

M7-M12 Integration Project

State Works Deed

Transport for NSW
Transport

M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust
State Works Contractor

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 2652/14606/81011812

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State Works Deed

Date 21 February 2023

Parties Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney, NSW 2000 (Transport)

M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust of 101 Wallgrove Road, Eastern Creek, NSW 2766 (State Works Contractor)

Background

- A. The Scope of Works and Technical Criteria describes a defined scope of work, the totality of which must be provided or procured by the Companies and Transport in accordance with the M7-M12 Integration Project Deed.
- B. The M7-M12 Integration Project Deed requires:
- (a) the Companies to design and construct the Company's Works and the Temporary Works; and
 - (b) Transport to enter into the State Works Deed pursuant to which the State Works Contractor must procure and manage the design and construction of the State Works.
- C. In order to discharge their obligations to provide the totality of work contained in the Scope of Works and Technical Criteria:
- (a) Transport and the State Works Contractor will enter into this deed; and
 - (b) the State Works Contractor and the Companies as principals (and not as agents of Transport) will enter into the D&C Deed, requiring the Contractor to design and construct the Project Works (being the Company's Works and the State Works) and the Temporary Works.
- D. Transport and the State Works Contractor have agreed that:
- (a) the State Works Contractor will procure the design and construction of the State Works; and
 - (b) Transport will pay the State Works Contractor,
- in accordance with this deed.

Operative provisions

1. Definitions and interpretation

1.1 M7-M12 Integration Project Deed definitions

Definitions in the M7-M12 Integration Project Deed (including those incorporated from another document) apply in this deed unless the relevant term is defined in this deed.

1.2 Definitions

In this deed:

Aggregate State Works Payment means, as at any date, the aggregate of all State Works Instalments previously paid to the State Works Contractor by Transport under this deed up to that date.

Certificate of Initial Works Contribution means a certificate substantially in the form required by Schedule 8 certifying that the entire Initial Works Contribution has been paid.

Certificate of State Works Completion means a certificate substantially in the form required by Schedule 5 certifying that State Works Completion has been achieved.

Change of Control means, in relation to the State Works Contractor:

- (a) if the State Works Contractor comes under the Control of a person (acting alone or together with its Associates) who did not Control the State Works Contractor as at the date of this deed or following any event which is approved by Transport under clause 8 and/or the M7-M12 Integration Project Deed; or
- (b) if a person (acting alone or together with its Associates) who was in Control of the State Works Contractor as at the date of this deed or following any event which is approved by Transport under clause 8 and/or the M7-M12 Integration Project Deed stops having Control of the State Works Contractor,

other than as a result of a Permitted Dealing.

D&C Deed Sum has the meaning given to that term in the D&C Deed.

Date of Initial Works Contribution means the date certified in a Certificate of Initial Works Contribution pursuant to clause 3(c)(i)B.

Date of State Works Completion means the date of State Works Completion, as stated in a Certificate of State Works Completion.

Dispute Resolution Procedure means the dispute resolution procedure set out in Schedule 9 of the M7-M12 Integration Project Deed.

FCC means the document entitled "FCC" which sets out the forecast capital cost of the Integration Project and which was initialled by the parties on or about the date of this deed.

Final Payment Date means the date on which the full amount of the State Works Payment has been paid to the State Works Contractor or set-off pursuant to this deed.

Initial Works Contribution means the first \$ [REDACTED] (in aggregate) of the Total Project Costs paid by the Companies or the State Works Contractor (or both).

Liquidated Damages (EDC) has the meaning given to it in the D&C Deed, and is the amount of liquidated damages payable by the Contractor to the Companies and the State Works Contractor under the D&C Deed in respect of [REDACTED] arising from a delay to the Project Works, calculated at a rate of \$ [REDACTED]

M7-M12 Integration Project Deed means the document entitled "M7-M12 Integration Project Deed" between Transport and the Companies dated on or about the date of this deed.

Monthly Payment means, in respect of a month, the amount identified as such in, or calculated in accordance with, the Payment Schedule.

Payment Amount means the amount certified by the Transport Representative to be paid to the State Works Contractor under clause 5.3(a)(iv).

Payment Claim means a progress claim in respect of the State Works Payment submitted by the State Works Contractor in accordance with clause 5.2 in the form of Schedule 2.

Payment Claim Date means each date after the Date of Initial Works Contribution which is the 25th day of a month.

Payment Schedule means Schedule 6.

Payment Statement means a payment statement issued by Transport's Representative in accordance with clause 5.3 in the form of Schedule 7.

Project Management Fee means the amount of \$ [REDACTED], payable in accordance with clause 5.

SOP Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

State Works means the components of the Project Works specified in Schedule 1 and such other works as agreed between the parties from time to time.

State Works Completion means the stage when Integration Completion is achieved in relation to the State Works.

State Works Instalment means an amount paid to the State Works Contractor by Transport.

State Works Payment means the amount described as, or calculated as, the "Total State Works Payment" in the Payment Schedule.

State Works Security means the document entitled "M7-M12 Integration Project State Works Security" entered into between Transport and the State Works Contractor dated on or about the date of this deed.

SWC Trustee means M7 State Works Contractor Pty Ltd (ACN 664 603 249).

SWC Trust means the M7 State Works Contractor Trust.

SWC Trust Deed means the trust deed establishing the 'M7 State Works Contractor Trust' signed by M7 State Works Contractor Pty Limited (ACN 664 603 249) and dated 30 January 2023.

SWD Early Termination Amount means, on any date on or prior to the Date of Integration Completion, [REDACTED].

SWD Early FM Termination Amount means, on any date on or prior to the Date of Integration Completion, [REDACTED].

Total Project Costs means the sum of:

- (a) the aggregate amounts paid or payable [REDACTED]; and
- (b) to the extent not included in paragraph (a), all other amounts paid or payable by or on behalf of [REDACTED].

less any amounts that have been paid [REDACTED].

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed; and unless the context indicates a contrary intention:
- (b) **person** includes an individual, the estate of an individual, a body politic, 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 but not including Transport policies referred to in the Scope of Works and Technical Criteria) 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 any section or 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:
 - (i) this deed includes all schedules, exhibits, attachments and annexures to it;
 - (ii) the M7-M12 Integration Project Deed or any other Integration Project Document includes all schedules, exhibits, attachments and annexures to such document, and includes a reference to the Scope of Works and Technical Criteria;

- (iii) the Amended M7 Motorway Project Deed includes all schedules, exhibits, attachments and annexures to such document, and includes a reference to the "Scope of Works and Technical Criteria" as defined within it; and
- (iv) the Scope of Works and Technical Criteria includes all Appendices to the Scope of Works and Technical Criteria;
- (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 other grammatical form of that word or phrase has a corresponding meaning;
- (l) "day" means calendar day;
- (m) a reference to a court or tribunal is to an Australian court or tribunal;
- (n) 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;
- (o) a reference to a "month" is a reference to a calendar month; and
- (p) 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 the 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 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by the State Works Contractor if it is certified as a true copy by a director, secretary or general manager of the State Works Contractor.

1.7 Order of precedence

The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this deed:

- (a) the deed, excluding the schedules and exhibits; and
- (b) the schedules and the remaining exhibits,

except to the extent that any part of the various documents comprising this deed impose a higher standard, quality, level of service or quantum than any other part of the various documents comprising this deed in which case the higher standard, quality, level of service or quantum prevails.

1.8 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.

1.9 Condition precedent

The rights and obligations of the parties under this deed will not commence until the Satisfaction Date.

1.10 SWC Trustee's capacity

- (a) The SWC Trustee enters into this deed in its capacity as the trustee of the SWC Trust.
- (b) Subject to clauses 1.10(e) and 1.10(f) and unless specified to the contrary in this deed, the parties to this deed (other than the SWC Trustee) acknowledge that the SWC Trustee's obligations under this deed are incurred by the SWC Trustee solely in its capacity as trustee of the SWC Trust.
- (c) Subject to clauses 1.10(e) and 1.10(f) and unless specified to the contrary in this deed, the parties to this deed (other than the SWC Trustee) may enforce their rights against the SWC Trustee arising from the SWC Trustee's non-performance of its obligations under this deed only to the extent of the SWC Trustee's right of indemnity out of the assets of the SWC Trust.
- (d) Subject to clauses 1.10(e) and 1.10(f) and unless specified to the contrary in this deed, if any party to this deed (other than the SWC Trustee) does not (by reason of non-payment by the State Works Contractor) recover any amounts owing to it by enforcing its rights under or in connection with this deed, that party may not seek to recover the shortfall by:
 - (i) bringing proceedings against the SWC Trustee in its personal capacity; or
 - (ii) applying to have the SWC Trustee wound up or proving in the winding up of the SWC Trustee unless another creditor has initiated proceedings to wind up the SWC Trustee.
- (e) The limitations in clauses 1.10(a) to 1.10(d) inclusive will not apply to any obligation or liability of the SWC Trustee arising as a result of, or to the extent that it is not satisfied because, there is a reduction in the extent of the SWC Trustee's entitlement to be indemnified out of the assets of the SWC Trust as a result of:
 - (i) fraud, negligence, breach of trust or breach of duty on the part of the SWC Trustee;
 - (ii) any breach of the representations and warranties made by the SWC Trustee under this deed;
 - (iii) any breach by the SWC Trustee of any of its obligations under this deed (other than any breach of its obligation to perform the State Works Contractor's obligations); or
 - (iv) a failure on the part of the SWC Trustee to perform its duties properly within the meaning of section 601GA(2) of the Corporations Act, in each case in its capacity as trustee of the SWC Trust.

- (f) Nothing in clauses 1.10(a) to 1.10(d) (inclusive) prevents a party obtaining any injunctive relief, order for specific performance, declaration or similar relief against the SWC Trustee or enforcing this deed in accordance with its terms.

2. Obligations of State Works Contractor

- (a) **(Design and construction of State Works):** The State Works Contractor must procure and manage the design and construction of the State Works to ensure that Transport fully discharges its obligations to the Companies to procure the design and construction of the State Works under the M7-M12 Integration Project Deed and, in respect of the State Works and the SWC Activities:
- (i) must comply with all requirements of the M7-M12 Integration Project Deed that apply to the Company's Works and the Company's Activities;
 - (ii) assumes all obligations and gives all warranties to Transport that the Companies assume or give in respect of the Company's Works or the Company's Activities;
 - (iii) bears all risks and liabilities that the Companies bear in respect of the Company's Works or the Company's Activities; and
 - (iv) will have the benefit of all relief, rights, benefits and warranties provided under the M7-M12 Integration Project Deed in favour of the Companies in respect of the Company's Works and the Company's Activities,
- as though:
- (v) the State Works were the Company's Works;
 - (vi) the SWC Activities were the Company's Activities; and
 - (vii) the State Works Contractor were one of the Companies.
- (b) **(Companies' warranties, releases or waivers, acknowledgements and risks):** Without limiting clause 2(a), the State Works Contractor acknowledges that, in respect of the State Works and the SWC Activities, it:
- (i) gives all warranties to Transport;
 - (ii) provides all releases or waivers in favour of Transport;
 - (iii) makes all acknowledgements; and
 - (iv) accepts all risks,
- that the Companies give to Transport, provide in favour of Transport, acknowledge or accept under the M7-M12 Integration Project Deed in respect of the Company's Works and the Company's Activities.
- (c) **(Transport's warranties, releases or waivers, acknowledgements and risks):** Without limiting clause 2(a)(iv), Transport acknowledges that it:
- (i) gives all warranties to the State Works Contractor;
 - (ii) provides all releases or waivers in favour of the State Works Contractor;
 - (iii) makes all acknowledgements; and
 - (iv) accepts all risks,

that Transport gives to the Companies, provides in favour of the Companies, acknowledges or accepts under the M7-M12 Integration Project Deed in respect of the Company's Works and the Company's Activities for the benefit of the State Works Contractor in respect of the State Works and the SWC Activities.

- (d) **(Companies' obligations):** Without limiting clause 2(a), the State Works Contractor acknowledges that it must do everything necessary to ensure that the Companies comply with their obligations under the M7-M12 Integration Project Deed in relation to the design and construction of the Project Works, to the extent such obligations relate to the State Works.

3. Initial Works Contribution

- (a) **(No payment prior to Date of Initial Works Contribution):** Without limiting clause 5, the State Works Contractor acknowledges and agrees that:
- (i) it has no entitlement to, and Transport will not be liable to pay, any part of the State Works Payment prior to the Date of Initial Works Contribution; and
 - (ii) the amount of any claim for a progress payment submitted prior to the Date of Initial Works Contribution will be calculated as \$■.
- (b) **(Notice by the State Works Contractor):** When the State Works Contractor considers that the Initial Works Contribution has been made, the State Works Contractor may:
- (i) notify Transport and the Independent Certifier of its opinion; and
 - (ii) request the Independent Certifier to issue a Certificate of Initial Works Contribution stating the Date of Initial Works Contribution.
- (c) **(Independent Certifier to make determination):** The parties acknowledge that within 15 Business Days after the State Works Contractor complying with clause 3(b) the Independent Certifier is required to determine whether the Initial Works Contribution has been made and either:
- (i) if the Initial Works Contribution has been made, issue a Certificate of Initial Works Contribution to Transport and the State Works Contractor:
 - A. certifying that the Initial Works Contribution has been made; and
 - B. stating the Date of Initial Works Contribution; or
 - (ii) if the Initial Works Contribution has not been made, issue a notice to Transport and the State Works Contractor to this effect.
- (d) **(Date is final and binding):** Without limiting clause 3(e), the Certificate of Initial Works Contribution will be final and binding for the purpose only of establishing that the Initial Works Contribution has been made and will not be capable of challenge on any basis other than manifest error.
- (e) **(No approval):** A Certificate of Initial Works Contribution will not:
- (i) constitute an approval by Transport of the State Works Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the State Works comply with this deed; or

- (iii) prejudice any rights or powers of Transport.

4. Representatives

- (a) Transport and the State Works Contractor acknowledge and agree that the Transport Representative acts at all times as the servant or agent of Transport and is subject to the directions of Transport and will act solely in the interests of Transport in connection with this deed.
- (b) Without limiting clause 4(a), the parties agree that the persons appointed by:
- (i) Transport under clause 4.1 of Annexure A of the M7-M12 Integration Project Deed will also act as the Transport Representative under this deed; and
- (ii) the Companies under clause 4.2 of Annexure A of the M7-M12 Integration Project Deed to act as a representative of and be authorised to act on behalf of the Companies in discharging the Companies' functions under the M7-M12 Integration Project Deed with respect to the design and construction of the Company's Works and the performance of the Company's Activities will also act as a representative of and be authorised to act on behalf of the State Works Contractor in discharging the State Works Contractor's functions under this deed.

5. Payment

5.1 Payment of State Works Payment

Subject to the provisions of this deed, Transport must pay the State Works Contractor the State Works Payment in accordance with the payment regime in this clause 5.

5.2 Payment Claims and calculating progress payments

- (a) **(Each Payment Claim Date):** The State Works Contractor may make a Payment Claim on or after each Payment Claim Date (including in a subsequent month), provided that the State Works Contractor can only submit one Payment Claim in any month. A Payment Claim may be made in respect of any Monthly Payment which has not previously been the subject of a Payment Claim.
- (b) **(Submit Payment Claim):** If the State Works Contractor is entitled to make a Payment Claim for a Monthly Payment under this deed, it must submit a Payment Claim to Transport in the form required by Schedule 2 which may not exceed the Monthly Payment for the relevant month(s).
- (c) **(Amount of progress payment):** The State Works Contractor agrees that the amount of a progress payment (for the purposes of the SOP Act and this clause 5) will be calculated by reference to the Payment Schedule, and not by reference to Schedule 1.
- (d) **(No further Payment Claim):** The State Works Contractor agrees that:
- (i) the State Works Contractor must not submit any further Payment Claims after the full amount of the State Works Payment has been paid in accordance with this deed; and
- (ii) the amount of any progress payment claimed by the State Works Contractor after the full amount of the State Works Payment has been paid in accordance with this deed will be calculated as \$ [REDACTED]

- (e) **(Amounts in Schedule 1 do not impact Payment Claims, Payment Amount, Monthly Payments or Payment Schedule):** For the avoidance of doubt, the parties acknowledge and agree that the amounts set out in Schedule 1 and described as "Total – excluding GST" do not impact on the operation of the Payment Schedule or the timing or amount of any Payment Claim, Payment Amount or Monthly Payment or the calculation of the amount of any progress payment.

5.3 Payment Statements

- (a) Within 10 Business Days after receiving a Payment Claim submitted or purported to be submitted in accordance with clause 5.2, Transport's Representative (on behalf of Transport) will give the State Works Contractor (with a copy to Transport) a Payment Statement in the form of Schedule 7 certifying:
- (i) the Payment Claim to which it relates;
 - (ii) all amounts previously paid to the State Works Contractor by Transport under this deed in respect of the State Works;
 - (iii) any amounts which Transport is entitled to retain, deduct, withhold or set-off (in accordance with any right to set-off which Transport may have pursuant to clause 5.7(a) or otherwise at Law) against any monies otherwise due to the State Works Contractor;
 - (iv) the amounts (if any) of the payment that Transport proposes to make to the State Works Contractor; and
 - (v) if the Payment Amount is less than the amount claimed in the Payment Claim:
 - A. the reason why the Payment Amount is less than the amount claimed in the Payment Claim (including if it is because the full amount of the State Works Payment will have been paid after payment of the relevant Payment Amount); and
 - B. if the reason for the difference is that Transport has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) The State Works Contractor agrees with Transport that a Payment Claim submitted to Transport's Representative is received by Transport's Representative as agent for Transport and that a Payment Statement issued by Transport's Representative is issued by Transport's Representative as agent for Transport.
- (c) In issuing a Payment Statement, Transport's Representative may deduct from the amount which would otherwise be payable to the State Works Contractor, any amount which Transport is entitled to retain, deduct, withhold or set-off under this deed.
- (d) Any failure by Transport's Representative to set out in a Payment Statement an amount which Transport is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the State Works Contractor by Transport will not constitute a waiver of, or otherwise limit or affect, Transport's right to subsequently retain, deduct, withhold or set-off any amount it is entitled to retain, deduct, withhold or set-off under this deed.

5.4 Payment of State Works Payment Amounts and Project Management Fee

- (a) Transport must, within 15 Business Days after receipt of a valid Payment Claim issued by the State Works Contractor under clause 5.2, pay the Payment Amount to the State Works Contractor.
- (b) Transport must, within 20 Business Days of the Date of Integration Completion, pay the Project Management Fee to the State Works Contractor.
- (c) All payments made by Transport under this deed must be made:
 - (i) in Australian dollars;
 - (ii) in immediately available funds; and
 - (iii) to the bank account most recently notified to Transport by the State Works Contractor for that purpose.
- (d) Subject to clause 14, on or before the due date for payment of a Payment Amount to the State Works Contractor, Transport will provide a recipient created tax invoice to the State Works Contractor in respect of the State Works Contractor's supply to which the payment relates.

5.5 Payment is not acceptance

- (a) **(Payment on account):** Any Payment Statement or payment made under this clause 5 is not:
 - (i) evidence of the value of work or evidence that the work has been satisfactorily carried out in accordance with this deed;
 - (ii) acceptance or approval by Transport or the Independent Certifier of the State Works Contractor's performance or compliance with this deed; or
 - (iii) an admission of liability by Transport,
 and is made on account only.
- (b) **(Corrections):** Transport's Representative may in any Payment Statement correct any previous Payment Statement issued by Transport's Representative.

5.6 Notice before State Works Completion

The State Works Contractor must give Transport (with a copy to the Independent Certifier) separate notices at least:

- (a) 3 months; and
- (b) 1 month,

prior to the date upon which the State Works Contractor reasonably expects to achieve State Works Completion.

5.7 State Works Completion

- (a) **(Notice by the State Works Contractor):** When the State Works Contractor considers that it has achieved State Works Completion, the State Works Contractor must, in the form required by Schedule 3:
 - (i) notify Transport and the Independent Certifier of its opinion; and

- (ii) request the Independent Certifier to issue a Certificate of State Works Completion stating the date on which the State Works Contractor achieved State Works Completion.
- (b) **(Independent Certifier to make determination):** The parties acknowledge that within 15 Business Days after the State Works Contractor complying with clause 5.7(a), the Independent Certifier is required to determine whether State Works Completion has been achieved and either:
- (i) if State Works Completion has been achieved, issue a Certificate of State Works Completion to Transport and the State Works Contractor:
 - A. certifying that State Works Completion has taken place;
 - B. stating the Date of State Works Completion; and
 - C. listing any minor Defect corrections of the kind referred to in the definition of State Works Completion which, in the Independent Certifier's opinion, remain to be performed; or
 - (ii) if State Works Completion has not been achieved:
 - A. issue a notice to Transport and the State Works Contractor listing the work remaining to be performed to achieve State Works Completion; or
 - B. issue a notice to Transport and the State Works Contractor stating that State Works Completion is so far from being achieved that it is not practicable to provide the list referred to in clause 5.7(b)(ii)A,

after which the State Works Contractor must continue to diligently progress the State Works to achieve State Works Completion.
- (c) **(Correction of Defects which did not prevent State Works Completion):** Without limiting the State Works Contractor's other obligations under this deed (including in respect of Defects), as soon as practicable upon receipt of a Certificate of State Works Completion, the State Works Contractor must diligently correct all of the Defects applicable to the State Works specified in the Certificate of State Works Completion.
- (d) **(Further notice by the State Works Contractor):** The State Works Contractor must give notice to Transport and the Independent Certifier when the work listed in a notice issued by the Independent Certifier under clause 5.7(b)(ii)A has been completed.
- (e) **(Resubmission):** Clauses 5.7(a), 5.7(b) and 5.7(c) will apply in respect of the State Works Contractor's notice under clause 5.7(d) in the same way as if it were the original notice given under clause 5.7(a).
- (f) **(No restriction on Independent Certifier):** The Independent Certifier, in making its determination as to whether State Works Completion has been achieved:
- (i) will not be restricted by any notice, list or opinion which it previously provided to the State Works Contractor under clause 5.7(b)(ii)A; and
 - (ii) will be entitled to raise any other items of work (other than the minor Defects of the kind referred to in the definition of State Works Completion) as a ground for determining that State Works Completion has not been achieved.

5.8 Effect of Certificate of State Works Completion

- (a) **(Date is final and binding):** Without limiting clause 5.8(b), the Certificate of State Works Completion will be final and binding for the purpose only of establishing that State Works Completion has been achieved and will not be capable of challenge on any basis other than manifest error.
- (b) **(No approval):** A Certificate of State Works Completion will not:
 - (i) constitute an approval by Transport of the State Works Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the State Works comply with this deed; or
 - (iii) prejudice any rights or powers of Transport.

5.9 Set-off

Transport may set-off or deduct from any monies due to the State Works Contractor:

- (a) any debt or other monies due from the State Works Contractor to Transport; and
- (b) any bona fide claim to any money which Transport may have against the State Works Contractor whether for damages or otherwise,

whether under the Transport Project Documents or otherwise at Law relating to the Integration Project.

5.10 Interest

If a party does not pay any money payable by it to any other party under this deed by the due date, the first mentioned party must pay interest on that amount on demand by the other party. Interest is:

5.11 [Not used]

5.12 Change Payments

The parties acknowledge and agree that Changes under clause 10 of Annexure A of the M7-M12 Integration Project Deed can be:

- (a) designed by the Companies as a Change to the Company's Works; and
 - (b) constructed by the State Works Contractor as a Change to the State Works,
- to the extent agreed between Transport, the Companies and the State Works Contractor.

6. Assumption of risk by State Works Contractor

Except to the extent expressly provided under this deed or the M7-M12 Integration Project Deed:

- (a) the State Works Contractor accepts all risks in respect of the State Works, including the risk of:
 - (i) the actual cost of the design and construction of the State Works being greater than the State Works Payment; and
 - (ii) the design and construction of the State Works not being completed in accordance with the requirements of this deed or so as to enable Transport to satisfy its obligations to the Companies under the M7-M12 Integration Project Deed;
- (b) the State Works Contractor acknowledges that:
 - (i) under the M7-M12 Integration Project Deed, the Companies are required to investigate, finance, fund, plan, design and construct the Company's Works and the Temporary Works; and
 - (ii) the State Works Contractor must integrate, interface and co-ordinate the design and construction of the State Works with the design and construction of the Company's Works and the Temporary Works; and
- (c) Transport will have no liability to the State Works Contractor and the State Works Contractor will have no Claim against Transport arising out of or in connection with the Project Works, the Temporary Works, the Project Activities or this deed, including:
 - (i) the actual cost of the design and construction of the State Works being greater than the State Works Payment; or
 - (ii) the design and construction of the State Works not being completed in accordance with the requirements of this deed or so as to enable Transport to satisfy its obligations to the Companies under the M7-M12 Integration Project Deed.

7. Force majeure

7.1 Suspension of obligations

- (a) If a Force Majeure occurs, the State Works Contractor's obligations under this deed which are affected by the Force Majeure will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure.
- (b) If a Force Majeure occurs and a notice under clause 21.1(a) of Annexure A of the M7-M12 Integration Project Deed is issued, no party will be in default of its obligations under this deed in so far as the failure or delay in the observance or performance of those obligations by that party is caused by the Force Majeure specified in the notice under clause 21.1(a) of Annexure A of the M7-M12 Integration Project Deed.
- (c) Upon the State Works Contractor becoming able to recommence performing its obligations which were suspended under clause 7.1(a), the State Works Contractor must recommence the performance of those obligations.

7.2 Duty to remedy Force Majeure

To the extent the effects of a Force Majeure relate to the State Works or the SWC Activities, the State Works Contractor must remedy and Mitigate those effects promptly in accordance with clauses 18.10 and 21.4 of Annexure A of the M7-M12 Integration Project Deed.

7.3 Alternative arrangements

During the period of suspension, Transport may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the State Works Contractor).

7.4 Cessation of Force Majeure

The State Works Contractor must notify Transport immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure.

7.5 No financial relief to the State Works Contractor

Subject to clause 19 of the Amended M7 Motorway Project Deed, Transport will not be obliged to provide any financial relief to the State Works Contractor during the period of suspension.

7.6 No compensation to Transport

The State Works Contractor will not be liable to compensate Transport for any costs or losses which Transport incurs during the period of suspension.

8. Assignment

8.1 Entitlement to assign

- (a) Notwithstanding anything in the M7-M12 Integration Project Deed to the contrary, except as provided in:
- (i) the Debt Financing Documents (as defined in the Amended M7 Motorway Project Deed);
 - (ii) the Integration Debt Finance Documents; and
 - (iii) the RMS Consent Deed,
- the State Works Contractor must not sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in any of the Integration Project Documents without the prior written consent of Transport and compliance with this clause 8.
- (b) In granting its consent under clause 8.1(a), Transport may withhold its consent in its absolute discretion.
- (c) Transport may sell, transfer or assign or otherwise dispose of or deal with its interest in the Integration Project Documents without the prior written consent of the State Works Contractor provided it does so in accordance with clause 14.1(b) of the M7-M12 Integration Project Deed.

8.2 Change of Control prior to State Works Completion

- (a) The State Works Contractor undertakes to Transport that the direct legal and beneficial owners of the State Works Contractor will remain unchanged until State Works Completion.

- (b) The State Works Contractor must not permit:
- (i) any Change of Control of the State Works Contractor; or
 - (ii) the acquisition of shares, units or an economic interest in shares or units in any Holding Company (other than an Ultimate Shareholder) of the State Works Contractor which is restricted by the M7-M12 Integration Project Deed,
- other than in accordance with clause 14 of the M7-M12 Integration Project Deed.

8.3 Change of Control after State Works Completion

For the purposes of clause 8.2, any Change of Control of the State Works Contractor after State Works Completion will be deemed to be an assignment by the State Works Contractor of its interest in this deed and the other Integration Project Documents and such change will be subject to the terms and conditions of this clause 8.

9. Suspension

The parties agree that:

- (a) if the obligations of the Companies are suspended for any reason under the M7-M12 Integration Project Deed, Transport may elect by notice in writing to the State Works Contractor to suspend the obligations of both the State Works Contractor and Transport under this deed;
- (b) if the obligations of the State Works Contractor and Transport are suspended pursuant to clause 9(a), those obligations will recommence upon the obligations of the Companies recommencing under the M7-M12 Integration Project Deed; and
- (c) if a suspension occurs pursuant to clause 9(a), the State Works Contractor will not be entitled to:
 - (i) any adjustment of the State Works Payment; or
 - (ii) make any Claim against Transport arising out of, or in any way in connection with, the suspension, except to the extent relief is expressly allowed for under the M7-M12 Integration Project Deed.

10. Termination

10.1 Terminated if M7-M12 Integration Project Deed terminates

This deed terminates if the M7-M12 Integration Project Deed terminates. This deed may not be terminated by any party in any other circumstances (including repudiation at common law).

10.2 Termination payments

- (a) If this deed terminates under clause 10.1 prior to the Final Payment Date, the State Works Contractor agrees that, subject to clause 10.2(b), it will not be entitled to:
 - (i) any [REDACTED]; or
 - (ii) [REDACTED], this deed or the termination.

- (b) Without limiting clause 9.9 of the M7-M12 Integration Project Deed, if, prior to Integration Completion, this deed terminates under clause 10.1 as a result of the M7-M12 Integration Project Deed being terminated under:
 - (i) clause 9.5 or 9.7 of the M7-M12 Integration Project Deed, Transport must within 30 Business Days after the date of termination pay the SWD Early Termination Amount to the State Works Contractor;
 - (ii) clause 9.6 of the M7-M12 Integration Project Deed, Transport must within 30 Business Days after the date of termination pay the SWD FM Early Termination Amount to the State Works Contractor.
- (c) The State Works Contractor agrees that in calculating the:
 - (i) SWD Early Termination Amount, there will be no double counting of amounts that are included in the calculation of the Early Termination Amount (M7M12) under the M7-M12 Integration Project Deed; and
 - (ii) SWD FM Early Termination Amount, there will be no double counting of amounts that are included in the calculation of the Uninsurable FM Termination Amount (M7M12) under the M7-M12 Integration Project Deed.

10.3

[REDACTED]

11. Dispute resolution

Any dispute or difference arising out of, relating to, or in connection with this deed or the conduct of the parties in relation to this deed, or its subject matter (including any question regarding the existence, validity or termination of this deed) (**Dispute**) must be resolved in accordance with the Dispute Resolution Procedure, as if:

- (a) a reference therein:
 - (i) to a "Company" or "the Companies" was a reference to "the State Works Contractor";
 - (ii) to "the parties" was a reference to "Transport and the State Works Contractor"; and
 - (iii) to "party" was a reference to either one of them,

provided that:

- (b) the State Works Contractor authorises the chief executive officer of the Companies to resolve any Dispute on behalf of, and relinquish any right of, the State Works Contractor in connection with this deed;
- (c) the State Works Contractor's agreement will not be required to effect a valid selection of any expert or arbitrator;
- (d) the State Works Contractor will not be obliged to pay any part of the costs of any expert or arbitrator; and
- (e) subject to paragraphs (a) to (d) above, nothing in this clause will otherwise limit the effect of clause 26 of the Amended M7 Motorway Project Deed.

12. Representations, warranties and covenants

12.1 Representations and warranties by the State Works Contractor

The State Works Contractor makes the following continuing representations and warranties for the benefit of Transport:

- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party;
- (b) it has power to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party, to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;
- (c) its obligations under each Integration Project Document to which it is expressed to be a party are valid and binding and are enforceable against it and in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights;
- (d) it subsists and is properly constituted;
- (e) it is not in default of its material obligations under any Transport Project Document;
- (f) it is not involved in, and does not conduct, any business other than the business related to the Integration Project and will not do so without the prior written approval of Transport;
- (g) its obligations under the State Works Security will rank ahead of, and its obligations under this deed and each Integration Project Document to which it is expressed to be a party (other than the State Works Security) will rank at least equally with, all its other unsecured indebtedness, other than indebtedness preferred by law;
- (h) the execution, delivery and performance of each Integration Project Document to which it is expressed to be a party and the transactions under each of them do not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (i) it does not 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);
- (j) no litigation (which has not been disclosed to Transport in writing prior to the date of this deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any Integration Project Document to which it is expressed to be a party; and
- (k) except as contemplated under an Integration Project Document or in connection with a transaction which is contemplated by an Integration Project Document, it will

not trade or incur any Liabilities or carry on any business or enter into any document or agreement other than the Integration Project Documents without Transport's prior written approval.

12.2 Trustee representations and warranties

The SWC Trustee will:

- (a) immediately notify Transport in writing if its ceases to be the trustee of the SWC Trust and procure that any new trustee executes in favour of Transport any documents, guarantees and Encumbrances (as defined in the State Works Security) which Transport requires, provided that these are not any more onerous than those required or obtained by, under or in relation to the Integration Project Documents to which the SWC Trustee is expressed to be a party;
- (b) notify Transport immediately in writing if the SWC Trust is determined or for any reason ceases to exist, or if the SWC Trustee is required or directed by any of the beneficiaries of the SWC Trust to do any act or thing in relation to the SWC Trust or trust funds of the SWC Trust;
- (c) not without the prior written consent of Transport and until the satisfaction of all the Secured Obligations (as defined in the State Works Security), exercise in its own favour personally any right of indemnification, reimbursements, recoupment, lien or charge to which it might be entitled personally against any beneficiary or against or in respect of money or other assets forming part of the SWC Trust;
- (d) not cause or permit any SWC Trust property to be mixed with any other property;
- (e) not default in the performance of its obligations as trustee of the SWC Trust (whether imposed under the SWC Trust Deed or at law);
- (f) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:
 - (i) the termination of the SWC Trust or the termination, rescission or revocation of the SWC Trust or the SWC Trust Deed (as applicable);
 - (ii) the resettlement of any assets of the SWC Trust;
 - (iii) the resignation, retirement, removal or replacement of the SWC Trustee as trustee of the SWC Trust or the appointment of an additional trustee of the Asset Trust or the Project Trust (as applicable); or
 - (iv) the determination, alteration, shortening or fixing of the vesting date of the SWC Trust; and
- (g) not release, dispose of or otherwise prejudice:
 - (i) its rights of indemnity against the SWC Trust property or any right of indemnity against the beneficiaries of the SWC Trust;
 - (ii) its rights of exoneration; or
 - (iii) its equitable lien over the SWC Trust property; and

the SWC Trustee shall at Transport's request:

 - (iv) exercise its indemnity against the SWC Trust, and its rights of exoneration in respect of and equitable lien over the SWC Trust property

and any indemnity against the beneficiaries of the SWC Trust in relation to the Secured Money (as defined in the State Works Security); and

- (v) assign to Transport those indemnities, that right of exoneration and that equitable lien and otherwise facilitate the subrogation of Transport to those indemnities and that equitable lien in relation to the Secured Money (as defined in the State Works Security);
- (h) not consent to or register the transfer of any units in the SWC Trust or cancel, repurchase or redeem any units in the SWC Trust if to do so would breach clause 8 in respect of the SWC Trust.

12.3 Representations and warranties by Transport

Transport makes the following continuing representations and warranties for the benefit of the State Works Contractor:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party;
- (c) it is legally entitled and has all statutory power to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of power;
- (d) its obligations under each Integration Project Document to which it is expressed to be a party are valid and binding and are enforceable against it in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and
- (e) the execution, delivery and performance of each Integration Project Document to which it is expressed to be a party and the transactions under each of them does not violate any law to which Transport is subject.

13. Restrictions on the State Works Contractor

13.1 Restrictions on business

The State Works Contractor must not (without the prior written approval of Transport) engage in any business other than procuring and managing the design and construction of the State Works and the carrying out of its obligations and the exercise of its rights under this deed, the D&C Deed, the M7-M12 Integration Project Management Deed and the Integration Debt Finance Documents.

13.2 Restrictions on acquisition of property and liabilities being incurred

The State Works Contractor must not (without the prior written approval of Transport) acquire or hold any property or incur any liability other than for the purposes of the State Works or pursuant to the Integration Debt Finance Documents.

13.3 Restrictions on subcontracting

The State Works Contractor must not (without the prior written approval of Transport) enter into any Subcontracts other than the D&C Deed.

14. GST

- (a) Notwithstanding any other provision of this deed, any amount payable for a supply made under this deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b) Subject to clause 14(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
- (i) any amount payable or consideration to be provided under any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (the **Recipient**), equal to the amount of GST payable on that supply as calculated by the **Supplier** in accordance with the GST law and payable at the same time and in the same manner as for the **Agreed Amount**;
 - (iii) the **Supplier** will provide a tax invoice (or equivalent documentation which complies with the GST law) to the **Recipient** in respect of that supply, no later than the time at which the **Agreed Amount** for that supply is to be provided under this deed; and
 - (iv) for the avoidance of doubt, where any debt or other monies due are set off or deducted under clause 5.9, this does not alter the "**Agreed Amount**" of consideration for a supply for the purposes of determining the value of the supply to be included on the recipient created tax invoice (or equivalent documentation that complies with the GST law).
- (c) Subject to clause 14(e), if, for any reason, the GST payable by the **Supplier** in respect of a supply it makes under this deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the **Recipient** under clause 14(e) in respect of that supply, the **Supplier** will provide a refund or credit to or will be entitled to receive the amount of this variation from the **Recipient** (as appropriate). Where an adjustment event occurs in relation to a supply, the **Supplier** will issue an adjustment note to the **Recipient** in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the **Recipient** is dissatisfied with any calculation to be made by the **Supplier** under this clause, the **Recipient** may, at its own expense and after notifying the **Supplier** accordingly, refer the matter to an independent expert nominated by the President of the Institute of Arbitrators and Mediators Australia for expert determination, which will be final and binding on all Parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this deed, the matters required to be taken into account by the **Supplier** under this clause and any other matter considered by the expert to be relevant to the determination. The Parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert. However, this clause 14(d) shall not apply to any supply dealt with under clause 14(e).
- (e) The parties agree that, unless otherwise agreed in writing, the following will apply to all supplies made by the State Works Contractor to Transport under or in connection with this deed:

- (i) Transport will issue to the State Works Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply made by the State Works Contractor to Transport under this deed;
 - (ii) the State Works Contractor will not issue a tax invoice in respect of any taxable supply it makes to Transport;
 - (iii) each party acknowledges and warrants that at the time of entering into this deed, it is registered for GST and will notify the other party if it ceases to be registered; and
 - (iv) Transport may notify the State Works Contractor that it will no longer issue a RCTI for each taxable supply made by the State Works Contractor under this deed, in which case, from that point in time, Transport will not be required to issue RCTIs in respect of such supplies and the State Works Contractor will be required to issue tax invoices pursuant to clause 14(b)(iii).
- (f) The Parties acknowledge that this clause 14(f) applies to the extent each party is making supplies to the other party for consideration, and is the Recipient of all supplies from the other party. Where two parties (or entities on whose behalf those parties are acting) in accordance with this deed exchange non-monetary consideration:
- (i) notwithstanding clause 14(b), the additional amount payable on any supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; unless
 - (ii) it is determined, whether by agreement between the parties or by demand, assessment or private ruling issued by the Commissioner of Taxation that there is a disparity between:
 - A. the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Recipient to the Supplier; and
 - B. the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Supplier and have their nexus with the non-monetary consideration and monetary consideration being provided by the Recipient and referred to in clause 14(f)(ii)A.
- (g) Where clause 14(f)(ii) applies, the Supplier and the Recipient will use best endeavours to determine a mutually acceptable means of calculating additional amounts to be provided between the parties to ensure, as far as possible that neither the Supplier nor the Recipient suffers a net cost or loss. If within 30 Business Days of the determination under clause 14(f)(ii), the parties are unable to agree on a means of calculating the additional amounts payable, clause 14(b) shall apply without any limitation imposed by this clause 14(g), however:
- (i) the Supplier must only issue a tax invoice or an adjustment note to reflect the application of clause 14(g) after the parties have reached an agreement under this clause 14(g) or have determined that they are unable to reach such an agreement; and
 - (ii) the additional amount payable pursuant to clause 14(g) will only be payable 5 Business Days after the receipt by the Recipient of the tax

invoice or adjustment note issued by the Supplier in accordance with clause 14(g)(i).

- (h) Where any party to this deed receives a demand, assessment or private ruling regarding the matters addressed in clause 14(f), it must notify the other parties to this deed of that fact and provide them with a copy of the demand, assessment or private ruling within 10 Business Days of receiving it. Before any party to this deed applies for a private ruling regarding the matters addressed in clause 14(f), it must provide the other parties to this deed with a copy of the private ruling request it intends to lodge with the Commissioner of Taxation no less than 10 Business Days prior to its lodgement of same.

15. Notices

15.1 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 (unless the Notice is sent from the email address of either Representative, in which case the Notice is deemed to have been signed by the relevant Representative);
- (b) addressed to the person to whom it is to be given;
- (c) either:
- (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) subject to clause 15.1(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 15.1(c)(ii) under clauses 3(b), 9(a) or 10, in addition to the Notice sent pursuant to clause 15.1(c)(ii), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 15.1(c)(i).

15.2 Effectiveness of notices

- (a) A Notice referred to in clause 15.1(d) will not be effective unless it is delivered in accordance with clause 15.1(c)(i).
- (b) A Notice issued pursuant to clause 15.1(c)(ii) and a Notice issued pursuant to clause 15.1(c)(i) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

15.3 When a notice is given

A Notice that complies with this clause 14(a) 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 15.3(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 15.1(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 15.3(b); and
 - (ii) the date determined in accordance with clause 15.3(a).

15.4 Address for notices

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

Transport

Address: Western Sydney Project Office
Transport for NSW
Level 7, 27 Argyle Street
Parramatta NSW 2150

Email address: [REDACTED]@transport.nsw.gov.au

Attention: Project Director M12 Motorway

State Works Contractor

Address: 101 Wallgrove Road
Eastern Creek NSW 2766

Email address: Legal@nswroads.com.au
Attention: Company Secretary

15.5 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 15.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 14(a). 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 15.1(c)(ii) will only form part of a communication under this clause 14(a) if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this deed:
 - (i) to ensure that their respective firewall and/or mail server (as applicable):

- A. allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received;
 - B. does not trap any messages in the spam filter which:
 - 1) in the case of notices sent by Transport to the State Works Contractor, have been sent from transport.nsw.gov.au; and
 - 2) in the case of notices sent by the State Works Contractor to Transport, have been sent from westlinkm7.com.au or such other domain as is notified to Transport in writing by the State Works Contractor; 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.

16. General

16.1 Governing law

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

16.2 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 action or 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 action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, where that venue falls within clause 16.2(a).

16.3 Cost

A party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.

16.4 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 any party to this deed will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.
- (b) Any waiver or consent given by 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 another party to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the first party,
- 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.

16.5 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.

16.6 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.

16.7 Survival of certain provisions

The parties acknowledge and agree:

- (a) clauses 1, 5.10, 10.2, 11, 14, 15 and 16 and any other provisions of this deed which are expressed to survive termination (together the **Surviving Clauses**) will survive rescission, termination or expiration of this deed;
- (b) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this deed occurring before such rescission or termination;
- (c) no right or obligation of any party will merge on completion of any transaction under this deed, and all rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed; and
- (d) no provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

16.8 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.

16.9 Amendments

This deed may only be varied by a deed executed by or on behalf of both Transport and the State Works Contractor.

16.10 Expenses

- (a) Subject to paragraph (b), each party must bear its own costs, including professional costs and disbursements, associated with the preparation and execution of this deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto.
- (b) As between the parties, Transport must pay (or reimburse the State Works Contractor within 10 Business Days for) all stamp, registration and similar taxes including fines and penalties payable to or required to be paid by any appropriate Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment receipt or other transaction contemplated by them.

16.11 Severability of provisions

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, then:

- (a) that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 16.11(b)(i), preserves to the maximum possible extent:
 - A. the enforceability of the provision and the provisions of this deed; and
 - B. the original effect and intent of this deed.

16.12 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 Transport and the State Works Contractor 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.

16.13 Entire Agreement

To the extent permitted by Law, 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 written or other agreement of the parties, in relation to the subject matter of this deed.

16.14 Not used

16.15 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's 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 representations or inducements expressly set out in this deed.

16.16 Moratorium legislation

Unless application is mandatory by Law, any present or future Law will not apply to this deed so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to Transport.

16.17 No partnership, joint venture or other fiduciary relationship

Neither this deed nor any other Integration Project Document to which Transport or the State Works Contractor are expressed to be parties creates a partnership, joint venture or fiduciary relationship between Transport (on the one hand) and the State Works Contractor (on the other hand).

16.18 Taxes

Subject to clauses 14 and 16.10(b) of this deed and clause 7 of the M7-M12 Integration Project Deed, the State Works Contractor must pay all Taxes which may be payable in respect of the SWC Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

16.19 PPSA

- (a) For the purposes of this clause 16.19:
 - (i) **"Key Contractor"** means the Contractor and the Tolling Equipment Subcontractor;
 - (ii) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
 - (iii) **"Security Interest"** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person including a security interest under section 12 of the PPSA; and
 - (iv) "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPSA.
- (b) The State Works Contractor acknowledges and agrees that:

- (i) **(Transport's rights):** if and to the extent that Transport at any time forms a belief on reasonable grounds that Transport is, or will become, a secured party in connection with this Deed or any other Project Document or any transaction contemplated by this Deed or any other Project Document, Transport may, at the State Works Contractor's expense, take all steps that Transport considers necessary to:
 - A. perfect, protect, record, register, amend or remove the registration of, Transport's Security Interest in any relevant personal property that is the subject of that Security Interest (**Relevant Personal Property**); and
 - B. better secure Transport's position in respect of the Relevant Personal Property under the PPSA;
- (ii) **(Assistance):** it will do, and ensure that each Key Contractor does, all things reasonably necessary to assist Transport to take the steps described in clause 16.19(b)(i);
- (iii) **(Waiver of right to receive any verification statement, etc):** it irrevocably and unconditionally waives (and will ensure that each Key Contractor irrevocably and unconditionally waives):
 - A. (to the extent permitted by law) its right to receive any notice that is required by any provision of the PPSA (including any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of Transport in the Relevant Personal Property); and
 - B. its right to receive any information under section 275 of the PPSA.
- (c) **(Excluded PPSA sections):** To the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of Transport's Security Interest in Relevant Personal Property, the State Works Contractor and Transport agree (and will ensure that each Key Contractor agrees with Transport) that, in accordance with section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests (to the extent, if any, mentioned in section 115) section 95, subsection 121(4), section 125, section 130, subsection 132(3)(d), subsection 132(4), section 135, section 142 and section 143.
- (d) **(Confidentiality):**
 - (i) if the State Works Contractor is a "debtor" (as defined in the PPSA), the State Works Contractor and Transport agree (and will ensure that each Key Contractor agrees with Transport) to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and not to disclose that information to anyone; and
 - (ii) clause 16.19(d)(i) does not apply to any disclosure of information or documents which is otherwise required or permitted under any Project Document.
- (e) The State Works Contractor acknowledges and agrees that:
 - (i) **(No disclosure):** it will not (and will ensure that each Key Contractor will not):
 - A. make any request under section 275 of the PPSA or to take any action which would otherwise require Transport to make a disclosure under that section; or

- B. disclose the contents of this Deed or any security agreement that provides for Transport's Security Interest in Relevant Personal Property, the amount or performance obligation secured by Transport's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA;
- (ii) **(State Works Contractor to notify Transport):** other than in relation to Security Interests arising in the ordinary course of the SWC Activities (but only where the interest does not secure payment or performance of an obligation), it must immediately notify Transport if the State Works Contractor or any Key Contractor becomes aware of any person other than Transport taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
- (f) **(Removal of registered security interest):** it must arrange (and ensure that each Key Contractor arranges) for the removal or cessation of any registration of any Security Interest that affects the priority of Transport's interest in Relevant Personal Property.

Schedule 1 - State Works

(Clause 1.1)

State Works means the following components of the Project Works:

Description	Total (excluding GST)
Interchange-EDC Costs, comprising:	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]

Description	Total (excluding GST)
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
Management fee	[REDACTED]
Total	[REDACTED]

Schedule 2 - Payment Claim

(Clause 5.2)

To: **Transport for NSW (Transport)**

From: [A Director, Secretary or General Manager of the State Works Contractor]

In accordance with the terms of clause 5.2 of the State Works Deed between Transport and M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust (**State Works Contractor**) dated [insert date] (**State Works Deed**) with respect to the Integration Project, I hereby submit this Payment Claim as follows:

Date of Payment Claim	Month	Amount claimed
[Insert date of Payment Claim]	[Insert month(s) in respect of which payment is claimed]	[insert Monthly Payment for relevant month(s)]

For and on behalf of
M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust

Signed:

Date:

Schedule 3 - State Works Contractor's Notice of State Works Completion

(Clause 5.7(a))

M7-M12 Integration Project (Project)

To: Transport for NSW, a New South Wales Government agency (**Transport**) and [insert] (**Independent Certifier**)

Copy: [insert] (**D&C Contractor**) and [insert] (**Security Trustee**)

From: [A Director, Secretary or General Manager] of M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust (**State Works Contractor**)

In accordance with the terms of clause 5.7(a) of the deed between Transport and the State Works Contractor dated [insert] (**State Works Deed**), we hereby:

1. certify that State Works Completion has been achieved by the State Works Contractor on [insert] in accordance with the terms and conditions of the State Works Deed; and
2. request that the Independent Certifier issues a Certificate of State Works Completion stating the date on which State Works Completion was achieved.

.....
Signed for and on behalf of

M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust

Schedule 4 – [Not used]

Schedule 5 - Independent Certifier's Certificate of State Works Completion

(Clause 1.2)

[ON INDEPENDENT CERTIFIER'S LETTERHEAD]

[insert date]

Project Representative [insert address]

M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust [insert address]

Dear [insert name]

CERTIFICATE OF STATE WORKS COMPLETION

Integration Project State Works Deed (**State Works Deed**)

We refer to the State Works Deed and hereby advise you that State Works Completion (as defined in the State Works Deed) was achieved on [insert date].

This Certificate of State Works Completion does not relieve the State Works Contractor of its obligation to rectify Defects under clause 5.7(c) of the State Works Deed and to complete any other outstanding obligations under the State Works Deed.

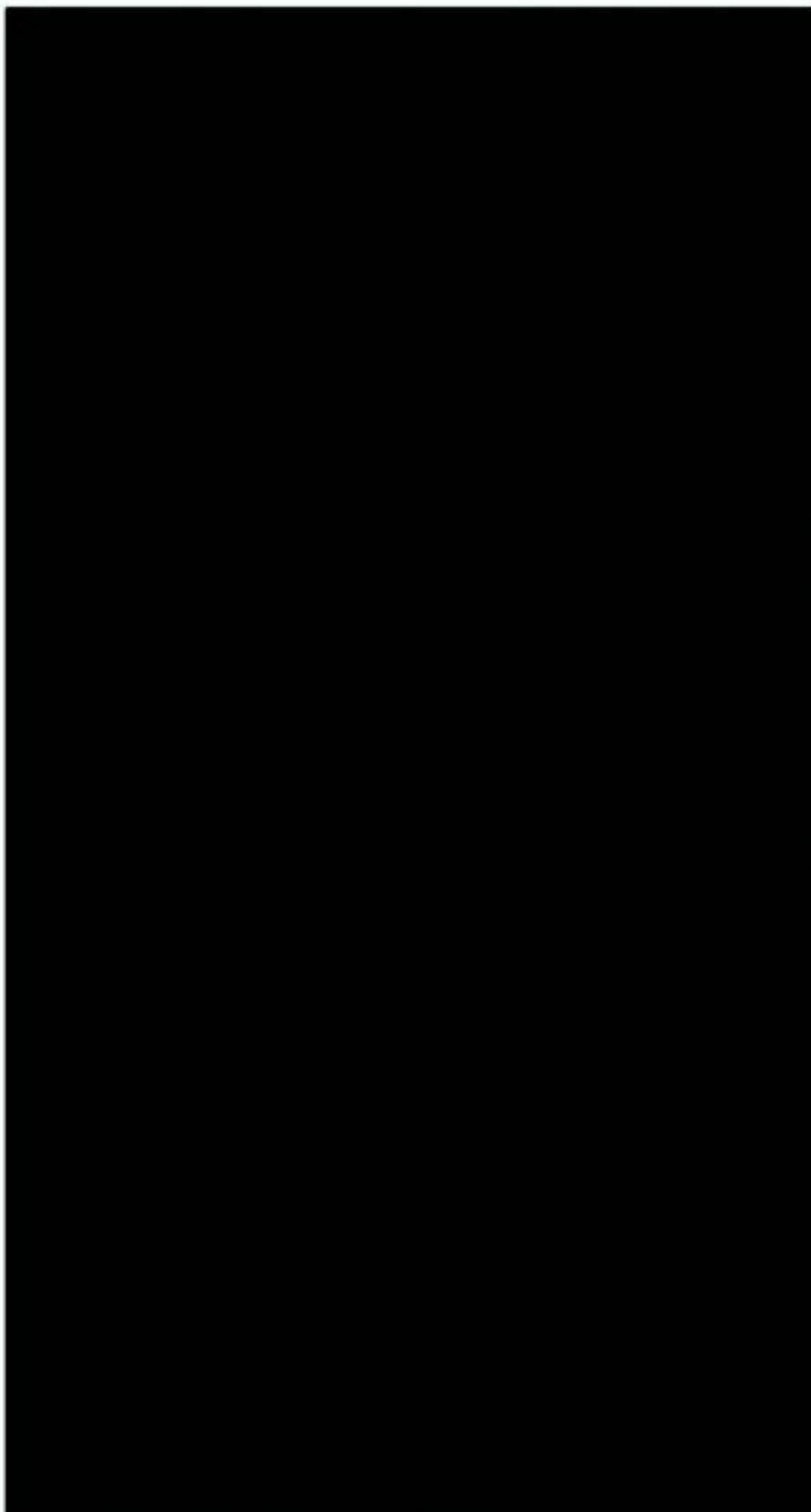
Yours sincerely

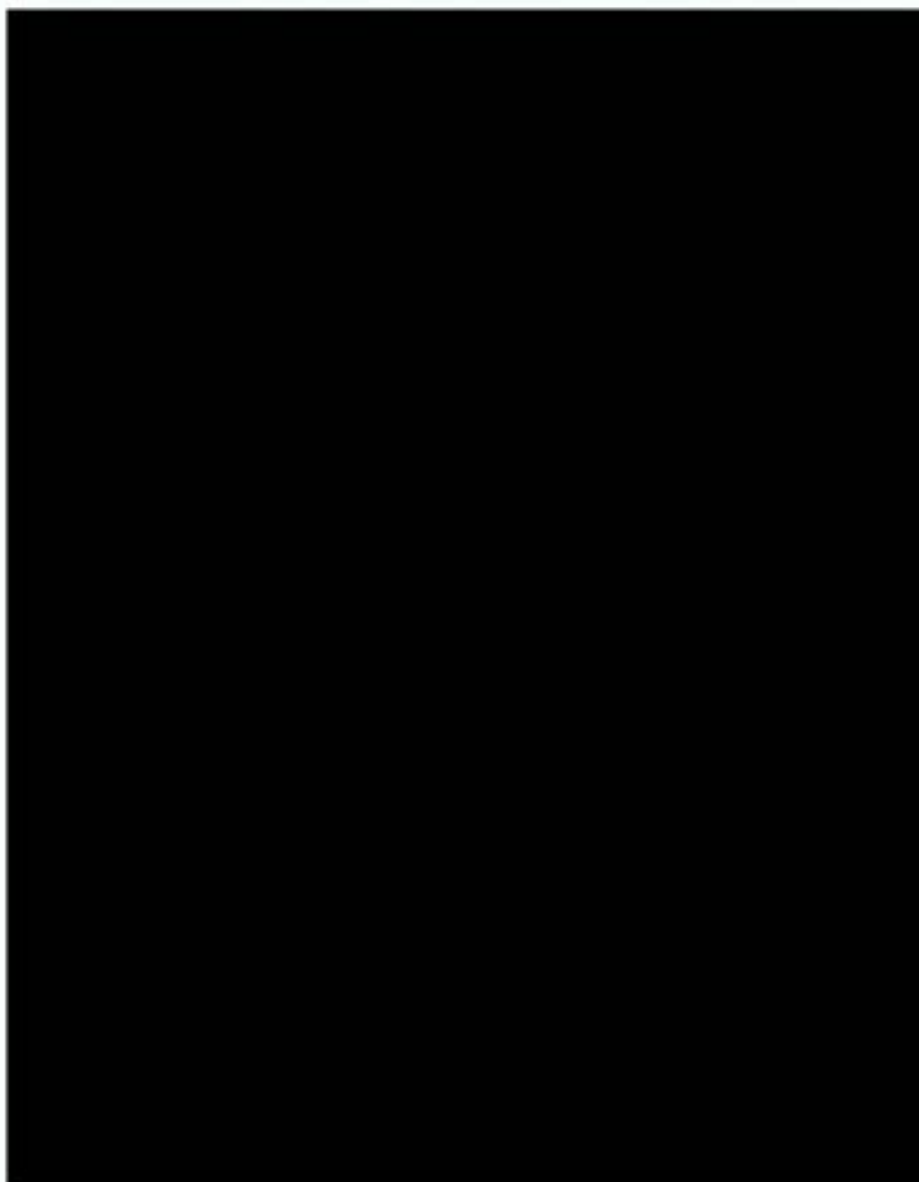
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for and on behalf of the Independent Certifier

Schedule 6 –Payment Schedule

(Clause 1.2)





Schedule 7 - Form of Payment Statement

(Clause 5.3)

M7-M12 Integration Project (Project)

To: M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust (**State Works Contractor**)

Copy: Transport for NSW, a New South Wales Government agency (**Transport**)

From: *[insert name of Transport Representative]*

In accordance with the terms of clause 5.3 of the State Works Deed between Transport and the State Works Contractor dated *[insert date]* (**State Works Deed**) with respect to the Integration Project, I hereby certify that:

1. this payment statement relates to the following Payment Claim:
[insert details of Payment Claim to which State Works Contractor Payment Statement relates];
2. Transport has previously paid the State Works Contractor *[insert amount]* under the State Works Deed in respect of the State Works;
3. Transport considers that it is entitled to retain, deduct, withhold or set-off (in accordance with any right to set-off which Transport may have pursuant to clause 5.7(a) of the State Works Deed or otherwise at Law) against any monies otherwise due to the State Works Contractor an amount of *[insert amount]*;
4. in respect of the Payment Claim described in paragraph 1, the amount to be paid by Transport is *[insert amount]*; and
5. *[delete if not applicable]* the amount to be paid by Transport as set out in paragraph 5 is less than the payment claimed in the Payment Claim described in paragraph 1, due to *[insert reason in accordance with clause 5.3 of the State Works Deed]*.

Terms defined in the M7-M12 Integration Project Deed and the State Works Deed have the same meaning in this statement.

Signed for and on behalf of
Transport Representative

Date

IMPORTANT NOTE:

Any evaluation or issue of a Payment Statement by the Transport Representative will not:

1. constitute approval of any work nor will it be taken as admission or evidence that the part of the State Works covered by the Payment Statement has been satisfactorily carried out in accordance with the M7-M12 Integration Project Deed or the State Works Deed; or
2. constitute a waiver of the requirements of clause 5.2 of the State Works Deed in relation to any Payment Claim other than to the extent (if any) to which Transport expressly waives such requirements in respect of the Payment Claim the subject of the Payment Statement.

Schedule 8 - Independent Certifier's Certificate of Initial Works Contribution

(Clause 1.2)

M7-M12 Integration Project (Project)

To: Transport for NSW, a New South Wales Government agency (**Transport**) and M7 State Works Contractor Pty Ltd (ACN 664 603 249) in its capacity as trustee of the M7 State Works Contractor Trust (**State Works Contractor**)

From: [insert] (**Independent Certifier**)

In accordance with the terms of clause 3(c) of the M7M12 Integration Project State Works Deed between Transport and the State Works Contractor dated [insert date] (**State Works Deed**) with respect to the Project, I certify that the entire Initial Works Contribution has been paid as at the Date of Initial Works Contribution specified below.

Date of Initial Works Contribution

Terms defined in the State Works Deed have the same meaning in this certificate.

.....
Signed for and on behalf of
[IC]

.....
Date

Executed as a deed.

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

[Redacted]

[Redacted]

Signature of authorised delegate

[Redacted]

Name of witness (print)

[Redacted]

Name of authorised delegate (print)

[Redacted]

Position of authorised delegate (print)

[Redacted]

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



Signature of director



Full name of director



Signature of company secretary/director



Full name of company secretary/director