

# NorthConnex Project

## Independent Certifier Deed

Road and Maritime Services  
RMS

NorthConnex Company Pty Ltd  
Project Company

NorthConnex State Works Contractor Pty Ltd  
State Works Contractor

APP Corporation Pty Limited  
Independent Certifier

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Our reference 2652/14606/80145688

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# Independent Certifier Deed

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**Date** 31 JANUARY 2015

**Parties** Roads and Maritime Services of Level 9, 101 Miller Street, North Sydney, NSW 2060 (RMS)

NorthConnex Company Pty Ltd (ACN 602 719 513) of 101 Wallgrove Road, Eastern Creek, NSW 2766 (Project Company)

NorthConnex State Works Contractor Pty Ltd (ACN 169 328 385) of 101 Wallgrove Road, Eastern Creek, NSW 2766 (State Works Contractor)

APP Corporation Pty Limited (ACN 003 764 770) of Level 10, 111 Pacific Highway, North Sydney, NSW 2060 (Independent Certifier)

## Background

- A. On or about the date of this deed, the Project Company entered into the Project Deed, and the State Works Contractor entered into the State Works Deed, with RMS in respect of the Works.
- B. The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the Works and offers its expertise in those fields.
- C. The Project Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1.
- D. The Independent Certifier will perform its obligations on the terms and conditions of this deed.

## This deed provides

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed:

**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 Equity Document;
- (b) any information relating to the Project Company's, the State Works Contractor's or the Independent Certifier's cost structure or profit margins;
- (c) any information relating to any of the Project Company's, 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 Project Company, 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.

**Completion Phase Services** means all Services related to Completion and the rectification of Defects and the performance by each of the Project Company and the State Works Contractor of its obligations in respect of Completion of the Works and the rectification of Defects, including those specified in clause 14 of the Project Deed.

**Construction Phase Services** means all Services related to the construction of the Works and the performance by each of the Project Company and the State Works Contractor of its construction obligations in respect of the Works, including those specified in clause 13 of the Project Deed.

**Design Phase Services** means all Services related to the design of the Works and the performance by each of the Project Company and the State Works Contractor of its design obligations in respect of the Works, including those specified in clause 11 of the 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'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.

**M2 Project Deed** means:

- (a) the deed entitled "M2 Motorway Project Deed" entered into between the Minister for Roads, Roads and Traffic Authority of New South Wales, The Hills Motorway Limited and Hills Motorway Management Limited on or about 26 August 1994;
- (b) the deed entitled "M2 Motorway Upgrade Project Deed" entered into between the Minister for Roads, RMS, The Hills Motorway Limited and Hills Motorway Management Limited on or about 25 October 2010; and
- (c) the deed entitled "M2 Integration Project Deed" between the Minister for Roads and Freight for and on behalf of Her Majesty Queen Elizabeth the Second in right of the State of New South Wales, RMS and the M2 Entities dated on or around the date of this deed in respect of the widening of the M2 Motorway.

**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 14.13(a)(i) of the Project Deed.

**Other Parties** means RMS, the Project Company and the State Works Contractor.

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

**Project Agreements** means the Project Deed, the State Works Deed, the M2 Interface Deed, the M7 Interface Deed and any other document the parties agree is a Project Agreement.

**Project Deed** means the deed titled "NorthConnex Project: Project Deed" between RMS and the Project Company dated on or about the date of this deed.

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

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

**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.

**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 Project Deed will have the same meaning in this deed as in the 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 Contra proferentem**

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

#### **1.5 Business Day**

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

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

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

Any consent or approval referred to in, or required under, this deed from the 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 RMS as an Authority**

- (a) Subject to clause 1.7(b), the Project Company, the State Works Contractor and the Independent Certifier acknowledge and agree that:
  - (i) nothing in this deed or in any of the Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion

of RMS to exercise any of its functions and powers pursuant to any legislation; and

- (ii) without limiting clause 1.7(a)(i) anything which RMS 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 RMS under this deed and will not entitle the Project Company, the State Works Contractor or the Independent Certifier to make any Claim against RMS arising out of the subject matter of this deed and the other Project Documents to which RMS is a party.
- (b) The parties agree that clause 1.7(a) is taken not to limit any liability which RMS would have had to the Project Company, the State Works Contractor or the Independent Certifier under this deed, or any other Project Document to which RMS is a party, as a result of a breach by RMS of a term of this deed or any other Project Document to which RMS is a party but for clause 1.7(a).

## 1.8 Ambiguous terms

- (a) If RMS considers, or if any of the Independent Certifier, the Project Company or the State Works Contractor notifies RMS'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), RMS's Representative must direct the interpretation of this deed which the parties must follow.
- (b) RMS'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 RMS's Representative gives in accordance with clause 1.8(a):
  - (i) will not relieve the Independent Certifier, the Project Company 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 Project Company or the State Works Contractor to make (nor will it make RMS liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect RMS's rights against any of the Independent Certifier, the Project Company 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 Project Company 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 Payment

- (a) Subject to the Independent Certifier performing the Services in accordance with this deed, the Project Company will pay the Independent Certifier the Fee subject to and in accordance with the Payment Schedule.
- (b)

## 2.3 Nature of Services

- (a) The Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect, the Services or the Independent Certifier's obligations under 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 RMS must determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this deed which may affect the Project Company or the State Works Contractor, RMS may take into account representations made by the Project Company 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;
- (b) it has received a copy of the M2 Project Deed and the execution version of the M7 Motorway Project Deed and that it has read, and is familiar with, the terms of the M2 Project Deed and the execution version of the M7 Motorway Project Deed to the extent each relates to the Services; and
- (c) 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, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a skilled professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements (and where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 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 for the purpose of determining whether Completion has been achieved by the Project Company 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 Project Company 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; and
- (k) in undertaking the Services, will comply with all the safe working requirements of the Project Company and the State Works Contractor.

### 3.4 Access and Project Office

- (a) Each of the Project Company 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 Project Company 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 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 RMS otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.

### 3.7 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 RMS's Representative, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (c) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
- (d) a summary of key risks and issues relating to the Services;
- (e) details of any Project Company or State Works Contractor non-conformances raised by the Independent Certifier or RMS and details on the verification of the rectification by the Project Company 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 Deeds poll

- (a) The Independent Certifier must, on or prior to the Satisfaction Date (as defined in each of the M2 Interface Deed and the M7 Interface Deed respectively) enter into a deed poll:
  - (i) in favour of the M7 Entities in a form satisfactory to the M7 Entities under which the Independent Certifier acknowledges the role of the M7 Entities under the M7 Motorway Project Deed and that the M7 Entities will be relying on the Independent Certifier's performance of its obligations under this deed in respect of certifying the design and construction of the NorthConnex Works (as defined in the M7 Interface Deed) as described in clause 2.1(d) of the M7 Interface Deed; and
  - (ii) in favour of the M2 Entities in a form satisfactory to the M2 Entities under which the Independent Certifier acknowledges the role of the M2 Entities under the M2 Project Deed and that the M2 Entities will be relying on the Independent Certifier's performance of its obligations under this deed in respect of certifying the design and construction of the NorthConnex Works (as defined in the M2 Interface Deed) as described in clause 2.1(d) of the M2 Interface Deed.
- (b) The parties acknowledge that the forms of deed poll at Schedule 8 will be satisfactory to the M7 Entities and the M2 Entities for the purposes of clauses 3.15(a)(i) and 3.15(a)(ii) (as applicable) unless the Project Company otherwise notifies the Independent Certifier.

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## 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 Completion,



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

- (iii) two representatives nominated by the Project Company;
- (iv) two representatives nominated by RMS; 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 Project Deed;
  - (ii) RMS and the Project Company 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 Project Company and the representatives nominated by RMS are to be engaged by or through the Independent Certifier on commercial terms and conditions acceptable to RMS and the Project Company;
  - (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) RMS and the Project Company 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 Project Company or RMS (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

- (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.

### 3A.4 Meetings

- (a) Without limiting clause 3A.4(b), the Independent Certifier must convene meetings of the Operational Readiness Group so as to discharge the functions of the Operational Readiness Group under the Project Deed, including making the determinations required by clause 14.13 of the Project Deed and to discuss and review any matters relating to the opening of the Motorway pursuant to clause 14.14.
- (b) The Independent Certifier must, with the agreement of all members of the Operational Readiness Group, establish the procedures governing meetings of the Operational Readiness Group and visits to and inspections of the Project Site, the Motorway and the Project Activities. Meetings of the Operational Readiness Group 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 RMS's representatives and one of the Project Company's 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:
  - (i) develop an agenda for each meeting of the Operational Readiness Group; and
  - (ii) 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 Project Company and RMS. 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 Motorway and inspect the Project Activities at the times required by the 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 Motorway Opening Date;
- (b) the Date of Completion; and
- (c) termination of the 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 Project Company pursuant to clause 3A.1(b)(ii) or the representative nominated by RMS 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**

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

- (a) act professionally and independently of each and all of the Other Parties and in a timely manner;
- (b) act honestly, reasonably and fairly;
- (c) exercise the standard of care, knowledge, skill, expertise, experience and diligence which would be expected of a skilled professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular; and
- (d) 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**

The Independent Certifier must:

- (a) keep confidential details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Works, this deed, the Project Documents or the Project and not provide, disclose or use the information or documents except:
  - (i) to disclose them to the Other Parties;
  - (ii) for the purposes of performing the Services;
  - (iii) where required by Law or to obtain legal advice on this deed; or
  - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 4.2(a).

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

### **4.3 Exclusivity**

- (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 Project Company or the State Works Contractor or any of their respective contractors, consultants or providers; or
  - B. in the Project; or
- (iv) provide services to or advise any other person in relation to the 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 Project and to ensure the best value for money of the Project; and
  - (ii) damages may not be a sufficient remedy for a breach of 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 Project) dated on or around the date of this deed between the Sub IC, the Project Company Group 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, a partner, joint venturer or agent of any Other Party.
- (b) 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 Project Documents;
  - (ii) waive or alter any terms of the Project Documents; or
  - (iii) discharge or release a party from any of its obligations pursuant to the Project Documents.

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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 Project Company 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 Project Company's or the State Works Contractor's ability to achieve Completion by the Date for Completion or the Sunset Date;
  - (ii) it considers to be, in the context of the 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 Project Document and another party or the parties to any Project Document or any other person in relation to a Project Document or the 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 Completion has been achieved by the Project Company and the State Works Contractor) and the Independent Certifier must consider any comments received from the Other Parties.

### 6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the Project Company's or the State Works Contractor's obligations under this deed or the Project Agreements, the Project Company and the State Works Contractor must:
  - (i) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise requested by the Independent Certifier or directed by RMS;
  - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by RMS, including allowing access to the Project Site and any Extra Land and all areas where the Works are being performed;

- (iii) ensure that Hold Points and Witness Points are included in the Project Plans as reasonably required by the Independent Certifier to enable the Independent Certifier to perform the Services; and
  - (iv) coordinate the Project Activities with the Services.
- (b) 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 RMS to have no liability

Each party acknowledges that RMS 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 RMS being a party to this deed; or
- (b) for the performance of any obligation of the Project Company, 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 Changes to Services, suspension of Services and appointment of Substitute Certifier

- (a) The Other Parties may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Services referred to in clause 7.1(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the 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 7.1(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 7.1, in accordance with this deed. Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

## 7.2 Meeting 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 7.2(a) by:
  - (i) requesting that the Independent Certifier comply with this deed;
  - (ii) changing the Services in accordance with clause 7.1(a);
  - (iii) suspending the Services in accordance with clause 7.1(c);
  - (iv) appointing a Substitute Certifier in accordance with clause 7.1(d); or
  - (v) terminating the appointment of the Independent Certifier in accordance with clause 9.

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## 8. Liability, insurance and indemnity

### 8.1 Limitation of liability

### 8.2 Exclusions

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

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

### 8.3 Insurances

From the later of the date of the 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 not less than \$ \_\_\_\_\_ for any single claim and in the aggregate in respect of legal liability (including, without limitation, in connection with property damage, personal injury or death) arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents or consultants; and
  - (ii) a deductible of not more than \$ \_\_\_\_\_;
- (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 not less than \$ \_\_\_\_\_ 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 \$ \_\_\_\_\_; 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) certified copies of the insurance policies apart from the professional indemnity insurance and workers compensation insurance; and
- (b) certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 8,

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

### 8.6 Periods for insurance

The Independent Certifier must maintain:



- (a) the professional indemnity insurance for a period of 7 years (whether annually renewable or a single project policy) after the Date of Completion or the date of termination of this deed, whichever is earlier;
- (b) the workers compensation insurance until it ceases to perform the 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 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; 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).

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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 7 days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

## 9.2 Termination

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

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

## 9.3 Delivery of documents

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

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

## 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 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 contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007 or the NSW Public Private Partnership Guidelines published by the NSW Government and dated August 2012;
- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party;
- (f) which, in the reasonable opinion of 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 Project Company 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 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 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 Project; or

- (g) by RMS that is not Commercially Sensitive Information.

### 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) and 10.2(e), 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 Project Company, the State Works Contractor and the Independent Certifier must not issue any information, publication, document or article for publication concerning the Project or the Project Activities to any media (or permit any third party to do so) without the prior written approval of RMS's Representative (acting reasonably) and only in a manner approved by RMS's Representative (acting reasonably).
- (b) If the Project Company, 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 Project or the Project Activities, that party must promptly provide details of such request to RMS's Representative.

### 10.5 Disclosure by RMS

- (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 RMS and will be published in accordance with applicable government policies and guidelines;
  - (iii) this deed and information concerning this deed will be published on RMS'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) RMS and RMS'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, RMS has consulted with the Project Company, 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) RMS will notify the Project Company, the State Works Contractor and the Independent Certifier of any proposed disclosure of any information that RMS considers (acting reasonably) may be Commercially Sensitive

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

- (iii) following notification by RMS in accordance with clause 10.5(b)(ii), RMS will take reasonable steps to consult with the Project Company, 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 RMS in accordance with clause 10.5(b)(ii); or
  - B. consultation between RMS, the Project Company, the State Works Contractor and the Independent Certifier (as applicable) in accordance with clause 10.5(b)(iii),

the Project Company, 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 Project Company, 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 Project Company, the State Works Contractor or the Independent Certifier (as applicable) received notification from RMS or the date on which the consultation process concluded (as relevant).

- (c) RMS may take into account any objection received from the Project Company, the State Works Contractor or the Independent Certifier pursuant to clause 10.5(b)(iv) in determining whether the information identified by the Project Company, 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 RMS'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; and
- (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:

### RMS

Address: Level 9  
101 Miller Street  
North Sydney  
NSW 2060

Email address: NorthConnex@rms.nsw.gov.au  
Attention: General Manager, Motorway Projects

### Project Company

Address: 101 Wallgrove Road, Eastern Creek, NSW 2766  
Email address: [ncx@westlinkm7.com.au](mailto:ncx@westlinkm7.com.au)  
Fax: 02 9834 9211  
Attention: Chief Executive Officer

and, prior to expiry of the last Defects Correction Period, with a copy to:

Address: Level 9, 1 Chifley Square, Sydney NSW 2000  
Email address: [programdirector@northconnex.com.au](mailto:programdirector@northconnex.com.au)  
Fax: 02 9254 4990  
Attention: Program Director

### State Works Contractor

Address: 101 Wallgrove Road, Eastern Creek, NSW 2766  
Email address: [ncx@westlinkm7.com.au](mailto:ncx@westlinkm7.com.au)  
Fax: 02 9834 9211  
Attention: Chief Executive Officer

and, prior to expiry of the last Defects Correction Period, with a copy to:

Address: Level 9, 1 Chifley Square, Sydney NSW 2000  
Email address: [programdirector@northconnex.com.au](mailto:programdirector@northconnex.com.au)  
Fax: 02 9254 4990  
Attention: Program Director

**Independent Certifier**

Address: Level 7, 116 Miller Street, North Sydney, NSW 2060  
 Email address: scott.johnston@app.com.au  
 Attention: Scott Johnston

**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 RMS to the Project Company, the State Works Contractor or the Independent Certifier, have been sent from rms.nsw.gov.au;
      - 2) in the case of notices sent by the Project Company to RMS, the State Works Contractor or the Independent Certifier, have been sent from westlinkm7.com.au or such other domain as is notified to the other parties in writing by the Project Company;
      - 3) in the case of notices sent by the State Works Contractor to RMS, the Project Company or the Independent Certifier, have been sent from westlinkm7.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 RMS, the Project Company or the State Works Contractor, have been sent from app.com.au 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 Project Company 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 Project Company is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

### **13.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, 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.

### **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.

## Schedule 1 - Services

### PART A

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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 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 Project Company 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 11 of the Project Deed and satisfying itself that the Design Documentation satisfies the requirements of the Project Deed, the State Works Deed and the SWTC, including by:
  - (i) attending meetings of the Project Company's design team and any other meetings at which design issues are discussed;
  - (ii) meeting with the Project Company and the Contractor; and
  - (iii) conducting audits of the Project Company's 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 including providing various certificates required under the Project Agreements;
- (d) all the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier or which requires the Project Company to ensure will be performed by the Independent Certifier;
- (e) 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;

- (f) where requested by the Project Company pursuant to clause 2.2, the Independent Certifier carrying out detailed "first principles" design checks of the Design Documentation in respect of:
- (i) bridges;
  - (ii) tunnel support; and
  - (iii) other major structures;
- (g) from the Date of Completion until the end of the period two years following, ensuring that O&M Work is independently certified by performing the following activities once per year:
- (i) review of the audit schedule and plan;
  - (ii) witnessing separate annual audits for operations and maintenance which typically are for 5 days duration;
  - (iii) reviewing audit reports; and
  - (iv) providing a report on audit results and certifying that the requirements for the O&M Work contained in the NorthConnex SWTC are being met; and
- (h) certification of the correction of any Defects and any non-conformance by the Project Company 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.

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## 3. Performance of the Services and the Planning Approval

- (a) The Independent Certifier must certify that the Final Design Documentation is consistent with any Future Modification Report (as defined in Schedule 3 to the Project Deed) submitted to the Secretary of the Department of Planning and Environment (**Secretary**) pursuant to condition B5 of the Planning Approval.
- (b) Provided that:
- (i) the Project Company has submitted a Future Modification Report to the Secretary which satisfies the requirements of condition B5 of the Planning Approval (other than the requirement for satisfaction of the Secretary); and
  - (ii) the Final Design Documentation is consistent with that Future Modification Report so submitted,
- the Independent Certifier may not withhold its verification of the Final Design Documentation pursuant to paragraph 3(a).
- (c) To the extent that the Secretary requires the Future Modification Report to be modified, the Independent Certifier must undertake a final verification of the Final Design Documentation to reflect such requirements.

## Schedule 2 - Payment Schedule

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### 1. Payment claim

At the end of each month after the later of the date of the Project Deed and the date of this deed, the Independent Certifier must submit to the Project Company (copying RMS) an account for payment on account of the Fee:

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

### 2. Payment and notification of disputed amounts

- (a) The parties agree that the Project Company will pay % of the Fee, including any adjustments calculated in accordance with paragraph 4 of this Payment Schedule.
- (b) Subject to paragraph 5 of this Payment Schedule the Project Company must, within 30 days after receipt of the account for the month (submitted in accordance with paragraph 1), pay the Independent Certifier any portion of the Fee attributable to the Services performed during the month which is not disputed. If the Project Company disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, the Project Company must notify the Independent Certifier in writing of the reasons for any amount which is disputed (which must be copied to RMS).
- (c) If the parties do not resolve the matter within 10 Business Days after the issue of the Project Company's written notice, RMS's Representative (acting reasonably and independently) must determine the dispute. Any determination by RMS's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

### 3. The Fee

- (a) Subject to paragraphs 3(b) and 3(c), the Fee consists of the lump sums set out in the table below.
- (b) The Fee  
  
Schedule 2  
clause 2.2. in accordance with this  
the Project Company pursuant to
- (c)

but only to the extent that the Independent Certifier has obtained the Project Company's prior written consent to the incurring of such expenses.

<b>Fee</b>	

**4. Schedule of Rates**

<b>Role</b>	<b>Nominated Personnel</b>	<b>Daily Rate (\$) (excluding GST)</b>
<b>Project Management Design</b>		
I C Representative		
I C Project Director		
Design Manager		
Quality Management		
Safety Reviewer		
Environmental Reviewer		
Administration/Document Controller		
<b>Design Reviewers</b>		
<b>Tunnel design</b>		
Tunnelling Reviewer		
Support Systems		
Engineers cut and cover		
<b>Geotech and Ground support</b>		

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Hydrogeology Reviewer		
Geology reviewer		
<b>roads and civil</b>		
Alignment and Road Safety Reviewer		
<b>Pavements Reviewer</b>		
Hydrology/Drainage Reviewer		
Lines and Signs Reviewer		
Return Works		
Traffic and Return Works Reviewer		
<b>Mech/Elec + Durability</b>		
Utilities and Services Reviewer		
Ventilation Reviewer		
Durability Reviewer		
Fire and Life Safety Reviewer		
<b>Tunnel Systems</b>		
OMCS, Scada,PLC, Tolling Reviewer		
ITS ,Voice,Data and Comms Network Reviewer		
<b>Structures</b>		
Temporary Works		
Buildings Reviewer		



Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Viaducts/Bridges		
Major Structures		
other structures		
<b>Urban Design</b>		
Built Arch		
UD and Landscape Reviewer		
BCA / DDA Assessor		
<b>Environmental</b>		
Stormwater treatment Reviewer		
Ground water treatment Reviwer		
Planning Reviewer		
Noise and Vibration Reviewer		
<b>Construction Project Management</b>		
I C Representative		
I C Project Director		
Design Manager		
Quality Management		
Progress Monitoring Engineer		

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Cost/Payment Assessment Engineer		
Safety Reviewer		
Environmental Reviewer		
Administration/Document Controller		
<b>Construction Site Personnel</b>		
Construction Manager ( not nominated)		
Senior Tunnelling Engineer and Construction Manager		
Senior Engineer Mechanical and Electrical		
Geotechnical Engineer Tunnelling Works		
<b>Project Engineers</b>		
Project Engineer Tunnelling Works		
Project Engineer Civil Works		
Project Engineer Structural Works		
Project Engineer M&E Works		
<b>Surveillance Officers</b>		
SO Tunnelling Works		
SO Civil Works		
SO Structural Works		
SO - M&E works		

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
Technical Specialist		
Tunnel Ventilation		
OMCS		
RAMS		
Testing and Commissioning		
Other Technical Specialist		

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 Project Company.

**5. Monthly payment schedule for lump sums**

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

Month after Date of the Deed	Payment (\$A, excl GST)
1	
2	
3	

4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
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43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
<b>sub total</b>	
post completion 1 qtr	
2 qtr	
3 qtr	
4 qtr	

5qtr	
6 qtr	
7 qtr	
8 qtr	
<b>TOTAL</b>	

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**6. GST**

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

## Schedule 3 - Minimum resources and surveillance levels

### 1. Minimum resources commitment

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including 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		81.6
I C Project Director		17.46
Design Manager		341
Quality Management		40
Safety Reviewer		23
Environmental Reviewer		24
Administration/Document Controller		254
<b>Design Reviewers</b>		
<b>Tunnel design</b>		
Tunnelling Reviewer		270
Support Systems		160
<b>Geotech and Ground support</b>		
Hydrogeology Reviewer		70
Geology reviewer		90
<b>roads and civil</b>		
Alignment and Road Safety Reviewer		184
Pavements Reviewer		80
Hydrology/Drainage Reviewer		78
Lines and Signs Reviewer		54
Return Works		18
Traffic and Return Works Reviewer		48
<b>Mech/Elec + Durability</b>		
Utilities and Services Reviewer		54
Ventilation Reviewer		156
Durability Reviewer		30

Fire and Life Safety Reviewer		108
<b>Tunnel Systems</b>		
OMCS, Scada,PLC, Tolling Reviewer		159
ITS ,Voice,Data and Comms Network Reviewer		159
<b>Structures</b>		
Temporary Works		90
Buildings Reviewer		36
Viaducts/Bridges		58
Major Structures		122
other structures		93
<b>Urban Design</b>		
Built Arch		6
UD and Landscape Reviewer		36
BCA / DDA Assessor		6
<b>Environmental</b>		
Stormwater treatment Reviewer		15
Ground water treatment Reviwer		18
Planning Reviewer		6
Noise and Vibration Reviewer		18
	<b>Design SubTotal</b>	<b>3,004</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		742
I C Project Director		83
Quality Management		93
Safety Reviewer		45
Environmental Reviewer		47
Administration/Document Controller		607
<b>Construction Site Personnel</b>		
Construction Manager		
Senior Tunnelling Engineer and Construction Manager		693
Senior Engineer Mechanical and Electrical		440
Geotechnical Engineer Tunnelling Works		532
<b>Project Engineers</b>		
Project Engineer Tunnelling Works		680



Project Engineer Civil Works		452
Project Engineer Structural Works		766
Project Engineer M&E Works		554.8
<b>Surveillance Officers</b>		
SO Tunnelling Works		700
SO Civil Works		852
SO Structural Works		486
SO - M&E works		560
<b>Technical Specialist</b>		
Tunnel Ventilation		228
OMCS		234
RAMS		98
Testing and Commissioning		200
<b>Other Technical Specialist</b>		
Structures		120
Roads		120
Other		120
	<b>Construction Sub Total</b>	<b>9,453</b>

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

## 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 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 Project and the Project Activities and at least 20 years' experience in construction including strong experience in infrastructure construction.

### 2.3 Senior Tunnelling Engineer - Tunnelling Works Construction

The Tunnelling Engineer - Tunnelling 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 Project and the Project Activities and at least 15 years' experience in construction including strong experience in tunnelling construction.

## **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 Project and the Project Activities and at least 15 years' experience in design and construction including strong experience in tunnelling M&E works.

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

The Geotechnical Engineer - Tunnelling 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 Project and the Project Activities and at least 15 year' experience in construction including strong experience in tunnelling construction.

## **2.6 Project Engineer - Tunnelling Works Construction**

The Project Engineer - Tunnelling 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 Project and the Project Activities and at least 10 years' experience in construction including strong experience in tunnelling construction.

## **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 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 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 Project and the Project Activities and at least 10 years of experience in the design and construction of M&E systems for road tunnels.

## **2.10 Surveillance Officer - Tunnelling Works Construction**

The Surveillance Officer - Tunnelling Works Construction must have at least 15 years of experience in the construction industry and at least 10 years in surveillance of construction, including tunnelling.

## **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 including tunnel ventilation, lighting, drainage and fire systems.

**2.14 Technical Specialist - Tunnel Ventilation**

The Technical Specialist - Tunnel Ventilation must possess a recognised qualification relevant to the position and the Services and at least 15 years of experience in the design and construction of road tunnel ventilation systems.

**2.15 Technical Specialist - Operations Management and Control Systems (OMCS)**

The Technical Specialist - Operations Management and Control Systems must possess a recognised qualification relevant to the position and the Services and at least 15 years of experience in the design and construction of Operations Management and Control Systems.

**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 road tunnels or similar 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 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 OHS Management Systems as well as design and construction certification experience.

**2.23 Environmental Reviewer**

The Environmental Reviewer 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.

**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 Review**

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 Review**

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 Review**

The Utilities and Services Reviewer must have at least 10 years of experience in the roads infrastructure industry.

**2.29 Durability Review**

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

**2.30 UD & LS Review**

The UD & LS Review must have at least 20 years of experience in the urban design and landscape including road 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><i>Environmental Observation</i></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 style="text-align: center;">} <i>Twice weekly</i></p>

Surveillance Activity	Frequency during the Project Activities
<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><i>Daily</i></p> <p><i>Daily</i></p> <p>} <i>Weekly</i></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>• <i>testing frequencies;</i></li> <li>• <i>test methods;</i></li> <li>• <i>test result verifications; and</i></li> <li>• <i>release of Hold Points.</i></li> </ul> </li> </ul>	<p>} <i>Weekly</i></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>

Surveillance Activity	Frequency during the Project Activities
<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 including in relation to the tunnel alignment, tunnel excavations, service facility shafts, cross passages, cross passages with sumps and construction work is within each relevant design tolerance;</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><i>use of any materials, plant and equipment that differs from accepted industry standards;</i></li> <li><i>concrete including in-situ concrete and precast elements;</i></li> <li><i>sprayed concrete;</i></li> <li><i>waterproofing systems;</i></li> <li><i>water collection, treatment and discharge systems;</i></li> <li><i>rock bolts/ground anchors;</i></li> <li><i>blasting;</i></li> <li><i>tunnel and cavern lighting and ventilation systems; and</i></li> <li><i>Utility Service diversions.</i></li> </ul> </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>

Surveillance Activity	Frequency during the Project Activities
<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>• <i>tunnel excavation;</i></li> <li>• <i>cross passages;</i></li> <li>• <i>nozzle enlargements;</i></li> <li>• <i>bridges and structures;</i></li> <li>• <i>ground support and treatment;</i></li> <li>• <i>waterproofing;</i></li> <li>• <i>permanent structural concrete linings;</i></li> <li>• <i>tunnel portal, headwalls and wing walls;</i></li> <li>• <i>dive structures;</i></li> <li>• <i>slope protection and retaining structures;</i></li> <li>• <i>flood protection including sump and drainage systems;</i></li> <li>• <i>crossover cavern;</i></li> <li>• <i>structural connections;</i></li> <li>• <i>groundwater collection, treatment and drainage systems;</i></li> <li>• <i>shaft excavation;</i></li> <li>• <i>concrete blinding layer;</i></li> <li>• <i>soil and rock bolts and anchors;</i></li> <li>• <i>niches and enlargements excavation;</i></li> <li>• <i>earthing and electrolysis protection, including earthing and bonding of reinforcement and monitoring points;</i></li> <li>• <i>mechanical and electrical works;</i></li> <li>• <i>haulage roads;</i></li> <li>• <i>provisions to access, secure, support and hand over the Third Party Works;</i></li> <li>• <i>Utility Service diversions; and</i></li> <li>• <i>adjustments to or demolition of existing infrastructure and buildings.</i></li> </ul> </li> </ul>	<p style="text-align: center; vertical-align: middle;"><i>Daily</i></p>



Surveillance Activity	Frequency during the Project Activities
<p><b>Quality Product Surveillance Monitoring</b></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; and</li> <li>Monitor manufacture of off-site precast units (not super t girders).</li> </ul>	<p><i>Weekly</i></p> <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><i>preparation and testing of grout test specimens; and</i></li> <li><i>bolt anchorage testing of rock bolts</i></li> <li><i>Monitor preparation of sprayed concrete test specimens;</i></li> <li><i>Monitor concrete supply, including:</i> <ul style="list-style-type: none"> <li><i>audits of each batch plant;</i></li> <li><i>reviews of grout, mortar, concrete, precast concrete and sprayed concrete mix designs (including off-site work); and</i></li> <li><i>monitoring of supplied mixes compared with mix designs.</i></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>

Surveillance Activity	Frequency during the Project Activities
<ul style="list-style-type: none"> <li>• Monitor concreting and associated works including:               <ul style="list-style-type: none"> <li>• <i>preparation;</i></li> <li>• <i>formwork;</i></li> <li>• <i>bracing;</i></li> <li>• <i>reinforcement;</i></li> <li>• <i>placing;</i></li> <li>• <i>stressing;</i></li> <li>• <i>finishing;</i></li> <li>• <i>curing; and</i></li> <li>• <i>stripping formwork.</i></li> </ul> </li> </ul>	<p style="text-align: center;"><i>Initial activity and twice weekly thereafter</i></p>
<ul style="list-style-type: none"> <li>• Sprayed concrete, including:               <ul style="list-style-type: none"> <li>• <i>Batching and mixing</i></li> <li>• <i>Application</i></li> <li>• <i>Depth control</i></li> <li>• <i>Curing</i></li> <li>• <i>Production tests</i></li> </ul> </li> </ul>	<p><i>Each procedure</i></p> <p><i>Twice weekly</i></p> <p><i>Twice weekly</i></p> <p><i>Monthly</i></p> <p><i>Daily</i></p>
<ul style="list-style-type: none"> <li>• Monitor steel fabrication, including:               <ul style="list-style-type: none"> <li>• <i>reviews of welding procedures; and</i></li> <li>• <i>monitoring of the fabrication and welding processes for major members (off-site).</i></li> </ul> </li> </ul>	<p><i>Each procedure</i></p> <p><i>Twice weekly</i></p>
<ul style="list-style-type: none"> <li>• Monitor protective treatment systems (off-site).</li> </ul>	<p><i>Twice Weekly</i></p>
<ul style="list-style-type: none"> <li>• Monitor ground movement equipment monitors including:               <ul style="list-style-type: none"> <li>• <i>audits of equipment; and</i></li> <li>• <i>review of results.</i></li> </ul> </li> </ul>	<p><i>Monthly</i></p> <p><i>Daily</i></p>

## 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;
- (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 Project Company 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, 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 Project Company's 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 Project Company and the State Works Contractor have addressed all issues of review, comment and consultation with RMS 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 Completion;
  - (iv) certification of the rectification by the Project Company 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 Monitoring Plan in terms of the assumptions relating to the Project Activities including:
- (i) number of design lots developed; and
  - (ii) program durations.

Attachment A - Initial Certification and Monitoring Plan

**Schedule 5 - Subcontractors and Technical Specialists**

<b>Name of subcontractor</b>	<b>Part of the Services/Technical Speciality</b>
Hyder Consulting Pty Limited ACN 104 485 289	Design reviewers / General
Jacobs Associates	Design reviewers / Tunnelling

**Schedule 6 - Commercially Sensitive Information**

Information which is "Commercially Sensitive Information" for the purposes of the Project 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 Project Deed, including determining whether each of the Opening Conditions Precedent have been satisfied by the Project Company;
- (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 Project, or a financial interest in the 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 Project which could reasonably be considered to suggest partiality; or
  - (iii) involvement in the 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 Project and with all entities involved in the Project; and
- (c) disclosure of close professional or personal relationships with any member of any entity involved in the Project.



## Schedule 8 - Deeds poll

### Part A: Deed Poll for the M7 Interface Deed

## Deed Poll

### Independent Certifier – M7 / NorthConnex Interface

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**Date ▶**

2014

**By** APP Corporation Pty Limited (ACN 003 764 770) (the  
**Independent Certifier)**

**In favour of** each Beneficiary (as defined in clause 1.1 below)

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**This deed poll witnesses as follows:**

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## 1. Definitions and interpretation

### 1.1 Definitions

The defined terms in clause 1.1 of the M7 / NorthConnex Interface Deed have the same meaning in this Deed unless a term is defined in this Deed, in which case the meaning given in this Deed will prevail.

The meanings of the terms used in this Deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Beneficiaries</b>	means the M7 Entities and <b>Beneficiary</b> means any of them.
<b>Deed</b>	means this Deed Poll.
<b>M7 / NorthConnex Interface Deed</b>	means the deed entitled "M7 / NorthConnex Interface Deed" entered into between RMS, WestLink, WSO Co and NorthConnex Co on or about the date of this Deed.
<b>NorthConnex Co</b>	means NorthConnex Company Pty Ltd (ACN 602 719 513)

<b>Term</b>	<b>Meaning</b>
<b>Project Agreement</b>	means the NorthConnex Project Deed.
<b>RMS</b>	means Roads and Maritime Services.
<b>Services</b>	means the services set out in Schedule 1 to the Independent Certifier Deed to the extent such services relate to the NorthConnex Works.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) a reference to any party includes that party's executors, administrators, successors, and permitted assigns, including any person taking by way of novation;
- (d) a reference to any document (including this Deed but excluding the Project Agreement and NorthConnex D&C Deed other than to the extent those documents are amended in accordance with clauses 1.8(c) and 1.8(d) of the M7 / NorthConnex Interface Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by laws, regulations, rules and other statutory instruments (however described) issued under it;
- (f) references to parties, clauses, schedules, exhibits and Attachments are references to parties, clauses, schedules, exhibits and Attachments to or of this Deed (unless expressly stated otherwise) and a reference to this Deed includes any schedule, exhibit or Attachment to this Deed;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (i) a reference to a day, month, quarter or year is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year respectively;
- (j) a reference to '\$' or 'dollar' is to Australian currency; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

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## 2. Acknowledgement by the Independent Certifier

The Independent Certifier unconditionally acknowledges the role of the Beneficiaries under the M7 Project Deed and agrees that:

- (a) the Beneficiaries will be relying on the performance of the Independent Certifier's obligations under the Independent Certifier Deed in respect of certifying that the design and construction of the NorthConnex Works comply with the Project Agreement (including any certificate or other document signed or given by the Independent Certifier under or pursuant to the Independent Certifier Deed or the Project Agreement);
- (b) it has received a copy of the M7 / NorthConnex Interface Deed and it has read, and is familiar with, the terms of the M7 / NorthConnex Interface Deed to the extent each relates to the Services;
- (c) it acknowledges the role of the Beneficiaries under the M7 Project Deed; and
- (d) its obligations under the Independent Certifier Deed extend to, and include, the obligations, functions, duties and services of the Independent Certifier referred to in the Project Agreement and the M7 / NorthConnex Interface Deed.

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## 3. General

### 3.1 Waiver

A provision or a right created under this Deed may not be waived except by instrument in writing signed by the person granting the waiver.

### 3.2 Governing law

This Deed is to be governed and interpreted by reference to the laws of the State of New South Wales and the Independent Certifier and the Beneficiaries irrevocably submit to the exclusive jurisdiction of the Courts of the State of New South Wales and Courts having jurisdiction in appeals therefrom.

### 3.3 Variation of arrangements

- (a) No variation to or amendment of any term of this Deed may be made except by instrument in writing signed by the Independent Certifier.
- (b) This Deed cannot be varied, amended, replaced, restated, novated, revoked or terminated without the prior written consent of the Beneficiaries. Any such purported action without that prior written consent will be of no effect.

### 3.4 Enforcement Costs

The Independent Certifier agrees to reimburse each Beneficiary for any reasonable costs or expenses reasonably incurred by it in connection with the enforcement of its rights under this Deed.

### 3.5 Deed poll

This Deed:

- (a) is a deed poll entered into and made by the Independent Certifier in favour of and for the benefit of; and

(b) may be relied on and is enforceable by,

each Beneficiary from time to time even though the entity that is the Beneficiary is not party to this Deed or may not be in existence at the time of execution and delivery of this Deed.

# Signing page

## Executed as a deed poll

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**Executed by APP Corporation Pty Limited**  
(ACN 003 764 770) in accordance with  
section 127 of the Corporations Act 2001 (Cth):

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Signature of director

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Signature of company secretary/director

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Full name of director

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Full name of company secretary/director

## Part B: Deed Poll for the M2 Interface Deed

## Deed Poll

## Independent Certifier – M2 / NorthConnex Interface

Date ▶

2014

By APP Corporation Pty Limited (ACN 003 764 770) (the  
Independent Certifier)

In favour of each Beneficiary (as defined in clause 1.1 below)

This deed poll witnesses as follows:

## 1. Definitions and interpretation

### 1.1 Definitions

The defined terms in clause 1.1 of the M2 / NorthConnex Interface Deed have the same meaning in this Deed unless a term is defined in this Deed, in which case the meaning given in this Deed will prevail.

The meanings of the terms used in this Deed are set out below.

Term	Meaning
Beneficiaries	means the Hills M2 Entities and <b>Beneficiary</b> means any of them.
Deed	means this Deed Poll.
M2 / NorthConnex Interface Deed	means the deed entitled "M2 / NorthConnex Interface Deed" entered into between RMS, THML, HMML and NorthConnex Co on or about the date of this Deed.
NorthConnex Co	means NorthConnex Company Pty Ltd (ACN 602 719 513)

<b>Term</b>	<b>Meaning</b>
<b>Project Agreement</b>	means the NorthConnex Project Deed.
<b>RMS</b>	means Roads and Maritime Services.
<b>Services</b>	means the services set out in Schedule 1 to the Independent Certifier Deed to the extent such services relate to the NorthConnex Works.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) a reference to any party includes that party's executors, administrators, successors, and permitted assigns, including any person taking by way of novation;
- (d) a reference to any document (including this Deed but excluding the Project Agreement and NorthConnex D&C Deed other than to the extent those documents are amended in accordance with clauses 1.8(c) and 1.8(d) of the M2 / NorthConnex Interface Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by laws, regulations, rules and other statutory instruments (however described) issued under it;
- (f) references to parties, clauses, schedules, exhibits and Attachments are references to parties, clauses, schedules, exhibits and Attachments to or of this Deed (unless expressly stated otherwise) and a reference to this Deed includes any schedule, exhibit or Attachment to this Deed;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (i) a reference to a day, month, quarter or year is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year respectively;
- (j) a reference to '\$' or 'dollar' is to Australian currency; and
- (k) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

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## 2. Acknowledgement by the Independent Certifier

The Independent Certifier unconditionally acknowledges the role of the Beneficiaries under the M2 Project Deed and agrees that:

- (a) the Beneficiaries will be relying on the performance of the Independent Certifier's obligations under the Independent Certifier Deed in respect of certifying that the design and construction of the NorthConnex Works comply with the Project Agreement (including any certificate or other document signed or given by the Independent Certifier under or pursuant to the Independent Certifier Deed or the Project Agreement);
- (b) it has received a copy of the M2 / NorthConnex Interface Deed and it has read, and is familiar with, the terms of the M2 / NorthConnex Interface Deed to the extent each relates to the Services;
- (c) it acknowledges the role of the Beneficiaries under the M2 Project Deed; and
- (d) its obligations under the Independent Certifier Deed extend to, and include, the obligations, functions, duties and services of the Independent Certifier referred to in the Project Agreement and the M2 / NorthConnex Interface Deed.

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## 3. General

### 3.1 Waiver

A provision or a right created under this Deed may not be waived except by instrument in writing signed by the person granting the waiver.

### 3.2 Governing law

This Deed is to be governed and interpreted by reference to the laws of the State of New South Wales and the Independent Certifier and the Beneficiaries irrevocably submit to the exclusive jurisdiction of the Courts of the State of New South Wales and Courts having jurisdiction in appeals therefrom.

### 3.3 Variation of arrangements

- (a) No variation to or amendment of any term of this Deed may be made except by instrument in writing signed by the Independent Certifier.
- (b) This Deed cannot be varied, amended, replaced, restated, novated, revoked or terminated without the prior written consent of the Beneficiaries. Any such purported action without that prior written consent will be of no effect.

### 3.4 Enforcement Costs

The Independent Certifier agrees to reimburse each Beneficiary for any reasonable costs or expenses reasonably incurred by it in connection with the enforcement of its rights under this Deed.

### 3.5 Deed poll

This Deed:

- (a) is a deed poll entered into and made by the Independent Certifier in favour of and for the benefit of; and



(b)            may be relied on and is enforceable by,

each Beneficiary from time to time even though the entity that is the Beneficiary is not party to this Deed or may not be in existence at the time of execution and delivery of this Deed.

Executed as a deed poll

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**Executed by APP Corporation Pty Limited**  
(ACN 003 764 770) in accordance with  
section 127 of the Corporations Act 2001 (Cth):

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

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

Executed as a deed.

**Executed by NorthConnex State Works Contractor Pty Ltd (ACN 602 719 513)** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

**Andrew Head**

Full name of director



Signature of company secretary/director

**Andrew Sims**

Full name of company secretary/director

**The Seal of Roads and Maritime Services** ABN 76 236 371 088 was hereunto affixed by its authorised signatory:



Name



Signature



**Executed by NorthConnex Company Pty Ltd (ACN 169 328 385)** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

**Andrew Head**

Full name of director



Signature of company secretary/director

**Andrew Sims**

Full name of company secretary/director

**Executed by APP Corporation Pty Limited (ACN 003 764 770)** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director



Full name of director



Signature of company secretary/director

**Angelique Nesbitt**  
Company Secretary

Full name of company secretary/director