

Deed of Appointment of Independent Certifier

This Deed made at Sydney on 17 August 2022

Parties

An unincorporated joint venture comprising Ferrovia Construction (Australia) Pty Ltd (ABN 98 150 820 116) of Level 9, 65 Berry Street, North Sydney NSW 2060 **and Gamuda Berhad (ARBN 632 738 768)** a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing Company Registration number 197601003632 (29579-T) of Menara Gamuda, PJ Trade Centre, No. 8, Jalan PJU 8/8A, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor, Malaysia

("Contractor")

Transport for New South Wales

(ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061

("Principal")

Aurecon Australasia Pty Ltd

(ABN 54 005 139 873) of Level 8, 850 Collins Street, Docklands VIC 3008

("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 Project.
- B. The Independent Certifier represents that it is experienced generally in construction and project management and, in particular, in the construction and project management of works similar to the Project Works and offers its expertise in those fields.
- C. The D&C Deed and the ARTC Agreements (as applicable) contemplate that the Independent Certifier will discharge those functions set out in Attachment 2 to this Deed.
- D. The Independent Certifier will perform its obligations on the terms and conditions of this Deed.

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

In this Deed words and expressions which have a defined meaning in the D&C Deed have the same meaning in this Deed, except where otherwise expressly defined in this Deed, and:

Aboriginal Business means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such by Supply Nation, the NSW Indigenous Chamber of Commerce or a similar acceptable Indigenous business verification organisation.

Aboriginal Employee means an employee of the Independent Certifier, who is a person of Aboriginal or Torres Strait Islander descent as verified by the Independent Certifier in accordance with guidance provided under the Aboriginal Procurement Policy.

Aboriginal Participation Plan means a plan that satisfies the requirements for an 'Aboriginal Participation Plan' described in the Aboriginal Procurement Policy.

Aboriginal Participation Report means a report that satisfies the reporting requirements in the Aboriginal Procurement Policy.

Acoustics Advisor means Hutchison Weller Pty Ltd ABN 34 604 174 518.

Acoustics Advisor Deed of Appointment means the contract between the Principal and the Acoustics Advisor titled Professional Services Contract (Construction Industry) Acoustic Advisor (Contract

Number 20.0000302555.2406) dated 27 October 2021, attached to this Deed at Schedule 1 to Attachment 14, which is to be novated in accordance with clause 3.11(c).

Additional Services has the meaning given in clause 6A.

ARTC Agreements means the Project Documents referred to in Item 3 and Item 4 of Attachment 1.

Comment has the meaning given in section 3 of the Contractor Documentation Schedule.

Commercially Sensitive Information means any information the Principal identifies as:

- (a) information relating to the Principal's, the Contractor's or the Independent Certifier's cost structure or profit margins;
- (b) information relating to any of the Principal's, the Contractor's or the Independent Certifier's Intellectual Property Rights; or
- (c) information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Principal, the Contractor or the Independent Certifier or any of their shareholders, financiers or subcontracts,

which, in respect of the information contained in this Deed, is the information listed in Attachment 15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Construction Verification Services means:

- (a) all services listed in Attachment 2 to this Deed relating to the verification of the construction of the Project Works, the Temporary Works and the performance by the Contractor of its construction obligations under the D&C Deed, including services relating to the testing of contaminants that may comprise a Site Condition; and
- (b) the re-verification or re-certification of design packages verified as part of the Design Verification Services, and resolving requests for information, non-conformances and similar relating to the Design Verification Services, but only where such activities arise out of or in connection with the Services described in paragraph (a).

D&C Deed means the deed between the Principal and the Contractor dated 17 June 2022.

Design Verification Services means all services listed in Attachment 2 to this Deed relating to the verification and certification of the design of the Project Works, the Temporary Works and the performance by the Contractor of its design obligations under the D&C Deed, including those specified in clause 12 of the D&C Deed.

Environmental Representative means The Trustee for GEOLINK UNIT TRUST ACN 101 084 557.

Environmental Representative Deed of Appointment means the contract between the Principal and the Environmental Representative titled Professional Services Contract (Construction Industry) Environmental Representative (Contract Number 20.0000302555.1831) dated 23 July 2021, attached to this Deed at Schedule 1 to Attachment 13, which is to be novated in accordance with clause 3.11(b).

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

GST, GST law and other terms used in clause 8.3 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 8.3) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

Independent Certifier's Representative means the relevant person referred to in clause 3.3(c)(i) or clause 3.3(c)(ii) and any person holding that position in accordance with clause 3.3(b).

[REDACTED]

[REDACTED]

Information from Tenderer's Returnable Schedules means the Tenderer's Returnable Schedules in Part 1 of Attachment 4 to this Deed.

[illegible]

Minimum Aboriginal Participation Requirements means one or a combination of the following:

- (a) at least 1.5 per cent of the value of the Fee as at the date of this Deed is subcontracted to Aboriginal Businesses;
- (b) at least 1.5 per cent of the Independent Certifier's Australian based workforce (full time equivalent) directly contributing to the Services are Aboriginal Employees; or
- (c) at least 1.5 per cent of the value of the Fee as at the date of this Deed is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Services.

Minimum Requirements means the minimum requirements for the Verification and Monitoring Plan, as set out in Attachment 6 to this Deed.

Minimum Resources Commitment means the minimum level of resources to be provided by the Independent Certifier for the performance of the Services, as set out in clause 1 of Attachment 9 to this Deed.

Minimum Surveillance is the minimum level of continual attendance, monitoring and verification of the status of a product, and analysis of records to ensure that product requirements are being met, as set out in Attachment 5 to this Deed.

Monthly Progress Report means the report referred to in clause 3.8 of this Deed.

NCR means a non-conformity report.

Nominated Personnel means the person or persons nominated in accordance with clause 3.3(c), or any replacement personnel nominated in accordance with clause 3.3(b).

Other Parties means the Principal and the Contractor.

Payment Schedule means Attachment 3 to this Deed.

Principal Contractor means the Contractor acting in its capacity as 'principal contractor' for the purposes of the WHS Laws in accordance with the D&C Deed.

Principal's Representative means, as applicable, the Principal's Representative or a Principal's Assistant Representative.

Project means the design and construction of the Coffs Harbour Bypass project, a motorway-grade road project involving a highway from south of Englands Road to Korora Hill that bypasses Coffs Harbour, as further detailed in the D&C Deed.

Project Documents means those agreements and other documents described in Attachment 1 to this Deed, and includes the Planning Approval.

Quarter means:

- (a) in the case of the first Quarter, the period commencing on the date of this Deed and ending on the day immediately prior to the first Quarterly Date occurring thereafter;
- (b) each 3 month period commencing on a Quarterly Date thereafter; and
- (c) in the case of the last Quarter, the period commencing on the last Quarterly Date occurring prior to the expiry of the last Defects Correction Period and ending on the date of expiry of the last Defects Correction Period.

Quarterly Date means 1 January, 1 April, 1 July and 1 October in any year in the period commencing on the date of this Deed and expiring on the date of expiry of the last Defects Correction Period.

Response has the meaning given in section 3 the Contractor Documentation Schedule.

Services means the Design Verification Services and the Construction Verification Services.

Verification and Monitoring Plan means the plan the Independent Certifier is required to prepare in accordance with clause 3.6, and in respect of which the Principal and the Contractor have not issued a notice under clause 3.6(b)(ii), as that plan is updated from time to time in accordance with clause 3.7 of this Deed.

Working Day means an aggregate period of 8 hours.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where 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;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Governing Law

This Deed is governed by and will be construed according to the laws of New South Wales.

1.4 Ambiguous terms

- (a) If the Principal's Representative considers, or the Independent Certifier or Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, discrepancy or inconsistency in this Deed (including in any attachments), the Principal's Representative must direct the interpretation of this Deed which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.4(a), is not required to state whether or not there is an ambiguity, inconsistency or discrepancy in respect of the terms of this Deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.4(a):
 - (i) will not relieve the Independent Certifier or the Contractor from or alter its liabilities or obligations under this Deed, under the Project Documents (in the case of the Contractor), 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, under the Project Documents (in the case of the Contractor), or otherwise according to Law; and

- (iv) must, in respect of a notice given in clause 1.4(a) by the Independent Certifier or the Contractor, be given within 25 Business Days of receipt of that notice.

1.5 Principal as an Authority

- (a) Subject to clause 1.5(b), the Contractor and the Independent Certifier acknowledge and agree that:
 - (i) nothing in this Deed or in any of the Project Documents will in any way unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law; and
 - (ii) without limiting clause 1.5(a)(i), anything that the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this Deed and will not entitle 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 Project Documents to which the Principal is a party.
- (b) The parties agree that clause 1.5(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 Project 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 Project Document to which the Principal is a party but for clause 1.5(a).

2. Appointment of the Independent Certifier

2.1 Appointment

- (a) Each of the Other Parties appoints the Independent Certifier under this Deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).

2.2 Payment

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

2.3 Nature of Services

The Independent Certifier and the Other Parties acknowledge and agree that the Verification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the Deed.

3. Independent Certifier's obligations

3.1 Acknowledgement

The Independent Certifier acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the:
 - (i) "Independent Certifier" under the Project Documents set out in Item 1 and Item 2 of Attachment 1; and
 - (ii) "Project Verifier" under the Project Documents set out in Item 3 and Item 4 of Attachment 1.

3.2 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the knowledge, skill, expertise and experience of the Independent Certifier in the performance of its obligations under this Deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and the Project Documents, and where no time is prescribed, within a reasonable time, and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses Schedule 13.2(a) and Schedule 13.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this Deed or the Project Documents;

- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services in accordance with this Deed; and
 - (ii) without limiting subparagraph (i), to the extent the Verification and Monitoring Plan is not inconsistent with:
 - (A) the Project Documents; or
 - (B) the nature of the Services,
 it will carry out and perform the Services in accordance with the Verification and Monitoring Plan;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's Activities are being undertaken, comply with the reasonable directions of the Principal Contractor;
- (g) will provide transport on site for the use of its site personnel;
- (h) must, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the Project Works, the Temporary Works and the Contractor's Activities:
 - (i) when appropriate or necessary to do so (including for the purpose of determining whether Opening Completion and Completion has been achieved by the Contractor; or
 - (ii) when reasonably requested by the Principal or the Contractor,
 in a manner which satisfies or exceeds the requirements ascertainable from Attachment 5 by Independent Certifier during the Contractor's Activities and the Verification and Monitoring Plan (including surveillance levels and resources) and will invite and permit the Principal and the Contractor to accompany it on all such inspections;
- (i) must carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Contractor) except where it is the unavoidable consequence of performing the Services;
- (j) in undertaking the Services will comply with all the safe working requirements of the Contractor;
- (k) acknowledges that a reference in sections 2 and 3 of Appendix D.4 of the SWTC to the "Project Verifier" is to be read as a reference to the Independent Certifier; and
- (l) must nominate itself as the 'nominated authority' for the release of all Hold Points and Witness Points documented within Attachment D4.1 of Appendix D.4 of the SWTC and any Hold Points or Witness Points inserted by the Independent Certifier as contemplated by clause 2.4(e) of the D&C Deed.

3.3 Independent Certifier's Organisation and Personnel

- (a) The Independent Certifier must provide a dedicated management team and personnel who are engaged under an effective organisation structure and have appropriate and a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under this Deed. The organisation structure must clearly identify positions, roles, skills, expertise, experience levels, tasks, resourcing levels, delegated authorities and responsibilities and internal and external lines of authority, communication and reporting, including those with the Principal's Representative and the Contractor.
- (b) The Independent Certifier must ensure that the Nominated Personnel:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the Nominated Personnel are removed:
 - (A) they must be replaced by people of at least equivalent ability, knowledge, skill, expertise and experience (including the ability, knowledge, skill, expertise and experience required by clause 2 of Attachment 9 to this Deed); and
 - (B) prior to removal and replacement, there must be a proper and adequate handover to ensure that the new personnel have a reasonable understanding of the Project and the Services; and
 - (iii) are available for consultation as any party may reasonably require from time to time.
- (c) The people required to perform the Services are:
 - (i) [REDACTED], as Independent Certifier's Representative for the Design Verification Services;
 - (ii) [REDACTED], as Independent Certifier's Representative for the Construction Verification Services;
 - (iii) [REDACTED], as Independent Certifier's project director; and

- (iv) the other persons listed in clause 2 of Attachment 9 to this Deed.
- (d) The Other Parties may direct the Independent Certifier to remove from the performance of the Services any of the Nominated Personnel and the Independent Certifier must comply with any such direction.
- (e) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Attachment 2 which the Independent Certifier is required to execute as part of the Services (being Schedules 13 (Independent Certifier's Certificate - Payment Claim), 14 (Independent Certifier's Certificate - Quality), 15 (Independent Certifier's Certificate - Design Documentation), 16 (Independent Certifier's Certificate - Opening Completion and Completion), 17 (Independent Certifier's Certificate - Nominated Defects), 17A (Independent Certifier's Certificate - As-Built documentation) and 18 (Independent Certifier's Certificate – Final Completion) of the D&C Deed). The Independent Certifier must ensure that these certificates and documents are signed by the person or persons so notified.

3.4 Subcontracting

- (a) Subject to clause Schedule 13.3, the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties.
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting, and will be liable for the acts and omissions of any subcontractor as if they were acts and omissions of the Independent Certifier.
- (c) Unless the Other Parties otherwise approve in writing, the Independent Certifier must contract with the subcontractors set out below in respect of the relevant part of the Services set out below:

Name of subcontractor	Relevant Services
Geolink (ABN 79 896 839 729)	Environmental Representative
Hutchison Weller Pty Ltd (ABN 34 603 174 518)	Acoustics Advisor

3.5 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with ISO 9000 and ISO 9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this Deed as a result of:
 - (i) compliance with the quality assurance requirements of this Deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Verification and Monitoring Plan or any audit under clause Schedule 13.9.

3.6 Verification and Monitoring Plan

- (a) The Independent Certifier must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Verification and Monitoring Plan" which must:
 - (i) be based on the Minimum Requirements;
 - (ii) at the Principal's discretion, be based on the level of service identified in Part 1 and Part 2 of Attachment 4 to this Deed; and
 - (iii) comply with the Minimum Surveillance, the Minimum Resources Commitment and clause 2 of Attachment 9 to this Deed.
- (b) The Principal may:
 - (i) review the Verification and Monitoring Plan submitted under clause 3.6(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, or if the Principal believes that the Verification and Monitoring Plan does not comply with the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment or clause 2 of Attachment 9 to this Deed, notify the Independent Certifier with details of the non-compliance.
- (c) If the Independent Certifier receives a notice under clause 3.6(b)(ii), the Independent Certifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clause 3.6(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 3.6(b)(ii) within 15 Business Days after the submission of the relevant Verification and Monitoring Plan, the relevant Verification and

Monitoring Plan submitted will be the Verification and Monitoring Plan with which the Independent Certifier must comply (as it is updated from time to time under and in accordance with clause 3.7).

3.7 Revisions to the Verification and Monitoring Plan

- (a) The Independent Certifier must:
 - (i) within:
 - (A) six months of the date of this Deed; or
 - (B) if the Project Plans have not been submitted by the Contractor under clause 3.3 of the D&C Deed within six months after the date of this Deed, within 20 Business Days after the date the Project Plans are submitted by the Contractor under clause 3.3 of the D&C Deed,

amend, update and develop the Verification and Monitoring Plan as necessary to reflect the Project Plans as submitted by the Contractor under clause 3.3 of the D&C Deed;
 - (ii) progressively amend, update and develop the Verification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Contractor's Activities, and Variations under the D&C Deed and any changes in the manner of performing the Services;
 - (iii) ensure that any amendments, updates or developments of the Verification and Monitoring Plan under clause 3.7(a)(i) or clause 3.7(a)(ii) are consistent with, and comply with, the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment and clause 2 of Attachment 9 to this Deed; and
 - (iv) submit each revision of the Verification and Monitoring Plan to the Other Parties.
- (b) The Principal may:
 - (i) review the Verification and Monitoring Plan submitted under clause 3.7(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, including that the revised Verification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in Attachment 4 (Information from Tenderer's Returnable Schedules),

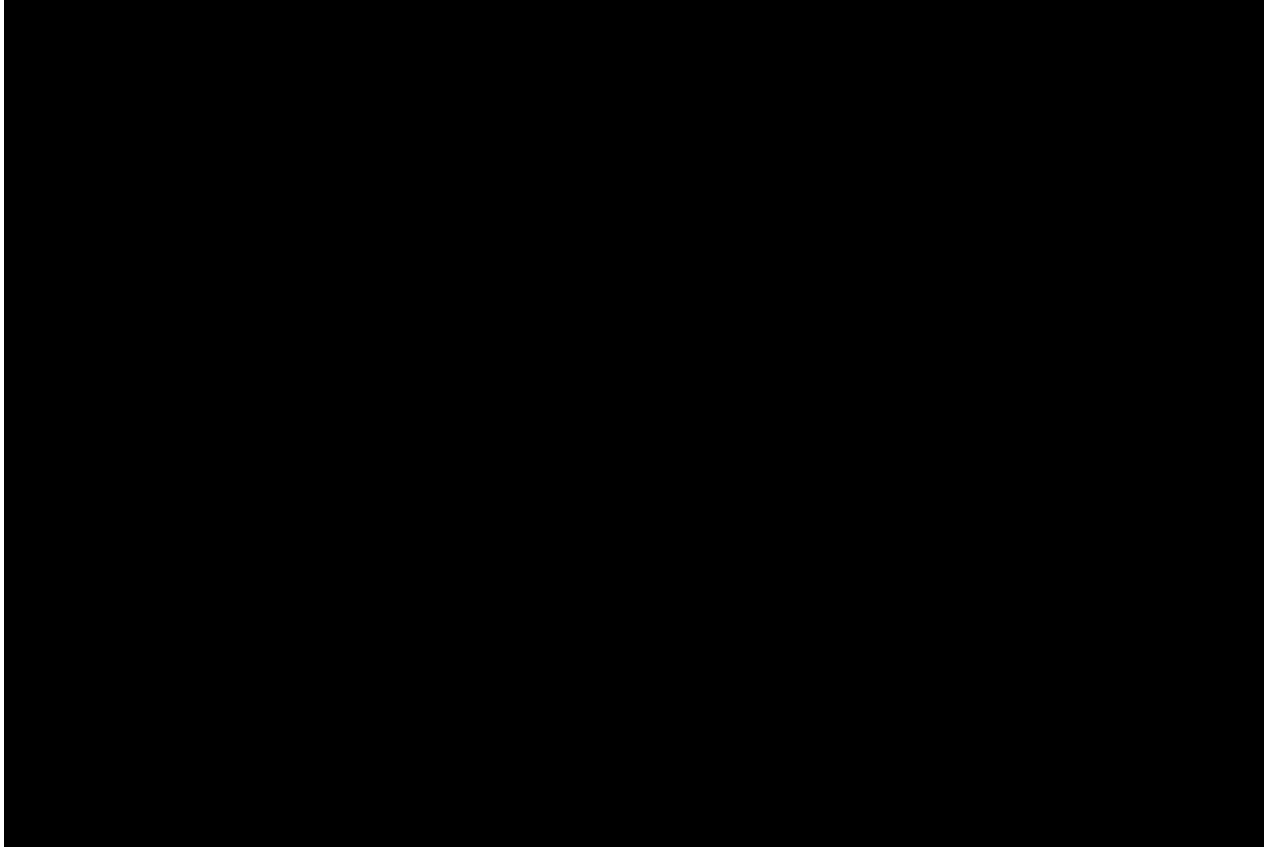
notify the Independent Certifier with details of the non-compliance or reduction.
- (c) If the Independent Certifier receives a notice under clause 3.7(b)(ii), the Independent Certifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clauses 3.7(a) to 3.7(c) will re-apply.
- (d) The Principal owes no duty to the Independent Certifier to review the Verification and Monitoring Plan for errors, omissions or compliance with this Deed.
- (e) Without limiting clause 3.2(e), the Independent Certifier must not, either in the preparation of the Verification and Monitoring Plan required by clause 3.6(a) or the amending, updating and development of the Verification and Monitoring Plan required by clause 3.7(a)(i), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise contained in Attachment 4 (Information from Tenderer's Returnable Schedules) without the prior written approval of the Principal's Representative.
- (f) The Independent Certifier must not amend the Verification and Monitoring Plan other than in accordance with this clause 3.7.

3.8 Monthly Progress Reports by the Independent Certifier

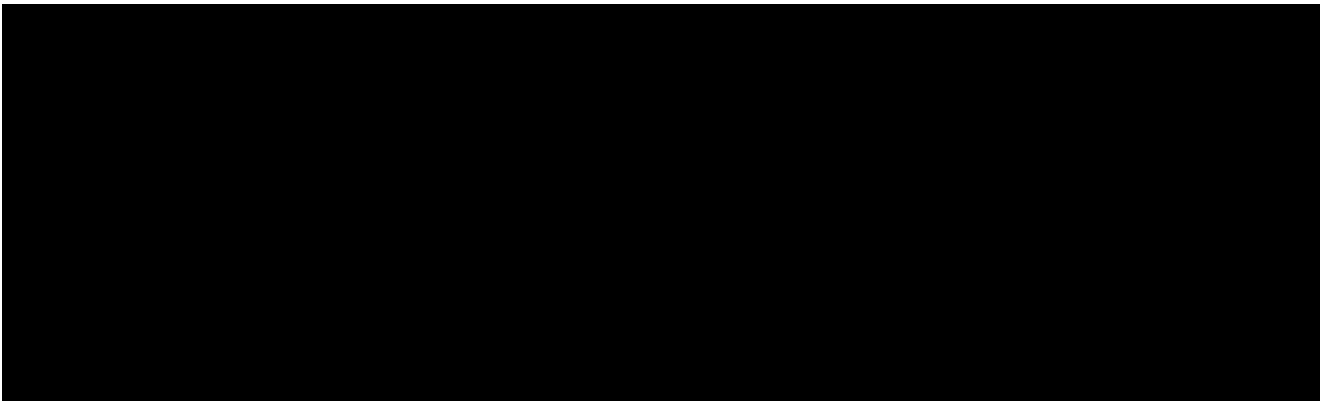
During the period from the date of this Deed until the end of the Defects Correction Period, the Independent Certifier must provide a monthly progress report in electronic form (and, if requested by the Principal, in hard copy) to each of the Principal's Representative, and the Contractor by the fifth Business Day of the following month and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) a description of the verification activities undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (c) a summary of key risks and issues relating to the Services;
- (d) the Independent Certifier's current and planned resources and staffing levels;
- (e) details of any Contractor non-conformities raised by the Independent Certifier or the Principal and details on the verification of the rectification by the Contractor of non-conformities;

- (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) details of the current version of the Verification and Monitoring Plan and a summary of any amendments, updates and developments to the Verification and Monitoring Plan during the reporting period;
- (h) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Services, together with detailed particulars on how the Independent Certifier is dealing or proposes to deal with any such act, matter or thing;



- (j) a description of how the Contractor has satisfied the Minimum Surveillance, including a description of the completed surveillance activities, and evidence demonstrating that the Independent Certifier has satisfied the Minimum Surveillance.



3.9 Audit and surveillance

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system under this Deed by a third party, at the request of the Other Parties or any one of them; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:

- (i) give to the third party access to premises occupied by the Independent Certifier where the Services are being undertaken; and
- (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

3.10 Access to records

- (a) From the date of this Deed and for a period of seven years following completion of the Services, the Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents prepared or generated by or on behalf of the Independent Certifier arising out of or in connection with the carrying out the Services.
- (b) Digital media records are to be provided in both native format and formats with the greatest potential for long term survival such as Portable Document Format specialised for the preservation of electronic documents (PDF/A-1) or equivalent.

3.11 Deeds

The Independent Certifier must, within 5 Business Days of the date of this Deed, provide the Principal with:

- (a) a duly executed deed poll in favour of ARTC in the form of Attachment 11;
- (b) a duly executed Deed of Novation substantially in the form of Attachment 13, in respect of the Environmental Representative Deed of Appointment; and
- (c) a duly executed Deed of Novation substantially in the form of Attachment 14, in respect of the Acoustics Advisor Deed of Appointment.

3.12 Aboriginal participation in construction

- (a) The Independent Certifier acknowledges and agrees that, prior to the date of this Deed, it prepared and submitted to the Principal a draft Aboriginal Participation Plan which has not been approved by the Principal as at the date of this Deed.
- (b) The Independent Certifier acknowledges that it must prepare and submit within 20 Business Days of the date of this Deed an updated Aboriginal Participation Plan prepared in accordance with the Aboriginal Procurement Policy and in the format prescribed by the NSW Procurement Board (as defined in the Aboriginal Procurement Policy) which shows how the Independent Certifier intends to meet the Minimum Aboriginal Participation Requirements for the Principal's review and approval.
- (c) The Principal will review the Aboriginal Participation Plan submitted under clause 3.12(b) and either:
 - (i) approve the updated Aboriginal Participation Plan; or
 - (ii) if the updated Aboriginal Participation Plan does not comply with the requirements of clause 3.12(b), notify the Independent Certifier of that non-compliance.
- (d) If the Independent Certifier receives a notice under clause 3.12(c)(ii), the Independent Certifier must promptly amend the updated Aboriginal Participation Plan to resolve the issues identified by the Principal and submit such revised updated Aboriginal Participation Plan to the Principal, after which clause 3.12(c) will reapply.
- (e) The Independent Certifier must comply with the Aboriginal Participation Plan approved by the Principal under the process set out in clause 3.12(b) to clause 3.12(d) (inclusive).
- (f) The Independent Certifier must prepare and submit to the Principal:
 - (i) each quarter, an Aboriginal Participation Report, providing details of the implementation of the Aboriginal Procurement Policy and achievement targets; and
 - (ii) prior to the completion of Services, the final Aboriginal Participation Report, describing and explaining:
 - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (B) what actual outcomes have been achieved; and
 - (C) whether the Minimum Aboriginal Participation Requirements have been met.
- (g) If the Minimum Aboriginal Participation Requirements have not been met by the Independent Certifier prior to the Independent Certifier's final payment claim, the Principal may direct the remaining balance of the required spend to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses.
- (h) Templates are, at the date of this Deed, available at:
<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>.

3.13 Performance Regime

The Principal and the Independent Certifier must comply with Attachment 10.

4. Independence and Confidentiality

4.1 Independent Certifier to be independent

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

- (a) subject to clause 6A, independently of the Other Parties;
- (b) honestly, diligently and reasonably;
- (c) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of a [REDACTED] professional providing services similar to the Services within the construction industry generally and the design and construction of major engineering works in particular; and
- (d) within the time prescribed under this Deed or the Project Documents or as anticipated by the Contract Program.

4.2 Confidentiality

The Independent Certifier must keep confidential details of this Deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Project or the Project Documents and not provide, disclose or use the information or documents except:

- (a) to the Other Parties;
- (b) for the purposes of performing the Services;
- (c) where required by law or to obtain legal advice on this Deed; or
- (d) with the prior written consent of the Other Parties.

This obligation will survive completion of the 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 in section 9 and 50 of the *Corporations Act 2001* (Cth)) of the Independent Certifier; and
 - (ii) any employees, agents, subcontractors and consultants that are involved in the provision of Services,

do not, from the date of execution of this Deed until the earlier of completion of the Services or termination in accordance with clause 7:

 - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - (A) with the Contractor or any of its contractors, consultants or providers; or
 - (B) in any work being carried out under the Project Documents; or
 - (iv) provide services to or advise any other person in relation to the Project Documents or the work being carried out under the Project Documents,

other than the provision of the Services under this Deed, except with the prior written consent of the Principal which may be withheld or granted in its absolute discretion.
- (b) The Independent Certifier agrees that:
 - (i) having regard to the Project Documents and the Services, 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 of the Project Documents and to ensure the best value for money of the Project Documents; and
 - (ii) damages may not be sufficient remedy for a breach of clause 4.3 and the Principal 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.

4.4 Publicity

- (a) The Independent Certifier must not issue any information, publication, document or article for publication concerning the Project or the 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 Services, that party must promptly provide details of such request to the Principal's Representative.

5. Obligations of the Other Parties

5.1 No Interference or Influence

- (a) Subject to clause 6A, the Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this Deed will not of itself constitute a breach of this clause.
- (b) Clause 5.1(a) does not prevent the Other Parties from providing written comments to the Independent Certifier in respect of the Design Documentation or any other aspect of the Contractor's Activities.

5.2 Co-operation by Contractor

Without limiting or otherwise affecting any of the Contractor's obligations under this Deed or the Project Documents, the Contractor must:

- (a) 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;
- (b) allow the Independent Certifier to attend all design meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by the Principal, including allowing access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Independent Certifier must comply with the reasonable directions of the Principal Contractor;
- (c) ensure that Hold Points and Witness Points are included in the Project Plans as required by the Independent Certifier to enable the Independent Certifier to perform the Services;
- (d) establish, provide, maintain, operate, service and remove, at the Contractor's cost, the site facilities required by the Independent Certifier for use by the Independent Certifier's personnel. The Independent Certifier's site facilities must be a separate building that adjoins the Contractor's main site administration facilities and must be provided by the Contractor to the satisfaction of the Independent Certifier, including requirements for all weather car parking, covered walkways, office fit out, furnishings, air conditioning, fencing and gates, security systems, information technology and communications infrastructure (including network computers). The Independent Certifier's site facilities must be available for use at least two months prior to the commencement of construction activities on the Construction Site and until four months after the Date of Opening Completion; and
- (e) allow the Independent Certifier and the Independent Certifier's personnel to perform the Services during the hours of work permitted under the Planning Approval.

5.3 Principal to have no liability

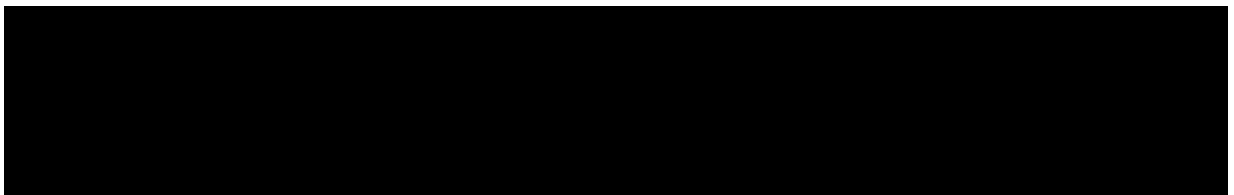
- (a) Each party acknowledges that the Principal is not, nor will be taken to have a liability, or to have assumed or become (on enforcement of any of their powers or otherwise), liable:
 - (i) to any party to this Deed by reason of the Principal being a party to this Deed; or
 - (ii) for the performance of or failure to perform, any obligation of the Contractor or the Independent Certifier under this Deed, the Project Documents or otherwise.
- (b) Without limiting clause 5.3(a), each party acknowledges and agrees that the Independent Certifier does not have the authority to authorise any non-compliance with the Project Documents.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2:

- (a) the Independent Certifier's total liability under or in connection with this Deed, from all claims howsoever arising (including negligence and breach of statutory duty), will be limited in aggregate to \$20 million; and



6.2 Exclusions

- (a) The limitation of liability in clause 6.1 [REDACTED] do not apply to:
 - (i) any claims arising out of or in connection with any of the following on the part of the Independent Certifier or anyone for whom it is responsible:
 - (A) fraud or criminal conduct;
 - (B) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
 - (C) gross negligence being any negligent act or omission which the Independent Certifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed; or
 - (ii) limit or exclude the Independent Certifier's liability in respect of:
 - (A) liability to the extent to which the Independent Certifier is (or will be or ought to be) entitled to be paid or indemnified pursuant to a public liability or product liability insurance policy or a motor vehicle comprehensive or third party property damage insurance policy required under this Deed in respect of that liability; or
 - (B) liability for which, but for a failure by the Independent Certifier to comply with its obligations under this Deed or under a public liability or product liability insurance policy or a motor vehicle comprehensive or third party property damage insurance policy required under this Deed, the Independent Certifier would have (or ought to have) been entitled to receive payment or been indemnified under the insurance policy.
- (b) Without limiting clause 6.1, the Independent Certifier's total liability under this Deed in respect of all claims arising out of or in connection with the:
 - (i) Acoustics Advisor and the Acoustics Advisor Deed of Appointment will be limited to \$[REDACTED] (**AA Liability Cap**), subject to the exclusions set out in the Acoustics Advisor Deed of Appointment; and
 - (ii) Environmental Representative and the Environmental Representative Deed of Appointment will be limited to \$[REDACTED] (**ER Liability Cap**), subject to the exclusions set out in the Environmental Representative Deed of Appointment.

6.3 Insurances

- (a) The Principal has effected an insurance policy as referred to in Item 1 of Attachment 7 and clause 7.1(a) of the D&C Deeds.
- (b) The Independent Certifier must from the date of the D&C Deed effect and maintain the policies of insurance listed in Attachment 7 to this Deed:
 - (i) on the terms;
 - (ii) for the types;
 - (iii) for the periods; and
 - (iv) for the sums,
 specified in Attachment 7 to this Deed.
- (c) The Independent Certifier acknowledges and agrees that:
 - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Attachment 8 (Insurance Policy Wording) and the actual insurance policies effected by the Principal pursuant to clause 7.1(a) of the D&C Deed and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the

risks referred to in this Deed and is aware that those insurance policies will not provide cover to the Independent Certifier against all the risks assumed by the Independent Certifier under this Deed;

- (ii) the obtaining of insurance by the Principal in accordance with clause 7.1(a) of the D&C Deed does not limit or otherwise affect the Independent Certifier's obligations under this Deed; and
- (iii) the policies of insurance referred to in clause 7.1(a) of the D&C Deed have been obtained at the Principal's cost.
- (d) The Independent Certifier is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a) D&C Deed and may effect insurance to cover the amount of that excess at its own cost.

6.4 Notice of matter affecting insurance

The Independent Certifier must notify the Other Parties of any:

- (a) occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Deed; and
- (b) notice of any claim or subsequent proceeding or action and developments concerning the claim, as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such event or circumstance.

6.5 Provision of information

- (a) Before the Independent Certifier starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the Independent Certifier must supply proof that all insurance policies which the Independent Certifier is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.
- (b) If a notification is made pursuant to clause 6.4 of this Deed, the Independent Certifier must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

The Independent Certifier must ensure that any subcontractor engaged by the Independent Certifier who is not covered by the professional indemnity policy of insurance effected and maintained by the Independent Certifier, effects and maintains a professional indemnity policy of insurance on terms, for the period and for the sum specified in Attachment 7 to this Deed.

6.7 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 6 does not limit the liability or other obligations of the Independent Certifier under this Deed.

6.8 Indemnity

Subject to clause 6.1, the Independent Certifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of any:

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

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

6A Additional Services

- (a) The parties acknowledge that:
 - (i) the Principal may direct the Independent Certifier in writing to carry out any additional services in relation to the Project from time to time (**Additional Services**); and
 - (ii) Additional Services directed under clause 6A(a)(i) may include:
 - (A) advising the Principal on claims for extension of time, by engaging a specialist subcontractor approved by the Principal with experience in assessing extensions of time; and
 - (B) any other services required by the Principal in respect of the Project.
- (b) The Other Parties:

- (i) consent to the Independent Certifier performing the Additional Services for the benefit of Principal (as applicable); and
- (ii) acknowledge that the Contractor will not receive copies of any documents or notices to or from the Independent Certifier in connection with the Additional Services (unless the Principal's Representative so determines, in its absolute discretion).
- (c) Without limiting clause 6A(a), the Principal (after prior consultation with the Contractor) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (d) The Other Parties may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

7. Termination of appointment

7.1 Notice of termination

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

- (a) the Independent Certifier is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the Independent Certifier is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 5 Business Days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the Independent Certifier a notice of termination of this Deed, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

7.2 Prior agreement on replacement

Prior to serving a notice under clause 7.1, the Principal, and the Contractor must have agreed upon another person to act as a replacement for the Independent Certifier.

7.3 Termination

Where a notice is served on the Independent Certifier under clause 7.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 7.1; or
- (b) the appointment of a replacement for the Independent Certifier.

7.4 Delivery of documents

Upon the date of termination of the appointment of the Independent Certifier, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for the purposes of the Project Documents and the Project.

7.5 Reasonable assistance

Where the Other Parties give a notice of termination under clause 7.1, the Independent Certifier must provide full assistance to the Other Parties and any replacement for the Independent Certifier appointed in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

7.6 Payment until date of termination

Where this Deed is terminated under clause 7.1(d), the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for Services performed up to the date of the termination.

7.7 Termination without payment

Termination of this Deed will be without prejudice to any claim which one or both of the Other Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

7.8 Survive termination

This clause 7 will survive the termination of this Deed by the Other Parties under clause 7.1.

7.9 Rights upon Termination

If this Deed is terminated pursuant to clauses 7.1(a) to 7.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the Deed had the Independent Certifier repudiated the Deed and the Other Parties elected to treat the Deed as at an end and recover damages.

8. Expenses, Stamp Duty and GST

8.1 Expenses

Except as otherwise provided in this Deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Deed.

8.2 Stamp Duties

- (a) The Contractor must:
 - (i) pay all stamp duties (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed; and
 - (ii) indemnify each other party against any liability arising from failure to comply with clause 8.2(a)(i).
- (b) The Contractor is authorised to make any application for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

8.3 GST

- (a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (the "**Supplier**") under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
 - (ii) an additional amount will be payable by the party to whom that supply is made (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause (b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 10 Business Days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

9. Miscellaneous

9.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Deed.

9.2 Notices

Any notices contemplated by this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Name: Transport for New South Wales
Address: 20-44 Ennis Road Milsons Point NSW 2061
For the attention of: Project Director (Principal), Coffs Harbour Bypass Project

Name: Principal's Representative
Address: 20-44 Ennis Road Milsons Point NSW 2061
Email: [REDACTED]
 For the attention of: [REDACTED]

Name: The Ferrovia Gamuda Joint Venture
Address: Level 9, 65 Berry St North Sydney 2060
Email: [REDACTED]
 For the attention of: [REDACTED]

Name: [REDACTED]
Address: [REDACTED]
Email: [REDACTED]
For the attention of: [REDACTED]

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid express post to the relevant address of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid express post) on the second Business Day after the date of posting to an address within Australia, and on the fourth Business Day after the date of posting to an address outside Australia; and
 - (ii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a day that is not a 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.
- (f) Any notice contemplated by this deed to be given to the Principal must be delivered to the Principal address in accordance with clause 9.2(b).
- (g) Subject to clause 9.2(f), the party making the communication may give any notice contemplated by this deed to be given to other parties by email, to the relevant email address in accordance with clause 9.2(b) or to a new email address which one party notifies to the other parties in writing from time to time.
- (h) A notice given by email is taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply.

9.3 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 9.3(a).

9.4 Amendments

This Deed may only be varied by a document signed by or on behalf of each of the parties.

9.5 Assignment

No party to this Deed may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party to this Deed.

9.6 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 will 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 of a breach of any term of this Deed will operate as a waiver of any breach of that term or of a breach of any other term of this Deed.

9.7 Consents

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

9.8 Counterparts

- (a) This Deed may be executed in any number of counterparts, each of which may be executed by one or more parties, may be executed electronically or in handwriting (including a print out of the electronic form) and will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document. Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this Deed, this shall be taken to be the same, and have the same effect, as if the signature on the counterparts were on a single copy of this Deed.
- (b) Executed counterparts of this Deed may be exchanged by email.

9.9 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

9.10 Entire agreement

To the extent permitted by law, in relation to the subject matter of this Deed, 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.

9.11 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.

9.12 Relationship of the parties

- (a) The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing herein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) It is understood that the Independent Certifier is acting as an independent contractor for the Other Parties and therefore, the Independent Certifier is not authorised to enter into any binding obligations on behalf of either or both of the Other Parties.

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or
- (b) ceases to exist,

this Deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body.

9.14 Severance

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

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

9.15 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.

9.16 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 9.16(a) it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

9.17 Modern Slavery

- (a) The Independent Certifier warrants that it:
 - (i) is not aware of (including through the making of reasonable inquiries) any Modern Slavery practices being used in its operations or supply chains (or in those of any entity it owns or controls); and
 - (ii) has never been convicted of a Modern Slavery Offence, and nor has any entity it owns or controls.
- (b) The Independent Certifier must not at any time engage or be complicit in any Modern Slavery practice, and must immediately notify the Principal if it suspects or becomes aware of any Modern Slavery practice occurring in connection with the Project Works.
- (c) If the Independent Certifier is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide the Principal with a copy of any report it is required to prepare under that Modern Slavery Law promptly upon the Principal's request.
- (d) For the purposes of this clause 9.17:
 - (i) **Modern Slavery** has the same meaning as in the Modern Slavery Law and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children;
 - (ii) **Modern Slavery Law** includes, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth); and
 - (iii) **Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW).

9.18 Change in Control

- (a) Subject to the terms of this clause 9.18, the Independent Certifier must ensure that there is no Change in Control of any entity that comprises the Independent Certifier without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Independent Certifier must notify the Principal in writing of any Change in Control of any entity that comprises the Independent Certifier, and provide:
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and

- (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 9.18(d), in relation to the Change in Control of the relevant entity that comprises the Independent Certifier.
- (c) The Principal's approval is not required for a Change in Control arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Independent Certifier gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the Independent Certifier where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the Independent Certifier or the relevant entity that comprises the Independent Certifier:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Project; or
 - (ii) as a result of the Change in Control, the Independent Certifier will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Independent Certifier under this Deed.
- (e) The Principal's approval of a Change in Control of any entity that comprises the Independent Certifier will not relieve the Independent Certifier of any of its obligations under this Deed.

9.19 Commonwealth Building Code

- (a) In this clause 9.19:
 - (i) **ABC Commissioner** means the Australian Building and Construction Commissioner referred to in section 15(1) of the BCIP Act;
 - (ii) **ABCC** means the body referred to in section 29(2) of the BCIP Act;
 - (iii) **Building Code** means the Code for the Tendering and Performance of Building Work 2016 (Cth), which is available at <https://www.legislation.gov.au/Details/F2019C00289>, as amended from time to time;
 - (iv) **Building Contractor** has the same meaning as in the BCIP Act;
 - (v) **Building Industry Participant** has the same meaning as in the BCIP Act;
 - (vi) **Building Work** has the same meaning as in subsection 3(4) of the Building Code;
 - (vii) **Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code;
 - (viii) **Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code;
 - (ix) **Related Entity** has the same meaning as in the Corporations Act;
 - (x) **Subcontractor** means a Building Contractor or Building Industry Participant who Project Co has entered, or proposes to enter, into a subcontract with to undertake any of the Works; and
 - (xi) **Works** means Commonwealth Funded Building Work that is the subject of this Deed.
- (b) The Independent Certifier:
 - (i) declares as at the date of this Deed; and
 - (ii) must ensure during the term of this Deed, that, in relation to the Services, it and its subcontractors, consultants and each related entity:
 - (iii) complies with, and acts consistently with, the Building Code;
 - (iv) meets the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction;
 - (vi) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and

- (vii) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government.
- (c) The Independent Certifier acknowledges and agrees that compliance with the Building Code does not relieve the Independent Certifier from any responsibility or obligation under this Deed.
- (d) The Independent Certifier must promptly:
 - (i) notify the ABCC of:
 - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the Independent Certifier to rectify the breach; and
 - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 9.19(d)(i)(A); and
 - (ii) give the Principal a copy of any notification given by the Independent Certifier to the ABCC under clause 9.19(d)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (e) The Independent Certifier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIP Act and the Building Code and must ensure that it (and must procure that its subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
 - (i) for entry under section 72 of the BCIP Act;
 - (ii) to interview any person under section 74 of the BCIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (f) The Independent Certifier must not enter into a subcontract for any aspect of the Services unless:
 - (i) the subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Independent Certifier agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the subcontract with the subcontractor includes an equivalent clause to this clause 9.19.
- (g) The Independent Certifier must provide the Commonwealth with any subcontractor's Declaration of Compliance referred to in clause 9.19(f) promptly upon request.
- (h) The Independent Certifier must maintain adequate records of the compliance with the Building Code by:
 - (i) the Independent Certifier;
 - (ii) the subcontractors;
 - (iii) the Independent Certifier's consultants; and
 - (iv) any related entity of the Independent Certifier.

9.20 Disclosure by Principal

- (a) The Independent Certifier and the Contractor 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 contract register under the GIPA Act); and
 - (iv) the Principal and the Principal's Representative may make this Deed available to any person as required by any applicable Law.
- (b) Nothing in this clause 9.20 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

10. DISPUTE RESOLUTION

10.1 Procedure for resolving disputes

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 10.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clauses 10.2, 10.3 and 10.4.

10.2 Negotiation

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective senior officer with the authority to resolve the dispute of those parties to the dispute.
- (b) A notice under clause 10.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause Schedule 110.210.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 10.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 10.2(a) is received.
- (d) The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 10.2(c) and will be contractually binding on the parties to the dispute.
- (e) The 10 Business Days referred to in clause 10.2(c) may be extended by agreement of the parties to the dispute in writing.
- (f) If the Dispute is not fully resolved by the Dispute Representatives within 10 Business Days (or such longer period as the parties agree) after the date the notice under clause 10.2(a) is received:
 - (i) a party to the dispute may by giving notice in writing to the other parties, refer the dispute to expert determination in accordance with clause 10.3; or
 - (ii) the parties may agree to have the dispute determined by litigation.

10.3 Expert Determination

- (a) Any dispute which is referred to expert determination under clause 10.2(f)(i) will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Appendix A to Schedule 38 of the D&C Deed.
- (b) The parties must promptly make available to the Expert all such additional information, access to the Construction Site, any Extra Land and all areas where the Works are being performed (including any relevant Local Areas) and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the dispute.
- (c) The parties agree that, to the extent permitted by Law:
 - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* NSW are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* NSW (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by the parties to the dispute, the Expert must give its determination in writing to both parties, which must be reasoned and must state that it is given under this clause 10.3.
- (e) Without limiting clause 10.1(b), the determination of the Expert will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment made in court proceedings.

10.4 Notice of dissatisfaction

- (a) If:

- (i) a party is dissatisfied with a determination made by an Expert under clause 10.3, then that party may, within 10 Business Days after receiving the determination, give notice to the other parties of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by the parties to the dispute), then any party to the dispute may, within 10 Business Days after the relevant period has expired, give a notice to the other parties of its dissatisfaction,
- (each a Notice of Dissatisfaction).
- (b) A Notice of Dissatisfaction issued under clause 10.4(a) must:
 - (i) state that it is given under this clause 10.4; and
 - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
 - (c) No party will be entitled to commence court proceedings in respect of any dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 10.4.

10.5 Final and binding decision

- (a) If:
 - (i) an Expert has made a determination as to a dispute; and
 - (ii) no Notice of Dissatisfaction has been given by any party under clause 10.4 within 10 Business Days after it received the Expert's determination,
 then the determination will become final and binding upon all parties, who must give effect to it.
- (b) Once a determination of an Expert has become final and binding under clause 10.5(a), no party will be entitled to challenge the determination on any basis.

10.6 Continue to perform

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

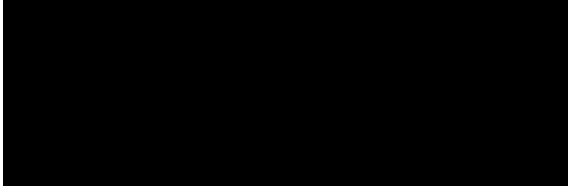
10.7 Urgent relief

- (a) Nothing in this clause 10 will prevent:
 - (i) a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief; or
 - (ii) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, or an equivalent provision under any Law.

10.8 Survive termination

This clause 10 will survive the termination of this deed.

Attachment 1 - Project Documents

Contract Details	
1	D&C Deed and Schedules dated 17 June 2022
2	Exhibits to the D&C Deed dated 17 June 2022
3	ARTC Deed of Lease between the Principal and ARTC
4	

Attachment 2 - Independent Certifier Services

1. D&C Deed functions

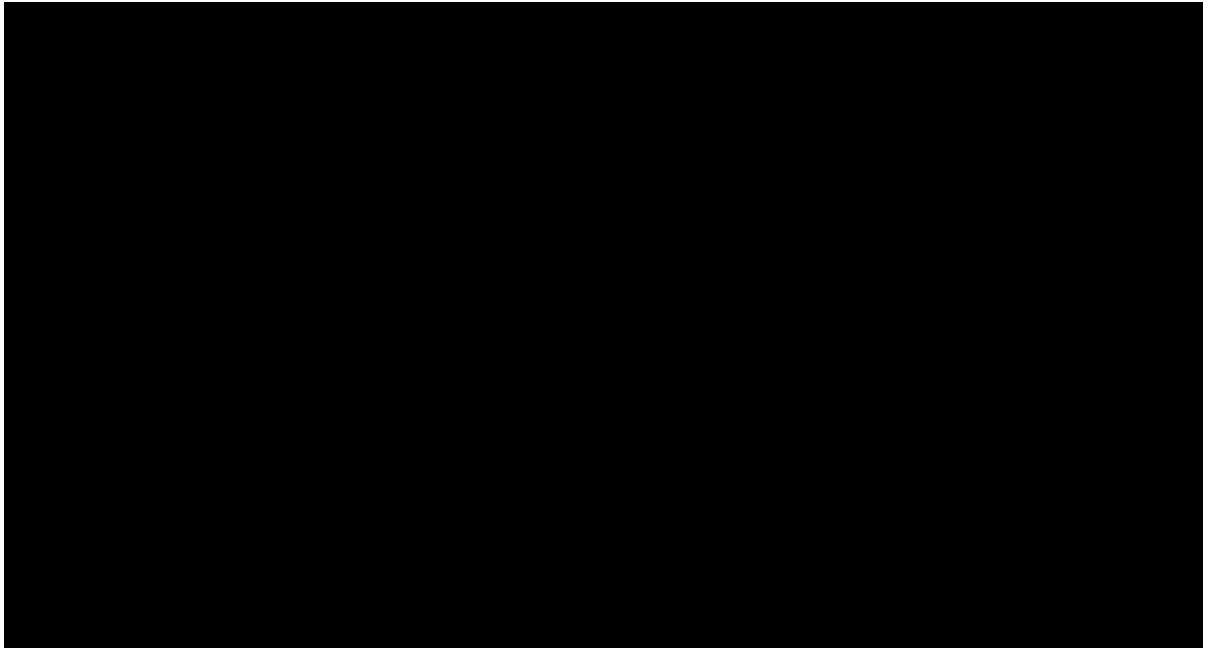
The Independent Certifier must discharge the functions, obligations, duties and services which the Project Documents set out in Item 1 and Item 2 of Attachment 1 contemplate will be discharged by the Independent Certifier, which include the following:

- (a) functions, obligations, duties and services identified in the D&C Deed (where the clause references below are to clauses in the D&C Deed):
 - Clause 2.4(f)(i) Independently verify in accordance with this Deed that:
 - (a) the Project Works; and
 - (b) the Temporary Works,
 comply with the requirements of the D&C Deed;
 - Clause 2.4(f)(ii) Make determinations on matters that the D&C Deed expressly requires be determined by the Independent Certifier;
 - Clause 2.4(i) Receive all information and documents, attend all design meetings (including the Project Design Group meetings), obtain access to such premises as may be necessary or reasonably required for the performance of the obligations of the Independent Certifier under this Deed and insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release these and any other the Hold Points in accordance with the SWTC;
 - Clause 2.4(j) Execute and provide certificates in the form of:
 - (a) Schedule 13 (Independent Certifier's Certificate – Payment Claim) with each progress claim made under clause 18.2(a);
 - (b) Schedule 14 (Independent Certifier's Certificate – Quality) every 3 months from the date of this deed up to the end of the last Defects Correction Period;
 - (c) Schedule 14A (Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period):
 - (i) every 3 months from the date of the D&C Deed up to the end of the Landscaping Maintenance Period; and
 - (ii) at the end of the Landscaping Maintenance Period as a condition precedent to the Principal's Representative issuing a notice to the Contractor under clause 13A.5(b)(i);
 - (d) Schedule 15 (Independent Certifier's Certificate – Design Documentation) in accordance with the times set out in the D&C Deed;
 - (e) Schedule 16 (Independent Certifier's Certificate - Opening Completion and Completion) as a condition precedent to Opening Completion and Completion;
 - (f) Schedule 17 (Independent Certifier's Certificate - Nominated Defects) on request in connection with the rectification of particular Defects nominated by the Principal's Representative;
 - (g) Schedule 17A (Independent Certifier's Certificate – As-Built Documentation) in accordance with the times set out in the D&C Deed; and
 - (h) Schedule 18 (Independent Certifier's Certificate – Final Completion) on the expiry of the last Defects Correction Period as a condition precedent to Final Completion;
 - Clause 2.5(d)(ii)B Receive from the Proof Engineer a copy of a comprehensive report on the independent assessment of all factors influencing the final integrity of elements of the Project Works and associated Temporary Works;
 - Clause 2.6(a) Engage the Environmental Representative on the terms of the Deed of Appointment of ER;
 - Clause 2.7A(a) Engage the Acoustics Adviser on the terms of the Deed of Appointment of Acoustics Adviser;
 - Clause 2.8(d)(ii)B Receive from the Independent Checking Engineer a copy of a comprehensive report on the check required under clause 2.8(d)(ii)A;

Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 1(d)	Attend preliminary start-up and construction start-up workshop;
Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 2(b)	When required by the Principal's Representative, attend weekly Construction Site meetings;
Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 3(b)	When required by the Principal's Representative or the Project Director, attend Evaluation Meetings;
Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 4	Attend meetings of the Project Control Group in accordance with section 3.19.1 of the SWTC;
Clause 3.1 Schedule 40 (Workshops and Meetings) clause 6	Attend meetings of the Project Design Group in accordance with section 3.19.2 of the SWTC;
Clause 3.1 Schedule 40 (Workshops and Meetings) clause 7	Attend meetings of the Completion Working Group in accordance with section 3.19.3 of the SWTC;
Clause 3.3(c)	Receive each Project Plan;
Clause 3.3(d)	Review each Project Plan submitted (including each re-submitted Project Plan) under clause 3.3 and notify the Contractor, within 15 Business Days of the submission (or in the case of a re-submission, within 10 Business Days), if the Project Plan does not comply with the D&C Deed giving reasons;
Clause 3.3(e)	Receive each amended Project Plan;
Clause 3.3(h)(ii)	Receive each further developed, amended or updated Project Plan;
Clause 3.3(j)(iv)	Issue a notice to the Contractor in relation to the further development, amendment or updating of a Project Plan if it believes any Project Plan is non-compliant, and receive each further amended and compliant Project Plan;
Clause 3.4(b)	Receive the draft Operations and Maintenance Plan;
Clause 3.4(c)	Receive the final draft Operations and Maintenance Plan;
Clause 3.4(d)	Receive the amended final Operations and Maintenance Plan;
Clause 3.4(f)	If the Maintenance Plan or any draft is rejected, receive the developed, amended or updated Operations and Maintenance Plan;
Clause 5.1(c)(iii)	Monitor the preparation of, and review and comment on, the Approval Related Documentation prepared by the Contractor;
Clause 5.1(c)(iv)	Receive all Approval Related Documentation;
Clause 5.1(c)(v)	Consult (if necessary or desirable) with the Contractor and comment on the Approval Related Documentation;
Clause 5.1(c)(vii)	If necessary or desirable, request and receive information from the Contractor in order to review and consider the Approval Related Documentation;

Clause 5.17 and
Schedule 51
(Heavy Vehicle
National Law
Requirements)
clause 3.1

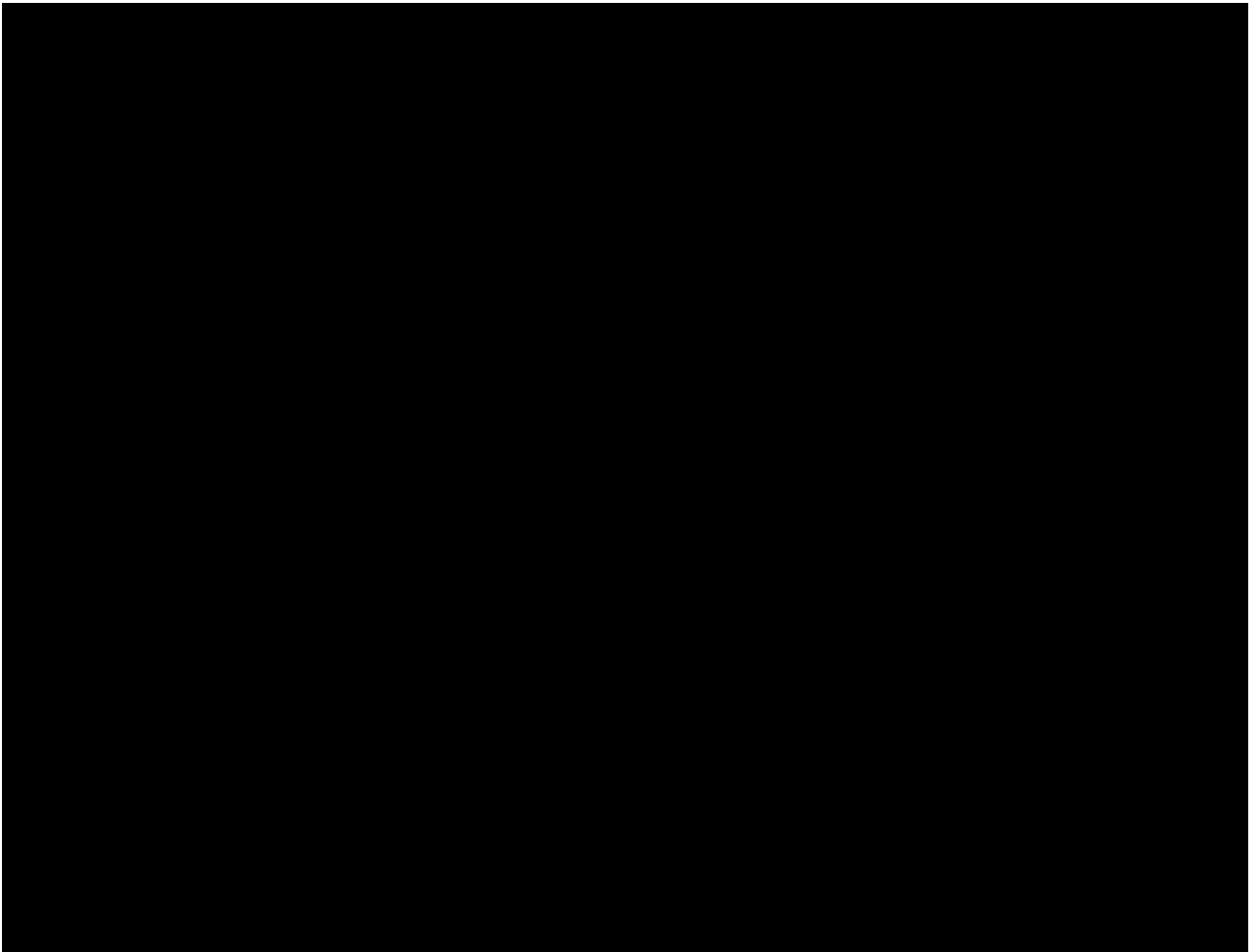
Clause 5.17 and Schedule 51 (Heavy Vehicle National Law Requirements)
clause 3.1



- Clause 11.2(a)(ii) Observe, monitor, audit and test all aspects of quality in the Contractor's Activities and the durability of the Project Works to verify compliance with the requirements of the D&C Deed;
- Clause 11.2(a)(iii) Review and assess the quality of the Contractor's Activities, and the durability of the Project Works to verify the Contractor's compliance with the requirements of the D&C Deed;
- Clause 11.2(b)(ii) Receive reports on quality issues from the Quality Manager;
- Clause 11.2(d) Audit and review each revision of the Quality Plan within 10 Business Days of submission of the plan to the Principal's Representative;
- Clause 11.3(c) & (d) Participate in a Hold Point procedure on behalf the Designer (if requested by the Contractor and agreed by the Independent Certifier);
- Clause 12.2 Receive, review, comment on and monitor the design performance of the Contractor in accordance with clauses 12.2 and 12.3 of the D&C Deed, including management of Reviewer's Comments as contemplated by the Contractor Documentation Schedule;
- Clause 12.2(d) Review the Design Documentation for each discrete design element of the Project Works in accordance with the Contractor Documentation Schedule.
- Clause 12.2(e) Verify that the Design Documentation for the Final Design Documentation Stage (and any amended versions of Design Documentation for the Final Design Documentation Stage) for the Project Works and Temporary Works (other than Category 3 Temporary Works) by providing design verification in the form of Schedule 15 (Independent Certifier's Certificate - Design Documentation) to the D&C Deed attaching a register of drawings the subject of the verification;
- Clause 12.2(f) Consult (if necessary or desirable) with and take into account any views and requirements of any Reviewer and any relevant Authority on the Design Documentation;
- Clause 12.2(g) Receive and certify Design Documentation for a particular design development stage in accordance with the Contractor Documentation Schedule;
- Clause 13.2(g) Following completion of the Property Works with respect to a Parcel, receive a executed deed in the form of Schedule 35 (Owner's Deed Poll) or a statement signed by the Contractor to the effect that the owner or owners have failed or refused to execute a deed;

- Clause 13.10(i)(ii) Receive evidence that title to the Spare Parts will vest in the Principal upon payment;
- Clause 16.1(a) Receive a detailed written Defects report;
- Clause 16.1A(a) Notify the Contractor of a Defect;
- Clause 16.1A(b) Receive a Defects report setting out all Defects the subject of a written report in accordance with clause 16.1(a) and all Defects notified by the Principal's Representative or the Independent Certifier in accordance with clause 16.1A(a);
- Clause 16.1A(d) Receive a notice to the effect that the Contractor does not agree that one or more matters the subject of a Defects Rectification Notice constitute a Defect;
- Clause 16.1A(f) Determine whether the disputed matter the subject of a Defects Rectification Notice is a Defect and the nature and extent of that Defect;
- Clause 16.2(a) Receive the Defects Rectification Methodology;
- Clause 16.2(b) Review and comment on the Defects Rectification Methodology;
- Clause 16.2(d) Determine, if requested, whether a Defect the subject of the correction works that has been corrected no longer constitutes a Defect, and receive all relevant documentation and attend an inspection (if necessary or desirable);
- Clause 16.2(e) Notify whether the Defect the subject of the correction works has been corrected or not corrected;
- Clause 16.7(c) Receive a Site Audit Statement for Local Area Works (if requested);
- Clause 16.7(d) Receive notice that each discrete part of the Local Area Works is complete and jointly inspect the relevant Local Area Works with the Principal's Representative, the Project Director and the representative of any relevant Authority;
- Clause 16.7(f) Following inspection, notify the Contractor of the date of completion of the discrete part of the Local Area Works or if not completed, the items which remain to be completed;
- Clause 16.7(g)(i) Receive written notice from relevant Authority to the effect that the Authority is satisfied that a discrete part of the Local Area Works is complete;
- Clause 16.8(a) Receive notice that a discrete part of the Service Works is complete, or that a relevant Defect has been corrected or Variation completed;
- Clause 17.1(a) Receive Subsidiary Contract Programs for all activities to be undertaken in carrying out the Contractor's Activities (including procurement of goods and materials);
- Clause 17.1(e) Receive reviewed and updated Contract Programs and Subsidiary Contract Programs along with the reports required by the Contractor Documentation Schedule;
- Clause 17.10(a) Receive notice from the Contractor of the estimated Date of Opening Completion and Date of Completion (as applicable);
- Clause 17.10(b) Inspect the Contractor's Activities with the Principal's Representative and the Project Director within 10 Business Days of receipt of a notice under clause 17.10(a)(ii);
- Clause 17.10(c) Following inspection, notify the Contractor of items which it believes must be completed before Opening Completion or Completion (as applicable) or that it is not practicable to issue a list as the Contractor is so far from achieving Opening Completion or Completion (as applicable);
- Clause 17.10(d) Receive notice from the Contractor of any amendments to the estimated Date of Opening Completion or Date of Completion (as applicable);
- Clause 17.10(e) Receive notice from the Contractor that it considers it has achieved Opening Completion or Completion (as applicable);
- Clause 17.10(f) Inspect the Contractor's Activities with the Principal's Representative and the Project Director within 5 Business Days of receipt of a notice under clause 17.10(e);
- Clause 17.10(g) Notify the date on which Opening Completion or Completion (as applicable) was achieved or if not achieved, the items remaining to be completed or that it is not practicable to notify of the items remaining to be completed;

- Clause 17.10(h) Receive a further written notice from the Contractor that it has proceeded with the Contractor's Activities and thereafter considers it has achieved Opening Completion or Completion (as applicable);
- Clause 17.14(a) Receive notice from the Contractor of the estimated Date of Final Completion;
- Clause 17.14(b) Inspect the Works with the Principal's Representative and the Project Director within 15 Business Days of receipt of a notice under clause 17.14(a);
- Clause 17.14(c) Provide the Contractor with a list of items which must be completed before Final Completion is achieved;
- Clause 17.14(d) Receive notice from the Contractor that it considers it has achieved Final Completion and inspect the Works with the Principal's Representative and the Project Director;
- Clause 17.14(e) Notify the date on which Final Completion was achieved or if not achieved, the items remaining to be completed or that it is not practicable to notify of the items remaining to be completed;
- Clause 17.14(f) Receive a further written notice from the Contractor that it has proceeded with the Contractor's Activities and thereafter considers it has achieved Final Completion;
- Clause 18.2(c)(iii) Certify in the form of Schedule 13 (Independent Certifier's Certificate - Payment Claim) of the D&C Deed that the parts of the Contractor's Activities claimed for payment comply with the requirements of the D&C Deed, for each progress claim made by the Contractor under clause 18.2(a) of the D&C Deed;
- Clause 18.6(b)(iii) Receive evidence (to its satisfaction) that title to the unfixed goods and materials will vest in the Principal on payment and that no other person holds a Security Interest in the unfixed goods and materials and the Contractor has done everything required by the Principal under clause 18.6(b)(ii);
- Clause 18.6(b)(iv) Receive details or information (to its satisfaction) from the Contractor that the relevant unfixed goods or material are properly stored at a location agreed to by the Principal, labelled the property of the Principal, and adequately protected from damage or loss;
- Clause 18.11(a) If nominated by the Principal's Representative, carry out an audit of and copy the Contractor's documents, accounts and other records to the extent reasonably necessary to verify the matters set out in clause 18.11(a);
- Clause 23.2 (Definition of Opening Completion) Execute and provide a certificate in the form of Schedule 31 (Independent Certifier's Certificate – Tunnel System Works) in accordance with the D&C Deed;
- (b) otherwise discharge the role, functions, obligations, duties and services of the Independent Certifier under the D&C Deed, including those identified in the SWTC; and
- (c) become familiar with the role, functions, obligations, duties and services (express or implied) under the D&C Deed of the "Independent Certifier" and review information made available to the Independent Certifier by the Other Parties in order to become fully acquainted with the Project.



5. General

The Independent Certifier must also discharge the following functions, obligations, duties and services:

- (a) attend meetings and report as required from time to time by the Other Parties;
- (b) carry out any additional services in relation to the Project as jointly directed in writing by the Other Parties or as directed under clause 6A of this Deed; and
- (c) undertake, as a minimum, the surveillance listed in Attachment 5 to this Deed.

Attachment 3 - Payment Schedule

1. Payment claim

- (a) At the end of each month after the date of the D&C Deed, the Independent Certifier must submit to the Principal a claim for payment on account of the Fee:
 - (i) setting out the value of the Services performed in accordance with this Deed during the relevant month;
 - (ii) calculated in accordance with this Payment Schedule;
 - (iii) in such form and with such details and supporting documentation as the Principal may reasonably require; and

(Payment Claim).

- (b) Each payment claim submitted by the Independent Certifier to the Principal must be accompanied by an executed Subcontractor's Statement and Supporting Statement in the form set out at clause 9 of this Payment Schedule.

2. Payment

The Principal must, within 15 Business Days after receipt of the Payment Claim for the month, pay the Independent Certifier that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

The Principal must pay the Independent Certifier any amount included in a Payment Claim which it does not dispute. If the Principal disagrees with an amount included in the Payment Claim, the Principal must within 10 Business Days after receipt of the relevant Payment Claim notify the Independent Certifier in writing of the reasons for any amount which is disputed.

4. The Fee

- (a) The Fee consists of the following components:
 - (i) a lump sum of \$ [REDACTED] exclusive of GST for the Design Verification Services;
 - (ii) a lump sum of \$ [REDACTED] exclusive of GST for the Construction Verification Services;

subject to adjustment in accordance with clauses 4(b) or 4(c) below (as the case may be).

- (b) Adjustments will be made to the lump sums and costs referred to in clause 4(a) in accordance with:
 - (i) the appropriate rates set out in the Schedule of Rates in clause 5 of this Payment Schedule; and
 - (ii) the disbursements set out in clause 6 of this Payment Schedule,
 for reasonable increases or decreases in the cost to the Independent Certifier of performing the Design Verification Services and/or the Construction Verification Services which arise as a result of (without double counting):
 - (iii) a Variation directed by the Principal's Representative under the D&C Deed;
 - (iv) any re-verification and re-certification of design packages previously certified as Final Design Documentation due to a Variation directed by the Principal's Representative under the D&C Deed requiring that re-verification and re-certification (but excluding where such work would otherwise constitute Construction Verification Services);
 - (v) a delay to the performance of the Design Verification Services and/or Construction Verification Services due to an extension to the Contract Program of not less than [REDACTED] working days, but only to the extent that the [REDACTED]

- (vi) any additional services jointly directed in writing by the Other Parties or as directed under clause 6A of the Deed, as required by paragraph (b) under the heading "General" in Attachment 2 to this Deed;

[Redacted]

: or

[Redacted]

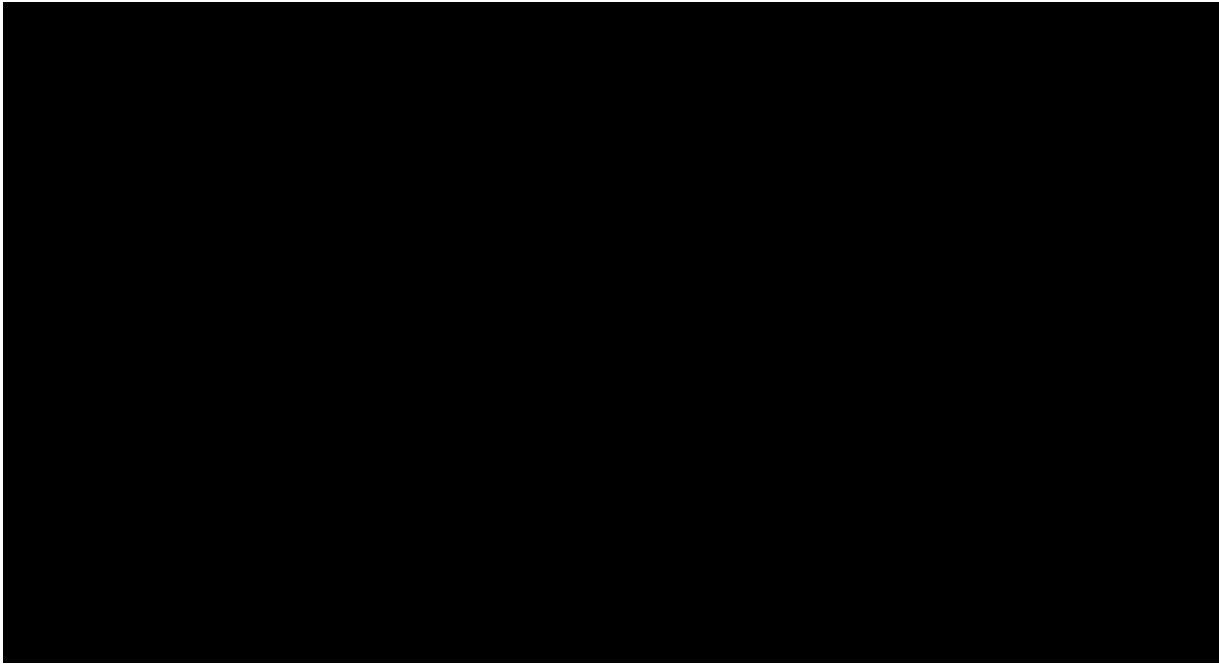
In this clause, a "design package" means each submission of the Design Documentation to the Independent Certifier and other information required by clause 12.2 of the D&C Deed or the Contractor Documentation Schedule relating to each discrete design element of the Contractor's Activities and includes the Design Documentation that is produced for each of the Developed Concept Design Stage, Substantial Detailed Design Stage, Final Design Documentation Stage and Issue for Construction Design Documentation.

- (c) The Independent Certifier acknowledges that (except as described in and payable under clause 6 of this Payment Schedule) it has allowed in the lump sums referred to in clause 4(a) for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from the Construction Site and excluding provision of the Independent Certifier site facilities referred to in clause 5.2(d) of this Deed), disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.
- (d) The Independent Certifier:
 - (i) acknowledges that the Contractor will be undertaking work out of ordinary working hours (including traffic management and works within the road tunnels);
 - (ii) agrees that it is responsible for scheduling the timing of its performance of the Services, including in relation to all work undertaken by the Contractor out of ordinary working hours; and
 - (iii) agrees that the lump sums referred to in clause 4(a) above and the rates set out in the Schedule of Rates in clause 5 of this Payment Schedule include allowances for the provision of Services performed out of ordinary working hours and the Independent Certifier will have no entitlement to any adjustment to the Fee arising out of or in any way in connection with the Independent Certifier's decision to perform the Services (or any part thereof) out of ordinary working hours.

5. Schedule of Rates
Design Verification Services – adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
------	---------------------	---------------------------------

[Redacted Table Content]



Construction Verification Services – adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
<div></div>		

These rates contain allowances for the provision of all labour, materials, plant, equipment and work, including telecommunications, vehicles, accommodation, disbursements and any other costs necessary for

and arising out of or in connection with the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this Deed, excluding disbursements described in and payable under clause 6 of this Payment Schedule and reasonable costs for transport.

When claiming payment for any Services for which the Independent Certifier is to be paid on a Schedule of Rates basis the Independent Certifier must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid on a Schedule of Rates basis.

6. Disbursements

- (a) If the Independent Certifier incurs disbursements in the course of carrying out the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this Deed, the Independent Certifier will be entitled to reimbursement of its actual direct costs only if those disbursements:
 - (i) have been reasonably and properly incurred for the sole purpose of performing 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 clause 6(b);
 - (ii) were approved in writing by the Contractor and the Principal's Representative prior to being incurred where they exceed \$[REDACTED]; and
 - (iii) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and the Principal's Representative.
- (b) The Independent Certifier is not entitled to reimbursement of costs relating to vehicles, car parking, computers, insurance, general office consumables and telecommunications.
- (c) If the Independent Certifier incurs disbursements in the course of carrying out the Services for which the Independent Certifier is to be paid on a lump sum basis under this Deed, the Independent Certifier will be entitled to reimbursement of its actual direct costs only if those disbursements:
 - (i) were not possible to be identified at the tender stage;
 - (ii) have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits on the Contractor's Activities at and in the vicinity of the Construction Site;
 - (iii) were approved in writing by the Contractor, the Principal's Representative prior to being incurred where they exceed \$[REDACTED]; and
 - (iv) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and the Principal's Representative.
- (d) The Independent Certifier will not be entitled to make any claim against the Contractor arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clauses 6(a) and 6(c) above.

7. Monthly payment schedule for lump sums

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

Month after date of the D&C Deed	Payment (\$ excluding GST)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	

Month after date of the D&C Deed	Payment (\$ excluding GST)
12	<div></div>
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	

Month after date of the D&C Deed	Payment (\$ excluding GST)
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
TOTAL**	



- 8. **GST**
All lump sums, rates and amounts in this Payment Schedule exclude GST.
- 9. **Subcontractor’s Statement and Supporting Statement**

**Subcontractor's Statement and Supporting Statement
(Paragraph 1(b) of Attachment 3 (Payment Schedule))**

SUBCONTRACTOR'S STATEMENT

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION
(Note 1 - see back of form)**

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work.

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR’S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.)

Subcontractor: ABN:
.....
(Business name)

of:
.....
(Address of subcontractor)

has entered into a contract with: ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier:..... (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. *You must tick one box.* (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. (Note 9)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

- (f) Signature: Full Name:.....
- (g) Position/TitleDate/...../.....

***NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, schedule 2 part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called ***the subcontractor***) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'
Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor;
or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of schedule 2 of the *Payroll Tax*

Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Supporting statement

- (a) This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.
- (b) For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

*Head contractor: [business name of head contractor] ABN [insert ABN] has entered into a contract with:[business name of subcontractor] ABN [insert ABN], contract number/identifier [insert].

OR

*Head contractor: [business name of head contractor] ABN [insert ABN] has entered into a contract with the subcontractors listed in the attachment to this statement.

* [Delete whichever of the above does not apply]

This statement applies for work between [start date] and [end date] inclusive (the construction work concerned), subject of the payment claim dated [date].

I, [full name], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature:

Date:

Full name:

Position/Title:

Attachment to the Supporting Statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Notes for Supporting Statement

Offences for False Statement

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

These notes are not intended as legal advice and contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

Attachment 4 - Information from Tenderer's Returnable Schedules

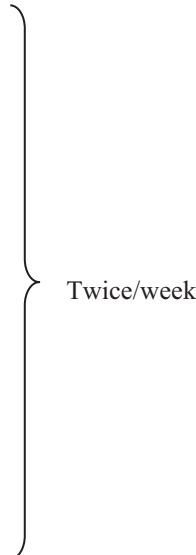



Part 1





Part 2







Attachment 5 - Minimum Surveillance by Independent Certifier during the Contractor's Activities

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Environmental Surveillance Monitor for the implementation of controls, for day and night work, for: <ul style="list-style-type: none"> • noise and vibration; • dust; • mud, dirt and debris on roadways; • water pollution; • stormwater; • property accesses; • temporary pedestrian pathways; • working within the approved hours; • spoil stockpiling and disposal; • acid sulphate soil; • soil erosion; • contaminated lands; • waste management and recycling; • indigenous heritage; • Panama Disease; • European heritage; and • threatened species. 		
Traffic Surveillance Monitor traffic management and traffic controls to assess compliance with the conditions of Road Occupancy Licences, including: <ul style="list-style-type: none"> • as-built layouts for compliance with approved traffic control plans, including sign maintenance and delineation; • provisions for cyclists, pedestrians, disabled persons and buses; • timing and duration of road occupancies; • qualifications of traffic control personnel; • haulage routes off the Construction Site; and • night inspections of roadworks. Monitor traffic management and traffic controls to assess compliance with the conditions of property access provisions.	 Weekly Immediately after each traffic switch and monthly thereafter Daily	 Weekly Immediately after each traffic switch and monthly thereafter Daily

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Work Health and Safety Surveillance Inspect and monitor the Contractor's Activities on the Construction Site for compliance with the work, health and safety provisions of the D&C Deed. Monitor: <ul style="list-style-type: none"> the Contractor's safety inspections; interfaces between different work groups on the Construction Site; the preparation and induction of job safety analyses; Construction Site vehicle and plant movements; and the security of the public from the Contractor's Activities. 	Daily  Twice/Week	Daily  Twice/Week
Construction Surveillance Monitor the Contractor's obligation to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses.	Monthly	Monthly
Monitor on-site design changes.	All changes	All changes
Check that Contractor's Activities including in tunnel alignment, tunnel excavations, service facility shafts, cross passages with sumps and construction work is within the relevant design tolerance.	Weekly	Weekly
Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with clauses 12.2 to 12.6 of the D&C Deed.	50% of design lots	50% of design lots
Check that durability requirements of the Project Works are being addressed and satisfied.	20% of design lots	20% of design lots

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
<p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> • all operations management and control systems and infrastructure; • use of materials, plant and equipment that differs from accepted industry practices; • concrete including in-situ concrete and precast elements; • sprayed concrete; • waterproofing systems; • water collection, treatment and discharge systems; • rock bolts/ground anchors; • tunnel and cavern lighting and ventilation systems; • concrete and AC pavements; and • blasting. 	<p>Each trial and test</p>	<p>Each trial and test</p>
<p>Witness the construction of the Project Works and Temporary Works including</p> <ul style="list-style-type: none"> • Tunnel excavation; • Cross Passages; • Bridge and structures; • Ground support and treatment; • Waterproofing; • Permanent structural concrete linings; • Tunnel portal, headwall and wing walls; • Slope protection and retaining walls; • Flood protection including sump and drainage systems; • Crossover cavern; • Structural connections; • Groundwater collection, treatment and drainage systems; • Shaft excavation; • Concrete blinding layer; • Soil and rock bolts and anchors; <p>Mechanical and Electrical works;</p>	<p>Daily</p>	<p>Daily</p>

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Record general and detailed work in progress and non-conformances using photographs and video recording of significant activities (time and GPS referenced).	200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.	200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.
Quality Management Surveillance Inspect work in progress for compliance with the requirements of the D&C Deed.	Daily	Daily
Inspect Construction Site circumstances where significant non-conformities are or are likely to be reported.	Each occurrence	Each occurrence
Check compliance with method statements	Daily	Daily
Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> • testing frequencies; • test methods; • test result verifications; and • release of hold points. 	} Daily	} Daily
Monitor the implementation of significant approved NCR dispositions.	All dispositions	All dispositions
Quality Product Surveillance Monitor and inspect foundation and subgrade preparation and treatments, including: <ul style="list-style-type: none"> • structure foundations; • pavement subgrades; • cast-in-place pile foundations; and • inaccessible drainage foundations. 	} Initial preparation and treatment and twice/week thereafter	} Initial preparation and treatment and twice/week thereafter
Monitor and inspect compaction of earthworks and reinforced soil.	Daily	Daily
Monitor and inspect: <ul style="list-style-type: none"> • water testing and grouting. 	} Initial testing, grouting and stressing and twice/week thereafter	} Initial testing, grouting and stressing and twice/week thereafter
Monitor and inspect: <ul style="list-style-type: none"> • preparation and testing of grout test specimens; and • bolt anchorage testing of rock bolts. 	} Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter	} Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.
Monitor and inspect preparation of shotcrete test specimens	Monthly	Monthly

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Monitor and inspect concrete supply, including: <ul style="list-style-type: none"> audits of each batch plant; reviews of grout, mortar, concrete and shotcrete mix designs (including offsite work); and monitoring of supplied mixes compared with mix designs. 	Monthly Each mix Monthly	Monthly Each mix Monthly
Monitor and inspect concreting associated works including: <ul style="list-style-type: none"> preparation; production conformity records formwork (including certification); bracing; reinforcement (including heating and welding); placing; finishing; curing; and stripping formwork. 	 Daily	 Daily
Monitor and inspect: <ul style="list-style-type: none"> water testing and grouting; and stressing operation, of post-tensioned concrete. 	 Twice/ structure	 Twice/ structure
Monitor and inspect casting, transport, delivery and storage of: <ul style="list-style-type: none"> precast structures, reinforced concrete pipes and reinforced concrete box culverts Pretensioned precast structures 	Initial unit and twice weekly thereafter Initial member then weekly thereafter	Initial unit and twice weekly thereafter Initial member then weekly thereafter
Monitor and inspect concrete pavement subbases and bases, including: <ul style="list-style-type: none"> thickness, levels, relative density, curing, cracking and surface profile for rideability; pavement strengths prior to trafficking by vehicular traffic; and conditions for trafficking of pavements by heavy (off road) vehicles. 	Twice/week Twice/week Initial conditions	Daily Daily Initial conditions
Monitor and inspect asphaltic concrete supply, including: <ul style="list-style-type: none"> audits of each batch plant; reviews of AC mix designs; and monitoring of supplied mixes compared with mix designs. 	Monthly Each mix Weekly	Monthly Each mix Weekly
Monitor and inspect the laying of asphaltic concrete, including: <ul style="list-style-type: none"> thickness, levels, relative density; and surface profile for rideability. 	Twice/week Each procedure	Daily Each procedure

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Monitor and inspect steel fabrication, including: <ul style="list-style-type: none"> reviews of welding procedures; and monitoring of the fabrication and welding processes for major members (off-site). 	Each procedure Twice/week	Each procedure Twice/week
Monitor protective treatment systems (off-site).	Twice/week	Twice/week
Monitor the interfaces of civil and electrical works, including: <ul style="list-style-type: none"> backfilling of cabling conduit trenches. 	Initial backfilling and daily thereafter	Initial backfilling and daily thereafter
Monitor landscaping preparation and implementation	Daily	Daily

For the purposes of this Attachment 5 to this Deed:

- (a) "Type A Category of the Contractor's Activities" is the Contractor's Activities associated with the Local Area Works, Property Works and Service Works; and
- (b) "Type B Category of the Contractor's Activities" is the Contractor's Activities associated with the Works and Temporary Works.

Attachment 6 - Minimum Requirements

The Verification 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 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 precast yards, concrete and asphalt production plants, steel fabrication and specialist materials such as bridge bearings and tunnel OMCS hardware;
- (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 activities such that the work covered by items (ii), (iii) and (iv) above meet the requirements of the D&C Deed;
- (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 of work the subject of Payment Claims made by the Contractor in order to provide the certificate in the form of Schedule 13;
 - (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 7 - Insurance Schedule

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
Principal Arranged Insurance (TfNSW) The details of the policy below is provided in the iCare policy documents. A copy of these may be provided upon request. Capitalised terms which are not defined in the deed are defined in the sample policy documents.				
1. Broad form Public Liability and Product Liability	Public and Products Liability: \$ Each and every occurrence	Maintained from the date of the D&C Deed until the Date of Completion - 		The Principal has arranged policies of third party liability insurance.
Independent Certifier Arranged Insurances				
1. Motor Vehicle Comprehensive	\$20 million For any single occurrence	Annually from the date of the D&C Deed until the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier).	(a) Is with an Approved Insurer; (b) Covers motor vehicles owned or used by the Independent Certifier or its subcontractors directly or indirectly engaged in performance of the Services; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	Only required if the Independent Certifier will use a motor vehicle in the course of providing the Services or if the Independent Certifier will use or park their motor vehicles on premises owned or occupied by the Principal.

2. Professional Indemnity	\$ [REDACTED] any one claim and in the annual aggregate, Maximum excess of \$ [REDACTED]	From the date of the D&C Deed until the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier) plus [REDACTED] years following the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier). The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the D&C Deed.	(a) Is with an Approved Insurer; (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	
3. Workers Compensation	As per the relevant Workers Compensation legislation.	Annually from the date of the D&C Deed until the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier).	(a) Is with an Approved Insurer; and (b) Is as per relevant Workers Compensation legislation.	

Definitions and Notes:

1. In this Attachment 7 (Insurance Schedule), "Approved Insurer" means:
 - (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) the NSW Self Insurance Corporation (ABN 97 369 689 650); or
 - (e) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).

2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the Insurer agrees to waive all rights of subrogation that they may have or acquire against the Principal where required to do so under the contract.

Attachment 8 - Insurance Policy Wording

The Principal will provide the Independent Certifier with policy wordings within a reasonable time of the policies being effected.

Attachment 9 - Independent Certifier’s Personnel

1. Minimum Resources Commitment

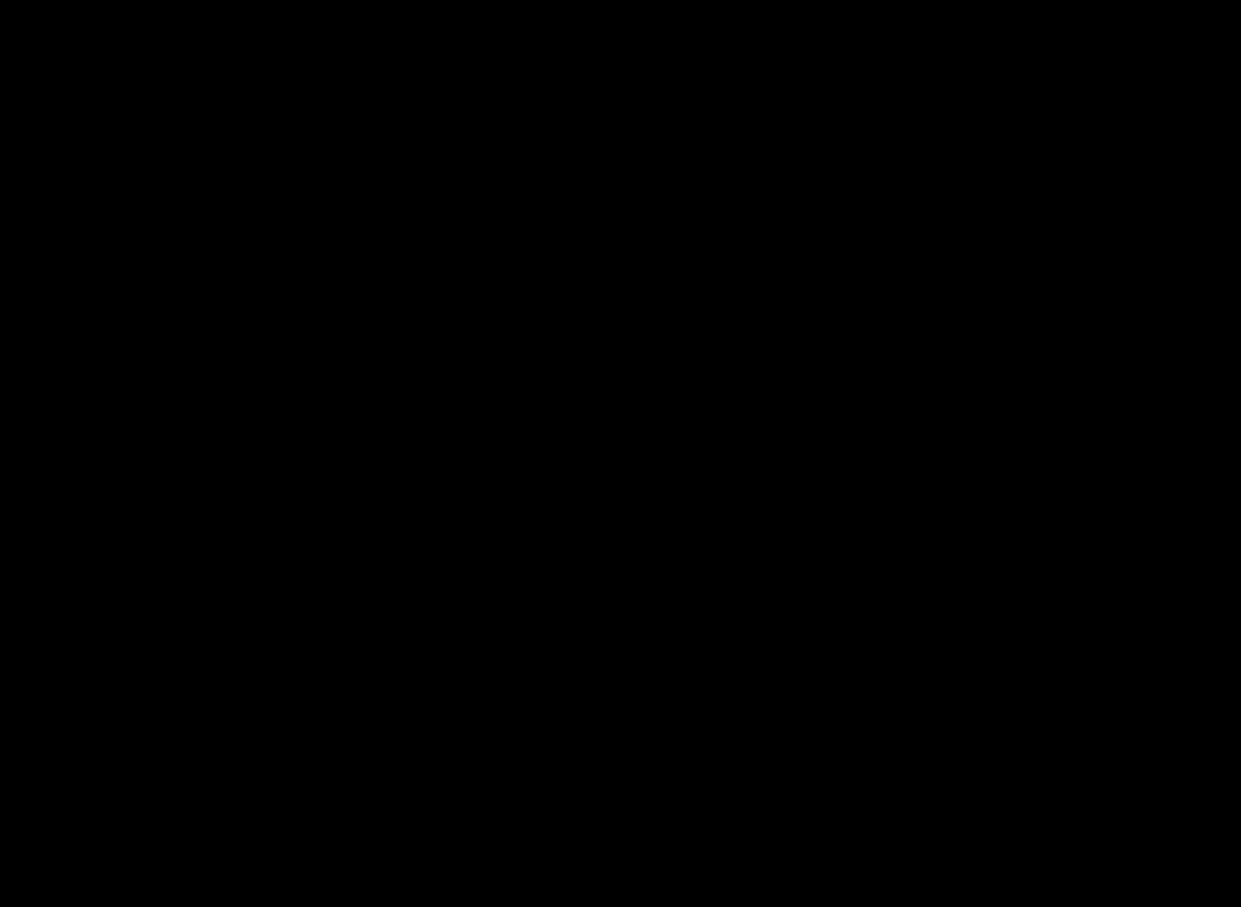
The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Attachment 9 to this Deed are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this Deed.

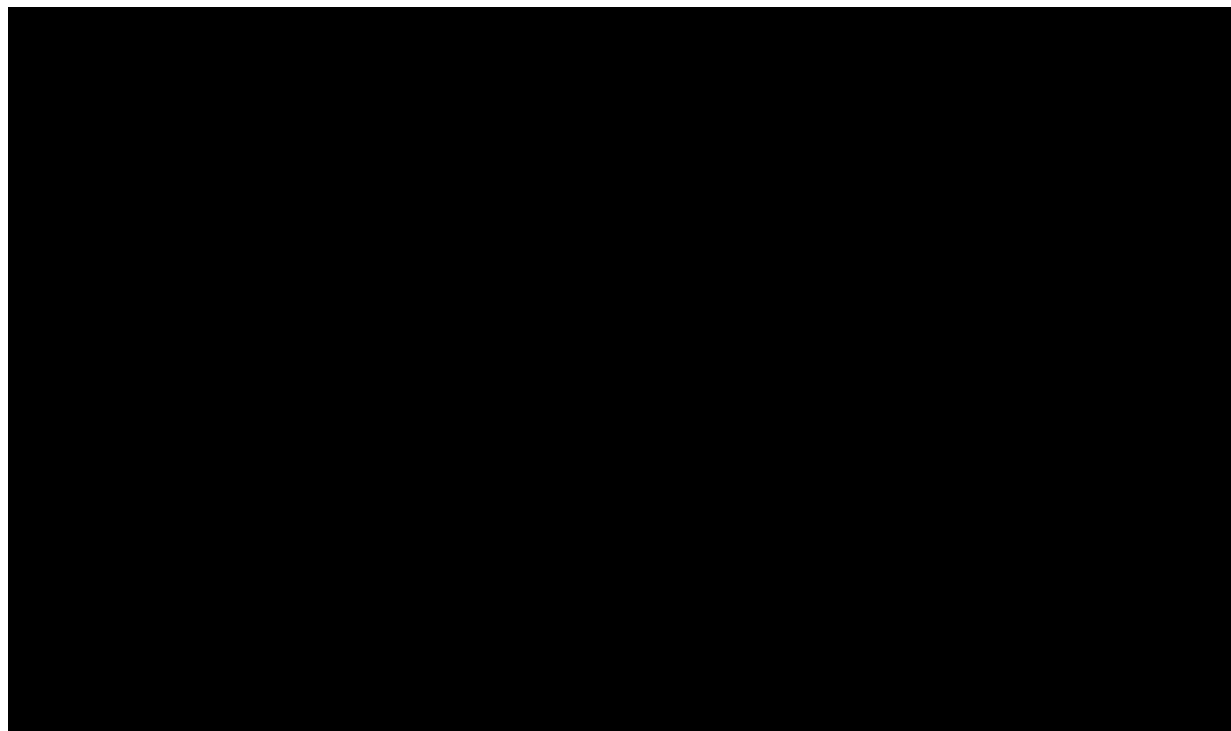
References to “days” exclude public holidays and include only those days which are stated in the Contract Program as working days.

1.1 Design Verification

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

Position	Name	Minimum commitment	
		During performance of design activities associated with the Contractor's Activities, until all discrete design elements have passed IFC Design Documentation Stage	During performance of construction activities associated with the Contractor's Activities, including until the expiry of the last Defects Correction Period
Role			





1.2 Construction Verification

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

Position	Name	Minimum Commitment
Independent Certifier's Representative, Construction	[REDACTED]	Full time during the performance of the Contractor's Activities, and to be based on the Construction Site full time Monday to Saturday inclusive during the construction of the Project Works and Temporary Works.
Senior Project Engineer – Civil, Tunnel and Structural Works Construction	[REDACTED]	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil, structural and tunnel works components of the Project Works and Temporary Works.
Project Engineer – Civil Works Construction	[REDACTED]	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works.
Project Engineer – Structural Works Construction	[REDACTED]	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works.
Project Engineer – Tunnel Works Construction	[REDACTED]	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the tunnel works components of the Project Works and Temporary Works.

Surveillance Officer – Civil Works Construction		Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works.
Surveillance Officer – Structural Works Construction		Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works.
Surveillance Officer – Tunnel Works Construction		Based on the Construction Site full time Monday to Saturday inclusive during the construction of the tunnel works components of the Project Works and Temporary Works.
Document Controller/Site Administrative assistant (1 No.)		Based on the Construction Site full time Monday to Friday inclusive during the construction of the Project Works and Temporary Works.

2. Minimum Ability, Knowledge, Skill, Expertise and Experience of Independent Certifier's Personnel

2.1 Independent Certifier's project director

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

2.2 Independent Certifier's Representative for the Design Verification Services

The Independent Certifier's Representative for the Design Verification Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 20 years of experience in the design of major road projects including strong experience in road tunnels or similar complex infrastructure.

2.3 Independent Certifier's Representative for the Construction Verification Services

The Independent Certifier's Representative for the Construction Verification Services must possess a recognised qualification relevant to the position and the Services, a Chartered Engineer registered with Engineers Australia and have at least five years' experience in the construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 20 years of experience in construction including strong experience in road tunnels or similar complex infrastructure.

2.4 Senior Project Engineer – Civil, Tunnel and Structural Works Construction –

The senior project engineer – civil, tunnel and structural works construction must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 15 years of experience in construction including strong experience in road, tunnel and bridge construction.

2.5 Project Engineer – Civil Works Construction

The project engineer – civil works construction must possess a recognised qualification relevant to the position and the Services and have experience in construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years of experience in civil construction including strong experience in road construction.

2.6 Project Engineer – Structural Works Construction

The project engineer – structural works construction must possess a recognised qualification relevant to the position and the Services and have experience in construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years of experience in the construction of structures.

2.7 Project Engineer – Tunnel Works Construction

The project engineer – tunnel works construction must possess a recognised qualification relevant to the position and the Services and have experience in construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years of experience in the construction of tunnels.

2.8 Surveillance Officer – Civil Works Construction

The surveillance officer – civil works construction must have at least 15 years of experience in the civil engineering construction industry including experience on large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years in surveillance of roadworks construction, including rigid and flexible pavements, drainage, earthworks, asphaltting, and spray sealing.

2.9 Surveillance Officer – Structural Works Construction

The surveillance officer - structural works construction must have at least 15 years of experience in the civil engineering construction industry including experience on large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years in surveillance of the construction of structures, including piling, concrete work, precasting, prestressing, steel fabrication and erection.

2.10 Surveillance Officer – Tunnel Works Construction

The surveillance officer - tunnel works construction must have at least 15 years of experience in the civil engineering construction industry including experience on large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years in surveillance of the construction of tunnels including portal excavation, drill and blast activities, structures / supports, M&E, OMCS / systems, etc.

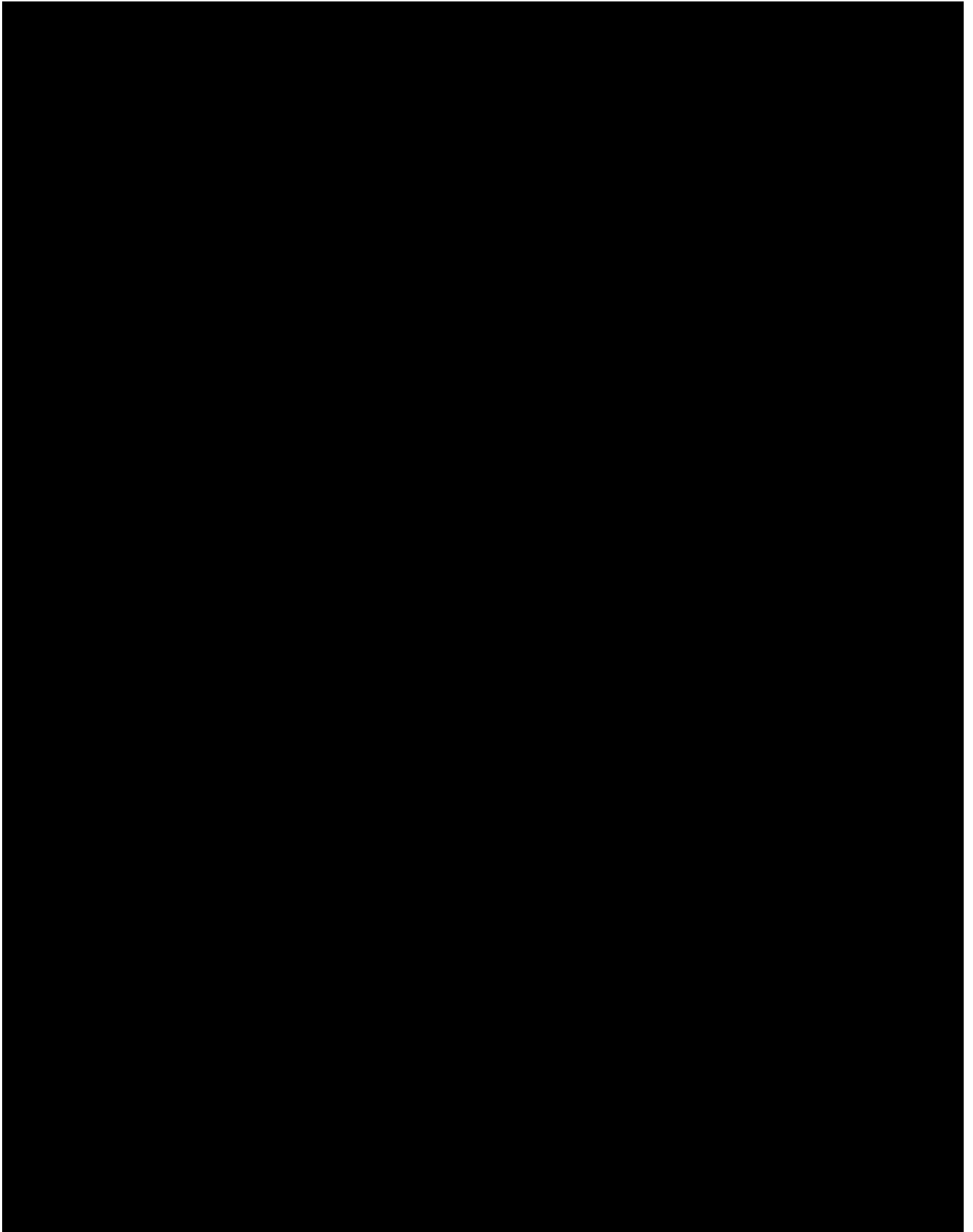
2.11 Document Controller/Site Administrative Assistant

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



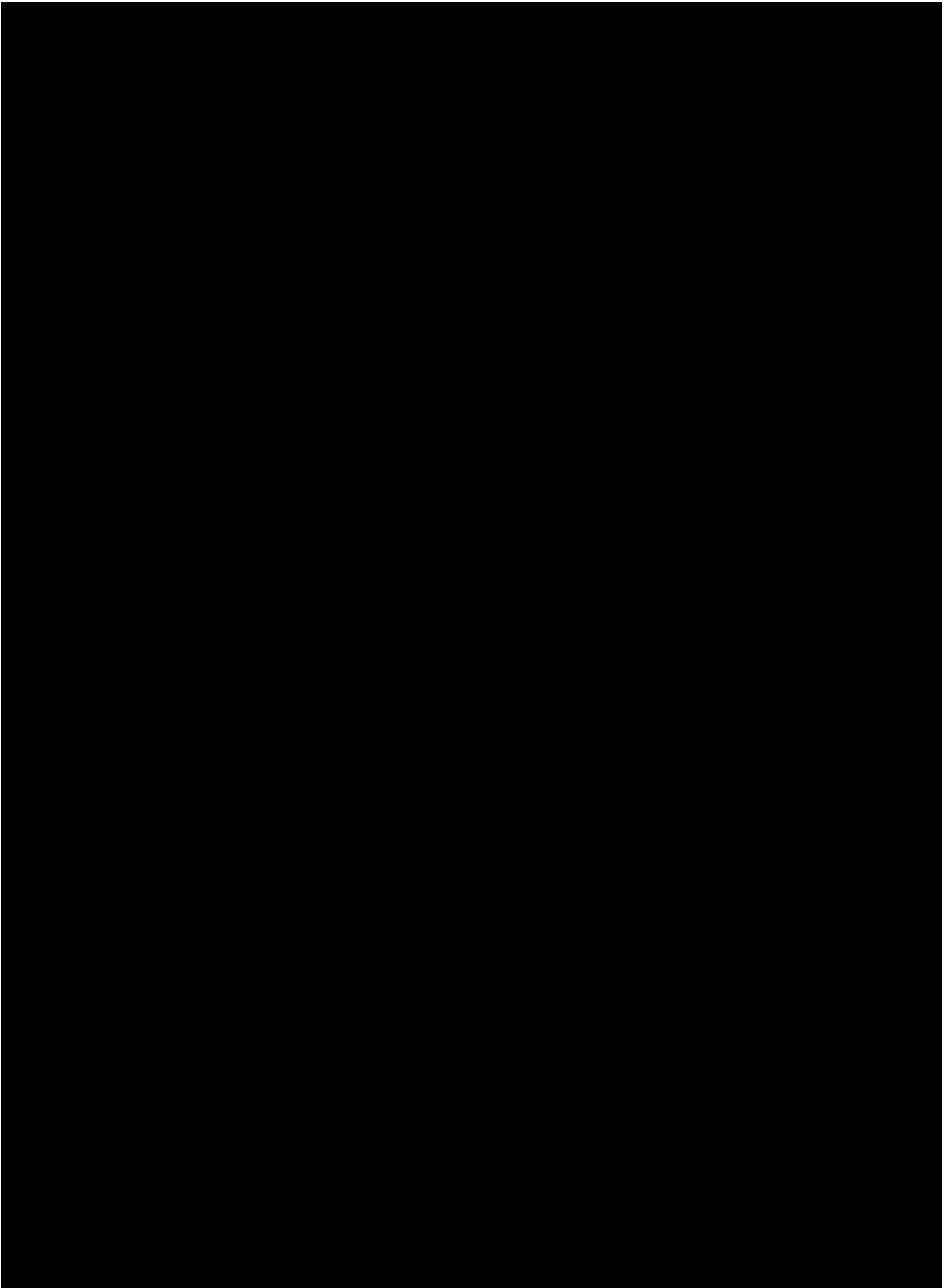
Attachment 12 – Not Used

Attachment 13 – Environmental Representative Deed of Novation





Attachment 14 – Acoustics Advisor Deed of Novation

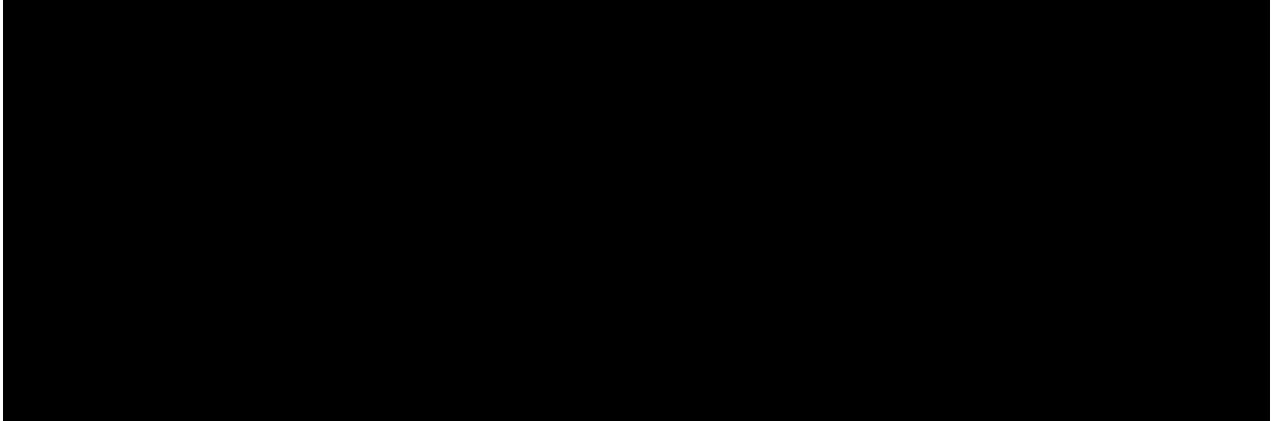


Attachment 15 – Commercially Sensitive Information

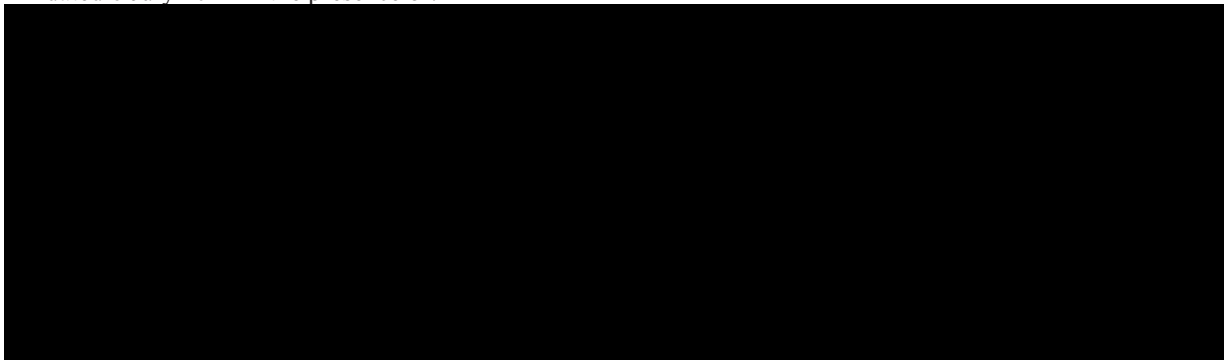
Commercially Sensitive Information	Detail

Executed and delivered as a deed.

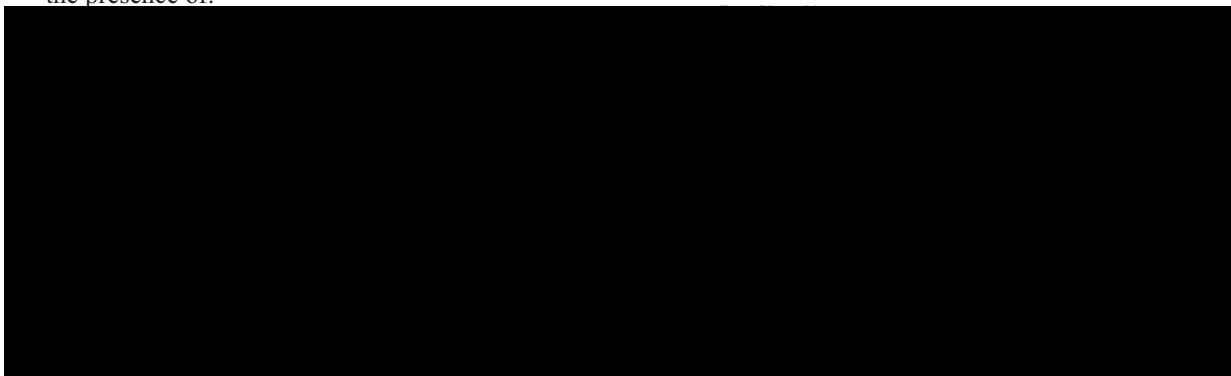
Executed for and on behalf of **Transport for NSW (ABN 18 804 239 602)** by its duly authorised delegate in the presence of:



Signed Sealed and Delivered for **Ferrovial Construction (Australia) Pty Ltd (ABN 98 150 820 116)** by its attorney under power of attorney dated 6 July 2021 in the presence of:



Signed Sealed and Delivered for **Gamuda Berhad (ARBN 632 738 768)** a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing Company Registration number 197601003632 (29579-T) by its attorney under Deed of Authorisation dated 3 June 2022 in the presence of:



Executed by Aurecon Australasia Pty Ltd

(ABN 54 005 139 873) in accordance with section
127(1) of the *Corporations Act 2001* (Cth) by authority
of its directors:

