Services and have at least ten years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities.


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 IC 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 at each site which forms part of the Construction Site:

<b>Surveillance Activity</b>	<b>Frequency during the Contractor's Activities</b>
<p><b>Environmental Observation</b></p> <p>Observe the implementation of physical environmental controls, in accordance with the Construction Environmental Management Plan and sub-plans, including:</p> <ul style="list-style-type: none"> <li>• <i>noise and vibration;</i></li> <li>• <i>air quality;</i></li> <li>• <i>mud, dirt and debris on roadways;</i></li> <li>• <i>water quality;</i></li> <li>• <i>Contamination;</i></li> <li>• <i>property accesses;</i></li> <li>• <i>temporary pedestrian pathways and cycleways;</i></li> <li>• <i>working within the approved hours;</i></li> <li>• <i>spoil stockpiling and disposal;</i></li> <li>• <i>waste management and disposal;</i></li> <li>• <i>heritage management;</i></li> <li>• <i>landscape maintenance; and</i></li> <li>• <i>report to the Other Parties and the Environmental Representative.</i></li> </ul>	<p style="text-align: center;">Twice weekly</p>

Surveillance Activity	Frequency during the Contractor's Activities
<p><b>Traffic and Transport Surveillance</b></p> <p>Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, including:</p> <ul style="list-style-type: none"> <li>• <i>layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation;</i></li> <li>• <i>provisions for bicyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic;</i></li> <li>• <i>timing and duration of road occupancies;</i></li> <li>• <i>qualifications of traffic control personnel; and</i></li> <li>• <i>truck haulage routes off the Construction Site.</i></li> </ul>	<p>Daily</p> <p>Daily</p> <p>} Weekly</p>
<p><b>Work Health and Safety Observation</b></p> <p>In conjunction with provision of the other IC Services, advise the other parties of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property.</p>	<p><i>As required</i></p>
<p><b>Quality Management Surveillance</b></p> <p>Inspect the Contractor's Activities for compliance with the requirements of the D&amp;C Deed.</p>	<p><i>Daily</i></p>
<p>Inspect circumstances where significant non-conformances are or will be reported.</p>	<p><i>Each occurrence</i></p>
<p>Check compliance with the Quality Plans, process control plans and work processes.</p>	<p><i>Each method statement</i></p>
<p>Check implementation of inspection and test plans, including:</p> <ul style="list-style-type: none"> <li>• <i>testing frequencies;</i></li> <li>• <i>test methods;</i></li> <li>• <i>test result verifications; and</i></li> <li>• <i>release of Hold Points.</i></li> </ul>	<p>} Weekly</p> <p><i>All Hold Points</i></p>

Surveillance Activity	Frequency during the Contractor's Activities
Monitor the rectification of non-conforming product or work.	<i>All rectifications</i>
<p><b>Construction Surveillance</b></p> <p>Monitor the Contractor's obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses;</p>	<i>Weekly</i>
Check that the Contractor's Activities including in relation to the tunnel alignment, tunnel excavations, service facility shafts, cross passages, cross passages with sumps and construction work is within each relevant design tolerance;	<i>Weekly</i>
Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with the D&C Deed.	<i>Daily</i>
Check that durability requirements of the Project Works are being addressed and applied;	<i>Weekly</i>
<p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> <li>• <i>use of any materials, plant and equipment that differs from accepted industry standards;</i></li> <li>• <i>concrete including in-situ concrete and precast elements;</i></li> <li>• <i>sprayed concrete;</i></li> <li>• <i>waterproofing systems;</i></li> <li>• <i>water collection, treatment and discharge systems;</i></li> <li>• <i>rock bolts/ground anchors;</i></li> <li>• <i>blasting;</i></li> <li>• <i>tunnel and cavern lighting and ventilation systems; and</i></li> <li>• <i>Utility Service diversions.</i></li> </ul>	 <p><i>Each trial and test</i></p>
Record photographically and catalogue general and detailed work in progress.	<i>20 digital photographs/day</i>

<p>Witness the construction of the Project Works and Temporary Works including:</p> <ul style="list-style-type: none"><li>• <i>tunnel excavation;</i></li><li>• <i>cross passages;</i></li><li>• <i>nozzle enlargements;</i></li><li>• <i>bridges and structures;</i></li><li>• <i>ground support and treatment;</i></li><li>• <i>waterproofing;</i></li><li>• <i>permanent structural concrete linings;</i></li><li>• <i>tunnel portal, headwalls and wing walls;</i></li><li>• <i>dive structures;</i></li><li>• <i>slope protection and retaining structures;</i></li><li>• <i>flood protection including sump and drainage systems;</i></li><li>• <i>crossover cavern;</i></li><li>• <i>structural connections;</i></li><li>• <i>groundwater collection, treatment and drainage systems;</i></li><li>• <i>shaft excavation;</i></li><li>• <i>concrete blinding layer;</i></li><li>• <i>soil and rock bolts and anchors;</i></li><li>• <i>niches and enlargements excavation;</i></li><li>• <i>earthing and electrolysis protection, including earthing and bonding of reinforcement and monitoring points;</i></li><li>• <i>mechanical and electrical works;</i></li><li>• <i>haulage roads;</i></li><li>• <i>provisions to access, secure, support and hand over the Third Party Works;</i></li><li>• <i>Utility Service diversions; and</i></li><li>• <i>adjustments to or demolition of existing infrastructure and buildings.</i></li></ul>	 <p>Daily</p>
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<p><b>Quality Product Surveillance Monitoring</b></p> <ul style="list-style-type: none"> <li>• Monitor structure foundation and subgrade preparation and treatments;</li> <li>• Monitor compaction of earthworks and spoil; and</li> <li>• Monitor manufacture of off-site precast units.</li> </ul>	<p>Initial preparation and treatment</p> <p>Weekly</p> <p>Twice Weekly</p>
<p>Monitor:</p> <ul style="list-style-type: none"> <li>• preparation and testing of grout test specimens;</li> <li>• bolt anchorage testing of rock bolts;</li> <li>• Monitor preparation of sprayed concrete test specimens;</li> <li>• Monitor concrete supply, including: <ul style="list-style-type: none"> <li>• audits of each batch plant;</li> <li>• reviews of grout, mortar, concrete, precast concrete and sprayed concrete mix designs (including off-site work); and</li> <li>• monitoring of supplied mixes compared with mix designs.</li> </ul> </li> </ul>	<p>} Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.</p> <p>Weekly</p> <p>Weekly</p> <p>Each mix</p> <p>Weekly</p>
<p>Monitor concreting and associated works including:</p> <ul style="list-style-type: none"> <li>• preparation;</li> <li>• formwork;</li> <li>• bracing;</li> <li>• reinforcement;</li> <li>• placing;</li> <li>• stressing;</li> <li>• finishing;</li> <li>• curing; and</li> <li>• stripping formwork.</li> </ul> <p>Sprayed concrete, including:</p>	<p>} Daily</p>

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



## **Schedule 4**

### **Subcontractors and Technical Specialists**

Nil

## Schedule 5

### Commercially Sensitive Information

	<b>Deed Reference</b>	<b>Commercially Sensitive Information</b>
1.	Schedule 2 (Payment Schedule), clauses 3, 4 and 5	All
2.	Schedule 3 (Minimum resources and surveillance levels), clause 1	All
3.	Attachment A to Schedule 8 (Initial Certification and Monitoring Plan)	All

## Schedule 6

### Independent Certifier Deed Poll

(clause 1.1 Definition of *Deed Poll* and clause 2.4)

#### Form of Independent Certifier Deed Poll

This **deed poll** (*Deed Poll*) made the \_\_\_\_\_ day of \_\_\_\_\_ 2021

**By:** [Insert Independent Certifier] (ABN [Insert]) of [Insert D&C IC Address] (**Independent Certifier**),

**in favour of:**

- (1) **WCX M4 PT Pty Ltd** (ABN 59 614 741 436) in its personal capacity and in its capacity as trustee of the **WCX M4 Project Trust** (ABN 31 878 147 068)
- (2) **WCX M4 AT Pty Ltd** (ABN 61 614 741 445) in its personal capacity and in its capacity as trustee of the **WCX M4 Asset Trust** (ABN 30 972 117 496)
- (3) **WCX M5 AT Pty Ltd** (ABN 49 608 798 081) in its personal capacity and in its capacity as trustee of the **WCX M5 Asset Trust** (ABN 73 899 615 977)
- (4) **WCX M5 PT Pty Ltd** (ABN 36 608 798 465) in its personal capacity and in its capacity as trustee of the **WCX M5 Project Trust** (ABN 23 365 031 283)
- (5) **WCX M4-M5 Link PT Pty Limited** (ABN 81 624 153 788) in its personal capacity and in its capacity as trustee of the **WCX M4-M5 Link Project Trust** (ABN 67 667 191 375)
- (6) **WCX M4-M5 Link AT Pty Limited** (ABN 85 624 153 742) in its personal capacity and in its capacity as trustee of the **WCX M4-M5 Link Asset Trust** (ABN 18 934 919 866)

(together the **Beneficiaries**).

#### Recitals

- A Transport for New South Wales (ABN 18 804 239 602) (**Principal**) and the Beneficiaries are the parties to the WestConnex Interface Agreement.
- B The Principal and [Insert Contractor Details] (**Contractor**) have engaged the Independent Certifier under a deed entitled "M6 Stage 1 Independent Certifier Deed" dated on about the date of this Deed Poll (**Independent Certifier Deed**) to, amongst other things, perform the services in relation to the M6 Stage 1 Works (**Services**) which, following certification of "Opening Completion" by the Independent Certifier, will form part of the motorway operated by the Principal.
- C The Beneficiaries are relying on the Independent Certifier to perform the Services in accordance with the Independent Certifier Deed.
- D The Beneficiaries will suffer loss if the Independent Certifier does not perform the Services in accordance with the Independent Certifier Deed.
- E It is a condition of the Independent Certifier Deed that the Independent Certifier executes this Deed Poll.

This Deed Poll witnesses that the Independent Certifier hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:

- 1 It will comply with its obligations under the Independent Certifier Deed.
- 2 The Beneficiaries may rely on:
  - (a) the performance of the Independent Certifier's obligations under the Independent Certifier Deed; and
  - (b) on any certificate or other document signed or given by the Independent Certifier under or pursuant to the Independent Certifier Deed.
- 3 Each representation and warranty made by the Independent Certifier under the Independent Certifier Deed is represented and warranted by the Independent Certifier in favour of the Beneficiaries at the same time as it is given under the Independent Certifier Deed.
- 4 Each indemnity provided by the Independent Certifier under the Independent Certifier Deed is given by the Independent Certifier in favour of the Beneficiaries.
- 5 The aggregate of the Independent Certifier's liability to the Beneficiaries under or in connection with this Deed Poll (whether arising under the law of contract, under an indemnity, in tort (including negligence) under statute, in equity or otherwise) and the Independent Certifier's liability to the Principal and the Contractor under or in connection with the Independent Certifier Deed (whether arising under the law of contract, under an indemnity, in tort (including negligence) under statute, in equity or otherwise):
  - (a) will not exceed the liability which the Independent Certifier would have had under the Independent Certifier Deed if the Independent Certifier Deed had named, as the Principal, the Beneficiaries and the Principal jointly and severally;
  - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Independent Certifier Deed.
- 6 Any provision of this Deed Poll which seeks to limit or exclude a liability of the Independent Certifier is to be construed as doing so only to the extent permitted by law.
- 7 Beneficiaries
  - (a) The Principal may at any time give notice to the Independent Certifier that another entity is to become an additional Beneficiary under this Deed Poll. The Principal may give multiple notices under this clause. The Independent Certifier agrees that on and from the date of the Principal's notice, the entity identified by the Principal will be a Beneficiary under this Deed Poll.
  - (b) If for any reason a Beneficiary is unable to enforce against the Independent Certifier its promises under this Deed Poll, the Independent Certifier agrees that the Principal may do so on behalf of any and all Beneficiaries.
- 8 The Beneficiaries may assign or charge the benefits and rights accrued under this Deed Poll.
- 9 This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 10 The Independent Certifier hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any

proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

- 11 This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiaries.
- 12 The obligations of the Independent Certifier under this Deed Poll are joint and several and each person constituting the Independent Certifier acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed Poll) of the other as if those acts or omissions were its own and the Principal and the Beneficiaries to this Deed Poll may proceed against any one or all of them.

**Executed** as a Deed Poll.

**Executed** by **[INSERT INDEPENDENT CERTIFIER]** (ABN [insert]) in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## Schedule 7

### Form of Deed of Novation

**THIS DEED** is made on

2021

#### **BETWEEN:**

- (1) **[Name of Novatee]** **[ABN/ACN of Novatee]** of **[insert address]** (the **Novatee**);
- (2) **Transport for New South Wales** (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**Principal**);
- (3) **[Insert Contractor]** (ABN **[Insert]**) of **[Insert Address]** (**Contractor**); and
- (4) **[Insert Independent Certifier]** (ABN **[Insert]**) of C/**[Insert Address]** (**Independent Certifier**).

#### **RECITALS:**

- A. The Contractor and the Principal are parties to a deed for the design and construction of the M6 Stage 1 dated **[Insert Date]** (**D&C Deed**).
- B. The Principal, the Contractor and the Independent Certifier are parties to an Independent Certifier Deed dated **[Insert Date]** (**Independent Certifier Deed**).
- C. The Principal wishes to exercise its right to novate its interests, rights and obligations under the Independent Certifier Deed, pursuant to clause 13.12(b) of the Independent Certifier Deed.
- D. The parties to this Deed have agreed to novate the Independent Certifier Deed on the terms of this Deed.

#### **1. DEFINITIONS AND INTERPRETATION**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules, and annexures to that agreement or document.

- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Except as otherwise defined in this Deed, terms used in this Deed that are defined in the D&C Deed have the same meanings in this Deed.
- (j) The word "include" in any form is not a word of limitation.

## 2. **NOVATION**

### 2.1 **Novation**

The parties agree to novate the Independent Certifier Deed, such that on and from the date of execution of this Deed (the **Effective Date**):

- (a) the Novatee is substituted for the Principal under the Independent Certifier Deed as if the Novatee had originally been a party to the Independent Certifier Deed instead of the Principal; and
- (b) each reference in the Independent Certifier Deed to the Principal is to be read as if it were a reference to the Novatee.

### 2.2 **Assumption of rights and obligations**

On and from the Effective Date:

- (a) the Novatee:
  - (i) will be bound by, and must comply with, the Independent Certifier Deed as it relates to the Principal;
  - (ii) will enjoy all the rights and benefits conferred on the Principal under or in respect of the Independent Certifier Deed (whether arising before or after the Effective Date); and
  - (iii) will assume all the obligations and liabilities of the Principal under or in respect of the Independent Certifier Deed arising or accruing on or after the Effective Date (but will not assume any obligation or liability of the Principal under or in respect of the Independent Certifier Deed arising or accruing before the Effective Date); and
- (b) the Contractor and the Independent Certifier will comply with the Independent Certifier Deed on the basis that the Novatee has replaced the Principal under it in accordance with the terms of this Deed.

## 3. **RELEASE**

### 3.1 **Release by Contractor and Independent Certifier**

The Contractor and the Independent Certifier each release the Principal from:



- (a) its obligations and liabilities under or in respect of the Independent Certifier Deed; and
- (b) all claims, actions, demands, proceedings and liability that the Contractor or the Independent Certifier may have or claim to have, or but for this release might have had, against the Principal in connection with the Independent Certifier Deed,

arising on or after the Effective Date.

### 3.2 **No release by Contractor and Independent Certifier**

- (a) Neither the Contractor nor the Independent Certifier releases the Principal from:
  - (i) any of its obligations or liabilities under or in respect of the Independent Certifier Deed; or
  - (ii) any claims, actions, demands, proceedings or liability that the Contractor or the Independent Certifier may have or claim to have, or but for this release might have had, against the Principal in connection with the Independent Certifier Deed,accruing or arising before the Effective Date.
- (b) The Principal remains liable to the Contractor for all its obligations and liabilities under the Independent Certifier Deed accruing or arising before the Effective Date.

## 4. **INDEMNITY**

### 4.1 **Indemnity by the Principal**

The Principal indemnifies the Novatee against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Novatee by the Contractor, the Independent Certifier or any other person in connection with any matter relating to, or any act or omission of the Principal with respect to, the Independent Certifier Deed before the Effective Date.

### 4.2 **Indemnity by Novatee**

The Novatee indemnifies the Principal against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Principal by the Contractor, the Independent Certifier or any other person in connection with any matter relating to, or any act or omission of the Novatee with respect to, the Independent Certifier Deed on or after the Effective Date.

5. **INSURANCE**

The Independent Certifier will:

- (a) take all steps necessary to ensure that the Novatee will enjoy all of the rights, benefits and entitlements on and from the Effective Date that the Principal enjoyed prior to the Effective Date under the policies of insurance that are required to be taken out pursuant to clause 8.3 of the Independent Certifier Deed; and
- (b) if the Novatee is unable to enjoy all of the rights, benefits and entitlements that the Principal enjoyed under those policies of insurance, take out replacement policies of insurance with effect on and from the Effective Date that will provide such rights, benefits and entitlements to the Novatee and will otherwise comply with the requirements of clause 8.3 of the Independent Certifier Deed in all respects.

6. **NOTICES UNDER THE INDEPENDENT CERTIFIER DEED**

For the purposes of all provisions in the Independent Certifier Deed regarding service of notices, the address for the Novatee is the address set out at the start of this Deed.

7. **REPRESENTATIONS AND WARRANTIES**

- (a) Each party represents and warrants to each other party that:
  - (i) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the party;
  - (ii) it has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or cause to be performed its obligations under this Deed; and
  - (iii) this Deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.
- (b) Each of the Contractor, the Independent Certifier and the Principal represents and warrants to the Novatee that, as at the Effective Date, neither the Contractor, the Independent Certifier nor the Principal is in default under any provision of the Independent Certifier Deed.

8. **DELIVERY OF DOCUMENTS**

The Principal will deliver to the Novatee on request a copy of all documents in its possession, custody or control connected with or evidencing its rights under the Independent Certifier Deed.

9. **FURTHER ASSURANCES**

At the reasonable request of another party, each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

10. **ASSIGNMENT**

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party, which may not be unreasonably withheld.

11. **AMENDMENT**

This Deed may be amended only by another deed executed by all the parties.

12. **COSTS AND DUTY**

The Principal must bear the costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Novatee.

13. **GOVERNING LAW AND JURISDICTION**

This Deed is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

14. **COUNTERPARTS**

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**Executed and delivered** as a deed.

The Seal of **Transport for NSW** (ABN 18 804 239 602) was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the *Transport Administration Act 1988* (NSW):

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Signatory Name

**Executed** by **[Insert Contractor]** ABN [insert] in accordance with section 127 of the Corporations Act 2001 (Cth):

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Executed** by **[Insert Independent Certifier]** ABN [insert] in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** by **[Insert Name and ABN of Novatee]** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## Schedule 8

### Requirements of Certification and Monitoring Plan

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

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Principal and the Contractor;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the proposed timing of progressive performance of the IC Services to meet the requirements of the D&C Deed, including the timing for conducting audits of Project Plans and other aspects of the Contractor's Activities;
- (f) Hold Point and Witness Point requirements, including the identification of all Witness Points and Hold Points required by the Independent Certifier, in the form of a schedule which identifies all Hold Points to be released by the Independent Certifier;
- (g) the Independent Certifier's comprehensive plans for:
  - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the Contractor's compliance with design and construction obligations, including methodology for certification of Design Documentation;
  - (ii) without limiting paragraph (g)(i), continual observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Works to determine, verify and ensure the Contractor's compliance with the requirements of the D&C 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;
- (h) the Independent Certifier's strategies, processes, methodologies and procedures for:
  - (i) reviewing and assessing the Project Plans;
  - (ii) reviewing and assessing environmental protection, outcomes and performance;
  - (iii) audit, surveillance and monitoring of the Contractor's design and construction activities, including the processes used for determining the

- levels and scope of surveillance of the Contractor's design and construction activities, including in relation to occupational health and safety;
- (iv) identifying and managing the Independent Certifier's work to be subcontracted, including quality, reporting and communication aspects of the work;
  - (v) ensuring that the Contractor has addressed all issues of review, comment and consultation with the Principal in relation to Design Documentation and construction; and
  - (vi) risk management of the work covered by items (ii). (iii) and (iv) above, to meet the requirements of the D&C Deed; and
- (i) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied to achieve and satisfy the following requirements:
- (i) verification of the quality and quantum of work the subject of Payment Claims made by the Contractor in order to provide the certificate in the form of Part N of Schedule 14 (*Form of Certificates*);
  - (ii) verification of the Contractor's processes for ongoing checking of testing, calibration and parallel testing to check compliance and test error;
  - (iii) verification of the Contractor's interface issues between processes and elements and Project Plans;
  - (iv) verification of the Contractor's processes for the control of Subcontractors;
  - (v) verification of the Contractor's processes for environmental monitoring and protection;
  - (vi) verification of the Contractor's processes to address safety in design issues;
  - (vii) verification of the Contractor's processes to ensure that durability is incorporated into all aspects of the design and construction of the Project Works;
  - (viii) verification of the Contractor's processes to address constructability issues; and
  - (ix) verification of the rectification by the Contractor of non-conformities.



**Attachment A to Schedule 8 – Initial Certification and Monitoring Plan**



































































































































































































































































































































































































