

NOTE: Some clauses and Schedules have been partly or completely removed under the provisions of the GIPA Act. For details, refer to the PTTC's Government Contracts Register – Independent Certifier Deed.

Independent Certifier Deed

Electronic Ticketing System for the Greater Sydney region

Public Transport Ticketing Corporation ABN 57 443 320 873

Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561

Arup Pty Ltd ABN 18 000 966 165

Independent Certifier Deed executed at Sydney on

Parties

- 1 **Public Transport Ticketing Corporation** ABN 57 443 320 873 of Level 20, Town Hall House, 456 Kent Street, Sydney NSW 2000 (**PTTC**)
 - 2 **Cubic Transportation Systems (Australia) Pty Limited** ABN 82 003 617 561 of Level 12, 95 Pitt Street, Sydney NSW 2000 (**Contractor**)
 - 3 **Arup Pty Ltd** ABN 18 000 966 165 of Level 10, 201 Kent Street, Sydney NSW 2000 (**Independent Certifier**)
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Background

- A. The Parties have entered into this Deed to appoint the Independent Certifier as the Independent Certifier for the purposes of the ETS Project.
 - B. By entering into this Deed the Independent Certifier accepts its appointment under this Deed and agrees to independently carry out its obligations and fulfil its functions under this Deed.
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1 Interpretation

1.1 Definitions

In this Deed:

Certification Services Plan means the plan which the Independent Certifier is required to prepare and update in accordance with clause 4.2 of this Deed.

Deed means this deed entitled "Independent Certifier Deed" between the PTTC, the Contractor and the Independent Certifier and includes the attached Schedules.

Fee means [REDACTED]

Functions means those functions listed in Schedule 1, and any other obligation, function, task, duty or service contemplated to be performed by the Independent Certifier under this Deed or the Project Deed.

Independent Certifier Developed IP means [REDACTED]
[REDACTED]

Independent Certifier Project IP means [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Independent Certifier Retained IP means [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IC Deed Commencement Date means the date on which each of the conditions precedent in clause 1A have been satisfied, or waived, as confirmed in writing by the PTTC to the Independent Certifier.

IC Deed Execution Date means the date of execution of this Deed as specified at the front of this Deed.

Insurance means [REDACTED]

Insurance Letter means [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Party means each of the PTTC, the Contractor and the Independent Certifier and **Parties** means all of them.

Payment Schedule means Schedule 2 of this Deed.

Project Budget means [REDACTED]

Project Deed means the deed entitled "Project Deed - Electronic Ticketing System for the Greater Sydney region" dated on or about the date of this Deed between the PTTC and the Contractor.

Project Support Function means any Function covered by the Project Budget which is not in respect of a Milestone or DDI Review.

Representative means any of the Independent Certifier's Personnel, who perform, or are appointed by the Independent Certifier to perform, any of the Functions and any other person appointed by the Independent Certifier under clause 5.3(b).

Schedule of Rates means [REDACTED]

Security Interest means a right, interest, power or arrangement in relation to an asset which provides security for the payment or satisfaction of a debt, obligation or liability, including under a bill of sale, mortgage, charge, lien, pledge, trust, power, deposit, hypothecation or arrangement for retention of title, and includes an agreement to grant or create any of those things.

Specified Personnel means the Representatives listed in Schedule 7 and any replacement of such people in accordance with clause 5.4(d).

1.2 Definitions in Project Deed

Unless expressly stated otherwise, terms used in this Deed that are not defined in this Deed but are defined in the Project Deed have the same meanings in this Deed as they have in the Project Deed.

1.3 Application of certain provisions of the Project Deed

Clauses 1.2 – 1.6, 1.13(a), 58.18 and 58.22 of the Project Deed apply to this Deed as if they were set out in full in this Deed.

1.4 Approvals and consents

Unless expressly stated otherwise, all approvals or consents required to be given by the Independent Certifier under this Deed must not be unreasonably withheld or delayed.

1.5 Exercise of functions

Clause 1.7 of the Project Deed applies to this Deed as if it were set out in full in this Deed, provided that references in that clause 1.7 to “the Contractor” will be read as references to “the Contractor or the Independent Certifier”.

1.6 PTTC's Representative

Clause 4.5 of the Project Deed applies to this Deed as if it were set out in full in this Deed, provided that references in that clause 4.5 to “the Contractor” will be read as references to “the Contractor and the Independent Certifier”.

1A Conditions precedent

- (a) The obligations of the Parties under this Deed (other than those under this clause 1A and clauses 10 and 18 and any provisions which by their nature are intended to commence on the IC Deed Execution Date) do not come into force until satisfaction, or waiver by the PTTC, of each of the following:
 - (i) the Independent Certifier effecting the insurances required in clause 12.1;
 - (ii) provision by the Independent Certifier to the PTTC of the Insurance Letter; and
 - (iii) provision by the Independent Certifier to the PTTC of a copy of its most recent audited financial statements,

(Conditions Precedent).
- (b) The Independent Certifier must notify the PTTC and the Contractor promptly following the satisfaction of each of the Conditions Precedent.
- (c) The PTTC may agree in writing to waive any Condition Precedent.
- (d) If any of the Conditions Precedent are not satisfied or waived by the date which is 5 Business Days after the IC Deed Execution Date, then the PTTC may terminate this Deed by at least 5 Business Days' notice to the other Parties.
- (e) If the PTTC terminates this Deed under clause 1A(d), no Party will have any liability for any Losses or Claims suffered or incurred by any other Party as a result of or in connection with such termination.

2 Appointment of Independent Certifier

2.1 Appointment of Independent Certifier

- (a) The PTTC and the Contractor appoint the Independent Certifier under this Deed to perform the Functions.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).
- (c) The Independent Certifier must perform the Functions in accordance with this Deed.
- (d) The Independent Certifier's appointment commences on the IC Deed Commencement Date or as agreed by the Parties and expires at the end of the Term, unless terminated earlier in accordance with clause 13 of this Deed.

3 Payment

[Commercial-in-confidence]

4 Independent Certifier's obligations

4.1 Acknowledgments by Independent Certifier

The Independent Certifier acknowledges and agrees that:

- (a) it has received a copy of the Project Deed;
- (b) it has read and is familiar with the terms of the Project Deed and the nature of the work necessary for the performance of the Functions;
- (c) it has reviewed this Deed and the Project Deed for the accuracy and completeness of the description of the Functions;
- (d) the Fees payable to it covers the costs of it complying with the Functions; and
- (e) subject to this clause 4, for the purpose of, and in the course of, performing the Functions, it will:
 - (i) attend those Sites:
 - (A) required by the Certification Services Plan;
 - (B) which the Independent Certifier considers are appropriate or necessary to attend; and
 - (C) reasonably requested by the PTTC or the Contractor; and
 - (ii) conduct all appropriate or necessary tests and inspections of the Stages, the Milestones, the Sites and the ETS as required or contemplated under the Certification Services Plan and the Project Deed.

4.2 Certification Services Plan

- (a) Within 10 Business Days of the IC Deed Commencement Date, the Independent Certifier must prepare and submit a Certification Services Plan to the PTTC and the Contractor that meets the requirements specified for the Certification Services Plan in Schedule 3.
- (b) The Independent Certifier must prepare and submit to the PTTC and the Contractor an updated Certification Services Plan:
 - (i) prior to the date which is 6 months from the IC Deed Commencement Date and thereafter, at intervals not exceeding 6 months; and
 - (ii) if reasonably requested by the PTTC.
- (c) The Contractor may notify the PTTC of any comments on a Certification Services Plan within 10 Business Days of receipt of such Certification Services Plan from the Independent Certifier under clauses 4.2(a) or 4.2(b) and the PTTC will take such comments into account in its review of the Certification Services Plan.
- (d) The PTTC may, within 15 Business Days of receipt of a draft Certification Services Plan from the Independent Certifier under clauses 4.2(a) or 4.2(b), notify the Independent Certifier of any comments on the Certification Services Plan, including whether the Certification Services Plan complies with the requirements set out in Schedule 3 and is otherwise consistent with this Deed and the Project Deed.
- (e) If the PTTC provides comments to the Independent Certifier under clause 4.2(d), the Independent Certifier must promptly, and in any event, within 10 Business Days of receipt of those comments, submit to the PTTC a redraft of the plan which, subject to clause 9.1, addresses the PTTC's comments.
- (f) The Independent Certifier must comply with the Certification Services Plan in performing the Functions.

4.3 Monthly report

The Independent Certifier must provide to the PTTC by the 5th Business Day of each month a report in such format as is required by the PTTC containing or setting out such information as is specified in the Certification Services Plan, or as otherwise reasonably requested by the PTTC.

4.4 Project Budget

- (a) The Independent Certifier must prepare and submit to the PTTC an updated Project Budget at the same time it provides an updated Certification Services Plan to the PTTC under clause 4.2(b)(i).
- (b) The PTTC will notify the Independent Certifier whether it approves the updated Project Budget within 20 Business Days of receipt of such Project Budget. If the PTTC does not approve the updated Project Budget, the PTTC and the Independent Certifier will meet to discuss and agree in good faith the updated Project Budget.

5 Acknowledgments of Independent Certifier

5.1 Not employee or agent

- (a) The Independent Certifier is an independent contractor and is not an employee or agent of the PTTC or the Contractor.
- (b) The Independent Certifier's Representatives are not the Personnel or representatives of the PTTC or the Contractor. The Independent Certifier assumes full responsibility for the acts and omissions of each of its Representatives.

5.2 Independence of the Independent Certifier

The Independent Certifier acknowledges, represents, warrants and undertakes to the PTTC and the Contractor that in performing the Functions it will:

- (a) act independently of the PTTC and the Contractor, and in good faith;
- (b) act honestly, reasonably and with the degree of professional care, knowledge, experience, skill and diligence which may be expected of a qualified person or a firm of project management consultants experienced in the performance of the same or similar services to the Functions and not do anything which would give rise to a conflict of interest in its performance of the Functions;
- (c) act within the time prescribed under this Deed and the Project Deed, or, where no time is prescribed, within a reasonable time;
- (d) immediately notify the PTTC and the Contractor in writing upon becoming aware of the existence or possibility of a conflict of interest; and
- (e) not accept any role in relation to the ETS Project other than as set out in this Deed.

5.3 Acknowledgements regarding the Independent Certifier certifying Completion

- (a) In establishing whether the Stages or Milestones have achieved Completion, without in any way limiting any other obligations of the Independent Certifier under this Deed, the Independent Certifier:
 - (i) must carry out those inspections:
 - (A) required by the Certification Services Plan;
 - (B) which the Independent Certifier considers are appropriate or necessary to undertake; and
 - (C) reasonably requested by the PTTC or the Contractor;
 - (ii) subject to clause 5.3(b), acting reasonably, is entitled to rely upon reports produced by suitably qualified and experienced experts, consultants and contractors but only to the extent the subject matter of such reports is within the field of the expertise of the relevant expert, consultant or contractor; and
 - (iii) subject to clause 5.3(b), acting reasonably, is entitled to rely upon certificates produced by suitably qualified and experienced experts but only to the extent that the subject matter of such certificates is within the field of such expert's expertise.

- (b) If the Independent Certifier deems it necessary for it to establish whether the Stages or Milestones have achieved Completion, the Independent Certifier may engage an independent expert, consultant or contractor acceptable to both the PTTC and the Contractor to assist certifying Completion. Before engaging such expert, consultant or contractor, the PTTC and the Independent Certifier will agree a fee for such expert, consultant or contractor and the provisions of the Payment Schedule will apply to such fee.

5.4 Representatives

- (a) The Independent Certifier must provide:
 - (i) Specified Personnel to perform the roles specified in Schedule 7; and
 - (ii) other experienced and skilled Representatives to perform the Functions and must within 10 Business Days of the IC Deed Commencement Date give written notice to the Parties of the identity and contact details of such Representatives.
- (b) The Independent Certifier must ensure that all of its Representatives:
 - (i) act honestly, reasonably and with the degree of professional care, knowledge, experience, skill and diligence which may be expected of a qualified person experienced in the performance of the same or similar services to the Functions;
 - (ii) perform the services required of their respective positions; and
 - (iii) are available for consultation as the PTTC and Contractor may reasonably require from time to time.
- (c) The Independent Certifier must ensure that none of its Representatives are removed without the prior written consent of the PTTC and the Contractor (which consent must not be unreasonably withheld or delayed), and if any such Representative is removed, must be replaced by a person of at least equivalent skill and experience.
- (d) The Independent Certifier acknowledges that it will have full charge and control and assumes full responsibility for the acts and omissions of its Representatives.

5.5 Subcontracting

The Independent Certifier:

- (a) must not subcontract the performance of any of the Functions to any person (other than an approved subcontractor listed in Schedule 4) without the prior written consent of the PTTC and the Contractor and on such terms and conditions as determined by the PTTC and the Contractor, other than as permitted under clause 5.3(b);
- (b) remains responsible for the performance of the Functions in accordance with this Deed, notwithstanding any such subcontracting;
- (c) is liable for the acts, omissions or defaults of its subcontractors as fully as if they were the Independent Certifier's own acts, omissions or defaults; and
- (d) must ensure that any subcontract includes a provision to the effect that, to the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002*

(NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to the subcontract howsoever such rights, obligations or liabilities are sought to be enforced.

5.6 Quality assurance

- (a) The Independent Certifier must implement a quality assurance system in accordance with ISO9000, and otherwise in a form reasonably acceptable to the PTTC and the Contractor, to ensure compliance of the Functions with the requirements of this Deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any Functions 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 audit under clause 5.7 of this Deed.

5.7 Audit

- (a) The Independent Certifier must:
 - (i) allow any audit of its quality assurance system or its performance of the Functions under this Deed by a third party, at the request of the PTTC or the Contractor; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the audit.
- (b) Without limiting the foregoing, the Independent Certifier must, at all times:
 - (i) give to the third party referred to in clause 5.7(a)(i) access to premises occupied by the Independent Certifier where the Functions are being undertaken; and
 - (ii) permit such third party to inspect applicable information relevant to the audit.

6 Benefit of Independent Certifier's Obligations

- (a) The Independent Certifier acknowledges and agrees that:
 - (i) the PTTC and the Contractor:
 - (A) are relying upon its independence;
 - (B) are relying upon its skill and experience in the performance of the Functions in accordance with this Deed;
 - (C) will rely upon its certification for the purposes of the Project Deed;
 - (D) may suffer a Loss if it does not perform the Functions in accordance with the requirements of this Deed; and
 - (ii) it has no authority to give directions to the PTTC or the Contractor other than that (if at all) expressly set out in this Deed or the Project Deed.

- (b) The Independent Certifier represents, warrants and undertakes to the PTTC and the Contractor that, in performing the Functions, it will comply with all Laws.
- (c) The Independent Certifier acknowledges that in carrying out the Functions, the Independent Certifier must do so in a manner which will not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Contractor and the ETS Entities), except where it is the unavoidable consequence of performing the Functions, in which case the Independent Certifier will give reasonable prior notice to each affected person.
- (d) Without limiting clause 6(c), the Independent Certifier must, in carrying out the Functions, comply with the Site Access Plan to the extent relevant.

7 Not used

8 Change to Functions, Suspension of Functions and Appointment of Substitute Certifier

8.1 Change of Functions

- (a) The PTTC and the Contractor may, by written notice to the Independent Certifier jointly signed by them, direct the Independent Certifier to carry out a change to the Functions (including an addition or omission) which is within the general scope of this Deed, and the Independent Certifier must comply with that direction. For clarification, this clause 8.1 does not apply to a change in the scope of the Functions in respect of a DDI Review, Milestone or Project Support Function.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Functions (or, in relation to any omission of any of the Functions, a reduction in the Fees) referred to in clause 8.1(a) will be determined in accordance with the Schedule of Rates. If an additional amount (or reduction) for the change to the Functions cannot be determined by reference to the Schedule of Rates, the amount will be a reasonable amount determined by the PTTC in consultation with the Independent Certifier.

8.2 Suspension of Functions

The PTTC and the Contractor may, by written notice to the Independent Certifier jointly signed by them, direct the Independent Certifier to suspend any or all of the Functions for the period of time specified in that notice.

8.3 Substitute Certifier

- (a) The PTTC and the Contractor may appoint another certifier (**Substitute Certifier**) to carry out those Functions which the PTTC and the Contractor have directed to be omitted or suspended under clause 8.1 or 8.2, and (as between the PTTC and the Contractor), in connection with those Functions:
 - (i) any decision of a Substitute Certifier has the same effect as a decision of the Independent Certifier; and
 - (ii) the Substitute Certifier will be required to enter into a deed on substantially the same terms as this Deed (with any substantial departures from such terms being agreed by the PTTC and the Contractor).

- (b) Notwithstanding a change to the Functions or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Functions, as varied in accordance with this clause 8, in accordance with this Deed. Without affecting any rights, obligations or liability relating to the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

8.4 Force Majeure

- (a) For the purposes of this clause 8.4, "Force Majeure" has the same meaning as in the Project Deed, except that a reference to "Party" in the definition of "Force Majeure" in the Project Deed will be taken to include the Independent Certifier.
- (b) Subject to paragraph 8.4(c), no party is liable for any failure or delay in performing its obligations under this Deed to the extent such failure or delay is caused by a Force Majeure event.
- (c) As between the PTTC and the Contractor, any liability of the PTTC or the Contractor in respect of a Force Majeure event is governed by the Project Deed, which applies in all respects to this Deed as if this Deed formed a part of the Project Deed. The PTTC and the Contractor agree that, for clarification and by way of example, if the Independent Certifier is excused from its liability for any failure or delay in performing its obligations under this Deed in relation to a DDI, the 20 Business Day timeframe referred to in clause 9.3(a) of the Project Deed may be extended accordingly in accordance with clause 51 of the Project Deed.

9 Obligations of the PTTC and the Contractor

9.1 No interference or influence

- (a) Subject to clause 9.1(b), the PTTC and the Contractor must not interfere with or attempt to influence the Independent Certifier in the performance of the Functions.
- (b) Clause 9.1(a) will not prevent either the PTTC or the Contractor from providing information or written submissions to the Independent Certifier setting out that Party's opinion on a particular matter relating to this Deed or the Functions, provided that nothing in this clause 9.1(b) itself will require the Independent Certifier to act in accordance with that information or written submission. If the PTTC or the Contractor provides any information or written submissions to the Independent Certifier then that Party must, at the same time, provide a copy of such information and submissions to the other Party.

9.2 Cooperation

Without limiting their obligations under clause 9.1, the PTTC and the Contractor must:

- (a) co-operate with the Independent Certifier;
- (b) provide all necessary information and documents within its possession, custody or control to the Independent Certifier; and
- (c) procure for the Independent Certifier access to such premises owned, leased or licensed to it as may be reasonably necessary,

to enable the Independent Certifier to perform the Functions.

10 General representations and warranties of Independent Certifier

- (a) The Independent Certifier represents, warrants and undertakes that:
- (i) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform the Functions and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) 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);
 - (iii) its obligations under this Deed are valid, legal and binding obligations enforceable against it in accordance with the terms of this Deed, subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
 - (iv) 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;
 - (v) 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
 - (vi) 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 the Functions.
- (b) Except as otherwise provided, each representation and warranty contained in this Deed:
- (i) is made on the IC Deed Execution Date; and
 - (ii) will be deemed to be repeated immediately before each notice or certificate is issued by the Independent Certifier under this Deed,
- with reference to the facts and circumstances then subsisting.

11 Security Interests

The Independent Certifier must not:

- (a) create or allow to exist any Security Interest over its rights under this Deed; or
- (b) deal with, sell, assign, transfer, novate or otherwise dispose of, its rights or obligations under this Deed.

12 Insurance and Indemnity

[Commercial-in-confidence]

13 Termination of Appointment and Novation

13.1 Termination by the other Parties

- (a) The PTTC or the Contractor may terminate this Deed by notice in writing delivered to the Independent Certifier and the other Party:
 - (i) if the Independent Certifier is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Party giving notice to terminate;
 - (ii) if the Independent Certifier is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Party giving notice to terminate, has not been remedied within 10 Business Days of the service by such Party of a notice requiring the breach to be remedied;
 - (iii) if an Insolvency Event occurs in relation to the Independent Certifier;
 - (iv) for the convenience of the PTTC or the Contractor at any time and for any reason, upon 20 Business Days written notice to the Independent Certifier by the PTTC or the Contractor; or
 - (v) if there is a Change in Control of the Independent Certifier.
- (b) Notwithstanding clause 13.1(a) and unless the PTTC and the Contractor otherwise agree, the PTTC or the Contractor may only terminate this Deed if the PTTC and the Contractor first agree to the appointment of another person to perform the Functions on such terms and conditions as the PTTC and the Contractor reasonably propose.

13.2 Termination of the Project Deed

If the Project Deed is terminated then this Deed is terminated with effect from the date of termination of the Project Deed and without necessity of notice.

13.3 Time of termination

Unless the PTTC and the Contractor otherwise agree, the termination of this Deed under clause 13.1 will take effect upon the Independent Certifier's receipt of notice from the PTTC and the Contractor confirming the appointment of a replacement to the Independent Certifier under clause 13.1(b).

13.4 Obligations following termination or expiry

- (a) Upon termination or expiry of this Deed:
 - (i) the Independent Certifier must deliver up to the PTTC all books, computer records and other records, drawings, specifications, documents and other materials in the possession, custody or control of the Independent Certifier relating to the Functions; and
 - (ii) subject to any applicable provisions of the Project Deed, the PTTC has the right to use the materials referred to in clause 13.4(a)(i) for any purpose.
- (b) Where this Deed is terminated under clauses 13.1 or 13.2, the Independent Certifier must provide full assistance to the PTTC, the Contractor and any successor to the Independent Certifier appointed in order to enable such successor

to be in a position to perform the Functions under this Deed with effect from the date of appointment of such successor.

- (c) Nothing in this clause 13.4 will prevent the Independent Certifier from retaining for its records one copy of the books, records, drawings, specifications and other documents referred to in clause 13.4(a)(i), provided however that nothing contained in this clause 13.4 will relieve the Independent Certifier of its obligations under clause 18.

13.5 Compensation

- (a) Where this Deed is terminated under clauses 13.1(a)(iv), the Independent Certifier is only entitled to be paid by the PTTC and the Contractor the proportion of the Fee for Functions performed up to the date of the termination and the Independent Certifier agrees that its only right against the PTTC and/or the Contractor arising from such a termination is to claim for payment under this clause 13.5(a).
- (b) Where this Deed is terminated under clauses 13.1(a)(i), (ii), (iii) or (v), the Independent Certifier is not entitled to any unpaid proportion of the Fee for Functions not performed in accordance with this Deed up to the date of the termination, and has no rights against the PTTC and/or the Contractor arising from such termination.

13.6 Termination without prejudice

Termination of this Deed is without prejudice to any accrued rights or liabilities of the Parties.

14 Expenses, Stamp Duties and GST

14.1 Expenses

Each Party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Deed.

14.2 Stamp duties

The PTTC must pay all stamp duty (apart from financial institutions duties or bank account debit taxes which will lie between the Parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed.

14.3 GST

- (a) Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 14.3.
- (b) If a Party makes a supply to another Party under or in connection with this Deed, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying or providing that consideration the recipient must:
 - (i) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and

- (ii) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay unless the supplier has issued to the recipient a tax invoice (or an adjustment note) for that supply.
- (c) The supplier must refund to the recipient any overpayment by the recipient for GST, but the supplier need not refund to the recipient any amount for GST paid to the Commissioner of Taxation unless the supplier is entitled to a refund or credit of that amount.
- (d) If a Party provides a payment for or in satisfaction of a Claim or a right to make a Claim under or in connection with this Deed that gives rise to a liability for GST, the provider must pay, and indemnify the recipient on demand against, the amount of that GST.
- (e) If a Party has a Claim under or in connection with this Deed for a cost on which that Party must pay an amount for GST, the Claim is for the cost plus the amount for GST (except any amount for GST for which that Party is entitled to an input tax credit).
- (f) If a Party has a Claim under or in connection with this Deed whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

15 Choice of Law and Submission to Jurisdiction

- (a) This Deed is governed by the Law in force in New South Wales.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Deed, and waives any right it might have to claim that those courts are an inconvenient forum.

16 Notices

16.1 How to give a notice

A notice, consent or other communication under this Deed 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) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

16.2 When a notice is given

A notice, consent or other communication that complies with this clause 16 is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail:
 - (i) within Australia – 2 Business Days after posting; or
 - (ii) to or from a place outside Australia – 5 Business Days after posting.

16.3 Address for notices

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

PTTC

Address: Level 20, Town Hall House, 456 Kent Street, Sydney, New South Wales 2000

Fax number: (02) 9263 2577

Attention: PTTC Representative, PTTC

The Contractor

Address: Level 12, 95 Pitt Street, Sydney, New South Wales 2000

Fax number: (02) 8249 8337

Attention: Ron Sinclair, Director of Contracts

The Independent Certifier

Address: Arup Pty Ltd, Level 10, 201 Kent Street, Sydney New South Wales 2000

Fax number: (02) 9320 9321

Attention: Steve Lennon, Project Director

17 Dispute Resolution

17.1 Procedure for resolving disputes

- (a) This clause 17 applies only in respect of disputes between:
 - (i) the Independent Certifier; and
 - (ii) the Contractor and/or the PTTC.

The Project Deed will apply in respect of any disputes (including those relating to this Deed) between the Contractor and the PTTC to which the Independent Certifier is not a party.

- (b) Subject to clause 17.1(c), the Parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 17 and that it is a condition precedent to the referral of a dispute to litigation that a Party first exhausts the procedures referred to in clause 17.2.
- (c) Nothing in this clause 17 will prevent a Party seeking urgent injunctive or equitable relief.

17.2 Negotiation

- (a) If a dispute arises, then a Party may give notice to the other Parties to the dispute, requesting that the dispute be referred for resolution to the respective chief executive officers of those Parties.
- (b) A notice under clause 17.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 17.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 17.2(a), then those persons (or the persons for the time being acting in those positions) (**DR Representatives**) must meet and use reasonable endeavours acting in good faith to resolve the dispute within 10 Business Days of the date on which the notice under clause 17.2(a) is received. The joint decisions (if any) of the DR Representatives must be reduced to writing within the 10 Business Days referred to in this clause 17.2(c) and will be contractually binding on the Parties to the dispute.
- (d) The 10 Business Days referred to in clause 17.2(c) may be extended by agreement of the Parties in writing.
- (e) For clarification, a Party may commence litigation in relation to a dispute if the Parties have not:
 - (i) resolved the dispute; and
 - (ii) reduced their joint decisions to writing,at the conclusion of the 10 Business Days referred to in clause 17.2(c) (as that period may be extended under clause 17.2(d)).

17.3 Continue to perform

Notwithstanding the existence of a dispute, the Independent Certifier must continue to perform the Functions.

18 Information and Confidentiality

18.1 Applicability of this clause 18

- (a) This clause 18 applies only in respect of information disclosed:
 - (i) by the Independent Certifier to the PTTC and vice versa; and

- (ii) by the Independent Certifier to the Contractor and vice versa.
- (b) The provisions of the Project Deed will apply in respect of any confidential information disclosed by the Contractor to the PTTC and vice versa.
- (c) In relation to the information contained within the Insurance Letter and any financial statements provided by the Independent Certifier under this Deed:
 - (i) the PTTC acknowledges that the Independent Certifier claims that such information and financial statements are “commercial-in-confidence” for the purposes of the *Freedom of Information Act 1989* (NSW); and
 - (ii) clauses 18.3(f), 18.3(g) and 18.3(h) will not apply.

18.2 Keep confidential

The Parties must keep confidential all matters relating to this Deed and must use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating to this Deed. This obligation of confidence extends to confidential information provided to or obtained by a Party prior to entry into this Deed.

18.3 Permitted disclosure

Clause 18.2 will not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a Party to this Deed for the purposes of such performance;
- (b) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of breach of clause 18.2;
- (c) any disclosure which is required by any Law (including any order of a court of competent jurisdiction) or in accordance with clause 17;
- (d) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- (e) any disclosure of information to any prospective permitted assigns;
- (f) any disclosure by the PTTC of information relating to the design, construction, operation and maintenance of the ETS Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new Contractor, its advisers and lenders should PTTC decide to re-tender this Deed pursuant to the terms of the Project Deed;
- (g) any disclosure of information by the PTTC to any ETS Entity; and
- (h) any disclosure by the PTTC of any document relating to this Deed and which the Contractor (acting reasonably) has agreed with the PTTC contains no commercially sensitive information.

18.4 Obligations preserved

Where disclosure is permitted under clause 18.3, other than clauses 18.3(b), (c), (f) or (g), 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.

18.5 Auditor-General

Notwithstanding the other provisions of this clause 18, the Parties acknowledge that the Project Documents will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW), and information concerning the Project Documents will be tabled in Parliament by or on behalf of PTTC and will be published in accordance with the Guidelines, and PTTC may make the Project Documents available to any person, subject to the deletion of commercially sensitive information.

18.6 Exploitation of information

Except with the written consent of the PTTC, the Independent Certifier must not make use of this Deed or any information issued or provided by or on behalf of the PTTC in connection with this Deed otherwise than for the purposes of this Deed.

19 Intellectual property

[Commercial-in-confidence]

20 General

20.1 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.

20.2 Waiver

A failure to exercise or enforce or a delay in exercising or enforcing or a partial exercise or enforcement of any right, remedy, power or privilege under this Deed by either Party will not in any way:

- (a) preclude or operate as a waiver of any further exercise or enforcement of; or
- (b) constitute or operate as an election not to exercise or enforce,

that or any other right, remedy, power or privilege under this Deed or provided by Law.

20.3 Operation of indemnities

- (a) No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.
- (b) Unless expressly provided otherwise, each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties.
- (c) Each indemnity in this Deed survives the expiry or termination of this Deed.
- (d) A Party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

20.4 Giving effect to this Deed

Each Party must do anything (including execute any document) that the other Party or Parties may reasonably require to give full effect to this Deed.

20.5 Counterparts

This Deed may be executed in a number of counterparts and all such counterparts taken together will be deemed to constitute one and the same agreement.

20.6 Attorney

Each person who executes this document on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Schedule 1 — Functions

Project Deed functions

The Independent Certifier must discharge the functions which the Project Deed contemplates will be discharged by the Independent Certifier including the following:

- (a) The Independent Certifier must take receipt of each notice of Completion delivered to it by the Contractor in respect of a Stage or Milestone under clause 14.1 of the Project Deed.
- (b) Following receipt of the notice of Completion under paragraph (a), the Independent Certifier must:
 - (i) consult with the Contractor about the tasks necessary to achieve Completion; and
 - (ii) attend the relevant Site, take input from appropriately qualified persons regarding specialist activities necessary to achieve Completion and conduct all appropriate or necessary tests and inspections of the Sites and the ETS to determine whether Completion has occurred.
- (c) The Independent Certifier must take receipt of any information provided to it by the PTTC and the Contractor in respect of the relevant Stage or Milestone under paragraph (a) to determine whether Completion has occurred in accordance with the requirements of the Project Deed.
- (d) The Independent Certifier must take receipt of documentation and results relating to any tests performed by the PTTC or the Contractor (without limiting the Independent Certifier's obligation under paragraph (b)).
- (e) The Independent Certifier must consider whether any Defects in the relevant Stage or Milestone fall within paragraph (a) of the definition of "Completion" in the Project Deed.
- (f) The Independent Certifier must, if it is of the opinion that Completion of a Stage or Milestone has been achieved in accordance with the requirements of the Project Deed, issue a certificate substantially in the form set out in Schedule 5 of this Deed in accordance with clause 14.1(c) of the Project Deed certifying that Completion of the Stage or Milestone has been achieved. The Independent Certifier must provide details of any Defects in the relevant Milestone which fall within paragraph (a) of the definition of "Completion" in the Project Deed in the form set out in Schedule 6 of this Deed.
- (g) The Independent Certifier must, if it is of the opinion that Completion of a Stage or Milestone has not been achieved in accordance with the requirements of the Project Deed, notify the PTTC and the Contractor and take receipt of any new notice of Completion issued to it by the Contractor (in which case the process described above will occur again).
- (h) The Independent Certifier must when requested by the PTTC review any copies of DDI Deliverables provided to it by the Contractor under clause 9.2 of the Project Deed and must provide comments to the PTTC within 15 Business Days of receipt of the DDI Deliverables from the Contractor as to whether it considers that such DDI Deliverables are in accordance with the Project Deed.

Schedule 2 — Payment Schedule

[Commercial-in-confidence]

Schedule 3 — Requirements for Certification Services Plan

The Certification Services Plan must include the following:

- 1 A comprehensive schedule of activities to be undertaken by the Independent Certifier in order to certify the Completion of each Stage or Milestone in accordance with the requirements of the Project Deed and otherwise, to perform the Functions.
- 2 The Independent Certifier's methodology, detailed processes and approach of performing the Functions (which includes but is not limited to):
 - (i) the management team structures including nominated Personnel and subcontractors, their positions and the roles and tasks they will perform in respect of the Functions;
 - (ii) the minimum skill, expertise and experience levels of each position;
 - (iii) resource levels for each component of the Functions;
 - (iv) the governance structures that apply including internal and external lines of authority, communication and reporting, including those with the PTTC's Representative and the Contractor;
 - (v) the identification of delegated authorities of the Independent Certifier's Personnel, including identification of Personnel with delegated authority to execute the Certificates of Completion on behalf of the Independent Certifier;
 - (vi) all compliance records to be maintained, in the form of a schedule; and
 - (vii) details of the monthly report to be provided in accordance with clause 4.3 of this Deed.

Schedule 4 — Approved Subcontractors

1. Logica Australia Pty Limited (ABN 39 001 260 699) of Level 13, 100 Pacific Highway North Sydney NSW 2060
2. Edgar, Dunn & Company Pty Limited (ABN 77 078 626 892) of Level 4, 222 Clarence Street, Sydney NSW 2000
3. Grant Thornton Australia Pty Limited (ABN 41 127 556 389) of Level 17, 383 Kent Street, Sydney NSW 2000

Schedule 5 — Independent Certifier's Certificate

[Commercial-in-confidence]

Schedule 6 – Milestone Completion Report

[Report to contain details of minor Defects which fall within paragraph (a) of the definition of "Completion".]

Schedule 7 – Specified Personnel

[Commercial-in-confidence]

Execution page

Executed as a deed.

Signed, sealed and delivered by the **Public Transport Ticketing Corporation** in the presence of:

Signature of the Chief Executive Officer on behalf of the Public Transport Ticketing Corporation pursuant to section 35X(2) of the *Transport Administration Act 1988* (NSW):

Signature of witness

Name of Chief Executive Officer (print)

Name of witness (print)

Signed, sealed and delivered by **Cubic Transportation Systems (Australia) Pty Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed, sealed and delivered by **Arup Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)
