

# M7-M12 Integration Project

## Independent Certifier Deed

Dated 21 FEBRUARY 2023

Transport for NSW (**Transport**)

Westlink Motorway Limited (**Westlink**)

WSO Co Pty Limited (**WSO Co**)

M7 State Works Contractor Pty Ltd as trustee for the M7 State Works  
Contractor Trust (**State Works Contractor**)

Aurecon Australasia Pty Ltd (**Independent Certifier**)

**King & Wood Mallesons**

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# Independent Certifier Deed

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# Independent Certifier Deed

## Details

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| <b>Parties</b>                |           |   |
|-------------------------------|-----------|---|
| <b>Transport</b>              | Name      | <b>Transport for NSW</b>  |
|                               | ABN       | 18 804 239 602  |
|                               | Address   | 231 Elizabeth Street, Sydney, NSW 2000  |
|                               | Email     | ██████████@transport.nsw.gov.au   |
|                               | Attention | Project Director M12 Motorway   |
| <b>Westlink</b>               | Name      | <b>Westlink Motorway Limited</b> in its own capacity and as nominee and agent for the Westlink Motorway Partnership |
|                               | ABN       | 63 096 512 300  |
|                               | Address   | 101 Wallgrove Road, Eastern Creek, NSW 2766   |
|                               | Email     | Legal@nwroads.com.au  |
|                               | Attention | Company Secretary   |
| <b>WSO Co</b>                 | Name      | <b>WSO Co Pty Limited</b>   |
|                               | ABN       | 73 102 757 924  |
|                               | Address   | 101 Wallgrove Road, Eastern Creek, NSW 2766   |
|                               | Email     | Legal@nwroads.com.au  |
|                               | Attention | Company Secretary   |
| <b>State Works Contractor</b> | Name      | <b>M7 State Works Contractor Pty Ltd (ACN 664 603 249)</b> as trustee for the M7 State Works Contractor Trust       |
|                               | ACN       | 664 603 249   |
|                               | Address   | 101 Wallgrove Road, Eastern Creek, New South Wales 2776   |
|                               | Email     | Legal@nwroads.com.au  |
|                               | Attention | Company Secretary   |

|                               |                 |  |
|-------------------------------|-----------------|--|
| <b>Independent Certifier</b>  | Name            | Aurecon Australasia Pty Ltd  |
|                               | ABN             | 54 005 139 873   |
|                               | Address         | Level 11, 73 Miller Street, North Sydney, NSW 2060   |
|                               | Email           | ██████████@aurecongroup.com  |
|                               | Attention       | ██████████   |
| <b>Business Day place (s)</b> | Sydney, NSW     |  |
| <b>Governing law</b>          | New South Wales |  |
| <b>Recitals</b>               | <b>A</b>        | On or about the date of this deed, the Companies entered into the M7-M12 Integration Project Deed, and the State Works Contractor entered into the State Works Deed, with Transport in respect of the Works.   |
|                               | <b>B</b>        | The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the Works and offers its expertise in those fields.  |
|                               | <b>C</b>        | The Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1   |
|                               | <b>D</b>        | The Independent Certifier has represented to Transport and the Companies that it has the resources and expertise required to perform the Services and its other obligations under this deed in accordance with this deed and Transport and the Companies have entered into this deed in reliance on that representation. |
|                               | <b>E</b>        | The Other Parties appoint the Independent Certifier to perform the Services.   |
|                               | <b>F</b>        | The Independent Certifier accepts the appointment and agrees to carry out the Services and its other obligations under this deed on the terms of this deed.  |

# Independent Certifier Deed

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

In this deed:

**Aboriginal Participation Obligations** means the Independent Certifier's obligations with respect to Aboriginal participation contained in Schedule 8.

**Additional Services** means any additional services carried out pursuant to an Additional Services Order or otherwise in accordance with clause 7.1.

**Additional Services Order** means an order for Additional Services issued in accordance with clause 7.1.

**Additional Services Proposal** has the meaning in clause 7.1(b).

**Additional Services Request** has the meaning in clause 7.1(a).

**Best Industry Practice** means the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a skilled professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular.

**Certification and Monitoring Plan** means the plan prepared by the Independent Certifier in accordance with clause 3.8(d) as that plan is updated from time to time in accordance with clause 3.9.

**Commercially Sensitive Information** means:

- (a) any information relating to any financing arrangement under any Integration Equity Document;
- (b) any information relating to the Companies', the State Works Contractor's or the Independent Certifier's cost structure or profit margins;
- (c) any information relating to any of the Companies', the State Works Contractor's or the Independent Certifier's Intellectual Property Rights; or
- (d) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Companies, the State Works Contractor or the Independent Certifier or any of their shareholders, financiers or subcontractors,

which, in respect of the information contained in this deed, is the information described in Schedule 6.

**Company** means each of Westlink and WSO Co (or either of them if the context so requires) and "Companies" means each of them severally for their respective obligations under the Project Agreements.

**Completion Phase Services** means all Services related to Retained Works Completion, and Integration Completion and the rectification of Defects and the performance by each of the Companies and the State Works Contractor of its obligations in respect of Retained Works Completion, and Integration Completion

of the Works and the rectification of Defects, including those specified in clauses 13, 14, 15 and 16 of Annexure A to the M7-M12 Integration Project Deed.

**Construction Phase Services** means all Services related to the construction of the Works and the performance by each of the Companies and the State Works Contractor of its construction obligations in respect of the Works, including those specified in clause 11 of Annexure A to the M7-M12 Integration Project Deed.

**Design Phase Services** means all Services related to the design of the Works and the performance by each of the Companies and the State Works Contractor of its design obligations in respect of the Works, including those specified in clause 9 of Annexure A to the M7-M12 Integration Project Deed.

**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 11 have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 11) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

**Independent Certifier Deed Poll** means the deed poll set out in Schedule 9.

**Independent Certifier's Representative** means the relevant person referred to in Schedule 3 or any other person holding that position in accordance with clause 3.5(b)(ii).

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

**M7-M12 Integration Project Deed** means the deed titled "M7-M12 Integration Project Deed" between Transport, Westlink, WSO Co, dated on or about the date of this deed.

**Operational Readiness Group** means the group established and convened in accordance with clause 3A.

**Operational Readiness Notice** has the meaning given to that term in clause 13.4(a)(i) of Annexure A to the M7-M12 Integration Project Deed.

**Other Parties** means Transport, the Companies and the State Works Contractor.

**Payment Schedule** means Schedule 2 to this deed.

**Pre Agreed Change** means each of:

- (a) Pre Agreed Change 1; and
- (b) Pre Agreed Change 3,

(or either of them if the context so requires).

**Pre Agreed Change 1** means those elements of the Works which involves upgrades and modifications to the "M7 Motorway shared user path" near Maxwells Creek at "Lot 40/DP 1164508, Prestons", to improve existing flood immunity, including:

- (a) raising the existing shared path levels above the "39.35% AEP flood event";



- (b) increasing the existing culvert capacity;
- (c) removing the existing bund located on the eastern side of "Lot 40/DP 1164508"; and
- (d) any relocation of the "M7 OMCS backbone".

**Pre Agreed Change 3** means those elements of the Works involving upgrades to the existing M7 Motorway water quality basins into bio-retention type basins to satisfy the requirements of the Planning Approval condition for the M7 Widening Modification (to contribute towards the achievement of the NSW "Water Quality Objectives" by improving water quality in the receiving watercourses).

**Project Agreements** means the M7-M12 Integration Project Deed, the State Works Deed and any other document the parties agree is a Project Agreement.

**Services** means the services set out in Schedule 1.

**Sub IC** has the meaning given to that term in the D&C Deed.

**Sub Deed of Appointment of Independent Certifier** has the meaning given to that term in the D&C Deed.

**Substitute Certifier** has the same meaning as in clause 7.2(d).

**Technical Specialists** means a person who possesses a recognised qualification relevant to the position and services and at least 15 years' experience.

**Term** means the term of this deed as set out in clause 3.14.

**Upper Limiting Fee** means the upper limiting fee for the performance of the Additional Services which must be:

- (a) calculated by reference to the schedule of rates set out in the Payment Schedule; or
- (b) If the nature of the services are such that the schedule of rates set out in the Payment Schedule is not applicable, based on reasonable rates and prices.

**Validity Period** has the meaning in clause 7.1(c).

**WHS Management Systems** means a WHS management system which complies with Law and is otherwise in accordance with the NSW Government Work Health & Safety Management Systems and Auditing Guidelines (6<sup>th</sup> Edition) (December 2019).

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

**Working Day** means an aggregate period of 8 hours.

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

## 1.2 Definitions in Project Deed

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the M7-M12 Integration Project Deed will have the same meaning in this deed as in the M7-M12 Integration Project Deed.

### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation of this deed;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) **includes** in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or code and standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (l) a reference to a court or tribunal is to an Australian court or tribunal;
- (m) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (n) a reference to a **month** is a reference to a calendar month; and
- (o) a reference to **\$** or **dollar** is to Australian currency.

#### **1.4 No bias against drafting party**

No term or provision of this deed will be construed against a party on the basis that the deed or the term in question was put forward or drafted by or on behalf of that party.

#### **1.5 Business Day**

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

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

#### **1.6 Approvals and Consents**

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

#### **1.7 Transport as an Authority**

- (a) Subject to clause 1.7(b), the Companies, the State Works Contractor and the Independent Certifier acknowledge and agree that:
  - (i) nothing in this deed or in any of the Integration Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of Transport to exercise any of its functions and powers pursuant to any legislation; and
  - (ii) without limiting clause 1.7(a)(i) anything which Transport does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by Transport under this deed and will not entitle the Companies, the State Works Contractor or the Independent Certifier to make any Claim against Transport arising out of the subject matter of this deed and the other Integration Project Documents to which Transport is a party.
- (b) The parties agree that clause 1.7(a) is taken not to limit any liability which Transport would have had to the Companies, the State Works Contractor or the Independent Certifier under this deed, or any other

Integration Project Document to which Transport is a party, as a result of a breach by Transport of a term of this deed or any other Integration Project Document to which Transport is a party but for clause 1.7(a).

## **1.8 Ambiguous terms**

- (a) If Transport considers, or if any of the Independent Certifier, the Companies or the State Works Contractor notifies Transport's Representative in writing that it considers, that there is an omission, ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed (including in any Schedules), Transport's Representative must direct the interpretation of this deed which the parties must follow.
- (b) Transport's Representative, in giving a direction in accordance with clause 1.8(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which Transport's Representative gives in accordance with clause 1.8(a):
  - (i) will not relieve the Independent Certifier, the Companies or the State Works Contractor from or alter its liabilities or obligations under this deed or otherwise according to law;
  - (ii) will not entitle the Independent Certifier, the Companies or the State Works Contractor to make (nor will it make Transport liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect Transport's rights against any of the Independent Certifier, the Companies or the State Works Contractor, whether under this deed or otherwise according to Law; and
  - (iv) must in respect of a notice given under clause 1.8(a) by the Independent Certifier, the Companies or the State Works Contractor, be given within 20 Business Days of receipt of that notice.

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## **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).
- (c) The Independent Certifier must perform the Services in accordance with this deed.

### **2.2 Standard**

- (a) The Independent Certifier must perform the Services during the Term.

- (b) The Independent Certifier warrants that it has the resources and expertise to perform the Services.
- (c) In performing the Services, the Independent Certifier must:
  - (i) comply with this deed;
  - (ii) comply with all Laws;
  - (iii) apply Best Industry Practice; and
  - (iv) perform all its Services:
    - (A) independently;
    - (B) within the times specified in this deed and in the Project Agreements, and if no time is specified, promptly and with all due expedition;
    - (C) in a manner which will not delay or disrupt the Other Parties; and
    - (D) in accordance with the requirements of the Project Agreements.

### 2.3 Payment

- (a) In consideration of the Independent Certifier undertaking the Services in accordance with this deed, the Companies will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.
- (b) Payments made by the Companies are on account only and are not:
  - (i) evidence of the value of the Services performed by the Independent Certifier; or
  - (ii) an admission of Liability on the part of the Other Parties.

- (c) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

## 2.4 Nature of Services

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect, the Services or the Independent Certifier's obligations under this deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then Transport may determine the appropriate action, agreement, decision, direction or the like
- (c) In reaching decisions in relation to this deed which may affect the Companies or the State Works Contractor, Transport may take into account representations made by the Companies and the State Works Contractor.

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## 3 Independent Certifier's obligations

### 3.1 Acknowledgement

The Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of each of the Project Agreements and that it has read, and is familiar with, the terms of the Project Agreements to the extent they relate to the Services; and
- (b) its obligations under this deed extend to, and include, the obligations, functions, duties and services of the Independent Certifier referred to in the Project Agreements.

### 3.2 General representations and warranties

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);

- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

### 3.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently and exercise Best Industry Practice;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements (and where no time is prescribed, promptly and with all due expedition) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.3(a) and 3.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or any Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
  - (i) it will carry out and perform the Services;
  - (ii) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3; and
  - (iii) without limiting clauses 3.3(e)(i) and (ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
    - (A) the Project Agreements;
    - (B) the nature of the Services; or

- (C) without limiting clauses 3.3(e)(iii)(A) and (B), the requirements of clause 4,

it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;

- (f) will provide transport on site for the use of its site personnel;
- (g) will, in carrying out the Services, carry out physical inspections of the Project Site, any Extra Land, the Works and the Project Activities when appropriate or necessary to do so (including attendance on joint inspections of the Project Activities included in the EDC Works or the Returned Works (excluding the EDC Works) as the case may be, and including for the purpose of determining whether Retained Works Completion has been achieved by the Companies and the State Works Contractor), and when reasonably requested by an Other Party, in a manner which satisfies or exceeds the requirements ascertainable from Schedule 3 and Schedule 4 and the Certification and Monitoring Plan (including surveillance levels and resources) and will invite and permit the Other Parties to accompany it on all such inspections;
- (h) warrants that, in performing the Services, it will keep itself informed of the progress of:
  - (i) the development of the Project Plans and the Design Documentation; and
  - (ii) the Works,to the extent necessary to enable the Independent Certifier to provide timely reviews and timely and relevant comments in accordance with this deed;
- (i) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Companies and the State Works Contractor) except where it is the unavoidable consequence of performing the Services;
- (j) will co-operate with the Other Parties and their subcontractors and coordinate the Services with the Project Activities;
- (k) in undertaking the Services, will comply with all the safe working requirements of the Companies and the State Works Contractor;
- (l) in accessing the Project Site, Extra Land and/or any other areas relevant to the Project Activities, will comply with the Companies, State Works Contractor's and Contractor's access rules, site induction requirements and safety and security procedures.

### **3.4 Access and Project Office**

- (a) Each of the Companies and the State Works Contractor must provide for the Independent Certifier accommodation and access to such premises as may be reasonably necessary to enable the Independent Certifier to discharge its obligations under this deed.
- (b) The Independent Certifier must:
  - (i) establish a project office within the accommodation provided by the Companies and the State Works Contractor (Project Office);



- (ii) keep proper and complete written records of the performance of the Services at the Project Office; and
- (iii) ensure that its Key Personnel and the Independent Certifier's Representative are located at the Project Office to the extent necessary to enable the Independent Certifier to perform the Services.

### **3.5 Key Personnel**

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the Key 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 the Other Parties within 7 days of the request for removal), and if any of the people are removed:
    - (A) they must be promptly replaced by people of at least equivalent skill, expertise and experience; and
    - (B) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements and the Services; and
  - (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Other Parties may jointly direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply with any such direction.
- (d) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.

### **3.6 Subcontracting**

- (a) Subject to clause 3.6(c) and with the exception of the Technical Specialists, the Independent Certifier may not subcontract or permit the subcontracting of the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed).
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Independent Certifier.

- (c) Unless the Other Parties otherwise approve in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

### 3.7 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
  - (i) compliance with the quality assurance requirements of this deed; or
  - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification and Monitoring Plan or any audit under clause 3.12.

### 3.8 Certification and Monitoring Plan

- (a) The Independent Certifier must prepare and submit to the Other Parties within 25 Business Days of the date of this deed a Certification and Monitoring Plan which must:
  - (i) be based on the initial Certification and Monitoring Plan contained in Attachment A to Schedule 4;
  - (ii) meet or exceed the requirements of Schedule 3;
  - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the initial Certification and Monitoring Plan; and
  - (iv) comply with the requirements for the Certification and Monitoring Plan in Schedule 4.
- (b) The Other Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.8(a); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed, or if the Other Parties believe that the Certification and Monitoring Plan does not provide the information required by Schedule 4, notify the Independent Certifier of the non-compliance.
- (c) If the Independent Certifier receives a notice under clause 3.8(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties, after which clause 3.8(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 3.8(b)(ii) within 15 Business Days after the submission of the relevant Certification and Monitoring Plan, the relevant Certification and Monitoring Plan submitted by the Independent Certifier will be the

Certification and Monitoring Plan with which the Independent Certifier must comply (as it is updated under clause 3.9).

### **3.9 Revisions to Certification and Monitoring Plan**

- (a) The Independent Certifier must:
  - (i) progressively amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Works, any Changes and any changes in the manner of performing the Services;
  - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under clause 3.9(a) are consistent with, and provide, the information set out in Schedule 4; and
  - (iii) submit each revision of the Certification and Monitoring Plan to the Other Parties for their review and comment.
- (b) The Other Parties may:
  - (i) review the Certification and Monitoring Plan submitted under clause 3.9(a)(iii); and
  - (ii) if the Certification and Monitoring Plan does not comply with this deed or the Other Parties believe that the revised Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the Independent Certifier of that non-compliance or reduction.
- (c) If the Independent Certifier receives a notice under clause 3.9(b)(ii), the Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties after which clause 3.9(b) will reapply.
- (d) Without limiting clause 3.3(e), the Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 3.8 or the amending, updating and development of the Certification and Monitoring Plan required by clauses 3.9(a) and 3.9(c), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan or the then existing Certification and Monitoring Plan without the written approval of the Other Parties.
- (e) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 3.9.

### **3.10 Other Parties not responsible**

The Other Parties:

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

### 3.11 Progress Reports by the Independent Certifier

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

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

### 3.12 Audit and surveillance

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

### 3.13 Access to records

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

### 3.14 Term

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

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

### 3.15 Aboriginal participation in construction

The Independent Certifier must comply with the Aboriginal Participation Rules as set out in Schedule 8.

### 3.16 Deed poll

The Independent Certifier must on the date of execution of this deed execute and deliver to the Contractor, with a copy to the Companies and State Works Contractor an Independent Certifier Deed Poll.

## 3A. Operational Readiness Group

### 3A.1 Establishment

- (a) Upon the earlier of:
  - (i) the date on which the Independent Certifier receives an Operational Readiness Notice; and
  - (ii) the date that is 15 months prior to the Date for Integration Completion,

the Independent Certifier must establish and convene a committee to be known as the **Operational Readiness Group** comprising:



- (iii) two representatives nominated by each Company;
  - (iv) two representatives nominated by Transport; and
  - (v) the Independent Certifier or a nominee of the Independent Certifier.
- (b) The parties acknowledge and agree that:
    - (i) the Independent Certifier will:
      - (A) manage the Operational Readiness Group;
      - (B) use its best endeavours to ensure that each member of the Operational Readiness Group performs its obligations under this clause 3A; and
      - (C) use its best endeavours to ensure that the Operational Readiness Group discharges its functions under the Annexure A to the M7-M12 Integration Project Deed;

- (ii) Transport and the Companies must nominate their representatives for the purposes of clause 3A.1(a) by no later than the date of the first meeting of the Operational Readiness Group;
  - (iii) the representatives nominated by the Companies and the representatives nominated by Transport are to be engaged by or through the Independent Certifier on commercial terms and conditions acceptable to Transport and the Companies;
  - (iv) each member of the Operational Readiness Group must satisfy the criteria set out in Part A of Schedule 7;
  - (v) each of the parties must submit the documents referred to in Part B of Schedule 7 to the other parties; and
  - (vi) decisions of the Operational Readiness Group will be made on a majority basis.
- (c) Transport and the Companies shall provide all reasonable assistance to the Independent Certifier for the establishment and conduct of the duties of the Operational Readiness Group, including with respect to their nominated representatives.

### 3A.2 Replacement of members

- (a) If the Independent Certifier considers (acting reasonably) that a member of the Operational Readiness Group does not satisfy the requirements of clause 3A.1(b), the Independent Certifier may request that the Companies or Transport (as applicable) nominate another representative to act as a member of the Operational Readiness Group.
- (b) If a member of the Operational Readiness Group declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the party that nominated that member must nominate a replacement member within 10 Business Days and clause 3A.1(b) will apply to that replacement member.

### 3A.3 Payment of costs

- (a) 
- (b) The Operational Readiness Group may request that the parties agree to such advisors, consultants and subcontractors as the Operational Readiness Group requires from time to time attending meetings of the Operational Readiness Group and providing specialist advice to the Operational Readiness Group.
- (c) 

### 3A.4 Meetings

- (a) Without limiting clause 3A.4(b), the Independent Certifier must:

- (i) convene meetings of that Operational Readiness Group (so as to discharge the functions of the Operational Readiness Group under the M7-M12 Integration Project Deed) at monthly intervals (or such other intervals agreed between Transport and each Company), commencing on the date on which the Operational Readiness Group is established pursuant to clause 3A.4(a)(i), to discuss the opening the Retained Works, including the progress of the Project Activities and the satisfaction of the Retained Works Opening Conditions Precedent;
  - (ii) convene a meeting of that Operational Readiness Group to inspect the Project Activities included in the Retained Works within 10 Business Days after receiving an Operational Readiness Notice or a Further OR Notice for the Retained Works; and
  - (iii) within 10 Business Days after an inspection referred to in clause 3A.4(b)(iii), give the Companies a written notice informing each Company either:
    - (A) that that Operational Readiness Group determines that the Retained Works Opening Conditions Precedent have been satisfied;
    - (B) containing a list of items which that Operational Readiness Group believes must be completed in order to satisfy the Retained Works Opening Conditions Precedent; or
    - (C) stating that that Operational Readiness Group believes that the Retained Works Opening Conditions Precedent are so far from being achieved that it is not practicable to issue a list as contemplated in clause 3A.4(b)(iv)(B).
- (b) The Independent Certifier must:
- (i) with the agreement of all members of the Operational Readiness Group:
    - (A) establish the procedures governing meetings of the Operational Readiness Group and visits to and inspections of the Project Site, the Retained Works and the Project Activities,

where for meetings of the Operational Readiness Group:

    - (B) the meetings must be conducted in such a manner as its members may from time to time agree and in accordance with the procedures established by the Independent Certifier, provided that one of Transport's representatives and one of the Companies' representatives must be present in order for there to be a quorum at a meeting of the Operational Readiness Group;
    - (C) the chairperson of the Operational Readiness Group will:
      - 1) develop an agenda for each meeting of the Operational Readiness Group; and

2) prepare minutes of the meetings of the Operational Readiness Group;

(D) the minutes of the meetings of the Operational Readiness Group must be circulated by the chairperson to the other members of the Operational Readiness Group for comments, additions and corrections. Within 7 Business Days of the meeting, the amended minutes will be circulated to the Companies and Transport. The minutes as amended will be presented for adoption by the Operational Readiness Group at the next meeting of the Operational Readiness Group.

### **3A.5 Information and Site Visits**

The Operational Readiness Group must visit the Project Site and the Retained Works and inspect the Project Activities at the times required by the M7-M12 Integration Project Deed.

### **3A.6 Expiry of the Operational Readiness Group**

Unless the parties otherwise agree, the Operational Readiness Group will terminate upon the earlier of:

- (a) the Date of Retained Works Completion; and
- (b) termination of the M7-M12 Integration Project Deed.

### **3A.7 Relationship between Independent Certifier and representatives**

The parties acknowledge and agree that nothing in, or contemplated by, this clause 3A will be construed or interpreted as constituting a relationship between the Independent Certifier and the representative nominated by the Companies pursuant to clause 3A.1(b)(ii) or the representative nominated by Transport pursuant to clause 3A.1(b)(ii) of fiduciaries, employer and employee or principal and agent.

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## **4 Independence, confidentiality and exclusivity**

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

- (a) The Independent Certifier warrants for the benefit of the Other Parties that it has no conflict of interest with respect to the carrying out of the Services.
- (b) The Independent Certifier warrants to the Other Parties that in performing the Services, it will:
  - (i) act professionally and independently of each and all of the Other Parties and in a timely manner;
  - (ii) act honestly, reasonably and fairly;
  - (iii) exercise the standard of care, knowledge, skill, expertise, experience and diligence which would be expected of a skilled professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and



- (iv) without limiting this clause 4.1, act within the times prescribed under the Project Agreements or as anticipated by the Overall D&C Program and the Subsidiary D&C Program.

## 4.2 Confidentiality

- (a) The Independent Certifier must:
  - (i) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Works, this deed, the Integration Project Documents or the Integration Project and not provide, disclose or use the information or documents except:
    - (A) to disclose them 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; and
  - (ii) ensure that its subcontractors comply with the terms of clause 4.2(a)(i).
- (b) 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 by sections 9 and 50 of the Corporations Act 2001 (Cth)) of the Independent Certifier; and
  - (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.14:
  - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
    - (A) with the Other Parties or any of their respective contractors, consultants or providers in respect of the Integration Project; or
    - (B) not used; or
  - (iv) provide services to or advise any other person in relation to the Integration Project or the Project Agreements,other than the provision of the Services under this deed, except with the prior written consent of the Other Parties which may be withheld or granted in their absolute discretion.
- (b) The Independent Certifier agrees that:

- (i) having regard to the Project Agreements 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 requirements of the Integration Project and to ensure the best value for money of the Integration Project; and
  - (ii) damages may not be a sufficient remedy for a breach of clause 4.3 and each of the Other Parties may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.
- (c) The Other Parties consent to the Independent Certifier being appointed as the Sub IC under the Sub Deed of Appointment of Independent Certifier (in respect of the Integration Project) dated on or around the date of this deed between the Sub IC, the Companies and the Contractor.

#### **4.4 Relationship with the Other Parties**

- (a) The Independent Certifier is an independent consultant and is not, and must not purport to be, an employee, a partner, joint venturer or agent of any Other Party.
- (b) The Independent Certifier assumes full responsibility for the benefit of the Other Parties for the acts and omissions of its employees, contractors, consultants and agents.
- (c) No Other Party is liable for, nor will they be taken to have a Liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance of any obligation of the Independent Certifier under this deed.
- (d) Each party acknowledges and agrees that the Independent Certifier has no authority to:
  - (i) give directions to any of the Other Parties or the Contractor other than as expressly set out in this deed or any of the Integration Project Documents;
  - (ii) waive or alter any terms of the Integration Project Documents; or
  - (iii) discharge or release a party from any of its obligations pursuant to the Integration Project Documents.
- (e) Transport is not liable for, nor will Transport be taken to have a Liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance or failure to perform any obligation of the Independent Certifier, the Companies or the State Works Contractor under this deed.

#### **4.5 Independent Certifier's powers**

In performing the Services the Independent Certifier:

- (a) will act as an expert and not as an arbitrator;
- (b) will not be bound to observe the rules of evidence;

- (c) must take into consideration all documents, information and other written material that the Other Parties place before the Independent Certifier; and
- (d) subject to clause 4.5(c), will not be expected or required to take into consideration any other documents or information or material but may do so if the Independent Certifier requires them.

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## 5 Notifications

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

- (a) that any matter stated or certified by the Contractor, the Companies or the State Works Contractor or certificate provided under any Project Agreement is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which, in its reasonable opinion:
  - (i) may materially or adversely affect the Companies' or the State Works Contractor's ability to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works, Integration Completion by the Date for Integration Completion or the Sunset Date;
  - (ii) it considers to be, in the context of the Integration Project, of material interest to any of the Other Parties;
  - (iii) may involve a material breach of any Project Agreement; or
  - (iv) may involve a material dispute between any of the parties to any Integration Project Document and another party or the parties to any Integration Project Document or any other person in relation to a Integration Project Document or the Integration Project.

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## 6 Obligations of the Other Parties

### 6.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed or the Project Agreements will not of itself constitute a breach of this clause.
- (b) Clause 6.1(a) will not prevent the Other Parties from providing written comments to the Independent Certifier in respect of the Design Documentation or any other aspect of the Project Activities (including in connection with the Independent Certifier's determination of whether Retained Works Completion has been achieved by the Companies and the State Works Contractor) and the Independent Certifier must consider any comments received from the Other Parties.

### 6.2 Co-operation

- (a) The Other Parties must:

- (i) co-operate with the Independent Certifier;
- (ii) reasonably assist the Independent Certifier; and
- (iii) act honestly and fairly,

to enable the Independent Certifier to perform the Services.

(b) The Other Parties must:

- (i) allow the Independent Certifier to attend all meetings; and
- (ii) procure access for the Independent Certifier to such premises that the relevant Other Party controls to enable the Independent Certifier to perform the Services including allowing access to the Project Site and any Extra Land and all areas where the Works are being performed;
- (iii) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise reasonably requested by the Independent Certifier or (where relevant) directed by Transport.

(c) The Companies and the State Works Contractor must:

- (i) ensure that Hold Points and Witness Points are included in the Project Plans as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services; and
- (ii) coordinate the Project Activities with the Services.

(d) A copy of any written communication to the Independent Certifier must be provided by the sending party to each of the Other Parties within 2 Business Days of providing the same to the Independent Certifier.

### 6.3 Transport to have no liability

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

- (a) to any party to this deed by reason of Transport being a party to this deed; or
- (b) for the performance of any obligation of the Companies, the State Works Contractor or the Independent Certifier whether under or purportedly under this deed or under any Project Agreement or otherwise.

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

### 7.1 Additional Services

- (a) The Other Parties may at any time during the Term jointly issue a notice to the Independent Certifier setting out details of a proposed Additional Services Order that the Other Parties are considering (**Additional Services Request**).

- (b) As soon as practicable, and in any event within 10 Business Days after the issue of the Additional Services Request, the Independent Certifier must provide the Other Parties with a proposal setting out:
- (i) a description of the Additional Services to be performed by the Independent Certifier under the Additional Services Request, including:
    - (A) the program for carrying out the Additional Services;
    - (B) the personnel required to perform the Additional Services; and
    - (C) the estimated number of hours or days (as applicable) required to be performed by each of the personnel; and
  - (ii) the proposed Upper Limiting Fee,
- (Additional Services Proposal).**
- (c) The Additional Services Proposal must remain valid for acceptance by the Other Parties for the period stated in the proposal which must be not less than 30 Business Days after the date of the proposal (**Validity Period**).
- (d) Within the Validity Period, the Other Parties may by written notice to the Independent Certifier do one of the following:
- (i) advise the Independent Certifier that the Other Parties:
    - (A) require further information or clarification with respect to the Additional Services Proposal; or
    - (B) have altered the scope of the Additional Services Request,

in which case the Independent Certifier must provide the Other Parties with an updated Additional Services Proposal within 5 Business Days of receiving the Other Parties' notice under this clause 7.1(d) and this clause 7.1(d) will reapply to the updated Additional Services Proposal;
  - (ii) withdraw the proposed Additional Services Request, in which case the Independent Certifier must not carry out the Additional Services; or
  - (iii) issue an Additional Services Order setting out:
    - (A) a description of the Additional Services to be performed by the Independent Certifier; and
    - (B) the Upper Limiting Fee for the performance of the Additional Services.
- (e) The Independent Certifier must, within 5 Business Days of receipt of the Additional Services Order, provide the Other Parties with a notice either:
- (i) accepting the Additional Services Order; or

- (ii) subject to clauses 7.1(f) and 7.1(g), containing detailed written reasons why it cannot accept the Additional Services Order (acting reasonably).
- (f) For the purpose of clause 7.1(e), the Independent Certifier must accept and comply with any Additional Services Order issued by the Other Parties in accordance with clause 7.1(a), unless the Independent Certifier can demonstrate, to the Other Parties' reasonable satisfaction, that the Independent Certifier:
  - (i) would be in breach of this deed as a consequence of performing the Additional Services contemplated under the Additional Services Order; or
  - (ii) does not have the expertise or experience required to perform the Additional Services contemplated under the Additional Services Order in accordance with this deed.
- (g) Without limiting clause 7.1(f), the Independent Certifier acknowledges and agrees that it would be acting unreasonably by not accepting an Additional Services Order due to a disagreement in relation to the proposed Upper Limiting Fee for the performance of Additional Services subject to an Additional Services Order, and in these circumstances the Independent Certifier must:
  - (i) accept the Additional Services Order in accordance with clause 7.1(e)(i);
  - (ii) provide a written notice of disagreement to the Other Parties with respect to the proposed Upper Limiting Fee; and
  - (iii) perform the Additional Services in accordance with the Additional Services Order.
- (h) If the Other Parties and the Independent Certifier do not agree to the applicable Upper Limiting Fee within 5 Business Days after the issue of the Independent Certifier's written notice under clause 7.1(g)(ii), the Other Parties -(acting reasonably and independently) must determine the dispute. Any determination by the Other Parties in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in accordance with any subsequent court proceedings.
- (i) An Additional Services Order is deemed accepted for all purposes under this deed if no notice is received by the Other Parties from the Independent Certifier in accordance with clause 7.1(e).
- (j) If an Additional Services Order is accepted or deemed to be accepted by the Independent Certifier under this clause 7.1:
  - (i) the Additional Services set out in that Additional Services Order become part of the Services and must be performed in accordance with this deed; and
  - (ii) the Additional Services Fee (if any) set out in that Additional Services Order becomes part of the Fee and must be paid in accordance with this deed.
- (k) The Other Parties are not obliged to:

- (i) issue any Additional Services Request to the Independent Certifier under clause 7.1(a); or
  - (ii) proceed with any Additional Services Proposal issued under clause 7.1(b).
- (l) The Independent Certifier acknowledges that:
- (i) the Other Parties have made no representations as to the amount of work (if any) which the Other Parties may request the Independent Certifier to perform under Additional Services Orders;
  - (ii) the Independent Certifier may not make any claim against the Other Parties on the basis that the Other Parties has not requested or engaged the Independent Certifier to perform any or sufficient work under Additional Services Orders; and
  - (iii) the Other Parties are entitled to engage other contractors to perform services similar to the Services.

## 7.2 Changes to Services, suspension of Services and appointment of Substitute Certifier

- (a) Without limiting clause 7.1, the Other Parties may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to:
- (i) change the Services;
  - (ii) delete any Services;
  - (iii) add new Services; and / or
  - (iv) change the Term,
- (including to give effect to a Pre Agreed Change) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Services referred to in clause 7.2(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by the Other Parties.
- (c) 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.
- (d) The Independent Certifier acknowledges and agrees that the Other Parties may appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 7.2(a) , and any decision of a Substitute Certifier appointed shall be treated (as between the Other Parties) as if it is a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Project Agreements in connection with those Services.
- (e) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7.2(a), in

accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

### 7.3 Meeting of Other Parties

- (a) If any one of the Other Parties is of the opinion that the Independent Certifier is not performing its duties in accordance with this deed, that Other Party may call a meeting of all of the Other Parties' duly authorised representatives who must attend within 2 Business Days (or such other period as is reasonably requested by that Other Party) to decide an appropriate action to resolve the issue.
- (b) Without limiting the scope of the Other Parties' decision, the Other Parties will consider at such a meeting whether to resolve the issue referred to in clause 7.3(a) by:
  - (i) requesting that the Independent Certifier comply with this deed;
  - (ii) changing the Services in accordance with clause 7.2(a);
  - (iii) suspending the Services in accordance with clause 7.2(c);
  - (iv) appointing a Substitute Certifier in accordance with clause 7.2(d); or
  - (v) terminating the appointment of the Independent Certifier in accordance with clause 9.

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## 8 Liability, insurance and indemnity

### 8.1 Limitation of liability

[REDACTED]

### 8.2 Exclusions

- (a) The limitation of liability in clause 8.1 will not limit the Liability of the Independent Certifier in respect of:
  - (i) fraud, [REDACTED] or illegal or criminal acts;
  - (ii) any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this deed or the rights or welfare of, or foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission;
  - (iii) [REDACTED]
  - (iv) [REDACTED]



- (v) [REDACTED]
- (vi) [REDACTED]
- (vii) [REDACTED]
- (viii) [REDACTED]

### 8.3 Insurances

From the later of the date of the M7-M12 Integration Project Deed and the date of this deed, the Independent Certifier must hold and maintain:

- (a) professional indemnity insurance with:
  - (i) a limit of indemnity of \$ [REDACTED] for any single claim and in the aggregate in respect of legal liability (including, without limitation, in connection with property damage, personal injury or death) arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents, subcontractors or consultants; and
  - (ii) a deductible of not more than \$ [REDACTED];
- (b) workers compensation insurance as required by Law under any statute relating to workers' or accident compensation;
- (c) public liability insurance:
  - (i) endorsed to indemnify each of the Other Parties as insureds to the extent that such parties are vicariously liable for the activities of the Independent Certifier;
  - (ii) with a limit of indemnity of \$ [REDACTED] for any one claim in respect of legal liability for third party property damage, personal injury or death arising from the performance of the Services under this deed; and
  - (iii) with a deductible of not more than \$ [REDACTED]; and
- (d) such other insurance as may reasonably be required by the Other Parties.

### 8.4 Notice of matter affecting insurance

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

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

## **8.5 Provision of information**

The Independent Certifier must provide to the Other Parties:

- (a) not used; and
- (b) certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 8,

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

## **8.6 Periods for insurance**

The Independent Certifier must maintain:

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

## **8.7 Obligations unaffected by insurance**

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

## **8.8 Indemnity in relation to third party property/persons**

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

- (a) Any damage to or loss of property (not including the Works); or
- (b) death of or injury to any person,

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

## **8.9 Indemnity in relation to breach**

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 breach of this deed by the Independent Certifier (including any claim or loss which an Other Party may have to another party arising from such breach).

## **8.10 Reduction**

The Independent Certifier's liability to indemnify the Other Parties is reduced proportionally to the extent that a malicious or negligent act or omission of the Other Parties, or employees or agents (other than the Independent Certifier and its employees, agents or contractors) of the Other Parties, or a breach of this

deed by the Other Parties has contributed to the liability, loss, claim, expense, damage or injury.

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## **9 Termination of appointment**

### **9.1 Notice of termination**

The Other Parties may jointly terminate the appointment of the Independent Certifier under 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 Event of Insolvency 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 the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

### **9.2 Termination**

- (a) Subject to clause 9.2(b), where a notice is served on the Independent Certifier under clause 9.1, the appointment of the Independent Certifier will terminate upon the earlier of:
  - (i) the date specified in the notice issued under clause 9.1; or
  - (ii) the appointment of a replacement for the Independent Certifier.
- (b) Where an event of termination of the Integration Project Deed has occurred and the Other Parties serve a notice pursuant to clause 9.1(d) the appointment of the Independent Certifier will terminate on the date specified in the notice.

### **9.3 Delivery of documents**

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

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

#### **9.4 Reasonable assistance**

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

#### **9.5 Payment until date of termination**

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

#### **9.6 Termination without payment**

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

#### **9.7 Survive termination**

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

#### **9.8 Rights upon termination**

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

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## **10 Confidentiality and publicity**

### **10.1 General restriction**

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

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

### **10.2 Exceptions**

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

- (a) which is in or after the date of this deed comes into the public domain (other than by breach of this clause) or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by Law or the Listing Rules of the Australian Stock Exchange Limited (if applicable);
- (c) as required for any legitimate NSW Government purpose or process;
- (d) pursuant to the project summary required to be published in accordance with the NSW Public Private Partnership Guidelines published by the NSW Government and dated July 2017;
- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party;
- (f) which is disclosed to a person authorised by the Commonwealth Minister in pursuance of the obligations of Transport or the Government under the National Land Transport Act or the Notes on Administration for Land Transport Infrastructure Projects;
- (g) which, in the reasonable opinion of the disclosing party, is required to be disclosed to:
  - (i) any actual or prospective investor in or lender to or holder of bonds, notes or similar instruments issued or to be issued in the domestic or international capital markets by (or trustee therefor) the Companies or the State Works Contractor (or assignee, novatee or transferee of a lender or holder);
  - (ii) any actual or prospective insurer in respect of the Integration Project;
  - (iii) that party's officers, employees, professional advisers, auditors or consultants;
  - (iv) any:
    - (A) person to whom disclosure is reasonably necessary to enable that person to comply with the Integration Project Documents to which it is a party; and
    - (B) subcontractors and sub-subcontractors (of any tier) of the subcontractors to whom disclosure is necessary to enable that subcontractor or sub-subcontractor to comply with the subcontract to which it is a party for the Integration Project;
- (h) by Transport that is not Commercially Sensitive Information; or
- (i) in relation to the Project Agreements, by the Other Parties that is permitted or otherwise in accordance with their obligations under the Project Agreements.

### 10.3 Obligations preserved

Where disclosure is permitted under clause 10.2, other than clauses 10.2(a), 10.2(b), 10.2(c), 10.2(d), 10.2(e) and 10.2(h), the party providing the disclosure

must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this deed.

#### 10.4 Publicity

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

#### 10.5 Disclosure by Transport

- (a) Notwithstanding the other provisions of this clause 10 but subject to clause 10.5(b), the parties acknowledge that:
  - (i) this deed will be made available to the Auditor-General in accordance with the Public Finance and Audit Act 1983 (NSW);
  - (ii) information concerning this deed may be tabled in Parliament of the State of New South Wales by or on behalf of Transport and will be published in accordance with applicable government policies and guidelines;
  - (iii) this deed and information concerning this deed will be published on Transport's contracts register in accordance with the GIPA Act (subject to the prior redaction of Commercially Sensitive Information which is not required to be disclosed in the contracts register under the GIPA Act); and
  - (iv) Transport and Transport's Representative may make this deed available to any person as required by any applicable Law.
- (b) The parties acknowledge that:
  - (i) by entering into this deed, Transport has consulted with the Companies, the State Works Contractor and the Independent Certifier in relation to the disclosure of those parts of this deed that are not Commercially Sensitive Information;
  - (ii) Transport will notify the Companies, the State Works Contractor and the Independent Certifier of any proposed disclosure of any information that Transport considers (acting reasonably) may be Commercially Sensitive Information by Transport under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
  - (iii) following notification by Transport in accordance with clause 10.5(b)(ii), Transport will take reasonable steps to consult with the Companies, the State Works Contractor and the Independent Certifier before disclosing the information referred to in clause 10.5(b)(ii); and
  - (iv) if, following:

- (A) notification by Transport in accordance with clause 10.5(b)(ii); or
- (B) consultation between Transport, the Companies, the State Works Contractor and the Independent Certifier (as applicable) in accordance with clause 10.5(b)(iii),

the Companies, the State Works Contractor or the Independent Certifier objects to disclosure of some or all of the information referred to in clause 10.5(b)(ii) on the basis that it is Commercially Sensitive Information, the Companies, the State Works Contractor or the Independent Certifier (as relevant) must provide details of any such objection within 5 Business Days of the date the Companies, the State Works Contractor or the Independent Certifier (as applicable) received notification from Transport or the date on which the consultation process concluded (as relevant).

- (c) Transport may take into account any objection received from the Companies, the State Works Contractor or the Independent Certifier pursuant to clause 10.5(b)(iv) in determining whether the information identified by the Companies, the State Works Contractor or the Independent Certifier as Commercially Sensitive Information should be disclosed.
- (d) Nothing in this clause 10.5 will limit or otherwise affect the discharge of Transport's obligations under the GIPA Act.

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## 11 GST

- (a) Except where the context suggests otherwise, terms used in this clause 11 have the meaning given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.

- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 11(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 11(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

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## 12 Notices

### 12.1 How to give a notice

A notice or consent under this deed (**Notice**) is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given;
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) subject to clause 12.1(d), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address; and
- (d) in the case of Notices which have been sent in accordance with clause 12.1(c)(ii) under clauses 3.8, 3.9, 3A, 7, 8.4 and 9, in addition to the Notice sent pursuant to clause 12.1(c)(ii), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 12.1(c)(i).

### 12.2 Effectiveness of notices

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

### 12.3 When a notice is given

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

- (a) if it is sent by mail:
  - (i) within Australia – 2 Business Days after posting; or
  - (ii) to or from a place outside Australia – 5 Business Days after posting;
- (b) subject to clause 12.3(c), if it is sent by email:
  - (i) by 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent equivalent to the time



shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; or

- (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; and
- (c) where clause 12.1(c)(ii) applies, the relevant Notice will be taken to have been received on the later of:
  - (i) the date determined in accordance with clause 12.3(b); and
  - (ii) the date determined in accordance with clause 12.3(a).

#### 12.4 Address for notices

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

##### Transport

Address: Western Sydney Project Office, Transport for NSW,  
Level 7, 27 Argyle Street, Parramatta NSW 2150  
Email address: [REDACTED]@transport.nsw.gov.au  
Attention: Project Director M12 Motorway

##### Westlink

Address: 101 Wallgrove Road, Eastern Creek, NSW 2760  
Email address: Legal@nwroads.com.au  
Attention: Company Secretary

##### WSO Co

Address: 101 Wallgrove Road, Eastern Creek, NSW 2760  
Email address: Legal@nwroads.com.au  
Attention: Company Secretary

##### State Works Contractor

Address: 101 Wallgrove Road, Eastern Creek, New South Wales  
2776  
Email address: Legal@nwroads.com.au  
Attention: Company Secretary

##### Independent Certifier

Address: Level 11, 73 Miller Street, North Sydney, NSW 2060  
Email address: [REDACTED]@aurecongroup.com  
Attention: [REDACTED]

#### 12.5 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 12.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 12. Any text in the body of the email or the subject line will not form part of the communication;

- (b) an attachment to an email referred to in clause 12.1(c)(ii) will only form part of a communication under this clause 12 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this deed:
  - (i) to ensure that their respective firewall and/or mail server (as applicable):
    - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received;
    - (B) does not trap any messages in the spam filter which:
      - 1) in the case of notices sent by Transport to the Companies, the State Works Contractor or the Independent Certifier, have been sent from transport.nsw.gov.au;
      - 2) in the case of notices sent by the Companies to Transport, the State Works Contractor or the Independent Certifier, have been sent from Legal@nswroads.com.au or such other domain as is notified to the other parties in writing by the Companies;
      - 3) in the case of notices sent by the State Works Contractor to Transport, the Companies or the Independent Certifier, have been sent from Legal@nswroads.com.au or such other domain as is notified to the other parties in writing by the State Works Contractor; and
      - 4) in the case of notices sent by the Independent Certifier to Transport, the Companies or the State Works Contractor, have been sent from [REDACTED]@aurecongroup.com or such other domain as is notified to the other parties in writing by the Independent Certifier; and
    - (C) automatically sends a receipt notification to the sender upon receipt of a message; and
  - (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

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## 13 General

### 13.1 Governing law

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

### 13.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 13.2(a).

### 13.3 Cost

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

### 13.4 Waiver

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

### 13.5 Further acts and documents

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

### **13.6 Provisions limiting or excluding liability**

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

### **13.7 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **13.8 Variation**

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

### **13.9 Severability of provisions**

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

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

- (a) The obligations of a party, if more than one person, under this deed are joint and several and each person constituting that party acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the other parties to this deed may proceed against any one or all of them.
- (b) The rights of a party, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting that party (and not severally or jointly and severally).
- (c) Any payment by a party under this deed to any account nominated in writing by another party or, failing such nomination, to any one or more persons constituting that party, will be deemed to be payment to all persons constituting that party.
- (d) A party, if more than one person, may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting that party.
- (e) An obligation or liability assumed by, or a right conferred on, the Other Parties binds or benefits each of them severally.

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

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

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

### **13.12 Assignment**

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.

### **13.13 Entire Agreement**

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

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

### **13.14 Indemnities**

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.

### **13.15 No representation or reliance**

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

### **13.16 Moratorium Legislation**

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

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## **14 State Works Contractor's limitation of liability**

- (a) The SWC Trustee enters into this deed in its capacity as the trustee of the SWC Trust.
- (b) Subject to clauses 14(e) and (f) and unless specified to the contrary in this deed, the parties to this deed (other than the SWC Trustee) acknowledge that the SWC Trustee's obligations under this deed are incurred by the SWC Trustee solely in its capacity as trustee of the SWC Trust.
- (c) Subject to clauses 14(e) and (f) and unless specified to the contrary in this deed, the parties to this deed (other than the SWC Trustee) may enforce their rights against the SWC Trustee arising from the SWC Trustee's non-performance of its obligations under this deed

only to the extent of the SWC Trustee's right of indemnity out of the assets of the SWC Trust.

- (d) Subject to clauses 14(e) and (f) and unless specified to the contrary in this deed, if any party to this deed (other than the SWC Trustee) does not (by reason of non-payment by the State Works Contractor) recover any amounts owing to it by enforcing its rights under or in connection with this deed, that party may not seek to recover the shortfall by:
- (i) bringing proceedings against the SWC Trustee in its personal capacity; or
  - (ii) applying to have the SWC Trustee wound up or proving in the winding up of the SWC Trustee unless another creditor has initiated proceedings to wind up the SWC Trustee.
- (e) The limitations in clauses 14(a) to 14(d) inclusive will not apply to any obligation or liability of the SWC Trustee arising as a result of, or to the extent that it is not satisfied because, there is a reduction in the extent of the SWC Trustee's entitlement to be indemnified out of the assets of the SWC Trust as a result of:
- (i) fraud, negligence, breach of trust or breach of duty on the part of the SWC Trustee;
  - (ii) any breach of the representations and warranties made by the SWC Trustee under this deed;
  - (iii) any breach by the SWC Trustee of any of its obligations under this deed (other than any breach of its obligation to perform the State Works Contractor's obligations); or
  - (iv) a failure on the part of the SWC Trustee to perform its duties properly within the meaning of section 601GA(2) of the Corporations Act, in each case in its capacity as trustee of the SWC Trust.
- (f) Nothing in clauses 14(a) to 14(d) (inclusive) prevents a party obtaining any injunctive relief, order for specific performance, declaration or similar relief against the SWC Trustee or enforcing this document in accordance with its terms.
- (g) In this clause 14:
- (i) **SWC Trust** means M7 State Works Contractor Trust;
  - (ii) **SWC Trust Deed** means the document titled 'Trust Deed of M7 State Works Contractor Trust' dated 30 January 2023; and
  - (iii) **SWC Trustee** means M7 State Works Contractor Pty Ltd (ACN 664 603 249).

# Independent Certifier Deed

## Schedule 1 Services

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### 1 General

The Services include:

- (a) the Independent Certifier preparing a monthly report of a maximum of 8 A4 pages (plus attachments, if necessary) setting out:
  - (i) the tasks undertaken by the Independent Certifier during that month;
  - (ii) the visits made by the Independent Certifier to the Project Site and elsewhere in connection with the Integration Project during that month;
  - (iii) the documents reviewed by the Independent Certifier during that month and the current status of those documents;
  - (iv) the progress made by the Companies and the State Works Contractor in the development of the Design Documentation or the construction of the Works with reference to the current Overall D&C Program;
  - (v) tests attended by the Independent Certifier during that month and the results of those tests; and
  - (vi) any issues identified by the Independent Certifier,and submitting that report to each of the Other Parties no later than 5 Business Days after the end of the month to which the report relates;
- (b) The Independent Certifier carrying out the services referred to in clause 9 of Annexure A to the M7-M12 Integration Project Deed and satisfying itself that the Design Documentation satisfies the requirements of the M7-M12 Integration Project Deed, the State Works Deed and the SWTC, including by:
  - (i) attending meetings of the Companies' design team and any other meetings at which design issues are discussed;
  - (ii) meeting with the Companies and the Contractor; and
  - (iii) conducting audits of the Companies' compliance with its Design Plan;
- (c) all the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier or which require the Companies to ensure will be performed by the Independent Certifier including:
  - (i) the Design Phase Services;
  - (ii) the Construction Phase Services;
  - (iii) the Completion Phase Services; and
  - (iv) providing various certificates required under the Project Agreements;

- (d) without limiting sections 1(a) to (c), all other things and tasks not described in this deed or the Project Agreements, if those things and tasks should have been reasonably anticipated by an experienced and competent professional provider of the Services as being necessary for the performance of the Services or that are otherwise capable of inference from this deed or the other Project Agreements;
- (e) where requested by the Companies pursuant to clause 2.3, the Independent Certifier carrying out detailed "first principles" design checks of the Design Documentation in respect of:
  - (i) bridges; and
  - (ii) other major structures;
- (f) certification of the correction of any Defects and any non-conformance by the Companies and the State Works Contractor (including during the Defects Correction Period).

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## **2 Initial Certification and Monitoring Plan**

The Independent Certifier must provide the Services to no lesser effort, quality or standard than that detailed in Schedule 4 and the initial Certification and Monitoring Plan included as Attachment A to Schedule 4.



# Independent Certifier Deed

## Schedule 2 Payment Schedule

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### 1 Payment claim

- (a) At the end of each month after the later of the date of the M7-M12 Integration Project Deed and the date of this deed, the Independent Certifier must submit to the Companies (copying Transport) a claim for payment of the Fee:
- (i) setting out the amount due in respect of the Services and any expert advice obtained by the Independent Certifier in accordance with this deed;
  - (ii) calculated in accordance with this Payment Schedule; and
  - (iii) in such form and with such details and supporting documentation as the Companies may reasonably require (which may include details of the time expended by the Independent Certifier in performing the Services).
- (b) Each claim for payment submitted by the Independent Certifier must be accompanied by:
- (i) a supporting statement which complies with section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW); and
  - (ii) a duly signed written statement in a form which complies with the Independent Certifier's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Worker's Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by that legislation.
- (c) Within 10 Business Days after receipt of the claim for the month the Companies must assess the amount and issue a payment statement to the Independent Certifier setting out the portion of the payment claim which is agreed and any portion which is disputed.
- (d) The Independent Certifier must give the Companies a valid tax invoice for the amount assessed and within 3 Business Days of receipt of a payment statement under paragraph 1(c).
- (e) The Companies must, within the later of:
- (i) 5 Business Days of the payment statement; and
  - (ii) receipt of a valid tax invoice under paragraph 1(d),
- but in any event within 15 Business Days of receipt of a claim for payment received under paragraph 1(a), pay the Independent Certifier the portion of each claim for payment which is not disputed.
- (f) If the Companies dispute an amount included in claim submitted by the Independent Certifier then within 10 Business Days of receipt of the Independent Certifier's claim, the Companies must notify the Independent Certifier in writing of the reasons for any amount which is disputed.

---

## 2 Payment and notification of disputed amounts

If the parties do not resolve the matter within 10 Business Days after the issue of the Companies' written notice, Transport's Representative (acting reasonably and independently) must determine the dispute. Any determination by Transport's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

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## 3 The Fee

- (a) The Fee consists of the lump sum of \$ [REDACTED]
- (b) The Independent Certifier may claim payment for the performance of Services monthly, in accordance with Paragraph 1 of this Schedule 2.
- (c) The Fee contemplates that the Services will commence on the date of this deed and that performance of the Services will finish before 30 June 2026 (other than in respect of the Completion Phase Services).
- (d) In the event that the Independent Certifier must perform any of the Services after 30 June 2026 (other than the Completion Phase Services), the Independent Certifier will be compensated for such services in accordance with the schedule of rates contained in Paragraph 4 of this Schedule 2.
- (e) In the event that the Independent Certifier must carry out Services in respect of a Pre Agreed Change directed in accordance with clause 7.2, the Fee will be adjusted by the amount set out in Paragraph 6 of this Schedule 2.
- (f) In the event that the Independent Certifier must perform any of the Services on a NSW prescribed Public Holiday or on any day during the Independent Certifier's prescribed shut down period during December and January which will on aggregate not exceed 14 calendar days (such period to be advised not less than 2 months' prior in writing to the Other Parties), the Independent Certifier will be compensated for the services performed on such days in accordance with the schedule of rates contained in Paragraph 4 of Schedule 2.
- (g) In the event that any Additional Services are required, the Independent Certifier will be compensated for services in accordance with the schedule of rates contained in Paragraph 4 of Schedule 2.

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## 4 Schedule of Rates

| Role                                     | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|--|---------------------|---------------------------------|
| Design Phase Services                    |                     |                                 |
| Independent Certifier's Project Director | [REDACTED]          | [REDACTED]                      |

| Role  | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|---|---------------------|---------------------------------|
| Independent Certifier's Representative for Design | ██████████          | ██████                          |
| Design Manager                                    | ██████████          | ██████                          |
| Quality Manager                                   | ██████████          | ██████                          |
| Safety Reviewer                                   | ██████████          | ██████                          |
| Environmental Reviewer                            | ██████████          | ██████                          |
| Administration/Document Controller                | ██████████          | ██████                          |
| Hydrogeology Reviewer                             | ██████████          | ██████                          |
| Geology Reviewer                                  | ██████████          | ██████                          |
| Alignment and Road Safety Reviewer                | ██████████          | ██████                          |
| Pavements Reviewer                                | ██████████          | ██████                          |
| Hydrology/Drainage Reviewer                       | ██████████          | ██████                          |
| Lines and Signs Reviewer                          | ██████████          | ██████                          |
| Traffic and Return Works Reviewer                 | ██████████          | ██████                          |
| Utilities and Services Reviewer                   | ██████████          | ██████                          |
| Durability Reviewer                               | ██████████          | ██████                          |
| Tolling Reviewer                                  | ██████████          | ██████                          |
| ITS , Voice, Data and Comms Network Reviewer      | ██████████          | ██████                          |
| Temporary Works Reviewer                          | ██████████          | ██████                          |
| Buildings Reviewer                                | ██████████          | ██████                          |
| Viaducts/Bridges Reviewer                         | ██████████          | ██████                          |
| Major Structures Reviewer                         | ██████████          | ██████                          |
| Other Structures Reviewer                         | ██████████          | ██████                          |
| UD and Landscape Reviewer                         | ██████████          | ██████                          |
| BCA / DDA Assessor                                | ██████████          | ██████                          |
| Stormwater treatment Reviewer                     | ██████████          | ██████                          |
| Ground water treatment Reviewer                   | ██████████          | ██████                          |

| Role  | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|---|---------------------|---------------------------------|
| Planning Reviewer   | ██████████          | ██████████                      |
| Noise and Vibration Reviewer                                      | ██████              | ██████████                      |
| Contamination Reviewer  | ██████████          | ██████████                      |
| <b>Construction Phase Services</b>                                |                     |                                 |
| Independent Certifier's Project Director                          | ██████████          | ██████████                      |
| Independent Certifier's Representative for Construction           | ██████████          | ██████████                      |
| Quality Manager   | ██████████          | ██████████                      |
| Safety Reviewer   | ██████████          | ██████████                      |
| Environmental Reviewer  | ██████████          | ██████████                      |
| Administration/Document Controller                                | ██████████          | ██████████                      |
| Construction Manager  | ██████████          | ██████████                      |
| Senior Engineer - Mechanical and Electrical                       | ██████████          | ██████████                      |
| Senior Engineer - Civil and Structural Works Construction         | ██████████          | ██████████                      |
| Geotechnical Engineer   | ██████████          | ██████████                      |
| Project Engineer – Civil Works                                    | ██████████          | ██████████                      |
| Project Engineer – Structural Works (North)                       | ██████████          | ██████████                      |
| Project Engineer – M&E Works                                      | ██████████          | ██████████                      |
| Surveillance Officer – Civil Works Construction (North/Pavements) | ██████████          | ██████████                      |
| Surveillance Officer – Structural Works Construction (North)      | ██████████          | ██████████                      |
| Surveillance Officer – M&E  | ██████████          | ██████████                      |
| OMCS Reviewer   | ██████████          | ██████████                      |
| RAMS Reviewer   | ██████████          | ██████████                      |
| Testing and Commissioning Reviewer                                | ██████████          | ██████████                      |
| Project Engineer – Structural Works (Interchange)                 | ██████████          | ██████████                      |

| Role   | Nominated Personnel | Daily Rate (\$) (excluding GST) |
|--|---------------------|---------------------------------|
| Surveillance Officer – Structural Works Construction (Interchange) | [REDACTED]          | [REDACTED]                      |
| Surveillance Officer – Civil Works Construction (Interchange)      | [REDACTED]          | [REDACTED]                      |
| Scheduler  | [REDACTED]          | [REDACTED]                      |
| Payments Engineer  | [REDACTED]          | [REDACTED]                      |
| <b>Completion Phase Services</b>                                   |                     |                                 |
| Project Engineer – Civil Works                                     | [REDACTED]          | [REDACTED]                      |
| Project Engineer – Structural Works                                | [REDACTED]          | [REDACTED]                      |
| Surveillance Officer – Structural Works Construction               | [REDACTED]          | [REDACTED]                      |
| Surveillance Officer – M&E   | [REDACTED]          | [REDACTED]                      |
| OMCS Reviewer  | [REDACTED]          | [REDACTED]                      |

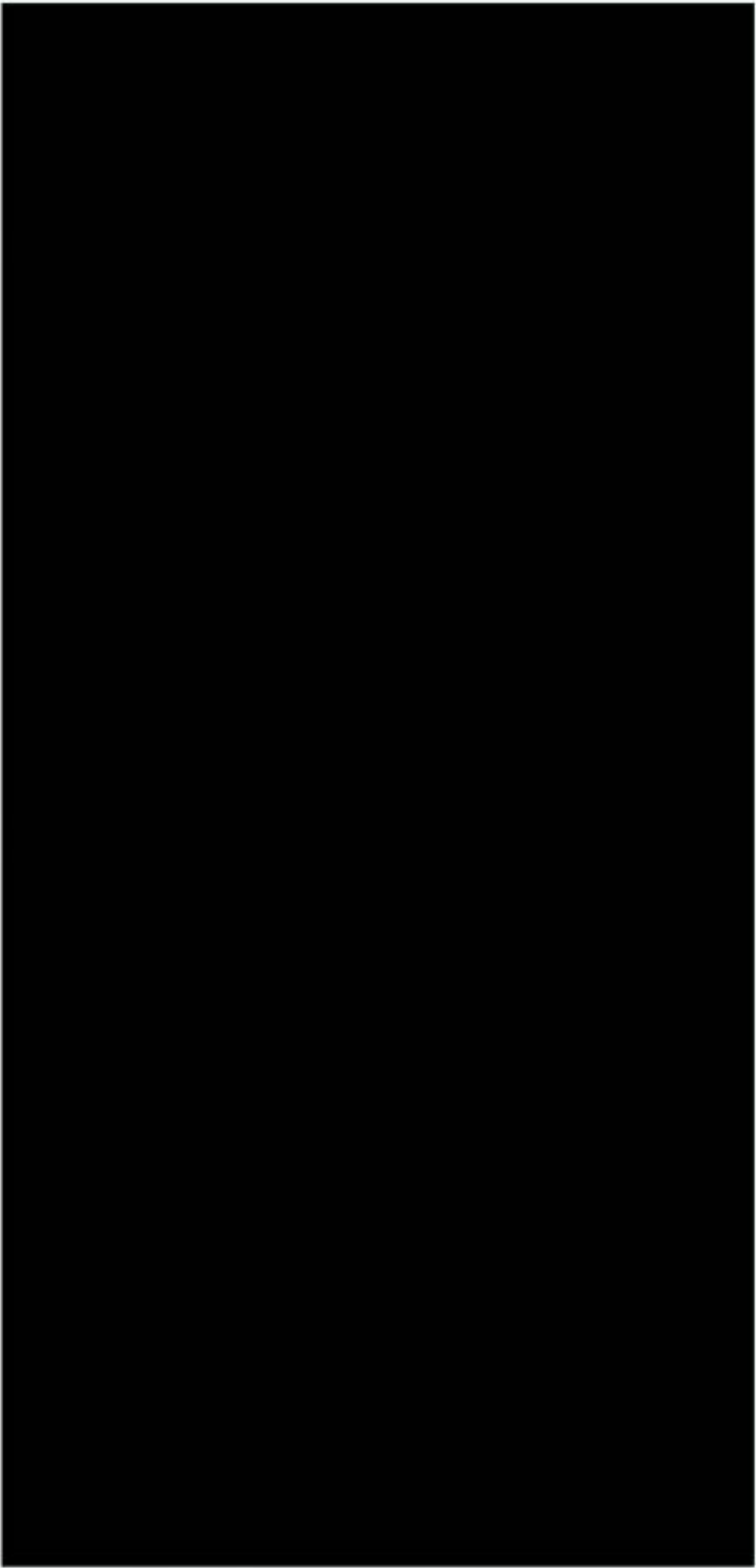
[REDACTED]

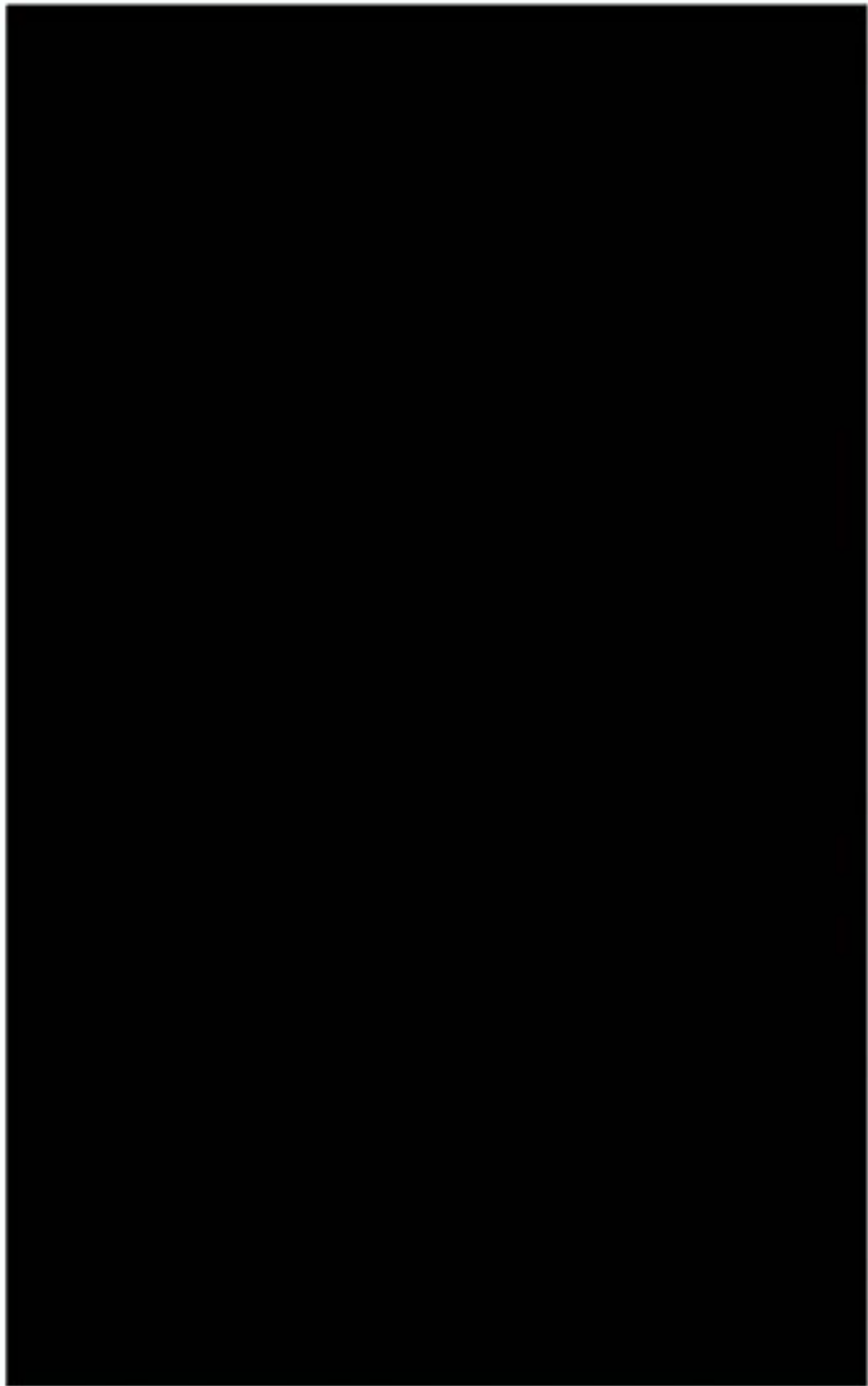
When claiming payment for any Services for which the Independent Certifier is to be paid on a schedule of rates basis the Independent Certifier must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid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

## 5 Monthly payment schedule for lump sums

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

[REDACTED]





## 6 Pre Agreed Changes

If a change to the Services is directed in accordance with clause 7.2 to give effect to a Pre Agreed Change, the Fee will be increased by the relevant amount set out in the table below:

| Pre-Agreed Change   | Total increase to the Fee (excl. GST) |
|---------------------|---------------------------------------|
| Pre-Agreed Change 1 |                                       |
| Pre-Agreed Change 3 |                                       |

---

## 7 GST

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



# Independent Certifier Deed

## Schedule 3 Minimum resources and surveillance levels

### 1 Minimum resources commitment

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

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

#### 1.1 Design Phase Services

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

| Position                           | Name       | Commitment (days) |
|------------------------------------|------------|-------------------|
| <b>Project Management Design</b>   |            |                   |
| I C Representative                 | ██████████ | 135.00            |
| I C Project Director               | ██████████ | 88.00             |
| Design Manager                     | ██████████ | 261.00            |
| Quality Management                 | ██████████ | 10.00             |
| Safety Reviewer                    | ██████████ | 10.00             |
| Environmental Reviewer             | ██████████ | 10.00             |
| Administration/Document Controller | ██████████ | 250.00            |
| <b>Design Reviewers</b>            |            |                   |
| <b>Geotech and Ground support</b>  |            |                   |
| Hydrogeology Reviewer              | ██████████ | 18.00             |
| Geology reviewer                   | ██████████ | 24.00             |
| <b>Roads and civil</b>             |            |                   |
| Alignment and Road Safety Reviewer | ██████████ | 40.00             |
| Pavements Reviewer                 | ██████████ | 36.00             |
| Hydrology/Drainage Reviewer        | ██████████ | 35.00             |

| Position                                     | Name                   | Commitment (days) |
|--|------------------------|-------------------|
| Lines and Signs Reviewer                     | ████████               | 14.00             |
| <b>Return Works</b>                          |                        |                   |
| Traffic and Return Works Reviewer            | ██████                 | 35.00             |
| <b>Mech/Elec + Durability</b>                |                        |                   |
| Utilities and Services Reviewer              | ██████                 | 12.00             |
| Durability Reviewer                          | ██████                 | 15.00             |
| <b>Systems</b>                               |                        |                   |
| Tolling Reviewer                             | ████████               | 16.00             |
| ITS , Voice, Data and Comms Network Reviewer | ██████                 | 38.00             |
| <b>Structures</b>                            |                        |                   |
| Temporary Works                              | ████████               | 34.00             |
| Buildings Reviewer                           | ████████               | 8.00              |
| Viaducts/Bridges                             | ████████               | 44.00             |
| Major Structures                             | ██████                 | 35.00             |
| Other structures                             | ████████               | 21.00             |
| <b>Urban Design</b>                          |                        |                   |
| UD and Landscape Reviewer                    | ████████               | 6.00              |
| BCA / DDA Assessor                           | ██████                 | 6.00              |
| <b>Environmental</b>                         |                        |                   |
| Stormwater treatment Reviewer                | ██████                 | 9.00              |
| Ground water treatment Reviewer              | ████████               | 6.00              |
| Planning Reviewer                            | ████████               | 6.00              |
| Noise and Vibration Reviewer                 | ██████                 | 6.00              |
| Contamination Reviewer                       | ████████               | 7.00              |
|  | <b>Design SubTotal</b> | <b>1235.00</b>    |

## 1.2 Construction Phase Services

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

| Position  | Name       | Commitment (days) |
|---|------------|-------------------|
|   |            |                   |
| <b>Construction Project Management</b>                    |            |                   |
| I C Representative  | ██████████ | 405.00            |
| I C Project Director                                      | ██████████ | 240.00            |
| Quality Management  | ██████████ | 68.00             |
| Safety Reviewer   | ██████████ | 68.00             |
| Environmental Reviewer                                    | ██████████ | 68.00             |
| Administration/Document Controller                        | ██████████ | 530.00            |
| <b>Construction Site Personnel</b>                        |            |                   |
| Construction Manager                                      | ██████████ | 620.00            |
| Senior Engineer Mechanical and Electrical                 | ██████████ | 100.00            |
| Senior Engineer – Civil and Structural Works construction | ██████████ | 510.00            |
| Geotechnical Engineer                                     | ██████████ | 100.00            |
| <b>Project Engineers</b>                                  |            |                   |
| Project Engineer Civil Works                              | ██████████ | 610.00            |
| Project Engineer Structural Works                         | ██████████ | 520.00            |
| Project Engineer Structural Works                         | ██████████ | 490.00            |
| Project Engineer M&E Works                                | ██████████ | 250.00            |
| <b>Surveillance Officers</b>                              |            |                   |
| SO Civil Works  | ██████████ | 650.00            |
| SO Civil Works  | ██████████ | 480.00            |
| SO Structural Works                                       | ██████████ | 500.00            |
| SO Structural Works                                       | ██████████ | 490.00            |
| SO - M&E works  | ██████████ | 230.00            |
| <b>Technical Specialist</b>                               |            |                   |
| OMCS  | ██████████ | 200.00            |
| RAMS  | ██████████ | 100.00            |

| Position                          | Name                          | Commitment (days) |
|-----------------------------------|-------------------------------|-------------------|
| Testing and Commissioning         | ██████                        | 100.00            |
| <b>Other Technical Specialist</b> |                               |                   |
| Structures                        |                               |                   |
| Roads                             |                               |                   |
| Scheduler                         | ██████                        | 68.00             |
| Payments Engineer                 | ██████                        | 72.00             |
|                                   | <b>Construction Sub Total</b> | 7469.00           |

### 1.3 Completion Phase Services

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

| Position   | Name                        | Commitment (days) |
|--|-----------------------------|-------------------|
| Project Engineer – Civil Works                       | ██████                      | 24.00             |
| Project Engineer – Structural Works                  | ██████                      | 24.00             |
| Surveillance Officer – Structural Works Construction | ██████                      | 24.00             |
| Surveillance Officer – M&E                           | ██████                      | 30.00             |
| OMCS Reviewer  | ██████                      | 30.00             |
|  |                             |                   |
|  | <b>Completion Sub Total</b> | 132.00            |

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

### 2.1 Independent Certifier's project director

- (a) The Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to the Integration Project and the Project 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 Construction Phase Services**

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

## **2.3 Not used.**

## **2.4 Senior Engineer - Mechanical and Electrical (M&E) Works**

The Senior Engineer - M&E Works must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in design and construction certification of large projects similar to the Integration Project and the Project Activities and at least 15 years' experience in design and construction.

## **2.5 Geotechnical Engineer - Civil Works Construction**

The Geotechnical Engineer - Civil Works Construction must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the Integration Project and the Project Activities and at least 15 year' experience in construction.

## **2.6 Not used.**

## **2.7 Project Engineer - Civil Works Construction**

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

## **2.8 Project Engineer - Structural Works Construction**

The Project Engineer - Structural Works Construction must possess a recognised qualification relevant to the position and the Services and have experience in the construction certification of large projects similar to the Integration Project and the Project Activities and at least 10 years of experience in the construction of structures including experience in structures construction.

## **2.9 Project Engineer – Mechanical and Electrical (M&E Works)**

The Project Engineer – M&E Works must possess a recognised qualification relevant to the position and the Services and have experience in design and construction certification of large projects similar to the Integration Project and the Project Activities and at least 10 years of experience in the design and construction of M&E systems.

- 2.10 Not used.**
- 2.11 Surveillance Officer – Civil Works Construction**  
The Surveillance Officer – Civil Works Construction must have at least 15 years of experience in the civil engineering industry and at least 10 years in surveillance of roadworks, traffic management and environmental management.
- 2.12 Surveillance Officer - Structural Works Construction**  
The Surveillance Officer - Structural Works Construction must have at least 15 years of experience in the civil engineering construction industry and at least 10 years in surveillance of the construction of structures, including piling, concrete work, pre-casting, pre-stressing, steel fabrication and erection.
- 2.13 Surveillance Officer - M&E Works**  
The Surveillance Officer - M&E Works must have at least 15 years of experience in the M&E construction industry and at least 10 years in surveillance of the construction of M&E systems.
- 2.14 Not used**
- 2.15 Not used**
- 2.16 Technical Specialist - Reliability Availability Maintainability and Safety (RAMS)**  
The Technical Specialist - Reliability Availability Maintainability and Safety must possess a recognised qualification relevant to the position and the Services and at least 15 years of experience in system engineering, maintenance and RAMS modelling.
- 2.17 Technical Specialist - Testing and Commissioning**  
The Technical Specialist - Testing and Commissioning must possess a recognised qualification relevant to the position and the Services and at least 15 years of experience in testing and commissioning complex infrastructure.
- 2.18 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.
- 2.19 Design Review Manager**  
The Design Review Manager must possess a recognised qualification relevant to the position and the Services and have at least ten years' experience in the design certification of large projects similar to the Integration Project and the Project Activities and at least 20 years' experience.
- 2.20 Construction Manager**  
The Construction Manager must possess a recognised qualification relevant to the position and the Services and have at least 20 years' experience in construction.

### **2.21 Quality Manager**

The Quality Manager must possess a recognised qualification relevant to the position and the Services and have at least 20 years' experience in infrastructure.

### **2.22 Safety Reviewer**

The Safety Reviewer must possess a recognised qualification relevant to the position and the Services and have at least 15 years' experience in auditing of quality, environmental and WHS Management Systems as well as design and construction certification experience.

### **2.23 Environmental Reviewers (including various sub-disciplines)**

The Environmental Reviewers (various sub-disciplines) must possess a recognised qualification relevant to the position and the Services and have at least 8 years' experience in environmental assessments and environmental compliance of infrastructure projects, including stormwater treatment, groundwater treatment, planning reviews and noise and vibration review.

### **2.24 Hydrology Reviewer**

The Hydrology Reviewer must have at least 15 years of experience in the infrastructure design and certification industry including drainage design of major road projects.

### **2.25 Line Marking and Signage Review**

The Line Marking and Signage Review must have at least 10 years of experience in the roads infrastructure industry and at least 3 years in civil construction.

### **2.26 Pavement Reviewer**

The Pavement Reviewer must have at least 15 years of experience in the roads infrastructure industry and at least 5 years in construction.

### **2.27 Traffic and Return Works Reviewer**

The Traffic Management Review must have at least 10 years of experience in the roads infrastructure industry with experience in traffic engineering, and development of road network designs.

### **2.28 Utilities and Services Reviewer**

The Utilities and Services Reviewer must have at least 15 years of experience in the roads infrastructure industry.

### **2.29 Durability Reviewer**

The Durability Reviewer must have at least 20 years of experience in materials including experience on roads infrastructure projects.

### **2.30 Urban Design & Landscape Reviewer**

The UD & LS Review must have at least 15 years of experience in the urban design and landscape including road infrastructure projects.

**2.31 Hydrogeology/Geology Reviewer**

The Hydrogeology and Geology Reviewers must have at least 15 years of experience in design of hydrogeology/geology on roads infrastructure projects.

**2.32 Alignment and Road Safety Reviewer**

The Alignment and Road Safety Reviewer must have at least 15 years of experience in geometric design, alignment and safety on roads infrastructure projects.

**2.33 Tolling Reviewer**

The Tolling Reviewer must have at least 15 years of experience in tolling design and implementation on roads infrastructure projects.

**2.34 ITS, Voice, Data, Comms Network Reviewer**

The ITS, Voice, Data, Comms Network Reviewer must have at least 15 years of experience in the design and implementation of ITS, voice, data and communications networks on roads infrastructure projects.

**2.35 Structures Reviewer (including various sub-disciplines)**

The Structures Reviewers (various sub-disciplines) must have at least 15 years of experience in the design of temporary works, buildings, viaducts/bridges, major structures and other structures for roads infrastructure projects.

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**3 Minimum surveillance commitment**

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

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

| Surveillance Activity | Frequency during the Project Activities |
|-----------------------|---|
|-----------------------|---|



|  |   |
|--|---|
| <p><b>Environmental Observation</b></p> <ul style="list-style-type: none"> <li>• Observe the implementation of physical environmental controls, in accordance with the Construction Environmental Management Plan and sub-plans, including: <ul style="list-style-type: none"> <li>• <i>noise and vibration;</i></li> <li>• <i>air quality;</i></li> <li>• <i>mud, dirt and debris on roadways;</i></li> <li>• <i>water quality;</i></li> <li>• <i>Contamination;</i></li> <li>• <i>property accesses;</i></li> <li>• <i>temporary pedestrian pathways and cycleways;</i></li> <li>• <i>working within the approved hours;</i></li> <li>• <i>spoil stockpiling and disposal;</i></li> <li>• <i>waste management and disposal;</i></li> <li>• <i>heritage management;</i></li> <li>• <i>landscape maintenance; and</i></li> <li>• <i>report to the Other Parties and the Environmental Representative.</i></li> </ul> </li> </ul> | <p>Twice weekly</p>                           |
| <p><b>Traffic and Transport Surveillance</b></p> <ul style="list-style-type: none"> <li>• Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, including: <ul style="list-style-type: none"> <li>• <i>layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation;</i></li> <li>• <i>provisions for bicyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic;</i></li> <li>• <i>timing and duration of road occupancies;</i></li> <li>• <i>qualifications of traffic control personnel; and</i></li> <li>• <i>truck haulage routes off the Project Site.</i></li> </ul> </li> </ul>  | <p>Daily</p> <p>Daily</p> <p>Weekly<br/>}</p> |

|   |  |
|---|--|
| <p><b>Work Health and Safety Observation</b></p> <ul style="list-style-type: none"> <li>In conjunction with provision of the other Services, advise the Other Parties of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property.</li> </ul>  | <p><i>As required</i></p>                          |
| <p><b>Quality Management Surveillance</b></p>   |  |
| <ul style="list-style-type: none"> <li>Inspect the Project Activities for compliance with the requirements of the Project Agreements.</li> </ul>  | <p><i>Twice weekly</i></p>                         |
| <ul style="list-style-type: none"> <li>Inspect circumstances where significant non-conformances are or will be reported.</li> </ul>   | <p><i>Each occurrence</i></p>                      |
| <ul style="list-style-type: none"> <li>Check compliance with the Quality Plans, process control plans and work processes.</li> </ul>  | <p><i>Each method statement</i></p>                |
| <ul style="list-style-type: none"> <li>Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> <li>testing frequencies;</li> <li>test methods;</li> <li>test result verifications; and</li> <li>release of Hold Points.</li> </ul> </li> </ul>   | <p><b>Weekly</b></p> <p><i>All Hold Points</i></p> |
| <ul style="list-style-type: none"> <li>Monitor the rectification of non-conforming product or work.</li> </ul>  | <p><i>All rectifications</i></p>                   |
| <ul style="list-style-type: none"> <li>Hold Point Releases – undertake all on site physical inspections immediately prior to releasing hold points.</li> </ul>  | <p><i>As required by each Hold Point</i></p>       |
| <p><b>Construction Surveillance</b></p>   |  |
| <ul style="list-style-type: none"> <li>Monitor the Project Company's and State Works Contractor's obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses;</li> </ul>   | <p><i>Monthly</i></p>                              |
| <ul style="list-style-type: none"> <li>Check that the Project Activities is within each relevant design tolerance;</li> </ul>   | <p><i>Weekly</i></p>                               |
| <ul style="list-style-type: none"> <li>Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with the Project Deed including clause 11.3(d) of the Project Deed.</li> </ul>   | <p><i>Weekly</i></p>                               |
| <ul style="list-style-type: none"> <li>Check that durability requirements of the Project Works are being addressed and applied;</li> </ul>  | <p><i>Weekly</i></p>                               |
| <ul style="list-style-type: none"> <li>Witness construction trials and commissioning tests, including: <ul style="list-style-type: none"> <li>use of any materials, plant and equipment that differs from accepted industry standards;</li> <li>concrete including in-situ concrete and precast elements;</li> <li>sprayed concrete;</li> </ul> </li> </ul> |  |

|   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• water collection, treatment and discharge systems;</li> <li>• rock bolts/ground anchors;</li> <li>• blasting;</li> <li>• Utility Service diversions.</li> </ul>  | <p><i>Each trial and test</i></p>               |
| <ul style="list-style-type: none"> <li>• Record photographically and catalogue general and detailed work in progress.</li> </ul>  | <p><i>20 digital photographs/day</i></p>        |
| <ul style="list-style-type: none"> <li>• Witness the construction of the Project Works and Temporary Works including: <ul style="list-style-type: none"> <li>• bridges and structures;</li> <li>• slope protection and retaining structures;</li> <li>• flood protection including sump and drainage systems;</li> <li>• structural connections;</li> <li>• groundwater collection, treatment and drainage systems;</li> <li>• soil and rock bolts and anchors;</li> <li>• earthing and electrolysis protection, including earthing and bonding of reinforcement and monitoring points;</li> <li>• mechanical and electrical works;</li> <li>• haulage roads;</li> <li>• provisions to access, secure, support and hand over the Third Party Works;</li> <li>• Utility Service diversions; and</li> <li>• adjustments to or demolition of existing infrastructure and buildings.</li> </ul> </li> </ul> | <p><i>Daily</i></p>                             |
| <p>Quality Product Surveillance Monitoring</p>  |   |
| <ul style="list-style-type: none"> <li>• Monitor structure foundation and subgrade preparation and treatments;</li> </ul>   | <p><i>Initial preparation and treatment</i></p> |
| <ul style="list-style-type: none"> <li>• Monitor compaction of earthworks and spoil;</li> <li>• Monitor manufacture of off-site pretensioned precast super t girders;</li> <li>• Monitor manufacture of off-site match cast segmental units (if required); and</li> <li>• Monitor launching of incrementally launched bridges (if required); and</li> <li>• Monitor manufacture of off-site precast units (not super t girders).</li> </ul>   | <p><i>Daily</i></p> <p><i>Weekly</i></p>        |

|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Monitor: <ul style="list-style-type: none"> <li>• preparation and testing of grout test specimens; and</li> <li>• bolt anchorage testing of rock bolts</li> <li>• Monitor preparation of sprayed concrete test specimens;</li> <li>• Monitor concrete supply, including: <ul style="list-style-type: none"> <li>• audits of each batch plant;</li> <li>• reviews of grout, mortar, concrete, precast concrete and sprayed concrete mix designs (including off-site work); and</li> <li>• monitoring of supplied mixes compared with mix designs.</li> </ul> </li> </ul> </li> </ul>   | <p><i>Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter</i></p> <p><i>Monthly</i></p> <p><i>Weekly</i></p> <p><i>Each mix</i></p> <p><i>Weekly</i></p>   |
| <ul style="list-style-type: none"> <li>• Monitor concreting and associated works including: <ul style="list-style-type: none"> <li>• preparation;</li> <li>• formwork;</li> <li>• bracing;</li> <li>• reinforcement;</li> <li>• placing;</li> <li>• stressing;</li> <li>• finishing;</li> <li>• curing; and</li> <li>• stripping formwork .</li> </ul> </li> <li>• Sprayed concrete, including: <ul style="list-style-type: none"> <li>• Batching and mixing</li> <li>• Application</li> <li>• Depth control</li> <li>• Curing</li> <li>• Production tests</li> </ul> </li> <li>• Monitor steel fabrication, including: <ul style="list-style-type: none"> <li>• reviews of welding procedures; and</li> <li>• monitoring of the fabrication and welding processes for major members (off-site).</li> </ul> </li> <li>• Monitor protective treatment systems (off-site).</li> <li>• Monitor ground movement equipment monitors including:</li> </ul> | <p><i>Initial activity and twice weekly thereafter</i></p> <p><i>Each procedure</i><br/><i>Twice weekly</i><br/><i>Twice weekly</i><br/><i>Monthly</i><br/><i>Daily</i></p> <p><i>Each procedure</i><br/><i>Twice weekly</i></p> <p><i>Twice Weekly</i></p> <p><i>Monthly</i><br/><i>Daily</i></p> |

|   |  |
|---|--|
| <ul style="list-style-type: none"><li>• audits of equipment; and</li><li>• review of results.</li></ul> |  |
|---|--|

## Schedule 4 Requirements of Certification and Monitoring Plan

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

- (a) the detailed schedule of functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier;
- (b) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Project Site and the roles and tasks of the nominated personnel, Technical Specialists and subcontractors;
- (c) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (d) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (e) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews, audits of Project Plans and other aspects of the Project Activities;
- (h) Hold Points and Witness Point requirements, in the form of a schedule, including the identification of all Witness Points and Hold Points required by the Independent Certifier. This should address the methodology on how physical inspections will be undertaken prior to the release of Hold Points if required by the relevant specification;
- (i) the Independent Certifier's comprehensive plans for:
  - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the Project Activities;
  - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Project Works to determine, verify and ensure the Companies' and State Works Contractor's compliance with the requirements of the Project Agreements;
  - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
  - (iv) off-site surveillance of critical activities, including precasting yards, on-site casting yards, concrete production plants and steel fabrication.
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:

- (i) reviewing the Project Plans;
  - (ii) addressing environmental monitoring and protection;
  - (iii) audit, surveillance and monitoring of the Companies' and State Works Contractor's design and construction activities, including the processes used for determining the levels and scope of surveillance of activities;
  - (iv) subject to this deed, identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
  - (v) ensuring that the Companies and the State Works Contractor have addressed all issues of review, comment and consultation with Transport in respect of the Design Documentation and the Project Activities; and
  - (vi) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (k) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) certification of the Design Documentation;
  - (ii) certification of the construction of the Project Works including constructability and durability issues;
  - (iii) certification of Retained Works Completion;
  - (iv) certification of the rectification by the Companies and the State Works Contractor of non-conformances and Defects (if required); and
  - (v) determination of any matters required by the Project Agreements;
- (l) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
  - (ii) committed surveillance resources; and
- (m) the basis of the initial Certification and Monitoring Plan in terms of the assumptions relating to the Project Activities including:
- (i) number of design lots developed; and
  - (ii) program durations.

# Independent Certifier Deed

## Attachment A Initial Certification and Monitoring Plan





























































































































































## Independent Certifier Deed

### Schedule 5 Subcontractors and Technical Specialists

| Name of subcontractor                                   | Part of the Services/Technical Speciality   |
|---|---|
| Strategic Solutions Group Pty Ltd (ABN: 28 626 856 942) | IC Representative (Design and Construction) |

# Independent Certifier Deed

## Schedule 6 Commercially Sensitive Information

Information which is "Commercially Sensitive Information" for the purposes of the M7-M12 Integration Project Deed.

# Independent Certifier Deed

## Schedule 7 Operational Readiness Group

### Part A Criteria

Each representative of a party referred to in clause 3A.1(b) must meet the following criteria:

- (a) each representative must be appropriately qualified, skilled and experienced and have sufficient knowledge to carry out the functions of the Operational Readiness Group under the M7-M12 Integration Project Deed, including determining whether each of the Retained Works Opening Conditions Precedent have been satisfied by the Companies;
- (b) each representative or nominee must be neutral, act impartially and be free from any conflict of interest and must not have:
  - (i) an ownership interest in any entity involved in the Integration Project, or a financial interest in the Integration Project (other than payment for services in the Operational Readiness Group);
  - (ii) a close professional or personal relationship with any member of any entity involved in the Integration Project which could reasonably be considered to suggest partiality; or
  - (iii) involvement in the Integration Project of a nature which could compromise that representative or nominee's ability to participate impartially in the Operational Readiness Group's activities.

### Part B Disclosure Statement

Each party must submit a disclosure statement for each of its representatives or nominees to the other parties. Each disclosure statement must include:

- (a) a resume of the representative or nominee's relevant experience;
- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the representative or nominee's primary or full-time employer, to the Integration Project and with all entities involved in the Integration Project; and
- (c) disclosure of close professional or personal relationships with any member of any entity involved in the Integration Project.



# Schedule 8 Aboriginal Participation Rules

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## 1 Aboriginal participation in construction

### 1.1 Independent Certifier Obligations

The Independent Certifier must:

- (a) within 10 Business Days of entering this deed, provide a finalised Aboriginal Participation Plan which complies with the requirements of this Schedule, which sets out how the Aboriginal Participation Requirement for this deed will be achieved;
- (b) comply with and implement the Aboriginal Participation Plan to meet the Aboriginal Participation Requirement; and
- (c) provide to Transport, in an agreed format:
  - (i) Aboriginal Participation Report within 3 Business Days after 31 March, 30 June, 30 September and 31 December until completion of the Services, which provides details of how the Aboriginal Participation Plan is being implemented and quantifies, with appropriate calculations, the Actual Aboriginal Participation being achieved to date. The report is to include verifiable evidence to support the Actual Aboriginal Participation reported; and
  - (ii) the final Aboriginal Participation Report. Details included in the final Aboriginal Participation Report must describe and explain:
    - A. how the Aboriginal Participation Plan has been implemented and quantify the Actual Aboriginal Participation for this deed; and
    - B. whether the Actual Aboriginal Participation by the Independent Certifier is less than the Aboriginal Participation Requirement, and if so, include a calculation of the Unmet Percentage;
- (d) provide any information or assistance, as reasonably requested by Transport to enable Transport to meet its obligations under the Aboriginal Procurement Policy; and
- (e) where an Unmet Percentage has been assessed by Transport, pay Transport within 20 Business Days after completion of the Services an amount equal to the Unmet Percentage multiplied by the Fee. The amount so calculated will be a debt due from the Independent Certifier to Transport. Once such monies are received, Transport will direct that amount to the Aboriginal Participation Fund established by Training Services NSW.

### 1.2 Definitions

The following definitions apply to this Schedule 8:

**Actual Aboriginal Participation** means the percentage of actual Aboriginal participation in the Contractor's Activities, as determined in accordance with the Aboriginal Participation Plan.

**Aboriginal Participation Plan** means the plan submitted by the Independent Certifier in accordance with this Schedule.

**Aboriginal Participation Report** means the plan submitted by the Independent Certifier in accordance with this Schedule.

**Aboriginal Participation Requirement** means the mandatory minimum requirement for Aboriginal participation in this deed, being an overall participation target of 5.4% in the delivery phase of the Integration Project and consisting of:

- (a) 2.4% Indigenous employment – full time equivalent positions in the workforce required for delivery; and
- (b) 3% Indigenous procurement-procurement-supplier use expenditure in delivery.

as set out in the Aboriginal Participation Plan.

**Aboriginal Procurement Policy** means the NSW Government's Aboriginal Procurement Policy and published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>.

**Unmet Percentage** means the difference between the Aboriginal Participation Requirement and the Actual Aboriginal Participation in the Services.

## Schedule 9 Independent Certifier Deed Poll

# M7-M12 Integration Project: Independent Certifier Deed Poll

Dated

Aurecon Australasia Pty Ltd (Independent Certifier)

**King & Wood Mallesons**  
Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Independent Certifier Deed Poll

|                      |   |          |
|----------------------|---|----------|
| <b>Details</b>       | <b>1</b>  |          |
| <b>General terms</b> | <b>2</b>  |          |
| <b>1</b>             | <b>Definitions and Interpretation</b>                                 | <b>2</b> |
| 1.1                  | Definitions   | 2        |
| 1.2                  | Definitions in D&C Deed   | 2        |
| 1.3                  | Interpretation  | 2        |
| 1.4                  | No bias against drafting party  | 3        |
| 1.5                  | Business Day  | 4        |
| 1.6                  | Inconsistencies   | 4        |
| <b>2</b>             | <b>Independent Certifier's Covenant</b>                               | <b>4</b> |
| <b>3</b>             | <b>Independent Certifier's General Representations and Warranties</b> | <b>4</b> |
| <b>4</b>             | <b>Further acknowledgements and warranties</b>                        | <b>5</b> |
| <b>5</b>             | <b>Governing Law and Jurisdiction</b>                                 | <b>5</b> |
| 5.1                  | Governing law   | 5        |
| 5.2                  | Jurisdiction  | 5        |
| <b>6</b>             | <b>Miscellaneous</b>  | <b>6</b> |
| 6.1                  | Further acts and documents  | 6        |
| 6.2                  | Expenses  | 6        |
| 6.3                  | Severance   | 6        |
| 6.4                  | Status of document  | 6        |
| <b>7</b>             | <b>Limitation of liability</b>  | <b>6</b> |
| <b>Signing page</b>  |   | <b>7</b> |
| <b>Annexure A</b>    | <b>Services</b>   | <b>8</b> |

# Independent Certifier Deed Poll

## Details

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By:

---

|                              |           |  |
|------------------------------|-----------|--|
| <b>Independent Certifier</b> | Name      | Aurecon Australasia Pty Ltd                        |
|                              | ABN       | 54 005 139 873                                     |
|                              | Address   | Level 11, 73 Miller Street, North Sydney, NSW 2060 |
|                              | Email     | [REDACTED]@aurecongroup.com                        |
|                              | Attention | [REDACTED]   |

For the benefit of:

---

|                   |           |   |
|-------------------|-----------|---|
| <b>Contractor</b> | Name      | John Holland Pty Ltd                              |
|                   | ABN       | 11 004 282 268                                    |
|                   | Address   | Level 9, 180 Flinders Street, Melbourne, Vic 3000 |
|                   | Email     | [REDACTED]@jhg.com.au                             |
|                   | Attention | [REDACTED]  |

|                 |          |   |
|-----------------|----------|---|
| <b>Recitals</b> | <b>A</b> | On or about the date of this deed poll, Transport, Westlink, WSO Co and the State Works Contractor entered into the Independent Certifier Deed.   |
|                 | <b>B</b> | Westlink, WSO Co, the State Works Contractor and the Contractor have entered into the D&C Deed.   |
|                 | <b>C</b> | The Independent Certifier Deed and the Project Documents provide for certain functions to be carried out by the Independent Certifier for the benefit of Transport. The Independent Certifier carries out certain functions under the D&C Deed. |
|                 | <b>D</b> | By entering into this deed, the Independent Certifier gives certain certifications in favour of the Contractor with respect to the functions it carries out under the D&C Deed.   |
|                 | <b>E</b> | The Independent Certifier executes this document in accordance with clause 3.16 of the Independent Certifier Deed.  |

# Independent Certifier Deed Poll

## General terms

The Independent Certifier declares for the benefit of the Contractor, as follows:

---

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this deed:

**D&C Deed** means the deed titled 'M7-M12 Integration Project D&C Deed' between Westlink, WSO Co, the State Works Contractor and the Contractor and dated on or about the date of the M7-M12 Integration Project Deed.

**Independent Certifier Deed** means the deed entitled "Independent Certifier Deed" entered into between Transport, each Company, the State Works Contractor and the Independent Certifier on or about the date of the M7-M12 Integration Project Deed.

**M7-M12 Project Integration Deed** means the deed between Transport, the Companies, the Borrower, the Partners and the Security Trustee dated on or about the date of this deed (and includes Annexure A).

**Project Documents** has the meaning given in the D&C Deed.

**Services** means the services set out in Annexure A.

#### 1.2 Definitions in D&C Deed

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

#### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation of this deed;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) **includes** in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:

- (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or code and standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either of these includes:
- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (l) a reference to a court or tribunal is to an Australian court or tribunal;
- (m) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (n) a reference to a **month** is a reference to a calendar month; and
- (o) a reference to **\$** or **dollar** is to Australian currency.

#### 1.4 No bias against drafting party

No term or provision of this deed will be construed against a party on the basis that the deed or the term in question was put forward or drafted by or on behalf of that party.



### 1.5 Business Day

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

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

### 1.6 Inconsistencies

To the extent of any inconsistency between the terms of this deed the D&C Deed, the D&C Deed will prevail over this deed.

---

## 2 Independent Certifier's Covenant

The Independent Certifier agrees to:

- (a) carry out the Services in accordance with the terms of, and otherwise comply with its obligations under the Independent Certifier Deed; and
- (b) hold and maintain the insurance required by clause 8.3 of the Independent Certifier Deed,

to the extent applicable to the Services under this Deed.

---

## 3 Independent Certifier's General Representations and Warranties

The Independent Certifier represents and warrants that:

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

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## 4 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that the Contractor:
  - (i) is relying upon the skill, expertise and experience of the Independent Certifier in the performance of its obligations under this deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Contractor that, in performing the Services, it will comply with all law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to the Contractor that, at all times, it will act within the time requirements for the performance of its obligations under the Independent Certifier Deed;
- (d) without limiting clauses 4(a) and 3(b), acknowledges that the Contractor is entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to:
  - (i) this deed and the D&C Deed; and
  - (ii) any decision, determination or the exercise of powers by the Independent Certifier under the M7-M12 Integration Project Deed or the State Works Deed which is binding on the Contractor, as contemplated under clause 10.2(k) of the D&C Deed;
- (e) warrants that in performing the Services it will act independently of Transport, each Company, the State Works Contractor and any of their respective Related Parties (including the Contractor).

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## 5 Governing Law and Jurisdiction

### 5.1 Governing law

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

### 5.2 Jurisdiction

- (a) The Independent Certifier 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) The Independent Certifier 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 5.2(a).

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## 6 Miscellaneous

### 6.1 Further acts and documents

The Independent Certifier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Independent Certifier) required by law or reasonably requested by the Contractor to give effect to this deed.

### 6.2 Expenses

The Independent Certifier must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

### 6.3 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 unenforceability under the law of any other jurisdiction of that or any other provision of this deed.

### 6.4 Status of document

This document is effective as a deed poll.

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## 7 Limitation of liability

[REDACTED]

- [REDACTED]
- [REDACTED]

EXECUTED as a deed poll.

# Independent Certifier Deed Poll

## Signing page

DATED: \_\_\_\_\_

Executed by Aurecon Australasia Pty Ltd  
(ACN 005 139 873) in accordance with  
section 127 of the Corporations Act 2001  
(Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director  
[delete position as appropriate]

\_\_\_\_\_  
Full name of director who states that he or she is  
a director of Aurecon Australasia Pty Ltd  
(ACN 005 139 873)

\_\_\_\_\_  
Full name of company secretary/director  
[delete position as appropriate] who states  
that he or she is a company  
secretary/director [delete position as  
appropriate] of Aurecon Australasia Pty  
Ltd (ACN 005 139 873)

# Independent Certifier Deed Poll

## Annexure A Services

The Services for the purposes of the D&C Deed include those referred to or required under the following clauses of the D&C Deed:

1. clause 10.2(k)(i) (Independent Certifier) in respect of decisions, determinations or the exercise of powers by the Independent Certifier under the M7-M12 Integration Project Deed or the State Works Deed which are binding on the Contractor under the D&C Deed;
2. clause 11.4 (Preparation of Design Documentation) to the extent the Independent Certifier reviews, comments on or monitors the design performance of the Contractor as contemplated by that clause;
3. clause 15.1(ca) (Retained Works Completion Process) only in respect of the notice provided by the Independent Certifier containing a list of items which it believes must be completed before Retained Works Completion is achieved, as contemplated under that clause;
4. clause 15.1(ea) (Retained Works Completion process) only in respect of the notice provided by the Independent Certifier containing a list of items which it believes must be completed before Retained Works Completion is achieved, or that Retained Works Completion is so far from being achieved that it is not practicable to issue such certificate, as contemplated under that clause;
5. clause 16.1(b) (Returned Works Construction Completion);
6. clause 17.7(d) (Correction of Defects in the Local Area Works, Utility Service Works or Property Works) to the extent the Independent Certifier determines that a Defect exists as contemplated under that clause;
7. services in respect of issuing the Retained Works Opening Date notice issued by the Independent Certifier pursuant to clause 13.4(b)(iv)(A) of Annexure A to the M7-M12 Integration Project Deed, as acknowledged by the Contractor under clause 15.5 of the D&C Deed; and
8. services in respect of executing a certificate in the form of Appendix G of Schedule 8 to the D&C Deed in respect of as-built documentation for the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) and providing it to the Principal's Representative,

and any other Services incidental or necessary to discharge the Independent Certifier's obligations under the D&C Deed as specified in, or reasonably inferable from, the D&C Deed.

# Independent Certifier Deed

## Signing page

DATED: 21 FEBRUARY 2023

Signed, sealed and delivered as a deed

### TRANSPORT

Signed, sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its duly authorised delegate in the presence of:

[Redacted signature]

Signature of witness

[Redacted signature]

Signature of authorised delegate

[Redacted name]

Name of witness (print)

[Redacted name]

Name of authorised delegate (print)

[Redacted position]

Position of authorised delegate (print)

[Redacted signature]

**THE COMPANIES**

**WSO Co**

Executed by WSO Co Pty Limited (ACN 102 757 924) in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director



Full name of director who states that he or she is a director of WSO Co Pty Limited (ACN 102 757 924)



Signature of company secretary/director [~~delete position as appropriate~~]



Full name of company secretary/director [~~delete position as appropriate~~] who states that he or she is a company secretary/director [~~delete position as appropriate~~] of WSO Co Pty Limited (ACN 102 757 924)

**Westlink**

Executed by Westlink Motorway Limited (ACN 096 512 300) in accordance with section 127 of the Corporations Act 2001 (Cth):



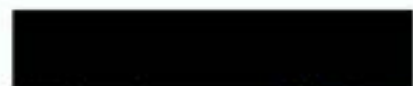
Signature of director



Full name of director who states that he or she is a director of Westlink Motorway Limited (ACN 096 512 300)



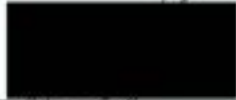
Signature of company secretary/director [~~delete position as appropriate~~]



Full name of company secretary/director [~~delete position as appropriate~~] who states that he or she is a company secretary/director [~~delete position as appropriate~~] of Westlink Motorway Limited (ACN 096 512 300)

**STATE WORKS CONTRACTOR**

Executed by M7 State Works Contractor Pty Ltd (ACN 664 603 249) as trustee for the M7 State Works Contractor Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



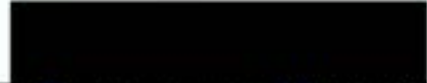
Signature of director



Full name of director who states that he or she is a director of M7 State Works Contractor (ACN 664 603 249)



Signature of company secretary/director ~~[delete position as appropriate]~~



Full name of company secretary/director ~~[delete position as appropriate]~~ who states that he or she is a company secretary/director ~~[delete position as appropriate]~~ of M7 State Works Contractor (ACN 664 603 249)



**INDEPENDENT CERTIFIER**

Executed by Aurecon Australasia Pty Ltd  
(ACN 005 139 873) in accordance with  
section 127 of the Corporations Act 2001



Signature of director



Full name of director who states that he or she is  
a director of Aurecon Australasia Pty Ltd (ACN  
005 139 873)



Signature of company secretary/director  
[delete position as appropriate]



Full name of company secretary/director  
[delete position as appropriate] who states  
that he or she is a company  
secretary/director [delete position as  
appropriate] of Aurecon Australasia Pty Ltd  
(ACN 005 139 873)