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## 1. Definitions and interpretation

### 1.1 Definitions

In this Annexure A:

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

**Aboriginal Employee** means an employee of a Company, the State Works Contractor or a Subcontractor, who is a person of Aboriginal or Torres Strait Islander descent as verified by the Contractor in accordance with guidance provided under the Aboriginal Procurement Policy.

**Aboriginal Participation Plan** has the meaning in clause 5.15(a).

**Aboriginal Participation Report** means a report submitted in accordance with clause 5.15(c).

**Aboriginal Participation Requirement** means the mandatory minimum requirement for Aboriginal participation in this deed as prescribed by sections 3.14(a)(i) and 3.14(a)(ii) of the SWTC.

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

**Accession Deed Poll** has the meaning given to that term in the Contractor's Side Deed.

**Act of Prevention** means:

- (a) a breach of this deed or the State Works Deed by Transport;
- (b) an act or omission by Transport or its Related Parties, not being an act or omission:
  - (i) expressly permitted or allowed by this deed, including any Direction given by Transport or Transport's Representative (other than a matter referred to in paragraph (c) of this definition);
  - (ii) which is carried out within the timeframe expressly permitted or allowed by this deed (other than a matter referred to in paragraph (c) of this definition);
  - (iii) to the extent the act or omission is caused or contributed to by a breach by a Company of this deed or the State Works Contractor of the State Works Deed, or any negligent or unlawful act or omission of a Company, the State Works Contractor or any of their respective Related Parties; or
  - (iv) being the exercise by Transport of any of its functions and powers pursuant to any Law; and
- (c) a Change the subject of a Direction by Transport's Representative under this deed or the State Works Deed, other than a Change approved by Transport under paragraph 2.3 of the Change Procedure.

**Actual Aboriginal Participation** means the percentage of actual Aboriginal participation in the Project Activities, as determined by combining:

- (a) the percentage of the total D&C Deed Sum that is subcontracted to Aboriginal Businesses;
- (b) the percentage of the full time equivalent Australian based workforce deployed on the Project Activities who are Aboriginal Employees, on average over the period of the Project, excluding milestones or works that do not include design or construction; and
- (c) the percentage of the total D&C Deed Sum that is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project Activities.

**Additional Third Party Agreement** has the meaning given to that term in clause 5.21(a)(ii)B.

**Approval** means any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Law, or any requirement made under any Law which must be obtained or satisfied (as the case may be):

- (a) to perform the Project Activities;
- (b) in connection with the Project, the Project Site or any Extra Land; or
- (c) otherwise to comply with Law,

including:

- (d) the Planning Approval; and
- (e) any Environment Protection Licence issued in relation to the Project Activities,

but not including:

- (f) any Direction given by Transport or Transport's Representative pursuant to this deed;
- (g) the exercise by Transport of its rights under this deed; or
- (h) any requirement by a person carrying out Existing Operations.

**Artefacts** means any and all:

- (a) valuable minerals, fossils or coins;
- (b) articles or objects of value or antiquity; or
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest.

**Asset Handover Information** means the asset information for the Returned Works which satisfies the requirements of Appendix C.2 to the Scope of Works and Technical Criteria as developed in accordance with clause 16.3.

**Asset Information System** means the system referred to in Section 7.2 of the Scope of Works and Technical Criteria.

**Authority** means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or



- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Project Activities; or
- (c) any other person having jurisdiction over, or ownership of, Utility Services, the Utility Service Works, the Local Areas or the Local Area Works,

and includes the Clean Energy Regulator.

**Back Office System** has the meaning given in the M7 Motorway Project Deed.

**Baseline Contamination Documents** means the following Information Documents:

- (a) 02.232 INFO DOC 0232 – M12 East – Contamination Investigation Report;
- (b) 02.165 INFO DOC 0165 - Acid Sulfate Soils and Salinity Management Plan;
- (c) INFO DOC 0362 - M12 Early Works - UEF 01 Unexpected Finds Report Rev 1;
- (d) 02.329 INFO DOC 0329 - M7 Motorway (Mod 6 Widening) - FINAL DPE;
- (e) INFO DOC 0359 - 20220809\_M7 Stage 3\_Test Pit Logs and Laboratory Test Results - Part 1;
- (f) INFO DOC 0388 - 20220817\_M7\_Stage 3\_Test Pit Logs & Lab Test Results - Part 2;
- (g) INFO DOC 0409 - M7 Stage 3 Test Pit Logs & Lab Test Results - Part 3;
- (h) INFO DOC 0426 - M7 Stage 3 Test Pit Logs & Lab Test Results - Part 4;
- (i) INFO DOC 0504 - 20220916\_M7\_Stage 3\_Test Pit Logs & Lab Test Results - Part 5; and
- (j) INFO DOC 0219 – Asbestos Register M7.

**Building Work** has the meaning given to “building work” in section 5 of the Federal Safety Commissioner Act 2022 (Cth).

**Business Day** means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

**Certificate of Retained Works Completion** means a notice in the form of Schedule 17 issued by the Independent Certifier pursuant to clause 13.1(e)(i).

**Certificate of Returned Works Construction Completion** means a notice in respect of the EDC Works or in respect of the Returned Works (excluding the EDC Works) as the case may be in the form of Schedule 18 issued by Transport’s Representative pursuant to clause 14.1(g)(i)A.

**Certificate of Returned Works Final Completion** means a notice in the form of Schedule 23 issued by Transport’s Representative pursuant to clause 14.6(e)(i).

**Certified AIP Plan** means the Australian Industry Participation Plan drafted by Transport, updated with each Company’s details (where relevant) and certified by the relevant Authority, as set out in Exhibit F to this deed.

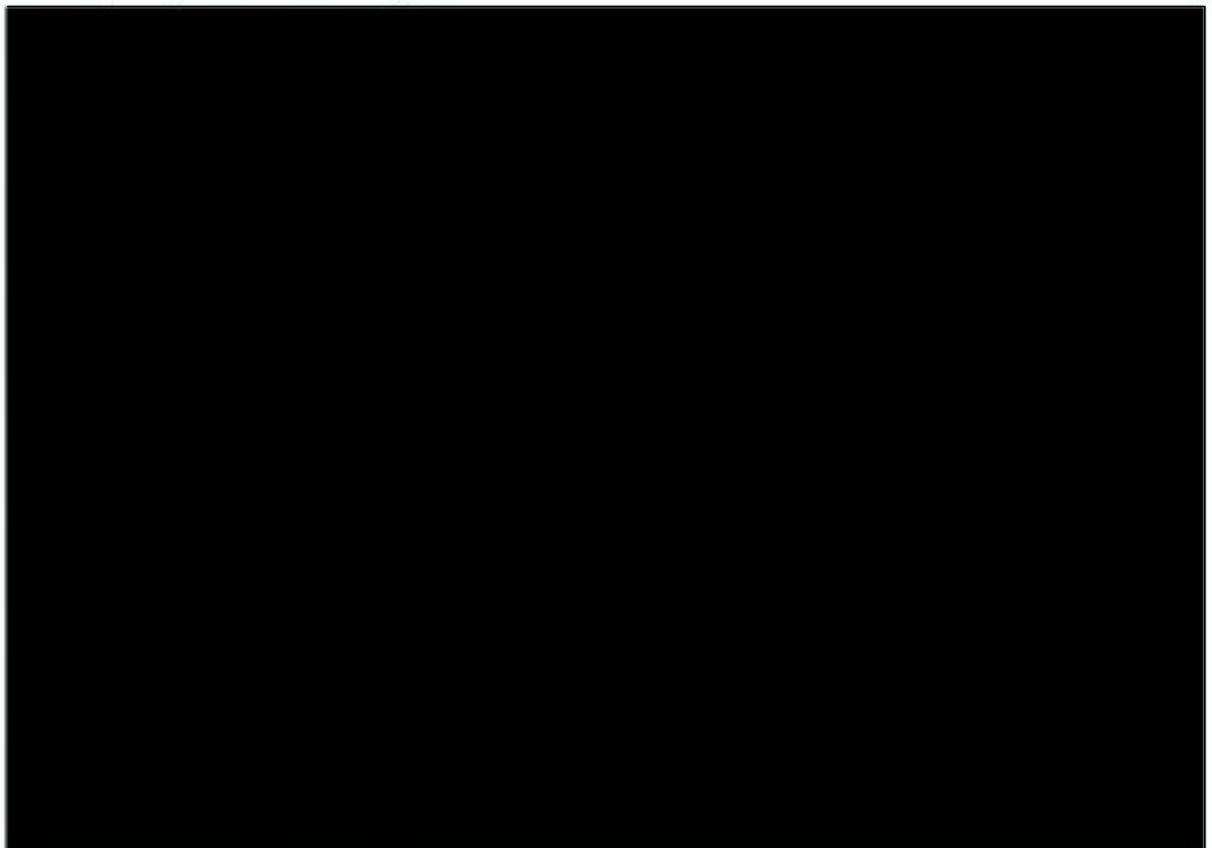
**Chain of Responsibility Guideline** means the document titled Heavy vehicle operations – chain of responsibility: Managing the risk of working with heavy vehicles, including chain of responsibility, Version 1.0, 20 November 2017.

**Chain of Responsibility Management Plan** means the Chain of Responsibility Management Plan to be developed in accordance with section 20 of Appendix C.1 of the Scope of Works and Technical Criteria.

**Chain of Responsibility Provisions** refers to any section of the Heavy Vehicle National Law under which the Companies, the State Works Contractor and their Subcontractors may be "a party in the Chain of Responsibility" (within the meaning given to the term "Chain of Responsibility" under the Heavy Vehicle National Law).

**Change** means any change or variation to the Project Works, the Temporary Works or the Project Activities and includes additions, increases, decreases, omissions, deletions, demolition or removal to or from any of these.

**Change Costs** means, to the extent a Change increases the cost of the Project Works, the Temporary Works or the Project Activities:



**Change in Codes and Standards** means a change in Codes and Standards which takes effect after the date of this deed and prior to the Date of Integration Completion.

**Change in Federal Environmental Law** means:

- (a) a change in a Federal Environmental Law existing at the date of this deed;
- (b) the enactment or making of a new Federal Environmental Law after the date of this deed; or
- (c) a change in the way a Federal Environmental Law is applied, or in the interpretation of a Federal Environmental Law, after the date of this deed,

which requires a Change to the Project Works or a change to the M7 Widening, EDC or the M7-M12 Interchange.

**Change Order** means a notice given by Transport under paragraph 1.4(b), paragraph 1.7(b), paragraph 1.7(d), paragraph 1.7(e)(i) or paragraph 1.8 of the Change Procedure.

**Change Procedure** means the procedure in Schedule 10.

**Change Proposal** means a notice given by Transport under paragraph 1.1(a) of the Change Procedure.

**Change Savings** means:



**Claim** includes any claim, action, demand or proceeding for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with, the Project, the Project Activities or either party's conduct in connection with the Project or the Project Activities prior to the date of this deed; or
- (c) otherwise at Law or in equity including:
  - (i) under or for breach of any statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment.

**Clean Energy Regulator** means the "Clean Energy Regulator" established under the Clean Energy Regulator Act 2011 (Cth).

**Codes and Standards** means:

- (a) the codes, standards, specifications and guidelines referred to in the Scope of Works and Technical Criteria; and
- (b) Environmental Standards.

**Commonwealth** means the Commonwealth of Australia.

**Communication Management Plan** has the meaning given to that term in the Scope of Works and Technical Criteria.

**Companies' Documentation Schedule** means Appendix C.2 to the Scope of Works and Technical Criteria.

**Companies' Notice of Retained Works Completion** means a notice in the form of Schedule 14 issued by the Companies pursuant to clause 13.1(d).

**Companies' Notice of Returned Works Construction Completion** means a notice in the form of Schedule 15 issued by the Companies pursuant to clause 14.1(e).

**Companies' Notice of Returned Works Final Completion** means a notice in the form of Schedule 19 issued by the Companies pursuant to clause 14.6(d).

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

**Company Group** means the Companies and the State Works Contractor and any wholly owned subsidiary of any of them, and **Company Group Member** means the Companies or the State Works Contractor.

**Company's Activities** means, in respect of each Company severally, all things and tasks which a Company does, is, or may be, required to carry out or do to comply with its obligations under the Transport Project Documents with respect to the Company's Works and the Temporary Works, but does not include the SWC Activities.

**Company's Controlling Corporation** means the entity that is the "controlling corporation" of each Company within the meaning of the NGER Legislation.

**Company's Delay Costs** means, in relation to a Compensation Event, [REDACTED]



**Company's Emissions and Energy Data** means any Emissions and Energy Data relating to any aspect of the Project Activities, or the activities of any Subcontractors engaged by a Company or the State Works Contractor, in connection with the Project Activities under this deed or the State Works Deed, including any such Emissions and Energy Data that:

- (a) a Company is required at any time to keep or to provide to Transport or to any Authority (or both) pursuant to an obligation under this deed, or the State Works Contractor is required at any time to keep or to provide to Transport or to any Authority (or both) pursuant to an obligation under the State Works Deed;
- (b) a Company, the State Works Contractor or a Company's Controlling Corporation is required at any time to keep or to provide to Transport or to any Authority (or both) pursuant to an obligation at Law (including an obligation under the NGER Legislation); or
- (c) a Company, the State Works Contractor or a Company's Controlling Corporation is entitled at any time to provide to the Clean Energy Regulator.

**Company's Works** means, in respect of each Company severally, the Project Works other than the State Works. A reference to the **Company's Works** is a reference severally to those respective obligations of WestLink and of WSO Co under this deed, and a reference to "a Company's Works" is a reference to the Company's Works of either or both of them.

**Compensation Event** means the occurrence of any of the following events prior to the Date of Integration Completion:

- (a) an Act of Prevention other than an Act of Prevention described in paragraph (c) of the definition of "Act of Prevention";
- (b) a Legal Challenge occurs and, as a consequence of that Legal Challenge, a Company Group Member receives an order by a court or direction by Transport's Representative pursuant to clause 2.5(a) or clause 2.5(d) which requires that each Company suspend or cease to perform any or all of its obligations under this deed, or the State Works Contractor suspend or cease to perform any or all of its obligations under the State Works Deed, other than due to:
  - (i) either a Company's or the State Works Contractor's failure to comply with its obligations under an Integration Project Document;
  - (ii) a breach of either Company's warranties under clause 2.3;
  - (iii) a wrongful or negligent act or omission of either Company, the State Works Contractor or their respective Related Parties;
  - (iv) a failure by either Company, the State Works Contractor or any of their respective Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation; or
  - (v) either Company's failure to comply with its obligations under the M7 Motorway Project Deed; or
- (c) a Native Title Claim is made and, as a consequence of that Native Title Claim:
  - (i) a Company receives an order by a court or a direction by Transport's Representative pursuant to clause 7.10(a) or clause 7.10(b), or is required at Law, to suspend or cease to perform any or all of its obligations under this deed; or
  - (ii) the State Works Contractor receives an order by a court or a direction by Transport's Representative pursuant to clause 7.10(a) or clause 7.10(b), or is required at Law, to suspend or cease to perform any or all of its obligations under the State Works Deed;
- (d) a Qualifying Change in Law which requires a Change to be made in accordance with clause 17.2 prior to the Date of Integration Completion;

(e)

(f)

**Completion Date** means, in respect of the:

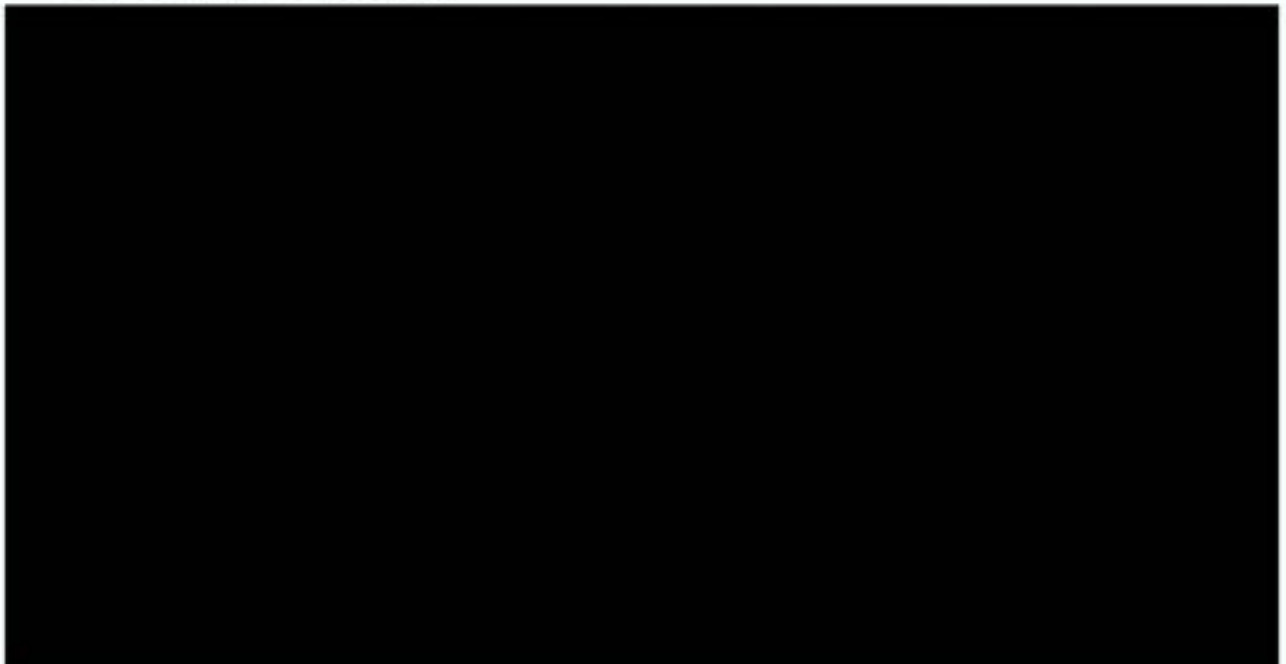
- (a) Returned Works, the relevant Date of Returned Works Construction Completion;
- (b) Retained Works, the Date of Retained Works Completion;
- (c) Local Area Works, the date specified in the notice provided to Transport and the Independent Certifier pursuant to clause 15.8(a)(ii) in respect of the relevant Local Area Works;

- (d) Utility Service Works, the date specified in the notice provided to Transport and the Independent Certifier pursuant to clause 15.9(a)(ii) in respect of the relevant Utility Service Works; or
- (e) Property Works, the date specified in the certificate provided to Transport's Representative pursuant to clause 7.4(a)(ii) in respect of the relevant Property Works,

(as applicable).

**Concept Design** means the EDC Concept Design, the M7 Widening Concept Design and the M7-M12 Interchange Concept Design.

**Consequential Loss** means any:



**Construction Environmental Management Plan** means the M12 Construction Environmental Management Plan and the M7 Construction Environmental Management Plan referred to in Appendix D.1 to the Scope of Works and Technical Criteria.

**Construction Management Plan** means the Project Plan of that name referred required by Section 6 of Appendix C.1 to the Scope of Works and Technical Criteria.

**Construction Plant** means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things used in the carrying out of the Project Activities but not forming part of the Project Works.

**Contamination** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

**Contamination Notice** means a notice or direction given, or purporting to have been given, under any Law which requires the person to whom it is issued to take action to investigate, remediate or manage Contamination and includes a site investigation notice, remediation notice and requirement to prepare a site management plan.

**Contract Documentation and Materials** has the meaning given to that term in clause 19.1.

**Contractor** means John Holland Pty Ltd (ACN 004 282 268).

**Contractor Guarantor** [REDACTED]

**Contractor's Direct Costs** means amounts referred to in paragraphs (a) to (g) of the definition of Direct Cost.

**Contractor's Direct Costs Statement** means a certification by the Independent Certifier in accordance with clause 26.3(a) in such form as Transport may reasonably require.

**Contractor's Side Deed** means the deed entitled "M7-M12 Integration Project D&C Side Deed" dated on or about the date of this deed between the Company Group, the Contractor and Transport and to be acceded to by the Contractor Guarantor after the date of this deed.

**Control** means:

- (a) in relation to a corporation:
  - (i) the ability to control, directly or indirectly, the composition of the board of the corporation;
  - (ii) the ability to exercise or control the exercise of the rights to vote in relation to more than 50% of the voting shares or other form of voting equity in the corporation;
  - (iii) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the corporation; or
  - (iv) the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the corporation within the meaning of section 50AA of the Corporations Act;
- (b) in relation to a trust estate:
  - (i) the ability to appoint or remove any trustee of the trust estate or to appoint any trustee in place of or in addition to any trustee of the trust estate;
  - (ii) the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the trustee of the trust estate within the meaning of section 50AA of the Corporations Act, or the manner in which the trustee of the trust estate deals with the income or the capital of the trust estate at any time;
  - (iii) the ability to nominate or alter the beneficiaries or unitholders of the trust estate at any time;
  - (iv) where the trust is a unit trust, the ability to exercise or control the exercise of the right to vote in relation to more than 50% of the units in the unit trust estate; or

(v) where the trust is a unit trust, the ability to dispose or exercise control over the disposal of more than 50% of the units in the unit trust estate; and

(c) in relation to an association or a partnership, firm or other body whether incorporated or unincorporated (**entity**), the capacity to determine, directly or indirectly, the financial and operating policies of the entity or how the affairs of the entity are to be conducted and managed.

**Corporations Act** means the Corporations Act 2001 (Cth).

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

**Critical Non-Contestable Work** means [REDACTED]  
[REDACTED]

- [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- [REDACTED]

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

**D&C Deed Sum** has the meaning given in the D&C Deed.

**D&C Guarantee** means the deed of guarantee to be provided in accordance with the Contractor's Side Deed which is given by the Contractor Guarantor to the Company Group in respect of the obligations of the Contractor under the D&C Documents (as defined in the D&C Deed) (other than the D&C Guarantee).

**Data** for the purposes of the definition of "Emissions and Energy Data" and Schedule 4, includes data, information, records and reports.

**Date for Integration Completion** means:

- (a) as at the date of this deed, [REDACTED];

- (b) where an extension of time for Integration Completion is granted by Transport's Representative or allowed in any arbitration or litigation proceedings, the date resulting therefrom; or
- (c) where the Companies are directed to accelerate the Project Activities, the 'Date for Integration Completion' resulting from that acceleration, as contemplated by clause 14.8(d).

**Date for Returned Works Construction Completion of the EDC Works** means:

- (a) as at the date of this deed, [REDACTED];
- (b) where an extension of time for Returned Works Construction Completion of the EDC Works is granted by Transport's Representative or allowed in any arbitration or litigation proceedings, the date resulting therefrom; or
- (c) where the Companies are directed to accelerate the Project Activities, the 'Date for Returned Works Construction Completion of the EDC Works' resulting from that acceleration, as contemplated by clause 14.8(d).

**Date of Integration Completion** means the date on when Integration Completion occurs, being the latter of the Date of Retained Works Completion, the Date of Returned Works Construction Completion of the EDC Works and the Date of Returned Works Construction Completion of the Returned Works (other than the EDC Works).

**Date of Retained Works Completion** means the date specified in a Certificate of Retained Works Completion as the date Retained Works Completion was achieved.

**Date of Returned Works Construction Completion** means, in respect of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be):

- (a) the date notified in accordance with clause 14.1(g)(i) as the date Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) was achieved; or
- (b) where another date is determined in any arbitration or litigation proceedings as the date on which Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) was achieved, that date.

**Date of Returned Works Final Completion** means, in respect of the Returned Works:

- (a) the date notified in accordance with clause 14.6(e)(i) as the date Returned Works Final Completion was achieved; or
- (b) where another date is determined in any arbitration or litigation proceedings as the date on which Returned Works Final Completion was achieved, that date.

**Date of Returned Works Opening Completion** means:

- (a) in respect of the EDC Works, the date (if any) notified in accordance with clause 14.3(a) as the date on which the EDC Works are to be opened to the public for the continuous passage of vehicles; and
- (b) in respect of the Returned Works (excluding the EDC Works), the date (if any) notified in accordance with clause 14.3(a) as the date on which the Returned Works (excluding the EDC Works) are to be opened to the public for the continuous passage of vehicles.

**Deed of Appointment of Environmental Representative** means the deed entitled "Deed of Appointment of Environmental Representative" entered into between Transport, the Company Group, the Contractor and the Environmental Representative pursuant to clause 7.15(a).

**Defect** means:

- (a) any defect, deficiency, fault, cracking, shrinkage, movement, subsidence, error or omission in the Project Works or the Temporary Works; or
- (b) other aspect of the Project Activities, the Project Works or the Temporary Works,

which is not in accordance with the requirements of this deed, but does not include:

- (c) any damage to a discrete part of the Project Works following the relevant Completion Date except to the extent such damage is caused or contributed to by either Company, the State Works Contractor or their Related Parties; or
- (d) in respect of the Project Works excluding the Retained Works and the EDC Ramps, any of the matters in paragraph (a) or (b) to the extent it is caused or contributed to by a failure to operate and maintain such Project Works in accordance with the operation and maintenance manuals provided by the Companies pursuant to this deed.

**Defects Correction Period** means a period referred to in clause 15.6, 15.8, 15.9 or 15.10.

**Design Documentation** means all:

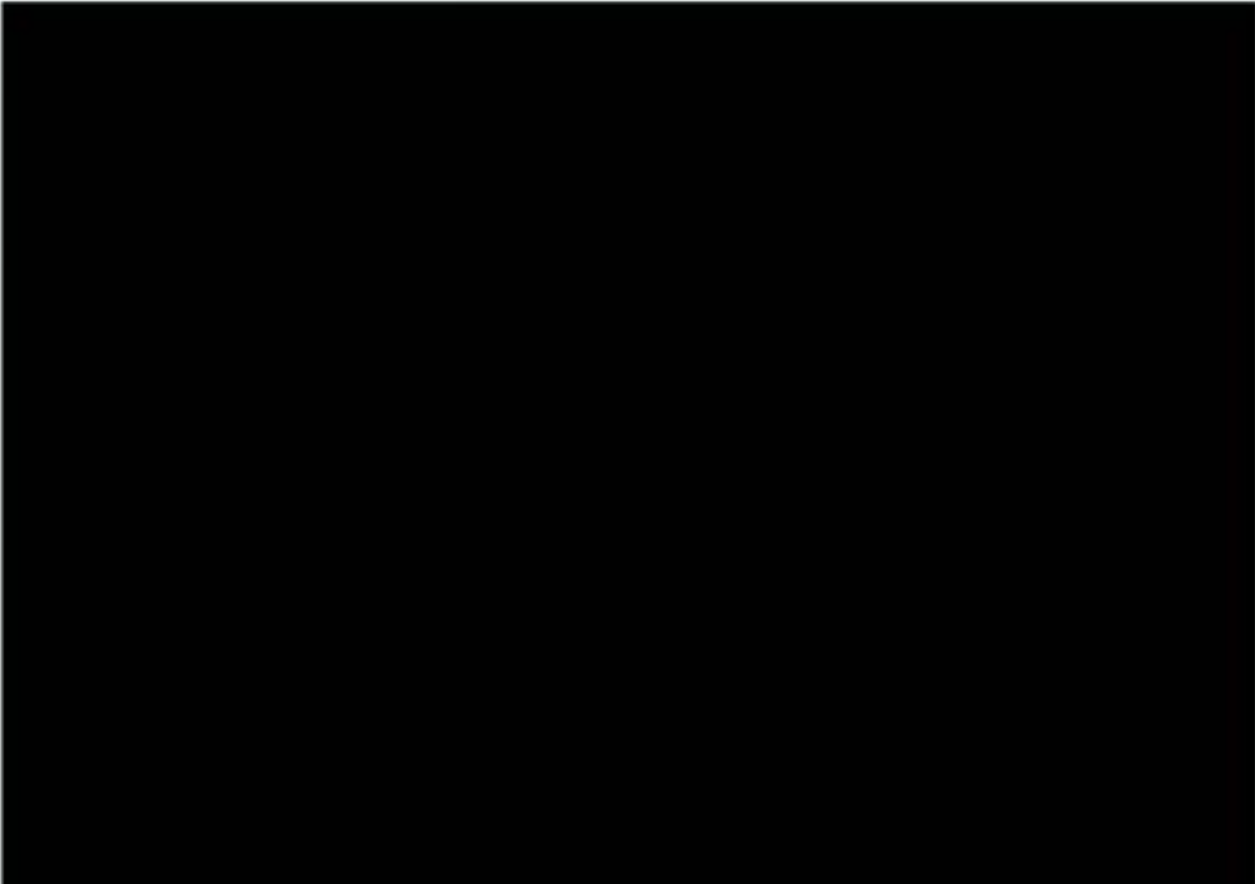
- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including any building information model prepared in relation to the Project Works, the Reviewable Temporary Works or the Project Activities), samples, prototypes, calculations, drawings, digital records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the Project Activities or which either Company, the State Works Contractor or any other person creates in performing the Project Activities (including the design of the Reviewable Temporary Works to codes and standards relevant to their intended use consistent with Good Industry Practice); and
- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Project Activities.

**Design Management Plan** means the plan of that name which satisfies the requirements of section 5 of Appendix C.1 to the Scope of Works and Technical Criteria.

**Design Review Schedule** means Schedule 9.

**Direct Cost** means:

- (a) the amount of wages and allowances paid or payable by the Contractor at rates as agreed by Transport's Representative or, if no agreement, at reasonable rates as stated by Transport's Representative;
- (b) the labour on-costs paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the wages paid or payable;
- (c) the amount of hire charges payable by the Contractor in respect of constructional plant used on the work in accordance with such hiring rates and conditions as may be agreed by Transport's Representative and the Companies or, if no agreement, in accordance with reasonable rates and conditions as stated by Transport's Representative;



**Direct Costs Claim** means a payment claim submitted by the Companies in accordance with clause 26.2.

**Direct Costs Claim Date** means the 25th day of each month.

**Direction** means any certificate, decision, demand, determination, direction, instruction, order, rejection, request or requirement.

**Discriminatory Change in State Law** means:

- (a) the amendment, repeal or change after the date of this deed of a State Law (not including any amendment or change in an Approval resulting from any direct action of either Company in accordance with this deed, or the State Works Contractor in accordance with the State Works Deed, including any Change requested by the Companies) existing at the date of this deed;
- (b) the enactment after the date of this deed of a new State Law; or
- (c) a change after the date of this deed in the interpretation or application of an existing State Law, brought about by:
  - (i) the amendment, repeal or change of another State Law; or
  - (ii) the enactment of a new State Law,

which directly affects the interpretation or application of the first mentioned existing State Law,

and which specifically and only:

- (d) affects the Project; or

- (e) has a direct effect upon the Project together with other privately owned and operated tollroads in the State of New South Wales.

**EDC** means the upgrade to the existing Elizabeth Drive between Duff Road and approximately 350m east of the M7 Motorway and the new connections to the M12 Central Project and the M7 Motorway, including Cecil Road and Wallgrove Road realignments.

**EDC Bonus Payment** means an amount equal to [REDACTED] per day.

**EDC Concept Design** means the concept design for the EDC Works included in Appendix E.3 of the Scope of Works and Technical Criteria.

**EDC Concept Design Non-Conformances** means the non-conformances and departures to the EDC Concept Design set out in the following Information Documents:

- (a) INFO DOC 0099 - M12EDD-WSPA-ALL-RW-RPT-000001.B.S3.B.01 - Elizabeth Drive Connection: 80% detailed design and road works reference design report - Nominated Non-Conformances & Departures; and
- (b) INFO DOC 0101 - M12EDD-WSPA-ALL-LV-RPT-000001.B.S3.B.01- Elizabeth Drive Connection: 80% detailed design and road works reference design report - Nominated Non-Conformances & Departures.

**EDC Site** means the area shown shaded in purple in the plans included in the Site Access Schedule as 'EDC Site' as amended to include any Extra Land acquired by Transport or a Company pursuant to clauses 7.5(a)(ii) or 7.5(b).

**EDC Target Date** means [REDACTED].

**EDC Works** means the road and other physical works, facilities, systems and Utility Services described in section 2.2 of the Scope of Works and Technical Criteria and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the EDC or the EDC Site.

**EDC Works Amount** means [REDACTED] as adjusted in accordance with the D&C Deed.

**Emissions and Energy Data** means:

- (a) any Data of the type that a registered corporation or any other person is required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any Data of the type that a registered corporation or any other person is entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other Data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

**Environment** means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and

- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c) of this definition.

**Environment Protection Licence** means an environment protection licence granted under the Protection of the Environment Operations Act 1997 (NSW).

**Environmental Documents** means:

- (a) the Planning Approval;
- (b) Appendix B.11, Appendix D.1, Appendix D.2 and Appendix D.5 to the Scope of Works and Technical Criteria; and
- (c) M12 OCEMP, to the extent relevant to the Project Activities.

**Environmental Law** means any and all Laws relating to the protection of the Environment but excludes Environmental Standards.

**Environmental Management System** means the system referred to in section 3.4.1 of the Scope of Works and Technical Criteria.

**Environmental Manager** means the individual referred to in section 3.4.2 of the Scope of Works and Technical Criteria.

**Environmental Notice** means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information issued by an Authority in respect of a matter concerning the Environment.

**Environmental Representative** or **ER** means the person appointed to perform the responsibilities of the Environmental Representative under this deed and the D&C Deed and any person appointed by Transport, the Companies, the State Works Contractor and the Contractor as a replacement from time to time.

**Environmental Standards** means all codes, standards, specifications and guidelines relating to the protection of the Environment that must be complied with by Law and that are:

- (a) issued by the New South Wales Environment Protection Authority; or
- (b) issued by an Authority that regulates [REDACTED].

**EP&A Act** means the Environmental Planning and Assessment Act 1979 (NSW) and regulations made under that Act.

**EPBC Act** means the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

[REDACTED]

**Excusable Cause of Delay** means:

- (a) an Act of Prevention;
- (b) an event referred to in paragraph (b) or paragraph (c) of the definition of Compensation Event;
- (c) [REDACTED];
- (d) the occurrence of a Force Majeure event;
- (e) a court makes a Final Determination;



**Existing Operations** means:

- (a) all infrastructure (including the existing infrastructure and Utility Services) which is owned, operated or under the control of an Existing Operator; and
  - (b) the businesses and operations undertaken by an Existing Operator,
- on or in the vicinity of the Project Site.

**Existing Operator** means:

- (a) TAHE;
- (b) Sydney Trains;
- (c) Endeavour Energy;
- (d) Transgrid;
- (e) Sydney Water;
- (f) Jemena Gas;
- (g) WaterNSW;
- (h) Telstra;
- (i) NBN;
- (j) Optus;

- (k) Axicom;
- (l) Uecomm;
- (m) TPG; and
- (n) Vocus,

and any of their Related Bodies Corporate.

[REDACTED]

[REDACTED]

**Extra Land** means the land acquired by Transport or a Company referred to in clause 7.5(a)(ii) or 7.5(b).

**Federal Environmental Law** means a Law of the Commonwealth which expressly requires or necessitates the installation, modification or enhancement of air filtration or Contamination control measures for the purposes of the Project but excludes any Environmental Standard.

**Final Design Documentation** means the Design Documentation required to be completed for the Final Design Documentation Stage.

**Final Design Documentation Stage** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design element or part thereof has been fully developed (including all design standards, design reports, specifications, models, calculations and the final developed drawings for the discrete design element or part thereof).

**Final Determination** means a decision of a court:

- (a) from which no appeal can be taken and in respect of which no application for special leave to appeal can be made; or
- (b) in respect of which the relevant appeal or special leave application period has expired without an appeal being taken or an application for special leave to appeal being made,

which prevents a Company or the State Works Contractor from undertaking the Project in accordance with this deed or the State Works Deed (respectively) and which is not a result of:

- (c) a Company's or the State Works Contractor's failure to comply with its obligations under an Integration Project Document;
- (d) a breach by a Company or the State Works Contractor of its warranties under an Integration Project Document;
- (e) a wrongful or negligent act or omission of a Company, the State Works Contractor or their respective Related Parties; or
- (f) a failure by a Company, the State Works Contractor or any of their respective Related Parties to comply with any Law.

**Final Handover** has the meaning given in the M7 Motorway Project Deed.



**Force Majeure** means:

- (a) earthquake, cyclone, fire, explosion, flood, malicious damage, sabotage, act of a public enemy, terrorism or civil unrest;
- (b) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy;
- (c) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel; or
- (d) confiscation, nationalisation, requisition or property damage under the order of any government,

which is beyond the reasonable control of either Company, the State Works Contractor and their respective Related Parties and which is:

- (e) an event which; or
  - (f) an event the effects of which,
- both:
- (g) prevents or delays a Company or the State Works Contractor from performing an obligation under the Integration Project Documents; and
  - (h) could not have been Mitigated, prevented, avoided, remedied or overcome by each Company, the State Works Contractor or their respective Related Parties taking those steps which a prudent, experienced and competent concessionaire, designer, constructor or operator would have taken.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**General Solid Waste** has the meaning given to "general solid waste (putrescible)" and "general solid waste (non-putrescible)" in the NSW EPA Waste Classification Guidelines as at the date of this deed.

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of each Company, the State Works Contractor or their respective Related Parties, as the case may be, under the same or similar circumstances as the performance of the Project Activities.

**Ground Risk Management Plan** means the Project Plan of that name referred to in Appendix C.1 to the Scope of Works and Technical Criteria.

**Groundwater Contamination** means Contamination of groundwater.

**Hazardous Substance** means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment.

**Hazardous Waste** has the meaning given to that term in the NSW EPA Waste Classification Guidelines as at the date of this deed.

**Heavy Vehicle National Law** means the:

- (a) Heavy Vehicle National Law set out in the Schedule to the Heavy Vehicle National Law Act 2012 (Qld) and as it applies through being adopted in other States and Territories, including through, inter alia, the Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), as amended, reproduced or updated from time to time; and
- (b) regulations in force under the Schedule to the Heavy Vehicle National Law 2012 (Qld) and as they apply through being adopted in other States and Territories, including through, inter alia, the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) as amended, reproduced or updated from time to time.

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of a designated authority.

**Identified Insurance** means the Project Insurance referred to in Items 1 and 3 of Part A of and Items 1 and 3 of Part B of Schedule 28.

**IFC Design Documentation** means the design which each Company is entitled in accordance with clause 9.4(d) to use for construction purposes and which consists of the Final Design Documentation verified by the Independent Certifier.

**Independent Certifier** means Aurecon Australasia Pty Ltd (ACN 005 139 873).

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

**Indigenous Participation Plan** means the plan set out at Exhibit H to this deed.

**Information Document** means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

- (a) referred to in Exhibit I to this deed;
- (b) issued or made available by, or on behalf of, Transport or the NSW Government, to a Company in connection with the Project, the Project Works or the Project Activities (including anything issued or made available through Transport's website), regardless of whether it was expressly classified or stated to be an "Information Document"; or
- (c) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed.

**Insured Liability** has the meaning given to that term in clause 18.4.

**Integration Completion** means Returned Works Construction Completion of the EDC Works, Returned Works Construction Completion of the Returned Works (excluding the EDC Works) and Retained Works Completion have been achieved.

**Intellectual Property Right** means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, registered and registrable designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, technical data and know-how, trade marks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

**Intelligent Transport System** means the integrated control systems which communicate with field equipment or devices and systems required to operate and manage the road network, this includes the devices and systems described by the SWTC including those in Appendix B.10, and Appendix B.12 and Appendix B.14.

**Interim M12 Motorway and Elizabeth Drive Connection** means a temporary connection between the M12 Motorway and Elizabeth Drive, to provide at a minimum the following:

- (a) an upgrade to the Elizabeth Drive including:
  - (i) minimum two lanes for the eastbound carriageway between the interim M12 Motorway and Elizabeth Drive intersection and the Elizabeth Drive and M7 Motorway interchange eastern intersection; and
  - (ii) minimum two lanes for westbound carriageway between the Elizabeth Drive and M7 Motorway interchange eastern intersection and the interim M12 Motorway and Elizabeth Drive intersection, transitioning to one lane at the western tie-in point with the existing Elizabeth Drive west of the M12 Motorway and Elizabeth Drive intersection;
- (b) a two lane ramp between the M12 Motorway and Elizabeth Drive (**M12-ED Ramp**), with:
  - (i) one lane from the M12 Motorway eastbound carriageway to the interim M12 Motorway and Elizabeth Drive intersection;
  - (ii) one lane from the interim M12 Motorway and Elizabeth Drive intersection to the M12 Motorway westbound carriageway; and
  - (iii) minimum posted speed limit on the ramp 60km/h;
- (c) a new intersection between Elizabeth Drive and M12-ED Ramp (**Interim M12/Elizabeth Drive Intersection**), with the following interim configuration:
  - (i) a left slip lane from the M12-ED Ramp to Elizabeth Drive westbound;
  - (ii) a right turn lane from the M12-ED Ramp to Elizabeth Drive eastbound;
  - (iii) a trap left slip lane from the Elizabeth Drive westbound carriageway to the M12-ED Ramp;
  - (iv) two through lanes from the Elizabeth Drive westbound carriageway at the eastern approach of the intersection;
  - (v) minimum two through lanes from the Elizabeth Drive eastbound carriageway at the western approach of the intersection; and
- (d) any other temporary treatments to allow the safe and efficient operation of the temporary connection,

and which is shown (for indicative purposes to aid interpretation of the above requirements only) on the sketch plan included at Schedule 46.

**Interlink** means Interlink Roads Pty Limited (ABN 53 003 845 430).

**Key Plant and Equipment** means the items of plant and equipment listed in Schedule 47.

**Law** means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;

- (b) principles of law or equity established by decisions of courts;
- (c) Approvals (including any condition or requirement under them); and

**LDs Cap (EDC)** means an amount equal to the lesser of:

- (a) [REDACTED] of the EDC Works Amount; and
- (b) [REDACTED].

**Legal Challenge** has the meaning given to that term in clause 2.5(a).

**Liability** includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

**Liquidated Damages (EDC)** means an amount equal to [REDACTED] per day.

**Local Area Works** means the modification, reinstatement and improvement of Local Areas which either Company or the State Works Contractor must design and construct and hand over to Transport or the relevant Authority in accordance with this deed and the Scope of Works and Technical Criteria including section 2.2.3 and Appendices B.6 and B.11 of the Scope of Works and Technical Criteria (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

**Local Areas** means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the Project Works or the Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

**Local Area Works Site** means the adjustments to any existing roads in the Local Areas that are affected by the Company's Activities or required by the Environmental Documents as described in section 2.2.3 of the Scope of Works and Technical Criteria.

**Local Government Area** means an 'area' as that term is defined in the Local Government Act 1993 (NSW).

**Loss** means:

- (a) any cost, expense, fee, loss, damage, Liability or other amount; and
- (b) without being limited by paragraph (a) of this definition and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

**M2 Entities** means The Hills Motorway Limited ACN 062 329 828 and Hills Motorway Management Limited ACN 064 687 645 in its capacity as trustee of the Hills Motorway Trust.

**M2 Motorway** means The Hills M2 Motorway which opened to traffic in May 1997 and links the Lane Cove Tunnel and the M7 Motorway.

**M5 Entities** means:

- (a) Interlink; or
- (b) following transfer of the M5 West Motorway from Interlink to the M5 Trustees, the M5 Trustees.

**M5 Trustees** means WCX M5 PT Pty Ltd (ACN 608 798 465) and WCX M5 AT Pty Ltd (ACN 608 798 081).

**M5 West Motorway** means the M5 South West Motorway located between King Georges Road (at the eastern end) and the Hume Motorway (at the western end) which following transfer of the M5 West Motorway from Interlink to the M5 Trustees, will form part of the new M5 Motorway.

**M7 Motorway** means the permanent works designed and constructed in accordance with the M7 Motorway Project Deed and, following Retained Works Completion includes the M7 Widening.

**M7 Motorway Project Deed** means the document entitled "Western Sydney Orbital Deed" entered into between Transport, WestLink and WSO Co on or about 13 February 2003, as amended from time to time (including pursuant to the M7-M12 Integration Project Deed).

**M7 Planning Approval** means:

- (a) the approval issued by the Minister for Planning in respect of the M7 Motorway dated 28 February 2002 as modified to permit the Project on 17 February 2023, including all conditions to such approval and documents incorporated by reference;
- (b) any modification to the approval referred to in paragraph (a) of this definition; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approval referred to in paragraph (a) of this definition from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

**M7 Widening** means the widening of the M7 Motorway from 2 lanes to 3 lanes each way between the M5 Motorway and Richmond Road.

**M7 Widening Concept Design** means the concept design for the M7 Widening included in Appendix E.3 of the Scope of Works and Technical Criteria.

**M7 Widening Site** means the Motorway Stratum, the Maintenance Site and Public Transport Corridor shown shaded in blue in the plans included in the Site Access Schedule as the 'M7 Widening Site' as amended to include any Extra Land acquired by Transport or a Company pursuant to clauses 7.5(a)(ii) or 7.5(b).

**M7 Widening Works** means the road and other physical works, facilities, systems and Utility Services described in section 2.2.1 of the Scope of Works and Technical Criteria and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the M7 Widening or the M7 Widening Site but which excludes the M7 Motorway (as existing immediately prior to the Satisfaction Date) and any Motorway Plant and Equipment (as defined in the M7 Motorway Project Deed where that Motorway Plant and Equipment existed immediately prior to the Satisfaction Date).

**M7-M12 Interchange** means the motorway connecting the M7 Motorway to the M12 Motorway as defined in Item 1.2 of Table E.1-1 of Appendix E.1 of the Scope of Works and Technical Criteria.

**M7-M12 Interchange Concept Design** means the concept design for the M7-M12 Interchange Works included in Appendix E.3 of the Scope of Works and Technical Criteria.

**M7-M12 Interchange Site** means the area shown shaded in yellow in the plans included in the Site Access Schedule as the 'M7-M12 Interchange Site' as amended to include any Extra Land acquired by Transport or a Company pursuant to clauses 7.5(a)(ii) or 7.5(b).

**M7-M12 Interchange Works** means the road and other physical works, facilities, systems and Utility Services described in section 2.2.1 of the Scope of Works and Technical Criteria and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the M7-M12 Interchange or on the M7-M12 Interchange Site.

**M12 Central Contractor** means the contractor engaged by Transport under the contract entitled 'M12 Motorway (Central), Construction between Badgerys Creek and the Water Tower Access Road, Cecil Hills, Contract Number 20.0000303606.2284' (being Seymour Whyte Constructions Pty Ltd (ACN 105 493 187) as at the date of this deed).

**M12 Central Interface Protocol** means the protocol contained in Schedule 40.

**M12 Critical Interface** means all components of the ramp connection from the M12 eastbound carriageway to Elizabeth Drive, that are required to enable the physical integration works required for Interface No. 1, as defined in Appendix B.33 of the SWTC, including all earthworks, pavement, drainage, signage and Intelligent Transport Systems.

**M12 Critical Interface IFC Design** means the following Information Documents:

- (a) INFO DOC 0150 – M12 Central Docs M12CDD-GHDA-ALL (1);
- (b) INFO DOC 0151 – M12 Central Docs M12CDD-GHDA-ALL (2);
- (c) INFO DOC 0152 – M12 Central Docs M12CDD-GHDA-ML2 (1);
- (d) INFO DOC 0153 – M12 Central Docs M12CDD-GHDA-ML2 (2);
- (e) INFO DOC 0154 – M12 Central Docs M12CDD-GHDA-ML2 (3);
- (f) INFO DOC 0155 – M12 Central Docs M12CDD-GHDA-ML2 (4);
- (g) INFO DOC 0156 – M12 Central Docs M12CDD-GHDA-ML2 (5);

- (h) INFO DOC 0157 – M12 Central Docs M12CDD-GHDA-ML2 (6); and
- (i) INFO DOC 0158 – M12 Central Docs M12CDD-GHDA-ML2 (7).

**M12 Motorway** means the motorway comprising 16-kilometres of dual carriageway between the M7 Motorway at Cecil Hills and The Northern Road at Luddenham.

**M12 OCEMP** means the Overarching Construction Environmental Management Plan for the M12 Motorway Project approved by Department of Planning and Environment on 21 December 2021 as amended or updated from time to time.

**M12 Planning Approval** means:

- (a) the approvals granted by:
  - (i) the Minister for Planning under section 5.19 of the EP&A Act in response to application SSI 9364 and dated 23 April 2021 for the works associated with the M12 Motorway; and
  - (ii) the Minister for Environment under section 75 of the EPBC Act reference number 2018/8286 and dated 3 June 2021,including all conditions to such approval and documents incorporated by reference;
- (b) any modification to the approvals referred to in paragraph (a) of this definition; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approval referred to in paragraph (a) of this definition from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

**M12 Site** means the M12 Central Contractor's project site, the boundaries of which are marked by the purple line on the plan in Schedule 35.

**Maintenance Site** has the meaning given in the M7 Motorway Project Deed.

**Major Australian Bank** means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

**Material and Consumable Rise and Fall** means rise and fall to the extent specified in and calculated in accordance with Schedule 42 (Material and Consumable Rise and Fall).

**Materials** means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods parts and other items incorporated or to be incorporated into the Project Works or the Temporary Works.

**Milestone** means Milestone 1 or Milestone 2, as applicable.

**Milestone 1** means that stage of the Project Activities where the value of the Project Works comprising the EDC Works that has been certified in accordance with the D&C Deed is equal to or greater than [REDACTED] of the EDC Works Amount.

**Milestone 2** means that stage of the Project Activities where the value of Project Works comprising the EDC Works that has been certified in accordance with the D&C Deed is equal to or greater than [REDACTED] of the EDC Works Amount.

**Milestone 2 Target Date** means [REDACTED].

**Minister** means any minister responsible for administering Part 5 (Classification of Roads) of the Roads Act.

**Moral Rights** means any rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

**Moral Rights Consent** means a consent by the owner of Moral Rights substantially in the form of Schedule 29.

**Motorway** means:

- (a) the M7 Motorway;
- (b) the EDC; and/or
- (c) the M7-M12 Interchange,

as the context requires.

**Motorway Stratum** has the meaning given in the M7 Motorway Project Deed.

**National Construction Code** means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

**Native Title Claim** means any claim or application relating to native title under the Native Title Act 1993 (Cth) or any other Law concerning native title.

**NC Actual Amount** means:

- (a) the actual amounts properly payable by either Company to each Authority in respect of Non-Contestable Work:
  - (i) as evidenced by invoices provided by the Companies to Transport's Representative and any other information reasonably required by Transport's Representative; and
  - (ii) excluding any amounts payable as a result of or in connection with:
    - A. a Change approved by Transport under paragraph 2.3 of the Change Procedure (unless otherwise agreed by Transport's Representative in writing);
    - B. Defects;
    - C. a failure by either Company or the State Works Contractor to manage the Non-Contestable Work in accordance with Good Industry Practice; or
    - D. a breach by either Company or the State Works Contractor of an Integration Project Document,

and does not include any margin on costs payable by a Company to an Authority in respect of Non-Contestable Work; and

- (b) Direct Costs, excluding margin under paragraph (g) of the definition of Direct Costs, for design and construction activities by or on behalf of the Companies in support of the Non-Contestable Work.

**NC Provisional Amount** has the meaning given in clause 7.13(a).





**NGER Legislation** means the National Greenhouse and Energy Reporting Act 2007 (Cth) and the regulations and any other legislative instruments under that Act.

**Non-Contestable Work** has the meaning given in clause 7.13(a).

**NSW Code** means the NSW Government Supplier Code of Conduct (updated February 2020) as in force and updated from time to time.

**NSW Government** means the Government of the State of New South Wales.

**NSW Government Policies** means the NSW Code, NSW Guidelines and any other NSW Government policies, guidelines and requirements referred to in the NSW Procurement Policy Framework, or specified or required by this deed.

**NSW Guidelines** means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (updated in September 2017) as in force and updated from time to time.

**O&M Manuals** means the operation and maintenance manuals prepared by WSO Co in accordance with the requirements of the M7 Motorway Project Deed and further developed by the Companies and the State Works Contractor in accordance with this deed to incorporate the O&M Work associated with Retained Works.

**O&M Plan** means the plan of that name which satisfies the requirements of section 15 of Appendix C.01 to the Scope of Works and Technical Criteria.

**O&M Work** means the work which WSO Co is or may be required to carry out under the M7 Motorway Project Deed in order to operate, maintain and repair the Retained Works.

**Open Book Basis** means the provision of primary records of any pricing, costing, calculations and other information (but excluding any breakdown of any pre-agreed or fixed rates or percentages) to enable an assessment of actual impacts and costs.

**Operational Readiness Group** has the meaning given to that term in the Independent Certifier Deed.

**Operator** has the meaning given in the M7 Motorway Project Deed.

**Original WEPD** means the deed entitled "Equity Participants Deed" dated 13 February 2003 between inter alia the Companies and the Partners as amended from time to time prior to 31 January 2015.

**Other Works** means any parts of the Project Works that the Contractor is not responsible for delivering pursuant to Schedule 35 of the D&C Deed.

**Overall D&C Program** means the overall program for design and construction activities which is contained in Exhibit C to this deed, as updated in accordance with clause 12.3(c).

**NSW Procurement Policy Framework** means NSW Government Procurement Policy Framework (updated in April 2022) as in force and updated from time to time.

**Pandemic** means any virus, biological contagion or outbreak of infectious disease characterised to be a pandemic by the World Health Organisation, excluding COVID-19.

**Partner** means:

- (a) on the date of this deed, each of WSO Partnership Investment Company Pty Limited (ACN 134 324 502), Transurban Nominees Pty Ltd (ACN 103 029 269) in its capacity as trustee of the Transurban WSO Trust and WSO Investment Management No.3 Pty Limited (ACN 134 324 520) in its capacity as trustee of the WSO Holding Trust; and
- (b) thereafter, each partner in the Partnership from time to time,

and **Partners** means all of them.

**Partnership** means WestLink Motorway Partnership, governed by the Westlink Motorway Partnership Deed.

**Payment Statement (DC)** means a payment statement issued by Transport in accordance with clause 26.3 in such form as Transport may reasonably require.

**PDCS** means the Companies' web based project data and collaboration system, or such other electronic project data and collaboration system notified by Transport's Representative under clause 4.4.

**Permitted Working Hours** means:

- (a) in relation to any Project Activities being undertaken under the M12 Planning Approval, the permitted working hours specified in the M12 Planning Approval; and
- (b) in relation to any Project Activities being undertaken under the M7 Planning Approval, the permitted working hours specified in the M7 Planning Approval.

**Planning Approval** means the M7 Planning Approval and the M12 Planning Approval, or the M7 Planning Approval or the M12 Planning Approval (as the context requires).

**Planning Approval Change** means:

(a) in respect of the M7 Planning Approval:

- (i) the M7 Planning Approval is modified under the EP&A Act or the EPBC Act; or
- (ii) the Minister for Planning and Infrastructure issues a new Approval in respect of the M7 Motorway in substitution for or replacement of the M7 Planning Approval;
- (iii) any new Approval referred to in paragraph (a)(ii) of this definition is modified under the EP&A Act or the EPBC Act; or
- (iv) any other consent, concurrence or approval, or determination of satisfaction with any matter described in paragraphs (b) and (c) of the definition of M7 Planning Approval after the date of this deed,

but excludes:

- (v) any consent, concurrence, approval or determination of, or modification to, the 'Construction Framework Environmental Management Plan' (as that term is defined in the M7 Planning Approval); and

(b) in respect of the M12 Planning Approval:

- (i) the M12 Planning Approval is modified under the EP&A Act or the EPBC Act; or
- (ii) the Minister for Planning and Infrastructure or the Minister for Environment issues a new Approval in respect of the EDC and M7-M12 Interchange in substitution for or replacement of the M12 Planning Approval;
- (iii) any new Approval referred to in paragraph (b)(ii) of this definition is modified under the EP&A Act or the EPBC Act; or
- (iv) any other consent, concurrence or approval, or determination of satisfaction with any matter described in paragraphs (b) and (c) of the definition of M12 Planning Approval after the date of this deed,

but excludes:

- (v) any consent, concurrence, approval or determination of, or modification to, the 'Construction Framework Environmental Management Plan' (as that term is defined in the M12 Planning Approval).

**Planning Approval Change Event** means the occurrence of a Planning Approval Change not arising as a consequence of:

- (a) either of a Company's or the State Works Contractor's failure to comply with its obligations under an Integration Project Document;
- (b) a breach by either Company of its warranties under clause 2.3;
- (c) negligent or unlawful act or omission of either Company, the State Works Contractor or their respective Related Parties;
- (d) a failure by either Company, the State Works Contractor or any of their respective Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation
- (e) either Company's failure to comply with its obligations under the M7 Motorway Project Deed.

**PPS Act** means the Personal Property Securities Act 2009 (Cth) and regulations made under that Act.

**Pre-Agreed Change** means any of the Changes described in Schedule 38.

**Principal Contractor Deed** means the deed entered into between Transport, each Company and the Contractor on or about the date of this deed in the form of Schedule 41.

**Project** means the design, construction, delivering and commissioning of the Project Works and the Temporary Works.

**Project Activities** means all things and tasks which either Company or the State Works Contractor does, is, or may be, required to carry out or do to comply with its obligations under the Transport Project Documents, whether or not the performance of such things or tasks is subcontracted by either Company or the State Works Contractor to another person. It is comprised by the Company's Activities and the SWC Activities.

**Project Insurance** means a policy or policies of insurance which each Company is obliged to obtain under clause 18.6 or Transport is obliged to obtain under clause 18.12.

**Project Management Deed** means the document entitled "M7-M12 Integration Project Management Deed" between WSO Co, the State Works Contractor, WestLink and Transport.

**Project Plan** means any plan of the kind referred to in clause 5.5(a), as that plan may be updated, amended and further developed under clause 5.5 and Schedule 3.

**Project Site** means:

- (a) the EDC Site;
- (b) the M7-M12 Interchange Site;
- (c) the M7 Widening Site; and
- (d) the Temporary Areas.

**Project WHS Management Plan** means the plan referred to as the 'Work Health and Safety Management Plan' in the Scope of Works and Technical Criteria which satisfies the requirements of Appendix C.1 to the Scope of Works and Technical Criteria.

**Project Works** means the physical works:

- (a) in respect of each Company severally, which that Company must design, construct and complete under this deed; and
- (b) which the State Works Contractor must design, construct and complete under the State Works Deed,

(including, to the extent relevant to such works, Changes directed in accordance with this deed) including:

- (c) the M7 Widening Works;
- (d) the EDC Works;
- (e) the M7-M12 Interchange Works;
- (f) the Utility Service Works;
- (g) the Local Area Works; and
- (h) the Property Works,

but excluding the Temporary Works. It is comprised by the Company's Works and the State Works.

**Property Works** means all works required to existing buildings and infrastructure or to and within properties arising out of the Project Activities as described or specified in the Scope of Works and Technical Criteria, including in Appendix E.2 of the Scope of Works and Technical Criteria (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

**Public Transport Corridor** has the meaning given in the M7 Motorway Project Deed.

[REDACTED]

**Qualifying Change in Law** means:

- (a) a Discriminatory Change in State Law;
- (b) the amendment, repeal or change after the date of this deed of an Environmental Law or Safety Law existing at the date of this deed;
- (c) the enactment after the date of this deed of a new Environmental Law or Safety Law;
- (d) [REDACTED];
- (e) a Change in Federal Environmental Law; or
- (f) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Quality Management System** means a corporate system that details the organisational structure, policies, procedures, practices, recourses and responsibilities for quality management.

**Quality Manager** means the person notified by the Companies to Transport who will perform the responsibilities of the Quality Manager under this deed.

**Quality Management Plan** means the Project Plan of that name referred to in Appendix C.7 to the Scope of Works and Technical Criteria.

**Reasonably Anticipated** means reasonably anticipated or foreseen at the date of this deed by a prudent, experienced and competent concessionaire, designer, constructor or operator in the position of a Company, who had:

- (a) done those things that each Company warrants under clause 7.7(a) that it has done; and
- (b) examined the Baseline Contamination Documents.

**Related Body Corporate** has the same meaning as in the Corporations Act.

**Related Parties** means:

- (a) in respect of Transport, Transport's Representative and any of the respective employees, agents, contractors or officers of Transport and Transport's Representative, excluding:
  - (i) the Independent Certifier;
  - (ii) the Environmental Representative;
  - (iii) the Company Group Members;
  - (iv) the Subcontractors of each Company and the State Works Contractor; and
  - (v) employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to (iv) of this definition;
- (b) in respect of each Company:
  - (i) each Sponsor Entity and each Subsidiary of a Sponsor Entity from time to time;
  - (ii) any Company Group Member;
  - (iii) each Subsidiary of the State Works Contractor;
  - (iv) the Operator;
  - (v) its Subcontractors or those of the State Works Contractor (in their capacity as contractors for the Project); and
  - (vi) any of the respective employees, agents, contractors (in their capacity as employees, agents or contractors for the Project) and officers of each Company, each Sponsor Entity, each Subsidiary of a Sponsor Entity

from time to time, any Company Group Member, its Subcontractors and any Subcontractor of the State Works Contractor,

excluding the Independent Certifier, the Environmental Representative and each of their respective employees, agents, consultants and officers; and

- (c) in respect of the State Works Contractor;
- (i) each Sponsor Entity and each Subsidiary of a Sponsor Entity from time to time;
  - (ii) any Company Group Member;
  - (iii) each Subsidiary of each Company;
  - (iv) its Subcontractors or those of the Companies (in their capacity as contractors for the Project); and
  - (v) any of the respective employees, agents, contractors (in their capacity as employees, agents or contractors for the Project) and officers of the State Works Contractor, each Sponsor Entity, each Subsidiary of a Sponsor Entity from time to time, any Company Group Member, its Subcontractors and any Subcontractor of the Companies,

excluding the Independent Certifier, the Environmental Representative and each of their respective employees, agents, consultants and officers.

**Relevant Insurer** means an insurance company having a financial performance rating of at least [REDACTED] by Standard and Poor's (or equivalent rating).

**Required Rating** means a credit rating of no less than [REDACTED] by Standard and Poor's (or equivalent rating) unless otherwise agreed between the parties, it being [REDACTED]

**Restricted Solid Waste** has the meaning given to that term in the NSW EPA Waste Classification Guidelines as at the date of this deed.

**Retained Works** means the M7 Widening Works and the parts of the M7-M12 Interchange Works in the areas shown shaded in blue as "Retained Works" and hatched in blue as "Retained Works (Aerial Stratum)" on the plan in Schedule 30.

**Retained Works Completion** means, in respect of the Retained Works, the stage in the execution of the Project Activities when each Company has satisfied all the conditions precedent to completion of the Retained Works set out in Schedule 12.

**Retained Works Opening Conditions Precedent** means:

- (a) each of the conditions precedent to completion of the Retained Works set out in Schedule 12, other than the conditions precedent referred to in paragraphs 2(a)(i), 2(a)(iii), 2(c)(i), 4, 5, 6(a), 7(a), 7(g) and 7(h) of Schedule 12;
- (b) that the Retained Works are capable of being operated for the safe, efficient and continuous passage of vehicles; and
- (c) that each Company has obtained:
  - (i) the Contractor's written consent to the opening of the Retained Works; and
  - (ii) the Operator's written consent to the opening of the Retained Works.

**Returned Works** means the EDC Works and parts of the M7-M12 Interchange Works in the area shaded in orange as "Returned Works" on the plan in Schedule 30.

**Returned Works Construction Completion** means, in respect of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), the stage when:

- (a) the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are complete in accordance with this deed, except for minor Defects which:
  - (i) do not prevent the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) from being reasonably capable of being used for their intended purpose;
  - (ii) can be corrected without prejudicing the convenient or intended use of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); and
  - (iii) the Companies have reasonable grounds for not promptly rectifying;
- (b) without limiting paragraph (a):
  - (i) the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are capable of being opened to the public for the continuous safe passage of vehicles; and
  - (ii) the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are complete in accordance with:
    - A. the Design Documentation which each Company and the State Works Contractor are entitled to use for construction purposes in accordance with clause 9.4(d);
    - B. all Approvals and applicable Laws; and
    - C. all relevant Australian Standards and other applicable codes in relation to the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be),except for minor Defects which:
    - D. do not prevent the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) from being reasonably capable of being used for their intended purpose;
    - E. can be corrected without prejudicing the convenient or intended use of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); and
    - F. the Companies have reasonable grounds for not promptly rectifying;
- (c) the Companies have:
  - (i) carried out and passed all tests which:
    - A. are required under this deed to be carried out and passed before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or



- B. must necessarily be carried out and passed before the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are opened to the public for the safe, efficient and continuous passage of vehicles;
- (ii) obtained all Approvals that they are required under this deed to obtain before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be);
- (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be);
- (iv) given to Transport's Representative all documents and other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) which:
  - A. are required to be given to Transport's Representative before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
  - B. must necessarily be handed over before the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are opened to the public for the safe, efficient and continuous passage of vehicles;
- (v) executed a certificate in the form of Schedule 15 in respect of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) and provided it to Transport's Representative;
- (vi) completed any works:
  - A. required to be completed under the Third Party Agreements; or
  - B. that are to be handed over to Third Parties,
 in accordance with the Third Party Agreements;
- (vii) provided Transport's Representative with any Site Audit Statements for the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) required by the Planning Approval; and
- (viii) to the extent applicable, the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) comply with the requirements of the Third Party Agreements;
- (d) the Independent Certifier has executed a certificate in the form of Schedule 21 in respect of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) and provided it to Transport's Representative;
- (e) the Quality Manager has executed a certificate in the form of Schedule 22 in respect of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) and provided it to Transport's Representative;
- (f) the Companies have provided a copy of the as-built documentation for the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) to Transport's Representative;

- (g) the Companies have provided the final Returned Works Operations and Maintenance Plan for the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) in accordance with clause 16.2;
- (h) the Companies have provided the final Asset Handover Information for the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) in accordance with clause 16.3; and
- (i) the Companies have done everything else which they are required to do under this deed before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) including but not limited to everything else which it is required to do in accordance with the Scope of Works and Technical Criteria including clauses 3.2(g), 3.3, 3.4, 3.5, 3.8, 3.9 and 4.0 of Appendix C.2 of the Scope of Works and Technical Criteria.

**Returned Works Final Completion** means, in respect of the Returned Works, the stage when:

- (a) the last Defects Correction Period has expired;
- (b) the Companies have:
  - (i) carried out and passed all tests which:
    - A. are required under this deed to be carried out and passed before Returned Works Final Completion; or
    - B. must necessarily be carried out and passed to verify that the Returned Works are in the condition this deed requires them to be in at Returned Works Final Completion;
  - (ii) obtained all Approvals that it is required under this deed to obtain but which were not obtained before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), and provided such Approvals to Transport's Representative;
  - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Returned Works Final Completion;
  - (iv) given to Transport's Representative all documents or other information in respect of the design, construction, use, occupation, maintenance and repair of the Returned Works which are required to be handed over to Transport before Returned Works Final Completion; and
  - (v) executed a certificate in the form of Schedule 19 and provided it to Transport's Representative; and
  - (vi) provided Transport with warranties required by clause 14.5;
- (c) the Independent Certifier has executed a certificate in the form of Appendix G of Schedule 8 in respect of as-built documentation for the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) and provided it to Transport's Representative;
- (d) the Quality Manager has executed a certificate in the form of Schedule 25 and provided it to Transport's Representative;
- (e) the Independent Certifier has executed a certificate in the form of Schedule 26 and provided it to Transport's Representative; and

- (f) each Company has done everything else which it is required to do before Returned Works Final Completion, including but not limited to everything else which it is required to do in accordance with clause 5.20 of the Scope of Works and Technical Criteria.

**Returned Works Opening Completion** means, in respect of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), the stage when:

- (a) the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are complete in accordance with this deed except for minor Defects which:
- (i) do not prevent the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) from being reasonably capable of being used for their intended purpose;
  - (ii) can be corrected without prejudicing the convenient or intended use of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); and
  - (iii) the Companies have reasonable grounds for not promptly rectifying;
- (b) without limiting paragraph (a), the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are capable of being opened to the public for the safe, efficient and continuous passage of vehicles; and
- (c) the Companies have carried out and passed all tests which must necessarily be carried out and passed before the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) are opened to the public for the safe, efficient and continuous passage of vehicles.

**Returned Works Operations and Maintenance Plan** means the plan of that name which satisfies the requirements of section 15 of Appendix C.1 to the Scope of Works and Technical Criteria as developed in accordance with clause 16.2, including the Project Plans incorporated under clause 5.5(e)(ii).

**Reviewable Temporary Works** means the Temporary Works which are Category 1 Temporary Works or Category 2 Temporary Works (as those terms are defined in SWTC Appendix C.2 Companies' Documentation Schedule Table C.2-3).

**RMS Consent Deed** means the deed entitled "RMS Consent Deed (2014) - Westlink M7 Refinancing" dated 4 August 2014 between, amongst others, Transport, the WSO Finance Pty Limited, WSO Co, WestLink, each Partner, the WestLink Motorway Partnership (as defined therein), National Australia Bank Limited (as agent) and the Security Trustee.

**Road Transport Legislation** has the meaning given to it by the definition in section 6 of the Road Transport Act 2013 (NSW) and includes the regulations and statutory rules made under that Act (such as the Road Rules 2014).

**Roads Act** means the Roads Act 1993 (NSW).

**Safety Law** means a State Law or legislation of the Commonwealth (including regulations and subordinate legislation) which imposes requirements in respect of:

- (a) work health and safety; or
- (b) road safety,

but excludes a [REDACTED].

**Satisfaction Date** means the day on which all of the conditions precedent in clause 2.1 (Conditions precedent to obligations of the Parties) of the M7-M12 Integration Project Deed are satisfied or waived.

**Scope of Works and Technical Criteria or SWTC** means the document and drawings set out in Exhibit A to this deed.

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a "security interest" as defined in section 12 of the PPS Act;
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

**Senior Project Group** means the group referred to in clause 4.3.

**Site Access Schedule** means Exhibit D to this deed.

**Site Audit Statement** means a site audit statement:

- (a) prepared under Part 4 of the Contaminated Land Management Act 1997 (NSW) by a site auditor accredited in accordance with Part 4 of the Contaminated Land Management Act 1997 (NSW) and any regulations under that Act;
- (b) that certifies that an area of land is suitable, in its condition as at the date of the Site Audit Statement, to be used for its proposed use; and
- (c) that is in a form satisfactory to Transport's Representative.

**Site Conditions** means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Project Site and any Extra Land or their surroundings including:

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of Transport or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Substance or other spoil or waste;
- (f) topography of the Project Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Project Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons

and physical conditions that are a consequence of weather or climatic conditions;  
and

- (k) any latent conditions.

**Sponsor Entity** means each of:



and **Sponsor Entities** means any two or more or all of them (as the context requires).

**State Law** means legislation of the State of New South Wales including regulations and subordinate legislation (but which excludes any Approval).

**State Works** has the meaning given to that term in the State Works Deed.

**State Works Contractor** means M7 State Works Contractor Pty Ltd (ACN 664 603 249) as trustee for the M7 State Works Contractor Trust.

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

**Subcontract** means a contract between either Company and/or the State Works Contractor and a Subcontractor and includes the D&C Deed and any other agreement for supply of goods or services (including professional services and Construction Plant hire) or both.

**Subcontractor** means a subcontractor of either Company and/or the State Works Contractor and includes the Contractor and any other supplier of goods or services (including professional services and Construction Plant hire) or both.

**Subsidiary** has the meaning given to that term in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if that entity Controls it and without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) if there are one or more interposed entities between it and the entity that Controls it.

**Subsidiary D&C Program** means a subsidiary program for design and construction activities of the kind referred to in clause 12.3(a) as updated under clause 12.3(c).

**Sunset Date** means:

- (a) as at the date of this deed, the date which is [REDACTED] after the Date for Integration Completion;
- (b) where an extension of time to the Sunset Date is granted by Transport's Representative or allowed pursuant to the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed, the 'Sunset Date' resulting from that extension of time; or

- (c) where the Companies are directed to accelerate the Project Activities, the 'Sunset Date' resulting from that acceleration, as contemplated by clause 14.8(d).

**SWC Activities** means all things and tasks which the State Works Contractor does, is, or may be, required to carry out or do to comply with its obligations under the State Works Deed with respect to the State Works, but does not include the Company's Activities.

**Sydney Trains** means Sydney Trains ABN 38 284 779 682 constituted under the Transport Administration (General) Amendment (Sydney Trains and NSW Trains) Regulation 2012 (NSW).

**Sydney Trains Possession Calendar** means the track possession calendar(s) contained in INFO DOC 0314 and INFO DOC 0315.

**TAHE** means Transport Asset Holding Entity a statutory corporation constituted by the Transport Administration Act 1988 (NSW) (as amended) of Level 15, 130 Pitt Street Sydney NSW.

**Tax** means any means any levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of any nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

**Temporary Areas** means the land contained within the Project Site but not forming part of the EDC Site, the M7-M12 Interchange Site or the M7 Widening Site shown shaded in red in the plans included in the Site Access Schedule as the 'Temporary Areas' which will be made available to the Companies for the purpose of undertaking the Companies' obligations under this deed.

**Temporary Works** means any temporary physical works required for the purpose of the carrying out of the Company's Activities, but which does not form part of the Company's Works or the State Works including any such works specified in section 2.3 of the Scope of Works and Technical Criteria and including, to the extent relevant to such works, Changes directed in accordance with this deed.

**Term** has the meaning given in the M7 Motorway Project Deed.

**Third Party Agreement** means:

- (a) the WSPT – M12 Interface Deed; and
- (b) any Additional Third Party Agreement.

**Third Party Agreement Matrix** means, in respect of each Third Party Agreement, the applicable responsibility matrix contained in Schedule 32.

**Third Party Software** means the M7 Motorway Control System – Operations Management and Control System (OMCS), Traffic Management and Control System (TMCS) (inclusive of the Digital Video Management System (DVMS) and Incident Management System (IMS)) and Motorway Network Communication System (MNCS).

**Third Party Works** means the Local Area Works, Property Works and Utility Service Works.

**Tolling Equipment Subcontractor** means the subcontractor to be engaged by the Contractor to provide tolling equipment in connection with the Project.

**Training Management Guidelines** means the NSW Government Training Management Guidelines: Skills, training and diversity in construction (July 2020), (<https://arp.nsw.gov.au/pbd-2020-03-skills-training-and-diversity-in-construction>), as in force and updated from time to time.

**Transport Access Land** means the land comprising the parcels identified as 'Transport Access Land' under the 'Land Category' column in the Site Access Schedule and shown shaded in purple in the site plans attached at Exhibit D as the 'Transport Access Land'.

**Transport Access Land (Stratum)** means the stratum comprising the parcels identified as 'Transport Access Land (Stratum)' under the 'Land Category' column in the Site Access Schedule and shown hatched in purple in the site plans attached at Exhibit D as the 'Transport Access Land (Stratum)'.

**Transport Land** means the land comprising the parcels identified as 'Transport Land' under the 'Land Category' column in the Site Access Schedule and shown shaded red in the site plans attached at Exhibit D as the 'Transport Land'.

**Transport Project Documents** means those Integration Project Documents to which Transport is expressed to be a party.



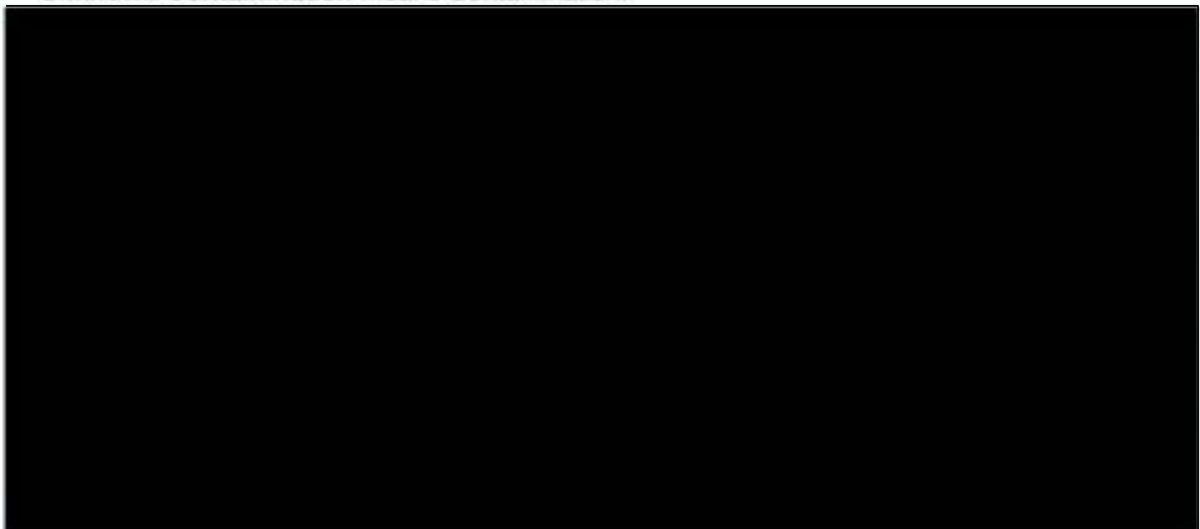
**Transport's Representative** means:

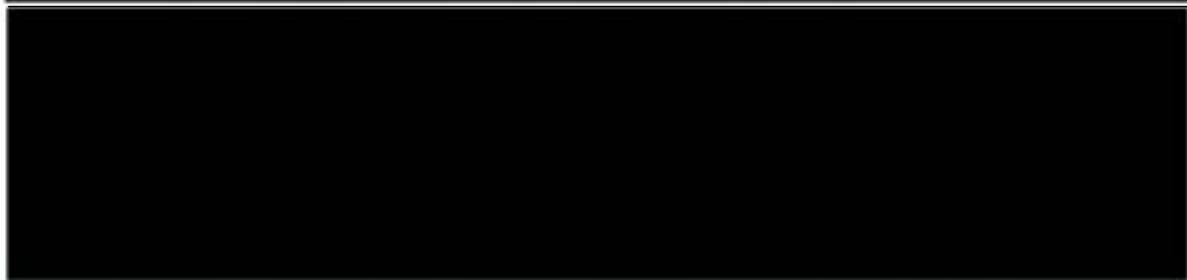
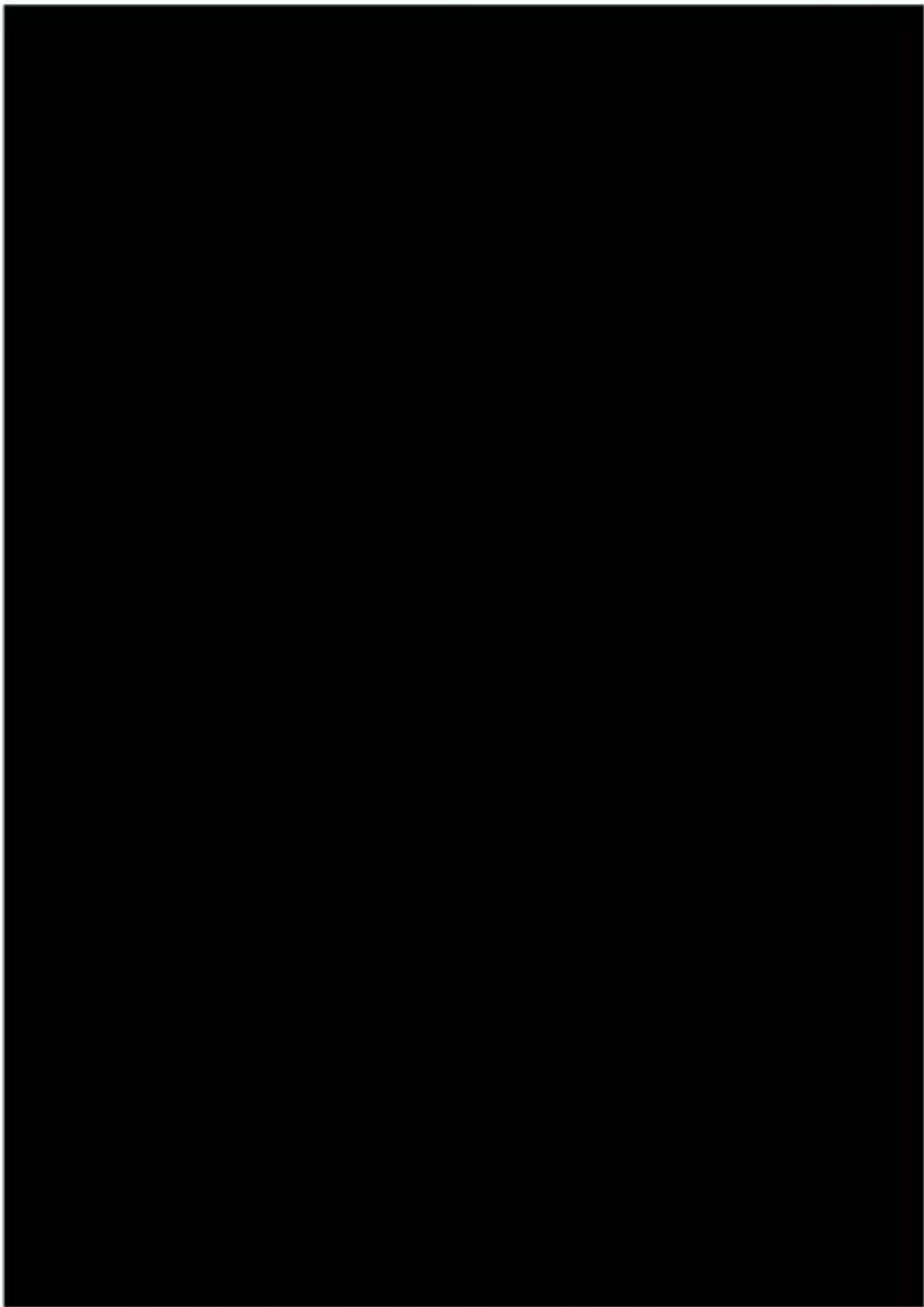
- (a) the person appointed by Transport under clause 4.1(a)(i); or
- (b) any other person appointed from time to time by Transport under clause 4.1(a)(ii).

**Uninsurable** means, in relation to a risk, either that:

- (a) insurance is not available with any Relevant Insurer; or
- (b) the insurance premium payable for the insurance is at such a level or the terms and conditions are such that a reputable insurance broker acceptable to the parties certifies that in its reasonable opinion the risk is not generally being insured against with Relevant Insurers by prudent, competent and experienced concessionaires, designers, contractors and/or operators (as applicable) of motorways or tollroads.


**Unknown Contamination** means Contamination:




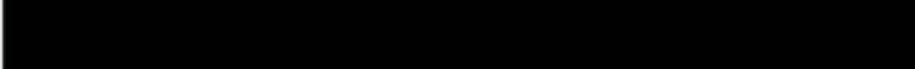
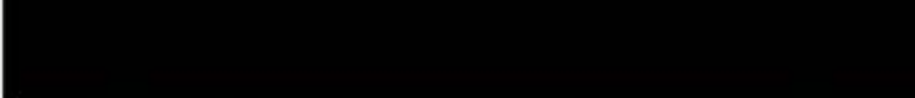

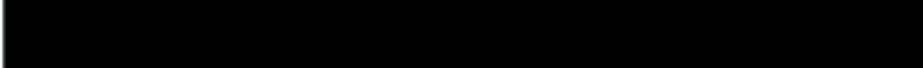
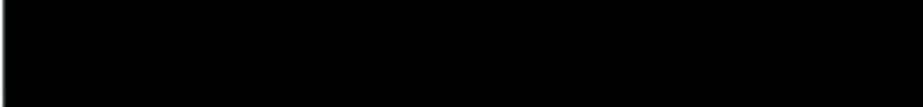




**Unknown Site Condition** means:

- (a) an Unknown Utility Service;
- (b) Unknown Contamination; or
- (c) 

**Unknown Site Condition Notice** means a written notice to be given by a Company pursuant to clause 7.12(a)(ii) or 7.12(a)(iii) which must contain all relevant details in relation to an Unknown Site Condition, including:

- (a) the type of Unknown Site Condition;
- (b) the location of the Unknown Site Condition;
- (c) the nature and extent of the Unknown Site Condition;
- (d) detailed particulars on why that Company believes the relevant characteristic or condition constitutes or involves an Unknown Site Condition which entitles that Company to make a Claim under clause 7.12;
- (e) the alternative measures that that Company considers are necessary and practicable to deal with the Unknown Site Condition, including a preliminary estimate of the extent to which each such alternative has a resourcing, cost, disruption or delay impact;
- (f) in respect of a written notice given by a Company pursuant to clause 7.12(a)(ii), details which are known to the Companies at that time regarding the extent to which that Unknown Site Condition is:
  - (i) 
  - (ii) 
  - (iii) 
- (g) in respect of a written notice given by a Company pursuant to clause 7.12(a)(iii), the extent to which that Unknown Site Condition is:
  - (i) 
  - (ii) 
  - (iii) 
- (h) any other information that that Company considers is relevant in the circumstances.

**Unknown Utility Service** means a Utility Service to the extent that the Utility Service:





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

**Unowned Parcel** means a parcel of land and property of which Transport is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.

**Utility Register** means the document set out in Schedule 43.

**Utility Service** means any service, facility or item of infrastructure, including water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, railway, industrial waste disposal and electronic communications service.

**Utility Service Works** means the construction, modification or relocation of Utility Services all of which are to be designed and constructed by either Company or the State Works Contractor and handed over to Transport, an Authority or any other person in accordance with this deed including any such works specified in the Scope of Works and Technical Criteria, including in Appendix B.39 of the Scope of Works and Technical Criteria (and including, to the extent relevant to such works, Changes directed in accordance with this deed).


**Western Sydney Parklands Trust** means Western Sydney Parklands Trust (ABN 85 202 544 800).

**Westlink** means WestLink Motorway Limited (ABN 63 096 512 300).

**Westlink Motorway Partnership Deed** means the amended Original WEPD annexed to the deed of amendment entitled "Deed of Amendment (WEPD)" dated 31 October 2014 between the Partners and WestLink Motorway Limited (ACN 096 512 300) as nominee.

**WHS Accreditation Scheme** has the meaning given in section 5 of the Federal Safety Commissioner Act 2022.

**WHS Legislation** means:

- (a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2017 (NSW); and
  - (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Project Works or the Temporary Works.
- 



**WSO Co** means WSO Co Pty Limited (ACN 102 757924).

**WSO Co Land** means the land comprising the parcels identified as 'WSO Co Land' under the 'Land Category' column in the Site Access Schedule. The WSO Co Land:

- (a) includes the Transport Access Land and the Transport Access Land (Stratum); and
- (b) excludes the Transport Land.



**WSPT – M12 Interface Deed** means the document of that name entered into between Transport and Western Sydney Parklands Trust dated 28 February 2022.

## 1.2 Definitions in this deed

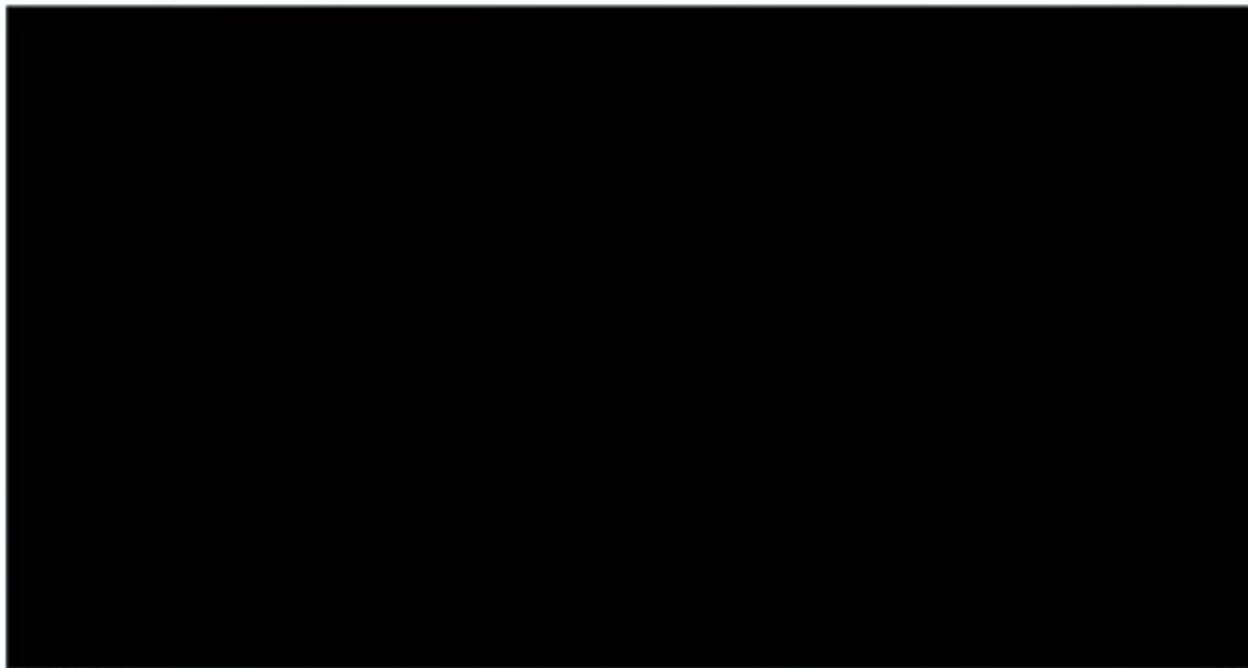
Except as otherwise defined in clause 1.1, terms used in this Annexure A that are defined in the M7-M12 Integration Project Deed have the same meaning where used in this Annexure A.

## 1.3 Interpretation

In this Annexure A unless the context indicates a contrary intention:

- (a) a reference to a clause or Schedule is a reference to a clause or Schedule of or to this Annexure A;
- (a) a reference to this Annexure A includes all schedules to this Annexure A;
- (b) a reference to 'this deed' is to the M7-M12 Integration Project Deed including this Annexure A; and
- (c) a reference to the M7-M12 Integration Project Deed is to the M7-M12 Integration Project Deed to which this Annexure A is attached.

## 1.4 Project Management Deed



## **2. Compliance with Law**

### **2.1 Compliance with Law**

Each Company must:

- (a) in carrying out the Company's Activities, comply with;
- (b) ensure that the State Works Contractor and its Related Parties, in carrying out the SWC Activities, comply with;
- (c) ensure that its Related Parties, in carrying out the Project Activities, comply with; and
- (d) ensure that at all times prior to and upon the relevant Completion Date the Project Works, the Temporary Works, the EDC, the M7-M12 Interchange and the M7 Widening comply with; and
- (e) not used,

all:

- (f) without limiting clause 17.2, applicable Laws, including any change in Law after the date of this deed and before the relevant Completion Date; and
- (g) without limiting clause 9.5, NSW Government Policies,

and must not engage in, and must ensure that the State Works Contractor and their respective Related Parties, in carrying out the Project Activities, do not engage in, any fraud, bribery or corruption.

Each Company must ensure that at the time of rectification, rectified Defects (if any) comply with applicable Laws and NSW Government Policies as at the relevant Completion Date.

### **2.2 Consents and Approvals**

- (a) Each Company acknowledges that Transport has obtained the Planning Approval.
- (b) In relation to any document required to be prepared pursuant to the Planning Approval which is also required to be submitted to an Authority, each Company must (but only in respect of those conditions or requirements in the Planning Approval with which each Company must comply pursuant to Part B of Schedule 1):

- (i) provide Transport's Representative with copies of any such documents;
  - (ii) provide Transport with an opportunity to comment on any such documents;
  - (iii) consider any comments made by Transport in relation to any such documents;
  - (iv) deliver a final version of any such documents in order to enable Transport to submit the relevant document to any Authority in accordance with the requirements of the Planning Approval; and
  - (v) provide Transport with such assistance as may be reasonably required by Transport to enable Transport to comply with all applicable Laws.
- (c) Each Company must:
- (i) expeditiously apply for and obtain from each relevant Authority all Approvals (other than the Planning Approval and the Approvals specified in Part A of Schedule 1);
  - (ii) comply with, and ensure that the State Works Contractor complies with, the lawful requirements of each such Authority to permit their proper consideration of the applications for Approvals (other than to the extent that Transport is responsible for such compliance under Part B of Schedule 1);
  - (iii) comply with, carry out and fulfil, and ensure that the State Works Contractor complies with, carries out and fulfils, all conditions and requirements of all Approvals (including those which Transport is expressed under the terms of the Approval to be required to comply with, carry out and fulfil), subject to the terms of Part B of Schedule 1;
  - (iv) in respect of any Approval, pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority (other than those specified in Part B of Schedule 1); and
  - (v) otherwise comply with, and ensure that the State Works Contractor complies with, clause 2.1.
- (d) Notwithstanding anything to the contrary in the Integration Project Documents, each Company and the State Works Contractor are not responsible for applying for or obtaining any Approvals under the EPBC Act.
- (e) Except to the extent prohibited by Law, each Company indemnifies Transport from and against any claims against Transport, or Loss suffered or incurred by Transport (including any amount which Transport is required to expend pursuant to any condition of the Planning Approval), arising out of or in any way in connection with a failure by that Company to comply with its obligations in clauses 2.1, 2.2(b), 2.2(c) or 2.3, including a failure of that Company to procure that the State Works Contractor complies with any of those obligations.
- (f) Without limiting clause 3.5 of the M7-M12 Integration Project Deed and subject to clause 2.2(g), if requested in writing by a Company, Transport will cooperate with, and (at that Company's cost) provide reasonable assistance to, that Company and the State Works Contractor in obtaining:
- (i) Approvals required to be obtained from TAHE or Sydney Trains; and
  - (ii) Approvals in respect of Utility Services,

necessary to carry out the Project Activities.

- (g) Neither Company nor the State Works Contractor will be entitled to make any Claim against Transport, and Transport has no liability to either Company or the State Works Contractor, arising out of or in any way in connection with an Approval referred to in clause 2.2(f) (including the conditions of that Approval, any delay to the grant of that Approval or any refusal by TAHE or Sydney Trains or a Utility Service provider to grant that Approval) other than to the extent Transport has failed to cooperate with, and (at that Company's cost) provide reasonable assistance to, that Company or the State Works Contractor in obtaining that Approval.

## 2.3 Modification Application Documents

- (a) The parties agree that subject to the terms of Part B of Schedule 1 and clause 2.3(d), each Company will prepare any applications, documentation, plans or reports required to be prepared in respect of any proposed modification to the Planning Approval (including, if applicable, the documents referred to in clause 2.2(b) and any other documents required to be submitted with the application for modification) (**Modification Application Documents**).
- (b) Each Company warrants that in respect of any Modification Application Documents prepared by the Company:
  - (i) it will use its best endeavours to ensure that each Modification Application Document will comply with the EP&A Act, the EPBC Act and any other applicable legislation; and
  - (ii) it will prepare each Modification Application Document in accordance with Good Industry Practice.
- (c) Each Company:
  - (i) acknowledges and agrees that Transport is the proponent under the EP&A Act in respect of the Planning Approval and submission of any Modification Application Documents; and
  - (ii) acknowledges that Transport will rely upon each Company's warranties in this clause 2.3.
- (d) The parties acknowledge and agree that where the proposed modification to the Planning Approval does not arise as a result of a modification to the Planning Approval proposed by the Companies or the State Works Contractor, the Companies will only be obligated to prepare Modification Application Documents where Transport provides a Change Proposal in accordance with paragraph 1 of Schedule 10.

## 2.4 Modifications to the Planning Approval

- (a) Without limiting clause 2.4(b), clause 10.1 will apply as if Transport had given a Change Order if a Planning Approval Change Event occurs prior to the Date of Integration Completion and requires:
  - (i) a Change to be made to the Project Works (including any change where such Planning Approval Change Event requires a change to be made to the Temporary Works and includes a change to the timing, means or method of performing the Project Activities or the process required to design and construct the Project Works);
  - (ii) a reduction in the Permitted Working Hours; or

(iii) a Change to the M7 Widening, EDC or M7-M12 Interchange or the operation of the M7 Widening, EDC or M7-M12 Interchange.

(b) Each Company must:

- (i) take all reasonable steps, and ensure that the State Works Contractor takes all reasonable steps, to Mitigate the cost of the Change;
- (ii) for this purpose and without limiting clause 22.1, comply with, and ensure that the State Works Contractor complies with, all reasonable directions of Transport concerning the Change, and its consequences; and
- (iii) ensure that its Subcontractors, and the State Works Contractor and its Subcontractors, comply with this clause 2.4(b),

and Transport's liability under clause 2.4(a) will be reduced to the extent that a Company fails to comply with these obligations.

(c) Except to the extent expressly stated otherwise in this clause 2.4, each Company will not be entitled to make, and Transport will not be liable upon, any Claim arising out of or in any way in connection with a modification to the Planning Approval.

(d) Without limiting any other provision of this deed, Transport must:

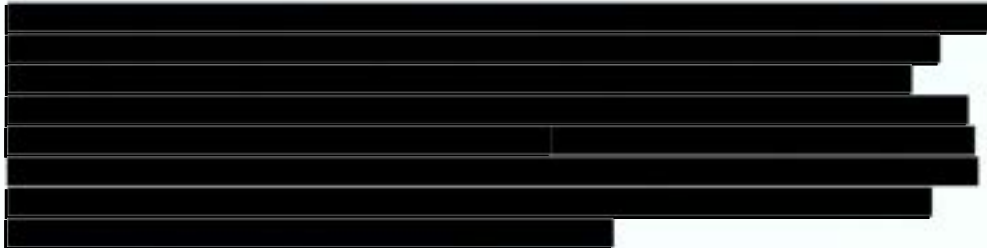
- (i) consult with the Companies prior to making or applying for a modification to the Planning Approval proposed by Transport;
- (ii) give reasonable consideration to:
  - A. any modification to the Planning Approval proposed by the Companies; and
  - B. the Companies' comments in respect of any modification to the Planning Approval proposed by Transport; and
- (iii) respond to any comments made by each Company in respect of any proposed modification to the Planning Approval within a reasonable period of time.

(e) Each Company:

- (i) acknowledges and agrees that:
  - A. as between Transport, the Companies and the State Works Contractor, only Transport is permitted to make or apply for modifications to the Planning Approval;
  - B. Transport may, provided that Transport has complied with its obligations under clause 2.4(d), refuse to make, seek or apply for such modification or discontinue or withdraw or change an application for such modification at any time; and
  - C. Transport need not apply for any modification to the Planning Approval on behalf of a Company or the State Works Contractor unless that Company first submits its proposal for modification to Transport's Representative for its review and Transport's Representative consents to the modification. In considering whether to give consent, Transport must comply with its obligations under clause 2.4(d)(ii)A;

- (ii) must not make, seek to or apply for any modification to the Planning Approval other than through Transport; and
- (iii) must pay to Transport all fees, costs and expenses arising out of, or in any way in connection with, any modification to the Planning Approval instigated by either Company.

## 2.5 Environmental assessment

- (a) If there is a legal challenge brought about by way of commencement of court proceedings in relation to the environmental assessment or a determination in respect of the Project, the Project Works or the Temporary Works under:
  - (i) the EP&A Act;
  - (ii) the EPBC Act; or
  - (iii) any other Law,(including a legal challenge to the Planning Approval) (**Legal Challenge**), each Company must continue to perform its obligations under this deed, and ensure that the State Works Contractor continues to perform its obligations under the State Works Deed, unless, as a result of that Legal Challenge, it is otherwise ordered by a court or directed by Transport's Representative.
- (b) Subject to clause 2.5(c), as between Transport, the Companies and the State Works Contractor, Transport is responsible for dealing with the Legal Challenge as it sees fit in its absolute discretion and at its own cost.
- (c) If requested to do so by Transport, a Company must procure that the Contractor provides reasonable assistance to Transport in dealing with any Legal Challenge, including by attending any relevant meetings and providing any information available to the Contractor, at that Company's cost.
- (d) For the purposes of clause 2.5(a), Transport's Representative may by written notice direct a Company to suspend any or all of its obligations under this deed, and cause the State Works Contractor to suspend any or all of its obligations under the State Works Deed, until such time as Transport gives that Company further written notice and that Company must comply, and ensure that the State Works Contractor complies, with that notice.
- (da) 
- (e) Transport will have no liability to either Company or the State Works Contractor in respect of an order by a court or direction by Transport's Representative that a Company cease to perform its obligations under this deed or the State Works Contractor cease to perform its obligations under the State Works Deed as a result of a Legal Challenge (including under clause 12.8) to the extent that the Legal Challenge:
  - (i) is initiated or upheld, or the court order is made, due to:



- A. either Company's or the State Works Contractor's failure to comply with its obligations under an Integration Project Document;
  - B. a breach of either Company's warranties under clause 2.3;
  - C. a wrongful or negligent act or omission of either Company, the State Works Contractor or their respective Related Parties;
  - D. a failure by either Company, the State Works Contractor or any of their respective Related Parties to comply with the EP&A Act or the EPBC Act; or
  - E. either Company's failure to comply with its obligations under the M7 Motorway Project Deed; or
- (ii) relates to or arises out of or in connection with any Change proposed by either Company in accordance with paragraph 2.3 of the Change Procedure or otherwise carried out by either Company or the State Works Contractor without Transport having issued a Change Order in respect of that Change.

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### **3. State Works**

#### **3.1 State Works Deed**

- (a) As between Transport and the Companies, Transport will procure the design and construction of the State Works.
- (b) Transport will 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.

#### **3.2 Acknowledgements regarding State Works**

Each Company acknowledges and agrees that:

- (a) except as expressly provided in this deed, Transport has no liability whatsoever to each Company and each Company has no Claim whatsoever against Transport arising out of or in connection with the State Works, the SWC Activities or the State Works Deed, including in respect of:
  - (i) any Defects in the State Works;
  - (ii) late completion of, or failure to complete, the State Works;
  - (iii) the State Works not being fit for their intended purposes; or
  - (iv) any non-compliance by the State Works Contractor with any requirements applying to the State Works or the SWC Activities;
- (b) each Company is not excused from any breach of its obligations under the Integration Project Documents which arises as a result of any act or omission of:
  - (i) the State Works Contractor; or
  - (ii) any Related Party of the State Works Contractor in carrying out the SWC Activities,

except to the extent the breach results from Transport's failure to comply with its obligations under the State Works Deed;

- (c) each Company must indemnify Transport in respect of any Loss or Claim brought against, suffered or incurred by Transport arising out of or in connection with the State Works other than payments which Transport is expressly required to make to the State Works Contractor under the State Works Deed, or pursuant to clauses 10.3 or 12.10 of this Annexure A;
- (d) each Company 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;
- (e) each Company must supervise and manage the performance of the SWC Activities to ensure that the Project Works (including the State Works) and the Project Activities (including the SWC Activities) comply with the requirements of this deed;
- (f) where a Company has any obligation under this deed which relates to the performance of the SWC Activities, that Company must satisfy the obligation by supervising and managing the performance of the SWC Activities; and
- (g) each Company must provide the State Works Contractor with sufficient access to the Project Site to enable the State Works Contractor to perform its obligations under the State Works Deed.

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## **4. Administration**

### **4.1 Transport's representatives**

- (a) Transport:
  - (i) must appoint a person to be its representative for any purpose under this deed;
  - (ii) may at any time replace any person appointed as a representative, in which event Transport must appoint another person as a representative; and
  - (iii) must give written notice of all appointments under clauses 4.1(a)(i) and 4.1(a)(ii) to the Companies.
- (b) Transport's Representative may:
  - (i) by written notice to the Companies appoint persons to exercise any of Transport's Representative's functions under this deed;
  - (ii) not appoint more than one person to exercise the same function under this deed; and
  - (iii) vary or revoke any appointment under clause 4.1(b)(i) by notice in writing to the Companies.
- (c) Transport's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 4.1(a).
- (d) An appointee of Transport's Representative under clause 4.1(b) may:
  - (i) by written notice to the Companies appoint persons to exercise any of the appointee's functions under this deed;

- (ii) not appoint more than one person to exercise the same function under this deed; and
  - (iii) revoke any appointment under clause 4.1(d)(i) by notice in writing to the Companies.
- (e) Transport and the Companies acknowledge and agree that any person appointed by Transport as a 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.
- (f) Unless expressly provided otherwise in this deed, a representative of Transport appointed pursuant to this clause 4.1 is not obliged to review, or comment upon, any documentation or information which either Company or the State Works Contractor gives to Transport in respect of the Project.

#### **4.2 Companies' representatives**

- (a) Each Company must within 5 Business Days of the Satisfaction Date give notice in writing to Transport in which it nominates the persons that will act as a representative of and be authorised to act on behalf of it in discharging its functions under this deed.
- (b) Each Company may nominate more than one such person, and if so, it must in its written notice specify the functions which each person is authorised to discharge. The Companies may not nominate more than one person to discharge the same function or functions under this deed.
- (c) The Companies may by notice in writing to Transport substitute a person appointed under this clause with another person.

#### **4.3 Senior Project Group**

- (a) A Senior Project Group must be established, and the parties must participate in the Senior Project Group, in accordance with Schedule 2.
- (b) The parties may agree to establish additional project management groups.

#### **4.4 Document management and transmission**

- (a) Each Company must manage and transmit documents, and ensure that the State Works Contractor manages and transmits documents, (which would otherwise be required to be transmitted as Notices in accordance with clause 17 (Notices) of the M7-M12 Integration Project Deed) including using an electronic medium (such as the PDCS) where required by Transport's Representative in writing, in accordance with the processes, procedures and systems in the Scope of Works and Technical Criteria or as otherwise reasonably required by Transport's Representative.
- (b) Documents supplied to either Company or the State Works Contractor by or for Transport will, as between Transport (on the one hand) and the Companies and the State Works Contractor (on the other), remain the property of Transport and must be returned by each Company to Transport on demand in writing. The documents must not, without the prior written approval of Transport, be used, copied or reproduced for any purpose other than the execution of the Project Activities.
- (c) Each Company must keep all that Company's and the State Works Contractor's records relating to the Project Activities in a secure and fire proof storage.
- (d) Each Company will not be entitled to make, and Transport will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 4.4.

- (e) Each Company must ensure that any documentation that it or the State Works Contractor provides to Transport in computer readable form contains no virus or computer software code which is intended or designed to:
  - (i) permit access to or use of a computer system by a third person not authorised by Transport; or
  - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

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## **5. The Companies' fundamental obligations**

### **5.1 The Companies' general obligations**

Each Company:

- (a) must carry out the Company's Activities, including:
  - (i) planning and designing and constructing the Company's Works and the Temporary Works;
  - (ii) commissioning the Project Works and the Temporary Works; and
  - (iii) contracting for the provision of, acquiring or otherwise procuring or providing all Materials, Construction Plant and Utility Services required for the performance of its obligations under this deed,in accordance with this deed;
- (b) must integrate, interface and co-ordinate the Company's Activities with the SWC Activities;
- (c) warrants that:
  - (i) each discrete part of the Project Works will:
    - A. upon the relevant Completion Date, be; and
    - B. other than in respect of the Third Party Works, thereafter at all relevant times, be capable of remaining,fit for their intended purposes;
  - (ii) not used
  - (iii) the Temporary Works will at all relevant times be fit for their intended purposes; and
- (d) will be liable to Transport for the acts and omissions of its Related Parties and their respective employees and agents as if such acts or omissions were acts or omissions of each Company.

### **5.2 Subcontracts**

- (a) The engagement by the Companies and the State Works Contractor of the Contractor to perform some or all of the Companies' obligations under this deed and the State Works Contractor's obligations under the State Works Deed will not limit or affect either Company's or the State Works Contractor's obligations or Liability under any Transport Project Document.

- (b) Each Company will be vicariously liable to Transport for the acts and omissions of its Related Parties, the Contractor, any other Subcontractors, the Contractor's subcontractors and their respective related parties in performing the Project Activities as if such acts or omissions were the acts or omissions of that Company.
- (c) Transport and each Company acknowledge and agree that each Company's obligations under this deed, and the State Works Contractor's obligations under the State Works Deed, are not lessened or otherwise affected by Transport's awareness of the terms of any Subcontract.
- (d) Each Company must notify Transport of any proposed or executed contract in respect of the Project Works or the Temporary Works (regardless of whether or not that Company is a party to that contract), and if Transport requires, give Transport:
  - (i) access to any such contract with a contract sum of more than [REDACTED] (including to all plans, specifications and drawings relating to that contract); and
  - (ii) a copy of any such contract with a contract sum of more than [REDACTED] (including of all plans, specifications and drawings relating to that contract),

but in each case which may be redacted to remove any commercially sensitive information.


(da)

[REDACTED]

[REDACTED]

- (e) Each Company must ensure that every Subcontract which has a contract value of [REDACTED] [REDACTED] includes a clause providing that if this deed is terminated for any reason or Transport takes over the Project Activities:
  - (i) subject to the Contractor's Side Deed, that Company and/or the State Works Contractor and the Subcontractor must, after Transport's Representative has given a Direction to do so, consent to a novation of the Subcontract to Transport; or
  - (ii) if Transport does not elect to novate the Subcontract, that Company and/or the State Works Contractor may terminate the Subcontract and pay to the Subcontractor an early termination amount equal to the amount determined by the Independent Certifier (or such other independent person as the parties agree) as being in respect of the D&C Deed or any other Subcontract entered into in connection with the Project Works, the aggregate of:

[REDACTED]

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- (f) Each Company must ensure that the State Works Contractor and the Contractor include an equivalent clause to clause 5.2(e)(ii) in each contract which has a contract value of [REDACTED] entered into by the State Works Contractor or the Contractor (respectively) with any subcontractor, supplier or consultant.

### 5.3 Utility Services

Each Company:

- (a) must obtain and pay for any Utility Services and all connections for all Utility Services that the Company and the State Works Contractor need to perform their obligations under the Integration Project Documents;
- (b) must investigate, protect, relocate, remove, modify, support, reinstate and provide for Utility Services necessary for that Company to comply with its obligations under this deed or the State Works Contractor to comply with its obligations under the State Works Deed;
- (c) must ensure there are no unplanned disruptions to the Utility Services in carrying out the Project Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the Project Activities;
- (d) must, to the extent not prohibited by Law, indemnify Transport from and against any claims against Transport, or Loss suffered or incurred by Transport, arising out of or in connection with:
- (i) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:
    - A. a failure by either Company to comply with any obligations under this deed, or the State Works Contractor to comply with any obligations under the State Works Deed; or
    - B. any negligent, unlawful or wrongful act or omission of either Company, the State Works Contractor or their respective Related Parties; or
  - (ii) a failure by either Company to comply with any obligation under this deed, or the State Works Contractor to comply with any obligation under the State Works Deed, with respect to Utility Services or the Utility Service Works including the obligations under the Scope of Works and Technical Criteria (including Appendix B.39 of the Scope of Works and Technical Criteria).

Subject to clauses 7.12, 7.13, 12.7 and 12.10, each Company is responsible for, and assumes the risk of, all additional work, increased costs and any other Loss, delay or disruption (including any delay in achieving Returned Works Construction Completion of the EDC Works or Integration Completion) it or the State Works Contractor suffers or incurs arising out of or in

any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the Project Activities.

#### 5.4 Long service levy

Before any construction work commences under this deed or the State Works Deed, each Company must:

- (a) pay (or procure payment) to the Long Service Corporation or that body's agent all amounts due and payable for the long service levy in respect of the Project Activities under the Building and Construction Industry Long Service Payments Act 1986 (NSW); and
- (b) produce to Transport's Representative the documents evidencing payment of the amounts referred to in clause 5.4(a).

#### 5.5 Project Plans

- (a) The Companies must prepare and develop the Project Plans specified in Appendix C.1 of the Scope of Works and Technical Criteria in accordance with Schedule 3.
- (b) No review of, comments upon, notice in respect of any Project Plan or any other act or omission of Transport's Representative (including a direction under paragraph 5 of Schedule 3) about any Project Plan will lessen or otherwise affect:
  - (i) the Liabilities or responsibilities of:
    - A. either Company under this deed or otherwise according to Law; or
    - B. the State Works Contractor under the State Works Deed or otherwise according to Law; or
  - (ii) Transport's rights against:
    - A. either Company, whether under this deed or otherwise according to Law; or
    - B. the State Works Contractor, whether under the State Works Deed or otherwise according to Law.
- (c) Each Company:
  - (i) must comply, and must procure that the State Works Contractor complies, with each Project Plan which has been submitted to Transport's Representative under this clause 5.5 and in respect of which:
    - A. the Independent Certifier has not given a notice under paragraph 2(a)(iii) of Schedule 3; and
    - B. Transport's Representative has not given a notice under paragraph 2(a)(iv) of Schedule 3; and
  - (ii) agrees that compliance with any Project Plan will not in any way lessen or affect:
    - A. the Liabilities or responsibilities of:
      - 1) either Company under this deed or otherwise according to Law; or

- 2) the State Works Contractor under the State Works Deed or otherwise according to Law; or
- B. Transport's rights against:
  - 1) either Company, whether under this deed or otherwise according to Law; or
  - 2) the State Works Contractor, whether under the State Works Deed or otherwise according to Law.
- (d) Each Company must comply, and ensure that the State Works Contractor complies, with the restrictions upon the carrying out of the Project Activities specified in the Scope of Works and Technical Criteria.
- (e) To the extent they are relevant to operation, maintenance, repair and reinstatement of:
  - (i) the Retained Works, all Project Plans must be incorporated into the O&M Manuals; and
  - (ii) the Returned Works, all Project Plans must be incorporated into the Returned Works Operation and Maintenance Plan.

## 5.6 Control of traffic

- (a) Each Company must not undertake, and must ensure that the State Works Contractor does not undertake, any Project Works or Temporary Works which have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any local road:
  - (i) without a road occupancy licence issued by Transport in accordance with the requirements of Appendix C.4 of the Scope of Works and Technical Criteria;
  - (ii) outside of the permitted times stated in the road occupancy licence; or
  - (iii) otherwise than in accordance with the terms and conditions of the road occupancy licence.
- (b) Each Company:
  - (i) is responsible for the control, direction and protection of all traffic in any way affected by the carrying out of the Project Activities;
  - (ii) must manage all such traffic to ensure:
    - A. its continuous, safe and efficient movement;
    - B. subject to clause 5.6(b)(iv), that the traffic carrying capacity of Local Areas is maintained; and
    - C. that any delays and disruptions to such traffic and the movement of such traffic are kept to an absolute minimum;
  - (iii) must coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities;
  - (iv) must at all times comply with the relevant traffic management plan prepared in accordance with the Planning Approval (where applicable)



and the requirements of the Scope of Works and Technical Criteria and any Third Party Agreement in respect of road traffic management and safety; and

- (v) must comply with the directions of any relevant Authority and Transport (in its capacity as an Authority) with respect to such management.

## 5.7 Principal contractor

- (a) In this clause 5.7 and clause 5.8, the terms "principal contractor", "workplace", "relevant entity", "construction project" and "construction work" have the same meaning as assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation, this deed and the State Works Deed, the Company's Works, the State Works and the Temporary Works are taken to be part of the same "construction project".
- (b) Each Company:
  - (i) acknowledges that the Companies, Transport and the Contractor are party to the Principal Contractor Deed;
  - (ii) acknowledges that pursuant to the Principal Contractor Deed, Transport has engaged the Contractor as the principal contractor in respect of the Company's Works, the State Works and the Temporary Works other than the Other Works; and
  - (iii) without limiting the Principal Contractor Deed, undertakes to Transport to manage the Contractor to ensure that it discharges the duties imposed on a principal contractor by the WHS Legislation in respect of the Company's Works, the State Works and the Temporary Works other than the Other Works.
- (c) Without limiting either Company's obligations under any other provision of this deed or the Principal Contractor Deed:
  - (i) if:
    - A. the engagement of the Contractor as principal contractor pursuant to the Principal Contractor Deed is not effective for any reason or is not effective in respect of the whole of the Company's Works, State Works or Temporary Works; or
    - B. the Principal Contractor Deed is terminated for any reason before the Company's Works, the State Works or the Temporary Works are complete,then to the extent that the Company's Works, the State Works or the Temporary Works includes construction work, Transport:
    - C. engages each Company as the principal contractor in respect of the Company's Works, the State Works and the Temporary Works on and from the date on which Transport's engagement and authorisation of the Contractor as principal contractor is terminated; and
    - D. authorises each Company to have management and control of each workplace at which the Company's Works, the State Works and the Temporary Works is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and

- (ii) to the extent that the Other Works includes construction work, Transport:
  - A. engages each Company as the principal contractor in respect of the Other Works on and from the date of this deed; and
  - A. authorises each Company to have management and control of each workplace at which the Other Works is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation,

and each Company accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

- (d) Each Company's engagement and authorisation as principal contractor pursuant to clause 5.7(c) will continue:
  - (i) subject to clause 5.7(d)(ii) and 5.7(d)(iii), until the earlier of:
    - A. the termination of this deed;
    - B. the relevant Completion Date for each discrete part of the Project Works;
    - C. in respect of any part or parts of the Returned Works, the date on which that part or parts of the Returned Works is opened prior to Returned Works Construction Completion of the EDC Works or Returned Works Construction Completion of the Returned Works (excluding the EDC Works) (as applicable) in accordance with clause 14.2 or 14.3; and
  - (ii) in respect of:
    - A. part of an "Other Project Contractor's Portion" (as defined in the M12 Central Interface Protocol), from the start time until the end time set out in the relevant "PC Change Request" (as defined in the M12 Central Interface Protocol) approved by Transport in accordance with the M12 Central Interface Protocol; and
    - B. the areas specified in the Site Access Schedule, until the termination or expiry of the rights referred to in clause 7.1(a) or 7.3 (as applicable),(unless sooner revoked by Transport); and
  - (iii) in respect of any:
    - A. work to any part of the Returned Works which has been opened in accordance with clause 14.2 or 14.3 carried out under this deed that is construction work;
    - B. defect rectification work carried out under clause 15 that is construction work (other than any defect rectification work for which the Contractor is the principal contractor),during the period any such work is carried out.
- (e) If a Company is engaged as principal contractor pursuant to clause 5.7(c), that Company must:

- (i) ensure that if any Law, including in the State or Territory in which the Project Works or the Temporary Works are situated or being carried out (as the case may be) requires that:
  - A. a person:
    - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
    - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
  - B. a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed; and
- (ii) if requested by Transport or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of Transport (acting reasonably) before either Company, the State Works Contractor or a Subcontractor (as the case may be) commences such work.
- (f) If the engagement of either Company as principal contractor under this clause is not effective for any reason, each Company agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 5.7(c).

## 5.8 Work health and safety

- (a) Each Company must carry out the Company's Works and the Temporary Works, and ensure that the State Works Contractor carries out the State Works:
  - (i) safely and in a manner that does not put the health and safety of persons at risk; and
  - (ii) in a manner that protects property.
- (b) If there is a risk of injury to people or damage to property arising from the Project Works or the Temporary Works:
  - (i) Transport's Representative may direct a Company to change its manner of working or to cease working, or procure that the State Works Contractor changes its manner of working or ceases working to minimise that risk; and
  - (ii) that Company must, at its cost, comply with, and ensure that the State Works Contractor complies with, any direction given by Transport's Representative under clause 5.8(b)(i).
- (c) Each Company must:

- (i) ensure that in carrying out the Project Activities under this deed and the State Works Deed, each Company and the State Works Contractor (respectively):
  - A. comply with all Laws and other requirements of this deed and the State Works Deed for work, health, safety and rehabilitation management;
  - B. ensure that all Subcontractors engaged by the Companies or the State Works Contractor and all subcontractors and consultants engaged by the Contractor comply with their respective obligations under the WHS Legislation; and
  - C. comply with their obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (ii) have, and ensure that the State Works Contractor has, a WHS management system which complies with the Law and is otherwise in accordance with the NSW Government Work Health & Safety Management Systems and Auditing Guidelines (6th Edition) (December 2019);
- (iii) ensure that the Contractor (or, if a Company is engaged as principal contractor pursuant to clause 5.7, that Company) exercises and fulfils all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
  - A. ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
  - B. enable Transport to satisfy its obligations under the WHS Legislation in connection with the Project Site;
- (iv) notify Transport's Representative immediately (and in any event, within 12 hours after such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Project Activities;
- (v) institute, and ensure that the State Works Contractor institutes, systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
- (vi) provide, and ensure that the State Works Contractor provides, Transport's Representative with the written assurances referred to in clause 5.8(c)(v), together with written assurances from each Company about each Company's ongoing compliance with the WHS Legislation and from the State Works Contractor about the State Works Contractor's ongoing compliance with the WHS Legislation;
- (vii) provide Transport's Representative with a written report of all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, clauses 5.7 and 5.8) or any other relevant matters as Transport's Representative may reasonably require from time to time, including a summary of each Company's and the State Works Contractor's compliance with the WHS Legislation;
- (viii) cooperate with Transport to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

- (ix) exercise a duty of utmost good faith to Transport, and ensure that the State Works Contractor exercises a duty of utmost good faith to Transport, in carrying out the Project Activities to enable Transport to discharge its duties under the WHS Legislation;
  - (x) ensure that it does not do anything or fail to do anything, and ensure that the State Works Contractor does not do anything or fail to do anything, that would cause Transport to be in breach of the WHS Legislation; and
  - (xi) ensure that each Subcontract includes provisions equivalent to clause 5.8.
- (d) To the extent not prohibited by Law, each Company must indemnify Transport from and against any claims against Transport, or Loss suffered or incurred by Transport, arising out of or in any way in connection with:
- (i) if a Company is engaged as principal contractor pursuant to clause 5.7, the failure of that Company to exercise or fulfil the functions and responsibilities of the principal contractor under WHS Legislation;
  - (ii) that Company's failure to comply with clauses 5.7 or 5.8 to the extent such failure arises out of or in connection with the State Works; or
  - (iii) that Company's failure to otherwise comply with clauses 5.7 or 5.8,
- except to the extent the appointment or engagement of that Company as principal contractor is revoked by Transport (in which case that Company must indemnify Transport from and against any claims against Transport, or Loss suffered or incurred by Transport, arising out of or in any way in connection with a failure by that Company referred to in clause 5.8(d)(i) or 5.8(d)(iii) before that revocation).

## 5.9 Project WHS Management Plan

- (a) Each Company acknowledges that preparation of the Project WHS Management Plan in accordance with clause 5.5 is a condition precedent to the commencement of Transport's obligations under clause 7.1(a).
- (b) Without limiting any requirement of the WHS Legislation or this deed, the Project WHS Management Plan must:
  - (i) set out in adequate detail the procedures each Company and the State Works Contractor will implement to manage the Project Works and the Temporary Works from a work health and safety perspective;
  - (ii) describe how each Company and the State Works Contractor propose to ensure that the Project Works and the Temporary Works are performed consistently with the WHS Legislation and any other Law;
  - (iii) address the matters specified in the WHS Legislation;
  - (iv) comply with the requirements applicable to a "Work Health and Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines; and
  - (v) comply with the requirements applicable to a "WHS Management Plan" set out in the NSW Government Work Health & Safety Management Systems and Auditing Guidelines (6th Edition) (December 2019).
- (c) Without limiting clause 5.5, each Company must:

- (i) continue to correct any defects in or omissions from the Project WHS Management Plan (whether identified by Transport's Representative or each Company); and
- (ii) regularly review and, as necessary, revise the Project WHS Management Plan in accordance with the WHS Legislation,

and submit an amended draft of its Project WHS Management Plan to Transport's Representative, after which clause 5.5 will reapply (to the extent applicable).

- (d) Each Company must document and maintain detailed records of inspections or audits undertaken as part of the Project WHS Management Plan.
- (e) Each Company must carry out, and ensure that the State Works Contractor carries out, the Project Works and the Temporary Works in accordance with, and otherwise implement, the latest Project WHS Management Plan.

## 5.10 Site induction

- (a) Without limiting each Company's obligations under clause 2.2(c) to comply, and ensure that the State Works Contractor complies, with the conditions and requirements of all Approvals, each Company must:
  - (i) provide safety and environmental site induction for persons nominated by Transport's Representative on the Project Site and for all personnel directly or indirectly engaged by each Company or the State Works Contractor and requiring access to the Project Site, any Extra Land and any other land upon which the Project Activities are being carried out; and
  - (ii) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.
- (b) The induction must:
  - (i) comply with all applicable Laws, Project Plans and Transport's procedures, policies and rules; and
  - (ii) otherwise be in accordance with the requirements of this deed.
- (c) Each Company must keep and maintain comprehensive and detailed induction records and provide Transport's Representative or its nominee, upon request, with access to such records.

## 5.11 Community relations

Each Company:

- (a) acknowledges that the areas where the Project Activities are to be carried out are of great importance to many people, including the local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
  - (i) required by the Scope of Works and Technical Criteria;
  - (ii) contained in the Communication Management Plan; and
  - (iii) reasonably requested by Transport from time to time.

## 5.12 Environmental Requirements

The parties must comply with the requirements of Schedule 4.

## 5.13 Liability under the NGER Legislation

- (a) Without limiting any other clause in this deed, each Company acknowledges and agrees that if the Project Activities or the Project Works and the Temporary Works constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and each Company will comply, and ensure that the State Works Contractor complies, with any obligations arising in respect of the Project Activities or the Project Works and the Temporary Works under the NGER Legislation.
- (b) If, despite the operation of clause 5.13(a), Transport incurs, or but for this clause 5.13 would incur, a Liability under or in connection with the NGER Legislation as a result of or in connection with the Project Activities or the design and construction of the Project Works and the Temporary Works (but not the operation of the Project Works), and the NGER Legislation provides that such Liability can be transferred by Transport to a Company, that Company must, upon the written request of Transport, do all things reasonably necessary to transfer the Liability to that Company.

## 5.14 Indemnity

Each Company must at all times indemnify Transport and its Related Parties from and against any Claim against, or Loss suffered or incurred by, Transport or its Related Parties, arising out of or in connection with:

- (a) either Company's breach of its obligations, including a failure to procure that the State Works Contractor complies with its obligations; and
- (b) any inaccuracy or omission in information provided to Transport by either Company or the State Works Contractor,

under clause 5.13 and paragraphs 4 and 5 of Schedule 4.

## 5.15 Aboriginal participation in construction

Each Company must:

- (a) within 15 Business Days of the Satisfaction Date, provide a finalised Aboriginal Participation Plan which complies with the requirements of this deed, which sets out how the Aboriginal Participation Requirement for this deed will be achieved;
- (b) comply with and implement, and procure that the State Works Contractor complies with and implements, the Aboriginal Participation Plan to meet the Aboriginal Participation Requirement; and
- (c) provide to Transport, in an agreed format:
  - (i) an Aboriginal Participation Report within 5 Business Days after 31 March, 30 June, 30 September and 31 December until the Date of Integration Completion, which provides details of how the Aboriginal Participation Plan is being implemented and quantifies, with appropriate calculations, the Actual Aboriginal Participation being achieved to date. The report is to include verifiable evidence to support the Actual Aboriginal Participation reported; and

- (ii) as a condition precedent to the Date of Integration Completion, the final Aboriginal Participation Report. Details included in the final Aboriginal Participation Report must describe and explain:
  - A. how the Aboriginal Participation Plan has been implemented and quantify the Actual Aboriginal Participation for this deed; and
  - B. whether the Actual Aboriginal Participation by that Company and the State Works Contractor is less than the Aboriginal Participation Requirement, and if so, include a calculation of the Unmet Percentage;
- (d) provide any information or assistance, as reasonably requested by Transport, to enable Transport to meet its obligations under the Aboriginal Procurement Policy; and
- (e) where an Unmet Percentage has been assessed by Transport, pay Transport, within 30 Business Days after the Date of Integration Completion, an amount equal to the Unmet Percentage multiplied by the D&C Deed Sum. The amount so calculated will be a debt due from that Company to Transport. Once such monies are received, Transport will direct that amount to the Aboriginal Participation Fund established by Training Services NSW.

## 5.16 Management of customers, stakeholders and other affected parties

- (a) Each Company must, and must procure the State Works Contractor to, in carrying out the Project Activities:
  - (i) do all things necessary to minimise the disturbance, nuisance or inconvenience caused to the occupants of land adjoining the Project Site, Extra Land or located in the vicinity of the Project Site or Extra Land (including Existing Operations and Utility Services) as a result of the Project Activities;
  - (ii) to the extent reasonably possible and having regard to the relevant Project Plan, in performing the Project Activities, not interfere with the free movement of traffic into and out of, adjacent to, around, on or about the Project Site or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, bicycle paths or facilities associated with the Existing Operations and Utility Services and must comply with:
    - A. Transport's reasonable directions in its capacity as an Authority; and
    - B. without limiting clause 22.1, any reasonable directions of Transport's Representative,
 in relation to them; and
  - (iii) program and coordinate the Project Activities using best practices so as to minimise the effect of the Project Activities on occupants of land adjoining the Project Site, Extra Land or located in the vicinity of the Project Site or Extra Land (including Existing Operations and Utility Services).
- (b) Each Company must, in dealing with customers of the M7 Widening, EDC and M7-M12 Interchange, stakeholders and other third parties affected by the Project Activities (**Stakeholders**):



- (i) ensure that a representative of that Company can be contacted by Stakeholders during normal business hours and that that Company's contact details are publicly available, including on that Company's website;
  - (ii) give reasonable consideration to all feedback received from Stakeholders; and
  - (iii) actively manage any issues raised by Stakeholders.
- (c) Each Company must immediately notify Transport in writing if any:
- (i) complaint is made or any proceedings are instituted or threatened;
  - (ii) letter of demand is issued; or
  - (iii) order or direction is made,
- by anyone (including any Authority or any landowner, lessee or licensee near the Project Site or Extra Land) against that Company, the State Works Contractor or any of their respective Related Parties in respect of any aspect of the carrying out of the Project Activities, including:
- (iv) Contamination arising out of, or in any way in connection with, the Project Activities;
  - (v) that Company's or the State Works Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder), any Project Plan or any Law regarding the Environment;
  - (vi) that Company's use or occupation of the Project Site or any Extra Land; or
  - (vii) Loss or damage of the kind referred to in clause 18.3.
- (d) Without limiting each Company's obligations under section 3.3 of the Scope of Works and Technical Criteria, each Company must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 5.16(c);
  - (ii) take all measures to resolve those matters as soon as possible; and
  - (iii) keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 5.16(c), which:
    - A. contains full details of:
      - 1) each complaint, proceedings, letter of demand, order and direction; and
      - 2) the action taken by that Company with respect to each complaint, proceedings, letter of demand, order and direction;
    - B. is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
    - C. may be inspected by Transport's Representative whenever Transport's Representative reasonably requires.

- (e) Each Company must notify anyone who may be adversely affected by the Project Activities before the relevant work is carried out including notification of:
  - (i) the likely duration of that work; and
  - (ii) the M7-M12 Integration Project 24 hour telephone number, postal address and email address established by Transport, in case any person wishes to make a complaint.

## 5.17 Existing Operations

- (a) Each Company acknowledges that:
  - (i) Existing Operators must not be prevented from continuing their Existing Operations during the course of the carrying out of the Project Activities; and
  - (ii) the access ways to the Project Site are used by other persons (including in connection with the Existing Operations) and will not be available exclusively to each Company or the State Works Contractor.
- (b) Each Company bears the risk of coordinating its access to the Project Site with any other relevant party (including Existing Operators and the State Works Contractor) that use the access ways to the Project Site.
- (c) Without limiting any other obligations of each Company or the State Works Contractor under the Integration Project Documents, each Company must:
  - (i) comply with, and ensure that the State Works Contractor complies with:
    - A. Transport's reasonable directions in its capacity as an Authority; and
    - B. without limiting clause 22.1, any reasonable directions of Transport's Representative,in connection with:
    - C. the Existing Operations (including access to and use of the Project Site) to the extent required to give effect to clause 5.17(a); and
    - D. work health and safety issues to enable Transport to comply with, and not place Transport in breach of, its obligations under any Law relating to work health and safety;
  - (ii) comply, and ensure that the State Works Contractor complies, with all reasonable policies, procedures and rules of Transport applying from time to time (as notified by Transport) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
  - (iii) keep itself informed, and ensure that the State Works Contractor keeps itself informed, as to the requirements to comply with and not do anything which may place Transport in breach of Law applying to the Existing Operations on the Project Site;
  - (iv) ensure that it and the State Works Contractor, in carrying out and completing the Project Activities, ensure that the Project Works properly interface and integrate with, and connect to, the physical infrastructure of

the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed; and

- (v) immediately:
  - A. repair and make good, and ensure that the State Works Contractor repairs and makes good, any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Project Activities; and
  - B. when directed by Transport's Representative, take such action, and ensure that the State Works Contractor takes such action, as is required to ensure that its obligations in this clause 5.17(c) are complied with.
- (d) If each Company becomes aware that a person who is not an Existing Operator (**Other Operator**):
  - (i) owns, operates or controls any infrastructure (including existing infrastructure and Utility Services); or
  - (ii) undertakes any business or operation,  
on or in the vicinity of the Project Site (**Other Operations**), each Company must use reasonable endeavours (but without any obligation to incur any cost or bear any delay) to:
    - (iii) ensure that the Other Operator is not prevented from carrying out the Other Operations by the Project Activities;
    - (iv) without limiting clause 22.1, comply with Transport's Representative's reasonable directions in connection with the Other Operations; and
    - (v) not do anything to place Transport in breach of Law applying to the Other Operations on the Project Site.
- (e) Each Company must ensure that the State Works Contractor and their respective Related Parties at all times comply with this clause 5.17, provided that this obligation shall not be required to be replicated in subcontracts of the Contractor.

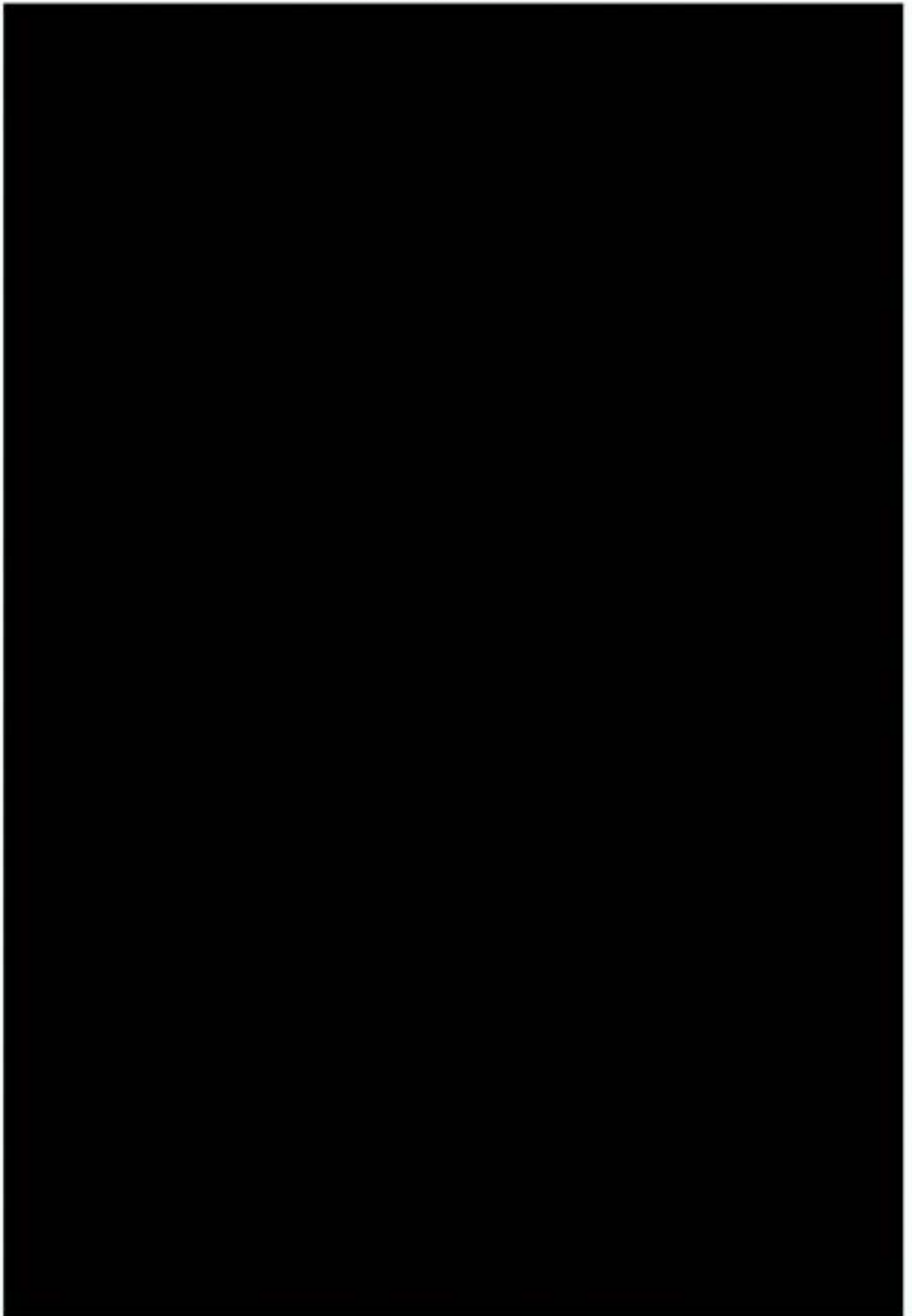
## 5.18 Other Motorway interfaces

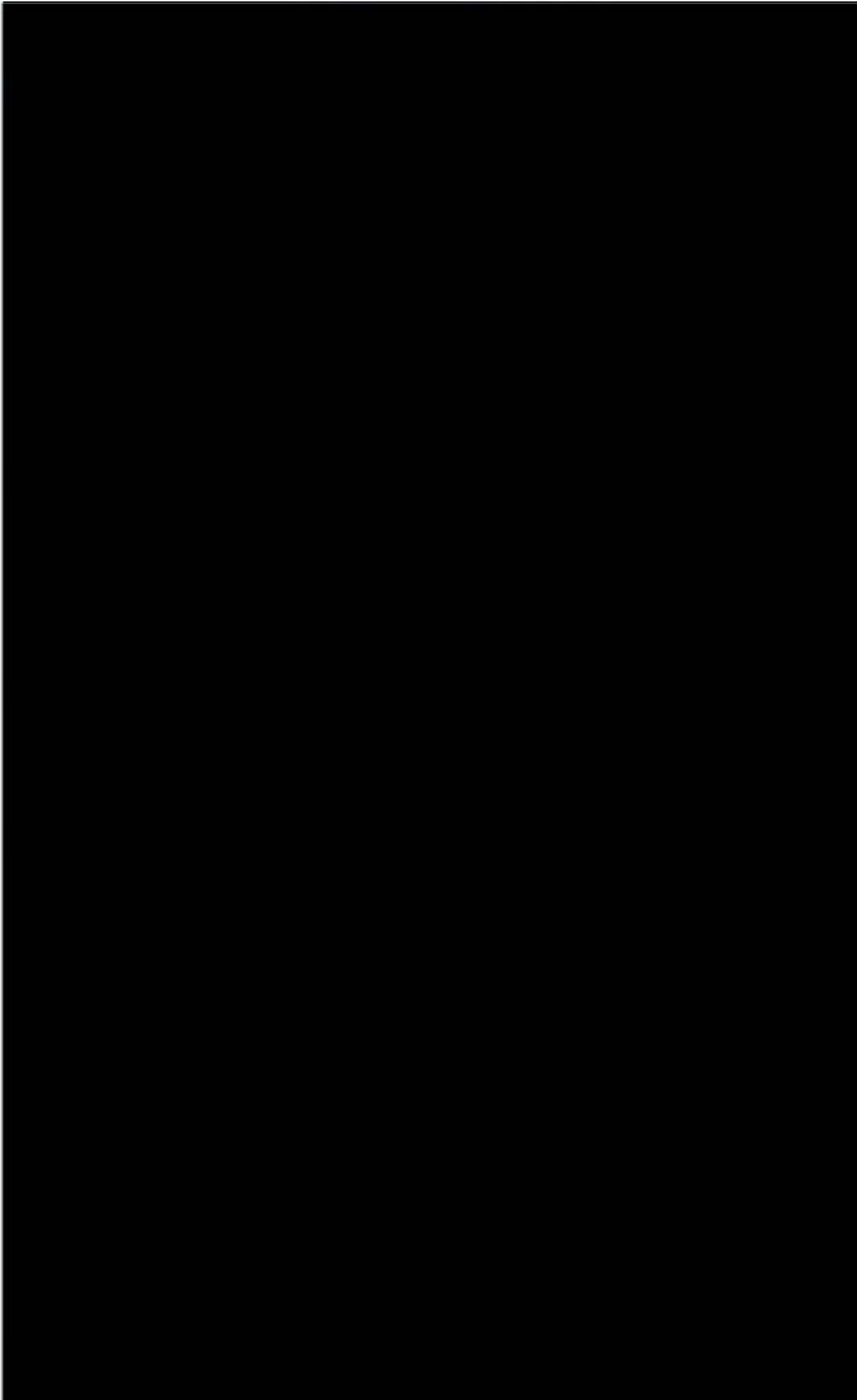
Each Company:

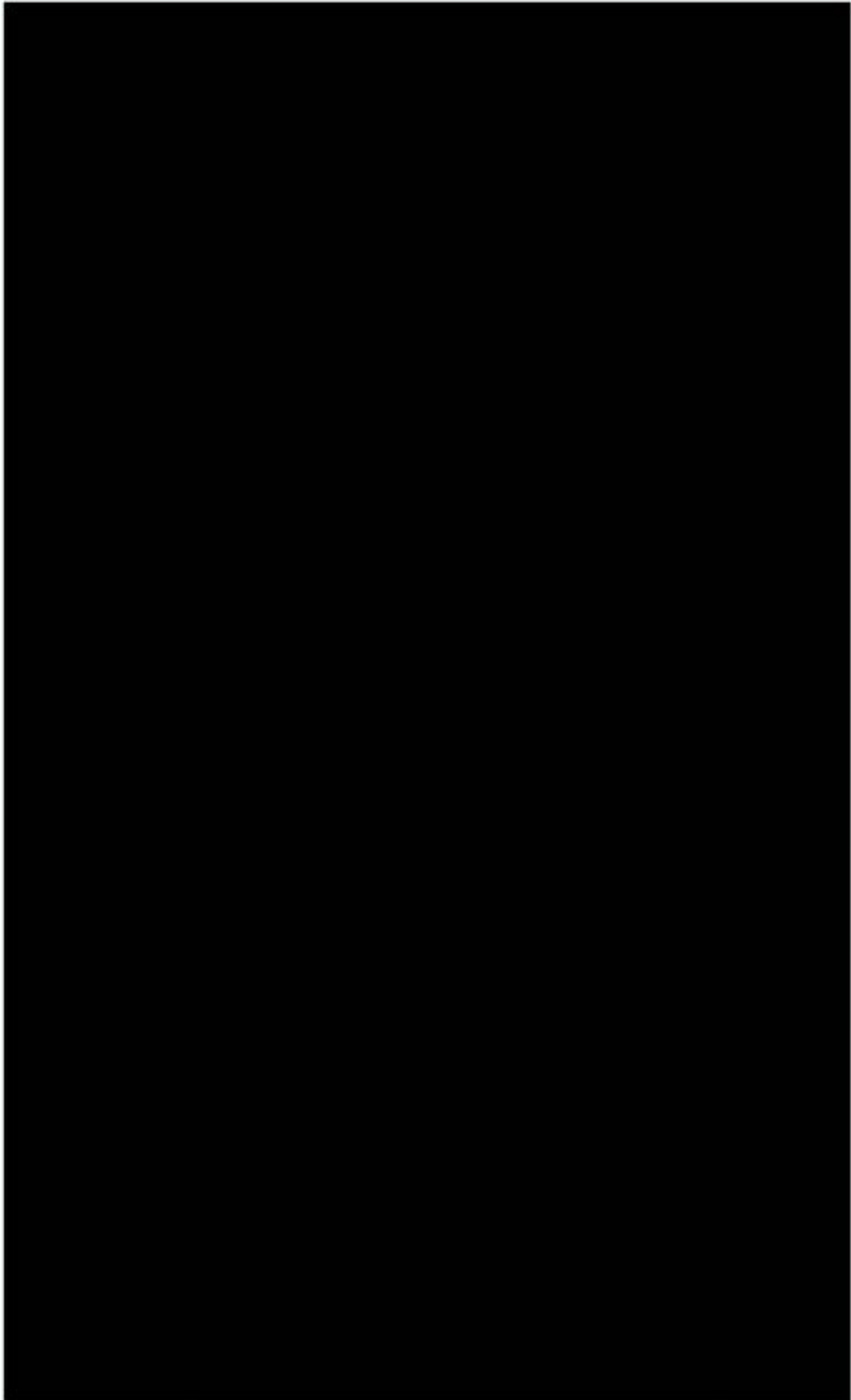
- (a) is responsible for interface arrangements with M2 Entities and M5 Entities in respect of the interface between the Project and the M2 Motorway and M5 West Motorway (as applicable); and
- (b) acknowledges and agrees that:
  - (i) the interface arrangements with M2 Entities and M5 Entities is at the sole risk of each Company, including the negotiation of such arrangements; and
  - (ii) Transport will not be liable upon any Claim by a Company or the State Works Contractor arising out of or in any way in connection with:
    - A. the interface between the Project and the M2 Motorway and the M5 West Motorway (as applicable);

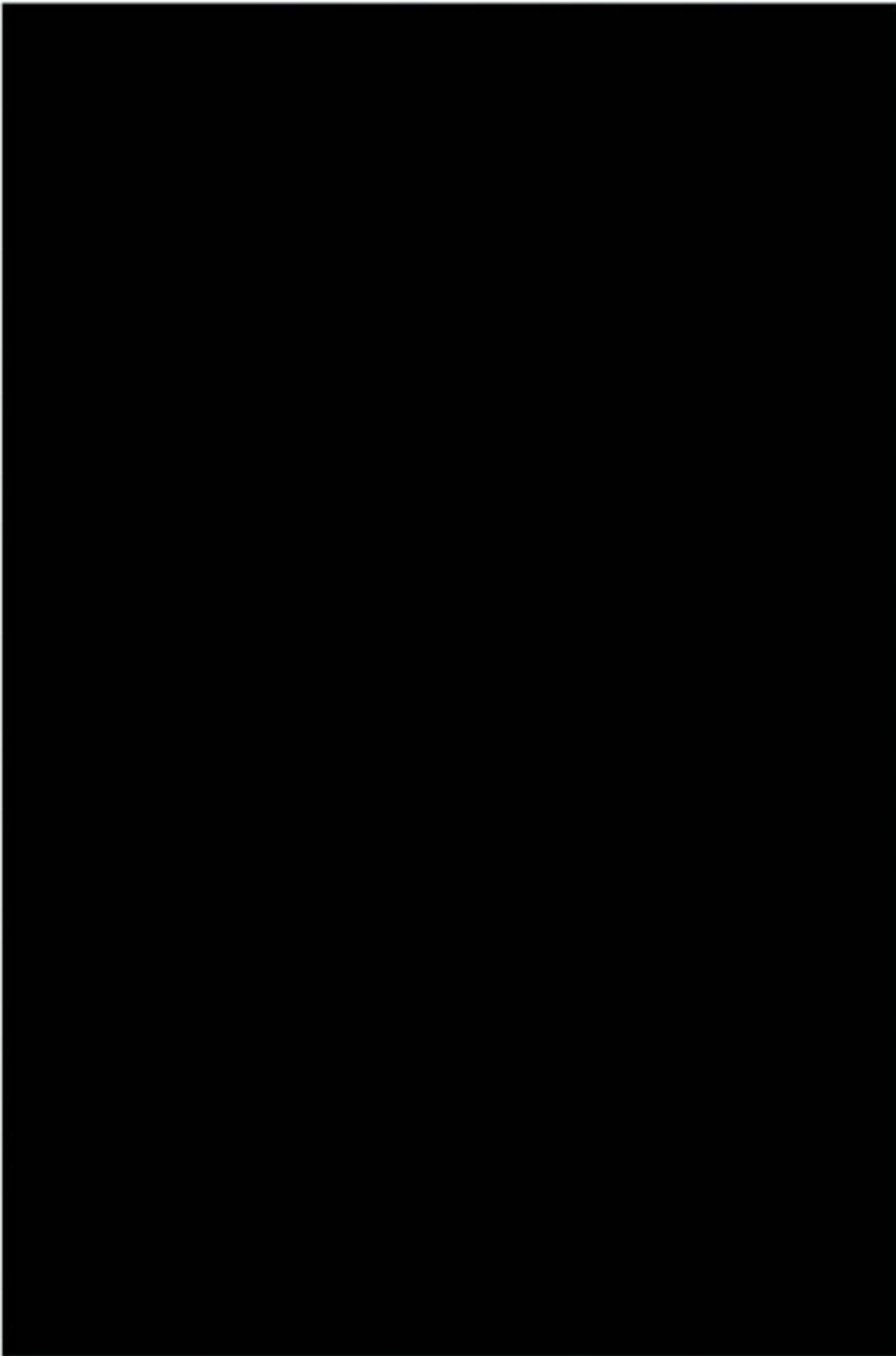
- B. the interface arrangements with M2 Entities and M5 Entities, including the negotiation of such arrangements; or
- C. any delay, additional costs or other effect on the Project Activities related to the interface arrangements with M2 Entities and M5 Entities.

5.19









**5.20 M12 Central Interface Protocol**

The Companies must:

- (a) use best endeavours to finalise and enter into, and procure that the Contractor enters into, the M12 Central Interface Protocol substantially in the form of Schedule 40 on or before [REDACTED];
- (b) without limiting clause 5.20(a), enter into, and procure that the Contractor enters into, the M12 Central Interface Protocol, within 5 Business Days of Transport notifying the Companies that the M12 Central Contractor has entered into the M12 Central Interface Protocol; and
- (c) once all parties to the M12 Central Interface Protocol have entered into the M12 Central Interface Protocol:
  - (i) comply, and procure that the State Works Contractor complies, with the M12 Central Interface Protocol, except to the extent they are prevented from doing so as a result of an act or omission of the M12 Central Contractor; and
  - (ii) procure that the Contractor complies with the M12 Central Interface Protocol, except to the extent it is prevented from doing so as a result of an act or omission of the M12 Central Contractor.

## 5.21 Third Party Agreements

- (a) The Companies acknowledge and agree that:
  - (i) Transport has entered into the WSPT – M12 Interface Deed; and
  - (ii) as at the date of this deed:
    - A. not used;
    - B. there may be additional third party agreements which Transport may, in its absolute discretion, enter into after the date of this deed with which Transport intends the Companies and the State Works Contractor to comply (in whole or in part) on behalf of Transport (each an **Additional Third Party Agreement**);
  - (iii) they have reviewed and carefully considered the WSPT – M12 Interface Deed set out in Exhibit J executed at the date of this deed;
  - (iv) they must comply with, satisfy, carry out and perform, and must procure that the State Works Contractor complies with, satisfies, carries out and performs, the conditions and requirements of each Third Party Agreement that are allocated to the Companies under Schedule 32 (as modified in accordance with clause 5.21(b)(v));
  - (v) not used; and
  - (vi) they must provide Transport with all reasonable assistance in preparing and providing to Transport all information that Transport is required (or reasonably proposes to) provide to a Third Party in connection with the Project Works.
- (b) In respect of any:
  - (i) Additional Third Party Agreement; or
  - (ii) amendment, replacement or supplement made to the WSPT – M12 Interface Deed other than an amendment, replacement or supplement



which Transport considers, acting reasonably, does not affect the Project Activities (**Amended Third Party Agreement**),

Transport will promptly notify the Companies of the date on which each such Third Party Agreement or Amended Third Party Agreement (as applicable) referred to in (b)(i) or (ii) above has been executed by all parties to it and will provide to the Companies a copy of:

- (iii) any executed Additional Third Party Agreement or Amended Third Party Agreement (as applicable) promptly after its execution; and
- (iv) amendments (if any) to Schedule 32 arising out of any Additional Third Party Agreement or Amended Third Party Agreement (as applicable), including amendments to the corresponding Third Party Agreement Matrix (**Revised Allocation**),

and the Companies must carry out their obligations under this deed and must procure that the State Works Contractor carries out its obligations under the State Works Deed:

- (v) on the basis of:
  - A. the executed version of the Additional Third Party Agreement or Amended Third Party Agreement (as applicable) provided by Transport; and
  - B. the Revised Allocation; and
- (vi) subject to clause 5.21(c), without any entitlement to make any other Claim.

(c) Without limiting clause 5.21(d), clause 10.1 will apply as if Transport had given a Change Order to the extent the terms of:

- (i) any Additional Third Party Agreement or Amended Third Party Agreement (as applicable); and/or
- (ii) the Revised Allocation,

impose greater or different obligations on the Companies than they would otherwise have had in complying with the terms of this deed.

(d) The Companies must:

- (i) take, and procure that the State Works Contractor takes, all reasonable steps to Mitigate the cost of the Change;
- (ii) without limiting clause 22.1, for this purpose, comply with, and procure that the State Works Contractor complies with, all reasonable directions of Transport concerning the Change, and its consequences; and
- (iii) ensure that the Subcontractors comply with this clause 5.21(d),

and Transport's liability under clause 5.21(c) will be reduced to the extent that either Company or the State Works Contractor fails to comply with these obligations.

(e)

[REDACTED]

- (f) The parties acknowledge and agree that the deed or agreement to be entered into between TAHE, Sydney Trains and either Company in connection with the Project (**Sydney Trains Agreement**) and any amendment, replacement or supplement made to the Sydney Trains Agreement is not a Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement for the purposes of this deed.

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## 6. Security Bond

### 6.1 Unconditional undertakings

- (a) Each Company must provide to Transport or procure that Transport is provided with, within [REDACTED] of the date of this deed, three unconditional undertakings as follows:
- (i) one for [REDACTED];
  - (ii) one for [REDACTED]; and
  - (iii) one for [REDACTED],
- each of which must be:
- (iv) in the form of Schedule 5 (or in a form otherwise approved by Transport's Representative);
  - (v) only in favour of Transport;
  - (vi) where required, duly stamped;
  - (vii) [REDACTED] with a credit rating of no less than the Required Rating, or as otherwise approved by Transport in its absolute discretion; and
  - (viii) payable at an office of the issuer in Sydney (or such other place as Transport may approve).
- (b) Not used
- (c) Subject to clauses 6.1(f), 6.1(fa)(ii)D. and Transport's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, Transport must:
- (i) within [REDACTED] after the Date of Returned Works Construction Completion of the EDC Works, release the unconditional undertaking procured by each Company under clause 6.1(a)(i) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash);
  - (ii) within [REDACTED] after the Date of Integration Completion, release the unconditional undertaking procured by each Company under clause 6.1(a)(ii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash); and
  - (iii) within [REDACTED] after the expiry of the last Defects Correction Period in respect of the Returned Works or any part of the Returned Works, release the unconditional undertaking procured by each Company under clause 6.1(a)(iii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash).

- (d) Transport:
- (i) may have recourse to:
    - A. any unconditional undertaking provided under this clause 6.1 at any time; or
    - B. the proceeds of any unconditional undertaking if it has been converted into cash;
  - (ii) is not obliged to pay each Company or any Related Party of each Company interest on:
    - A. any unconditional undertaking it; or
    - B. the proceeds of any unconditional undertaking if it has been converted into cash;
  - (iii) does not hold the proceeds referred to in clauses 6.1(d)(i)B or 6.1(d)(ii)B on trust for each Company or any Related Party of each Company; and
  - (iv) will, as soon as reasonably practicable after Transport has had recourse to an unconditional undertaking provided under this clause 6.1 (or the proceeds of an unconditional undertaking provided under this clause 6.1 which has been converted into cash), give each Company a written notice of Transport's reasons for doing so.
- (e) Each Company must not, and must procure that its Related Parties do not, take any steps to injunct or otherwise restrain:
- (i) any issuer of any unconditional undertaking provided under this clause 6.1 from paying Transport pursuant to the unconditional undertaking;
  - (ii) Transport from taking steps for the purposes of making a demand under any unconditional undertaking provided under this clause 6.1 or receiving payment under any such unconditional undertaking; or
  - (iii) Transport using the proceeds received under any unconditional undertaking provided under this clause 6.1.
- (f) Despite any other provision of this deed to the contrary but subject to clause 6.1(fa), where this deed may otherwise require Transport to release an unconditional undertaking or this deed is terminated by Transport, Transport may continue to hold the unconditional undertaking after the date for its release or the termination of this deed to the extent of any claim which Transport may have against a Company or the State Works Contractor arising out of, or in any way in connection with, this deed, the State Works Deed or the Project Activities whether for damages (including liquidated damages) or otherwise provided that Transport must release or procure the release of each unconditional undertaking (or the remaining proceeds of the unconditional undertaking if it has been converted into cash) to that Company or the State Works Contractor after such claim has been satisfied.
- (fa) Where clause 6.1(f) applies, if the amount of Transport's claim referred to in clause 6.1(f) is less than the value of the unconditional undertaking which Transport is entitled to continue to hold under clause 6.1(f) (**Retained Undertaking**):
- (i) the Companies may request Transport to accept (such acceptance not to be unreasonably withheld or delayed) a replacement unconditional undertaking in an amount not less than [REDACTED] of the amount of Transport's aggregate claims (as notified by Transport's Representative to the Companies), which replacement undertaking must otherwise be on terms equivalent to the Retained Undertaking; and

- (ii) if:
- A. Transport accepts the Companies' request; and
  - B. the Companies provide a replacement undertaking that complies with clause 6.1(fa)(i),
- then:
- C. Transport must release the Retained Undertaking to the Companies within 5 Business Days of receipt of the replacement undertaking; and
  - D. Transport may not have recourse to the Retained Undertaking (or the remaining proceeds of such Retained Undertaking if it has been converted into cash) at any time after the Companies have provided the replacement undertaking.
- (g) If the issuer of an unconditional undertaking provided to Transport under this clause 6.1 ceases to have the Required Rating, each Company must:
- (i) promptly, and within [REDACTED] of either Company becoming aware of that circumstance, notify Transport of that circumstance;
  - (ii) subject to clause 6.1(g)(iii), within [REDACTED] of being requested to do so by Transport, procure the issue to Transport of a replacement unconditional undertaking which satisfies the requirements of this clause 6.1, provided that if, at that time [REDACTED] no longer have the Required Rating, each Company may procure a replacement unconditional undertaking from the Major Australian Bank with the then highest rating below the Required Rating. However, if the conditions upon which such replacement unconditional undertaking is provided are materially different to those of the unconditional undertaking which it is replacing, each Company may seek Transport's consent (which is not to be unreasonably withheld or delayed) to procure a replacement unconditional undertaking from a foreign bank with a branch in Sydney which has the same rating; and
  - (iii) if, at any time after each Company has procured a replacement unconditional undertaking from a Major Australian Bank which does not have the Required Rating or a foreign bank pursuant to clause 6.1(g)(ii), [REDACTED] have the Required Rating, each Company must:
    - A. promptly, and within [REDACTED] of becoming aware of that circumstance, notify Transport of that circumstance; and
    - B. within [REDACTED] of becoming aware of that circumstance, procure the issue to Transport of a replacement unconditional undertaking from a Major Australian Bank with the Required Rating which satisfies the requirements of this clause 6.1.
- (h) If the Companies fail to replace an unconditional undertaking as and when required in accordance with clause 6.1(g), Transport may draw down the relevant unconditional undertaking in full and hold the proceeds as cash security. Where the Companies provide the replacement unconditional undertaking as required by clause 6.1(g), any cash security held by Transport under this clause 6.1(h) will be returned to the Companies within 5 Business Days.

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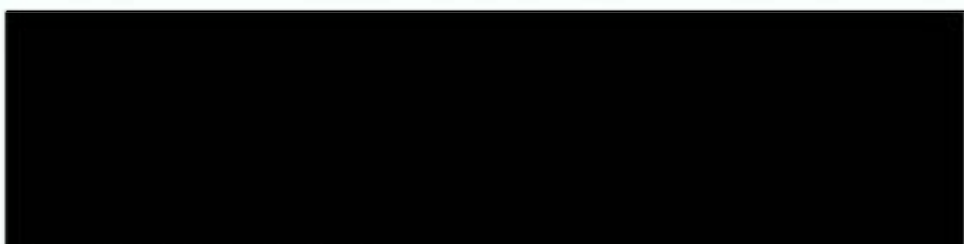
## 7. Access and Project Site

### 7.1 Access to the Transport Land

- (a) Subject to clause 5.9(a), Schedule 6 and any other provision of this deed affecting access to land, Transport must:
- (i) give, or ensure each Company, the State Works Contractor and each of their respective Related Parties and invitees have access to each area of the Transport Land, Transport Access Land and Transport Access Land (Stratum) specified in the Site Access Schedule by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Transport Land, Transport Access Land or Transport Access Land (Stratum), then by the last day of that period); and
  - (ii) thereafter continue to allow, or ensure that each Company, the State Works Contractor, each of their Related Parties and invitees continue to be allowed, access to each such area of the Transport Land, Transport Access Land and Transport Access Land (Stratum) specified in the Site Access Schedule.
- (b) The rights under clause 7.1(a) in respect of the areas of the Transport Land, Transport Access Land and Transport Access Land (Stratum) (or any part of them) specified in the Site Access Schedule will expire upon:
- (i) the expiry dates specified in the Site Access Schedule, to the extent such dates are specified;
  - (ii) in respect of those parts of the Transport Land or (if applicable) Transport Access Land or Transport Access Land (Stratum) on which Local Area Works, Property Works or Utility Service Works are carried out, the date of correction of all Defects in the Local Area Works, the Property Works and the Utility Service Works (as applicable) in accordance with clauses 15.7(a), 15.8, 15.9 and 15.10; and
  - (iii) otherwise, the Date of Integration Completion.
- (c) Each Company acknowledges and agrees that access to the Transport Land, Transport Access Land and Transport Access Land (Stratum) or any part of such land in accordance with the Site Access Schedule pursuant to this clause 7.1 and Schedule 6 will confer on each Company a right to such management and control as is necessary to:
- (i) enable each Company and the State Works Contractor to execute the Project Activities in accordance with this deed and the State Works Deed; and
  - (ii) discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor.
- (d) Transport acknowledges and agrees that:



(ii)



(e) The parties acknowledge and agree that:

(i) the Transport Land, Transport Access Land and Transport Access Land (Stratum) are each:

A. described in the Site Access Schedule against the relevant parcels of land under the 'Land Category' column; and

B. shown on the site plans attached at Exhibit D; and

(ii) notwithstanding anything else in this deed, to the extent there are any discrepancies or inconsistencies between the Site Access Schedule and the site plans attached at Exhibit D, the Site Access Schedule will prevail.

## 7.2 Mitigation

Each Company must take all reasonable steps to Mitigate any delay caused by, or any other effect of, a failure by Transport to give, or ensure that each Company has, access to the Transport Land, Transport Access Land and Transport Access Land (Stratum) in accordance with the Site Access Schedule pursuant to clause 7.1, including making reasonable changes to the sequencing or timing of, or the construction methodologies used in, the Project Activities and, where reasonably practicable, changing the Overall D&C Program or the Subsidiary D&C Programs to reflect this (but without any obligation to accelerate).

## 7.3 Access to WSO Co Land

(a) Subject to clause 5.9(a), Schedule 6 and any other provision of this deed affecting access to land, each Company, the State Works Contractor and each of their respective Related Parties and invitees may access the WSO Co Land (other than the Transport Access Land and the Transport Access Land (Stratum), which are subject to clauses 7.1 and 7.2) to:

(i) execute the Project Activities in accordance with this deed and the State Works Deed; and

(ii) discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor.

(b) Each Company acknowledges and agrees that access to the WSO Co Land pursuant to this clause 7.3 and Schedule 6 will confer on each Company a right to such management and control as is necessary to:

(i) enable each Company and the State Works Contractor to execute the Project Activities in accordance with this deed and the State Works Deed; and

(ii) discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor.

## 7.4 Property Works

(a) Each Company must:

- (i) carry out, and ensure that the State Works Contractor carries out, the Property Works:
  - A. in accordance with the Scope of Works and Technical Criteria; and
  - B. so that they are, upon Transport's Representative being provided with a certificate or statement referred to in clause 7.4(a)(ii), fit for their intended purpose;
- (ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clause 7.4(f), provide to Transport's Representative:
  - A. a certificate in the form of Schedule 7, duly executed by the owner or owners of any part of the Unowned Parcel; or
  - B. a statement signed by each Company to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule 7 within 15 Business Days of it being provided by a Company or the State Works Contractor to the owner or owners following completion of the Property Works including the work described in clause 7.4(f); and

(iii)



- (b) The acceptance of a certificate or statement provided by the Companies under clause 7.4(a)(ii) by Transport's Representative is not approval by Transport or Transport's Representative of either Company's performance of its obligations under this clause 7.4 or the State Works Contractor's performance of any Property Works.
- (c) Where any Property Works are required to be carried out on an Unowned Parcel, the Companies must give or procure that the Contractor gives a written notice to the owner or owners of the property (with a copy to Transport's Representative) which:
  - (i) describes the Property Works to be carried out;
  - (ii) requests access for the purposes of carrying out the Property Works; and
  - (iii) specifies the intended date for commencement of the Property Works, not less than 10 Business Days prior to the day on which the Companies intends to commence the Property Works.
- (d) If the owner or owners of a property do not provide the Companies or the State Works Contractor with sufficient access to carry out the Property Works from either:
  - (i) the date notified in the notice under clause 7.4(c); or

- (ii) such other date as may be agreed between the Companies and the owner or owners,

the Companies must:

- (iii) give Transport's Representative a notice stating this; and
- (iv) not carry out, and ensure that the State Works Contractor does not carry out, the Property Works until Transport's Representative gives the Companies a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 7.4(c) will reapply.

- (e) Upon being given access to any property for the purpose of carrying out any Property Works, the Companies must promptly carry out, or ensure that the State Works Contractor carries out, those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.

- (f) The Companies must:

- (i) rehabilitate, or ensure that the State Works Contractor rehabilitates, any part of an Unowned Parcel to the state agreed with the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to a Company or the State Works Contractor obtaining access; and
- (ii) otherwise repair, or ensure that the State Works Contractor repairs, any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 7.4.

- (g) If:

- (i) the Companies are not to carry out any specific Property Works in accordance with clause 7.4(d)(iv) (**Specific Property Works**);
- (ii) each Company has otherwise complied with its obligations under this clause 7.4; and
- (iii) the Companies have otherwise achieved the requirements for Returned Works Construction Completion of the EDC Works or Integration Completion (as applicable),

then:

- (iv) the Companies will not be required to complete the Specific Property Works as a condition precedent to Returned Works Construction Completion of the EDC Works or Integration Completion (as applicable);
- (v) Transport may specify a reasonable period after Returned Works Construction Completion of the EDC Works or Integration Completion (as applicable) within which those Specific Property Works must be completed; and
- (vi) the Companies must complete the Specific Property Works within the period specified by Transport.

## 7.5 Extra Land

- (a) Each Company must:



- (i) subject to this clause 7.5, carry out, and procure the State Works Contractor to carry out, the Project Works to ensure that, on:
  - A. Retained Works Completion, the M7 Widening is constructed within the M7 Widening Site;
  - B. Returned Works Construction Completion of the EDC Works, the EDC is constructed within the EDC Site; and
  - C. Retained Works Completion and Returned Works Construction Completion of the Returned Works (excluding the EDC), the M7-M12 Interchange is constructed within M7-M12 Interchange Site;
- (ii) procure for itself and the State Works Contractor, and at its own cost, the occupation or use of or relevant rights over any land or buildings in addition to the Project Site which is necessary or which it requires for the execution of the Project Activities (which may include additional land or buildings required for the Third Party Works); and

(iii)



- (b) Without limiting clause 7.5(a)(ii) but subject to clauses 7.5(c) and 7.5(d), to the extent that a Company is not able to comply, or has not complied, with clause 7.5(a)(i), that Company must procure for Transport, at that Company's cost, any land in addition to:
  - (i) the M7 Widening Site on which that Company or the State Works Contractor has constructed the M7 Widening;
  - (ii) the EDC Site on which that Company or the State Works Contractor has constructed the EDC; and
  - (iii) the M7-M12 Interchange Site on which that Company or the State Works Contractor has constructed the M7-M12 Interchange,and:
  - (iv) that Company must promptly give written notice to Transport containing details of the land which it is obliged to procure; and
  - (v) Transport may give written notice to that Company that Transport will procure all or part of the land the subject of that Company's notice.
- (c) Each Company acknowledges that:
  - (i) integration of the requirements for access to Extra Land is at the sole risk of each Company; and
  - (ii) Transport will not be liable upon any Claim (insofar as is permitted by Law) by each Company or the State Works Contractor arising out of or in any way in connection with:

- A. identifying and obtaining access to Extra Land; or
  - B. any delay, additional costs or other effects on the Project Activities related to the ability of each Company, the State Works Contractor or their respective Subcontractors to obtain access to Extra Land.
- (d) If Transport gives each Company a notice pursuant to clause 7.5(b)(v), each Company indemnifies Transport against the reasonable costs incurred by Transport in procuring the relevant land, including but not limited to:
- (i) any compensation payable by Transport in respect of the acquisition of that land under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) and any other reasonable compensation; and
  - (ii) reasonable legal and property valuer and other expert fees payable by Transport in connection with the procurement of the land and any reasonable surveyor's fees.

## 7.6 Access and inspection by Transport

- (a) Each Company must:
- (i) ensure that at all times Transport's Representative, any person authorised or nominated by Transport (including visitors invited by Transport and other contractors and consultants who are to perform work on the Project Site), the Environmental Representative, the Independent Certifier and the personnel referred to in clause 23.3(b); and
  - (ii) use its best endeavours to ensure that Existing Operators and any other Authorities,
- are:
- (iii) entitled, subject to normal safety and security constraints (including compliance with the Contractor's reasonable access rules, site induction requirements and safety and security procedures), to safe and convenient access during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) to:
    - A. the Project Site and Extra Land;
    - B. the Project Works and the Temporary Works;
    - C. all other areas relevant to the Project Activities; and
    - D. the Design Documentation and any other documentation created for the purposes of the Project Activities; and
  - (iv) not prevented from exercising the rights of access referred to in clause 7.6(a)(iii), including for the purposes of:
    - A. observing progress in and inspecting the Project Activities and monitoring compliance by each Company with its obligations under this deed and compliance by the State Works Contractor with its obligations under the State Works Deed;

- B. seeking comments from others in respect of the Project Activities; and
  - C. exercising any right or performing any obligation which Transport has under any Integration Project Document.
- (b) Each Company must provide, and ensure that the State Works Contractor provides, Transport, Transport's Representative and the Independent Certifier with every reasonable facility necessary for the inspection of the Project Activities.
- (c) Transport and Transport's Representative may at any time provide comments to the Independent Certifier in respect of the Company's Activities (with a copy to each Company) or the SWC Activities (with a copy to the State Works Contractor).
- (d) If Transport believes that the Project Works or the Temporary Works are not being constructed, or the Project Activities are not being carried out, in accordance with the requirements of this deed or the State Works Deed, Transport may give notice to each Company specifying the non-conformance or the Defect and stating that the notice is provided under this clause 7.6(d).
- (e) If either Company disagrees with any notice given by Transport pursuant to clause 7.6(d), it must within 10 Business Days after receipt of such a notice give notice of its disagreement to Transport. Transport and the Companies must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 5 Business Days thereafter, either party may by notice to the other and the Independent Certifier refer the matter for determination by the Independent Certifier, who must within 5 Business Days make a determination as to the matter and notify the parties in writing of its determination.
- (f) If Transport gives a notice under clause 7.6(d) and either Company does not give a notice under clause 7.6(e) (or if either Company does give a notice under clause 7.6(e) and the Independent Certifier determines that the Project Works or the Temporary Works are not being constructed, or the Project Activities are not being carried out, in accordance with the requirements of the M7-M12 Integration Project Deed or the State Works Deed), each Company must correct the non-conformance or the Defect the subject of the notice under clause 7.6(d).
- (g) Neither Transport nor Transport's Representative nor any person authorised by Transport under clause 7.6(a) owes any duty to either Company or the State Works Contractor to:
- (i) inspect the Project Activities; or
  - (ii) review any construction, maintenance or repair by the Companies or the State Works Contractor for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (h) No:
- (i) inspection of the Project Activities; or
  - (ii) review of any construction, maintenance or repair by the Companies or the State Works Contractor,
- by Transport, Transport's Representative or any person authorised by Transport under clause 7.6(a) will in any way lessen or otherwise affect:
- (iii) the obligations or warranties of:
    - A. each Company under this deed or otherwise according to Law; or

- B. the State Works Contractor under the State Works Deed or otherwise according to Law; or
- (iv) Transport's rights against:
  - A. each Company, whether under this deed or otherwise according to Law; or
  - B. the State Works Contractor, whether under the State Works Deed or otherwise according to Law.

## 7.7 Physical conditions

- (a) Without limiting clause 7.8(b) and each Company's express rights and entitlements pursuant to this deed, each Company warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, each of:
  - (i) each Company; and
  - (ii) the State Works Contractor,
 has:
  - (iii) examined the Transport Project Documents, the Project Site and its surroundings, the Information Documents and any other information that was made available in writing by Transport, or any other person on Transport's behalf, to each Company for the purpose of submitting a proposal for the Project;
  - (iv) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its proposal for the Project and its obligations under the Transport Project Documents;
  - (v) subject to clause 7.13(aa), satisfied itself as to the correctness and sufficiency of its proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the Transport Project Documents and of all matters and things necessary for the due and proper performance and completion of the Project Activities;
  - (vi) informed itself of:
    - A. all matters relevant to the employment of labour at the Project Site; and
    - B. all industrial matters relevant to the Project Site and the Project Activities;
  - (vii) been given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - A. relating to the subject matter of Information Documents; and
    - B. for design purposes and otherwise;
  - (viii) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of the Transport Project Documents, the Information Documents, the Site Conditions on the Project Site, as well as the risks, contingencies and other circumstances having an effect on its proposal, the performance of

its obligations and its potential Liabilities under the Transport Project Documents; and

- (ix) undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the Transport Project Documents and assume the obligations and potential risks and Liabilities which they impose on each Company and the State Works Contractor.
- (b) Without limiting or otherwise affecting clauses 7.7(c), 7.7(d), 7.7A, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14 or 7.17, Transport makes no representation and gives no warranty to each Company or the State Works Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Project Activities or otherwise in respect of the condition of:
    - A. the Project Site, Extra Land or their surroundings; or
    - B. any structure or other thing on, under, above or adjacent to the Project Site or Extra Land; or
  - (ii) the existence, location, condition or availability of any Existing Operations or Utility Service on, under, above, adjacent to or related to the Project Site or Extra Land.
- (c) Subject to clauses 7.7A, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14 and 7.17, each Company accepts:
- (i) the Project Site and any Extra Land; and
  - (ii) any structures or other things on, above or adjacent to, or under the surface of, the Project Site and any Extra Land,
- in their present condition subject to all defects and Site Conditions and agrees that it and the State Works Contractor are responsible for, and assume the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
  - (iv) any adverse effect on the Project Works or the Temporary Works,
- arising out of, or in any way in connection with, the Site Conditions encountered on the Project Site and any Extra Land in performing the Project Activities.
- (d) Subject to clauses 7.7A, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14 and 7.17, each Company:
- (i) must investigate, design and construct the Company's Works and the Temporary Works in accordance with this deed;
  - (ii) must ensure that the State Works Contractor investigates, designs and constructs the State Works in accordance with this deed and the State Works Deed; and
  - (iii) acknowledges that it will not be relieved of its obligations under this deed and the State Works Contractor will not be relieved of its obligations under the State Works Deed,

irrespective of:

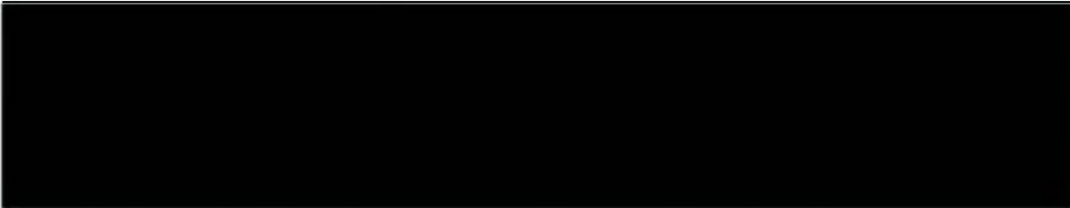
- (iv) the Site Conditions encountered at the Project Site and any Extra Land in performing the Company's Works, the Temporary Works or the State Works (as applicable);
- (v) whatever may be the condition or characteristics (including all sub-surface conditions) of:
  - A. the Project Site and any Extra Land, the Environment or their surroundings; or
  - B. any structure or other thing on, above or adjacent to, or under the surface of, the Project Site and any Extra Land, the Environment or their surroundings; and
- (vi) any assumptions, projections, estimates, contingencies or otherwise that either Company or the State Works Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 7.7(d)(v).

## 7.7A Critical Information

- (a) If during the execution of the Project Activities the Companies or the State Works Contractor becomes aware of any material error or inaccuracy in the Critical Information (**Critical Information Error**):
    - (i) the Companies must provide a written notice to the Transport's Representative within 22 Business Days of the Companies first becoming aware of the Critical Information Error;
    - (ii) that written notice must:
      - A. set out detailed particulars of the issue including any work necessary to overcome the effect of, or work which is occasioned by the Critical Information Error;
      - B. attach any key documents and other materials which detail the matters in clause 7.7A(a)(i)A above; and
      - C. detail the Project Activities affected;
    - (iii) if:
      - A. the Companies provide a notice under clause 7.7A(a)(i), Transport's Representative will respond to the Companies within 18 Business Days of receipt of such notice stating whether or not it agrees that there is a Critical Information Error; and
      - B. Transport's Representative agrees that there is a Critical Information Error that requires a Change to rectify or deal with that Critical Information Error,
- then:
- C. Transport's Representative must, at the same time as providing its notice under clause 7.7A(a)(iii)A:
    - 1) direct a Change under clause 10.1 in respect of the work necessary to overcome the effect of, or which otherwise is occasioned by the Critical Information Error; or

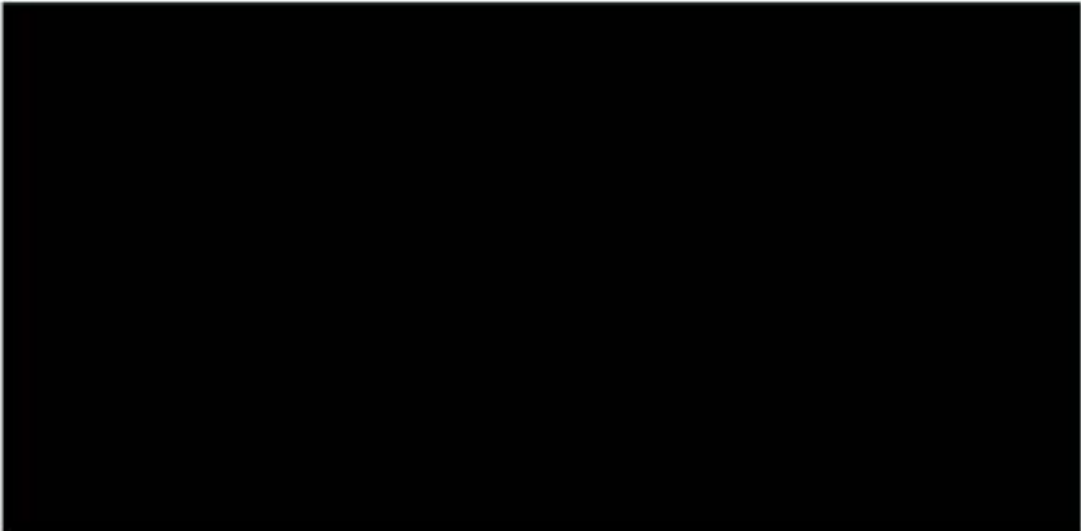
- 2) notify the Companies that they are not required to overcome the effect of, or otherwise deal with the Critical Information Error.
- (b) Where Transport's Representative notifies the Companies that they (or the State Works Contractor, as applicable) are not required to overcome the effect of, or otherwise deal with the Critical Information Error under clause 7.7A(a)(iii)C.2), then the Companies (or the State Works Contractor, as applicable) will:
- (i) be relieved of their obligations to carry out any work necessary to overcome the effect of the Critical Information Error, to the extent determined by Transport's Representative; and
  - (ii) not be regarded as being in breach of this deed to the extent that they do not carry out any such work necessary to overcome the effect of the Critical Information Error.
- (c) For the purpose of this clause 7.7A, **Critical Information** means the documents listed in Schedule 45 to the extent they relate to the Transport Land.
- (d) The parties agree that clauses 7.7 and 7.8 are to be read subject to this clause 7.7A.

## 7.8 Information Documents

- (a) Without limiting or otherwise affecting clause 7.8(b), each Company's express rights and entitlements pursuant to this deed or the State Works Contractor's express rights and entitlements under the State Works Deed:
- (i) Transport does not warrant, guarantee or assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
  - (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, each Company acknowledges that:
    - A. the Information Document or part thereof does not form part of this deed and that clause 7.8(b) applies to the Information Document or part thereof; and
    - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and
  - (iii) insofar as is permitted by Law, Transport will not be liable upon any Claim by either Company arising out of or in any way in connection with:
    - A. the provision of, or the purported reliance upon, or use of the Information Documents to or by either Company or any other person to whom the Information Documents are disclosed; or
    - B. a failure prior to the date of this deed by Transport to provide any information to either Company or the State Works Contractor.
- (b) 

(c)

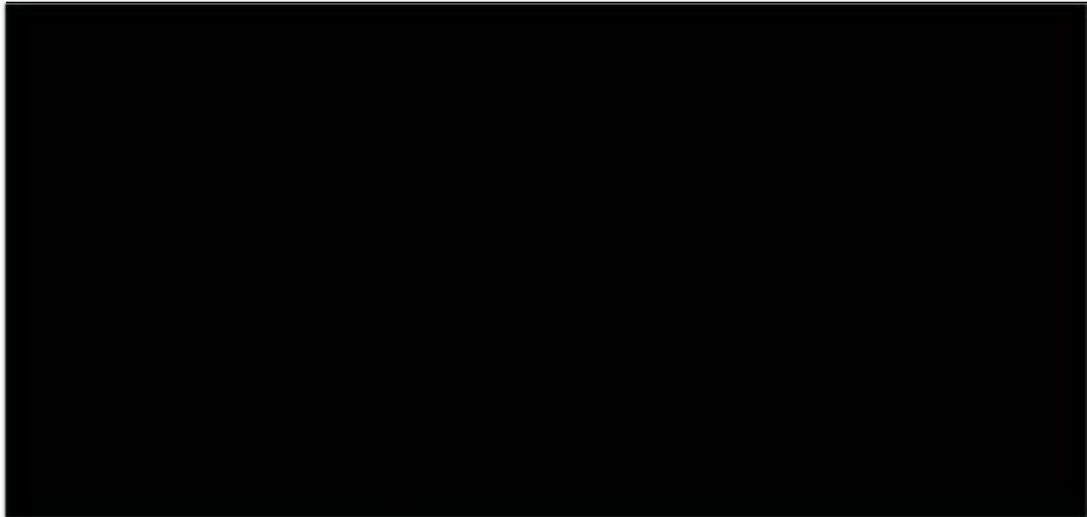




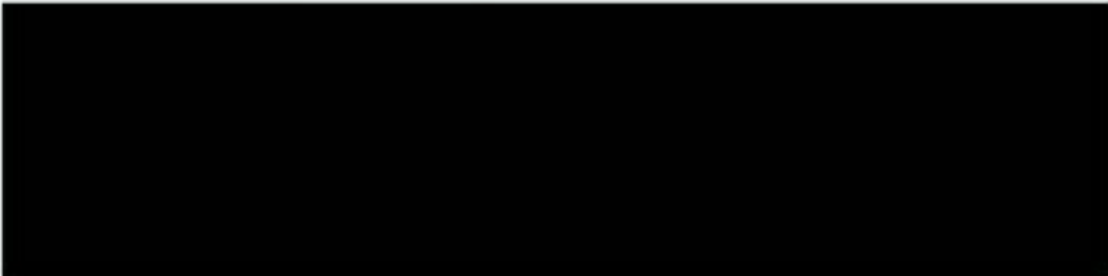
**7.9 Artefacts**

- (a) As between Transport, each Company and the State Works Contractor, any Artefacts found on or under the surface of the Project Site are the property of Transport.
- (b) Each Company must upon the discovery of any Artefact on or under the surface of the Project Site:
  - (i) at its cost, immediately notify Transport's Representative that an Artefact has been found;
  - (ii) at its cost, ensure that the Artefact is protected and not disturbed any further;
  - (iii) comply with all requirements of Authorities and Directions of Transport's Representative in relation to the Artefact; and
  - (iv) continue to perform, and ensure that the State Works Contractor continues to perform, the Project Activities except to the extent otherwise:
    - A. directed by Transport's Representative;
    - B. ordered by a court or tribunal; or
    - C. required by Law.

(c)



(d)



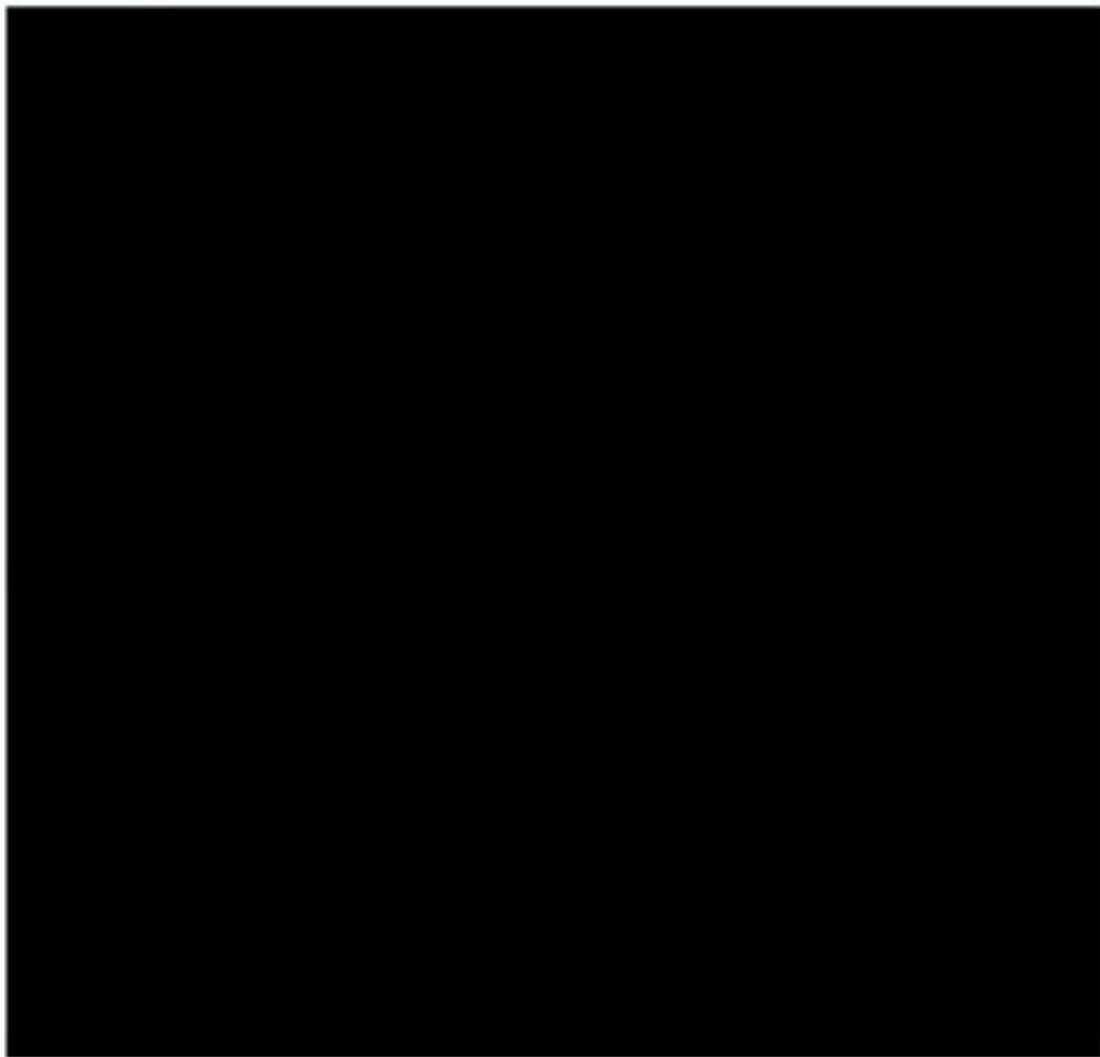
**7.10 Native Title Claim**

(a) If there is a Native Title Claim with respect to the Project Site, or any part of it, each Company must continue to perform its obligations under this deed, and ensure that the State Works Contractor continues to perform its obligations under the State Works Deed, unless otherwise:

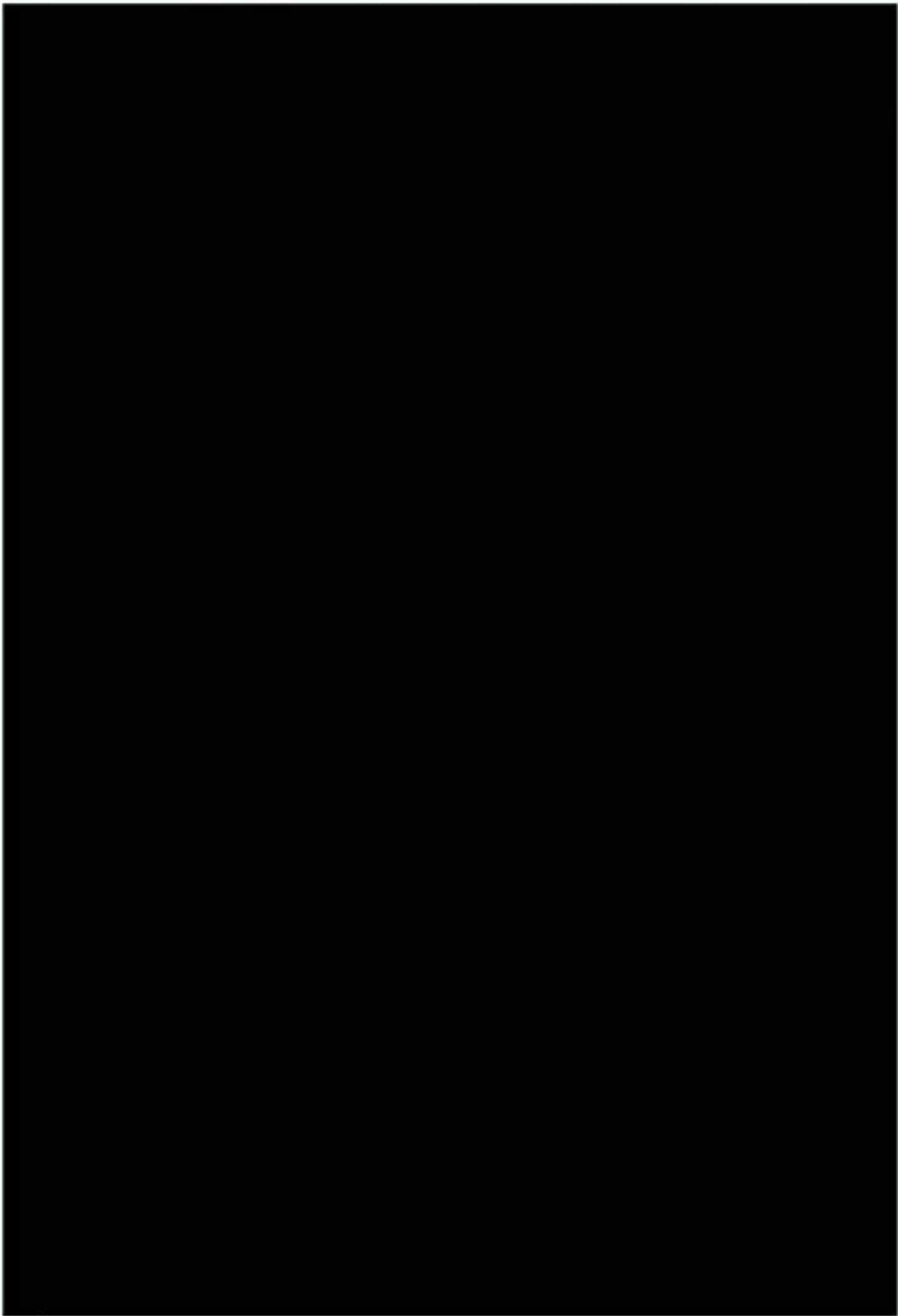
- (i) directed by Transport;
- (ii) ordered by a court or tribunal; or
- (iii) required by Law.

(b) For the purposes of clause 7.10(a)(i), Transport may by written notice direct either Company to suspend any or all of its obligations under this deed, and cause the State Works Contractor to suspend any or all of its obligations under the State Works Deed, and each Company must comply, and ensure that the State Works Contractor complies, with that notice until such time as Transport gives each Company further written notice.

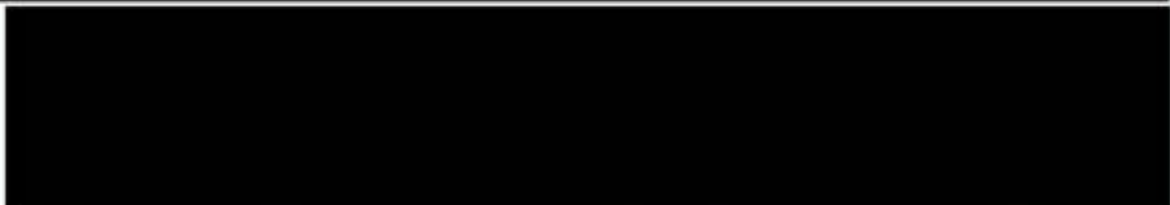
(c)



(d)



(e)



(f)

## 7.11 Contamination

- (a) If a Company or the State Works Contractor discovers any Contamination in, on or under the Project Site or the Extra Land (whether or not either Company, the State Works Contractor or their respective Related Parties have caused or contributed to that Contamination), the Companies must:
- (i) notify Transport as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination; and
  - (ii) give any notice required by Law relating to the Environment.
- (b) Each Company must comply, and ensure that the State Works Contractor and their respective Related Parties comply, with any Contamination Notice relating to Contamination referred to in clauses 7.11(e)(i) or 7.11(e)(ii) which is on, in, under, over or that emanated or is emanating from the Project Site or the Extra Land regardless of whether:
- (i) the Contamination Notice is addressed to Transport, either Company, the State Works Contractor or some other person; or
  - (ii) the Contamination occurred before or after either Company, the State Works Contractor or their respective Related Parties were given access to the relevant land.
- (c) If Transport, either Company, the State Works Contractor or any other person receives a Contamination Notice (other than a Contamination Notice relating to Contamination referred to in clauses 7.11(e)(i) or 7.11(e)(ii)), Transport must provide a copy of that Contamination Notice to each Company (if either Company or the State Works Contractor are not already in receipt of that notice) and Transport may:
- (i) direct each Company to provide Transport and any person authorised by Transport with such access to the Project Site and the Extra Land as is required to enable Transport to comply with that Contamination Notice, in which case each Company must promptly comply, and procure that the State Works Contractor promptly complies, with Transport's direction; or
  - (ii) propose a Change in accordance with paragraph 1 of the Change Procedure to require each Company to comply with that Contamination Notice.
- (d) Subject to their respective obligations at Law, the parties must not do anything with the intent, directly or indirectly, of causing or being likely to cause the service of a Contamination Notice.

(e) In addition to the requirements of the Environmental Documents and without limiting clause 7.7 but subject to clauses 7.11(g), 7.11(h) and 7.12:

(i) each Company bears the risk of all Contamination on, in, over, under, about or migrating to or from the [REDACTED]; and

(ii) each Company bears the risk of all:

A. Contamination:

1) on, in, over, under, about (but in each case within); or

2) without limiting clauses 7.11(g) or 7.11(h), migrating to or from,

the Project Site or any Extra Land which is disturbed by or interfered with in the carrying out of the Project Activities; or

B. Contamination which otherwise is caused or contributed to by the Project Activities,

and, to the extent clause 7.11(e)(i) or 7.11(e)(ii) applies, each Company must or must procure the State Works Contractor to:

(iii) prevent such Contamination from migrating outside the Project Site or Extra Land (as applicable);

(iv) dispose of, or otherwise deal with, such Contamination in accordance with Law and the Environmental Documents; and

(v) remediate the Project Site and any Extra Land to the standard required by Law and the Environmental Documents to the extent to which:

A. it is in any way degraded by such Contamination; and

B. the Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated.

(f) Except to the extent prohibited by Law and subject to clauses 7.11(g), 7.11(h) and 7.12, each Company must indemnify Transport from and against any claims against Transport, or Loss suffered or incurred by Transport, arising out of or in any way in connection with any failure by that Company to comply with its obligation under this clause 7.11.

(g) [REDACTED]

(h) [REDACTED]

(i) [REDACTED]

[REDACTED]

## 7.12 Unknown Site Conditions

- (a) If a Company or the State Works Contractor becomes aware of an Unknown Site Condition, each Company must:
- (i) notify Transport's Representative of the existence and possible scope of the Unknown Site Condition as soon as practicable and in any event within 5 Business Days of the date on which it becomes aware of the Unknown Site Condition;
  - (ii) within 10 Business Days after becoming aware of the Unknown Site Condition, provide an Unknown Site Condition Notice to Transport's Representative; and
  - (iii) [REDACTED]
- (b) Following receipt of an Unknown Site Condition Notice, Transport's Representative may request any additional information it reasonably requires from each Company or the State Works Contractor to assess the Unknown Site Condition Notice.
- (c) Within 10 Business Days after receipt of:
- (i) the Unknown Site Condition Notice under clause 7.12(a)(ii);
  - (ii) [REDACTED], and
  - (iii) any additional information requested by Transport's Representative pursuant to clause 7.12(b),
- whichever is later, Transport's Representative must notify each Company whether it believes that the Unknown Site Condition Notice identifies an Unknown Site Condition.
- (d) If Transport's Representative does not give a notice under clause 7.12(c) within the time required by clause 7.12(c), without limiting the Companies' or State Works Contractor's rights to dispute the matter, Transport's Representative is deemed to have notified each Company that it believes the Unknown Site Condition Notice does not identify an Unknown Site Condition.
- (e) Not used.
- (f) Subject to clauses 7.12(g) and 7.12(k), if the Companies give an Unknown Site Condition Notice and the Transport's Representative agrees or it is determined that there is an Unknown Site Condition then each Company or the State Works Contractor (as applicable) will be entitled to its reasonable net extra Direct Costs only which will be determined disregarding:
- (i) any work performed, amount incurred or delay to the Project Activities arising more than 10 Business Days before each Company gave an Unknown Site Condition Notice in respect of the relevant Unknown Site Condition;

- (ii) any work performed, amounts incurred or delay arising to the extent caused or made necessary by a Company's breach of this deed, the State Works Contractor's breach of the State Works Deed or a negligent or wrongful act or omission of a Company, the State Works Contractor or their Related Parties;
- (iii) any amounts incurred or delay arising to the extent the amounts or delay would have been avoided if each Company and the State Works Contractor had Mitigated them; and
- (iv) not used,

and neither Company nor the State Works Contractor is entitled to make any Claim against Transport, and Transport has no liability to either Company, in respect of work, amounts or delay disregarded pursuant to this clause 7.12(f).

- (g) Subject to clause 7.12(j), neither Company nor the State Works Contractor is entitled to make any Claim against Transport, and Transport has no liability to either Company, in respect of any costs in respect of an Unknown Site Condition other than those costs determined in accordance with clause 7.12(f).
- (h) To the extent that:
  - (i) a Company has proposed a method for treating Unknown Contamination in its Unknown Site Condition Notice that complies with relevant Laws and Good Industry Practice; and
  - (ii) Transport reasonably believes there is an alternative method that will reduce the Direct Costs payable by Transport, whilst also complying with this deed, relevant Laws and Good Industry Practice,

Transport may give that Company written notice requesting that Company consider the alternative method.
- (i) Each Company must, within 5 Business Days after receipt of a request under clause 7.12(h), give Transport written notice detailing:
  - (i) whether that Company agrees that the alternative method complies with this deed, relevant Laws and Good Industry Practice; and
  - (ii) any changes to the Direct Costs or delay to the Project Activities and Company's Delay Costs that would result from the alternative method compared to the method proposed by each Company.
- (j) Transport may, after receipt of a Company's notice under clause 7.12(i), require that Company to use the alternative method by issuing a Change Order where the alternative method does not breach Laws, Good Industry Practice or the Companies' other obligations under this deed.
- (k) If the Companies or the State Works Contractor discover an Unknown Utility Service:
  - (i) in respect of any additional work necessary to deal with the relevant Unknown Utility Service that is Non-Contestable Work, the Companies will be entitled to be paid in accordance with clause 7.13 as if such work was Non-Contestable Work; and
  - (ii) in respect of any additional work necessary to deal with the relevant Unknown Utility Service that is not Non-Contestable Work, clause 7.12(f) applies.

## 7.13 Non-Contestable Work

The parties agree that:

- (a) Schedule 39 contains an aggregate allowance (**NC Provisional Amount**) for the performance of non-contestable work in respect of Utility Services by Authorities in connection with the Transport Land (**Non-Contestable Work**);
- (aa) the NC Provisional Amount has been agreed by the parties as an aggregate allowance only, and the Companies do not warrant its correctness, sufficiency or adequacy;
- (b) the Companies must give Transport's Representative copies of:
  - (i) all notices, or agreements executed by Authorities, reports and other correspondence given or received in connection with any Non-Contestable Work; and
  - (ii) without limiting clause 7.13(b)(i), any estimates or quotes received from Authorities for Non-Contestable Work,

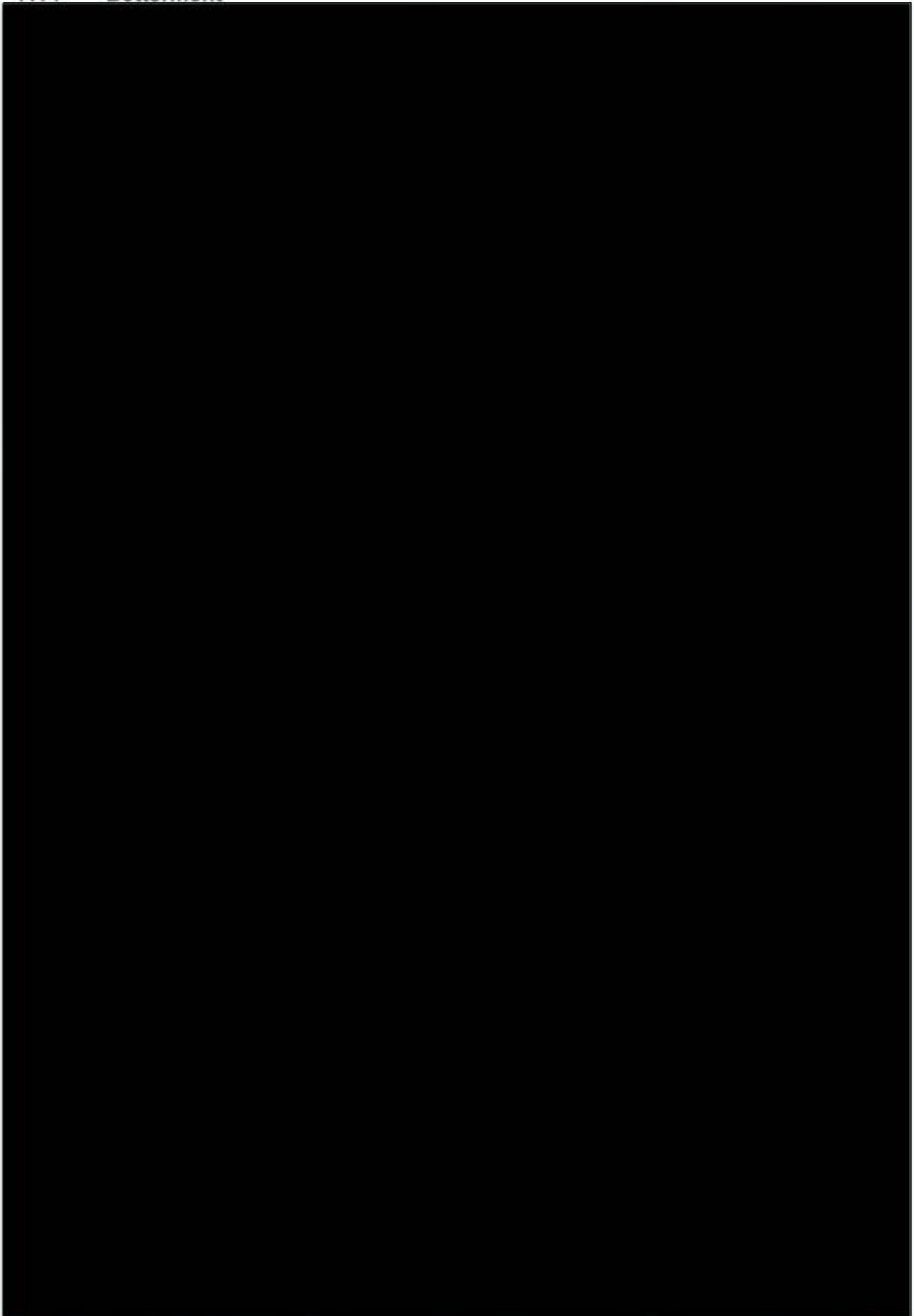
promptly after such notices, reports or other correspondence are given or received, agreements are executed or estimates or quotes are received by the Companies or the State Works Contractor (but in any event no later than 7 Business Days after they are given, received or executed by either Company or the State Works Contractor);
- (c) in respect of the Non-Contestable Work in Schedule 39, if the NC Provisional Amount is:
  - (i) less than the aggregate NC Actual Amount then Transport must pay the Companies; or
  - (ii) greater than the aggregate NC Actual Amount then the Companies must pay Transport

the difference between the NC Provisional Amount and the aggregate NC Actual Amount;
- (d) the Companies must take and ensure that the State Works Contractor takes all reasonable steps to Mitigate the NC Actual Amount;
- (e) without limiting clause 7.12 and subject to clauses 12.7 and 12.10, neither Company or the State Works Contractor are entitled to make, and Transport will not be liable upon, any Claim against Transport arising out of or in connection with:
  - (i) any Utility Service Works that are not Non-Contestable Work; and
  - (ii) any work that must be carried out to enable, or in connection with, the Non-Contestable Work but that is not carried out by the relevant Authority (or a contractor engaged by the Authority other than the Contractor),

(including any Temporary Works and works described in Appendix B.40 'Non-Contestable Works' of the Scope of Works and Technical Criteria as not being Non-Contestable Work); and
- (f) the Companies must, promptly upon request, provide to Transport's Representative a detailed breakdown, on a transparent and Open Book Basis, of the NC Actual Amounts.



7.14 Betterment

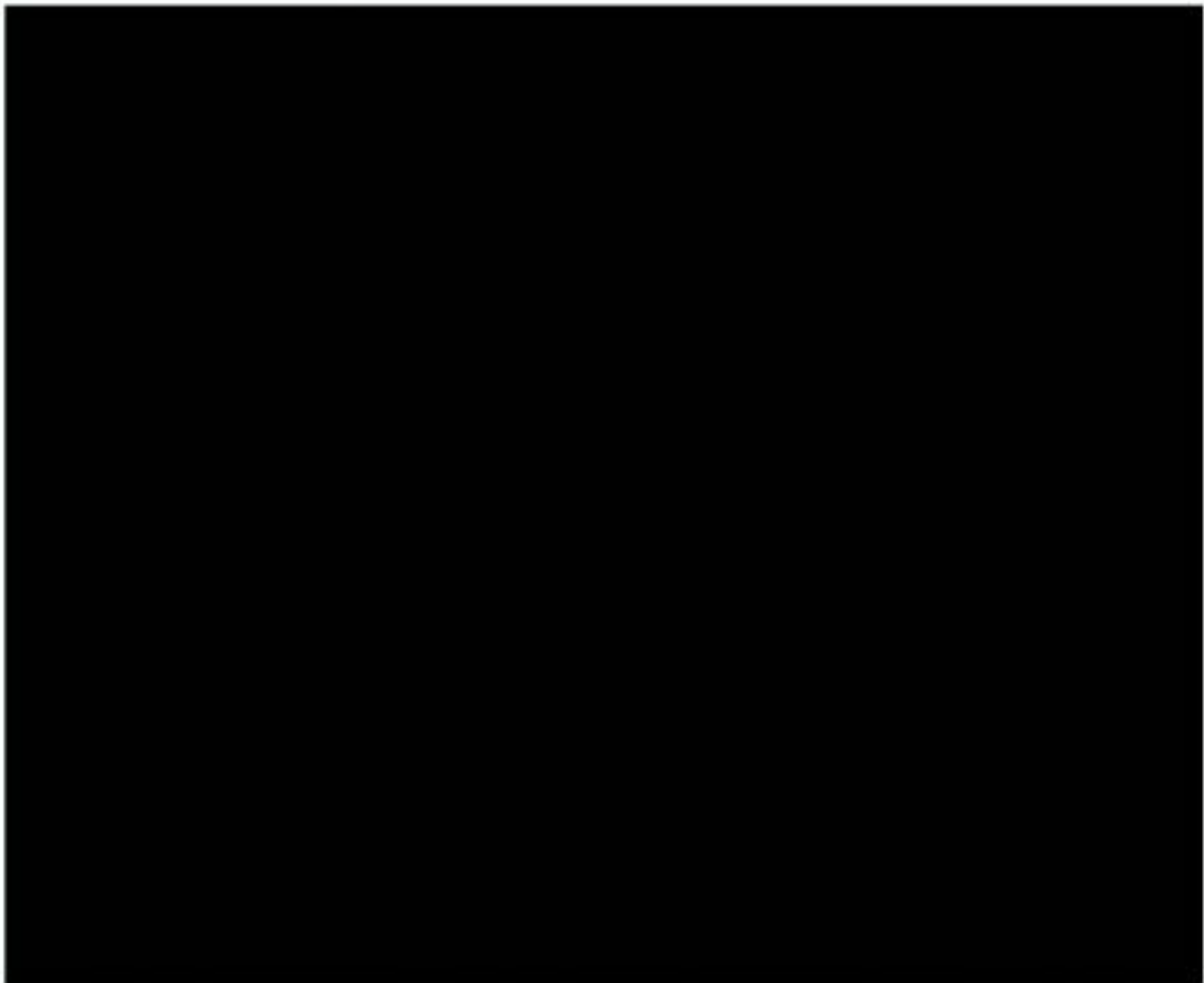


## 7.15 Environmental Representative

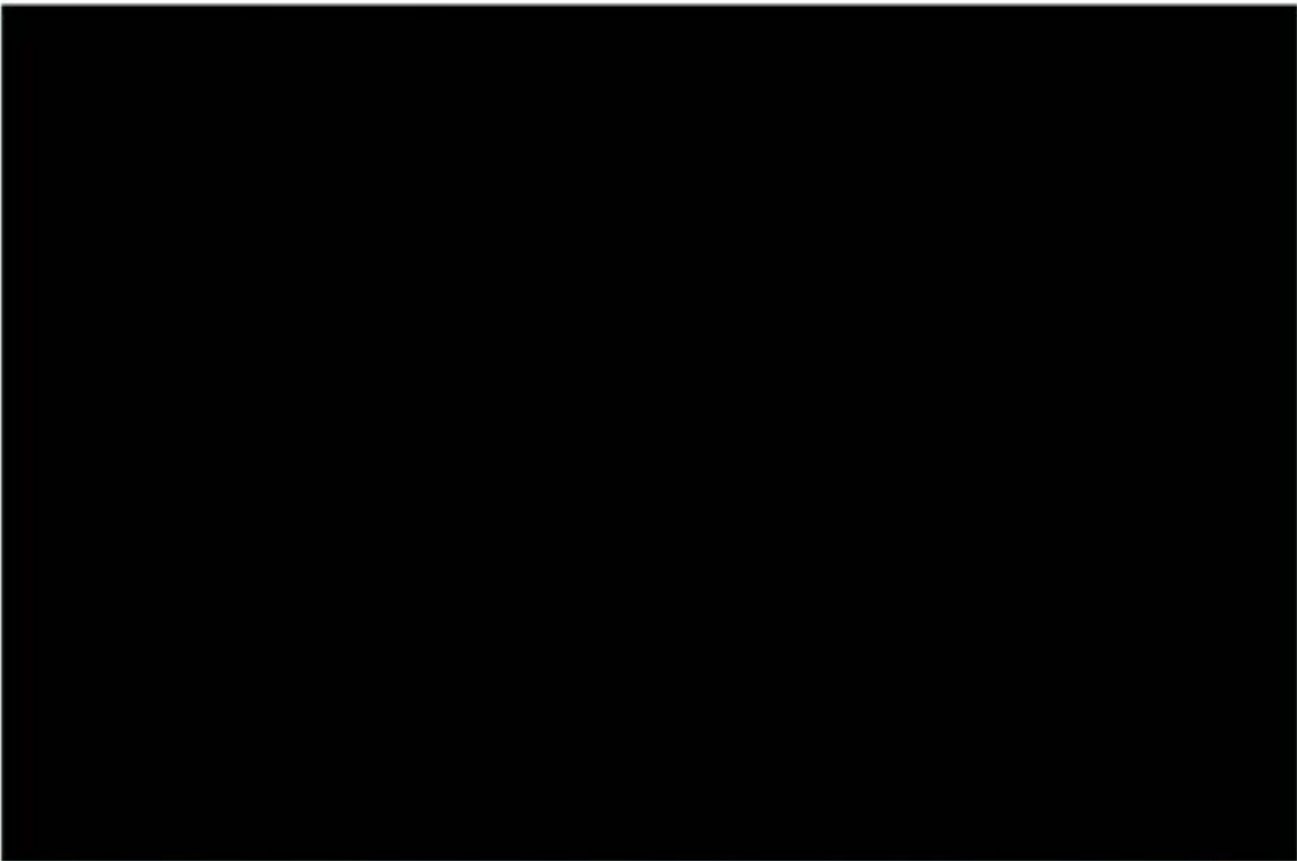
- (a) The Environmental Representative is to be engaged by Transport, the Company Group and the Contractor on the terms of the Deed of Appointment of Environmental Representative.
- (b) Transport and each Company acknowledges that the Environmental Representative is:
  - (i) obliged to act independently of the Company Group, Transport, the Contractor and any of their subcontractors;
  - (ii) required to discharge certain functions as identified in the Planning Approval and in accordance with the Deed of Appointment of Environmental Representative;
  - (iii) required to monitor the implementation of all environmental management plans and monitoring programs required under the Planning Approval and will advise Transport and the Company Group upon achievement of these plans/programs; and
  - (iv) required to advise Transport and Transport's Representative on the Company Group's and Contractor's compliance with the Planning Approval.
- (c) Each Company must, and must procure that the State Works Contractor must, provide the Environmental Representative with all information and documents and allow the Environmental Representative:
  - (i) to attend meetings; and
  - (ii) to access such premises,as may be:

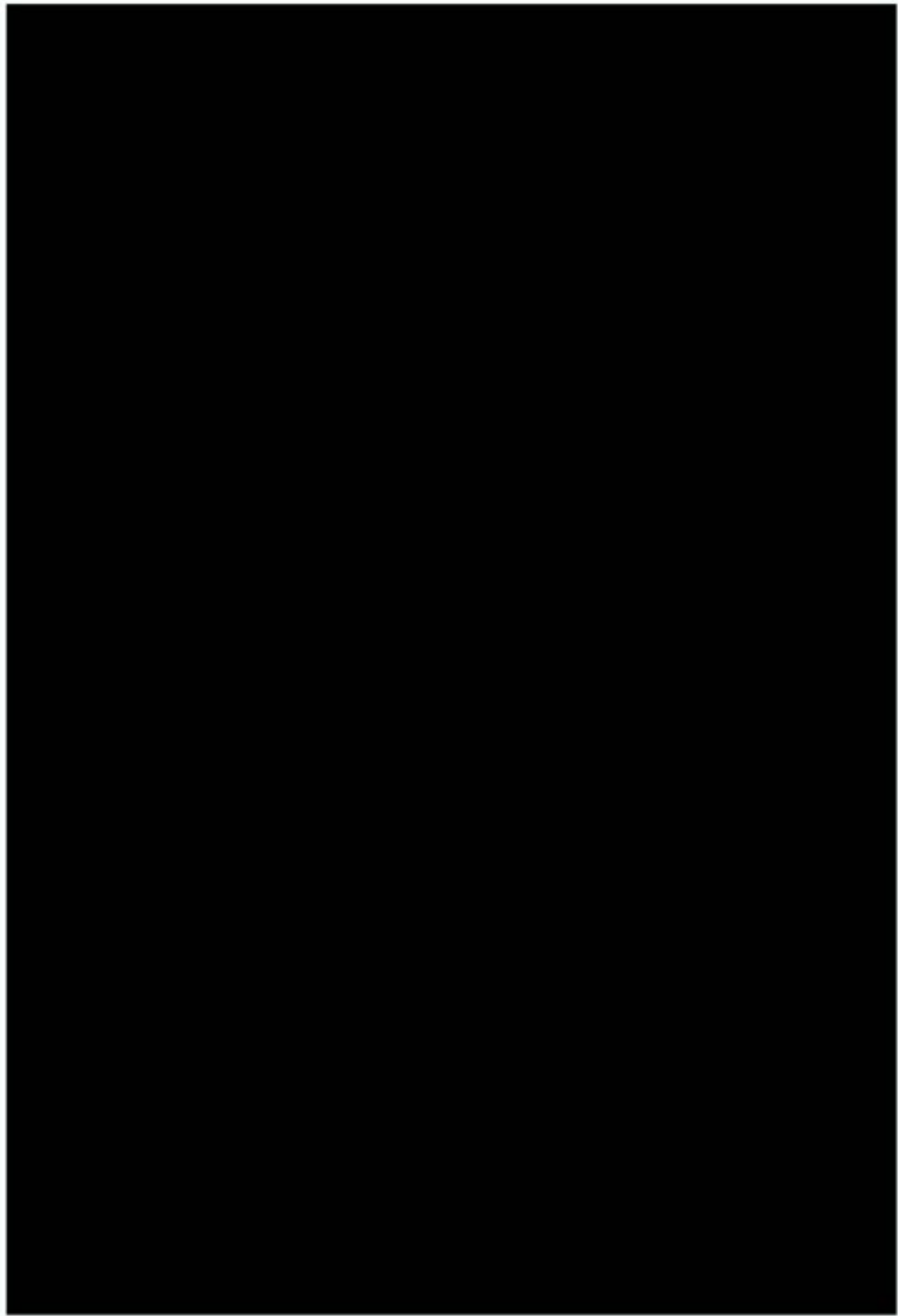
- (iii) necessary or reasonably required by the Environmental Representative, the Companies' Representative or Transport's Representative to allow the Environmental Representative to perform its obligations under the Deed of Appointment of Environmental Representative; or
  - (iv) lawfully requested by the Environmental Representative or directed by the Companies' Representative or Transport's Representative.
- (d) Each Company must:
  - (i) comply with, and procure that the State Works Contractor complies with, the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approval; and
  - (ii) not interfere with or improperly influence, and procure that the State Works Contractor does not interfere with or improperly influence, the Environmental Representative in the performance of any of its functions in connection with this deed.
- (e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of Environmental Representative will entitle a Company to make any Claim against Transport.
- (f) Not used.
- (g) Transport and the Companies must, within 15 Business Days (or such other date as agreed by the parties) after the date on which the Minister for Planning and Infrastructure approves the identity of the proposed Environmental Representative agreed by Transport and the Company being appointed as the Environmental Representative, execute the Deed of Appointment of Environmental Representative (substantially in the form contained in Exhibit K to this deed).

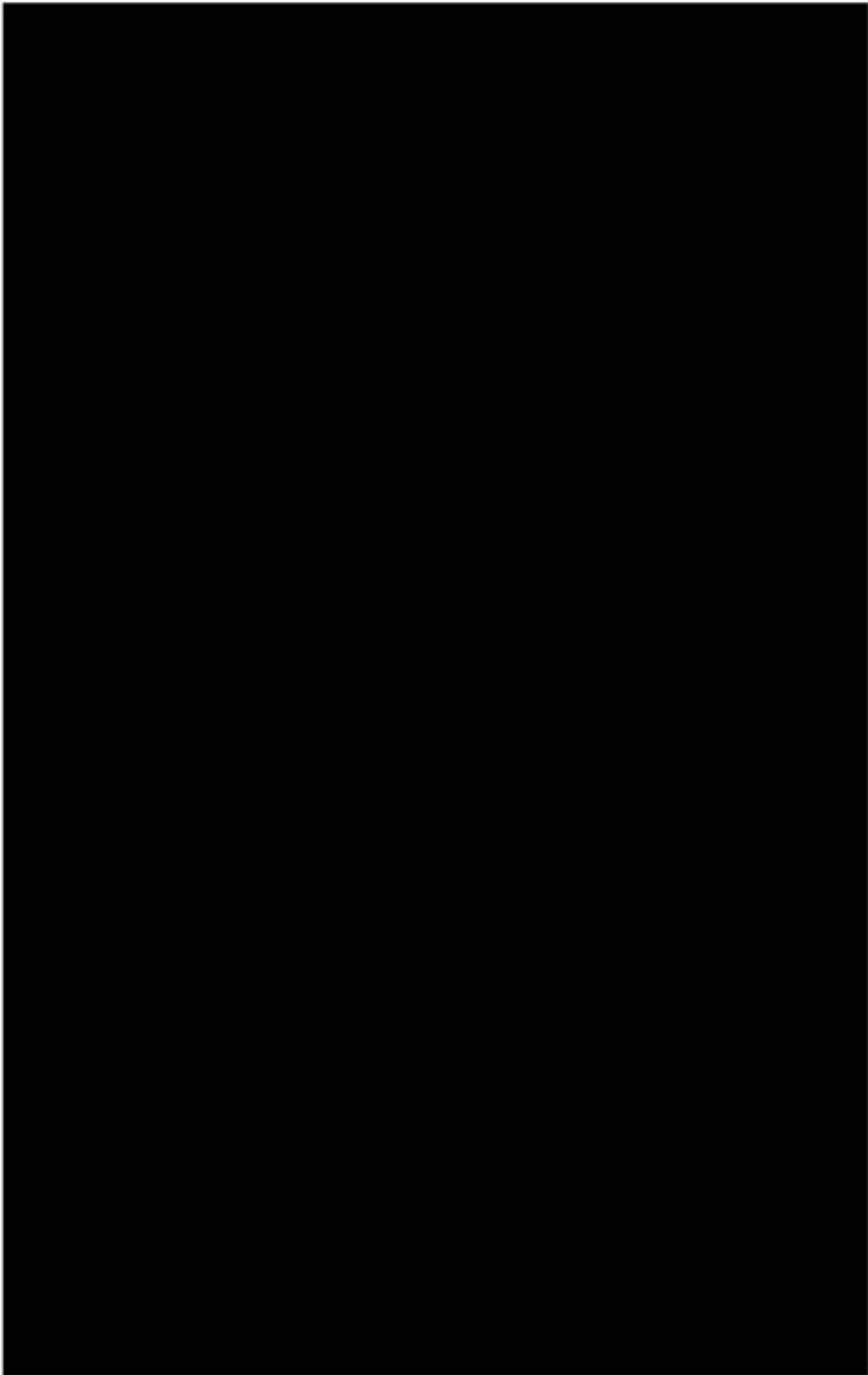
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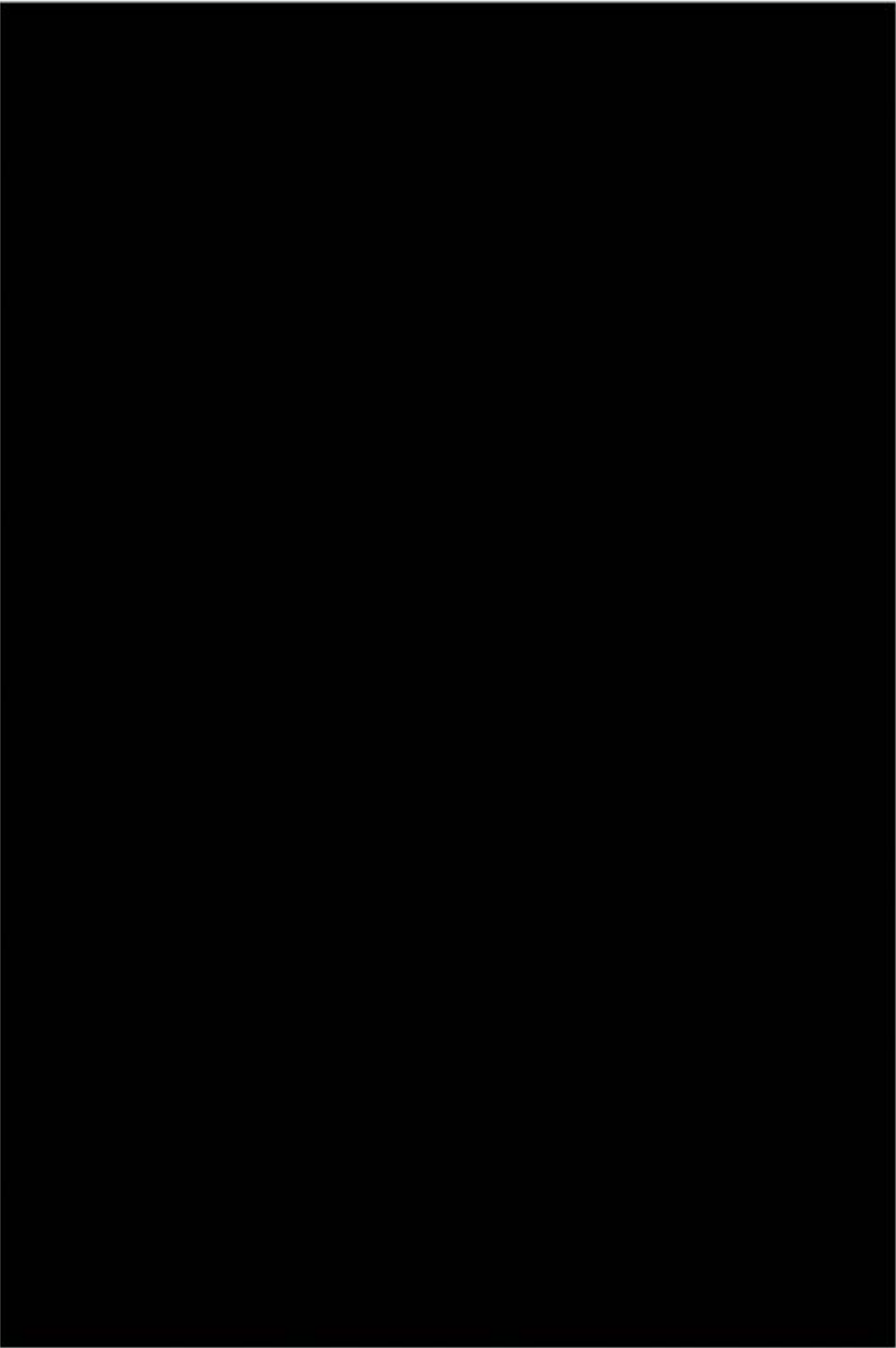


7.17











**7.18 M12 Central Interface**

- (a) If by the later of:
  - (i) [REDACTED]; and
  - (ii) the date on which the Companies can demonstrate to the reasonable satisfaction of Transport's Representative that it is ready to conduct the works to the M12 Critical Interface,the M12 Critical Interface has not been completed then:
  - (iii) Transport's Representative must direct a Change to the Companies to remove the works in respect of the M12 Critical Interface from the Project Works and to re-sequence the remaining M7-M12 Interchange Works; and
  - (iv) the relevant provisions of clause 10 and Schedule 10 will apply.
- (b) The parties acknowledge and agree that nothing in clause 7.18(a) shall prevent Transport's Representative from directing a further Change to reinstate the works in respect of the M12 Critical Interface into the Project Works upon the M12 Critical Interface being made available.



(c)

(d)

## 7.19 Motorway Stratum Lease

Transport acknowledges and agrees that if:

- (a) at any time prior to the Date of Retained Works Completion Transport in its capacity as lessor under the Motorway Stratum Lease:
    - (i) creates any easements benefitting or burdening that part of the Project Site that is within the Motorway Stratum in accordance with clause 8.1(a) of the Motorway Stratum Lease; or
    - (ii) dedicates land within that part of the Project Site that is within the Motorway Stratum of which it is the owner of the fee simple estate for road, rail or other purposes in accordance with clause 8.1(b) of the Motorway Stratum Lease,
- (a **New Easement**); and
- (b) the New Easement requires a change to the:
    - (i) design of the Project Works; or
    - (ii) Subsidiary D&C Program (including as a result of any change to the access arrangements contemplated in the Site Access Schedule),

then Transport must issue a Change Order under paragraph 1.8 of the Change Procedure in respect of that change.

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## 8. Quality

### 8.1 Quality Management System

- (a) Each Company must implement a Quality Management System for the management of all aspects of each Company's obligations under this deed and the State Works Contractor's obligations under the State Works Deed in accordance with Schedule 8, including in accordance with the applicable requirements of the Scope of Works and Technical Criteria, including section 1.1 of Appendix C.7 of the Scope of Works and Technical Criteria and the Quality Management Plan.
- (b) Each Company must develop and implement a Quality Management Plan in accordance with this deed including the Scope of Works and Technical Criteria, including section 1.2 of Appendix C.7 of the Scope of Works and Technical Criteria.

### 8.2 Independent Certifier

- (a) The Independent Certifier is to be engaged by Transport, each Company and the State Works Contractor on the terms of the Independent Certifier Deed at each Company's cost.
- (b) The Independent Certifier's role is to, amongst other things:

- (i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the Independent Certifier Deed that the Project Works and the Temporary Works comply with the requirements of this deed and the State Works Deed; and
  - (ii) make determinations on matters that this deed and the State Works Deed expressly requires be determined by the Independent Certifier.
- (c) The parties acknowledge and agree that:
- (i) without limiting the effect which the determinations of the Independent Certifier will have upon the rights and obligations of the parties under this deed or the State Works Deed, the Independent Certifier does not have any power to give any Directions to either Company or the State Works Contractor;
  - (ii) the Independent Certifier is obliged to act independently of Transport, each Company, the State Works Contractor and any of their respective Related Parties (including the Contractor), and is not an employee, agent or consultant of Transport, each Company or the State Works Contractor; and
  - (iii) any determination by the Independent Certifier in respect of a matter required by this deed or the State Works Deed to be determined by the Independent Certifier will be final and binding upon the parties, except in the case of manifest error or in relation to determinations made under or pursuant to clauses 7.6(e), 9.4(c)(ii), 15.7(c), 16.2(h), 16.3(h) or paragraph 1(e) of Schedule 8.
- (d) Each Company must provide, and ensure that the State Works Contractor provides, the Independent Certifier with all information and documents and allow the Independent Certifier:
- (i) to attend design meetings;
  - (ii) access to all premises where the Project Activities are being carried out; and
  - (iii) to insert Hold Points in the Project Plans and designate the nominated authority to release the Hold Points,
- all as may be:
- (iv) necessary or reasonably required by the Independent Certifier or Transport's Representative, to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed; or
  - (v) reasonably requested by the Independent Certifier.
- (e) Transport's Representative may provide comments to the Independent Certifier in accordance with clause 4.1.

### 8.3 Replacement of Independent Certifier

- (a) If the Independent Certifier Deed is terminated before its scheduled expiry, or if any incumbent Independent Certifier ceases to act as Independent Certifier, each Company, the State Works Contractor and Transport must, unless otherwise agreed by Transport, each Company and the State Works Contractor, prior to termination or cessation, and in any case within 10 Business Days after the termination of the Independent Certifier Deed or cessation, whichever is applicable, appoint another person to act as Independent Certifier.

- (b) The Companies will nominate 2 or more firms which the Companies consider appropriate to act as Independent Certifier for Transport's consideration.
- (c) If Transport, each Company and the State Works Contractor cannot agree such appointment, Transport, each Company and the State Works Contractor will request that the President of Engineers Australia (or its replacement or equivalent) nominate an Independent Certifier who has equivalent qualifications, experience and expertise to the incumbent Independent Certifier and is independent and such Independent Certifier will be appointed as soon as practicable in accordance with the previous Independent Certifier Deed.

## **8.4 No relief from obligations**

The:

- (a) Companies will not be relieved from any of their Liabilities or responsibilities under this deed (including under clause 15) or otherwise according to Law;
- (b) State Works Contractor will not be relieved from any of its Liabilities or responsibilities under the State Works Deed or otherwise according to Law; and
- (c) rights of Transport against:
  - (i) each Company, whether under this deed or otherwise according to Law; or
  - (ii) the State Works Contractor, whether under the State Works Deed or otherwise according to Law,

will not be limited or otherwise affected,

by or as a consequence of any of the following:

- (d) the implementation of, and compliance with, any quality system or the Quality Management Plan by either Company or the State Works Contractor;
- (e) compliance with any requirements of the Independent Certifier Deed;
- (f) any release, authorisation, approval or agreement by Transport's Representative, or any other person acting on behalf of Transport or Transport's Representative; or
- (g) any failure by Transport, Transport's Representative or any other person acting on behalf of Transport or engaged by Transport to detect any Defect; or
- (h) any monitoring or audit arranged by Transport's Representative under, or any discussions between the Quality Manager and Transport's Representative as contemplated under, Schedule 8.

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## **9. Design**

### **9.1 Design development**

- (a) Without limiting clause 3.2(d), each Company must hold regular meetings of its design team including its designers and the Independent Certifier.
- (b) Each Company must give reasonable prior written notice to Transport's Representative of those meetings referred to in section 5 of Appendix C.1 of the SWTC to enable Transport's Representative and its delegates to attend. Transport may request each Company to ensure the presence at the meeting of any relevant persons from the Contractor or any of either Company's Subcontractors or the

Contractor's subcontractors or consultants involved in the design of any part of the Project Works.

- (c) Each Company must give Transport's Representative:
- (i) an agenda for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
  - (ii) minutes of each design meeting within 48 hours after each meeting.

Each Company agrees that no such agenda or minutes of meeting shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

## 9.2 Concept Design

- (a) Each Company acknowledges that prior to the date of this deed:
- (i) the Companies prepared the M7 Widening Concept Design; and
  - (ii) Transport prepared the EDC Concept Design and M7-M12 Interchange Concept Design,

and, without limiting clause 9.6, each Company agrees that it bears absolutely all risks howsoever they may arise as a result of the use by either Company or the State Works Contractor of, or the reliance by either Company or the State Works Contractor upon, the Concept Design in performing the Project Activities and that such use and reliance will not limit any of its obligations under this deed or any of the State Works Contractor's obligations under the State Works Deed.

- (b) Without limiting clause 9.6, each Company is responsible for, and assumes the risk of, any Loss it or the State Works Contractor suffers or incurs arising out of or in connection with:
- (i) the design and construction of the Project Works and the Temporary Works in accordance with the Concept Design costing more, or taking longer, than anticipated; and
  - (ii) any differences between the Project Works and the Temporary Works which either Company or the State Works Contractor are required to design and construct (ignoring for this purpose any differences which are the subject of a Change Order or a notice issued by Transport under paragraph 2.3 of the Change Procedure) and the Concept Design including:
    - A. differences necessitated by any Site Conditions encountered on the Project Site;
    - B. differences required to ensure that:
      - 1) each discrete portion of the Project Works (other than the Third Party Works) will be upon the relevant Completion Date and will be capable of remaining; and
      - 2) the Temporary Works will be at all relevant times, fit for their intended purposes and satisfy the requirements of this deed and the State Works Deed; and

- C. differences required to ensure that each discrete part of the Third Party Works will be fit for their intended purposes and satisfy the requirements of this deed and the State Works Deed upon the provision of the certificate, statement or notice relevant to that part of the Third Party Works pursuant to clauses 7.4(a)(ii), 15.8(a)(ii) or 15.9(a)(ii) (as applicable),

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that each Company and the State Works Contractor may have made in relation to any of the matters set out in clauses 9.2(b)(i) or 9.2(b)(ii) above.

### 9.3 Design obligations

- (a) Without limiting clause 9.6, each Company warrants to Transport that:
  - (i) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed and the State Works Deed, despite the Concept Design (as further developed by each Company under this deed), and despite entry by Transport into the State Works Deed;
  - (ii) if the Project Works and the Temporary Works are designed and constructed in accordance with the Concept Design (as further developed by the Companies under this deed and the State Works Contractor under the State Works Deed), the Project Works and the Temporary Works will satisfy the requirements of this deed and the State Works Deed but nothing in this clause 9.3(a)(ii) affects or limits clauses 9.2(b)(i) or 9.2(b)(ii), which will prevail to the extent of any inconsistency;
  - (iii) it will carry out and complete the Company's Activities, and ensure that the State Works Contractor carries out and completes the SWC Activities, in accordance with the Concept Design (as further developed by the Companies under this deed and the State Works Contractor under the State Works Deed) but nothing in this clause 9.3(a)(iii) affects or limits clauses 9.2(b)(i) or 9.2(b)(ii), which will prevail to the extent of any inconsistency;
  - (iv) it will not make any adjustments to the Concept Design that will reduce the:
    - A. durability;
    - B. whole of life performance;
    - C. environment and sustainability performance;
    - D. functional performance; or
    - E. safety,of any part of the Project Works;
  - (v) without limiting clause 7.7A and clause 15.14, it has checked, examined, analysed and carefully considered the Scope of Works and Technical Criteria and the Environmental Documents and that:
    - A. it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the Scope of Works and Technical Criteria;

- B. it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the Scope of Works and Technical Criteria and Environmental Documents except for such omissions, ambiguities, discrepancies or inconsistencies addressed in Schedule 1;
- C. the Scope of Works and Technical Criteria is proper, adequate and fit for its intended purpose, including for the purpose of enabling:
  - 1) each Company to carry out each Company's Activities in accordance with, and to ensure that each Company's Activities comply with, this deed; and
  - 2) the State Works Contractor to carry out the SWC Activities in accordance with, and to ensure that the SWC Activities comply with, the State Works Deed,
 including the other warranties in this clause 9.3;
- D. it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Concept Design and Design Documentation), including any submitted or re-submitted to the Independent Certifier or Transport's Representative in accordance with this deed;
- E. it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by each Company or the State Works Contractor of, or reliance upon, the Scope of Works and Technical Criteria; and
- F. the use of, or reliance upon, the Scope of Works and Technical Criteria does not affect any of its obligations under this deed or any of the State Works Contractor's obligations under the State Works Deed, or entitle either Company or the State Works Contractor to make any Claim against Transport arising out of or in any way in connection with the Scope of Works and Technical Criteria;

(vi) the Design Documentation will:

- A. satisfy the requirements of the Scope of Works and Technical Criteria, the Third Party Agreements and the other requirements of this deed and the State Works Deed;
- B. be and will remain at all relevant times fit for its intended purpose; and

be prepared, certified, verified, completed and used in accordance with the requirements of this deed and the State Works Deed;

(vii) construction will be carried out in accordance with the Design Documentation which each Company and the State Works Contractor are entitled to use for construction purposes in accordance with clause 9.4(d);

(viii) construction carried out in accordance with the Design Documentation which each Company and the State Works Contractor are entitled to use

in accordance with clause 9.4(d) will satisfy the requirements of this deed and the State Works Deed; and

- (ix) each discrete part of the Project Works will:
  - A. be completed in accordance with, and satisfy the requirements of, this deed and the State Works Deed;
  - B. other than the Third Party Works, upon the relevant Completion Date, be fit for their intended purposes; and
  - C. other than the Third Party Works, thereafter will be capable of remaining at all relevant times fit for their intended purposes; and
- (x) in respect of each discrete part of the Third Party Works:
  - A. if the Third Party Works are Local Area Works or Utility Service Works, those Third Party Works will, upon Transport and the Independent Certifier being provided with a copy of the notice referred to in clause 15.8(a)(ii) or 15.9(a)(ii) (as applicable), be fit for their intended purpose; or
  - B. if the Third Party Works are Property Works, those Third Party Works will, upon Transport's Representative being provided with a certificate or statement referred to in clause 7.4(a)(ii), be fit for their intended purpose.
- (b) Each Company agrees that its obligations under, and the warranties and acknowledgements given in, this clause 9.3 will remain unaffected and that it will bear and continue to bear full Liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:
  - (i) without limiting clause 9.6, any design work carried out by others prior to the date of this deed and incorporated into the Concept Design, the Design Documentation or this deed;
  - (ii) subject to clause 1.8 of Schedule 10, any Change the subject of a Direction by Transport's Representative; or
  - (iii) the termination (for any reason) of this deed.

#### **9.4 Preparation of Design Documentation**

- (a) Each Company must give, and procure that the State Works Contractor gives, the Independent Certifier and Transport, throughout the preparation of the Design Documentation the opportunity to review, to comment on and to monitor the design performance of each Company and the State Works Contractor in accordance with this deed (including the Design Review Schedule, Appendix C.2 of the Scope of Works and Technical Criteria) and the Design Management Plan.
- (b) Each Company must develop and complete, and procure that the State Works Contractor develops and completes, all Design Documentation in accordance with this deed (including the Design Review Schedule and Appendix C.2 of the SWTC) and the Design Management Plan.
- (c) Each Company must ensure that the Final Design Documentation for each discrete design element of the Company's Works, the Reviewable Temporary Works and the State Works is:

- (i) certified by each Company (in respect of the Company's Works and the Reviewable Temporary Works) and the State Works Contractor (in respect of the State Works) in accordance with the Design Review Schedule and Appendix C.2 of the Scope of Works and Technical Criteria as:
  - A. being appropriate for construction;
  - B. complying with this deed (including the Scope of Works and Technical Criteria) or the State Works Deed (as applicable) and, in particular, the durability requirements in section 5.9 and the design life requirements of section 5.8 of the Scope of Works and Technical Criteria and section 3.3(s) and 3.3(t) of Appendix C.2 to the Scope of Works and Technical Criteria;
  - C. not involving or constituting a Change which has not been the subject of a Change Order or a notice issued by Transport under paragraph 2.3 of the Change Procedure or a notice under clause 10; and
  - D. meeting any other requirement as stipulated in Section 3.3(s) and 3.3(t) of Appendix C.2 of the Scope of Works and Technical Criteria; and

- (ii) verified by the Independent Certifier in accordance with the Design Review Schedule and Appendix C.2 of the Scope of Works and Technical Criteria as:
  - A. being appropriate for construction; and
  - B. complying with this deed (including the Scope of Works and Technical Criteria) or the State Works Deed (as applicable) and, in particular, the durability requirements in section 5.9 and the design life requirements of section 5.8 of the Scope of Works and Technical Criteria,

in accordance with the period specified in Appendix C.2 of the Scope of Works and Technical Criteria and the Design Review Schedule.

- (d) Without limiting clause 9.4(c), unless otherwise agreed in writing by Transport or permitted in accordance with Appendix C.2 of the Scope of Works and Technical Criteria, each Company must only use, and procure that the State Works Contractor only uses IFC Design Documentation for construction purposes to the extent that it has been:
  - (i) certified by each Company or the State Works Contractor under clause 9.4(c);
  - (ii) submitted to Transport for the opportunity to make comment; and
  - (iii) verified by the Independent Certifier, with any comments by Transport provided in the period contemplated by Appendix C.2 of the Scope of Works and Technical Criteria and the Design Review Schedule addressed by the Independent Certifier as part of the verification;

in accordance with the Design Review Schedule and Appendix C.2 of the Scope of Works and Technical Criteria.

- (e) Transport and each Company acknowledge and agree that:
  - (i) the receipt or review of, or any consultation or comments regarding, any Design Documentation by Transport is solely for the purpose of



monitoring the design performance of each Company and the State Works Contractor;

(ii) Transport does not assume a duty or owe a duty to either Company or the State Works Contractor to review the Scope of Works and Technical Criteria, the Concept Design or Design Documentation for errors, omissions or compliance with the requirements of this deed or the State Works Deed, or to consult with either Company or the State Works Contractor or make any comments regarding any Design Documentation; and

(iii) neither:

A. any review of, or consultation or comments by Transport, nor any failure by Transport regarding any Design Documentation or any other Direction by Transport in respect of any Design Documentation; nor

B. the certification of any Final Design Documentation by the Independent Certifier,

will lessen or otherwise affect:

C. each Company's acknowledgements and warranties under clause 9.2 or 9.3 or any of its other Liabilities or responsibilities under this deed or otherwise according to Law;

D. the State Works Contractor's warranties under the State Works Deed or any of its other Liabilities or responsibilities under the State Works Deed or otherwise according to Law; or

E. Transport's rights against:

1) each Company, whether under this deed or otherwise according to Law; or

2) the State Works Contractor, whether under the State Works Deed or otherwise according to Law.

## 9.5 Change in Codes and Standards

(a) Where there is a Change in Codes and Standards prior to the Date of Integration Completion:

(i) each Company must give a written notice to Transport's Representative within 20 Business Days after that Company first becoming aware (or when it ought reasonably to have first become aware of) the Change in Codes and Standards containing details of the Change in Codes and Standards; and

(ii) if a notice is given by each Company which complies with clause 9.5(a)(i), then within 10 Business Days after the notice having been given, Transport's Representative will either:

A. direct each Company to disregard the Change in Codes and Standards where doing so will not place the Companies in breach of Law; or

- B. direct a Change in respect of the Change in Codes and Standards.
- (b) If Transport's Representative gives a notice under clause 9.5(a)(ii)A, each Company will not be regarded as being in breach of this deed, and the State Works Contractor will not be regarded as being in breach of the State Works Deed, to the extent that it disregarded the relevant Change in Codes and Standards.
  - (c) If Transport's Representative gives a notice under clause 9.5(a)(ii)B, each Company and the State Works Contractor will not have any Claim for Change Costs against Transport:
    - (i) except to the extent that any relevant Design Documentation, before the issue of a notice under clause 9.5(a)(ii)B complied, or would have complied, with the requirements of this deed and the State Works Deed, including any requirement that the Design Documentation be fit for its intended purpose (or any similar reference); or
    - (ii) to the extent that, notwithstanding the Change in Codes and Standards, either Company or the State Works Contractor would have had to make a change to the:
      - A. Project Works or a change to the methods of construction used in carrying out the Project Works, in order for the Project Works to be fit for their intended purposes (or any similar reference) at the relevant Completion Date; or
      - B. Temporary Works, or a change to the methods of construction used in carrying out the Temporary Works, in order for the Temporary Works to be fit for their intended purpose (or any similar reference).

## 9.6 EDC Concept Design Non-Conformances

The parties acknowledge and agree that:

- (a) the EDC Concept Design includes the EDC Concept Design Non-Conformances;
- (b) the EDC Concept Design Non-Conformances have been approved by Transport; and
- (c) despite any provision to the contrary in this deed, the Companies and the State Works Contractor:
  - (i) are not required to address or otherwise overcome the EDC Concept Design Non-Conformances in developing the EDC Concept Design; and
  - (ii) will not be regarded as being in breach of any obligation under this deed in respect of or relating to any requirement that the Project Works and any related Design Documentation be fit for its purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the Companies and the State Works Contractor:
    - A. have not addressed or otherwise overcome the EDC Concept Design Non-Conformances in developing the EDC Concept Design; or
    - B. have relied on Transport's approval of the EDC Concept Design Non-Conformances.

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## 10. Changes

### 10.1 Transport and the Companies may propose a Change

- (a) Transport may require either Company to carry out, or procure that the State Works Contractor carries out, a Change in accordance with paragraph 1 of the Change Procedure.
- (b) [REDACTED]
- [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- (c) Each Company may propose a Change to Transport in accordance with paragraph 2 of the Change Procedure.

### 10.2 Pre-Agreed Changes

- (a) Transport's Representative may, in its absolute discretion and without being under any obligation to do so, direct by way of a Change any Pre-Agreed Change by giving written notice to the Companies.
- (b) Transport and each Company agree that:
- (i) if a notice pursuant to clause 10.2(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule 38, this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 38 from the date the Companies receive such notice; and
  - (ii) not used.
- (c) Where Transport's Representative directs a Pre-Agreed Change by giving written notice to the Companies by the relevant date referred to in clause 10.2(b), the Companies, in respect of that Pre-Agreed Change:
- (i) must carry out their obligations under this deed as amended by clause 10.2(b); and
  - (ii) acknowledge that:

- A. the Change Costs or Change Savings for each Pre-Agreed Change is as set out in Schedule 38 in the column entitled "Change Cost excluding GST";
- B. the payment of the Change Costs set out in Schedule 38 in respect of a Pre-Agreed Change by Transport to the Companies will be full compensation for any Loss or delay the Companies suffer or incur arising out of or in connection with the issue of such a notice and the Companies will not be entitled to be paid any other amount in respect of the Pre-Agreed Change;
- C. the Companies are not entitled to make any Claim for:
  - 1) any acceleration to the carrying out of the Project Activities which the Companies must perform at any time in order to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works or Integration Completion by the Date for Integration Completion; or
  - 2) other than as set out in Schedule 38, any delay to the carrying out of the Project Activities,

in connection with the issue of such a notice or the amendment of this Annexure A and this deed pursuant to clause 10.2(b).
- (d) Nothing in this clause 10.2 prevents Transport's Representative from issuing a Change Proposal or a Change Order pursuant to clause 10.1 or the Change Procedure that involves the same (or similar) changes to the Project Works as a Pre-Agreed Change after the relevant date for giving notice of the Pre-Agreed Change specified in Schedule 38.
- (e) If Transport's Representative issues a Change Order pursuant to clause 10.1 which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Change and which is issued or directed (as relevant) after the relevant date in Schedule 38 for that Pre-Agreed Change, the parties agree that the Change Costs or Change Savings of the Change will be determined in accordance with clause 10.1.

### 10.3 Payment for Changes

- (a) If a Change directed by Transport in accordance with clause 10.1(a) or clause 10.2 results in Change Costs:
  - (i) if Transport directed a Company to proceed to implement the Change under paragraph 1.4(b), paragraph 1.7(b) or paragraph 1.7(e) of the Change Procedure Transport must pay that Company the Change Costs progressively within 10 Business Days after each month in which the relevant work was undertaken unless otherwise agreed between the parties; and
  - (ii) if Transport directed a Company to proceed to implement the Change under paragraph 1.7(d) or paragraph 1.8 of the Change Procedure, Transport must pay that Company the Change Costs:
    - A. pending determination by Transport pursuant to paragraph 1.8(b) or determination in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12

Integration Project Deed, as reasonably determined by Transport; and

- B. following any determination referred to in clause 10.3(a)(ii)A (or agreement between the parties), as so determined (or agreed),

progressively within 10 Business Days after each month in which the relevant work was undertaken. If the Change Costs paid under clause 10.3(a)(ii)A are more or less than the Change Costs for the relevant month as subsequently determined or agreed, the difference must be paid by the relevant party to the other.

- (b) If a Change directed by Transport under clause 10.1(a) or clause 10.2 or paragraph 1 of the Change Procedure results in Change Savings (or in the case of a Change directed by Transport under paragraph 2 of the Change Procedure, is expected to result in Change Savings, as advised by the relevant Company under paragraph 2.2(a)(iii) of the Change Procedure), Transport and each Company agree that:
- (i) in the case of a Change directed by Transport under clause 10.1(a) or clause 10.2 or paragraph 1 of the Change Procedure, Transport is entitled to receive [REDACTED] of the Change Savings; and
- (ii) in the case of a Change directed by Transport under paragraph 2.3 of the Change Procedure, Transport is entitled to receive [REDACTED] of the greater of:
- A. the actual Change Savings; and
- B. the estimated Change Savings (as advised by the relevant Company under paragraph 2.2(a)(iii) of the Change Procedure).
- (c) Where an amount is payable to Transport pursuant to clause 10.3(b) then:
- (i) to the extent that it relates to the Project Works, this may be:
- A. set off against Change Costs in respect of the Project Works payable by Transport to a Company under clause 10.3(a); or
- B. where this is not set-off it must be paid by the relevant Company to Transport progressively within 10 Business Days after each month in which the relevant work which has been deleted or omitted would have been undertaken but for the Change.
- (d) Except where a Company is directed to carry out a Change pursuant to a Change Order, Transport will not be liable to either Company or the State Works Contractor for any Loss or otherwise upon any Claim arising out of or in any way in connection with any Change.

#### **10.4 Companies' entitlements**

This clause 10 and clause 12 are an exhaustive code of each Company's rights in any way in connection with any Change. Each Company waives all rights at Law to make any Claim against Transport in any way in connection with any of the matters set out in this clause 10 otherwise than in accordance with the terms of this deed.

## 10.5 Approvals for Changes

- (a) Subject to clause 10.5(b), each Company must apply for and obtain, or procure that the State Works Contractor applies for and obtains, all:
- (i) necessary amendments or modifications to any existing Approvals; and
  - (ii) new Approvals that may be,  
required for the execution of a Change.
- (b) Where the amendment or modification to any Approval required for the execution of the Change relates to the M7 Planning Approval or the M12 Planning Approval, each Company must:
- (i) carry out and provide to Transport all surveys, investigations, reports and studies:
    - A. reasonably requested by Transport's Representative;
    - B. to the standard reasonably directed by Transport's Representative; and
    - C. within the time reasonably directed by Transport's Representative; and
  - (ii) provide whatever other assistance and information Transport's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the relevant Planning Approval.
- (c) Each Company must implement, or procure that the State Works Contractor implements, the Change once the Approvals referred to in this clause 10.5 have been amended, modified or granted to permit the Change to be implemented.

## 10.6 Changes undertaken by the State Works Contractor

The parties acknowledge and agree that Changes under this clause 10 can be:

- (a) designed by either Company 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 the parties and the State Works Contractor.

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## 11. Construction

### 11.1 Construction

- (a) Each Company must construct the Project Works and Temporary Works, and must ensure that the State Works Contractor constructs the State Works:
- (i) in accordance with the requirements of this deed including:
    - A. the Scope of Works and Technical Criteria;
    - B. any relevant Design Documentation which each Company and the State Works Contractor are entitled to use for construction purposes in accordance with clause 9.4(d); and

- C. any Direction of Transport's Representative given or purported to be given under a provision of this deed, including any Change directed or approved by Transport in accordance with the Change Procedure or clause 10.2;
- (ii) using good workmanship and Materials which are:
    - A. new (other than as contemplated by the Scope of Works and Technical Criteria) and free of Defects or other imperfections; and
    - B. of the quality specified in the Scope of Works and Technical Criteria; and
  - (iii) so that each discrete portion of the Project Works, upon the relevant Completion Date, or, in respect of the Temporary Works, at all relevant times:
    - A. are; and
    - B. other than the Third Party Works, will be capable of remaining at all relevant times,
      - fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this deed and any Design Documentation, then unless otherwise directed by Transport, the requirements of this deed will prevail.

## 11.2 Performance of Project Activities

- (a) Without limiting clause 11.1, in performing the Company's Activities, each Company must:
  - (i) act in a timely and expeditious manner, and ensure that the State Works Contractor acts in a timely and expeditious manner in performing the SWC Activities; and
  - (ii) once it has commenced any construction activities on the Project Site, regularly and diligently proceed with the construction of the Company's Works and the Temporary Works, and ensure that the State Works Contractor regularly and diligently proceeds with the construction of the State Works, in accordance with this deed and the State Works Deed.
- (b) Without limiting clause 11.1, each Company warrants that it will perform the Company's Activities using the workmanship and Materials required by this deed, and ensure that the State Works Contractor performs the SWC Activities using the workmanship and Materials required by this deed and the State Works Deed, and which are fit for their intended purposes.

## 11.3 Skills Development and Training

- (a) Each Company must:
  - (i) embed, and procure that the State Works Contractor embeds, an Apprenticeship target of 20% of the Trades Workforce engaged in carrying out of the Project Activities;
  - (ii) consider, and procure that the State Works Contractor considers, the capacity of subcontractors to contribute to skills and training targets;

- (iii) ensure, and procure that the State Works Contractor ensures, that the following Infrastructure Skills Legacy Program targets are achieved in connection with the Project Activities:
    - A. 15% of the total Project Workforce to be made up of Learning Workers;
    - B. 10% of all trades positions engaged in carrying out the Project Activities to be made up of Apprentices;
    - C. at least 2% of all trade positions engaged in carrying out the Project Activities to be made up of women;
    - D. at least 8% of the total Project Workforce engaged in carrying out the Project Activities is aged less than 25 years; and
    - E. reporting the employment and training outcomes for people from the Local Region;
  - (iv) meet any other commitments made in the Scope of Works and Technical Criteria concerning skills, training and diversity; and
  - (v) from the date of this deed until the Date of Integration Completion, provide quarterly reports to Transport's Representative (at the end of March, June, September and December) in the form set out in Attachment A of the Training Management Guidelines or such other form as required by Transport's Representative, giving details of its achievement of the targets and demonstrating that each Company and the State Works Contractor are meeting (or will meet) the commitments made in this deed.
- (b) In addition to terms defined in this deed including this Annexure A, terms used in this clause have the meaning given to them in the Training Management Guidelines.

#### **11.4 Cleaning up**

In carrying out the Project Works and the Temporary Works, each Company must keep, and ensure that the State Works Contractor keeps, the Project Site, Extra Land and the Project Works clean and tidy and regularly remove, and ensure that the State Works Contractor removes, from the Project Site, Extra Land and Project Works any waste or surplus material arising from such performance.

#### **11.5 Signage**

- (a) Subject to clause 11.5(b), each Company must not, and must ensure that the State Works Contractor does not, erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Project Works, the Temporary Works or the Project Site (or permit any third party to do so) at any time prior to the Date of Integration Completion.
- (b) Prior to the Date of Integration Completion, each Company and the State Works Contractor may only (with the prior written approval of Transport) erect the following signage on or near the Project Site or Local Areas (as applicable):
  - (i) temporary directional signage to assist businesses in the vicinity of the Project Site, access to which has been, or is likely to be, adversely affected by the Project Activities;
  - (ii) signage required by Law or reasonably required for the safety and security of the Project Works and the Temporary Works;



- (iii) project identification signage approved by Transport;
- (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the Project Activities; and
- (v) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the Project Site.

## **11.6 Work methods**

Whether or not this deed or the Scope of Works and Technical Criteria prescribes a particular work method or a work method is otherwise part of this deed or reviewed or approved (expressly or impliedly) by Transport or Transport's Representative, the fact that any work method that a Company or the State Works Contractor adopts or proposes to adopt is impractical or impossible or that a Company or the State Works Contractor, with or without the approval of Transport's Representative, uses another work method will:

- (a) not entitle either Company or the State Works Contractor to make any Claim against Transport arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this deed or the State Works Deed to be frustrated.

## **11.7 As constructed documentation and reports**

Each Company must prepare and submit, and ensure that the State Works Contractor prepares and submits, to Transport's Representative and the Independent Certifier as constructed documentation and reports as required by and in accordance with the requirements of the Companies' Documentation Schedule or as otherwise reasonably requested by Transport's Representative.

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## **12. Time**

### **12.1 Commencement and progress**

Each Company must:

- (a) start to perform the Company's Works and the Temporary Works, and ensure that the State Works Contractor starts to perform the State Works, from the Satisfaction Date; and
- (b) regularly and diligently progress the Company's Works and the Temporary Works in accordance with this deed, and ensure that the State Works Contractor regularly and diligently progresses the State Works in accordance with the State Works Deed, to achieve Integration Completion.

### **12.2 Date for Returned Works Construction Completion of the EDC Works and Sunset Date**

Each Company must:

- (a) achieve, and ensure that the State Works Contractor achieves, Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works;
- (b) use best endeavours to achieve, and ensure that the State Works Contractor uses, best endeavours to achieve Integration Completion by the Date for Integration Completion; and

- (c) achieve, and ensure that the State Works Contractor achieves, Integration Completion by the Sunset Date.

### 12.3 Company's programming obligations

- (a) Within 18 Business Days after the Satisfaction Date, each Company must prepare and submit to the Independent Certifier and Transport's Representative subsidiary programs for the Project Activities, including all design and construction activities (including the SWC Activities and procurement of Materials and Utility Services).
- (b) The Subsidiary D&C Programs must:
  - (i) be based upon the Overall D&C Program; and
  - (ii) contain the details which Transport's Representative reasonably requires.
- (c) The Overall D&C Program and all Subsidiary D&C Programs must be:
  - (i) reviewed and updated by each Company on a monthly basis to take into account changes to each Company's and the State Works Contractor's program for the Project Activities and delays which may have occurred, including any for which either Company or the State Works Contractor is granted an extension of time under clause 12.8; and
  - (ii) given to the Independent Certifier and Transport's Representative with the reports required by the Companies' Documentation Schedule in both hard copy form and in electronic form approved by Transport.
- (d) No submission of or Direction relating to, or review of or comment upon, a program (including the Overall D&C Program and any Subsidiary D&C Program) prepared by either Company or the State Works Contractor, by Transport or Transport's Representative in connection with the program, nor the inclusion of the Overall D&C Program as an exhibit to this deed, will:
  - (i) relieve:
    - A. either Company from or alter its Liabilities or obligations under this deed; or
    - B. the State Works Contractor from or alter its Liabilities or obligations under the State Works Deed,especially (without limitation) the obligations of each Company under clause 12.2;
  - (ii) evidence or constitute notification of a delay or the claiming of or the granting of, an extension of time to the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion or the Sunset Date, or a Direction by Transport's Representative to accelerate, disrupt, prolong or vary any, or all, of the Project Activities; or
  - (iii) affect the time for performance of Transport's or Transport's Representative's obligations under this deed or the State Works Deed, including obliging Transport or Transport's Representative to do anything earlier than is necessary to enable each Company and the State Works Contractor to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works or Integration Completion by the Date for Integration Completion or the Sunset Date.

- (e) If a Company or the State Works Contractor chooses to compress the Project Activities or otherwise accelerate progress:
  - (i) neither Transport nor Transport's Representative will be obliged to take any action to assist or enable the Companies or the State Works Contractor to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works or Integration Completion by the Date for Integration Completion or the Sunset Date; and
  - (ii) the time for the carrying out of Transport's or Transport's Representative's obligations will not be affected.

## 12.4 Risk and Notice of Delay

- (a) Without limiting the Companies' express entitlements under the M7-M12 Integration Project Deed, each Company accepts the risk of all delays in, and disruption to, the carrying out of the Project Activities (including the Non-Contestable Work) and performance of its obligations, and the obligations of the State Works Contractor and their respective Related Parties, under the Transport Project Documents both before and after the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and the Sunset Date.
- (b) Each Company must within:
  - (i) 7 Business Days of the commencement of an occurrence causing any delay or which is likely to cause delay to either Company or the State Works Contractor, give Transport's Representative written notice of any delay or likely delay to the carrying out of the Project Activities; and
  - (ii) 15 Business Days of providing the notice in clause 12.4(b)(i), give Transport's Representative a further notice setting out the details of the cause of delay and how the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and the Sunset Date are likely to be affected (if at all).

## 12.5 Not used

## 12.6 Completion Remedy Plan

- (a) If the Companies fail to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works, Transport may by notice in writing to the Companies require the Companies to provide a remedy plan (**Completion Remedy Plan**).
- (b) If Transport gives a notice referred to in clause 12.6(a) then:
  - (i) the Companies must obtain the approval of Transport (acting reasonably having regard to the requirements of clause 12.6(c)(ii) and within the time periods required in clause 12.6(c)) to the Completion Remedy Plan;
  - (ii) the Completion Remedy Plan must:
    - A. contain a date by which the Companies undertake to achieve Returned Works Construction Completion of the EDC Works, which must be as soon as possible after the Date for Returned Works Construction Completion of the EDC Works; and

- B. include a revised Overall D&C Program which is consistent in all respects with the relevant date referred to in clause 12.6(b)(ii)A.
- (c) Transport must notify the Companies within 8 Business Days of receipt of a Completion Remedy Plan whether or not the relevant plan is approved for the purposes of clause 12.6(b)(i). Such notice shall be in writing and shall include its reasons for withholding its approval (if applicable). If Transport withholds its approval:
  - (i) the Companies shall within 7 Business Days of receipt of such notice update the Completion Remedy Plan to address any comments notified by Transport to the Companies and resubmit the updated plan to Transport; and
  - (ii) the process in this clause 12.6(c) shall re-apply, however the 8 Business Day review period shall be reduced to 3 Business Days.
- (d) The Companies must, and must procure the State Works Contractor to, diligently pursue the approved Completion Remedy Plan.
- (e) The Companies must provide, and procure that the State Works Contractor provides, Transport with a copy of any "Completion Remedy Plan" (as defined under the D&C Deed) relating to the Contractor's failure to achieve Integration Completion by the Date for Integration Completion within 1 Business Day of approving the relevant "Completion Remedy Plan" under clause 28.2(e) of the D&C Deed.

#### **12.7 Claim for extension of Date for Returned Works Construction Completion of EDC and Sunset Date**

If the Companies or the State Works Contractor are or will be delayed in achieving Returned Works Construction Completion of the EDC Works or Integration Completion by an Excusable Cause of Delay, the Companies may claim an extension of time in accordance with Schedule 11, provided that for the purposes of determining their entitlements under this clause pursuant to Schedule 11, the Companies and the State Works Contractor will be taken to have first become aware (or to have reasonably have become aware) of an Excusable Cause of Delay arising prior to the Satisfaction Date on the Satisfaction Date.

#### **12.8 Extension of Date for Returned Works Construction Completion of EDC Works, Date for Integration Completion and Sunset Date**

The Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and the Sunset Date will be extended by the period (if any) determined in accordance with paragraph 3 of Schedule 11, provided that for the purposes of determining their entitlements under this clause pursuant to Schedule 11, the Companies and the State Works Contractor will be taken to have first become aware (or to have reasonably have become aware) of an Excusable Cause of Delay arising prior to the Satisfaction Date on the Satisfaction Date.

#### **12.9 Liquidated damages for delay in achieving Returned Work Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works**

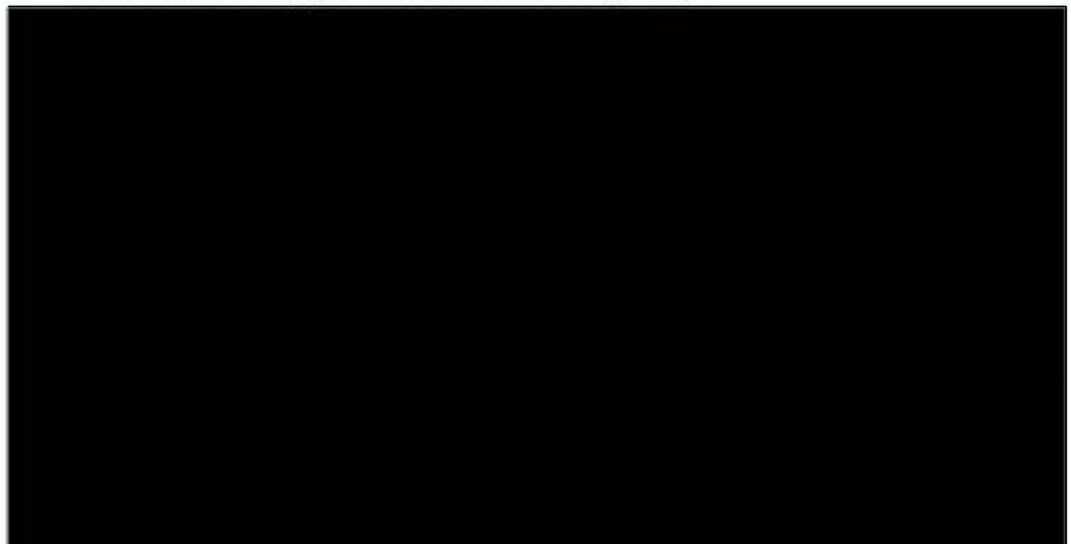
- (a) Transport and each Company agree and acknowledge that Transport as a statutory body representing the Crown, is pursuing a policy of upgrading the main roads of New South Wales for the purpose of:
  - (i) improving the efficiency of the New South Wales road network so that the costs of travelling (both in time and money) on New South Wales

roads are reduced as well as the cost of freight transport in New South Wales; and

- (ii) eliminating dangerous stretches of road in order to reduce damage to property and the number of fatalities and injuries caused by motor accidents.
- (b) Each Company and Transport acknowledge and agree that the Project Activities represent a most important element of implementing the policy outlined in clause 12.9(a) and will generally improve travel times, reduce freight costs and improve the local environment whilst reducing accidents and accident costs.
- (c) Each Company acknowledges and agrees that its failure to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works in accordance with this deed will not only result in direct Losses to Transport, but will also lead to the failure of Transport to achieve its policy objectives on behalf of the Crown to the immediate detriment of Transport and of those on whose behalf the policy objectives are pursued. The Loss arising from this failure of Transport to achieve its policy objectives is not capable of easy or precise calculation.
- (d) Therefore, subject to clause 12.9(k), each Company agrees that if it does not achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works, it will pay Transport Liquidated Damages (EDC) for each day after the Date for Returned Works Construction Completion of the EDC Works up to and including:
- (i) the Date of Returned Works Opening Completion of the EDC Works (if any);
  - (ii) the Date of Returned Works Construction Completion of the EDC Works; or
  - (iii) [REDACTED]; or
  - (iv) the date that this deed is validly terminated,
- whichever first occurs.
- (e) The Liquidated Damages (EDC) provided by clause 12.9(d) are a genuine pre-estimate of Transport's damages if Returned Works Construction Completion of the EDC Works occurs after the Date for Returned Works Construction Completion of the EDC Works and each Company has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by Transport for both its own Loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of each Company to achieve Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works.
- (f) Transport and each Company acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (g) Each Company agrees to pay the Liquidated Damages (EDC) under clause 12.9(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of Transport.

- (h) Each Company entered into the obligation to pay the amounts specified in clause 12.9(d) with the intention that it is a legally binding, valid and enforceable contractual provision against each Company in accordance with its terms.
- (i) Each Company agrees to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts.
- (j) Each Company agrees that if clause 12.9(d) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle Transport from recovering Liquidated Damages (EDC), Transport will be entitled to recover general damages as a result of delaying achieving Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works, but each Company's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if clause 12.9(d) had not been void, invalid or otherwise inoperative.
- (k) Transport and each Company agree that the aggregate of the amount payable under clause 12.9(d) is limited to the LDs Cap (EDC).

(l)



(m)



## 12.10 Compensation Events

- (a) If the Date for Returned Works Construction Completion of the EDC Works or the Sunset Date is extended pursuant to paragraph 3 of Schedule 11 due to a Compensation Event, the Companies are entitled to claim compensation from Transport in accordance with this clause 12.10.
- (b) If a Compensation Event occurs, each Company must:
  - (i) take all reasonable steps, and ensure that the State Works Contractor takes all reasonable steps, to Mitigate the consequences of the Compensation Event;
  - (ii) otherwise, without limiting clause 22.1, comply with, and ensure that the State Works Contractor complies with, all reasonable directions of

Transport concerning the Compensation Event and the consequences thereof; and

- (iii) ensure that its Related Parties, and the State Works Contractor's Related Parties, comply with the requirements of this clause 12.10(b).
- (c) Subject to clauses 12.10(b) and 12.10(d), Transport must pay the Companies the Company's Delay Costs arising as a direct result of the delay caused by the Compensation Event for which the extension of time was granted for the period for which the extension of time was granted. The Companies are not entitled to recover any amounts pursuant to this clause 12.10(c) in respect of an accepted Company Change Notice or Change Order.
- (d) Transport's liability to the Companies under clause 12.10(c) will not exceed the amount set out below per day for the period for which the extension of time was granted.

In respect of delays occurring in connection with the Project Activities:

- (i) prior to the commencement of site establishment and construction activities at the Project Site: [REDACTED] per day;
- (ii) on the Returned Works, after the commencement of site establishment and construction activities at the EDC Site or the M7-M12 Interchange Site (including any associated Temporary Areas):
  - A. prior to the Date of Returned Works Construction Completion of the EDC Works: [REDACTED] per day; and
  - B. after the Date of Returned Works Construction Completion of the EDC Works and prior to the Date of Returned Works Final Completion: [REDACTED] per day;
- (iii) on the Retained Works, after the commencement of site establishment and construction activities at the M7 Widening Site (including any associated Temporary Areas):
  - A. prior to the Date of Retained Works Completion: [REDACTED] per day; and
  - B. after the Date of Retained Works Completion and prior to the Date of Integration Completion: [REDACTED].
- (e) Without limiting the Companies' express entitlements under this deed, the Company's Delay Costs payable to the Companies under clause 12.10(c) will be the Companies' sole remedy for the recovery of any Loss which either Company or the State Works Contractor suffers or incurs arising out of or in any way in connection with any delay and disruption that:
  - (i) the Companies encounter in carrying out the Company's Works and the Temporary Works;
  - (ii) the State Works Contractor encounters in carrying out the State Works; and
  - (iii) arises out of, or in any way in connection with, a Compensation Event (including a breach of this deed or the State Works Deed by Transport).
- (f) Without limiting the Companies' express entitlements under this deed, clauses 12.10(c) and 12.10(d) are a limitation upon Transport's liability to each Company, the State Works Contractor and their respective Related Parties for any Losses suffered or incurred by each Company, the State Works Contractor or their

respective Related Parties arising out of or in any way in connection with any such delay or disruption and each Company waives, and must ensure that its Related Parties, the State Works Contractor and the State Works Contractor's Related Parties waive, all rights at Law to make any Claim against Transport, and Transport will not be liable to either Company, the State Works Contractor or their respective Related Parties in these circumstances other than in respect of the matters for which Transport may be liable under this clause 12.10.

- (g) Notwithstanding the occurrence of a Compensation Event, each Company must continue to perform, and ensure that the State Works Contractor continues to perform, all of its obligations under the Integration Project Documents to the extent that the Company and the State Works Contractor are not prevented from performing those obligations by that Compensation Event.
- (h) Where under this deed the Companies are entitled to recover Direct Costs and Company's Delay Costs in respect of the same event, there will not be any double counting of any costs or other amounts payable.

## 12.11 Milestones

- (a) When the Companies consider that Milestone 1 or Milestone 2 (as applicable) has been achieved, the Companies must notify Transport's Representative in writing, which notice must state that it is provided pursuant to this clause 12.11.
- (b) Thereafter, Transport's Representative, Transport, the Companies and the State Works Contractor must jointly inspect the Company's Activities included in the EDC Works at a mutually convenient time. The parties acknowledge that:
  - (i) Transport's Representative and Transport may invite any other persons to attend the inspection; and
  - (ii) the Contractor may attend the inspection.
- (c) Following the joint inspection under clause 12.11(b), Transport's Representative must within 5 Business Days after receipt of a notice under clause 12.11(a), or of receipt of a notice under clause 12.11(d):
  - (i) if the Milestone notified in the Companies' notice under clause 12.11(a), or clause 12.11(d) has been achieved, provide to the Companies a notice, which must state:
    - A. that it is provided pursuant to this clause 12.11(c)(i); and
    - B. the date on which the relevant Milestone was achieved; or
  - (ii) if the Milestone notified in the Companies' notice under clause 12.11(a), or clause 12.11(d) has not been achieved, issue a notice to the Companies in which it states:
    - A. the items which remain to be completed before the relevant Milestone is achieved; or
    - B. that the relevant Milestone is so far from being achieved that it is not practicable to notify the Companies of the items which remain to be completed as contemplated by clause 12.11(c)(ii)A.
- (d) If Transport's Representative issues a notice under clause 12.11(c)(ii), the Companies must proceed with the Company's Activities and thereafter when they consider that Milestone 1 or Milestone 2 (as applicable) has been achieved, the



Companies must give Transport's Representative written notice to that effect after which clauses 12.11(b) and 12.11(c) will reapply.

- (e) If the Companies achieve Returned Works Construction Completion of the EDC Works by the EDC Target Date, subject to clause 12.11(g), the Companies will be entitled to utilise the EDC Bonus Payment in respect of each day that comprises the period:
- (i) commencing on the later of:
    - A. the date on which Returned Works Construction Completion of the EDC Works is achieved; and
    - B. [REDACTED]; and
  - (ii) ending on the date immediately before the EDC Target Date.
- (f) Where under clause 12.11(e) the Companies are entitled to utilise the EDC Bonus Payment, the Companies will be entitled to disburse the EDC Bonus Payment within 5 Business Days after the end of the month immediately following the date on which Returned Works Construction Completion of the EDC Works was achieved.
- (g) The parties agree that the maximum entitlement of the Companies under clause 12.11(e) is limited to the lesser of:
- (i) [REDACTED] of the EDC Works Amount; and
  - (ii) [REDACTED].
- (h) The parties acknowledge and agree that:
- (i) the EDC Bonus Payment, if the Companies become entitled to it pursuant to clause 12.11(e), is a bonus for early achievement of Returned Works Construction Completion of the EDC Works and is independent of any other amounts Transport is required to pay to the Companies or the State Works Contractor;
  - (ii) the EDC Target Date is a fixed date and shall not be subject to any extensions of time under this deed; and
  - (iii) nothing in this clause 12.11 requires Transport to make any payment in relation to the EDC Bonus Payment, which has already been accommodated in the Integration Base Case Financial Model agreed between the parties.

## 12.12 Interim M12 Motorway and Elizabeth Drive Connection

- (a) If the Companies and the State Works Contractor fail to achieve Milestone 2 by the Milestone 2 Target Date, Transport may, on or before [REDACTED], direct the Companies to perform a Change to design and construct the Interim M12 Motorway and Elizabeth Drive Connection.

(b)

[REDACTED]

- (c) When the Companies consider that the Interim M12 Motorway and Elizabeth Drive Connection is complete, the Companies must notify Transport's Representative in writing, which notice must state that it is provided pursuant to this clause 12.12.
- (d) Thereafter, Transport's Representative, Transport and the Companies must jointly inspect the Project Activities included in the Interim M12 Motorway and Elizabeth Drive Connection at a mutually convenient time. The Companies acknowledge that Transport's Representative and Transport may invite any other persons to attend the inspection.
- (e) Following the joint inspection under clause 12.12(d), Transport's Representative must within 5 Business Days after receipt of a notice under clause 12.12(c), or of receipt of a notice under clause 12.12(f):
  - (i) if the Interim M12 Motorway and Elizabeth Drive Connection has been completed, provide to the Companies a notice, which must state:
    - A. that it is provided pursuant to this clause 12.12(e)(i); and
    - B. the date on which the M12 Motorway and Elizabeth Drive Connection was completed; or
  - (ii) if the Interim M12 Motorway and Elizabeth Drive Connection has not been completed, provide to the Companies a notice in which it states:
    - A. the items which remain to be completed before the M12 Motorway and Elizabeth Drive Connection is completed; or
    - B. that the M12 Motorway and Elizabeth Drive Connection is so far from being achieved that it is not practicable to notify the Companies of the items which remain to be completed as contemplated by clause 12.12(e)(ii)A.
- (f) If Transport's Representative issues a notice under clause 12.12(e)(ii), the Companies must proceed with the Project Activities and thereafter when they consider that the Interim M12 Motorway and Elizabeth Drive Connection has been completed, the Companies must give Transport's Representative written notice to that effect after which clauses 12.12(d) and 12.12(e) will reapply.

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## 13. Retained Works Completion

### 13.1 Retained Works Completion process

- (a) The Companies must or must procure the Contractor to give Transport's Representative, the Independent Certifier and the Sub-IC:
  - (i) 6 months';
  - (ii) 3 months';
  - (iii) 1 month's; and
  - (iv) 1 week's,prior written notice of the estimated Date of Retained Works Completion.
- (b) Subject to clause 13.1(g), Transport's Representative, the Companies, the Independent Certifier, the Sub-IC and the Contractor must, within 5 Business Days after receipt of the notice referred to in clauses 13.1(a)(ii) and 13.1(a)(iii), jointly inspect the Project Activities included in the Retained Works at a mutually convenient time.

- (c) Within 2 Business Days of the joint inspection referred to in clause 13.1(b), the Independent Certifier must give the Companies and Transport a notice either:
- (i) containing a list of items which it believes must be completed before Retained Works Completion is achieved; or
  - (ii) stating that it believes that Retained Works Completion is so far from being achieved that it is not practicable to issue a list as contemplated in clause 13.1(c)(i).
- (d) When the Companies consider Retained Works Completion has been achieved, the Companies must notify Transport's Representative and the Independent Certifier in writing and provide them with an executed Companies' Notice of Retained Works Completion. The Companies must procure the Contractor also provides to Transport's Representative and the Independent Certifier a copy of its 'Contractor's Notice of Retained Works Completion' under and as defined in the D&C Deed.
- Subject to clause 13.1(g), Transport's Representative, the Companies, the Independent Certifier, the Sub-IC and the Contractor must, within 5 Business Days of receipt of an executed Companies' Notice of Retained Works Completion by Transport's Representative and the Independent Certifier under clause 13.1(d), jointly inspect the Project Activities included in the Retained Works at a mutually convenient time.
- (e) Following the joint inspection under clause 13.1(d), the Independent Certifier must within 10 Business Days of receipt of an executed Companies' Notice of Retained Works Completion by Transport's Representative and the Independent Certifier under clause 13.1(d), or of receipt of a notice under clause 13.1(f):
- (i) if Retained Works Completion has been achieved, provide to Transport's Representative and the Companies an executed Certificate of Retained Works Completion; or
  - (ii) if Retained Works Completion has not been achieved, issue a notice to the Companies and Transport in which it states:
    - A. the items which remain to be completed before Retained Works Completion is achieved; or
    - B. that Retained Works Completion is so far from being achieved that it is not practicable to notify the Companies of the items which remain to be completed as contemplated by clause 13.1(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 13.1(e)(ii), the Companies must proceed with the Company's Activities, and ensure that the State Works Contractor proceeds with the SWC Activities, and thereafter when they consider Retained Works Completion has been achieved, the Companies must give and must procure the Contractor to give Transport's Representative and the Independent Certifier written notice to that effect after which clauses 13.1(d) and 13.1(e) will reapply.
- (g) Each Company acknowledges and agrees that:
- (i) Transport's Representative may invite any other person to attend any joint inspection provided for by this clause 13.1; and
  - (ii) Transport's Representative may provide comments to the Independent Certifier (with a copy to the Companies) in relation to any non-compliance of the Project Activities with this deed or the State Works Deed.

### 13.2 Effect of Certificate of Retained Works Completion

- (a) A Certificate of Retained Works Completion will not:
- (i) constitute approval by Transport or Transport's Representative of the Companies' performance of their obligations under this deed or the State Works Contractor's performance of its obligations under the State Works Deed;
  - (ii) be taken as an admission or evidence that the Project Works comply with this deed or the State Works Deed; or
  - (iii) prejudice any rights or powers of Transport or Transport's Representative.
- (b) Without limiting clause 13.2(a), the parties agree that, in the absence of manifest error by the Independent Certifier, the Independent Certifier's certification as set out in a Certificate of Retained Works Completion is final and binding on the parties for the purposes only of establishing that Retained Works Completion has occurred.

### 13.3 Defects or omissions in the Retained Works

Notwithstanding that Retained Works Completion may have occurred, each Company must as soon as practicable after Retained Works Completion (and in any event within [REDACTED] after the Date of Retained Works Completion) correct, and ensure that the State Works Contractor corrects, any Defects in the Retained Works which existed at the time of the issue of the Certificate of Retained Works Completion.

### 13.4 Operational Readiness Group

- (a) The Companies must give:
- (i) written notice to the Independent Certifier and Transport of the Companies' good faith estimate of the date on which it anticipates the Retained Works Opening Conditions Precedent will be satisfied at least 12 months before that date (**Operational Readiness Notice**); and
  - (ii) the Independent Certifier and Transport further written notice as soon as practicable if:
    - A. the estimated date specified in an Operational Readiness Notice changes; or
    - B. each Company considers that the Retained Works Opening Conditions Precedent have been satisfied,(each a **Further OR Notice**).
- (b) The Independent Certifier will:
- (i) establish an Operational Readiness Group pursuant to clause 3A.1 of the Independent Certifier Deed within 5 Business Days of the earlier of:
    - A. the date on which the Independent Certifier receives an Operational Readiness Notice in respect of the Retained Works; and
    - B. the date that is 15 months prior to the Date for Integration Completion;

- (ii) convene meetings of that Operational Readiness Group at monthly intervals (or such other intervals agreed between Transport and each Company), commencing on the date on which the Operational Readiness Group is established pursuant to clause 13.4(b)(i), to discuss the opening the Retained Works, including the progress of the Project Activities and the satisfaction of the Retained Works Opening Conditions Precedent;
  - (iii) convene a meeting of that Operational Readiness Group to inspect the Project Activities included in the Retained Works within 10 Business Days after receiving an Operational Readiness Notice or a Further OR Notice for the Retained Works; and
  - (iv) within 10 Business Days after an inspection referred to in clause 13.4(b)(iii), give the Companies a written notice informing each Company either:
    - A. that that Operational Readiness Group determines that the Retained Works Opening Conditions Precedent have been satisfied;
    - B. containing a list of items which that Operational Readiness Group believes must be completed in order to satisfy the Retained Works Opening Conditions Precedent; or
    - C. stating that the Operational Readiness Group believes that the Retained Works Opening Conditions Precedent are so far from being achieved that it is not practicable to issue a list as contemplated in clause 13.4(b)(iv)B.
- (c) If the Independent Certifier issues a notice:
- (i) pursuant to clause 13.4(b)(iv)A, clause 5.5 (Opening the Retained Works) of the M7-M12 Integration Project Deed will apply; or
  - (ii) pursuant to clause 13.4(b)(iv)B or clause 13.4(b)(iv)C, the relevant Company must proceed with the Company's Activities, and ensure that the State Works Contractor proceeds with the SWC Activities, and the Companies must give the Independent Certifier and Transport a Further OR Notice when they consider that the Retained Works Opening Conditions Precedent have been satisfied, in which case clauses 13.4(b)(iii) and 13.4(b)(iv) will re-apply.
- (d) The parties acknowledge that the:
- (i) Operational Readiness Group will have responsibility for determining whether the Companies have satisfied the Retained Works Opening Conditions Precedent;
  - (ii) members of Operational Readiness Group other than the Independent Certifier will not have any legal responsibility to Transport, the Companies or the Independent Certifier;
  - (iii) Operational Readiness Group must if requested make recommendations and provide advice to Transport, the Companies and the Independent Certifier in connection with the opening of the Retained Works, including with respect to the satisfaction of the Retained Works Opening Conditions Precedent;
  - (iv) findings, determinations and recommendations of the Operational Readiness Group will be binding on Transport, each Company and the Independent Certifier, provided that such findings, determinations and

recommendations will not limit or affect the Independent Certifier's determination of whether Retained Works Completion has been achieved pursuant to clause 13.1; and

- (v) the Companies must give the Operational Readiness Group such access to the Project Site, the Project Works, the Project Activities and any information, reports, records or documents reasonably required to enable the Operational Readiness Group to determine whether the Retained Works Opening Conditions Precedent have been satisfied.
- (e) If:
- (i) the Retained Works are opened for public use prior to the Date of Retained Works Completion at Transport's request or direction; and
  - (ii) the opening of the Retained Works necessitates a change to the:
    - A. design of the Project Works; or
    - B. Subsidiary D&C Program (including as a result of a Company or the State Works Contractor being directed, ordered or required by Transport's Representative to suspend or cease to perform any or all of the Project Activities with respect to the Retained Works),
- then:
- (iii) Transport must direct a Change; and
  - (iv) the relevant provisions of clause 10 and Schedule 10 will apply.

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## 14. Returned Works Completion

### 14.1 Returned Works Construction Completion

- (a) The Companies must or must procure the Contractor to give Transport's Representative, the Independent Certifier and the Sub-IC:
  - (i) 6 months';
  - (ii) 3 months';
  - (iii) 1 month's; and
  - (iv) 1 week's,prior written notice of the estimated Date of Returned Works Construction Completion of the EDC Works and the Returned Works (excluding the EDC Works) (as the case may be).
- (b) Transport's Representative, the Companies, the Independent Certifier, the Sub-IC and the Contractor must, within 5 Business Days of receipt of the notice referred to in clause 14.1(a)(ii) and 14.1(a)(iii), jointly inspect the Project Activities included in the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 14.1(b), Transport's Representative must give the Companies a notice either:
  - (i) containing a list of items which it believes must be completed before Returned Works Construction Completion of the EDC Works or the

Returned Works (excluding the EDC Works) (as the case may be) is achieved; or

- (ii) stating that it believes the Companies are so far from achieving Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) that it is not practicable to issue a list as contemplated in clause 14.1(c)(i).
- (d) If, after the Companies give or procure the Contractor to give a notice referred to in clause 14.1(a), the estimated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) changes, the Companies must promptly notify or must procure the Contractor to promptly notify Transport's Representative, the Independent Certifier and the Sub-IC of the revised date.
- (e) When the Companies consider they have achieved Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), the Companies must or must procure the Contractor to notify Transport's Representative and the Independent Certifier in writing and the Companies must provide them with an executed Companies' Notice of Returned Works Construction Completion. The Companies must procure the Contractor also provides to Transport's Representative and the Independent Certifier a copy of its "Contractor's Notice of Returned Works Construction Completion" under and as defined in the D&C Deed.
- (f) Transport's Representative, the Companies, the Independent Certifier, the Sub-IC and the Contractor must, within 5 Business Days of receipt of an executed Companies' Notice of Returned Works Construction Completion by Transport's Representative and the Independent Certifier under clause 14.1(e), jointly inspect the Project Activities included in the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) at a mutually convenient time.
- (g) Following the joint inspection under clause 14.1(f) and in any event within 10 Business Days of receipt of an executed Companies' Notice of Returned Works Construction Completion by Transport's Representative and the Independent Certifier under clause 14.1(e), Transport's Representative must:
  - (i) if Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) has been achieved:
    - A. provide the Companies with an executed Certificate of Returned Works Construction Completion stating the date on which the Companies achieved Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); and
    - B. state and notify the Companies of any minor Defects of the type described in paragraph (a) of the definition of "Returned Works Construction Completion"; and
  - (ii) if Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) has not been achieved, state and notify the Companies:
    - A. of the items, including any Defects, which remain to be completed before Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) is achieved; or
    - B. that the Companies are so far from achieving Returned Works Construction Completion of the EDC Works or the Returned

Works (excluding the EDC Works) (as the case may be) that it is not practicable to notify the Companies of the items which remain to be completed as contemplated by clause 14.1(g)(ii)A.

- (h) If Transport's Representative issues a notice under clause 14.1(g)(ii) the Companies must proceed with the Companies Activities, and procure that the State Works Contractor proceeds with the SWC Activities, and thereafter when they consider they have achieved Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) they must or must procure the Contractor to give Transport's Representative and the Independent Certifier a further written notice to that effect under clause 14.1(d) after which clauses 14.1(f) and 14.1(g) will reapply.
- (i) Each Company acknowledges and agrees that:
  - (i) Transport's Representative may invite any other person to attend any joint inspection provided for by clause 14.1 including representatives of the future operator of the Returned Works; and
  - (ii) any person invited by Transport's Representative to attend any joint inspection may provide comments to Transport's Representative in relation to any non-compliance of the Project Activities with this deed.
- (j) Each Company:
  - (i) acknowledges that, at the date of this deed, it is anticipated that achievement of Returned Works Construction Completion of the EDC Works before the Date for Returned Works Construction Completion of the EDC Works will be of benefit to Transport; and
  - (ii) must co-operate to ensure that, in respect of the EDC Works, any potential for early Returned Works Opening Completion and Returned Works Construction Completion is maximised in light of Transport's total requirements for the Project.

## 14.2 Part of the EDC Works

- (a) If required by Transport, each Company must:
  - (i) permit Transport to use; or
  - (ii) permit the opening for the use of the public of,  
  
any parts of the EDC Works other than as contemplated in the Project Plans or the Scope of Works and Technical Criteria, irrespective of whether Returned Works Opening Completion or Returned Works Construction Completion of the EDC Works has been achieved.
- (b) Subject to clause 14.2(d), such use of a part of the EDC Works prior to Returned Works Opening Completion or Returned Works Construction Completion of the EDC Works under clause 14.2(a) will not relieve:
  - (i) either Company of any of its responsibilities, obligations or liabilities under this deed; or
  - (ii) the State Works Contractor of its responsibilities, obligations or liabilities under the State Works Deed.

(c) 



(d)

### 14.3 Returned Works Opening Completion

- (a) If Returned Works Opening Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) has been achieved, Transport's Representative may, in his or her absolute discretion, and even though Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) has not been achieved, give a written notice to the Companies stating that it proposes to open the Returned Works or part of the Returned Works to the public for the continuous passage of vehicles by a date stated in the notice being no less than 5 days after the date of the issue of the notice. Transport will then have the right to open the Returned Works the subject of Transport's Representative's notice for the use of the public from the date stated in Transport's Representative's notice.
- (b) If Transport's Representative gives any such notice, this will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of each Company to achieve, and the ensure that the State Works Contractor achieves, Returned Works Construction Completion of the EDC Works by the Date for Returned Works Construction Completion of the EDC Works and Integration Completion by the Date for Integration Completion or the Sunset Date.

### 14.4 Opening of the Returned Works following Returned Works Construction Completion or Returned Works Opening Completion

If required by Transport, the Companies must not, by any act or omission of a Company or the State Works Contractor, prevent or obstruct Transport from opening the Returned Works the subject of a notice under:

- (a) clause 14.1(g)(i) to the public for the safe, efficient and continuous passage of vehicles within 1 day after the date of issue of a notice under clause 14.1(g)(i); and
- (b) clause 14.3(a) to the public for the safe, efficient and continuous passage of vehicles by the date stated in the notice under clause 14.3(a) being no less than 5 days after the date of the issue of the notice.

## 14.5 Warranties by others

- (a) Each Company must, as a condition precedent to Returned Works Final Completion, obtain and provide Transport with warranties from the Subcontractors and any subcontractor to a Subcontractor supplying any plant or equipment for incorporation in the Returned Works in favour of Transport on the terms in Schedule 27.
- (b) The provision of those warranties will not derogate from any rights which Transport may have against each Company in respect of the subject matter of those warranties.

## 14.6 Returned Works Final Completion

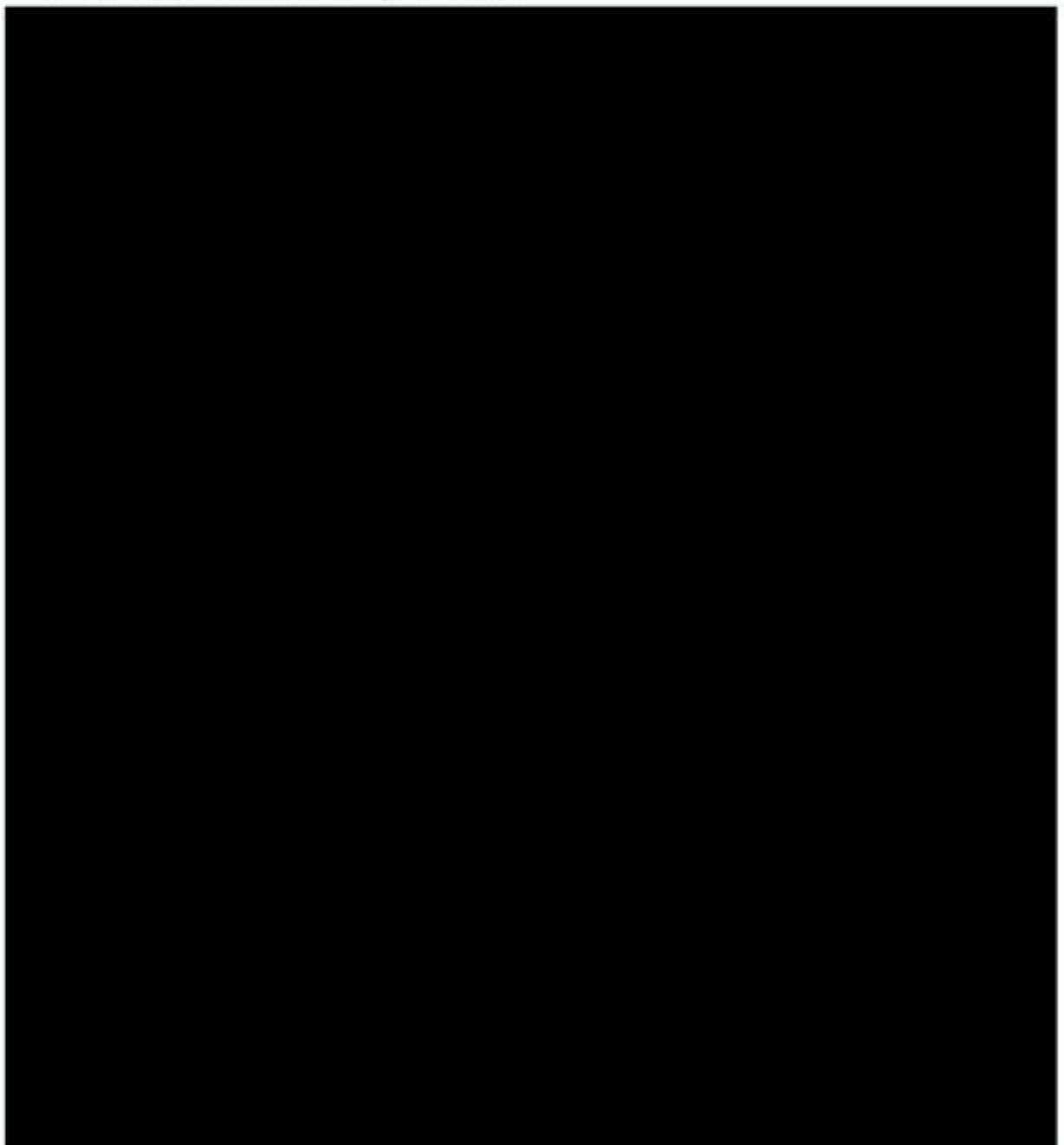
- (a) The Companies must or must procure the Contractor to give Transport's Representative and the Independent Certifier two months' written notice of the estimated Date of Returned Works Final Completion.
- (b) Transport's Representative, the Companies, the Independent Certifier, the Sub IC and the Contractor must, within 15 Business Days of the notice referred to in clause 14.6(a), jointly inspect the Returned Works at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 14.6(b), Transport's Representative must give the Companies a list of items which must be completed before Returned Works Final Completion is achieved.
- (d) When the Companies consider they have achieved Returned Works Final Completion, the Companies must notify Transport's Representative and the Independent Certifier in writing and provide them with an executed Companies' Notice of Returned Works Final Completion. The Companies must procure the Contractor also provides to Transport's Representative a copy of its "Contractor's Notice of Returned Works Final Completion" under and as defined in the D&C Deed. Transport's Representative, the Companies, the Independent Certifier, the Sub IC and the Contractor must then jointly inspect the Returned Works at a mutually convenient time.
- (e) Following the joint inspection under clause 14.6(d) and in any event within 20 Business Days of receipt of the notices under clause 14.6(d) by Transport's Representative and the Independent Certifier, Transport's Representative must:
  - (i) if Returned Works Final Completion has been achieved, issue to the Companies an executed Certificate of Returned Works Final Completion stating the date on which the Companies achieved Returned Works Final Completion; or
  - (ii) if Returned Works Final Completion has not been achieved, state and notify the Companies:
    - A. of the items which remain to be completed before Returned Works Final Completion is achieved; or
    - B. that the Companies are so far away from achieving Returned Works Final Completion, it is not practicable to specify the items referred to in clause 14.6(e)(ii)A.
- (f) If Transport's Representative issues a notice under clause 14.6(e)(ii)B, the Companies must proceed with the Project Activities and thereafter when they consider they have achieved Returned Works Final Completion the Companies must give or must procure the Contractor to give Transport's Representative and the Independent Certifier further written notice to that effect under clause 14.6(d) after which clauses 14.6(e) and 14.6(f) will reapply.

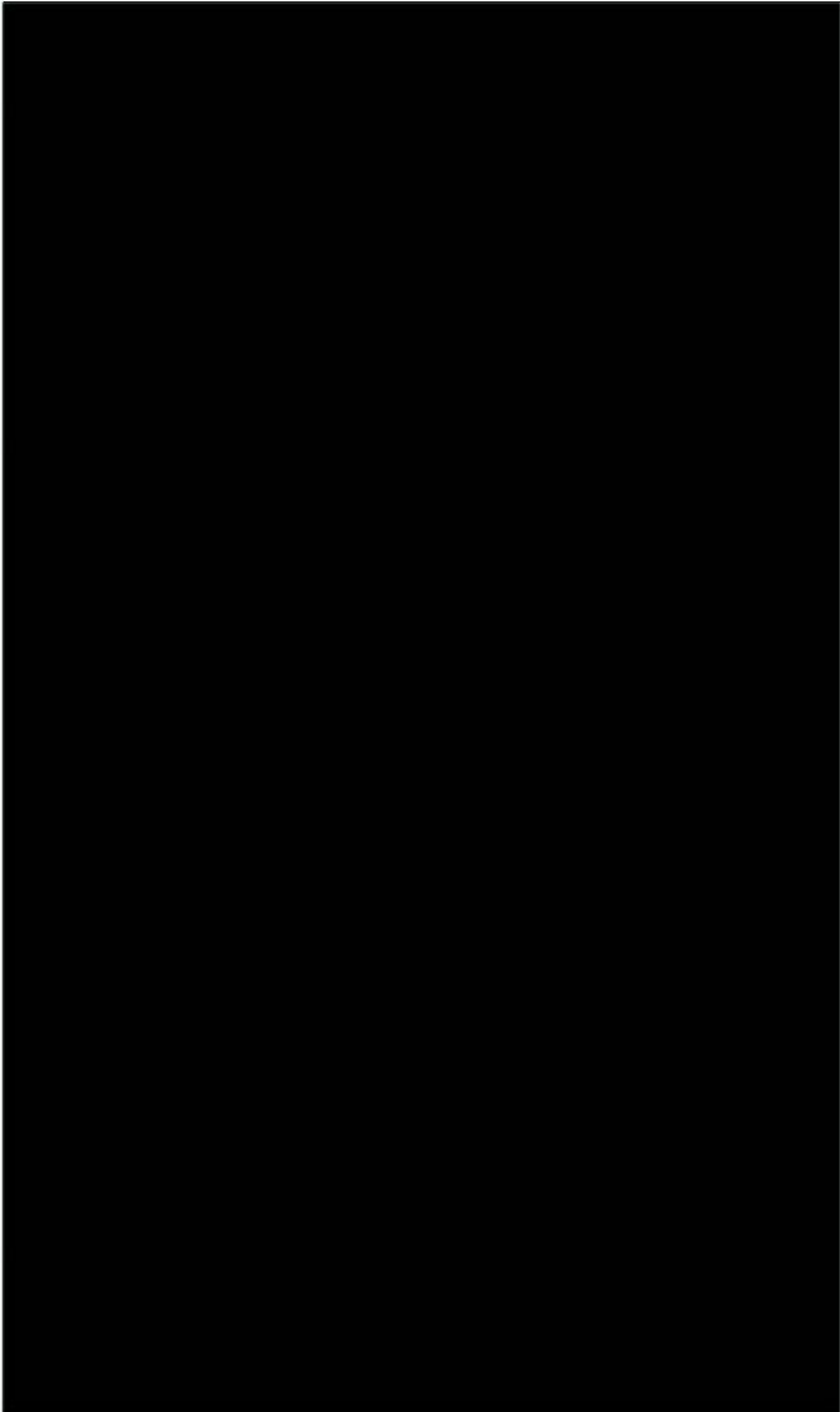
**14.7 Effect of Certificate of Returned Construction Completion or Returned Works Final Completion**

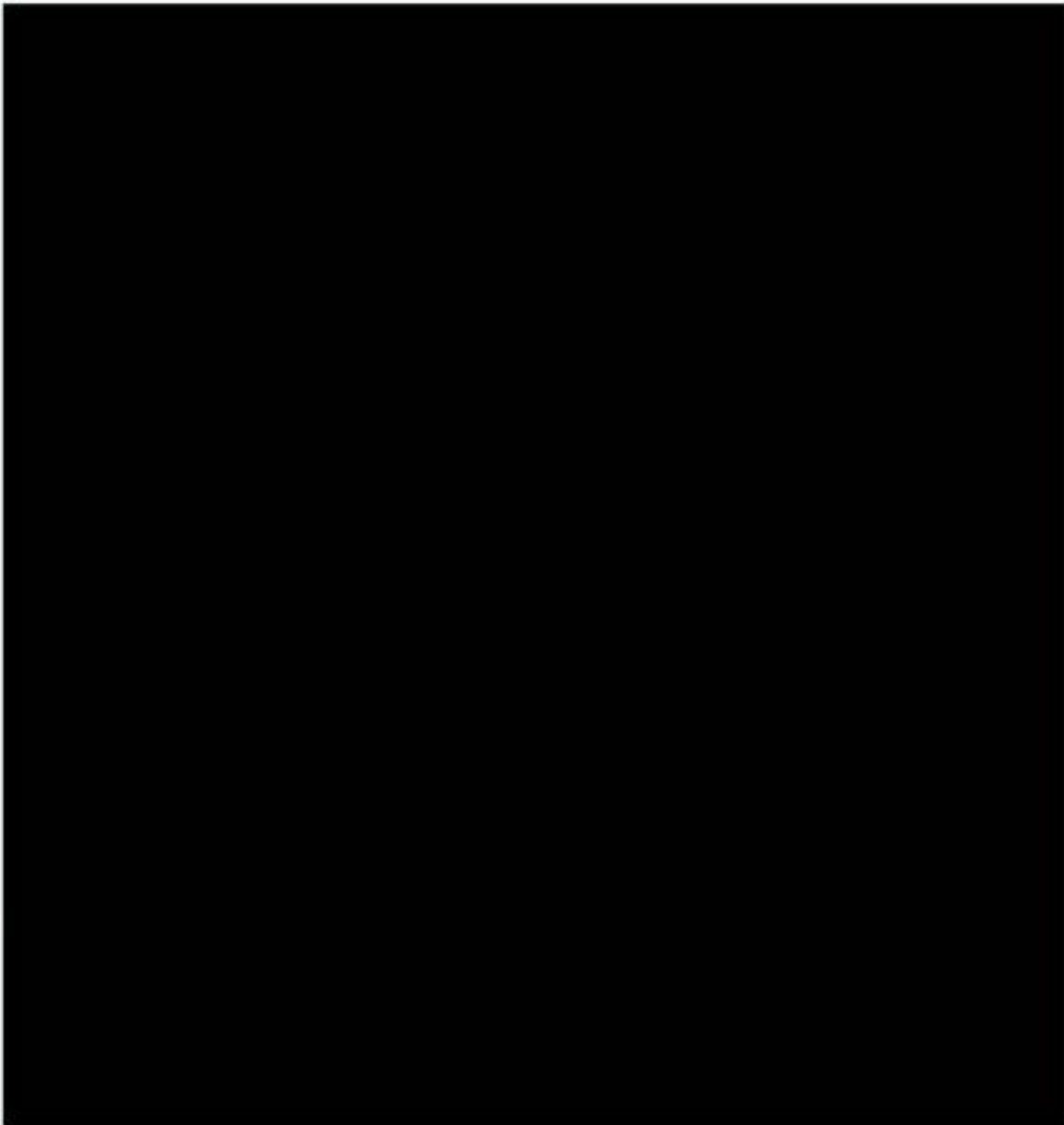
A notice issued under clause 14.1(g)(i) or 14.6(e)(i) will not:

- (a) constitute approval by Transport or Transport's Representative of a Company's performance of its obligations under this deed or the State Works Contractor's performance of its obligations under the State Works Deed;
- (b) be taken as an admission or evidence that the Project Works comply with this deed or the State Works Deed; or
- (c) prejudice any rights or powers of Transport or Transport's Representative, including the right to correct any Defect in the Returned Works that may have existed on the issue of a notice under clause 14.1(g)(i), whether or not the Defect was known to exist.

**14.8 Acceleration of the Project Activities**







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## **15. Defects Correction Periods**

### **15.1 Defects in the Returned Works**

- (a) The Companies must promptly give, and must procure that the State Works Contractor promptly gives, Transport's Representative a detailed written report of:
  - (i) any Defect they detect in Returned Works; and
  - (ii) all action proposed to correct that Defect, including the estimated time required.
  
- (b) Without limiting clause 15.2 and subject to clause 15.4, the Companies must correct, and must procure that the State Works Contractor corrects, all Defects in the Returned Works prior to the expiry of the relevant Defects Correction Period for the Returned Works, whether or not Transport's Representative notifies them of them as soon as practicable after detection.

### **15.2 Transport's Representative's direction**

If, prior to the expiry of the relevant Defects Correction Period for the Returned Works, Transport's Representative discovers or believes there is a Defect in the Returned Works or is

given notice of a Defect in the Returned Works under clause 15.1(a), Transport's Representative may, without prejudice to any other rights which Transport may have under this deed or otherwise at Law, give the Companies one or more of the following directions specifying the Defect and:

- (a) requiring the Companies to correct, or to procure that the State Works Contractor corrects, the Defect or any part of it and the direction may specify the reasonable time within which the rectification work must be carried out and other matters associated with the carrying out of the rectification work;
- (b) requiring the Companies to carry out, or to procure that the State Works Contractor carries out, a Change to overcome the Defect or any part of it and specifying the reasonable time within which this must be carried out and may specify other matters associated with the carrying out of the Change, which Change must not specify the methodology to rectify the Defect; or
- (c) advising the Companies that Transport will accept the work or any part of it despite the Defect,

and the Companies will only be entitled to receive Change Costs for correcting the Defect (or the part of it) or for carrying out the Change if the Defect (or the part of it) is something for which a Company or the State Works Contractor is not responsible.

### **15.3 Correction of Defect or Change in Returned Works**

If a direction is given under clause 15.2(a) or clause 15.2(b) prior to the expiration of the Defects Correction Period applicable to the Returned Works, the Companies must correct the Defect (or the part of it) or carry out the Change, or must procure that the State Works Contractor corrects the Defect (or the part of it) or carries out the Change:

- (a) within any time period specified in Transport's Representative's direction, which time must be reasonable; and
- (b) if during the Defects Correction Period applicable to the Returned Works:
  - (i) at reasonable times and in the manner agreed with Transport's Representative;
  - (ii) in accordance with the requirements of any relevant Authority;
  - (iii) so as to minimise the impact on the use of the relevant part of the Returned Works or the M12 Motorway;
  - (iv) in a manner which causes as little inconvenience as possible to users of the Returned Works, the M12 Motorway or any access and the adjacent community; and
  - (v) where the Companies or the State Works Contractor propose to perform any work which will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Returned Works or a local road the Companies must apply for, or procure that the State Works Contractor applies for a road occupancy licence in accordance with the requirements of Appendix C.4 of the Scope of Works and Technical Criteria.

### **15.4 Transport's correction of Defects in the Returned Works**

- (a) If Transport's Representative discovers or believes there is a Defect in the Returned Works or is given notice of a Defect in the Returned Works under clause 15.1(a)(i) which Transport's Representative reasonably believes:

- (i) involves an event serious enough to cause significant inconvenience and disruption to users of the Returned Works or any access or to the adjacent community; and
- (ii) the Companies will be unable to remedy, or unable to procure that the State Works Contractor remedies, the relevant Defect in the time required by Transport's Representative to prevent the event, inconvenience or disruption described in clause 15.4(a)(i) occurring,

then, without prejudice to any other rights which Transport may have under this deed or otherwise at Law:

- (iii) Transport may correct the Defect at the risk and cost of the Companies; and
  - (iv) the Companies must pay to Transport the reasonable costs of the correction work incurred by Transport, such amount to be as stated by Transport's Representative.
- (b) Nothing in clauses 15.1, 15.2 or this clause 15.4 requires Transport to inspect any part of the Project Works for Defects or to correct any Defect and each Company is not relieved from, and remains fully responsible for, its obligations under this deed and the State Works Contractor is not relieved from, and remains fully responsible for, its obligations under the State Works Deed.

## 15.5 Acceptance of work

If a direction is given under clause 15.2(c) prior to the expiration of the relevant Defects Correction Period applicable to the Returned Works, and a Company or the State Works Contractor is responsible for the Defect (or the part of it), the reasonable cost of correcting the Defect (or the part of it), such amount to be as stated by Transport's Representative, will be a debt due and payable from that Company to Transport on demand.

## 15.6 Returned Works

The Returned Works have:

- (a) a Defects Correction Period which begins on Returned Works Construction Completion of the relevant Returned Works and ends on the second anniversary of that date; and
- (b) a further Defects Correction Period of [REDACTED] in respect of any work the subject of a direction under clause 15.2(a) or clause 15.2(b) during the Defects Correction Period which begins on the date of the correction of the Defect or completion of the Change,

[REDACTED]

## 15.7 Correction of Defects in the Local Area Works, Utility Service Works or Property Works

- (a) The Companies must correct, and procure that the State Works Contractor corrects, all Defects in the Local Area Works, Utility Service Works or Property Works during the relevant Defects Correction Period.
- (b) Without limiting clause 15.7(a), if, during a Defects Correction Period, Transport discovers or believes there is a Defect in the Local Area Works, Utility Service Works or Property Works, Transport may, without prejudice to any other rights which Transport may have under this deed, the State Works Deed or otherwise at

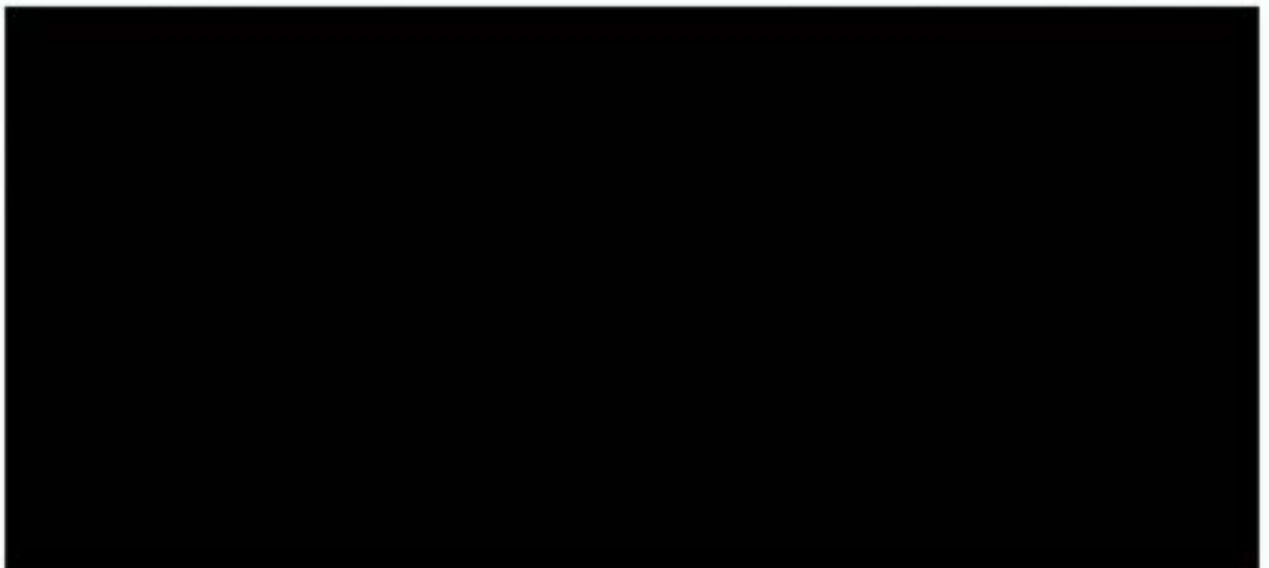
law, give the Companies a direction stating that the direction is provided under this clause 15.7(b), specifying the Defect and requiring the Companies to correct, or to procure the State Works Contractor corrects, the Defect or a part of it and specifying a reasonable time within which this must occur.

- (c) If the Companies disagrees with any direction given by Transport pursuant to clause 15.7(b), it must, within 10 Business Days of receipt of such a notice, give notice of its disagreement to Transport. Transport and the Companies must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 10 Business Days after the date of the Companies' notice, Transport or the Companies may, by notice to the other and the Independent Certifier, refer the matter for determination by the Independent Certifier, who must within 10 Business Days make a determination as to the matter and notify Transport and the Companies in writing of its determination together with its reasons for making its determination.
- (d) If Transport directs the Companies to correct, or procure that the State Works Contractor corrects, a Defect under clause 15.7(b) prior to the expiration of the relevant Defects Correction Period and the Companies do not give a written notice under clause 15.7(c) or, if they do, the Independent Certifier determines that a Defect exists, the Companies must correct the Defect (or the part of it):
  - (i) within the time specified in Transport's direction;
  - (ii) at times agreed with Transport and in accordance with the requirements of any relevant Authority;
  - (iii) so as to minimise the impact on the use of the relevant part of the Local Area Works, Utility Service Works or Property Works; and
  - (iv) in a manner which causes as little inconvenience as possible to users of the M7 Motorway, EDC, M7M-12 Interchange, any Local Area, a Utility Service, the Property Works or any access and the adjacent community.
- (e) The Companies must give notice to Transport and the Independent Certifier that a Defect has been corrected promptly after the correction of the Defect.

## 15.8 Local Area Works

Each discrete part of the Local Area Works has:

- (a) a Defects Correction Period which begins when:







- (iii) Transport and the Independent Certifier have been provided with a copy of this notice,



### 15.9 Utility Service Works

Each discrete part of the Utility Service Works has:

- (a) a Defects Correction Period which begins when:



- (ii) Transport and the Independent Certifier have been provided with a copy of this notice,

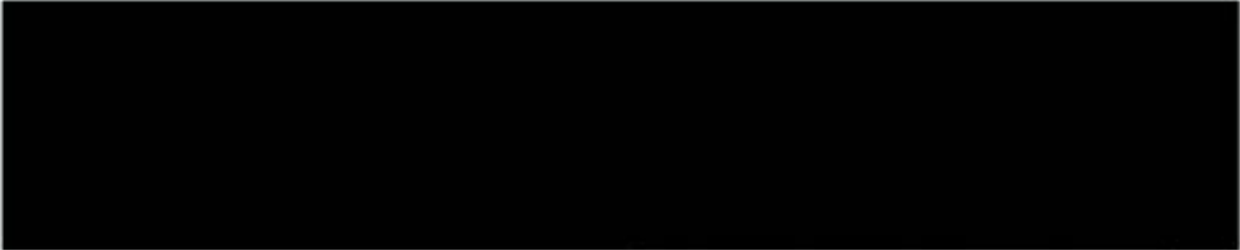




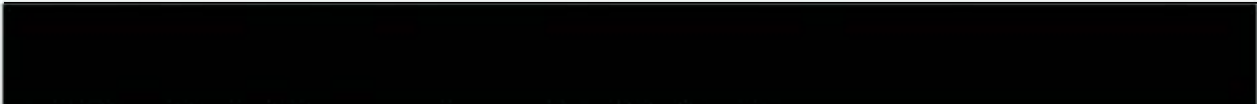
### 15.10 Property Works

Each discrete part of the Property Works has:

- (a) a Defects Correction Period which begins [REDACTED]



- (b) a further Defects Correction Period of [REDACTED]  
[REDACTED]  
[REDACTED]



### 15.11 Failure by the Company to comply with direction

If the Companies fail to comply with a notice given under clause 15.7(b), Transport may (without limiting any other rights it may have including under clause 3.4 (Transport Action) of the M7-M12 Integration Project Deed) apply for a court order for specific performance.

### 15.12 Rights not affected

Neither:

- (a) Transport's rights, whether under this deed, the State Works Deed or otherwise according to law; nor
- (b) the liability of:
  - (i) a Company, whether under this deed or otherwise according to law; or
  - (ii) the State Works Contractor, whether under the State Works Deed or otherwise according to law,

in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period,

will be in any way affected or limited by:

- (c) the rights conferred upon Transport or the Independent Certifier by this clause 15 or any other provision of this deed or the State Works Deed;
- (d) the exercise of, or the failure by Transport or the Independent Certifier to exercise, any such rights; or

- (e) any direction of Transport under this clause 15.

### 15.13 Access for defects in the Returned Works

- (a) Where the Companies are required, or the State Works Contractor is required, to rectify any Defects in the Returned Works after the Date of Returned Works Construction Completion of the EDC Works, the Date of Returned Works Construction Completion of the Returned Works (excluding the EDC Works), the Date of Returned Works Opening Completion of the EDC Works or the Date of Returned Works Opening Completion of the Returned Works (excluding the EDC Works) (as applicable), the Companies are responsible for obtaining access to the parts of the Project Site (including obtaining any road occupancy licence and approval from the relevant landowner) as is reasonably required to rectify the Defects. Transport will:

- (i) provide assistance to the Companies in obtaining access and use of the parts of the Project Site which are not owned or controlled by Transport; and
- (ii) provide the Companies with access and use of the parts of the Project Site which are owned and controlled by Transport,

in each case, where such access is reasonably required to rectify the Defects.

- (b) When completing Returned Works or rectifying Defects in the Returned Works after the Date of Returned Works Construction Completion of the EDC Works, the Date of Returned Works Construction Completion of the Returned Works (excluding the EDC Works), the Date of Returned Works Opening Completion of the EDC Works or the Date of Returned Works Opening Completion of the Returned Works (excluding the EDC Works) (as applicable), the Companies must:

- (i) minimise, and procure that the State Works Contractor minimises, disruption and adverse impacts on users of the relevant Returned Works and surrounding areas;
- (ii) not cause, and procure that the State Works Contractor does not cause, any unnecessary interference or inconvenience to users of the relevant Returned Works and surrounding areas; and
- (iii) comply with the Project Plans and other reasonable management requirements of Transport and any future operator of the EDC or M7-M12 Interchange.

### 15.14 No breach (information)

Despite any provision to the contrary in this deed, the Companies will not be regarded as being in breach of any obligation under this deed, and the State Works Contractor will not be regarded as being in breach of any obligation under the State Works Deed, in respect of or relating to any requirement that the Project Works and any related Design Documentation be fit for its purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the Companies and the State Works Contractor have relied on the following information set out in the Scope of Works and Technical Criteria:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

## 16. Operation and Maintenance Planning

### 16.1 O&M Manuals

- (a) As a condition precedent to Retained Works Completion, WSO Co must update the operation and maintenance manuals prepared by WSO Co in accordance with the requirements of the M7 Motorway Project Deed, and develop and amend the O&M Manuals (in each case) to incorporate the O&M Work associated with the Retained Works and identify the methods, systems and procedures (which must comply with the Scope of Works and Technical Criteria).
- (b) The O&M Manuals must contain the contents required by the Scope of Works and Technical Criteria.
- (c) Transport owes no duty to WSO Co to review the O&M Manuals or any draft submitted by WSO Co for errors, omissions or compliance with this deed.
- (d) No review of, comments upon, notice given in respect of, the O&M Manuals or any draft, or any other act or omission of Transport in respect of the O&M Manuals or any draft, will lessen or otherwise affect:
  - (i) either Company's Liabilities or responsibilities under this deed or otherwise according to law; or
  - (ii) Transport's rights against either Company, whether under this deed or otherwise according to law.
- (e) WSO Co:
  - (i) warrants that the O&M Manuals will be fit for their intended purposes; and
  - (ii) warrants, in addition to the warranties referred to in clause 5.5(e) for the Project Plans incorporated into the O&M Manuals under clause 5.5(e), that compliance with such O&M Manuals will enable it, during the Term, to fulfil its obligations under this deed.
- (f) WSO Co must provide to Transport the final O&M Manuals within 95 days after Retained Works Completion.
- (g) WSO Co:
  - (i) must comply with the O&M Manuals as submitted to Transport in accordance with the Companies' Documentation Schedule; and
  - (ii) agrees that compliance by it with the O&M Manuals will not in any way lessen or affect:
    - A. its liabilities or responsibilities under this deed or otherwise according to law; or
    - B. Transport's rights against it, whether under this deed or otherwise according to law.

### 16.2 Returned Works Operations and Maintenance Plan

- (a) As a condition precedent to Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), each Company must develop a Returned Works Operations and Maintenance Plan,

in accordance with the requirements of this deed (including the Scope of Works and Technical Criteria).

- (b) Each Company must submit to the Independent Certifier and Transport's Representative an initial draft of the Returned Works Operations and Maintenance Plan containing the contents specified in Appendix C.1 to the Scope of Works and Technical Criteria and to a standard and detail no different in substance from the final draft (excluding the incorporation of the Project Plans required by clause 5.5(e)(ii)) but for minor details:
- (i) no less than 120 Business Days prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
  - (ii) if either:
    - A. Transport's Representative reasonably anticipates that the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 120 Business Days prior to Transport's Representative's reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) provided that Transport's Representative gives each Company 25 Business Days' notice of the required date for submission; or
    - B. it is otherwise reasonably apparent that the anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be earlier than the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 120 Business Days prior to the reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be).
- (c) Each Company must submit to the Independent Certifier and Transport's Representative a final draft of the Returned Works Operations and Maintenance Plan (including incorporation of the Project Plans required by clause 5.5(e)(ii)):
- (i) no less than 60 Business Days prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
  - (ii) if either:
    - A. Transport's Representative reasonably anticipates that the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 60 Business Days prior to Transport's Representative's reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) provided that Transport's Representative gives each

Company 25 Business Days' notice of the required date for submission; or

- B. it is otherwise reasonably apparent that the anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be earlier than the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 60 Business Days prior to the reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be).
- (d) Each Company must submit to the Independent Certifier and Transport's Representative the final Returned Works Operations and Maintenance Plan (including incorporation of the Project Plans required by clause 5.5(e)(ii)):
- (i) no less than 20 Business Days prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
  - (ii) if Transport's Representative reasonably anticipates that the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 20 Business Days prior to Transport's Representative's reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) provided that Transport's Representative gives each Company no less than 25 Business Days' notice of the required date for submission.
- (e) Transport's Representative may:
- (i) review the Returned Works Operations and Maintenance Plan or any draft of it submitted under this clause 16.2; and
  - (ii) if it considers, acting reasonably, that the Returned Works Operations and Maintenance Plan or any draft of it submitted under this clause 16.2 does not comply with this deed, within 15 Business Days of the submission, reject the Returned Works Operations and Maintenance Plan or the draft specifying the reasons for rejection.
- (f) If the Returned Works Operations and Maintenance Plan or any draft is rejected, each Company must promptly submit an amended Returned Works Operations and Maintenance Plan to the Independent Certifier and Transport's Representative that addresses the reasons for rejection.
- (g) Each Company acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Returned Works Operations and Maintenance Plan under clause 5.5(e)(ii), the purposes of the Returned Works Operations and Maintenance Plan include for each Company to provide a detailed description of how the Returned Works should be maintained after the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be).
- (h) The Independent Certifier must audit and review (including for any non-compliances with this deed) each revision of the Returned Works Operations and Maintenance

Plan submitted under this clause 16.2 within 10 Business Days of submission of that plan to the Independent Certifier.

### 16.3 Returned Works Asset Handover Information

- (a) As a condition precedent to Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), each Company must develop the Asset Handover Information, in accordance with the requirements of this deed (including the Scope of Works and Technical Criteria).
- (b) Each Company must submit to the Independent Certifier and Transport's Representative an initial draft of the Asset Handover Information containing the contents specified in Appendix C.2 to the Scope of Works and Technical Criteria and to a standard and detail no different in substance from the final draft but for minor details:
  - (i) no less than 120 Business Days prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
  - (ii) if either:
    - A. Transport's Representative reasonably anticipates that the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 120 Business Days prior to Transport's Representative's reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) provided that Transport's Representative gives each Company 25 Business Days' notice of the required date for submission; or
    - B. it is otherwise reasonably apparent that the anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be earlier than the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 120 Business Days prior to the reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be).
- (c) Each Company must submit to the Independent Certifier and Transport's Representative a final draft of the Asset Handover Information:
  - (i) no less than 60 Business Days prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
  - (ii) if either:
    - A. Transport's Representative reasonably anticipates that the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no

less than 60 Business Days prior to Transport's Representative's reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) provided that Transport's Representative gives each Company 25 Business Days' notice of the required date for submission; or

- B. it is otherwise reasonably apparent that the anticipated Date of relevant Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be earlier than the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 60 Business Days prior to the reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be).
- (d) Each Company must submit to the Independent Certifier and Transport's Representative the final Asset Handover Information:
- (i) no less than 20 Business Days prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be); or
- (ii) if Transport's Representative reasonably anticipates that the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) will be prior to the Date for Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be), no less than 20 Business Days prior to Transport's Representative's reasonably anticipated Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) provided that Transport's Representative gives each Company no less than 25 Business Days' notice of the required date for submission.
- (e) Transport's Representative may:
- (i) review the Asset Handover Information or any draft of it submitted under this clause 16.3; and
- (ii) if it considers, acting reasonably, that the Asset Handover Information or any draft of it submitted under this clause 16.3 does not comply with this deed, within 15 Business Days of the submission, reject the Asset Handover Information or the draft specifying the reasons for rejection.
- (f) If the Asset Handover Information or any draft is rejected, each Company must promptly submit amended Asset Handover Information to the Independent Certifier and Transport's Representative that addresses the reasons for rejection.
- (g) Each Company acknowledges and agrees that the purposes of the Asset Handover Information include for each Company to provide detailed asset information about the Returned Works prior to the Date of Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be).
- (h) The Independent Certifier must audit and review (including for any non-compliances with this deed) each revision of the Asset Handover Information submitted under



this clause 16.3 within 10 Business Days of submission of that information to the Independent Certifier.

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## 17. Changes in Law

### 17.1 No claim unless Qualifying Change in Law


- (a) Subject to clauses 10, 12.8 and 12.10 and this clause 17, the Companies will be liable for the consequences of, and will have no Claim against Transport arising out of or in any way in connection with, any changes in Law.
- (b) If a Qualifying Change in Law occurs:
  - (i) the Companies must within 25 Business Days after the date on which the Companies become aware or ought reasonably to have become aware of the Qualifying Change in Law, give a written notice to Transport and Transport's Representative containing details of the Qualifying Change in Law; and
  - (ii) subject to clause 12.10 and this clause 17, each Company must comply with the Qualifying Change in Law at its own cost.


### 17.2 Change in Law prior to Integration Completion

- (a) If, prior to the Date of Integration Completion, a Qualifying Change in Law occurs which:
  - (i) has a direct effect on the Project Activities (which may include a direct effect on the method or means by which the Companies and/or the State Works Contractor carries out the Project Activities) such that a Change is required as a consequence of the occurrence of the Qualifying Change in Law; and
  - (ii) results in an increase in the Companies' and/or the State Works Contractor's Direct Costs of carrying out the Project Activities,

and the Companies wish to make a Claim for Change Costs under this clause 17 on account of the Qualifying Change in Law then, without limiting clause 12.10, the Companies must, within 25 Business Days after the date on which the Companies become aware or ought reasonably to have become aware of the Qualifying Change in Law, give a written notice to Transport's Representative:

- (iii) containing details of the Qualifying Change in Law; and

  
including sufficient information to support the estimate.

- (b) If the Companies issue a notice complying with the requirements of clause 17.2(a) and otherwise comply with the requirements of this clause 17, clauses 10.1 and 10.3 will apply as if Transport had given a Change Order in respect of the Change which is required as a consequence of the occurrence of the Qualifying Change in Law provided that any Change Costs payable to the Companies in respect of the Qualifying Change in Law will be 



- (ii) in accordance with clause 17.2(c).
- (c) Transport will only be liable to pay a portion of the Change Costs determined in accordance with clause 17.2(b) as follows:
  - (i) where the Change Costs [REDACTED]
  - (ii) Not used; and
  - (iii) where the Change Costs [REDACTED]

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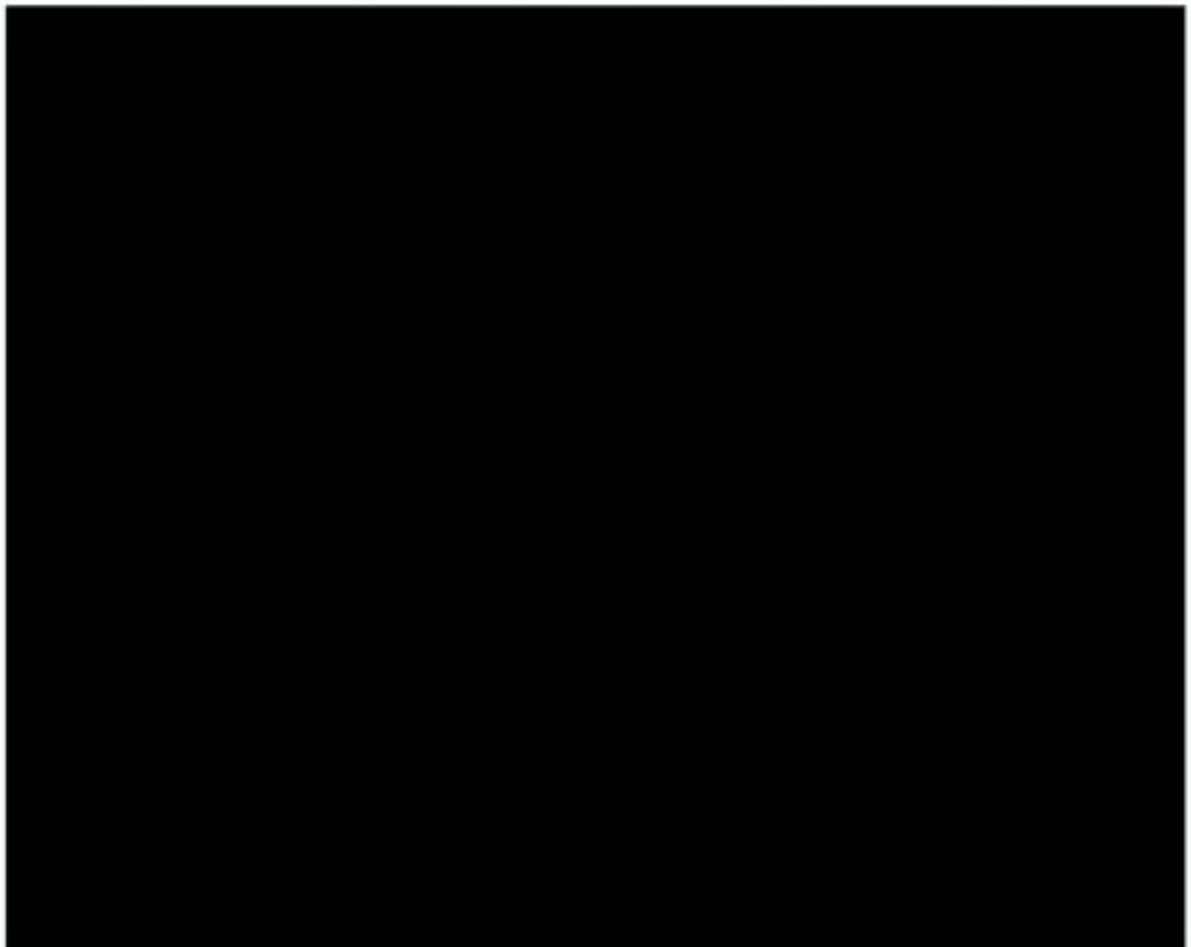
## 18. Loss or damage and insurance

### 18.1 Risk of loss or damage

- (a) Each Company must, and must ensure that the State Works Contractor, in carrying out the Project Activities, take all reasonable precautions to avoid destruction and damage to any property (including any property of Transport).
- (b) From the date of this deed until:
  - (i) the earlier of:
    - A. the Date of Returned Works Construction Completion of the EDC Works; and
    - B. the Date of Returned Works Opening Completion of the EDC Works;each Company bears the risk of Loss or damage to the EDC Works;
  - (ii) the earlier of:
    - A. the Date of Returned Works Construction Completion of the Returned Works (excluding the EDC Works); and
    - B. the Date of Returned Works Opening Completion of the Returned Works (excluding the EDC Works)each Company bears the risk of Loss or damage to the Returned Works (excluding the EDC Works); and
  - (iii) the Date of Integration Completion, each Company bears the risk of Loss or damage to the remainder of the Project Works (other than the Third Party Works and Returned Works) and the Temporary Works.
- (c) In respect of each discrete part of the Third Party Works, each Company bears:
  - (i) if the Third Party Works are Local Area Works or Utility Service Works, the risk of Loss or damage to those Third Party Works from the date of this deed until Transport and the Independent Certifier have been provided with a copy of the notice referred to in clause 15.8(a)(ii) or 15.9(a)(ii); or

- (ii) if the Third Party Works are Property Works, the risk of Loss or damage to those Third Party Works from the date of this deed until Transport's Representative has been provided with a certificate or statement referred to in clause 7.4(a)(ii).
- (d) Subject to clauses 18.1(b) and 18.1(c), each Company must in accordance with clause 18.10, promptly make good any Loss or damage to the Project Works or the Temporary Works (as applicable) caused during the period it bears the risk of Loss or damage.
- (e) Subject to clauses 7.17, 15, 18.1(b) and 18.1(c), the Companies are responsible for and must promptly rectify any Loss or damage to the Returned Works to the extent caused by the Project Activities.

## 18.2 Liability and indemnity



- (b) Clause 18.2(a) does not lessen or otherwise affect either Company's other obligations under this deed or the State Works Contractor's obligations under the State Works Deed.
- (c) Each Company's and the State Works Contractor's maximum aggregate liability to Transport and its Related Parties under clause 18.2(a)(iv) is [REDACTED].

## 18.3 Consequential Loss

- (a) [REDACTED]



(b) Subject to clause 18.3(c), but otherwise notwithstanding any provision to the contrary, each Company and the State Works Contractor will have no liability to Transport and its Related Parties, nor will Transport and its Related Parties be entitled to make any Claim against either Company or the State Works Contractor, for Transport's Consequential Loss.

(c) Clause 18.3(b) does not operate to exclude or limit each Company's or the State Works Contractor's liability to Transport and its Related Parties:

- (i) [Redacted]
- (ii) [Redacted]
- (iii) [Redacted]
- (iv) [Redacted]
- (v) [Redacted]
- (vi) [Redacted]
  - [Redacted]
  - [Redacted]
- (vii) [Redacted]
- (viii) [Redacted]
- (ix) [Redacted]

**18.3B Companies to diligently pursue third parties**

The Companies agree to diligently pursue the recovery of Loss of the type described in clause 18.3(c)(vi) including by commencing proceedings against a third party, unless:

- (a) those proceedings do not have reasonable prospects of success or reasonable prospects of yielding compensation in respect of the relevant Loss; or
- (b) the benefits of commencing and diligently pursuing proceedings do not outweigh the disbenefits (having regard to the nature and complexity of the claim).

#### 18.4 Insured Liability

Nothing in this deed operates to exclude or limit the liability of each Company or the State Works Contractor to Transport or its Related Parties for any Loss to the extent to which such Loss is an Insured Liability.

For the purposes of this deed, "Insured Liability" means:

- (a) where a Company, the State Works Contractor or any of their respective Related Parties or Transport or any of its Related Parties has an entitlement to recover or be indemnified in respect of such Loss under a Project Insurance:
  - (i) the amount or amounts actually recovered by either Company, the State Works Contractor or their respective Related Parties or Transport or its Related Parties (as applicable) from; and
  - (ii) the amount or amounts for which a Company, the State Works Contractor or their respective Related Parties or Transport or its Related Parties is otherwise actually indemnified by,  
  
the insurer or insurers of such Project Insurance; and
- (b) where, but for:
  - (i) the failure of a Company to comply with its obligations under this clause 18.4 to obtain, or procure that the State Works Contractor obtains, a Project Insurance; or
  - (ii) any failure by a Company or the State Works Contractor to:
    - A. diligently pursue a claim under the relevant policy of insurance;
    - B. comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
    - C. comply with its insurance obligations under this deed or State Works Deed,

not caused or contributed to by any act or omission of Transport or its Related Parties which has resulted in a loss of or reduction of the recovery or indemnity under a Project Insurance,

that Company, the State Works Contractor or a Related Party of any of them or Transport or its Related Party would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Project Insurance in respect of Loss, the amount or amounts which that Company, the State Works Contractor or a Related Party of any of them or Transport or its Related Party (as applicable) would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Project Insurance.

## 18.5 Damage to Third Party Property

- (a) Without limiting clause 18.2, where any Loss of or damage to real or personal property (other than the Project Works or the Temporary Works) occurs which arises out of, or in any way in connection with:
- (i) any failure by a Company to comply with its obligations under this deed, or the State Works Contractor to comply with its obligations under the State Works Deed, that Company must, at its cost, promptly repair any such Loss or damage; and
  - (ii) the Project Activities or the Project, the relevant Company must, at its cost, promptly repair any such Loss or damage (where that Company or the State Works Contractor has a legal liability to do), or if the affected person agrees, reasonably compensate the affected person for that Loss or damage (where that Company or the State Works Contractor has a Liability to do so).
- (b) Without limiting clause 3.4(a)(iii) (Transport action) of the M7-M12 Integration Project Deed, if a Company fails to carry out, or ensure that the State Works Contractor carries out, any repair work or to pay reasonable compensation under clause 18.5(a), Transport may, after giving reasonable prior notice to each Company, carry out such work or pay any such reasonable compensation and any Loss suffered or incurred by Transport will be a debt due and payable from that Company to Transport.

## 18.6 Insurances during the Project Activities

- (a) Each Company must effect and maintain, or procure that the State Works Contractor effects and maintains, the Project Insurances identified in Part A of Schedule 28 (or cause such Project Insurances to be effected and maintained) for the periods as specified in, and in accordance with Schedule 28.
- (b) The parties must:
- (i) not do or permit, or omit to do, anything which prejudices any Project Insurance;
  - (ii) rectify anything which might, if not rectified, prejudice any Project Insurance;
  - (iii) if the party is responsible for procuring a Project Insurance, reinstate a Project Insurance if it lapses;
  - (iv) not cancel, vary or allow any Project Insurance for which it is responsible to effect and maintain under Schedule 28 to lapse without the prior consent of the other party (such consent not to be unreasonably withheld or delayed);
  - (v) not used;
  - (vi) as soon as reasonably practicable notify the other party of any fact, circumstance or change in circumstances which could reasonably be expected to prejudice a Project Insurance;
  - (vii) in respect of each Project Insurance, comply with its duty of disclosure to all relevant insurers, including where failure to do so would breach, prejudice or invalidate the relevant policy;

- (viii) as soon as reasonably practicable notify the other party when it receives or gives a notice in connection with the cancellation of any Project Insurance;
  - (ix) do all things reasonably required by the other party or any other person in whose name a Project Insurance is effected to enable the other party or that other person to claim, collect or recover moneys due under any Project Insurance; and
  - (x) comply at all times with the terms of each Project Insurance.
- (c) The Companies are responsible for, must pay (where relevant) and accept all risks in connection with any deductibles or excess in respect of any claim on a Project Insurance policy, except for where such claim relates to an action or omission by Transport or its Related Parties or an Uninsurable risk.

## 18.7 Premiums

- (a) Each Company must punctually pay (or procure the payment of) all premiums in respect of the insurance policies in Part A of Schedule 28 and give Transport copies of receipts for payment of premiums if and when requested by Transport.
- (ab) Transport must punctually pay all premiums in respect of the insurance policies in Part B of Schedule 28 and give the Companies copies of receipts for payment or premiums if and when requested by the Companies.
- (b) If a Company or the State Works Contractor fails to effect or maintain any insurance policy (which it is required to maintain (or cause to be maintained) under Part A of Schedule 28 or to pay a premium or other amount payable to the insurer in respect of such insurance, Transport may effect such insurance or pay such premium or other amount and any costs so incurred by Transport will be a debt due and payable to Transport by the Company.
- (c) If Transport fails to effect or maintain any insurance policy in Part B of Schedule 28 or to pay a premium or other amount payable to the insurer in respect of such insurance, each Company may effect such insurance or pay such premium or other amount and any costs so incurred by the Company will be a debt due and payable to the Company by Transport.

## 18.8 Dealing with claims

In addition to the obligations to notify the insurer under any Project Insurance, each Company must and must procure the State Works Contractor to:

- (a) notify Transport of any occurrence or circumstances of which the Company is aware, or should reasonably have been aware, that could reasonably be expected to give rise to a claim in excess of [REDACTED] (Indexed) under:
  - (i) the Project Insurance referred to in Item 3 of Part A of Schedule 28 to the extent the claim is in respect of a vehicle brought onto the Project Site by the Companies or the Contractor or used in connection with the Project Activities; or
  - (ii) any other Identified Insurance,

**(Notifiable Claim);**
- (b) keep Transport fully informed of subsequent developments concerning the Notifiable Claim;

- (c) not compromise, settle or enforce a Notifiable Claim without the prior written consent of Transport (which must not be unreasonably withheld or delayed) except in relation to claims under motor vehicle insurance or workers compensation insurance; and
- (d) diligently pursue any Notifiable Claim.

## 18.9 Insurance proceeds

- (a) The parties agree that the proceeds of any claim made under any Project Insurance, to the extent such proceeds are received in respect of physical loss or damage to the Project Works or the Temporary Works, must be deposited into an account opened by the Companies with a financial institution notified to Transport in writing by each Company and approved by Transport (which approval will not be unreasonably withheld or delayed), the details of which account must be notified to Transport in writing by each Company upon the establishment of that account, until such time as the proceeds are applied in accordance with clause 18.9(b).
- (b) The parties agree that if a Company receives proceeds of claims made under the Project Insurances, to the extent such proceeds are received in respect of physical loss or damage to the Project Works or the Temporary Works, such proceeds are to be applied for the repair, reinstatement or replacement of the Project Works and/or the Temporary Works (as applicable).
- (c) Transport consents to a Company releasing to the Contractor on a progressive basis the insurance proceeds contemplated in clause 18.9(b) for reinstatement work carried out by the Contractor, to the extent such proceeds are received in respect of physical loss or damage to the Project Works or the Temporary Works, and that Company procures that such proceeds are to be applied for the repair, reinstatement or replacement of the Project Works and/or the Temporary Works (as applicable).

## 18.10 Reinstatement

Subject to clause 18.11, if any physical loss or damage occurs:

- (a) subject to clause 18.10(b), to any part of the Project Works or Temporary Works, the Companies must (without limiting its other obligations under this clause 18):
  - (i) subject to allowing reasonable time for inspection by insurers and to the terms and conditions of any relevant Project Insurance policy, take immediate steps to clear any debris and begin initial repair work;
  - (ii) promptly consult with Transport and carry out such steps as are necessary to ensure:
    - A. the prompt repair or replacement of the loss or damage so that:
      - 1) it complies with the Scope of Works and Technical Criteria; and
      - 2) there is minimal disruption to the Project Works or the Temporary Works or the M7 Motorway; and
    - B. that, to the greatest extent possible, each Company continues to comply with its obligations under the Integration Project Documents;
  - (iii) manage all repair and replacement activities so as to minimise the impact on the Project Works, the Temporary Works or the M7 Motorway;



- (iv) keep Transport fully informed of the progress of the repair and replacement activities; and
  - (v) apply all insurance proceeds in the repair or reinstatement of the Project Works or the Temporary Works; and
- (b) in respect of each discrete part of the Third Party Works, each Company will only be obliged to comply with its obligations under clause 18.10(a) in respect of each part of the Third Party Works until the certificate, statement or notice referred to in clause 7.4(a)(iii), 15.8(a)(iii) or 15.9(a)(ii) (as applicable) has been provided in accordance with that clause.

## 18.11 Uninsurable Risks

- (a) If a Company believes that any risk required to be insured under the Project Insurances is or becomes Uninsurable, then:
- (i) the Company must notify Transport within 5 Business Days after it believes that the risk has become Uninsurable; and
  - (ii) clauses 18.11(b), 18.11(c) and 18.11(e) will apply if the parties agree, or it is determined in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed, that the risk is Uninsurable.
- (b) Each Company is not obliged to effect or maintain a particular Project Insurance under Part A of Schedule 28 to the extent that, and only for so long as the risk against which such Project Insurance has been effected is Uninsurable (and did not become Uninsurable as a result of an act or omission of either Company, the State Works Contractor or a Related Party of either of them).
- (c) If a risk to be covered by Project Insurance under Part A of Schedule 28 is Uninsurable, each Company must approach the insurance market on a regular basis (such regularity being satisfactory to Transport, acting reasonably) to establish whether that risk remains Uninsurable and must advise Transport accordingly.
- (d) If, in Transport's opinion (acting reasonably) a risk which is required to be insured against under a Project Insurance is no longer Uninsurable, Transport may give written notice to the Companies.
- (e) If:
- (i) a Company believes that a risk which is required to be insured against under a Project Insurance under Part A of Schedule 28 is no longer Uninsurable, the Company must notify Transport and promptly effect the relevant Project Insurance; or
  - (ii) Transport gives the Companies a notice pursuant to clause 18.11(d) and the parties agree, or it is determined in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed, that a risk which is required to be insured against under a Project Insurance under Part A of Schedule 28 is no longer Uninsurable, each Company must promptly effect the relevant Project Insurance.

## 18.12 Principal arranged insurance

- (a) Transport must effect and maintain insurance policies as referred to in Items 1A to 5 of Part B of Schedule 28 for the periods referred to in those Items, subject to the terms and conditions (including sums insured, limits of liability and exclusions) set out in the policy documents referred to in Exhibit E to this deed.

- (b) Not used.
- (c) Not used.
- (d) Transport will maintain the insurance policies as referred to in Items 1A to 5 of Part B of Schedule 28 for the periods of cover described in that Schedule.
- (e) Before the earlier of:
  - (i) 30 Business Days after the date of this deed; or
  - (ii) either Company or the State Works Contractor commencing to carry out any part of the Project Works or Temporary Works,

the Companies must contact Transport's insurer and must provide to the relevant person all details reasonably requested for the purpose of the insurances referred to in Part B of Schedule 28.

- (f) [REDACTED]
- (g) [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- (h) [REDACTED]
  - [REDACTED]
  - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 18.13 Companies' acknowledgments

Each Company acknowledges and agrees that:

- (a) it has reviewed and examined the proposed wording of the insurance policies which appear in Exhibit E to this deed and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in clauses 18.1, 18.3 and 18.5 and is aware that those insurance policies will not provide cover to the Companies or the State Works Contractor against all the risks assumed by the Companies under clauses 18.1, 18.3 and 18.5;
- (b) the insurance cover under the policies of insurance referred to in clause 18.12 is subject to exclusions and limitations on liability or indemnity;
- (c) the obtaining of insurance by Transport in accordance with clause 18.12 does not limit or otherwise affect the Companies' obligations under this deed, including those under clauses 18.1, 18.3 and 18.5; and
- (d) the policies of insurance referred to in clause 18.12 have been obtained at Transport's cost.

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## 19. Intellectual property

### 19.1 Licence of Intellectual Property Rights

Each Company (irrevocably for all time and despite any termination of this deed for any reason) grants (or must procure the grant of), and must procure that the State Works Contractor grants (or procures the grant of), to Transport an irrevocable, non-exclusive, royalty free, perpetual and fully assignable licence to use (and to sublicense others to use) all Intellectual Property Rights in or relating to:

- (a) the Design Documentation; and
- (b) the materials, documents, images, photographs, software, processes and methods relevant to the Project Works, the Temporary Works and the Project Activities (including processes and methods of working),

in each case excluding the software source code (together the **Contract Documentation and Materials**) for:

- (c) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the Project Activities or the Project Works and the Temporary Works;
- (d) any purpose associated with further development of the Project Site; and
- (e) except in relation to the Third Party Software, any other purpose connected with Transport projects in New South Wales,

which licence is, subject to clause 19.1(g), effective immediately and will survive termination of this deed, provided that in respect of:

- (f) software that is commercially available off-the-shelf third party software, the obligation of each Company and the State Works Contractor is to license that item of software to Transport to the extent to which each Company and the State Works Contractor are permitted to do so pursuant to the terms of the licence granted to each Company and the State Works Contractor by the third party licensor and on the terms of that licence; and
- (g) customised third party software relating to tolling, customer management, operation or maintenance, the obligation on each Company and the State Works Contractor is to license or to procure the licensing of that item of software (or software that has substantially equivalent functionality) to Transport at the time and to the extent that it is required by Transport to enable Transport to operate, maintain and toll the M7 Motorway in accordance with the M7 Motorway Project Deed, unless each Company or the State Works Contractor can demonstrate to the satisfaction of Transport (acting reasonably) that any such licence cannot reasonably be obtained for a reasonable cost.

## 19.2 Warranty

- (a) Each Company:
  - (i) warrants that Transport's use (to the extent of the licences referred to in clause 19.1), as contemplated by clause 19.2(b), of the Contract Documentation and Materials, or any other work provided by each Company under this deed or the State Works Contractor under the State Works Deed, will not infringe any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction;
  - (ii) warrants that there are no Security Interests, and that it will not allow any Security Interests to be created, over any Intellectual Property Rights referred to in clause 19.1; and
  - (iii) must indemnify Transport to the extent any Claims, or costs, expenses, Losses or damages are suffered or incurred by Transport arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the Copyright Act 1968 (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, the Project Activities or the Contract Documentation and Materials.
- (b) For the purposes of clause 19.2(a), Transport's use (to the extent of the licences referred to in clause 19.1) of the Contract Documentation and Materials includes Transport's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change any part of the Contract Documentation and Materials or any part of the Project Works or the Temporary Works to which the Contract Documentation and Materials or any other work

provided by each Company under this deed or by the State Works Contractor under the State Works Deed relates:

- (i) with or without attribution of authorship;
- (ii) in any medium; and
- (iii) in any context and in any way it sees fit.

### 19.3 Company to procure for Transport

- (a) Each Company agrees to, and agrees to procure the cooperation of the State Works Contractor and any other third parties (to the full extent required to give effect to clauses 19.1 and 19.2) to:
  - (i) execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against Transport, its Related Parties or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by Transport to give full effect to the provisions of this clause 19; and
  - (ii) allow or assist Transport (and its Related Parties, licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation) or to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (b) Each Company irrevocably appoints, and must procure that the State Works Contractor appoints, Transport as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 19.3 if either Company or the State Works Contractor fails to execute the document or do the relevant act or thing within 5 Business Days of a written request by Transport's Representative.
- (c) Each Company warrants, and must procure that the State Works Contractor warrants, that:
  - (i) the use of the Intellectual Property Rights licensed under this clause 19 pursuant to the terms of this deed does not and will not infringe the Intellectual Property Rights of any party; and
  - (ii) each Company and the State Works Contractor are able to grant the licence granted in clause 19.1.
- (d) Without limiting clause 19.3(c), if any action or Claim for infringement or alleged infringement of any Intellectual Property Rights granted under this deed results in the use or enjoyment by Transport, its Related Parties or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Materials, the Project Activities or the Project Works or any part of them, being materially disrupted, impaired or adversely affected, each Company must at its own expense and at Transport's option:
  - (i) procure for the benefit of Transport, its Related Parties and its licensees, assignees and successors and their licensees and any other person authorised by it the right to continue to use and exploit the Intellectual Property Rights licensed pursuant to clause 19.1, in accordance with this deed; or

- (ii) modify or replace the Contract Documentation and Materials, the Project Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are licensed pursuant to clause 19.1, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Project Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are licensed pursuant to clause 19.1 will:
  - A. comply with the requirements of this deed; and
  - B. not limit or otherwise affect Transport's rights, or each Company's ability to comply with its obligations, under this deed or otherwise according to Law.
- (e) Each Company indemnifies, and agrees to keep indemnified, Transport from and against any Claims against Transport, or Loss suffered or incurred by Transport, arising out of or in any way in connection with:
  - (i) a breach by that Company or the State Works Contractor of any warranty set out in this clause 19; or
  - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Project Activities or the Project Works or any part of them.

#### 19.4 Moral rights

Each Company, in respect of the Intellectual Property Rights set out in this clause 19:

- (a) to the extent permitted by Law, will not, and will take reasonable steps to ensure that the State Works Contractor and their respective Related Parties do not, sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the date of this deed) in respect of any Intellectual Property Rights against:
  - (i) Transport;
  - (ii) Transport's Related Parties; or
  - (iii) any third party to whom Transport sub-licences (whether express or implied), or grants any other right to use, possess, modify, vary or amend any Intellectual Property Right;
- (b) will take reasonable steps to procure (without coercion) that all individuals who are, or are to be, or may be, authors of any Intellectual Property Right, sign, date and return to the Company a Moral Rights Consent (in consideration for the payment of \$1 to that individual) prior to those individuals commencing work on the creation of any Intellectual Property Rights, or as soon as practicable thereafter, in which each such individual becomes bound by the obligations to Transport as set out in the Moral Rights Consent, and to pay each such individual the sum of \$1 on behalf of Transport;
- (c) will within 5 Business Days after a request by Transport, provide to Transport any Moral Rights Consent which is obtained pursuant to clause 19.4(b) as requested by Transport; and
- (d) will maintain an up-to-date record of the names and contact details of each person who is an author of any Intellectual Property Right and the Intellectual Property Right of which such person is an author, and provide a copy of any updated records to Transport upon request.

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**20. Not used**

**21. Force Majeure**

**21.1 Force Majeure notice**

- (a) If a Company alleges or wishes to claim that Force Majeure has occurred the Companies must give Transport prompt written notice of the Force Majeure once it becomes aware of the same and the obligations affected together with full particulars of all relevant matters including:
- (i) details of the Force Majeure;
  - (ii) details of the obligations affected;
  - (iii) details of the action that the Companies or the State Works Contractor has taken and/or proposes to take to remedy the situation;
  - (iv) an estimate of the time during which the Companies or the State Works Contractor will be unable to carry out its obligations due to the Force Majeure;
  - (v) an estimate of the costs that the Companies or the State Works Contractor will incur to remedy the situation; and
  - (vi) details of all insurance moneys upon which the Companies or the State Works Contractor will be able to rely in making good damage caused by the Force Majeure.
- (b) After giving notice under clause 21.1(a) the Companies must continue to provide to Transport all relevant information pertaining to the Force Majeure.

**21.2 Meeting**

The Parties must meet within 5 Business Days of service of a notice of a Force Majeure event to determine the estimated length of time for which the Force Majeure will continue.

**21.3 Suspension of obligations**

- (a) If a Force Majeure occurs each Company's obligations under this deed (other than under this clause 21), and the State Works Contractor's obligations under the State Works 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) is issued, no party will be in default of its obligations under this deed, and neither Transport nor the State Works Contractor will be in default of its obligations under the State Works 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).
- (c) Upon a Company or the State Works Contractor (as applicable) becoming able to recommence performing its obligations which were suspended under clause 21.3(a), that Company must recommence, and ensure that the State Works Contractor recommences, the performance of those obligations.

## 21.4 Duty to remedy Force Majeure

Each Company must remedy and Mitigate, and ensure that the State Works Contractor remedies and Mitigates, the effects of a Force Majeure promptly in accordance with clause 18.10.

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## 22. Notification of Claims

### 22.1 Notice of Change

- (a) If a Company believes that any Direction of Transport's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against Transport arising out of, or in any way in connection with, the Direction:
- (i) within 7 Business Days after receiving written notice of the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to Transport's Representative that sets out:
    - A. that it considers the Direction constitutes or involves a Change;
    - B. details of the relevant Direction; and
    - C. details of why it considers the Direction constitutes or involves a Change; and
  - (ii) within 30 Business Days after giving the notice under clause 22.1(a)(i) or such longer period as Transport's Representative may direct, submit a written Claim to Transport's Representative which includes detailed particulars of:
    - A. why that Company believes the Direction constitutes or involves a Change;
    - B. the details specified in paragraph 1.2 of the Change Procedure;
    - C. the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
    - D. the provisions of this deed or other legal basis upon which the Claim is based; and
    - E. the amount claimed and how it has been calculated,falling which neither Company will be entitled to make any Claim against Transport arising out of or in connection with Transport's Representative's Direction.
- (b) Despite the fact that a Company considers that a Direction by Transport's Representative constitutes or involves a Change, each Company must continue to carry out the Company's Activities in accordance with this deed, and ensure that the State Works Contractor continues to carry out the SWC Activities in accordance with the State Works Deed, including any work connected with the Direction of Transport's Representative in respect of which notice has been given under clause 22.1(a).
- (c) If a Company issues a notice under clause 22.1(a), Transport may:



- (i) confirm that the Direction constitutes or involves a Change, or entitles that Company to make a Claim, by the giving of a notice under this clause 22.1(c)(i), in which case that Company must comply with the Direction and paragraph 1.8 of Schedule 10 will apply in respect of such Direction;
  - (ii) deny that the Direction constitutes or involves a Change, or entitles that Company to make a Claim, by the giving of a notice under this clause 22.1(c)(ii), in which case that Company:
    - A. may within 10 Business Days after the receipt of the notice issue a notice of dispute in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed; and
    - B. unless otherwise directed by Transport's Representative, must comply with the Direction irrespective of any Claim or dispute in relation to the Direction or any part of it; or
  - (iii) withdraw the Direction by giving a notice under this clause 22.1(c)(iii).
- (d) If within 20 Business Days after first receipt of the notice under clause 22, Transport's Representative has not taken any action under clause 22.1(c), Transport's Representative will be deemed to have given a notice under clause 22.1(c)(ii).

## 22.2 Notice of other Claims

Except as otherwise provided for in this deed, if a Company or the State Works Contractor wishes to make a Claim against Transport in respect of any Direction of Transport or Transport's Representative or other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed or the State Works Deed by Transport) under, arising out of, or in any way in connection with, this deed, the State Works Deed or the Project Activities, including anything in respect of which:

- (a) a Company is otherwise given an express entitlement under this deed or the State Works Contractor is otherwise given an express entitlement under the State Works Deed; or
- (b) this deed expressly provides that an amount is to be paid to a Company or the State Works Deed expressly provides that an amount is to be paid to the State Works Contractor,

that Company must give Transport's Representative the notice required by clause 22.3(a) and a Claim in accordance with clause 22.3(b).

## 22.3 Prescribed notices

- (a) Subject to clause 22.3(c), any written notice referred to in clause 22.2 must:

- (i) be provided not later than 15 Business Days after the later of:
  - A. the first occurrence of; or
  - B. when either Company first became aware of, or ought reasonably to have first become aware of,

the Direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and

- (ii) expressly specify:

- A. that that Company proposes to make a Claim; and
  - B. the Direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Subject to clause 22.3(c), any written Claim referred to in clause 22.2 must:
- (i) be provided not later than 20 Business Days after giving the written notice under clause 22.3(a); and
  - (ii) include:
    - A. detailed particulars, including the date or dates, of the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
    - B. the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
    - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
    - D. details of the amount claimed and how it has been calculated.
- (c) Where this deed:
- (i) expressly requires a Company or the State Works Contractor to give written notice in relation to a Claim or a written Claim;
  - (ii) expressly states the time within which the notice or Claim must be given by the Company or the State Works Contractor; and
  - (iii) expressly states what the notice or Claim must include,
- for the purposes of clause 22.2, the Company or the State Works Contractor must give the notice or Claim in accordance with those requirements.

## 22.4 Continuing events

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim referred to in clause 22.2 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the Company must continue to give the information required by clause 22.3(b) every 35 Business Days after the written Claim under clause 22.3(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

## 22.5 Bar

If either Company fails to comply with clauses 7.7A, 7.11(a)(i), 7.12(a)(ii), 7.14(a)(iii), 7.17(e)(iii)(B), 7.17(e)(iv), 9.5(a)(i), 17.2(a), 21.1, 22.1, 22.2, 22.3 or 22.4 or paragraphs 1(c) or 1(d) of Schedule 11:

- (a) Transport will not be liable upon any Claim (insofar as is permitted by Law) by either Company; and
- (b) each Company will be barred from making any Claim against Transport,

arising out of or in any way in connection with the relevant Direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

## 22.6 Other provisions unaffected

Nothing in clauses 22.1 to 22.6 will apply to or limit the operation or effect of any provision of this deed (other than those provisions referred to in clause 22.5) which requires each Company to give notice to Transport's Representative in order to preserve an entitlement to make a Claim against Transport.

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## 23. NSW Code and Guidelines

### 23.1 NSW Guidelines

In addition to terms defined in this deed and this Annexure A, terms used in this clause 23 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 23.2 Primary Obligation

- (a) Each Company must, in carrying out the Company's Activities:
  - (i) assume sole responsibility for and manage all aspects of industrial relations for the Company's Activities, and ensure that the State Works Contractor assumes sole responsibility for and manages all aspects of industrial relations for the SWC Activities;
  - (ii) keep Transport's Representative fully and properly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Company's Activities, and ensure that the State Works Contractor keeps Transport's Representative fully and properly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the SWC Activities; and
  - (iii) comply, and ensure that the State Works Contractor complies, with the Construction Management Plan.
- (b) Each Company must at all times comply with, and meet, and ensure that the State Works Contractor complies with and meets, any obligations imposed by, the NSW Code and NSW Guidelines.
- (c) Each Company must notify, and ensure that the State Works Contractor notifies, the Construction Compliance Unit (CCU) and Transport of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (d) Where a Company or the State Works Contractor engages a Subcontractor, that Company must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 23, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (e) Each Company must not, and must ensure that the State Works Contractor does not, appoint or engage another party in relation to the Project Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

### 23.3 Access and information

- (a) Each Company must maintain, and ensure that the State Works Contractor maintains, adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) Each Company must allow, and take reasonable steps to facilitate, and ensure that the State Works Contractor allows and takes reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by that Company or the State Works Contractor, including the Project Site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the Project;
  - (v) have access to personnel; and
  - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by that Company and the State Works Contractor, their respective Subcontractors and related entities.

- (c) Each Company and its related entities must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

### 23.4 Sanctions

- (a) Each Company warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If a Company does not comply with, or fails to meet any obligation imposed by, or does not ensure that the State Works Contractor complies with, the NSW Code or NSW Guidelines, a sanction may be imposed against that Company in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - A. record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by that Company, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

## 23.5 Compliance

- (a) Each Company bears the cost of ensuring compliance by it and the State Works Contractor with the NSW Code and NSW Guidelines, including in respect of any positive steps it or the State Works Contractor is obliged to take to meet its obligations under the NSW Guidelines. Each Company and the State Works Contractor are not entitled to make, and Transport and the State of NSW will not be liable upon, any Claim against Transport or the State of NSW arising out of or in any way in connection with either Company's or the State Works Contractor's compliance with the NSW Code and NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve each Company from responsibility to perform the Company's Activities or any other obligation under this deed, or relieve the State Works Contractor from responsibility to perform the SWC Activities or any other obligation under the State Works Deed, or from liability for any Defect in the Project Works or the Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change to this deed, the State Works Deed, the Project Works or the Temporary Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, each Company must immediately notify Transport (or nominee) of the change, or likely change and specify:
  - (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps each Company proposes to take to Mitigate any adverse impact of the change (including any amendments it proposes to a workplace relations management plan or work health and safety management plan).

Transport will direct each Company as to the course it must adopt within 10 Business Days of receiving notice.

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## 24. Federal Funding and other requirements

### 24.1 Australian Industry Participation (AIP)

Each Company must:

- (a) comply with and implement, and procure that State Works Contractor complies with and implements, the Certified AIP Plan; and
- (b) provide Transport with, and procure that State Works Contractor provides Transport with, any information requested regarding that Company's or the State Works Contractor's compliance with and implementation of the Certified AIP Plan.

Nothing in this clause changes the Company Group's obligations pursuant to clause 5.15.

### 24.2 Not used

### 24.3 Indigenous Participation Plan

Each Company must:

- (a) comply with and implement, and procure that State Works Contractor complies with and implements, the Indigenous Participation Plan; and
- (b) provide Transport with, and procure that State Works Contractor provides Transport with, any information requested regarding that Company's or the State Works Contractor's compliance with and implementation of the Indigenous Participation Plan.

Nothing in this clause changes the Company Group's obligations pursuant to clause 5.15.

#### **24.4 WHS Accreditation Scheme**

Each Company:

- (a) warrants that it and the State Works Contractor are accredited under the WHS Accreditation Scheme; and
- (b) must comply with, and ensure that the State Works Contractor complies with, all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while Building Work is carried out.

#### **24.5 Transport business ethics**

Each Company must comply, and must procure that the State Works Contractor complies with:

- (a) the 'Transport Statement of Business Ethics' available at <https://roads-waterways.transport.nsw.gov.au/documents/about/access-to-information/business-ethics-statement.pdf>; and
- (b) Transport's Customer Charter available from Transport's website.

#### **24.6 National Construction Code**

Where any part of the Project Activities meets one or more of the classifications of buildings described in the National Construction Code, each Company must comply, and must procure that the State Works Contractor complies, with the National Construction Code performance requirements in relation to materials whilst carrying out the Project Activities to which the National Construction Code applies.

#### **24.7 Heavy Vehicle National Law**

- (a) Each Company must, in carrying out the Project Activities and without limiting any other provisions of this deed, including Schedule 31:
  - (i) comply with, and ensure that the State Works Contractor and each Subcontractor complies with, the provisions of the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions) and the Road Transport Legislation;
  - (ii) ensure so far as is reasonably practicable, the safety of each Company's, the State Works Contractor's and any Subcontractors' transport activities relating to the use of any heavy vehicles in the course of the Project Activities;
  - (iii) ensure that, and ensure that the State Works Contractor ensures that, every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation and including the provisions of any Chain of Responsibility Management

Plan which has been submitted to Transport's Representative under this clause; and

- (iv) invite and permit Transport's Representative or its nominee to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.
- (b) Each Company acknowledges that for the purposes of the Chain of Responsibility Provisions of the Heavy Vehicle National Law, its Subcontractors may hold a number of roles including as consignor, loader, unloader, loading manager, prime contractor, operator, scheduler and packer.
- (c) Each Company must ensure that its personnel, the State Works Contractor and its personnel and their Subcontractors and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
  - (i) induction training prior to the commencement of the Project Activities; and
  - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (d) Where a Company becomes aware of any suspected, alleged or actual breach by a Company, the State Works Contractor or any Subcontractor or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in respect of any heavy vehicle used in performing the Project Activities, that Company must:
  - (i) promptly give Transport's Representative a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
  - (ii) otherwise comply with Law and the relevant Project Plans (including the Project WHS Management Plan, the Chain of Responsibility Management Plan and the Construction Management Plan).
- (e) Transport's Representative may, if it reasonably believes that a Company is not in compliance with, or a Company has not procured the State Works Contractor's or a Subcontractor's compliance with, its obligations under this clause or Schedule 31, by written notice direct that Company to show cause why that Company or the State Works Contractor should not be directed to suspend any or all of the Project Activities under this deed (including any activities carried out by any non-compliant Subcontractor) until such time as Transport can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, Transport may also, in its sole and absolute discretion:
  - (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are no longer engaged in the Project Activities; and
  - (ii) report any suspected or alleged breach to any State or Territory road safety authority or authorised officer under the Heavy Vehicle National Law.
- (f) Transport will have no liability to either Company in respect of an order by a court or direction by Transport's Representative that either Company cease to perform its obligations under this deed as a result of a suspected, alleged or actual breach of this clause, Schedule 31 or the Heavy Vehicle National Law.

- (g) Each Company is responsible for preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Project Site, Extra Land or any other areas affected by the Project Activities, including personal injury or death or loss or damage in connection with that Company's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Project Site, Extra Land or any other areas affected by the Project Activities of items that require transport activities or the movement on any road of any heavy vehicle whether loaded or not.
- (h) Each Company must:
  - (i) keep, and must ensure that the State Works Contractor and any Subcontractors keep, records of any steps taken in compliance with this clause, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan for at least 3 years after taking any such steps; and
  - (ii) have its compliance, and the State Works Contractor's compliance, independently audited, and provide Transport with an audit report in relation to each Company's and the State Works Contractor's compliance with this clause, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.
- (i) In this clause 24.7, "heavy vehicle", "transport activities", "consignor", "loader", "unloader", "loading manager", "prime contractor", "operator", "scheduler" and "packer" have the same meanings assigned to those terms in the Heavy Vehicle National Law.

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## 25. PPSA

- (a) For the purposes of this clause 25:
  - (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 Companies each acknowledge and agree 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 Integration Project Document or any transaction contemplated by this deed or any other Integration Project Document, Transport may, at the relevant Company'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; and
    - (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 25(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.
    - (iv) **(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, each of the Companies 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;
    - (v) **(Confidentiality)**:
      - A. If a Company is a "debtor" (as defined in the PPSA), that Company 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
      - B. clause 25(c)(i) does not apply to any disclosure of information or documents which is otherwise required or permitted under any Project Document;
- (c) Each of the Companies 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) **(Companies to notify Transport)**: other than in relation to Security Interests arising in the ordinary course of the Company's Activities (but only where the interest does not secure payment or performance of an obligation), it must immediately notify Transport if that Company 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

- (iii) **(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.

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## 26. Payment of Direct Costs

### 26.1 Transport's payment obligation

- (a) Subject to the provisions of this deed, where this deed provides that the Companies are entitled to be paid Direct Costs, such Direct Costs shall be claimed, assessed and paid in accordance with this clause 26.
- (b) This clause 26 does not limit Transport's obligations to pay the Companies all other amounts to which the Companies are entitled under this deed, including without limitation amounts payable under clauses 10 and 12.10, provided that where the Companies or the State Works Contractor are entitled to recover Direct Costs, Change Costs or Company's Delay Costs in respect of the same event there will not be any double counting of any costs or other amounts payable.

### 26.2 Direct Costs Claims

- (a) Subject to the Companies complying with this clause 26.2, the Companies may make a Direct Costs Claim on each Direct Costs Claim Date for a payment in respect of any Direct Costs that the Companies are entitled to under this deed.
- (b) If the Companies submit a Direct Costs Claim before the Direct Costs Claim Date in respect of that Direct Costs Claim, such early lodgement will not require the Independent Certifier to issue a Contractor's Direct Costs Statement or Transport to issue a Payment Statement (DC) in respect of that Direct Costs Claim any earlier than would have been the case had the Companies submitted the Direct Costs Claim in accordance with this deed.
- (c) Until the full amount of the State Works Payment (as defined in the State Works Deed) has been paid in accordance with the State Works Deed, the Companies must ensure that:
  - (i) any Direct Costs Claim submitted to Transport under this deed in any given month; and
  - (ii) the Payment Claim (as defined in the State Works Deed) submitted by the State Works Contractor under the State Works Deed for that month,are submitted to Transport together as a package.
- (d) Transport may determine, in its discretion, that a Direct Costs Claim is not valid because it is lodged after the applicable Direct Costs Claim Date or in breach of clause 26.2(c).
- (e) If the Companies are entitled to make a Direct Costs Claim under this deed, they must submit a Direct Costs Claim to Transport and the Independent Certifier containing the following:
  - (i) details of any Direct Costs payable in accordance with this deed by Transport to the Companies as of the date of the Direct Costs Claim;


- (ii) copies of all Payment Statements (CW) and Payment Statements (SW) (as defined in the D&C Deed) issued by the Sub-IC under the D&C Deed in respect of the relevant Direct Costs Claim; and
- (iii) sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Companies:
  - A. to enable the Independent Certifier to determine the Contractor's Direct Costs then payable by Transport to the Companies under this deed;
  - B. to enable the Transport to determine the other Direct Costs then payable by Transport to the Companies under this deed; and
  - C. including any such documentation or information as the Transport may by written notice from time to time reasonably require the Companies to set out or attach, whether in relation to a specific Direct Costs Claim or all Direct Costs Claims generally.

### 26.3 Payment Statements for Direct Costs

- (a) Within 8 Business Days after receiving a valid Direct Costs Claim submitted in accordance with clause 26.2, the Independent Certifier will give Transport and the Companies a Contractor's Direct Costs Statement certifying:
  - (i) the Direct Costs Claim to which it relates; and
  - (ii) to the extent the Direct Costs Claim includes Contractor's Direct Costs, any Contractor's Direct Costs payable to the Companies in accordance with this deed.
- (b) Within 10 Business Days after receiving a valid Direct Costs Claim submitted in accordance with clause 26.2, Transport's Representative (on behalf of Transport) will give the Companies a Payment Statement (DC) certifying:
  - (i) the Direct Costs Claim to which it relates;
  - (ii) 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 26.5 or otherwise at Law) against any monies otherwise due to the Companies; and
  - (iii) subject to clause 26.3(c), any Direct Costs payable to the Companies in accordance with this deed.

(c)



- 
- (d) In issuing a Payment Statement (DC), Transport's Representative may deduct from the amount which would otherwise be payable to the Companies, any amount which Transport is entitled to retain, deduct, withhold or set-off under this deed.
  - (e) Any failure by Transport's Representative to set out in a Payment Statement (DC) 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.

#### **26.4 Payment of Direct Costs**

Transport must pay the Companies the amount stated as payable by Transport under this deed in the Payment Statement (DC), the amount stated in the Direct Costs Claim, within 15 Business Days after the provision by the Companies of the relevant Direct Costs Claim.

#### **26.5 Set-off**

Transport may set-off or deduct from any monies due to the Companies any debt or other monies due from either Company to Transport, including any Liquidated Damages (EDC) whether under the Transport Project Documents or otherwise at Law relating to the Project.

#### **26.6 Companies' entitlements**

This clause 26 is an exhaustive code of each Company's rights in any way in connection with Direct Costs. Each Company waives all rights at Law to make any Claim against Transport in any way in connection with the payment of Direct Costs otherwise than in accordance with the terms of this clause 26.

## Schedule 1 – Approvals

(Clause 2.2 and 2.3)

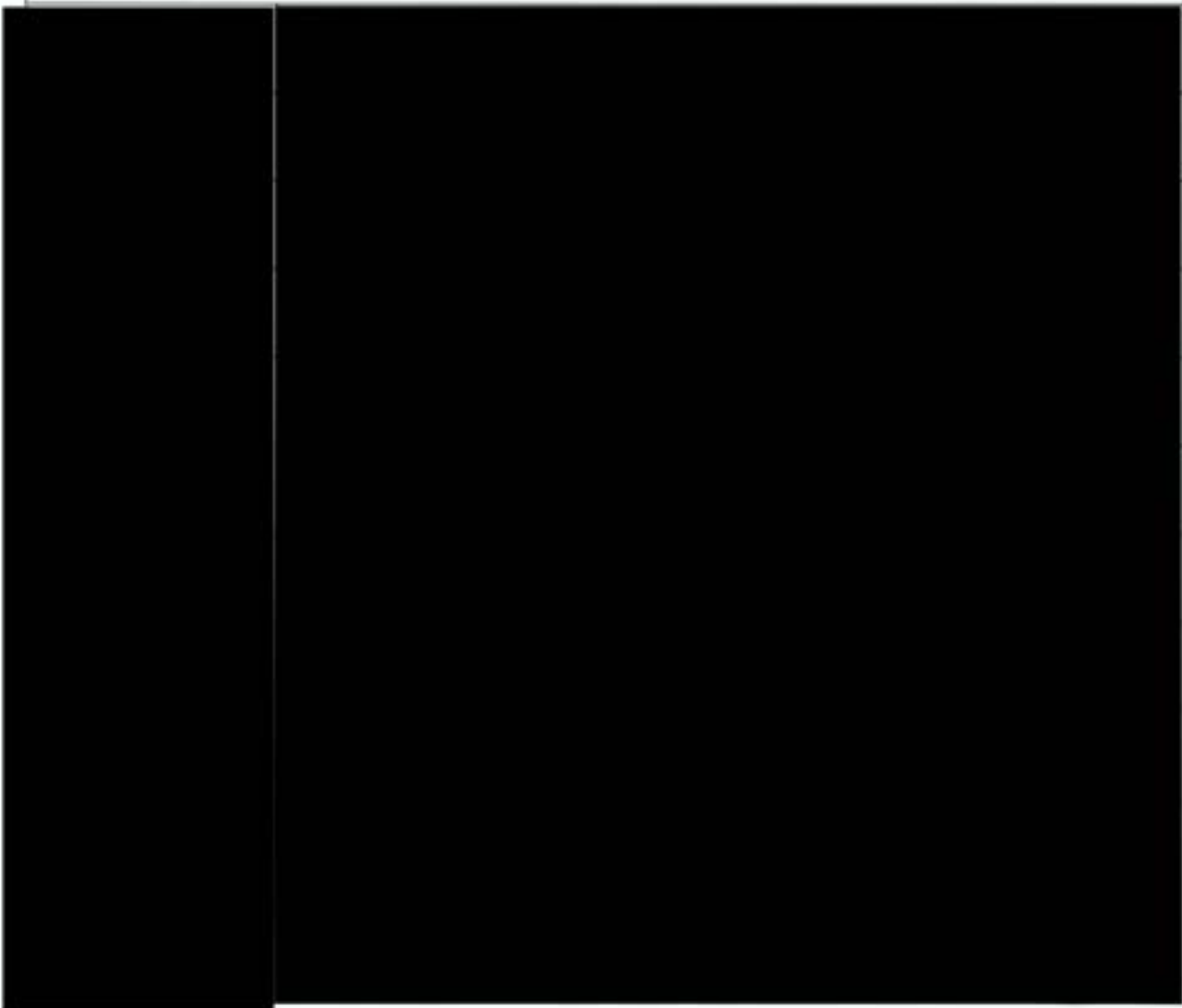
### Part A: Approvals to be obtained by Transport

The Planning Approval

### Part B: Conditions of Planning Approval to be undertaken by Transport

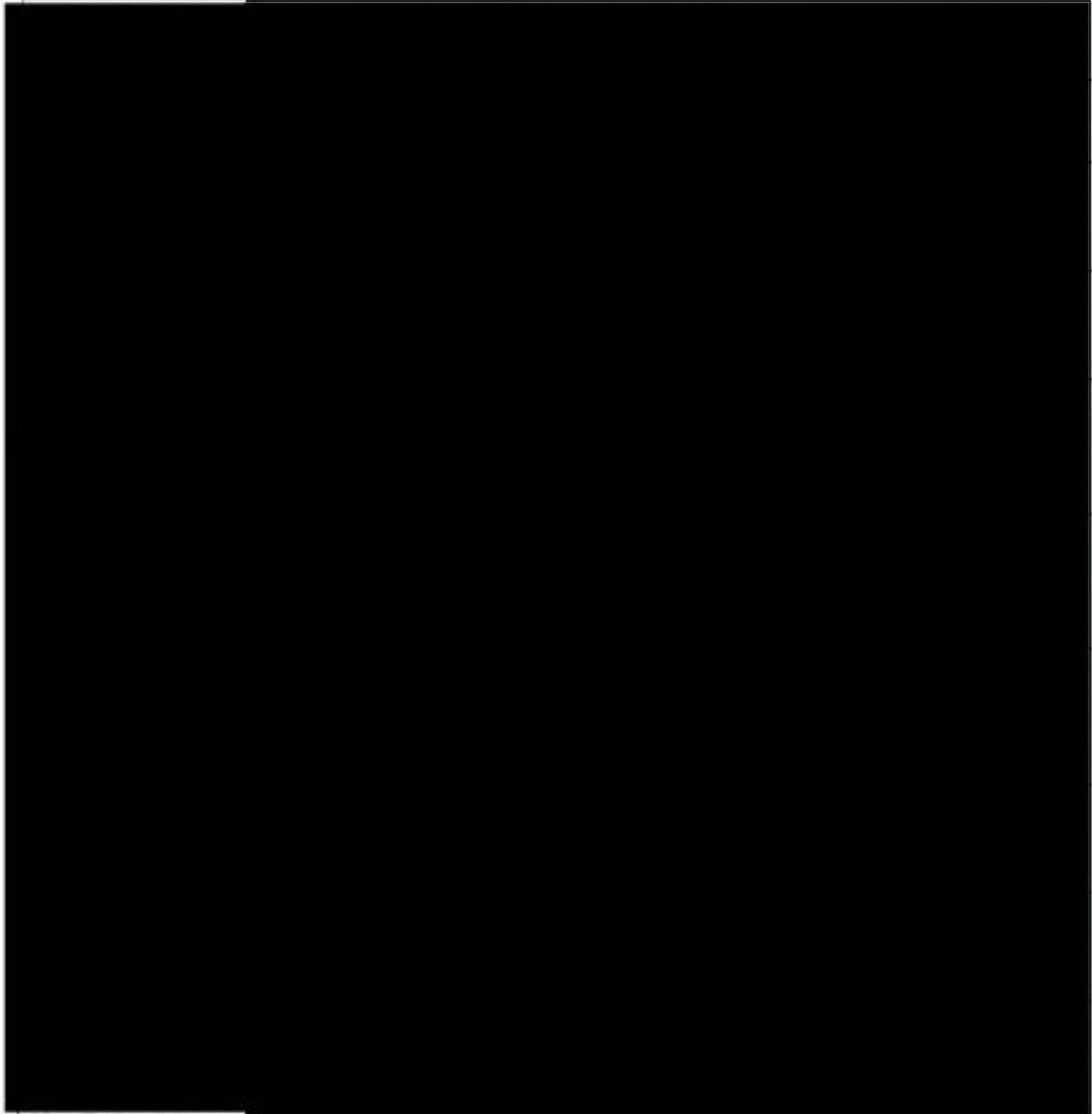
Each Company must fulfil, and ensure that the State Works Contractor fulfils, all the conditions and requirements of the Planning Approval except where the following table allocates responsibilities to Transport. Each Company must also fulfil, and ensure that the State Works Contractor fulfils, the requirements of the following table to the extent that responsibilities are allocated to that Company. Transport and each Company must fulfil those responsibilities which are allocated to it in the following table.

Planning Approval condition and condition number	Extent of Transport's responsibility for the Planning Approval condition specified
M7 Planning Approval	



Planning Approval  
condition and  
condition number

Extent of Transport's responsibility for the Planning Approval condition  
specified

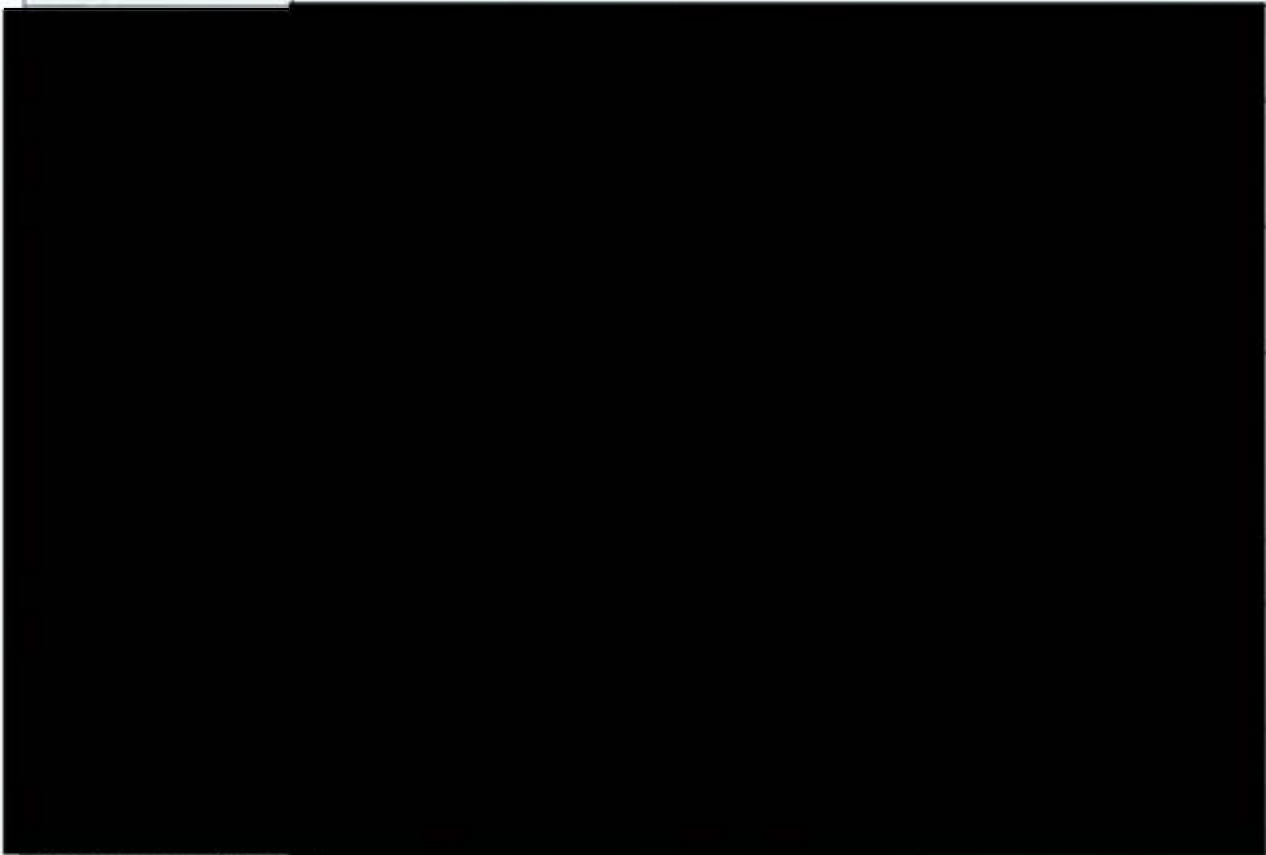


M12 Federal Approval - EPBC 2018/8266



Planning Approval  
condition and  
condition number

Extent of Transport's responsibility for the Planning Approval condition  
specified



M12 Planning Approval



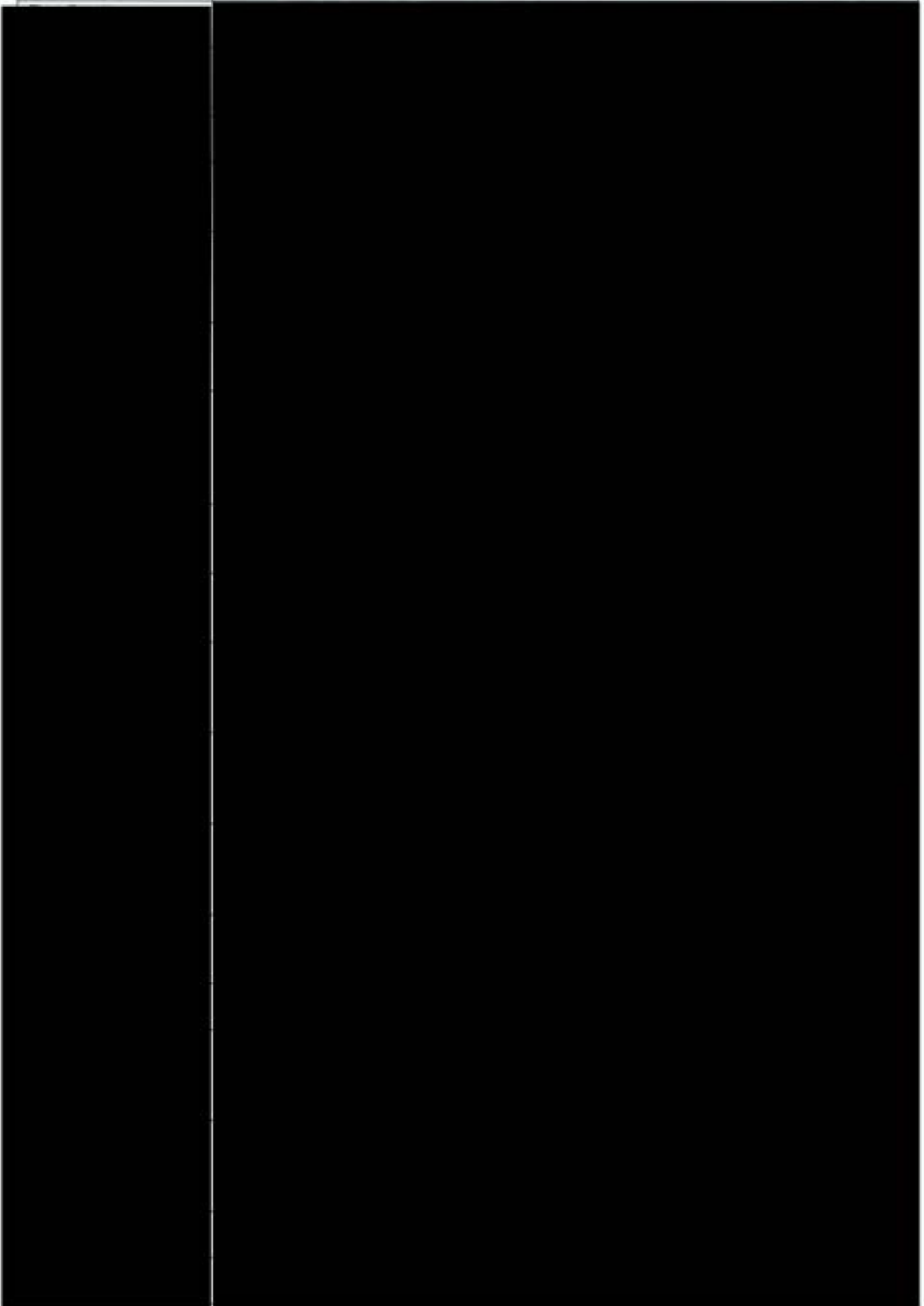
Planning Approval condition and condition number	Extent of Transport's responsibility for the Planning Approval condition specified



Planning Approval condition and condition number	Extent of Transport's responsibility for the Planning Approval condition specified

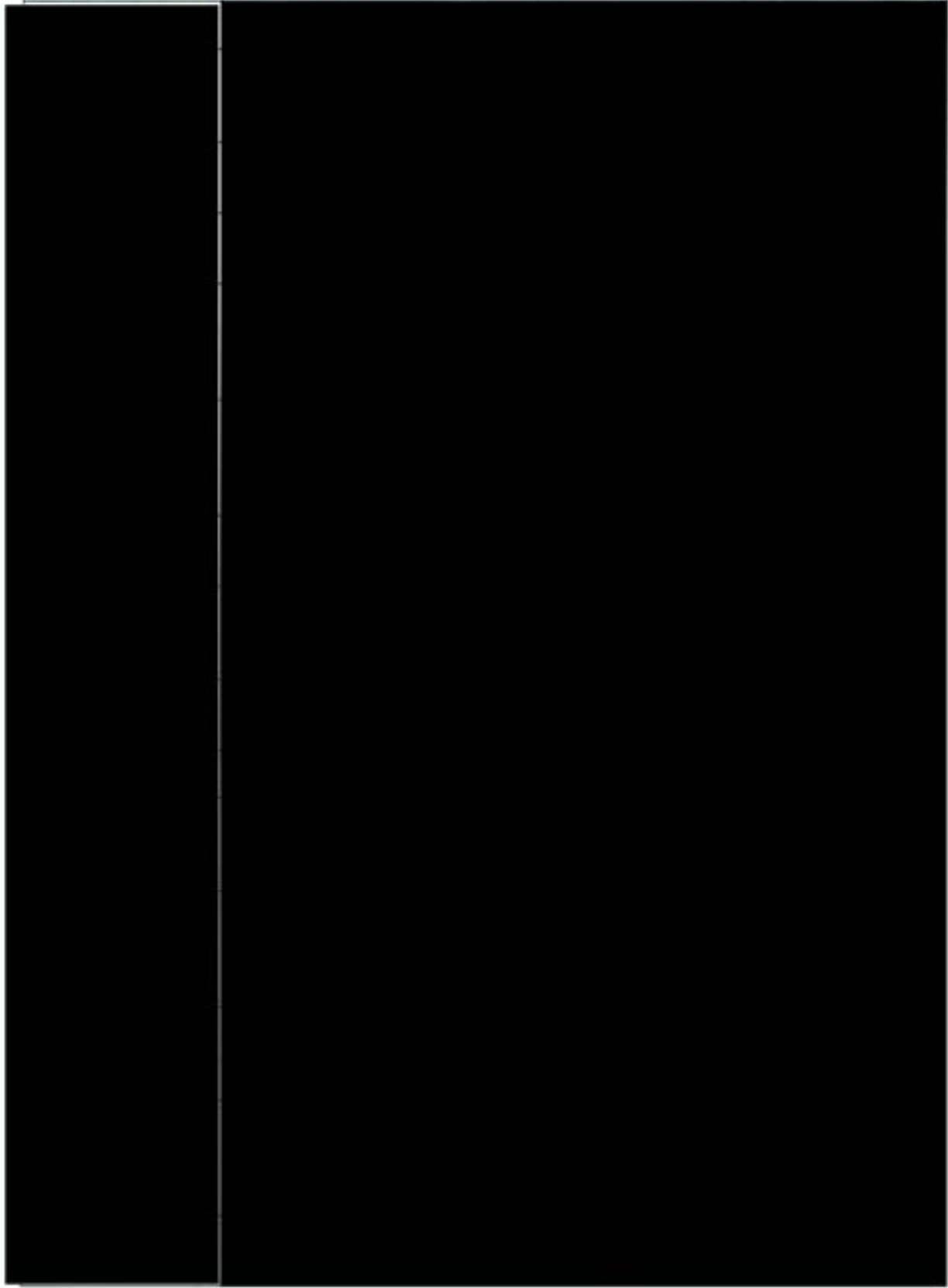
Planning Approval  
condition and  
condition number

Extent of Transport's responsibility for the Planning Approval condition  
specified



Planning Approval condition and condition number

Extent of Transport's responsibility for the Planning Approval condition specified



Planning Approval condition and condition number	Extent of Transport's responsibility for the Planning Approval condition specified
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## Schedule 2 - Senior Project Group

(Clause 4.3)

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### 1. Constitution

- (a) The Senior Project Group will consist of:
- (i) prior to the Date of Integration Completion:
    - A. a person appointed under:
      - 1) clause 4.1 as the representative of Transport; and
      - 2) clause 4.2 as the representative of the Companies.
    - B. 2 persons from Transport and 2 persons (in total) from the Companies holding positions more senior to the persons referred to in paragraph 1(a)(i)A; and
    - C. such other members as the Parties may from time to time agree; and
  - (ii) after the Date of Integration Completion:
    - A. a person appointed under:
      - 1) clause 4.1 as the representative of Transport; and
      - 2) clause 4.2 as the representative of the Companies; and
    - B. such other members as the parties may from time to time agree.
- (b) The persons referred to in paragraph 1(a) may appoint delegates to attend Senior Project Group meetings in their absence and to otherwise discharge their responsibilities under clause 4.3 and this Schedule 2.

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### 2. Objectives

The objectives of the Senior Project Group will be to monitor and review the progress of the Project, including to:

- (a) assist in the resolution of any special matters referred to the Senior Project Group by a party, including issues arising in respect of the Third Party Agreements;
- (b) monitor the progress of the Project Activities; and
- (c) review all progress reports provided in accordance with the Companies' Documentation Schedule.

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### 3. Meetings

- (a) The Senior Project Group will meet:
- (i) monthly prior to the Date of Integration Completion; and

- (ii) at six monthly intervals between the Date of Integration Completion and the expiry of the last Defect Correction Period.
- (b) Transport will convene and chair meetings of the Senior Project Group and will take the minutes of all meetings and distribute the minutes to members of the Senior Project Group.
- (c) Transport:
  - (i) has the right to have representatives of any Authority attend any meeting of the Senior Project Group as observers; and
  - (ii) may request a Company to procure the attendance of representatives of the State Works Contractor, Subcontractors or any subcontractor, supplier or consultant of them at any meeting of the Senior Project Group and that Company must comply with any such request.
- (d) Each Company has the right to have a representative of the State Works Contractor and the Subcontractors attend any meeting of the Senior Project Group as an observer.

## Schedule 3 - Project Plans

(Clauses 1.1 and 5.5)

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### 1. Project Plans

- (a) Each Project Plan must:
  - (i) where an initial plan exists for the relevant Project Plan and is contained in an Appendix to the Scope of Works and Technical Criteria, be based upon that initial plan;
  - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this Schedule 3 and Appendix C.1 of the Scope of Works and Technical Criteria; and
  - (iii) contain any relevant contents required under this deed, including as specified in Appendix C.1 of the Scope of Works and Technical Criteria.
- (b) Each Project Plan must be initially submitted to the Independent Certifier and Transport's Representative within any relevant time period specified in this deed (including as specified in Appendix C.1 of the Scope of Works and Technical Criteria).

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### 2. Review of Project Plans

- (a) In accordance with Appendix C.1 of the Scope of Works and Technical Criteria:
  - (i) Transport's Representative may review any Project Plan submitted under this Schedule 3; and
  - (ii) the Independent Certifier must review Nominated Project Plans (as defined in Appendix C.1 of the Scope of Works and Technical Criteria) submitted under this Schedule 3,and, if the Project Plan submitted does not comply with the M7-M12 Integration Project Deed:
  - (iii) the Independent Certifier must; and
  - (iv) Transport's Representative may,notify the Companies of that non-compliance within 18 Business Days of the initial submission of the Project Plan.
- (b) If the Companies receives a notice under paragraph 2(a) of this Schedule 3, the Companies must, within 20 Business Days, submit an amended Project Plan, or relevant part or component of it, to the Independent Certifier and Transport's Representative.
- (c) Transport's Representative owes no duty to either Company to review any Project Plan submitted by a Company for errors, omissions or compliance with the M7-M12 Integration Project Deed.

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### 3. Purpose of Project Plans

Each Company acknowledges and agrees that:

- (a) an intended purpose of each Project Plan is for that Company to provide a detailed description of how the Companies intend to carry out the Company's Activities in accordance with the requirements of the M7-M12 Integration Project Deed, and ensure that the State Works Contractor carries out the SWC Activities in accordance with the requirements of the State Works Deed, with respect to the subject matter of each Project Plan; and
- (b) the Project Plans will require ongoing development, amendment and updating throughout the duration of the Project Activities to take into account:
  - (i) Changes;
  - (ii) changes in Law;
  - (iii) the commencement of new phases or stages of design and construction as shown in the Overall D&C Program and the Subsidiary D&C Programs;
  - (iv) those events or circumstances expressly identified for each Project Plan including as specified in Appendix C.1 of the Scope of Works and Technical Criteria;
  - (v) any other events or circumstances which occur or come into existence and which have, or may reasonably be expected to have, a material effect on the manner in which the Companies carry out the Company's Activities or the State Works Contractor carries out the SWC Activities; and
  - (vi) the impact of [REDACTED] and all [REDACTED].

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#### 4. Warranties and undertakings

Each Company:

- (a) warrants that each Project Plan will be fit for its intended purpose and that compliance by it with the Project Plans will enable it to fulfil its obligations under the M7-M12 Integration Project Deed and the State Works Contractor to fulfil its obligations under the State Works Deed;
- (b) must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of Transport's Representative (which must not be unreasonably withheld); and
- (c) must continue to develop and promptly amend or update the Project Plans:
  - (i) to take into account:
    - A. the circumstances and events referred to in paragraph 3(b) as those circumstances and events occur or come into existence; and
    - B. any breach or potential breach of the warranties referred to in paragraph 4(a); and
  - (ii) as otherwise specified in the Scope of Works and Technical Criteria, including Appendix C.1 of the Scope of Works and Technical Criteria,

and promptly submit each further Project Plan to the Independent Certifier and Transport's Representative as it is further developed, amended or updated.



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## 5. Transport's Representative's direction

If Transport's Representative (acting reasonably) believes that:

- (a) any Project Plan does not comply with the requirements of the M7-M12 Integration Project Deed; or
- (b) a Company has not further developed, updated or amended any Project Plan in accordance with the requirements of paragraph 3(b),

Transport's Representative may by written notice direct the Companies to further develop, update or amend the Project Plan so that the Project Plan will comply with the requirements of the M7-M12 Integration Project Deed, specifying:

- (c) the reasons why such development, updating or amending is required; and
- (d) the time within which such development, updating or amending must occur,

and the Companies must:

- (e) further develop, update or amend the Project Plan as directed by Transport's Representative and so that it complies with the requirements of the M7-M12 Integration Project Deed; and
- (f) submit the further developed, updated or amended Project Plan to the Independent Certifier and Transport's Representative within the time specified in paragraph 5(d).

## Schedule 4 - Environmental Requirements

(Clause 5.12)

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### 1. Environment Protection Licence

Each Company must:

- (a) obtain an Environment Protection Licence in respect of the Project Activities from the date on which each Company or the State Works Contractor is given access to the Project Site (or any part thereof) pursuant to clause 7.1; and
- (b) hold an Environment Protection Licence in respect of the Project Activities until the Date of Integration Completion.

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### 2. Crown Building Work

- (a) Each Company must, in relation to any part of the Project Works or the Temporary Works that is Crown Building Work (as defined in section 6.1 of the EP&A Act), certify (on behalf of Transport) as required by section 6.28 of the EP&A Act.
- (b) Any certification under paragraph 2(a) of this Schedule 4 will not lessen or otherwise affect:
  - (i) the other Liabilities or responsibilities of:
    - A. each Company under this deed or otherwise according to Law; or
    - B. the State Works Contractor under the State Works Deed or otherwise according to Law; or
  - (ii) Transport's rights against:
    - A. each Company, whether under this deed or otherwise according to Law; or
    - B. the State Works Contractor, whether under the State Works Deed or otherwise according to Law.

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### 3. Environmental requirements

- (a) Each Company must not use the Project Site or any Extra Land, or allow the State Works Contractor or either of their respective Related Parties to use the Project Site or any Extra Land, so that:
  - (i) any Hazardous Substance is abandoned or dumped on the Project Site or any Extra Land;
  - (ii) any Hazardous Substance is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
  - (iii) any other substance is released from, deposited to, or emanates from, the Project Site or any Extra Land such that a state of Contamination occurs other than as permitted by this deed, the State Works Deed, Law or any Approval.

- (b) Each Company must at all times carry out, and ensure that the State Works Contractor and their respective Related Parties carry out, the Project Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.
- (c) Each Company must, without limiting clause 2.1:
- (i) comply with, and ensure that the State Works Contractor and their respective Related Parties in performing the Project Activities comply with:
    - A. all Laws relating to the Environment;
    - B. all Environmental Notices; and
    - C. the Project Plans; and
  - (ii) obtain and comply with all requirements of, and ensure that the State Works Contractor and their respective Related Parties in performing the Project Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Project Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
- (d) Unless otherwise specified in Schedule 1 and without limiting either Company's other obligations under this deed or the State Works Contractor's other obligations under the State Works Deed, and insofar as they apply to the Project Works, the Temporary Works or the Project Activities, each Company must comply with, carry out and fulfil, and ensure that the State Works Contractor complies with, carries out and fulfils, the conditions and requirements of all Environmental Documents, including those conditions and requirements which Transport is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, the Temporary Works and the Project Activities.
- (e) Each Company must immediately notify Transport in writing as soon as either Company or the State Works Contractor:
- (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law, Approval or Environmental Document regarding the Environment in the performance of the Project Activities;
  - (ii) becomes aware of any information, fact or circumstance where, if Transport were to be aware of such information, fact or circumstance, Transport would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of either Company or the State Works Contractor in relation to the information, fact or circumstance); or
  - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case each Company must provide to Transport a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.
- (f) Each Company must indemnify Transport from and against any Claims against Transport, or Loss suffered or incurred by Transport, arising out of or in any way in connection with a failure by that Company to comply, or ensure that the State Works Contractor complies, with any obligation under this paragraph 3.

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#### 4. Provision of Emissions and Energy Data to Transport

- (a) Each Company must provide that Company's Emissions and Energy Data (if any) to Transport's Representative:
  - (i) at such times as may be agreed by Transport and that Company, or, if no such agreement is reached, within 10 Business Days of receiving written notice from Transport indicating that it requires that Company's Emissions and Energy Data (if any) to be provided; and
  - (ii) on each occasion that that Company is required to provide that Company's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) Each Company acknowledges and agrees that Transport may use each Company's Emissions and Energy Data (if any) for any purpose as it sees fit.

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#### 5. Reporting Emissions and Energy Data

- (a) This paragraph 5 applies if, despite the operation of clause 5.13, Transport incurs a Liability under or in connection with the NGER Legislation as a result of or in connection with the Project Activities, the Project Works or the Temporary Works.
- (b) If Transport notifies a Company in writing that that Company is required to provide that Company's Emissions and Energy Data (if any) to Transport, then that Company must:
  - (i) provide that Company's Emissions and Energy Data (if any) to Transport's Representative in the same manner, form and level of detail, based on the same methods and at the same times:
    - A. as if that Company or the State Works Contractor was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data (if any) to an Authority and Transport was that Authority;
    - B. in accordance with the requirements or approvals of any Authority and any reasonable directions by Transport's Representative; and
    - C. without limiting paragraphs 5(b)(i)A and B, as may be required to enable Transport:
      - 1) to discharge, as and when they fall due, any obligations that it may have to provide that Company's Emissions and Energy Data (if any) to any Authority; and
      - 2) to provide to the Clean Energy Regulator, any Company's Emissions and Energy Data (if any) concerning any greenhouse gas project;
  - (ii) keep all such Company's Emissions and Energy Data (if any) as may be required to enable it to discharge its obligations under paragraph 5(b)(i);
  - (iii) retain records of its activities that are the basis of its Company's Emissions and Energy Data (if any) for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and

- (iv) permit that Company's Emissions and Energy Data (if any) to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by Transport or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under paragraphs 5(b)(ii) and (iii) and answering questions.
- (c) Without limiting paragraph 5(b) or any provision of the M7-M12 Integration Project Deed, each Company must assist, and ensure that the State Works Contractor assists, Transport to comply with the NGER Legislation in relation to any aspect of the Project Activities.
- (d) Each Company acknowledges and agrees that:
  - (i) each Company's Emissions and Energy Data is provided to Transport:
    - A. to discharge any obligations that Transport may have to provide such Data to an Authority; and
    - B. so that Transport may provide to the Clean Energy Regulator any Company's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) Transport may provide or otherwise disclose each Company's Emissions and Energy Data to any applicable Authority; and
  - (iii) nothing in this paragraph 5 is to be taken as meaning that Transport has agreed to perform on behalf of either Company or the State Works Contractor, any obligation that either Company or the State Works Contractor itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

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## 6. Sustainability

- (a) Each Company must comply, and ensure that the State Works Contractor complies, with the sustainability requirements set out in Appendix D.5 of the Scope of Works and Technical Criteria.
- (b) Without limiting paragraph 6(a), each Company must achieve, and ensure that the State Works Contractor achieves:
  - (i) a "Design" rating score of at least Excellent for the design of the Project Works and the Temporary Works; and
  - (ii) an "As Built" rating score of at least Excellent for the construction of the Project Works and the Temporary Works,from the Infrastructure Sustainability Council.
- (c) Without limiting paragraph 6(b), in order to achieve the ratings referred to in paragraph 6(b) each Company must:
  - (i) register, and ensure that the State Works Contractor registers, with the Infrastructure Sustainability Council for the purposes of obtaining a rating;

- (ii) cooperate and liaise, and ensure that the State Works Contractor cooperates and liaises, with the Infrastructure Sustainability Council as required; and
- (iii) provide, and ensure that the State Works Contractor provides, any documentation required by the Infrastructure Sustainability Council.

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## 7. Waste disposal

- (a) Each Company must:
  - (i) remove from the Project Site and any Extra Land; and
  - (ii) dispose of,  
  
any Contamination or other waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) Each Company must:
  - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Project Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
  - (ii) procure and provide evidence of such Approvals to Transport's Representative upon request.
- (c) Each Company must ensure that its employees and agents, and the employees and agents of the State Works Contractor, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.
- (d) Each Company must indemnify Transport from and against any claims against Transport, or Loss suffered or incurred by Transport, arising out of or in any way in connection with any failure by that Company to comply with any obligation under this paragraph, provided that that Company's liability to indemnify Transport will be reduced proportionally to the extent that an act or omission of Transport or any of its Related Parties contributed to the claim or Loss.

## Schedule 5 - Form of unconditional undertaking

(Clause 6.1)

THIS DEED POLL (Undertaking) made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

IN FAVOUR OF: Transport for NSW of [insert] (Transport)

GIVEN BY: \_\_\_\_\_ (Financial Institution)

Company/ies: WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) of 101 Wallgrove Road, Eastern Creek, New South Wales 2776 (each a "Company" and collectively "Companies")

Security Amount: \$ .....

The Contract: The M7-M12 Integration Project Deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924)

Contract Title: M7-M12 Integration Project Deed

Other words and phrases in this Undertaking have the meanings given in the M7-M12 Integration Project Deed.

### Undertaking

1. At the request of each Company, and in consideration of Transport accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by Transport to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, upon receipt from Transport of a notice in writing signed by Transport (or someone authorised by Transport) that it requires all or some of the Security Amount, the Financial Institution will pay Transport at once, without reference to either Company or the Contract and despite any notice from either Company not to pay.
3. Transport must not assign this Undertaking without the prior written agreement of the Financial Institution, which will not be unreasonably withheld.
4. This Undertaking continues until one of the following occurs:
  - (a) Transport notifies the Financial Institution in writing that the Security Amount is no longer required;
  - (b) this Undertaking is returned to the Financial Institution; or
  - (c) the Financial Institution pays Transport an amount which, in aggregate with all other amounts previously paid by the Financial Institution under this Undertaking, equals the Security Amount, or as much as Transport may require overall.
5. At any time, without being required to, the Financial Institution may pay Transport the Security Amount less any amounts previously paid under this Undertaking, and the liability of the Financial Institution will then immediately end.
6. This Undertaking is governed by the laws of the State of New South Wales.

**SIGNED** as a deed poll.

**Signed sealed and delivered** for and on behalf of  
by its Attorney under a Power of Attorney  
dated \_\_\_\_\_, and the Attorney  
declares that the Attorney has not received any  
notice of the revocation of such Power of Attorney,  
in the presence of:

---

Signature of Attorney

---

Signature of Witness

---

Name of Attorney in full

---

Name of Witness in full



## Schedule 6 - Terms of Access

(Clause 7.1 and 7.3)

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### 1. Project Company acknowledgements

- (a) Each Company acknowledges and agrees that:
- (i) it and the State Works Contractor may not be given exclusive access to the Project Site; and
  - (ii) access to the Project Site or any part thereof will be subject to each Company complying, and ensuring that the State Works Contractor complies, with clause 7.1, clause 7.3, this Schedule 6 and the Site Access Schedule.
- (b) Each Company acknowledges that:
- (i) its rights, and the State Works Contractor's rights, under clause 7.1, clause 7.3 and this Schedule 6 are subject to any restrictions upon the access, possession and use of the Project Site imposed by; and
  - (ii) it must comply with, and ensure that the State Works Contractor complies with:  
all:
    - (iii) access conditions that apply to an area of the Project Site as specified in the Site Access Schedule (to the extent any such conditions are specified); and
    - (iv) terms of the Site Access Schedule and the terms of any easement burdening the land contained in the Project Site as recorded in the register maintained by Land and Property Information New South Wales under the Real Property Act 1900 (NSW).
- (c) Each Company acknowledges that it and the State Works Contractor will have no entitlement to access the Project Site under clause 7.1, clause 7.3 and this Schedule 6 until each Company has submitted the Project WHS Management Plan to the Independent Certifier and Transport's Representative and the Independent Certifier has had 15 Business Days to review the Project WHS Management Plan and has not rejected the Project WHS Management Plan.

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### 2. No warranty by Transport

Subject to the express terms of this deed, Transport makes no express or implied warranty that the Project Site is now or will remain suitable or adequate for all or any of the purposes contemplated in this deed and save as aforesaid all warranties (if any) implied by Law are, to the extent permitted by Law, hereby expressly negated.

## Schedule 7 - Property Owner's Certificate

(Clause 7.4)

This Deed Poll is in favour of Transport for NSW (Transport).

PROPERTY ADDRESS: .....

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

*[Insert description of property works]*

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release Transport from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

**SIGNED as a Deed Poll.**

Signed sealed and delivered by  
in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

## Schedule 8 - Quality Management

(Clause 8.1)

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### 1. Quality management, verification and certification

- (a) Transport and each Company acknowledge that the design and construct project delivery method chosen for the Project Works and the Temporary Works:
  - (i) requires each Company, together with the State Works Contractor (to the extent applicable) to assume responsibility for all aspects of quality for the Project Activities and for the durability of the Project Works and the Temporary Works;
  - (ii) allows the Independent Certifier to observe, monitor, audit and test all aspects of quality in the Project Activities and the durability of the Project Works and the Temporary Works to certify compliance with the requirements of this deed and the State Works Deed;
  - (iii) requires the Independent Certifier by reviewing and assessing quality in the Project Activities and the durability of the Project Works and the Temporary Works, to certify each Company's compliance with the requirements of this deed and the State Works Contractor's compliance with the requirements of the State Works Deed; and
  - (iv) allows Transport's Representative to monitor compliance of the Project Activities with the requirements of this deed and the State Works Deed.
- (b) Each Company must ensure a Quality Manager is engaged who must:
  - (i) independently certify the effectiveness and integrity of each Company's quality system in achieving conformance with the requirements of this deed;
  - (ii) report to Transport's Representative and the Independent Certifier on quality issues in accordance with the requirements of this deed; and
  - (iii) have the requisite experience and ability to carry out the functions described in paragraphs 1(b)(i) and (ii).
- (c) Each Company must provide to Transport's Representative a certificate executed by the Quality Manager:
  - (i) in the form of Appendix A, within 3 months after the date of this deed;
  - (ii) in the form of Appendix B, every 3 months from the date of this deed until the Date of Integration Completion;
  - (iii) in the form of Appendix C, as a condition precedent to Integration Completion; and
  - (iv) in the form of Appendix D, upon the expiry of the last Defects Correction Period.
- (d) Each Company must provide to Transport's Representative a certificate executed by the Independent Certifier:
  - (i) in the form of Appendix E, within 3 months after the date of this deed;

- (ii) in the form of Appendix F, every 3 months from the date of this deed until the Date of Integration Completion;
  - (iii) in the form of Appendix G, within the timeframe required by section 3.8.2(b) of Appendix C.2 of the SWTC (but no later than Returned Works Final Completion); and
  - (iv) in the form of Appendix H, upon the expiry of the last Defects Correction Period.
- (e) The Independent Certifier must audit and review each revision of the Quality Management Plan within 10 Business Days after submission of that plan to Transport's Representative.
  - (f) Each Company must provide to Transport's Representative a certificate executed by each Company's Environmental Manager in the form of Appendix I every 3 months from the date of this deed until the Date of Integration Completion.

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## 2. Hold Points

Each Company must comply with the Hold Point procedures required by this deed, and ensure that the State Works Contractor complies with the Hold Point procedures required by this deed and the State Works Deed, including as inserted in Project Plans by the Independent Certifier pursuant to clause 8.2(d)(iii).

---

## 3. Project quality non-conformance

- (a) Each Company must comply with, and ensure that the State Works Contractor complies with, the procedure for non-conformances set out in the Scope of Works and Technical Criteria and the Quality Management Plan. Further to the provisions of clause 8.3(b) of AS/NZS ISO 9001-2008, the use, release or acceptance of nonconforming work can only be given by Transport's Representative, in its absolute discretion and without being under any obligation to do so.
- (b) Corrective actions implemented under each Company's quality system must comply with the requirements of this deed including the Scope of Works and Technical Criteria.
- (c) Each Company must promptly issue all documents relating to quality non-conformances to Transport's Representative.

---

## 4. Monitoring and audits

Each Company must:

- (a) have its and the State Works Contractor's compliance with the Project Plans audited at intervals not exceeding 6 months during the carrying out of the Project Works and its compliance with the Project Plans audited at intervals not exceeding 12 months from the date of this deed until the expiry of the last Defects Correction Period at its cost by an independent auditor who is acceptable to Transport;
- (b) permit representatives of Transport and the Independent Certifier to be present during such audits; and
- (c) deliver 2 copies of each audit report to Transport and the Independent Certifier within 5 Business Days of its completion.

---

## 5. Testing

Each Company must carry out, and ensure that the State Works Contractor carries out, all tests required:

- (a) by this deed; or
- (b) otherwise directed by Transport's Representative.

The costs of a test which is directed by Transport's Representative and which is not otherwise required by this deed will be borne by Transport unless the test detects a Defect or is upon a Defect.

## Appendix A

### Integration Project (Project)

(Clause 8.1 and Schedule 8)

To: Transport's Representative

From: Quality Manager

In accordance with the terms of paragraph 1(c)(i) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) with respect to the Project, I hereby certify that each Company's Quality Management System under clause 8.1 and Schedule 8 of Annexure A to the deed is in accordance with the requirements of Appendix C.7 of the Scope of Works and Technical Criteria, Transport's General Specification Q6 and AS/NZS ISO 9001 Quality management systems - Requirements.

.....  
Signed by

Quality Manager

## Appendix B

### Integration Project (Project)

#### (Clause 8.1 and Schedule 8)

To: Transport's Representative

From: Quality Manager

In accordance with the terms of paragraph 1(c)(ii) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, I hereby certify that between the following dates [*Insert dates of preceding 3 month period*]:

- (a) each Company's quality system under clause 8.1 and Schedule 8 of Annexure A to the deed was in accordance with AS/NZS ISO 9001 - 2008 Quality management systems - Requirements;
- (b) any Subcontractors' quality systems which form a part of each Company's quality system were in accordance with AS/NZS ISO 9001 - 2008;
- (c) each Company complied with and satisfied the requirements of Appendix C.7 of the Scope of Works and Technical Criteria and Transport's General Specification Q6;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by each Company was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to Transport's Representative and the Independent Certifier in accordance with the deed.

.....  
Signed by

Quality Manager

## Appendix C

### Completion - Integration Project (Project)

(Clause 8.1 and Schedule 8)

To: Transport's Representative

From: Quality Manager

In accordance with the terms of paragraph 1(c)(iii) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, I hereby certify in relation to the Project Works that:

- (a) each Company has complied with and satisfied the requirements of Appendix C.7 of the Scope of Works and Technical Criteria and Transport's General Specification Q6;
- (b) each Company has completed construction in accordance with the Design Documentation which each Company and the State Works Contractor are entitled to use for construction purposes in accordance with clause 9.4(d) of the deed, subject to minor Defects as referred to in paragraph 1 of Schedule 12 and paragraph (a) of the definition of "Returned Works Construction Completion";
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and Transport's Representative in accordance with the deed.

.....  
Signed by  
Quality Manager



## Appendix D

### Integration Project (Project)

(Clause 8.1 and Schedule 8)

To: Transport's Representative

From: Quality Manager

In accordance with the terms of paragraph 1(c)(iv) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, I hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) all design, construction, inspection, repairs and monitoring by each Company has been undertaken in accordance with the deed; and
- (c) all documentation has been recorded and submitted to the Independent Certifier and Transport's Representative in accordance with the deed.

.....  
Signed by  
Quality Manager

## Appendix E

### Integration Project (Project)

(Clause 8.1 and Schedule 8)

To: Transport's Representative

From: [Independent Certifier]

In accordance with the terms of paragraph 1(d)(i) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, we hereby certify that each Company's quality system under clause 8.1 and Schedule 8 of the deed is in accordance with the requirements of Appendix C.7 of the Scope of Works and Technical Criteria, Transport's General Specification Q6 and AS/NZS ISO 9001 Quality management systems - Requirements.

.....  
Signed for and on behalf of

[Independent Certifier]

## Appendix F

### Integration Project (Project)

#### (Clause 8.1 and Schedule 8)

To: Transport's Representative

From: [Independent Certifier]

In accordance with the terms of paragraph 1(d)(ii) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, we hereby certify that between the following dates [*Insert dates of preceding 3 month period*]:

- (a) each Company's quality system under clause 8.1 and Schedule 8 of Annexure A to the deed is in accordance with AS/NZS ISO 9001 Quality management systems - Requirements;
- (b) any Subcontractors' quality systems which form a part of each Company's quality system are in accordance with AS/NZS ISO 9001;
- (c) each Company has complied with and satisfied the requirements of Appendix C.7 of the Scope of Works and Technical Criteria and Transport's General Specification Q6;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by each Company has been undertaken in accordance with the deed, including the Scope of Works and Technical Criteria; and
- (f) that documentation has been recorded and submitted to Transport's Representative in accordance with the deed.

.....  
Signed for and on behalf of

[Independent Certifier]

## Appendix G

### Integration Project (Project)

#### (Clause 8.1 and Schedule 8)

To: Transport's Representative

From: [Independent Certifier]

In accordance with the terms of paragraph 1(d)(iii) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, we hereby certify that the attached As-Built documentation for the Returned Works complies with all requirements of the deed including the Scope of Works and Technical Criteria and in particular, the requirements of Appendix C.2 (Companies' Documentation Schedule).

.....  
Signed for and on behalf of

[Independent Certifier]

## Appendix H

### Integration Project (Project)

#### (Clause 8.1 and Schedule 8)

To: Transport's Representative

From: [Independent Certifier]

In accordance with the terms of paragraph 1(d)(iv) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, we hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) all design, construction, inspection, repairs and monitoring by each Company has been undertaken in accordance with the deed; and
- (c) all documentation has been recorded and submitted to Transport's Representative in accordance with the deed.

.....

Signed for and on behalf of  
[Independent Certifier]

## Appendix I

### Integration Project (Project)

(Clause 8.1 and Schedule 8)

To: Transport's Representative

From: [Environmental Manager]

In accordance with the terms of paragraph 1(f) of Schedule 8 of Annexure A to the deed between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a **Company**, together **the Companies**) dated [ ] with respect to the Project, I hereby certify that between the following dates [*Insert dates of preceding 3 month period*]:

- (a) each Company's Environmental Management System under section 3.4.1 of the Scope of Works and Technical Criteria was in accordance with AS/NZS ISO 14001 Environmental management systems - Requirements with guidance for use;
- (b) any Subcontractors' Environmental Management Systems which form a part of each Company's Environmental Management System were in accordance with AS/NZS ISO 14001 Environmental management systems - Requirements with guidance for use;
- (c) each Company complied with and satisfied the requirements of Transport set out in the Environmental Documents for which each Company is responsible under Schedule 1;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by each Company was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Independent Certifier and Transport's Representative in accordance with the deed.

.....  
Signed by  
[Environmental Manager]

## Schedule 9 - Design Review Procedure

(Clause 9.4)

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### 1. Definitions

In this Schedule 9:

**Design Gap Analysis Report** means a report that identifies:

- (a) any difference between the EDC Concept Design and the proposed Substantial Detailed Design for the EDC Works for each design element and the reasons for those differences;
- (b) the durability and maintainability requirements for the design element;
- (c) the performance criteria selected for the design element;
- (d) the design loadings and design standards that will be adopted for detailed design of the design element; and
- (e) how the design element complies with the performance criteria stipulated in the Scope of Works and Technical Criteria.

**Design Stage** has the meaning given in section 3.1 of Appendix C.2 of the Scope of Works and Technical Criteria.

**Developed Concept Design** means the Design Documentation required to be completed for the Developed Concept Design Stage.

**Developed Concept Design Stage** has the meaning given in section 3.2(d)(i) of Appendix C.2 of the Scope of Works and Technical Criteria.

**Substantial Detailed Design** means the Design Documentation required to be completed for the Substantial Detailed Design Stage.

**Substantial Detailed Design Stage** has the meaning given in section 3.2(d)(ii) of Appendix C.2 of the Scope of Works and Technical Criteria.

---

### 2. Design Review

- (a) Each Company must submit, and must procure that the State Works Contractor submits, to the Independent Certifier and Transport:
  - (i) two sets of all Design Documentation in hard copy format; and
  - (ii) two electronic copies of Design Documentation,  
  
in accordance with the requirements of this deed (including Appendix C.2 of the Scope of Works and Technical Criteria), the Design Management Plan and paragraph 2(g) of this Schedule at the:
    - (iii) in respect of the Design Documentation for the Project Works (excluding the Reviewable Temporary Works and the Third Party Works), at the:
      - A. subject to paragraph 2(ba), Developed Concept Design Stage;
      - B. Substantial Detailed Design Stage (where applicable); and

C. Final Design Documentation Stage;

- (iv) in respect of the Design Documentation for the Reviewable Temporary Works, at the Design Stages specified for the Reviewable Temporary Works in Appendix C.2 of the Scope of Works and Technical Criteria; and
- (v) in respect of the Design Documentation for the Third Party Works, at the times specified in the Design Management Plan,

including (where required by Appendix C.2 of the Scope of Works and Technical Criteria), model verification for each discrete design element of the Project Works and the Reviewable Temporary Works.

- (ba) The Companies will not be required to submit the Design Documentation for the EDC Works at the Developed Concept Design Stage if:
    - (i) the EDC Concept Design is at a stage which is more developed than Developed Concept Design Stage; or
    - (ii) where paragraph (ba)(i) does not apply:
      - A. the Companies have submitted a Design Gap Analysis Report to the Independent Certifier and Transport; and
      - B. Transport notifies the Companies in writing that it does not require the Design Documentation for the EDC Works to be submitted at the Developed Concept Design Stage.
  - (b) Design Documentation submitted at the Developed Concept Design Stage must be supported by a written report from each Company or the State Works Contractor (as applicable) in accordance with section 3.4.1(d) of Appendix C.2 to the Scope of Works and Technical Criteria.
  - (c) Design Documentation submitted at the Substantial Detailed Design Stage must be supported by a written report from each Company or the State Works Contractor (as applicable) which, without limiting the requirements of the Scope of Works and Technical Criteria:
    - (i) identifies any changes from:
      - A. in respect of the Design Documentation for the Project Works (excluding the EDC Works), the previously submitted Developed Concept Design; and
      - B. in respect of the Design Documentation for the EDC Works, the Concept Design,and the reasons for the changes made; and
    - (ii) where changes have been made, provides an update on any changes to the durability requirements, performance criteria, design loadings or design standards to be applied to the design element or operation and maintenance requirements.
- Each Company or the State Works Contractor (as applicable) may request in writing to the Independent Certifier for the Substantial Detailed Design Stage for consent for certain other design submission packages to be omitted.
- (d) Design Documentation submitted at the Final Design Documentation Stage must be supported by a written report from each Company or the State Works Contractor



(as applicable) in accordance with section 3.4.1(f) of Appendix C.2 of the Scope of Works and Technical Criteria.

- (e) For the purposes of the preparation of Design Documentation in accordance with this Schedule, the design elements include those specified in section 3.3(i) of Appendix C.2 of the Scope of Works and Technical Criteria.
- (f) Each Company must submit, or procure that the State Works Contractor submits (as applicable):
  - (i) a schedule of the design submissions and proposed submission dates (which may be amended from time to time) within the Design Management Plan; and
  - (ii) without limiting the requirements of section 3.3(d) of Appendix C.2 of the Scope of Works and Technical Criteria, all Design Documentation in accordance with the requirements of:
    - A. in respect of the Operations Management and Control System and Intelligent Transport Systems, Appendix B.12 of the Scope of Works and Technical Criteria;
    - B. in respect of the Toll Collection System, Appendix B.10 of the Scope of Works and Technical Criteria;
    - C. in respect of traffic control signals, Appendix B.09 of the Scope of Works and Technical Criteria; and
    - D. in respect of the development of information and communications technology systems, Appendix B.12 of the Scope of Works and Technical Criteria.
- (g) Each Company must:
  - (i) certify, or must procure that the State Works Contractor certifies (as applicable), the Final Design Documentation for each discrete design element of the Project Works and the Reviewable Temporary Works in accordance with the requirements of clause 9.4(c) and this must be shown on the Final Design Documentation; and
  - (ii) comply, and must procure that the State Works Contractor complies, with the requirements in respect of certification of Design Documentation in sections 3.3 and 3.6 of Appendix C.2 of the Scope of Works and Technical Criteria.
- (h) Without limiting the Scope of Works and Technical Criteria, each Company must, or must procure that the State Works Contractor (as applicable):
  - (i) allow 15 Business Days from the date a set of Design Documentation (**Design Package**) is submitted to the Independent Certifier and Transport for Transport (if it so desires) to consult with each Company or the State Works Contractor (as applicable) and make comments to the Independent Certifier on that Design Documentation;
  - (ii) allow 20 Business Days from the date a Design Package is submitted to the Independent Certifier for the Independent Certifier to provide comments on the Developed Concept Design and Substantial Detailed Design;
  - (iii) allow 20 Business Days from the date a Design Package is submitted to the Independent Certifier for the Independent Certifier to verify the Final Design Documentation as required under clause 9.4(c);

- (iv) except where permitted in accordance with Appendix C.2 of the Scope of Works and Technical Criteria, not use Final Design Documentation as IFC Design Documentation until the Independent Certifier has verified the Final Design Documentation as required under clause 9.4(c);
  - (v) not amend any Final Design Documentation which has been:
    - A. submitted to Transport and the Independent Certifier in accordance with this paragraph (h); and
    - B. verified by the Independent Certifier,
 unless it first submits the proposed amendments (duly certified by each Company or the State Works Contractor (as applicable) under clause 9.4(c)) to Transport and the Independent Certifier and the process in this paragraph (h) (other than paragraph (h)(vi)) and any other exceptions set out in Appendix C.2 of the Scope of Works and Technical Criteria has been reapplied to the proposed amendments; and
  - (vi) not amend any IFC Design Documentation other than to reflect a Change which has been proposed by each Company or the State Works Contractor (as applicable) and approved by Transport in accordance with clause 10.1 and paragraph 2 of the Change Procedure.
- (i) The Independent Certifier must, within the 20 Business Day period referred to in paragraph (h)(iii), either:
- (i) verify the Final Design Documentation in accordance with clause 9.4(c); or
  - (ii) in accordance with Appendix C.2 of the Scope of Works and Technical Criteria, give reasons why the Final Design Documentation:
    - A. is not appropriate for construction purposes; or
    - B. does not comply with the M7-M12 Integration Project Deed,
 and if the Independent Certifier verifies the Final Design Documentation in accordance with clause 9.4(c), the Independent Certifier must:
  - (iii) do so using the form in Appendix A to this Schedule 9; and
  - (iv) address any comments made by Transport under paragraph (h)(i) in the verification.
- (j) Subject to paragraph (i), if any Final Design Documentation is not verified by the Independent Certifier under paragraph (i) or paragraph (k), each Company must amend, or must procure that the State Works Contractor amends, in accordance with Appendix C.2 of the Scope of Works and Technical Criteria, the Final Design Documentation and:
- (i) re-certify it (or the relevant part of it) under clause 9.4(c); and
  - (ii) re-submit it (or the relevant part of it) to Transport and the Independent Certifier and after this, the process in paragraph (k) will be applied to the amended Final Design Documentation.
- (k) If any Final Design Documentation (or part of it) is resubmitted to Transport and the Independent Certifier pursuant to paragraph (j), the Independent Certifier must, within 10 Business Days, either:

- (i) verify the Final Design Documentation under clause 9.4(c); or
- (ii) in accordance with Appendix C.2 of the Scope of Works and Technical Criteria give reasons why the Final Design Documentation:
  - A. is not appropriate for construction purposes; or
  - B. does not comply with the M7-M12 Integration Project Deed,

and if the Independent Certifier verifies the resubmitted Final Design Documentation in accordance with clause 9.4(c), the Independent Certifier must:

- (iii) do so using the form Appendix A to this Schedule 9; and
  - (iv) address any comments made by Transport under paragraph (k) in the verification.
- (l) Notwithstanding clause 8.2(c)(iii), if a Company, the State Works Contractor or the Contractor wishes to discuss with Transport any comments or notices received from the Independent Certifier, that Company or the State Works Contractor (as applicable) must notify Transport to request a meeting to discuss the issue(s). The meeting between Transport and that Company or the State Works Contractor (as applicable) must take place within 5 Business Days of the request being received by Transport and be undertaken in good faith to try to resolve the issues raised in such comments or notices (and the parties agree that the Contractor is entitled to attend such meeting), which may only result in:
- (i) that Company or the State Works Contractor (as applicable) requesting a Change in accordance with clause 10 and paragraph 2 of the Change Procedure and, if that Change is approved by Transport, resubmitting the Final Design Documentation; or
  - (ii) that Company or the State Works Contractor (as applicable) addressing the comments or notices and resubmitting the Final Design Documentation in accordance with paragraph (j).
- (m) In considering any Final Design Documentation submitted under this Schedule, Transport is entitled to consult with and take into account any views and requirements of any relevant Authority.

**Appendix A: Independent Certifier's Certificate - Final Design Documentation**

To: Transport's Representative

From: [Independent Certifier]

Terms used in this certificate have the meaning given to them in the deed entitled "M7-M12 Integration Project Deed" entered into between Transport, WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) dated [insert] (**M7-M12 Integration Project Deed**).

In accordance with the terms of clause 9.4(c) of Annexure A to the M7-M12 Integration Project Deed, we hereby verify that the attached Final Design Documentation:

- (a) is appropriate for construction; and
- (b) complies with all the requirements of the M7-M12 Integration Project Deed (including the Scope of Works and Technical Criteria) or the State Works Deed (as appropriate) and, in particular, the durability requirements of section 5.9 and the design life requirements of section 5.8 of the Scope of Works and Technical Criteria.

.....  
Signed for and on behalf of

[Independent Certifier]

## Schedule 10 - Change Procedure

(Clause 1.1 and 10)

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### 1. Changes Proposed by Transport

#### 1.1 Change Proposal

- (a) Transport may at any time:
- (i) subject to paragraph 1.1(a)(ii) of this Schedule, prior to the Date of Returned Works Construction Completion; and
  - (ii) in respect of a Defect referred to in clause 15.2, prior to the expiry of the Defect Corrections Period,
- issue to a Company a notice titled "Change Proposal" setting out the details of a proposed Change which Transport is considering, including Transport's proposed requirements for the implementation of the proposed Change.
- (b) Each Company acknowledges that Transport may issue a Change Proposal that decreases, omits, deletes or removes work from the scope of the Project Works (**Excluded Works**) and may carry out that Excluded Work itself or may engage another person to carry out the Excluded Work on its behalf.
- (c) Except as directed in a Change Order or in respect of a Change contemplated in clauses [REDACTED], neither Company will be entitled to:
- (i) make any Claim against Transport arising out of, or in any way in connection with, a Change proposed by the Transport; or
  - (ii) vary or change the Project Works or the Temporary Works.

#### 1.2 Company Change Notice

As soon as practicable and in any event within 30 Business Days, or as otherwise agreed between the parties (acting reasonably) after receipt of a "Change Proposal" from Transport under paragraph 1.1(a), that Company must provide Transport with a notice (**Company Change Notice**) setting out detailed particulars of:

- (a) that Company's estimate of the Change Costs it or the State Works Contractor will incur, or the Change Savings it or the State Works Contractor will derive, by carrying out the proposed Change, substantiated (to the full extent possible) with a detailed breakdown;
- (b) [REDACTED]
- (c) the basis (if any) on which that Company would be prepared to fund the whole or part of the Change and the cost difference if that Company, rather than Transport, funds the Change;
- (d) the effect (if any) that Company and the State Works Contractor anticipate the Change will have on the Overall D&C Program, the Subsidiary D&C Programs and

- (f) the effect that Company and the State Works Contractor anticipate the Change will have on the performance of the Project Activities, the Project Works and the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected);
- (g) the effect that Company and the State Works Contractor anticipate the Change will have on the functionality or integrity of the elements of the Project Activities, the Project Works, the Temporary Works and the O&M Work and the quality or performance standards required by this deed, including specific details of:
  - (i) the elements of the Project Activities, the Project Works and the Temporary Works that will be affected;
  - (ii) how and to what extent the functionality or integrity of those elements will be affected;
  - (iii) the quality or performance standards affected and how and to what extent they will be affected;
  - (iv) any adverse effect which the Change will have on the ability of each Company to satisfy its obligations under this deed or the State Works Contractor to satisfy its obligations under the State Works Deed (including any warranties each Company is required to give under this deed or the State Works Contractor is required to give under the State Works Deed); and
  - (v) in respect of the Returned Works, any adverse effect which the Change will have on each Company's ability to achieve Final Handover in accordance with the requirements of the M7 Motorway Project Deed;
- (h) any other information concerning the proposed Change which Transport's Representative reasonably requires, including:
  - (i) sufficient detail to allow Transport to reconsider the need for the Change; and
  - (ii) whether any land in addition to the Project Site is required to implement the Change; and
- (i) the period within which the Company Change Notice remains valid for acceptance by Transport, which must be a reasonable period of not less than 20 Business Days after the date of the Company Change Notice (**Validity Period**).

Transport will not be obliged to proceed with any Change proposed in a Change Proposal.

### 1.3 Company Change Notice Requirements

- (a) Each Company must ensure that the Company Change Notice is prepared:
  - (i) so as to avoid, as far as practicable, the need for a new Approval or a Change to an existing Approval for the implementation of the Change;
  - (ii) on an Open Book Basis with respect to:



raised by Transport within 30 Business Days or as otherwise agreed between the parties (acting reasonably) after receipt of Transport's notice.

## 1.6 Acceptance of each Company Change Notice

If Transport accepts a Company Change Notice in accordance with paragraph 1.4(b):

- (a) the relevant Company must proceed to implement (or procure the implementation of) the Change (and submit any claim for an extension of time in respect of the Change under paragraph 1 of Schedule 11) on the basis of the Company Change Notice (as accepted by Transport); and
- (b) that Company will be relieved of its obligations under this deed, and the State Works Contractor will be relieved of its obligations under the State Works Deed, and that Company's obligations under this deed, and the State Works Contractor's obligations under the State Works Deed, will be varied, in each case to the extent specified in the Company Change Notice (as accepted by Transport).

## 1.7 Rejection of each Company Change Notice

- (a) If Transport rejects a Company Change Notice in accordance with paragraph 1.4(c), Transport may require that within a period of 5 Business Days after the date of Transport's notice under paragraph 1.4, the Parties commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Company Change Notice which are in dispute.
- (b) If the Parties reach agreement on the disputed matters in the Company Change Notice and Transport directs a Company to proceed with the Change (by notice titled "Change Order"):
  - (i) that Company:
    - A. must proceed to implement (or procure the implementation of) the Change; and
    - B. once Transport has given the Change Order, may submit a claim for an extension of time in respect of the Change under paragraph 1 of Schedule 11,  
  
on the basis of the Company Change Notice (as varied by the parties' agreement, as recorded in the "Change Order", on the matters in the Company Change Notice which were in dispute); and
  - (ii) that Company will be relieved of its obligations under this deed, and the State Works Contractor will be relieved of its obligations under the State Works Deed, and that Company's obligations under this deed, and the State Works Contractor's obligations under the State Works Deed, will be varied, in each case to the extent specified in the Company Change Notice (as varied by the parties' agreement, as recorded in the "Change Order", on the matters in the Company Change Notice which were in dispute).
- (c) If the parties are unable to reach agreement under paragraph 1.7(a) within 10 Business Days after the commencement of the consultation Transport may refer the matter for dispute resolution in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed. In resolving the dispute, the parties will, and will direct the expert or dispute forum to:
  - (i) have regard to the principles set out in paragraph 1.3, to the extent relevant;



- (ii) assume that funding for the Change will be provided by Transport, unless the parties otherwise agree; and
  - (iii) determine all matters required to enable the Change to be implemented.
- (d) If Transport refers the matter for dispute resolution, Transport may also direct a Company to proceed to implement (or procure the implementation of) the Change by a notice titled "Change Order" whether or not the matters in dispute have been agreed or determined in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed. If Transport gives such a notice:
  - (i) the disputed matters will, until Transport and that Company otherwise agree or a determination is made in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed, be reasonably determined by Transport. In making its determination, Transport will:
    - A. have regard to the principles set out in paragraph 1.3, to the extent relevant;
    - B. assume that funding for the Change will be provided by Transport, unless the parties otherwise agree; and
    - C. determine all disputed matters required to enable the Change to be implemented, including the changes required to any Integration Project Documents;
  - (ii) that Company:
    - A. must proceed to implement (or procure the implementation of) the Change in accordance with Transport's determination under paragraph 1.7(d); and
    - B. once Transport has given its determination under paragraph 1.7(d), may submit a claim for an extension of time in respect of the Change under paragraph 1 of Schedule 11, on the basis determined by Transport, notwithstanding that the matters in dispute have not been agreed or determined in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed; and
  - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.
- (e) Following resolution of the dispute referred for dispute resolution under paragraph 1.7(c), Transport may (unless it has already exercised its right under paragraph 1.7(d)) elect to do either of the following:
  - (i) require a Company to proceed to implement (or procure the implementation of) the Change in accordance with the Company Change Notice as varied by the resolution; or
  - (ii) except in the case of a Change contemplated in clauses [REDACTED]  
[REDACTED]  
[REDACTED] withdraw the proposed Change, by notice to that Company (which in the case of paragraph 1.7(e)(i) must be titled "Change Order").

- (f) If Transport gives a Company a Change Order pursuant to paragraph 1.7(e)(i):
- (i) that Company:
    - A. must proceed to implement (or procure the implementation of) the Change;
    - B. once Transport has given the Change Order, may submit a claim for an extension of time in respect of the Change under paragraph 1 of Schedule 11,  
  
in accordance with the Company Change Notice (as varied by the resolution, once made); and
  - (ii) that Company will be relieved of its obligations under this deed, and the State Works Contractor will be relieved of its obligations under the State Works Deed, and the Company's obligations under this deed, and the State Works Contractor's obligations under the State Works Deed, will be varied, in each case to the extent specified in the Company Change Notice (as varied by the resolution, once made).


### **1.7A Withdrawal of the proposed Change**

If Transport withdraws the Change Proposal in accordance with paragraph 1.4(d) or paragraph 1.7(e)(ii), neither Company nor the State Works Contractor is obliged or permitted to carry out the Change Proposal.

### **1.8 Transport may instruct a Company to proceed**

- (a) Whether or not:
- (i) Transport has issued a Change Proposal under paragraph 1.1(a); or
  - (ii) a Company has issued a Company Change Notice in response to a Change Proposal under paragraph 1.2,

Transport may at any time instruct a Company to implement a Change by issuing a notice titled "Change Order". In these circumstances:

- (iii) the matters set out in paragraphs 1.2(a) and 1.2(d) will, to the extent not already agreed by the Company, be as reasonably determined by Transport on an interim basis and stated in the relevant Change Order until such time as a determination or agreement has been reached in accordance with paragraph 1.8(a)(iv); and
  - (iv) the matters in paragraph 1.2 (including those matters referred to in paragraphs 1.2(a) and 1.2(d) which have been determined by Transport on an interim basis) will be as agreed or determined in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed.
- (b) In making its determination under paragraph 1.8(a)(iii), Transport will:
- (i) have regard to the principles set out in paragraph 1.3, to the extent relevant;
  - (ii) 
  - (iii) determine all matters required to enable the Change to be implemented.

- (b) If a Company disagrees with a matter determined by Transport under this paragraph 1.8:
  - (i) that Company may refer the matter for dispute resolution in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed;
  - (ii) that Company must proceed to implement (or procure the implementation of) the Change on the basis determined by Transport notwithstanding that the matters in dispute have not been agreed or determined in accordance with the dispute resolution procedures set out in clause 12 of the M7-M12 Integration Project Deed; and
  - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

## **1.9 Preparation of Company Change Notices**

- (a) Prior to submitting a Company Change Notice to Transport, a Company must provide Transport with that Company's estimate of the reasonable net extra Direct Costs it will incur as a consequence of preparing a Company Change Notice in accordance with this section 1.
- (b) [REDACTED]

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## **2. Changes proposed by a Company**

### **2.1 No Change without consent**

Each Company must not, and must procure that the State Works Contractor and their respective Related Parties do not, undertake any Change without Transport's prior consent.

### **2.2 Company proposal**

- (a) A Company may propose a Change to Transport by giving Transport a written notice with details of:
  - (i) the proposed Change;
  - (ii) the reason for the proposed Change;
  - (iii) that Company's estimate of the Change Costs it or the State Works Contractor will incur, or the Change Savings it or the State Works Contractor will derive, by carrying out the proposed Change, substantiated (to the full extent possible) with a detailed breakdown;
  - (iv) the effect of the proposed Change on the Project Activities;
  - (v) the time within which the proposed Change will be implemented and the manner in which that Company proposes to implement (or procure the implementation of) the Change;
  - (vi) the effect of the proposed Change on the Overall D&C Program, the Subsidiary D&C Programs, the Date for Returned Works Construction

Completion of the EDC Works and the Date for Integration Completion;  
and

- (vii) the effect that Company and the State Works Contractor anticipate the Change will have on the functionality or integrity of the elements of the Project Activities, the Project Works, the Temporary Works and the O&M Work and the quality or performance standards required by this deed and the State Works Deed, including specific details of:
  - A. the elements of the Project Activities, the Project Works and the Temporary Works that will be affected;
  - B. how and to what extent the functionality or integrity of those elements will be affected;
  - C. the quality or performance standards affected and how and to what extent they will be affected;
  - D. any adverse effect which the Change will have on the ability of each Company to satisfy its obligations under this deed (including any warranties each Company is required to give under this deed), or the State Works Contractor to satisfy its obligations under the State Works Deed (including any warranties the State Works Contractor is required to give under the State Works Deed); and
  - E. in respect of the Returned Works, any adverse effect which the Change will have on each Company's ability to achieve Final Handover in accordance with the requirements of the M7 Motorway Project Deed.

(b) If a Company proposes a Change under this paragraph 2.2, that Company will, if required by Transport, give to Transport:

- (i) a written statement from that Company and/or the State Works Contractor stating that the proposed Change:
  - A. will not adversely affect the functional integrity of any of the elements of the Project Activities and the performance standards required by this deed and/or the State Works Deed; and
  - B. will not adversely affect the quality standards, warranties and other obligations required under this deed and/or the State Works Deed;
- (ii) a written statement confirming that that Company and/or the State Works Contractor has appropriate financial and technical resources to undertake the proposed Change; and
- (iii) any other information and supporting documentation Transport's Representative reasonably requires.

## 2.3 Transport may approve or reject

- (a) Subject to paragraph 2.3(b), Transport:
  - (i) (in its absolute discretion, other than in respect of Temporary Works) may, by notice in writing, approve (with or without conditions) or reject any Change a Company proposes;

- (ia) (acting reasonably in respect of the Temporary Works) may, by notice in writing, approve (with or without conditions) or reject any Change a Company proposes; and
  - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, either Company or the State Works Contractor.
- (b) If, prior to the Date of Integration Completion:
- (i) an event or circumstance occurs which prevents a Company from achieving Integration Completion, other than an event or circumstance arising as a consequence of:
    - A. either Company's or the State Works Contractor's failure to comply with its obligations under an Integration Project Document;
    - B. a breach by either Company or the State Works Contractor of their warranties under an Integration Project Document;
    - C. a wrongful act or omission of a Company, the State Works Contractor or their respective Related Parties; or
    - D. a failure by a Company, the State Works Contractor or any of their respective Related Parties to comply with any Law; and
  - (ii) a Company proposes a Change to the Scope of Works and Technical Criteria pursuant to paragraph 2.2 to enable each Company to complete the Project at that Company's cost and risk,
- then Transport must act reasonably in considering the proposed Change.
- (c) Prior to giving any notice under paragraph 2.3(d), Transport's Representative may seek to negotiate with that Company over the amount of the Change Costs or Change Savings arising from the proposed Change. If the parties agree the amount of the Change Costs or Change Savings arising from the proposed Change, that Company's notice will be deemed to be amended by the inclusion of this different amount of Change Costs or Change Savings in place of the original Change Costs or Change Savings notified by that Company.
- (d) If Transport approves a Change proposed by a Company:
- (i) Transport will issue a written notice entitled "Change Order";
  - (ii) that Company must thereafter implement (or procure the implementation of) the Change on the basis approved by Transport; and
  - (iii) that Company's obligations under this deed, and the State Works Contractor's obligations under the State Works Deed, will be varied, in each case to the extent specified in that Company's notice issued under paragraph 2.2(a) and approved by Transport.

## 2.4 Company's risk

Unless otherwise agreed in writing by Transport, each Company will:

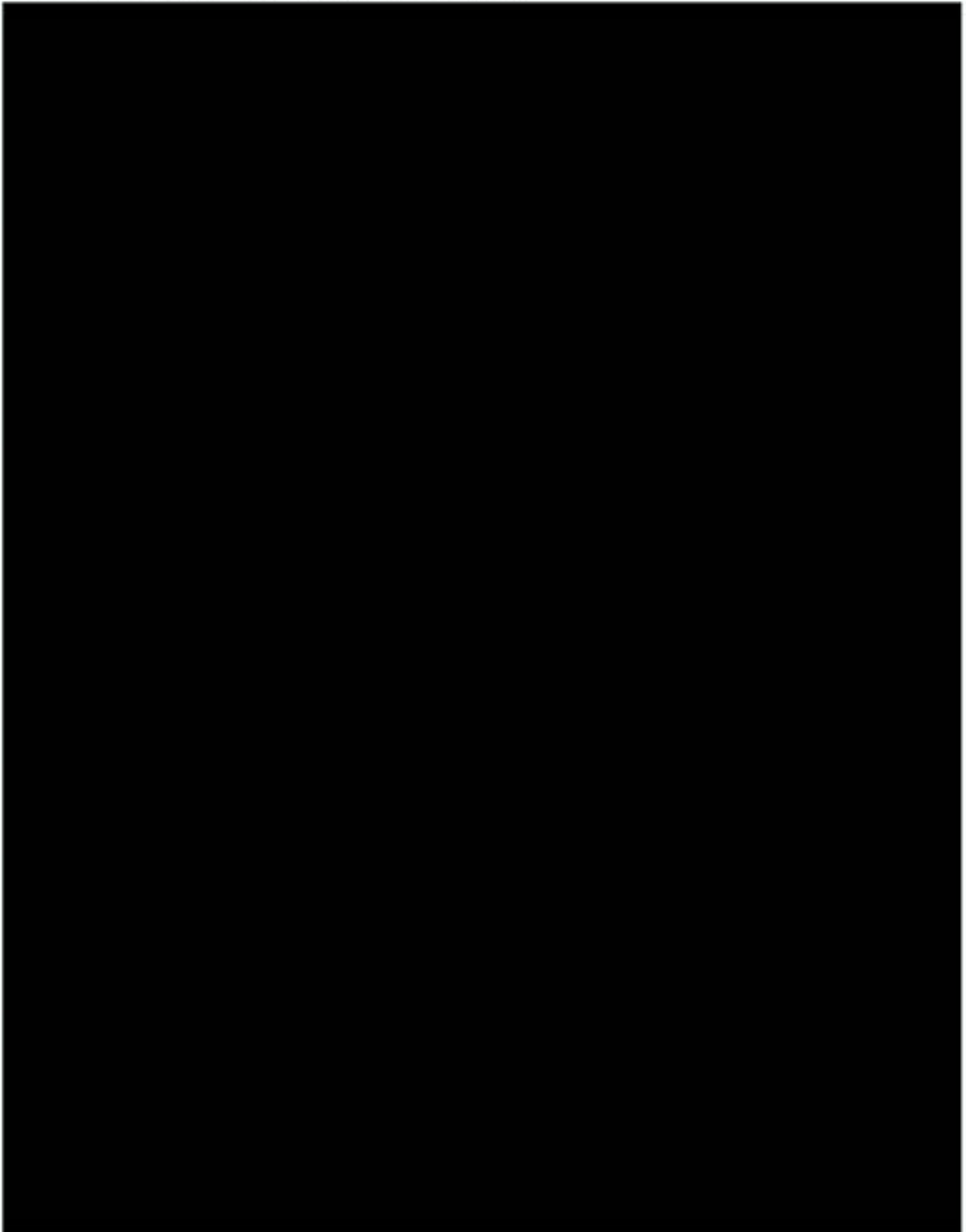
- (a) bear all risk and costs:
  - (i) associated with proposing a Change and providing the details under paragraph 2.2(a) and complying with paragraph 2.2(b);

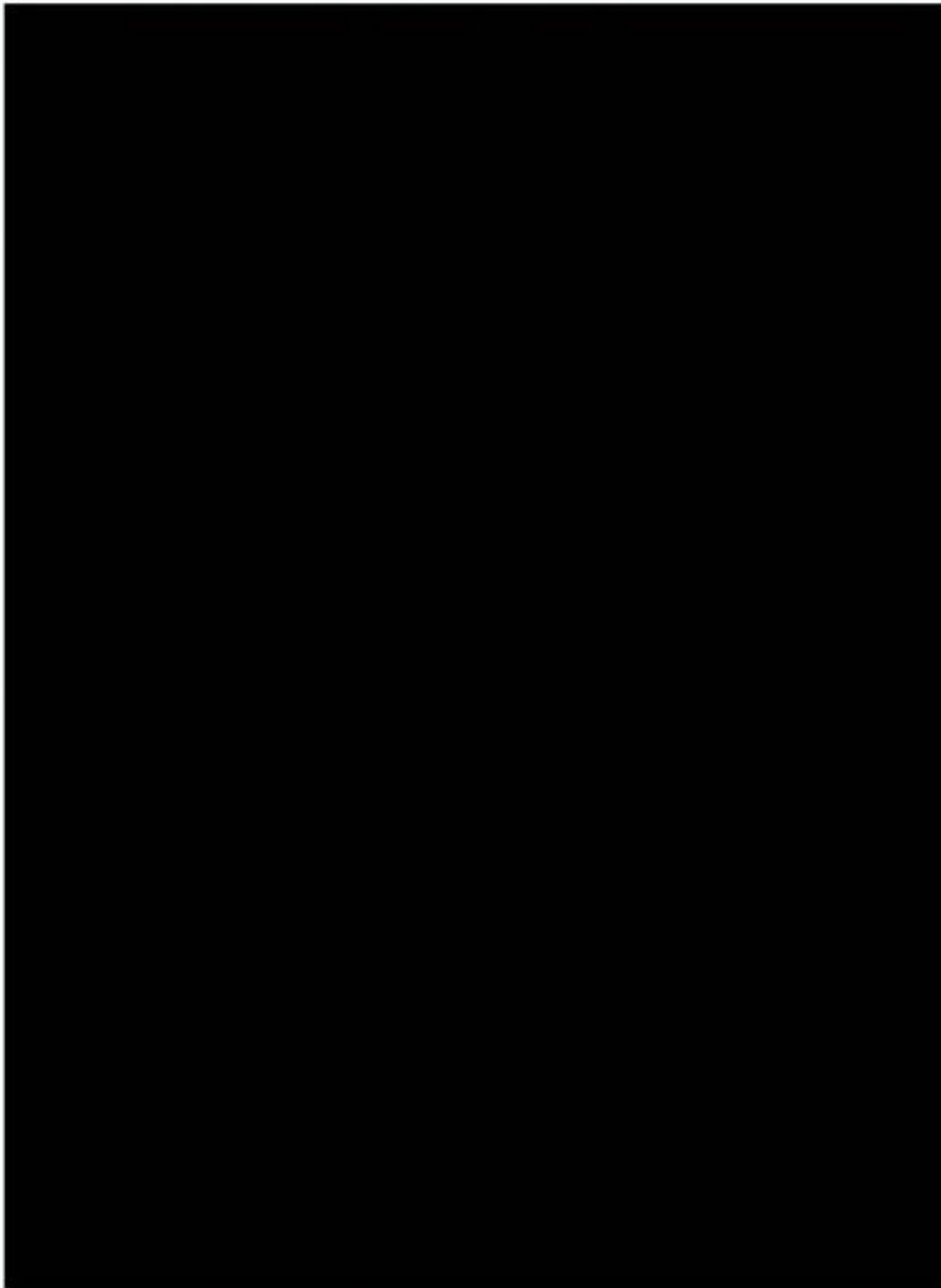
- (ii) reasonably incurred by Transport (or Transport's Representative) in assessing the proposed Change (such costs to be a debt due and payable from that Company to Transport); and
  - (iii) associated with implementing (or procuring the implementation of) the proposed Change, including obtaining and maintaining any Approvals necessary to implement the Change; and
- (b) not be entitled to make any Claim against Transport arising out of or in connection with the Change proposed by a Company and approved by Transport under paragraph 2.3.

# Appendix A

## Schedule of Daywork Rates and Margins

Schedule of Daywork Rates (Design Documentation)

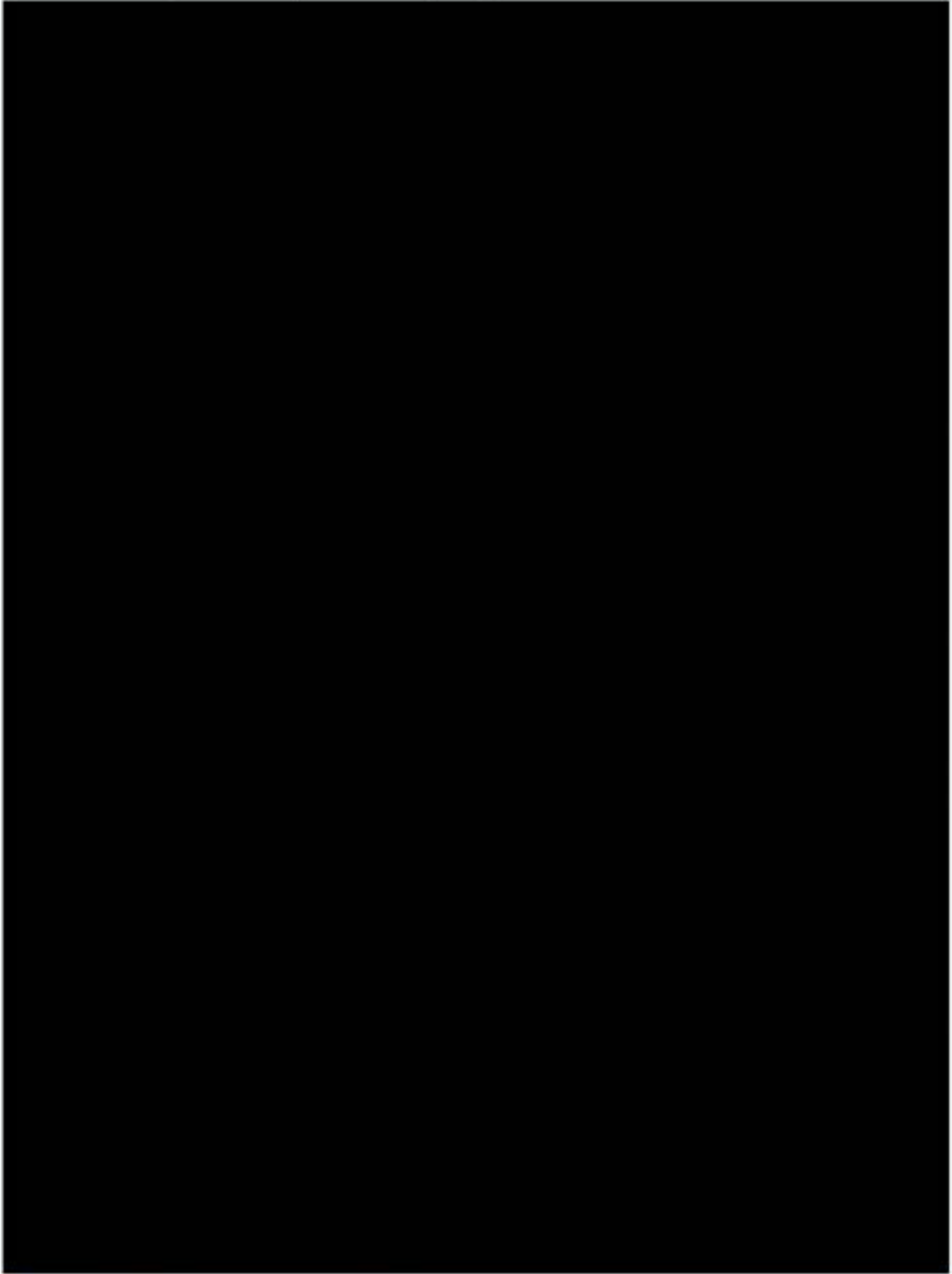


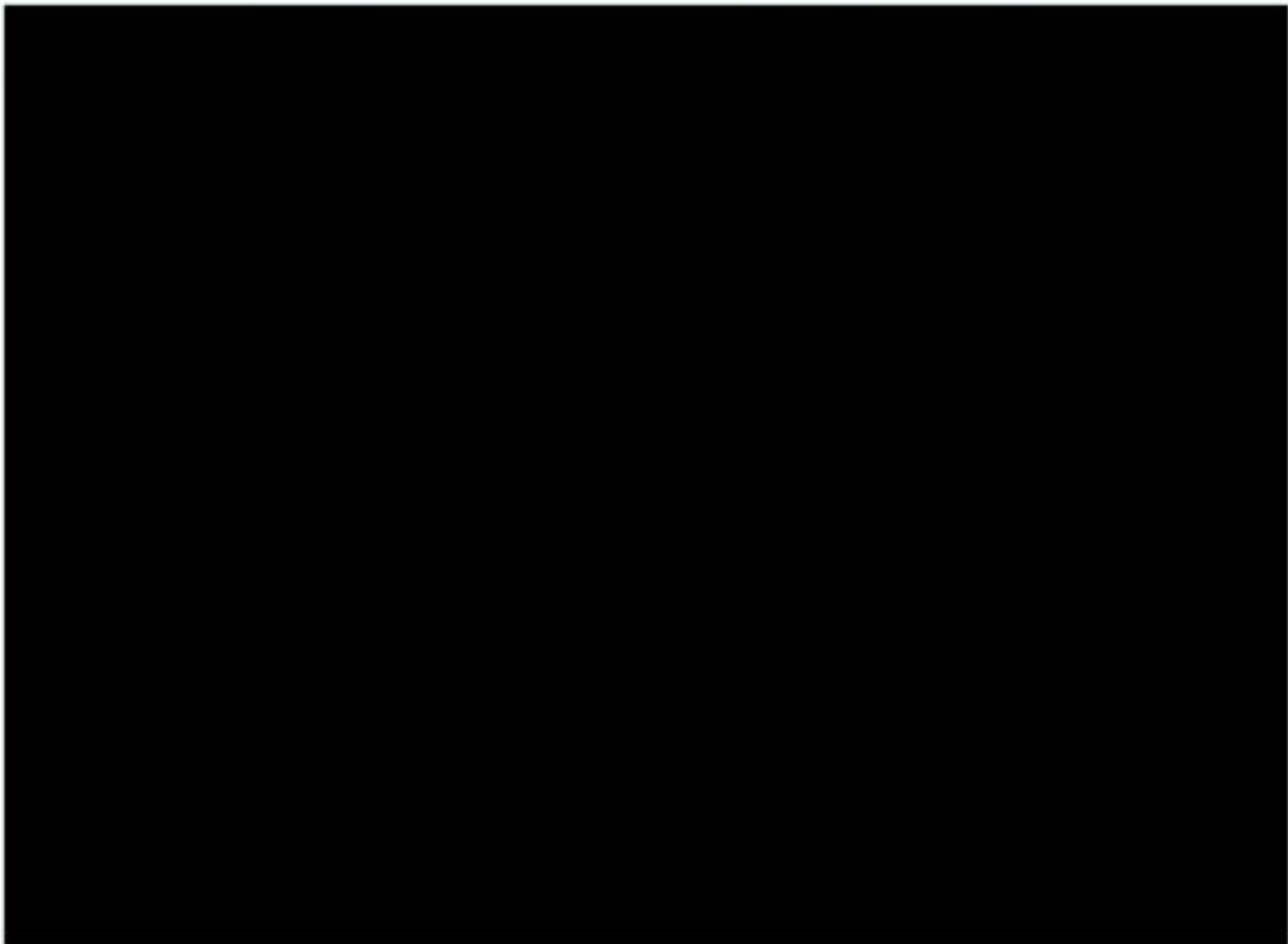




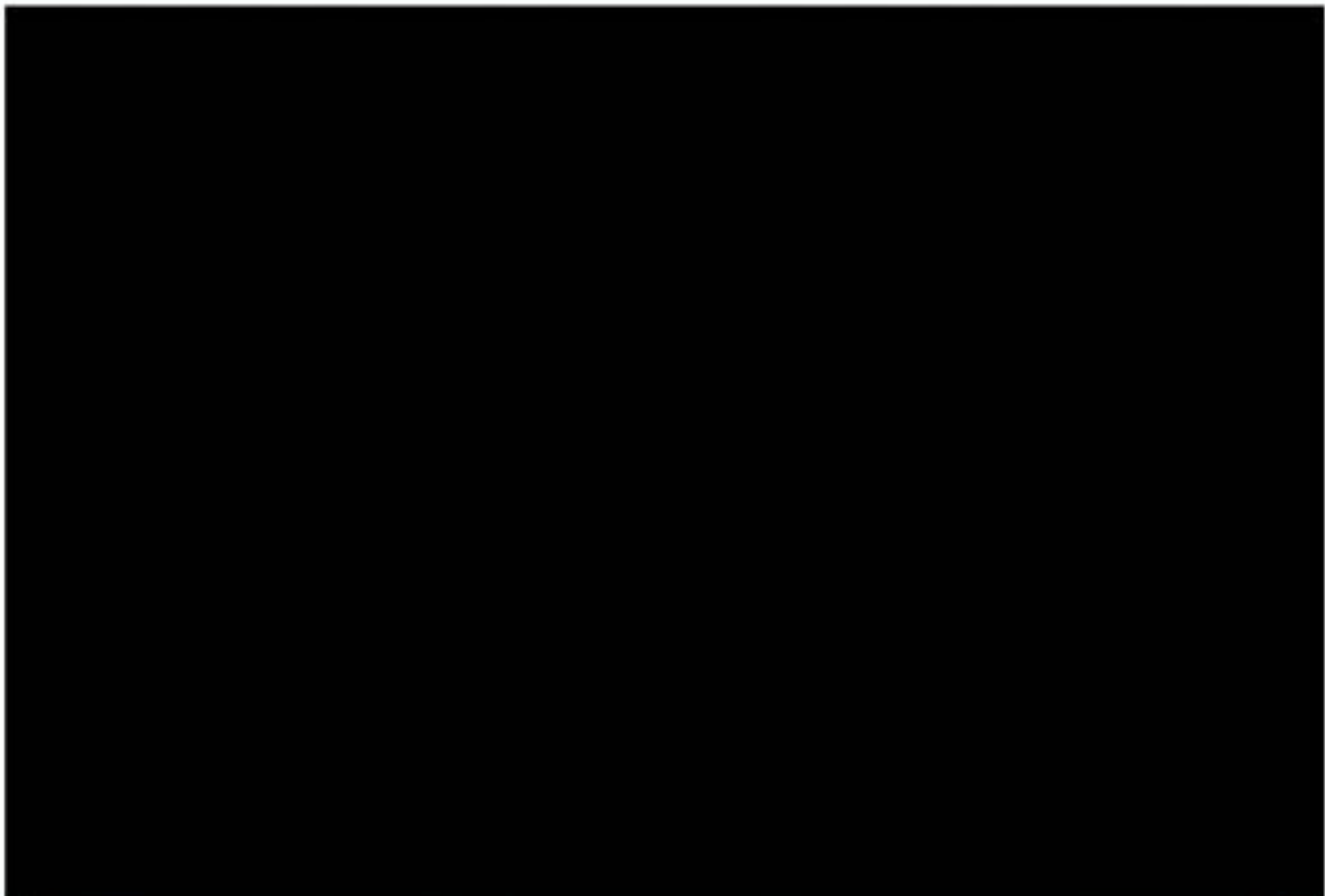
# Appendix B

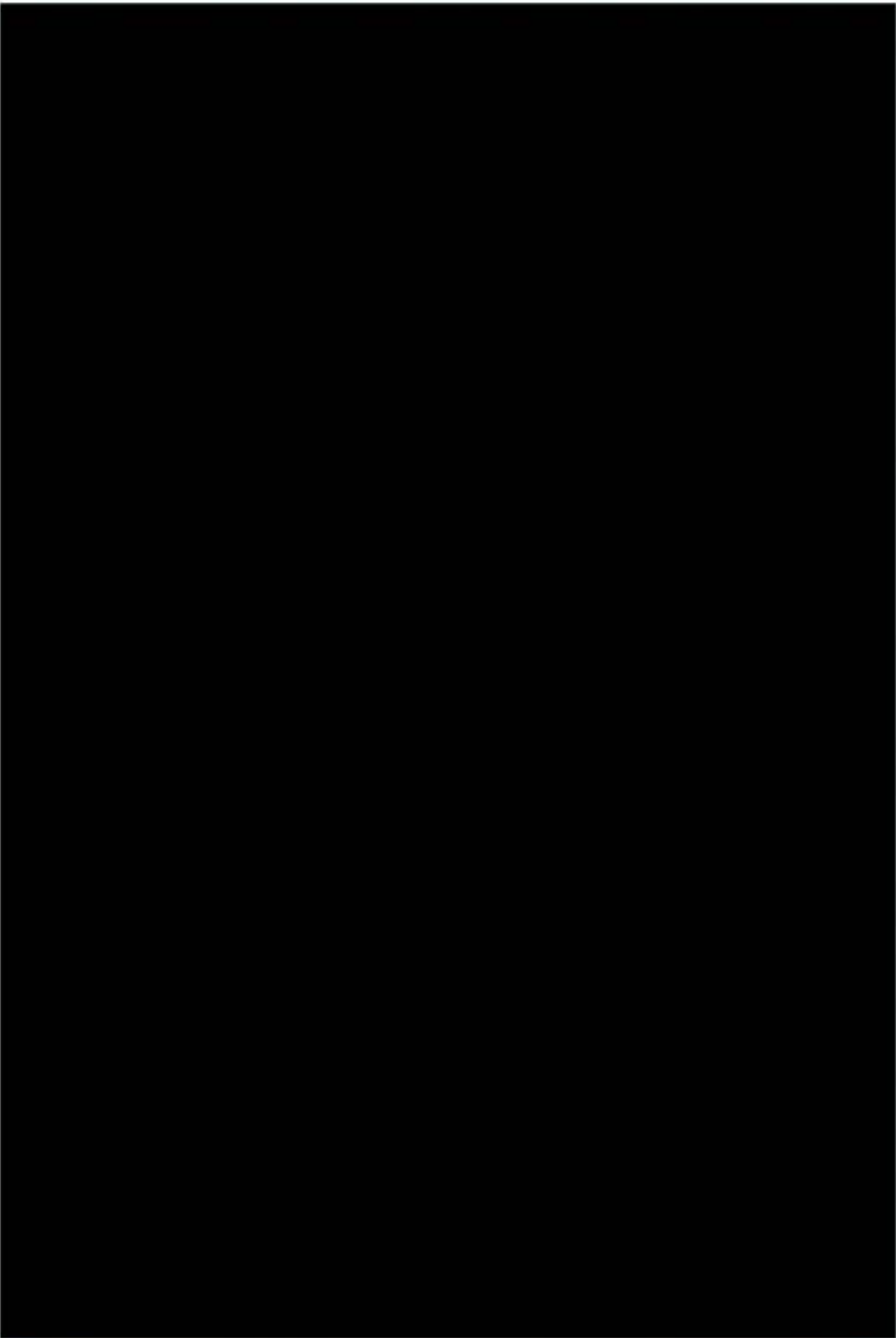
## Schedule of Daywork Rates (construction phase)





**Plant Rates**









## Schedule 11 - Extension of Date for Returned Works Construction Completion of EDC Works and Sunset Date

(Clause 12.6(a) and 12.8)

### 1. Claim for extension of time

To claim an extension of time:

- (a) between the date of the M7-M12 Integration Project Deed and the Date of Returned Works Construction Completion of the EDC Works, to the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and the Sunset Date; and
- (b) after the Date of Returned Works Construction Completion of the EDC Works, to the Date for Integration Completion and the Sunset Date,

each Company must:

- (c) within 12 Business Days of the earlier of when either Company or the State Works Contractor:
  - (i) became aware; or
  - (ii) should reasonably have become aware of the Excusable Cause of Delay causing the delay; or
  - (iii) a Company being required to proceed with (or procure the implementation of) a Change directed by Transport's Representative (including under paragraph 1.6(a), 1.7(b)(i), 1.7(d)(ii) or 1.7(f)(i) of Schedule 10) or any Change Order under this deed,

submit a written claim to Transport's Representative for an extension to:

- (iv) if paragraph 1(a) of this Schedule 11 applies, the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and Sunset Date; or
- (v) if paragraph 1(b) of this Schedule 11 applies, the Date for Integration Completion and the Sunset Date,

which:

- (vi) gives detailed particulars of the delay and the occurrence causing the delay, including whether the Excusable Cause of Delay is a Compensation Event;
- (vii) where the Excusable Cause of Delay is a Compensation Event, details of the likely reasonable costs referred to in clause 12.10(c) and how those costs have been calculated; and
- (viii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that:
  - A. by reference to the most recent, updated Overall D&C Program provided to the Independent Certifier pursuant to clause 12.3(c) of this deed (which may further be updated to take into account changes to the program for the Project

Activities and delays which may have occurred since the provision of the last Overall D&C Program provided to the Independent Certifier), the delay involves an activity which is critical to the maintenance of progress in the execution of the Project Activities and which will delay it and/or the State Works Contractor in achieving Returned Works Construction Completion of the EDC Works or Integration Completion in the manner described in paragraph 2(a)(v); and

- B. the conditions precedent to any extension of time in paragraph 2 have been satisfied;
- (d) if the effects of the delay continue beyond the 12 Business Day period referred to in paragraph 1(c) and the Companies wish to claim an extension of time to:
- (i) if paragraph 1(a) of this Schedule 11 applies, the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and Sunset Date; or
  - (ii) if paragraph 1(b) of this Schedule 11 applies, the Date for Integration Completion and the Sunset Date,

in respect of the further delay, each Company must submit a further written claim to Transport's Representative:

- (iii) every 12 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay (**Final EOT Claim**); and
- (iv) containing the information required by paragraph 1(c).

Transport's Representative may, within 10 Business Days after receiving a Company's claim or further claim for an extension of time, by written notice to that Company, request additional information in relation to the claim or further claim. Each Company must, within 10 Business Days of receiving such request, provide Transport's Representative with the information requested.

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## 2. Condition precedent to extension of time

- (a) It is a condition precedent to each Company's entitlement to an extension of time to:
- (i) if paragraph 1(a) of this Schedule 11 applies, the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and Sunset Date; or
  - (ii) if paragraph 1(b) of this Schedule 11 applies, the Date for Integration Completion and the Sunset Date,
- that:
- (iii) each Company must give the notices and claims required by paragraph 1 as required by that paragraph;
  - (iv) the cause of the delay was beyond the reasonable control of each Company, the State Works Contractor and their respective Related Parties; and
  - (v) each Company and/or the State Works Contractor is actually, or will be, delayed in achieving Returned Works Construction Completion of the EDC Works or Integration Completion (as applicable) by the Excusable Cause of Delay.

- (b) If the conditions precedent in paragraph 2(a) are not satisfied:
- (i) Transport will not be liable upon any Claim by either Company, the State Works Contractor or their respective Related Parties; and
  - (ii) each Company, the State Works Contractor and their respective Related Parties will be absolutely barred from making any Claim against Transport,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

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### **3. Extension of Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and Sunset Date**

- (a) Subject to paragraph 3(d), if the conditions precedent in paragraph 2(a) have been satisfied, Transport's Representative must extend:
- (i) if paragraph 1(a) of this Schedule 11 applies, the Date for Returned Works Construction Completion of the EDC Works, the Date for Integration Completion and the Sunset Date; or
  - (ii) if paragraph 1(b) of this Schedule 11 applies, the Date for Integration Completion and the Sunset Date,
- by:
- (iii) if the cause of delay is a Change, any period:
    - A. stated by Transport's Representative in a Change Order; or
    - B. subsequently agreed or determined in accordance with paragraphs 1.7 or 1.8 of Schedule 10 (as applicable); or
  - (iv) otherwise, a reasonable period, such period to be as stated by Transport's Representative and notified to Transport and each Company (with reasons) within 15 Business Days after the latest of:
    - A. that Company's last claim under paragraph 1(d); or
    - B. the provision by that Company of any additional information requested by Transport's Representative under paragraph 1.
- (b) If the effects of an Excusable Cause of Delay continue beyond the 12 Business Day period referred to in paragraph 1(c), then:
- (i) to the extent reasonably practicable based on the information available at the relevant time, Transport's Representative may give interim determinations as to the Company's entitlement to an extension of time pursuant to paragraph 3(a). Any such determination shall not, however, be a determination for the purposes of clause 12.10(a);
  - (ii) the Company must continue to comply with paragraph 1 and paragraph 2 in respect of the relevant delay; and
  - (iii) following receipt of the Company's Final EOT Claim Transport's Representative shall provide its final determination as to that Company's entitlement to an extension of time in accordance with paragraph 3(a),



and shall not be bound by any interim determination given in accordance with paragraph 3(b)(i).

- (c) Each Company acknowledges and agrees that it shall not be entitled to issue a notice of dispute in respect of any:
  - (i) interim determination given by Transport's Representative; or
  - (ii) failure by Transport's Representative to give an interim determination, pursuant to paragraph 3(b).
  
- (d) In respect of each claim for an extension of time under paragraph 1, each Company's entitlement to an extension of time will be reduced to the extent to which either Company, the State Works Contractor or any of their respective Related Parties:
  - (i) failed to Mitigate; or
  - (ii) caused or contributed to the delay.

## Schedule 12 - Conditions Precedent to Retained Works Completion

### (Clause 1.1 and 13.1)

1. The Retained Works are complete in accordance with the M7-M12 Integration Project Deed except for minor Defects which:
  - (a) do not prevent the Retained Works from being reasonably capable of being used for their intended purposes;
  - (b) can be corrected without prejudicing the convenient or intended use of the Retained Works; and
  - (c) the Companies or the State Works Contractor has reasonable grounds for not promptly rectifying,

provided that the completion of each discrete part of the Third Party Works in accordance with the M7-M12 Integration Project Deed (except for minor Defects described in paragraphs 1(a) to (c) above) will be determined:

- (d) if the Third Party Works are Local Area Works or Utility Service Works, upon Transport and the Independent Certifier being provided with a copy of the notice referred to in clause 15.8(a)(ii) or clause 15.9(a)(ii) (as applicable); or
  - (e) if the Third Party Works are Property Works, upon Transport's Representative being provided with a certificate or statement referred to in clause 7.4(a)(ii).
2. The Companies and the State Works Contractor have:
  - (a) carried out and passed all tests which:
    - (i) are required under the M7-M12 Integration Project Deed to be carried out and passed before the Retained Works reach Retained Works Completion;
    - (ii) must necessarily be carried out and passed before the Retained Works can be used for its intended purpose; or
    - (iii) must necessarily be carried out to verify that the Retained Works are in the condition the M7-M12 Integration Project Deed requires them to be in at Retained Works Completion;
  - (b) obtained all Approvals that are required to be obtained by a Company under the M7-M12 Integration Project Deed or the State Works Contractor under the State Works Deed before Retained Works Completion of the Retained Works and provided such Approvals to Transport's Representative;
  - (c) given to Transport's Representative all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Retained Works which:
    - (i) are required by the M7-M12 Integration Project Deed to be given to Transport's Representative before Retained Works Completion; or
    - (ii) must necessarily be handed over before the Retained Works can be used for their intended purpose,

including copies of all documentation in accordance with the requirements of the Scope of Works and Technical Criteria;

- (d) executed a certificate in the form of Schedule 14 and provided it to Transport's Representative and the Independent Certifier;
  - (e) removed all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works from the Project Site and Extra Land except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by Transport's Representative; and
  - (f) removed all signs erected in accordance with clause 11.5 and made good any damage caused by the removal of those signs.
3. The Quality Manager has executed a certificate in the form of Appendix C to Schedule 8 and provided it to Transport's Representative.
4. The Companies or the State Works Contractor have, in respect of any Extra Land occupied or used in connection with the Project Works:
- (a) rehabilitated the Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
  - (b) provided to Transport's Representative with:
    - (i) properly executed releases on terms satisfactory to Transport's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having an interest in such land; or
    - (ii) if the Companies or the State Works Contractor are unable to obtain such a release despite using its best endeavours to do so, a statement from the Companies or the State Works Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by the Companies or the State Works Contractor to the owner, occupier or other person following completion of the work on the Extra Land.
5. The Companies or the State Works Contractor have reinstated the Temporary Areas and any other land affected by or used for the purposes of the Temporary Works to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area which the M7-M12 Integration Project Deed (including the Scope of Works and Technical Criteria) specifies need not be reinstated (including where the Companies or the State Works Contractor is required to demolish buildings on the Temporary Area).
6. Transport has been provided with:
- (a) all other certificates required by the M7-M12 Integration Project Deed and the State Works Deed;
  - (b) a copy of all signed independent road safety audits required by section 5.20 of the Scope of Works and Technical Criteria;
  - (c) a summary prepared by the Quality Manager pursuant to paragraph 1(b)(ii) of Schedule 8 on all quality issues;
  - (d) all documents relating to all non-conformances pursuant to paragraph 3(c) of Schedule 8;
  - (e) copies of all site investigation reports and property conditions surveys pursuant to section 4.4.1 of the Scope of Works and Technical Criteria;
  - (f) details of the location of Utility Services pursuant to Appendices B.39 and D.6 of the Scope of Works and Technical Criteria; and

- (g) copies of Approvals from Authorities for the drainage design pursuant to section 2.2.4 of the Scope of Works and Technical Criteria.
7. Transport has been provided with:
- (a) a copy of the O&M Manuals and the revised O&M Plan, each as prepared in accordance with the M7-M12 Integration Project Deed;
  - (b) copies of all Approvals required to open, use and operate the Retained Works;
  - (c) not used;
  - (d) notices in accordance with clause 13.4(c);
  - (e) a written notice of the kind referred to in clause 15.8(a)(i)A from the relevant Authority for each discrete part of the Local Area Works which is required to be completed or a notice from each Company in accordance with clause 15.8(a)(i)B;
  - (f) a written notice of the kind referred to in clause 15.9(a)(i)A from the relevant Authority for of each discrete part of the Utility Service Works which is necessary or required to be completed so that the Motorway may be opened to the public for the safe, efficient and continuous passage of motor vehicles or a notice from each Company in accordance with clause 15.9(a)(i)B;
  - (g) the inventory details required in accordance with Appendix C.2 and section 7.2 of the Scope of Works and Technical Criteria; and
  - (h) a copy of "as built" drawings of the Project Works pursuant to Appendix C.2 of the Scope of Works and Technical Criteria.
8. Not used
9. Transport has approved each Company's Asset Information System as required under Section 7.2 of the Scope of Works and Technical Criteria.
10. Transport has received and approved the durability assessment reports required by section 3.4.5 of Appendix C.2 to the Scope of Works and Technical Criteria.

**Schedule 13 - Not used**

## Schedule 14 – Companies' Notice of Retained Works Completion

(Clauses 1.1 (definition of "Companies' Notice of Retained Works Completion") and 13.1(d))

To: Transport's Representative / Independent Certifier

From: [insert Companies' details] (together, the Companies)

In accordance with the terms of clause 13.1(d) of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (**M7-M12 Integration Project Deed**), we hereby certify that Retained Works Completion has been achieved by the Companies on [insert date] in accordance with the terms and conditions of the M7-M12 Integration Project Deed.

.....  
Signed for and on behalf of the Companies

## Schedule 15 – Companies' Notice of Returned Works Construction Completion

(Clauses 1.1 (definition of "Companies' Notice of Returned Works Construction Completion") and 14.1(e))

To: Transport's Representative / Independent Certifier

From: [insert Companies' details] (together, the **Companies**)

In accordance with the terms of clause 14.1(e) of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (**M7-M12 Integration Project Deed**), we hereby certify that Returned Works Construction Completion of the [EDC Works / Returned Works (excluding the EDC Works)] has been achieved by the Companies on [insert date] in accordance with the terms and conditions of the M7-M12 Integration Project Deed.

.....  
Signed for and on behalf of the Companies

**Schedule 16 - Not used**



## Schedule 17 – Certificate of Retained Works Completion

(Clauses 1.1 (definition of “Certificate of Retained Works Completion”) and 13.1(e)(i))

[ON INDEPENDENT CERTIFIER LETTERHEAD]

[insert date]

### Transport

Transport for NSW (ABN 18 804 239 602) of [insert Transport address, which will be consistent with the address for Notices under the M7-M12 Integration Project Deed], a NSW Government agency constituted under the Transport Administration Act 1988 (NSW)

### Companies

WestLink Motorway Limited (ABN 63 096 512 300) of 101 Wallgrove Road, Eastern Creek NSW 2776;  
and

WSO Co Pty Limited (ABN 73 102 757 924) of 101 Wallgrove Road, Eastern Creek NSW 2776.

Dear Sirs/Madams

### CERTIFICATE OF RETAINED WORKS COMPLETION M7-M12 Integration Project Deed

We refer to clause 13.1(e)(i) of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (M7-M12 Integration Project Deed) and hereby advise you that Retained Works Completion was achieved on [insert date].

This Certificate of Retained Works Completion does not relieve the Companies of their obligation to rectify Defects under clauses 13.3 and 15 of Annexure A to the M7-M12 Integration Project Deed and to complete other outstanding obligations under the M7-M12 Integration Project Deed.

Yours sincerely

.....

Signed for and on behalf of the Independent Certifier

## Schedule 18 – Certificate of Returned Works Construction Completion

(Clauses 1.1 (definition of "Certificate of Returned Works Construction Completion") and 14.1(g)(i)A)

[ON TRANSPORT'S LETTERHEAD]

[insert date]

### Companies

WestLink Motorway Limited (ABN 63 096 512 300) of 101 Wallgrove Road, Eastern Creek NSW 2776;  
and

WSO Co Pty Limited (ABN 73 102 757 924) of 101 Wallgrove Road, Eastern Creek NSW 2776

Dear Sirs/Madams

### CERTIFICATE OF RETURNED WORKS CONSTRUCTION COMPLETION M7-M12 Integration Project Deed

We refer to clause 14.1(g)(i)A of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (**M7-M12 Integration Project Deed**) and hereby advise you that Returned Works Construction Completion of the [EDC Works / Returned Works (excluding the EDC Works)] was achieved on [insert date].

A list of minor Defects of the type described in paragraph (a) of the definition of "Returned Works Construction Completion" is attached.

This Certificate of Returned Works Completion does not relieve the Companies of their obligation to rectify Defects under clause 15 of Annexure A to the M7-M12 Integration Project Deed and to complete other outstanding obligations under the M7-M12 Integration Project Deed.

Yours sincerely

.....  
Signed for and on behalf of Transport's Representative

**Attachment** – List of minor Defects of the type described in paragraph (a) of the definition of "Returned Works Construction Completion"

No.	Minor Defect
-----	--------------

1.	[insert]
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## Schedule 19 – Companies' Notice of Returned Works Final Completion

(Clause 1.1 (definition of "Companies' Notice of Returned Works Final Completion") and 14.6(d))

To: Transport's Representative and the Independent Certifier

From: [insert Companies' details] (together, the **Companies**)

In accordance with the terms of clause 14.6(d) of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [ ] (**M7-M12 Integration Project Deed**), we hereby certify that Returned Works Final Completion has been achieved by the Companies on [insert date] in accordance with the terms and conditions of the M7-M12 Integration Project Deed.

.....  
Signed for and on behalf of the Companies

**Schedule 20 - Not used**

## Schedule 21 - Independent Certifier's Certificate - Returned Works Construction Completion

(Clause 1.1 and paragraph (d) of the definition of Returned Works Construction Completion)

### [ON INDEPENDENT CERTIFIER'S LETTERHEAD]

[insert date]

#### Transport

Transport for NSW (ABN 18 804 239 602) of [insert Transport address, which will be consistent with the address for Notices under the M7-M12 Integration Project Deed], a NSW Government agency constituted under the Transport Administration Act 1988 (NSW)

#### Companies

WestLink Motorway Limited (ABN 63 096 512 300) of 101 Wallgrove Road, Eastern Creek NSW 2776; and

WSO Co Pty Limited (ABN 73 102 757 924) of 101 Wallgrove Road, Eastern Creek NSW 2776

Dear [insert the name of Transport's Representative]

### CERTIFICATE OF RETURNED WORKS CONSTRUCTION COMPLETION M7-M12 Integration Project Deed

In accordance with paragraph (d) of the definition of Returned Works Construction Completion in Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (M7-M12 Integration Project Deed), we hereby certify that:

- (a) the Companies have complied with and satisfied the requirements of Transport's General Specification Q6;
- (b) the Companies have completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 9.4(d) of Annexure A to the M7-M12 Integration Project Deed and the Design Review Schedule subject to minor Defects as referred to in paragraph (a) of the definition of "Returned Works Construction Completion";
- (c) the release of all Hold Points has been undertaken in accordance with the M7-M12 Integration Project Deed;
- (d) all documentation has been recorded and submitted to Transport's Representative in accordance with the M7-M12 Integration Project Deed;
- (e) the design used by the Companies for construction purposes is in accordance with the requirements of the M7-M12 Integration Project Deed, including the Scope of Works and Technical Criteria;
- (f) the construction complies with the requirements of the M7-M12 Integration Project Deed, including the Scope of Works and Technical Criteria, subject to minor Defects as referred to in paragraph (a) of the definition of "Returned Works Construction Completion"; and
- (g) the Final Design Documentation for each of the design elements specified in section 3.3(i) of Appendix C.2 of the Scope of Works and Technical Criteria,

is in accordance with the requirements of the M7-M12 Integration Project Deed, including the Scope of Works and Technical Criteria.

This certificate does not relieve the Companies of their obligation to rectify Defects under clause 15 of Annexure A to the M7-M12 Integration Project Deed and to complete other outstanding obligations under the M7-M12 Integration Project Deed.

Yours sincerely

.....

Signed for and on behalf of the Independent Certifier

## Schedule 22 - Quality Manager's Certificate - Returned Works Construction Completion

(Clause 1.1 and paragraph (e) of the definition of "Returned Works Construction Completion")

To: Transport's Representative

From: Quality Manager

In accordance with the terms of paragraph (e) of the definition of Returned Works Construction Completion in Annexure A to the deed between Transport for NSW (ABN 18 804 239 602), WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (together, the Companies) dated [ ] (M7-M12 Integration Project Deed), I hereby certify in relation to the [EDC Works / Returned Works (excluding the EDC Works)] that:

- (a) the Companies have complied with and satisfied the requirements of Appendix C.7 of the Scope of Works and Technical Criteria and Transport's General Specification Q6;
- (b) the Companies have completed construction in accordance with the Design Documentation which the Companies are entitled to use for construction purposes in accordance with clause 9.4(d) of Annexure A to the M7-M12 Integration Project Deed, subject to minor Defects as referred to in paragraph (a) of the definition of "Returned Works Construction Completion";
- (c) the release of all Hold Points has been undertaken in accordance with the M7-M12 Integration Project Deed; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and Transport's Representative in accordance with the M7-M12 Integration Project Deed.

.....  
Signed for and on behalf of the Quality Manager

## Schedule 23 – Certificate of Returned Works Final Completion

(Clause 1.1 (definition of "Certificate of Returned Works Final Completion") and 14.6(e)(i))

[ON TRANSPORT'S LETTERHEAD]

[insert date]

### Companies

WestLink Motorway Limited (ABN 63 096 512 300) of 101 Wallgrove Road, Eastern Creek NSW 2776;  
and

WSO Co Pty Limited (ABN 73 102 757 924) of 101 Wallgrove Road, Eastern Creek NSW 2776

Dear Sirs/Madams

### CERTIFICATE OF RETURNED WORKS FINAL COMPLETION M7-M12 Integration Project Deed

We refer to clause 14.6(e)(i) of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (**M7-M12 Integration Project Deed**) and hereby advise you that Returned Works Final Completion was achieved on [insert date].

This Certificate of Returned Works Final Completion does not relieve the Companies of their other outstanding obligations under the M7-M12 Integration Project Deed.

Yours sincerely

.....

Signed for and on behalf of Transport's Representative



**Schedule 24 - Not used**

## Schedule 25 - Quality Manager's Certificate - Returned Works Final Completion / Last Defects Correction Period

(Clause 1.1 and paragraph (d) of the definition of "Returned Works Final Completion")

To: Transport's Representative

From: Quality Manager

In accordance with the terms of paragraph (d) of the definition of Returned Works Final Completion of Annexure A to the deed between Transport for NSW (ABN 18 804 239 602), WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (together, the **Companies**) dated [ ] (**M7-M12 Integration Project Deed**) with respect to the Returned Works, I hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the M7-M12 Integration Project Deed:

- (a) the Companies have complied with and satisfied the requirements of Transport's General Specification Q6;
- (b) the Companies have completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under 9.4(d) of Annexure A to the M7-M12 Integration Project Deed and the Design Review Schedule;
- (c) the release of all Hold Points has been undertaken in accordance with the M7-M12 Integration Project Deed; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and Transport's Representative in accordance with the M7-M12 Integration Project Deed.

.....  
Signed for and on behalf of the Quality Manager

## Schedule 26 - Independent Certifier's Certificate - Returned Works Final Completion

(Clause 1.1 and paragraph (e) of the definition of "Returned Works Final Completion")

[ON INDEPENDENT CERTIFIER'S LETTERHEAD]

[insert date]

### Transport

Transport for NSW (ABN 18 804 239 602) of [insert Transport address, which will be consistent with the address for Notices under the M7-M12 Integration Project Deed], a NSW Government agency constituted under the Transport Administration Act 1988 (NSW)

### Companies

WestLink Motorway Limited (ABN 63 096 512 300) of 101 Wallgrove Road, Eastern Creek NSW 2776; and

WSO Co Pty Ltd (ABN 73 102 757 924) of 101 Wallgrove Road, Eastern Creek NSW 2776

Dear [insert the name of Transport's Representative]

### CERTIFICATE OF RETURNED WORKS FINAL COMPLETION M7-M12 Integration Project Deed

In accordance with paragraph (e) of the definition of Returned Works Final Completion in Annexure A to the deed between Transport for NSW (ABN 18 804 239 602) and the Companies dated [insert date] (**M7-M12 Integration Project Deed**), we hereby certify that as at the date of the expiration of the last "Defects Correction Period" as defined in the M7-M12 Integration Project Deed:

- (a) the release of all Hold Points has been undertaken in accordance with the M7-M12 Integration Project Deed;
- (b) the Companies have complied with and satisfied the requirements of Transport's General Specification Q6;
- (c) all design, construction, inspection, repairs and monitoring by the Companies has been undertaken in accordance with the M7-M12 Integration Project Deed, including the Scope of Works and Technical Criteria;
- (d) all documentation, reports, submissions, notices, approvals and the like have been submitted to Transport's Representative in accordance with the M7-M12 Integration Project Deed; and
- (e) the Final Design Documentation for each of the design elements specified in section 3.3(i) of Appendix C.2 of the Scope of Works and Technical Criteria,

is in accordance with the requirements of the M7-M12 Integration Project Deed, including the Scope of Works and Technical Criteria.

Yours sincerely

.....

Signed for and on behalf of the Independent Certifier

## Schedule 27 - Form of Warranty

### (Clause 14.5)

This deed poll is made the \_\_\_\_\_ day of \_\_\_\_\_ 20

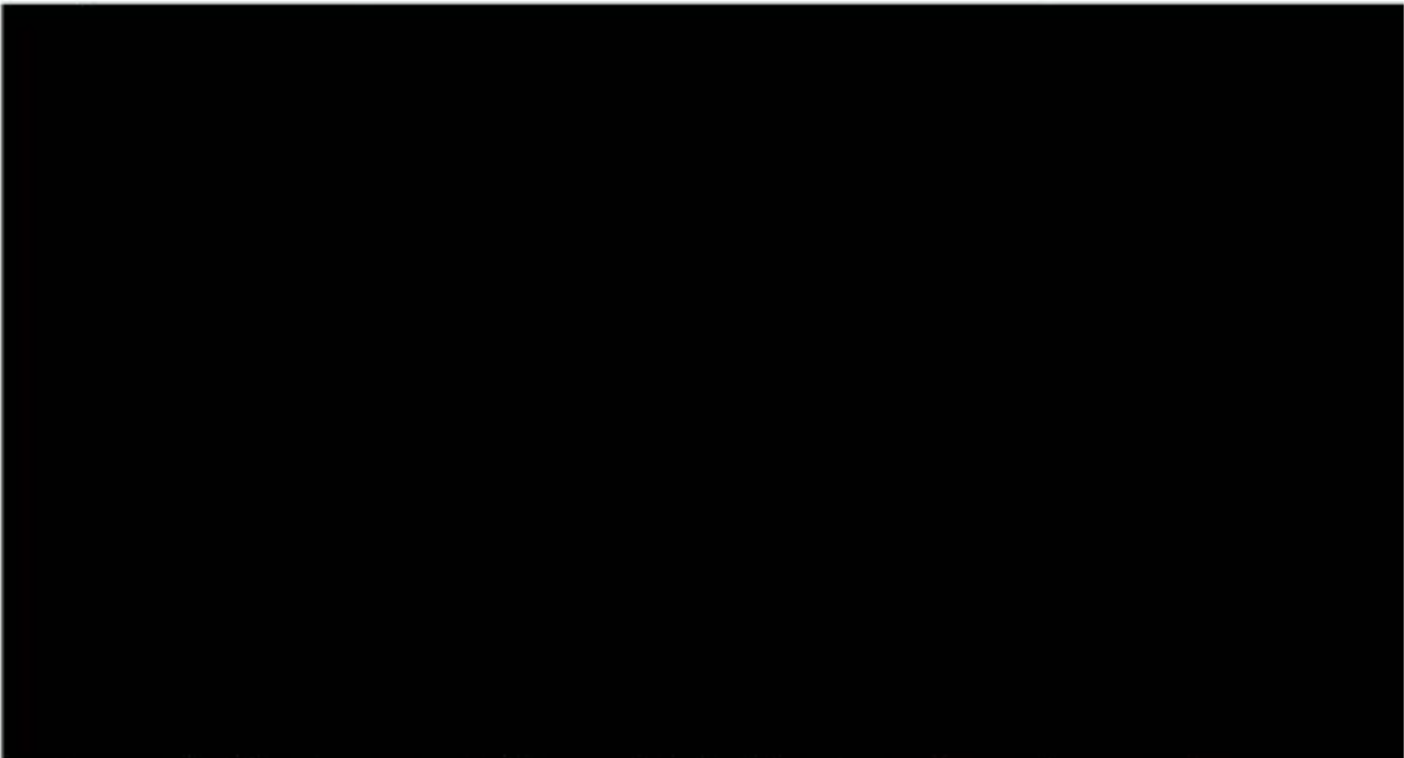
To: **TRANSPORT FOR NSW**, (ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("**Transport**")

By: That person described in Item 1 of the Schedule ("**Warrantor**" which expression will include its successors and assigns)

### Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in Item 3 of the Schedule ("**Contractor**") for the [*Insert project description*] ("**Project**").
  - B. It is a requirement imposed by Transport that the Warrantor give the following warranties in favour of Transport with respect to the Equipment.
- 

### Operative



3. The Warrantor covenants to Transport that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.
4. The Warrantor acknowledges to Transport that nothing contained in this Deed Poll is intended to nor will render Transport in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.



## Schedule

*Item 1: Warrantor*

*[Insert Warrantor's name]*

*[Insert Warrantor's address]*

*Item 2: The Equipment*

*[Insert details of the equipment]*

(Recital A)

*Item 3: The Contractor*

*[Insert Contractor's name] (ABN [Insert Contractor's ABN]) [Insert Contractor's address]*

(Recital A)

*Item 4: Deed*

The deed titled "*[Insert project deed title]*"

(Recital A)

*Item 5: Detailed Warranty of Warrantor*

*[Insert warranty with respect of the equipment]*

(Clause 1)

*Item 6: Period of Years*

*[Insert number of years]* years from the expiry of the last "Defects Correction Period" as defined in the Deed.

(Clause 2)

Executed as a deed poll.

Executed by [            ]

in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

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

\_\_\_\_\_  
Full name of director who states that he or she is a director of WSO Finance Pty Limited (ACN 102 757 871)

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

\_\_\_\_\_  
Full name of company secretary/director [*delete position as appropriate*] who states that he or she is a company secretary/director [*delete position as appropriate*] of WSO Finance Pty Limited (ACN 102 757 871)

## Schedule 28 - Project Insurances

(Clauses 18.6 and 18.12)

### General requirements

- (a) All insurances which Transport and the Companies are required to effect or maintain (or cause to be effected and maintained) under this deed:
- (i) with the exception of Workers Compensation, must be effected with a Relevant Insurer, or in the case of Principal Arranged Insurances arranged by Transport, means policies effected via iCare;
  - (ii) must:
    - A. be on the terms required by this Schedule 28 (and, in respect of Part B, Principal Arranged Insurance, on terms set out in Exhibit E to this deed); and
    - B. with the exception of Workers Compensation, Motor Vehicle and Construction Plant and Equipment insurances, otherwise as approved by Transport (which approval will not be unreasonably withheld or delayed);
  - (iii) with the exception of Workers Compensation, Motor Vehicle and Construction Plant and Equipment insurances, must not contain any exclusion, endorsement or alteration, unless it is first approved by Transport;
  - (iv) in the case of the Contract Works (project specific), Transit – Marine Cover (project specific), Third Party Liability (project specific), Early Works Public Liability (project specific) and Early Works Contract Works (project specific) insurances, must be in the joint names of the Contractor, subcontractors of every tier, each Company, the State Works Contractor and Transport (and, in the case of Third Party Liability (project specific), Sydney Trains and TAHE) and such others as have an insurable interest under the Project Documents (including the Security Trustee, once the Debt Financing Documents come into effect) for their respective rights, interests and liabilities and in which the insurer waives all rights of subrogation which it may have or acquire against all or any of the persons comprising the insured;
  - (v) except in the case of Workers Compensation, the Principal Arranged Insurances in Part B of this Schedule 28 must contain a term which requires the insurer to give the Company Group and Transport 20 Business Days' notice in writing prior to:
    - A. the insurer giving the party arranging the relevant insurance a notice of cancellation;
    - B. the insurer cancelling the policy on the request of the party arranging the relevant insurance;
    - C. the party arranging the relevant insurance allowing the policy to expire; or
    - D. the insurer giving the party arranging the relevant insurance any other notice in respect of the policy;



- (vi) the Companies must or must procure that the Contractor, in respect of the Company Insurances in Part A, as soon as possible following receipt of notice from the insurer, notifies and Transport in writing of:
    - A. the insurer giving a notice of cancellation;
    - B. the insurer cancelling the policy on the request of the Companies or the Contractor;
    - C. the insurer giving the Companies or the Contractor any other notice in respect of the policy.
  - (vii) in the case of Contract Works (project specific) and Early Works Contract Works (project specific) insurances, must specify Transport, each Company, the State Works Contractor and the Contractor as joint loss payees;
  - (viii) not used;
  - (ix) in the case of Third Party Liability (project specific), the insurance must contain:
    - A. a waiver of subrogation clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
    - B. a cross liability clause for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
  - (x) in the case of Contract Works (project specific), must be endorsed to note and allow the Companies' obligations under clause 18.10, to the effect that compliance by the Companies with the provisions of that clause will not prejudice the Companies' or any other insured parties' rights to indemnity under the insurances; and
  - (xi) in the case of Professional Indemnity insurance (project specific) must include:
    - A. a principal's indemnity endorsement in favour of the Companies and Transport (to the extent that Transport or the Companies has any liability as a principal), in a form approved by Transport (which approval will not be unreasonably withheld or delayed); and
    - B. each of the Contractor and its professional consultants as named insured for their respective rights, interests and liabilities in which the insurer waives all rights of subrogation which it may have or acquire against all or any of the persons comprising the insured.
- (b) The Companies must or must procure that the Contractor:
- (i) except in the case of Workers Compensation, gives Transport (and any other person in whose name a Project Insurance is effected) certificates of currency when requested by Transport;
  - (ii) give Transport certified copies of all:

- A. policies, including policy schedules; and
- B. endorsements,

in relation to the Transit - Marine Cover (project specific) as soon as it receives them from the insurer; and

- (iii) where a policy is in joint names or there are two or more insureds, have each such policy endorsed to the effect that the insurer agrees that any act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty by any one insured party shall not prejudice or invalidate the rights of the other parties comprising the insured who are themselves not guilty of such act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty.

(c) Transport must:

- (i) give the Companies certificates of currency when requested by the Company Group and certified copies of all:

- A. policies, including policy schedules; and
- B. endorsements,

in relation to insurance required to be taken out by Transport pursuant to Part B of this Schedule 28 as soon as it receives them from the insurer; and

- (ii) where the insurances are in joint names, have each policy endorsed to the effect that the insurer agrees that any act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty by any one insured party shall not prejudice or invalidate the rights of the other parties comprising the insured who are themselves not guilty of such act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty.

(d) Transport must ensure that the Third Party Liability (project specific) and Early Works Public Liability (project specific) (subject to the limitations in cover provided by the insurance market and policy terms, conditions and deductibles):

- (i) covers each Company, the State Works Contractor and the Contractor for potential liability to the Companies and Transport (as relevant) assumed by reason of the exclusion of Part 4 of the Civil Liability Act 2002 (NSW); and
- (ii) does not exclude any potential liability the Contractor may have had to the Companies under the D&C Deed, the Companies' may have had to Transport under or by reason of this deed, or the State Works Contractor may have had to Transport under or by reason of the State Works Deed.

(e) In the event of the insolvency of any insurer providing any of the Project Insurances, the party responsible for effecting the relevant insurance must replace such insurer, with an alternative Relevant Insurer as soon as reasonably practicable following becoming aware of such insolvency.

**PART A – COMPANY INSURANCES**

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
<b>Company Arranged Insurance (Companies)</b>			
1. Transit - Marine Cover (project specific)	<p><u>Limits of liability</u></p> <p>Sum insured equivalent to not less than the maximum total value of the goods and material to be incorporated into the Project Works being transferred in any one shipment.</p>	Duration of shipments of critical goods and material to be incorporated into the Project Works	Transit - Marine Cover insurance to cover Loss or damage to goods and material to be incorporated into the Project Works, caused by all commercially insurable risks, suffered during transit by land, sea or air from overseas plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.
2. Workers Compensation	As required by Law	On and from the Satisfaction Date until the end of all Defects Correction Periods	<p>Workers Compensation insurance:</p> <p>(a) as required by Law under any statute relating to workers' or accident compensation; and</p> <p>(b) to the extent permitted by law and available, extended to indemnify Transport as principal.</p>
3. Motor Vehicle	<p><u>Limits of liability</u></p> <p>(a) Physical loss or damage to vehicles - not less than the market value of all vehicles whether owned, hired, or leased by the Contractor, which are brought on to the Project Site</p> <p>(b) Third party property damage and injury or death to persons in respect of the Contractor's vehicles - at least [REDACTED] for any one occurrence</p>	On and from the Satisfaction Date until the end of all Defects Correction Periods	<p>Motor Vehicle Insurance which:</p> <p>(a) provides cover against all physical loss or damage to all vehicles whether owned, hired, or leased by the Contractor, which are brought on to the Project Site; and</p> <p>(b) covers third party property damage and injury or death to persons (other than as required by statute) in respect of all vehicles used by the Contractor in connection with the Project Activities.</p>
4. Construction Plant & Equipment	<u>Limits of liability</u>	On and from the Satisfaction Date until the end of all	Construction Plant & Equipment insurance in respect of any Construction Plant and equipment which

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
	Not less than the market value of the Contractor's Construction Plant and equipment	Defects Correction Periods	are brought on to the Project Site (whether owned, hired, or leased by the Contractor), which provides cover against all physical loss or damage to any of the Contractor's plant and equipment.

(Clause 18.12)

#### PART B – PRINCIPAL ARRANGED INSURANCE

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
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##### Principal Arranged Insurance (Transport)

The details of the policies below are provided in the iCare policy documents. A copy of these is set out in Exhibit E to this deed. Capitalised terms which are not defined in the deed are defined in the sample policy documents.

1A	Early Works Public Liability (project specific)	As per policy in Exhibit E to this deed	On and from the Satisfaction Date and maintained until (but not earlier than) the Third Party Liability (project specific) insurance at Item 3 below is effected and commences	Third Party liability insurance (Public and Products) covering claims in respect of:  (a) loss of, loss of use of, destruction or damage to, real or personal property; and  (b) injury to, or disease or death of, persons,  as per policy in Exhibit E to this deed
1B	Early Works Contract Works (project specific)	As per policy in Exhibit E to this deed	On and from the Satisfaction Date and maintained until (but not earlier than) the Contract Works (project specific) insurance at Item 1 below is effected and commences	To cover loss or damage as per policy in Exhibit E to this deed

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
1. Contract Works (project specific)	As per policy in Exhibit E to this deed	To be effected and commence no later than the date 75 days after the Satisfaction Date and maintained until the end of all Defects Correction Periods	Contract Works insurance to cover loss or damage to the Project Works.
2. Delay in Start-Up (project specific)	As per policy in Exhibit E to this deed	To be effected and commence no later than the date 75 days after the Satisfaction Date and maintained until the Date of Integration Completion	<p>Delay in Start-Up – 24 month indemnity for the Companies for their financial loss following a delay caused by a loss under the Contract Works policy.</p> <p>The Delay in Start-Up insurance must have a deductible of not more than 90 days (in aggregate) for all Claims.</p>
3. Third Party Liability (project specific)	<p><u>Limits of liability</u></p> <p>Public liability - [REDACTED] for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance</p> <p>Product liability - [REDACTED] for any single occurrence and in the aggregate for any one period of insurance.</p> <p><u>Deductibles</u></p> <p>As per policy in Exhibit E to this deed</p>	To be effected and commence no later than the date 75 days after the Satisfaction Date and maintained until the end of all Defects Correction Periods – covering Transport, the Companies, the State Works Contractor and the Contractor and other parties as specified in this deed	<p>Third Party liability insurance (Public and Products) covering claims in respect of:</p> <p>(a) physical loss or destruction of or damage to tangible property including the loss of use (total or partial) or any consequential loss or total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic or the like; and</p> <p>(b) bodily injury, death, illness, disease, shock, fright, loss of consortium and loss of amenities, mental anguish or mental injury, arising out of or in connection with the Project Works as per the policy wording set out in Schedule E to this deed.</p>

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
4.	Environmental Impairment Liability	<u>Limit of liability</u> [REDACTED] for any single occurrence.  <u>Deductible</u> As per policy in Exhibit E to this deed	To be effected and commence no later than the date 75 days after the Satisfaction Date and maintained until the end of all Defects Correction Periods – covering Transport, the Companies, the State Works Contractor and the Contractor and other parties as specified in this deed	Environmental impairment insurance as outlined in Exhibit E to this deed.
5.	Professional Indemnity insurance (project specific)	<u>Limit of liability</u> [REDACTED] for any single occurrence and in the aggregate for any one period of insurance.  <u>Deductible</u> As per policy in Exhibit E to this deed	On and from the Satisfaction Date until 10 years after the Satisfaction Date	Project specific professional indemnity insurance policy to cover liability arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission of the Contractor and its Head Designer as per policy in Exhibit E to this deed.
6.	Workers Compensation	<u>As required by Law</u>	On and from the Satisfaction Date until the end of all Defects Correction Periods	Workers Compensation insurance as required by Law under any statute relating to workers' or accident compensation.

## Schedule 29 - Moral Rights Consent

(Clause 19.4)

### MORAL RIGHTS CONSENT

THIS DEED POLL is made on the \_\_\_\_\_ day of \_\_\_\_\_

BY: [Name of individual] of [address], [occupation] (Author)

IN FAVOUR OF Transport for NSW (Transport)

and

WestLink Motorway Limited (ABN 63 096 512 300) and WSO Co Pty Limited (ACN 102 757 924) (each a Company, together the Companies)

#### WHEREAS:

- A. Transport proposes to contract out the design, construction, commissioning and operation of the M1M2 Motorway (the Project).
- B. Each Company is responsible for the Project under the deed dated [ ] between Transport and the Companies (Project Deed) and has engaged [insert] (the Construction Contractor) under the deed dated [ ] (D&C Deed) to carry out the Contractor's Activities (as defined in the D&C Deed) for which each Company is responsible under the Project Deed.
- C. The Author may create or have created one or more literary works, artistic works or other copyright material (whether created before or after the date of this Moral Rights Consent) for the purposes of or otherwise for use in connection with the Project (Copyright Material).

#### THE AUTHOR COVENANTS as follows:

The Author in consideration of Transport or a Company paying the Author one dollar (\$1) (receipt of which is hereby acknowledged):

1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's "moral rights" under the Copyright Act 1968 (Cth) (as amended), (whether before or after the date of this Moral Rights Consent) by:
  - (a) Transport, either Company or the State Works Contractor;
  - (b) any contractor which Transport, either Company or the State Works Contractor engages;
  - (c) any third party to whom Transport, either Company or the State Works Contractor sub-licenses (whether express or implied), or grants any other right to use, possess, modify, vary or amend any of the Copyright Material; or
  - (d) any third party to whom Transport or either Company assigns rights it has in, or in relation to any of the Copyright Material,

(together, **Transport, the Companies and Associated Persons**) in relation to any of the Copyright Material;

2. without limiting paragraph 1 above, consents to any of Transport, the Companies and Associated Persons:
  - (a) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;
  - (b) falsely attributing authorship of any of the Copyright Material;
  - (c) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:
    - (i) results in a material distortion, destruction or mutilation of any of the Copyright Material; or
    - (ii) is prejudicial to the honour or reputation of the Author; and
3. without limiting paragraphs 1 or 2, consents to any of Transport, the Companies and Associated Persons:
  - (a) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;
  - (b) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and
  - (c) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.

Nothing in this Deed amounts to an obligation on Transport to comply, or a warranty by Transport that it will comply, with the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.

**Executed as a deed poll.**

**Signed, sealed and delivered by *[insert full name of Author]* in the presence of:**

\_\_\_\_\_  
Signature of witness who confirms that this document was signed in the witness' presence or signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act (NSW)

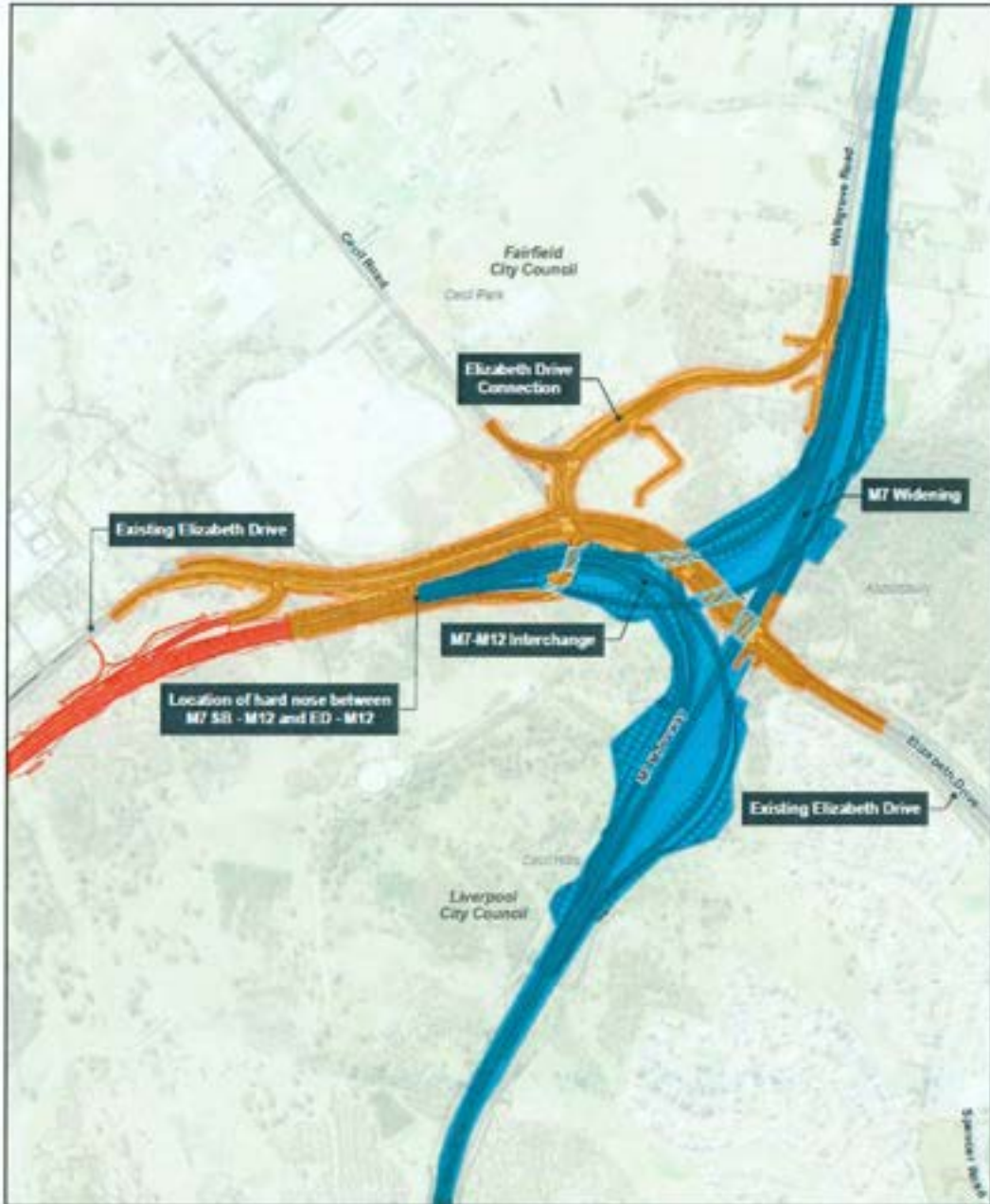
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness



# Schedule 30 - Retained Works and Returned Works Plans

(Clause 1.1)



**M7-M12 INTEGRATION PROJECT  
RETURNED AND RETAINED WORKS**



- Legend**
- M7-M12 Integration Project Works (Contractor's Concept Design)
  - M12 Central (Separate Contract)
  - Retained Works
  - ▨ Retained Works (Aerial Stratum)
  - Returned Works

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## Schedule 31 - Heavy Vehicle National Law Requirements

(Clause 24.7)

### 1. CHAIN OF RESPONSIBILITY – HEAVY VEHICLES

#### 1.1 Definitions

- (a) Capitalised terms in this Schedule 31 that are not defined in this deed have the meaning given to them under Heavy Vehicle National Law.
- (b) The term "Chain of Responsibility" is as described in Heavy Vehicle National Law.

#### 1.2 Chain of Responsibility obligations

- (a) Each Company must comply with and must procure that the State Works Contractor and each Subcontractor complies with:
  - (i) the Heavy Vehicle National Law generally and the requirements of the Chain of Responsibility Provisions specifically;
  - (ii) Transport's requirements (as the road authority) relevant to planning and use of heavy vehicles; and
  - (iii) the Chain of Responsibility Guideline.
- (b) Each Company must prepare the Chain of Responsibility Management Plan for the Project Activities in accordance with this deed, including section 20 of Appendix C.1 of the Scope of Works and Technical Criteria.
- (c) Each Company must ensure that and must procure that the State Works Contractor and each Subcontractor ensures that:
  - (i) all Heavy Vehicles used as part of carrying out the Project Activities; and
  - (ii) the Chain of Responsibility Management Plan prepared by each Company in accordance with section 20 of Appendix C.1 of the Scope of Works and Technical Criteria,comply with the Chain of Responsibility Guideline.

### 2. CHAIN OF RESPONSIBILITY MANAGEMENT PLAN REQUIREMENTS

#### 2.1 Core obligations

- (a) Each Company must not, and must procure that the State Works Contractor does not, commence any work on or adjacent to the Project Site or any place at which the Project Activities will be undertaken until each Company has submitted a revised Chain of Responsibility Management Plan to Transport in accordance with section 20 of Appendix C.1 of the Scope of Works and Technical Criteria.
- (b) No review of, comments on or any other act or omission of Transport's Representative about a Chain of Responsibility Management Plan, will lessen or otherwise affect:
  - (i) each Company's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the State Works Contractor's liabilities or responsibilities under the State Works Deed or otherwise according to Law;

- (iii) Transport's rights against each Company, whether under this deed or otherwise according to Law, or the State Works Contractor, whether under the State Works Deed or otherwise according to Law.
- (c) Each Company:
- (i) must comply with and ensure that the State Works Contractor and any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to Transport's Representative in accordance with section 1 of Appendix C.1 of the Scope of Works and Technical Criteria; and
  - (ii) agrees that compliance with the Chain of Responsibility Management Plan will not in any way lessen or affect:
    - A. its liabilities or responsibilities of either Company under this deed or otherwise according to Law or the State Works Contractor under the State Works Deed or otherwise according to Law; or
    - B. Transport's rights against either Company, whether under this deed or otherwise according to Law or the State Works Contractor under the State Works Deed or otherwise according to Law.

### **3. CHAIN OF RESPONSIBILITY REQUIREMENTS**

#### **3.1 Incorporation of Chain of Responsibility requirements**

Each Company must:

- (a) take account of and incorporate, and must ensure that the State Works Contractor and each Subcontractor takes account of and incorporates, all applicable, relevant or necessary requirements in relation to the Chain of Responsibility Provisions (particularly provisions that govern the supply chain for the Project Works and Temporary Works and for the bringing onto and removal from the Project Site items requiring transport services) in all aspects of the Project Activities, including:
  - (i) the Project Plans;
  - (ii) the design of the Project Works and Temporary Works; and
  - (iii) the Design Documentation; and
- (b) at key stages of the Project Activities, conduct Chain of Responsibility risk workshops which will include the designer, Transport, each Company, the State Works Contractor, the Contractor, Subcontractors and the Independent Certifier. The Chain of Responsibility risk workshops can be combined with the work health and safety risk workshops.

#### **3.2 Chain of Responsibility risk assessment workshop**

- (a) Prior to the development of the Chain of Responsibility Management Plan, and any subsequent reviews or revisions of the Chain of Responsibility Management Plan, each Company must undertake and document the outcomes of a formal Chain of Responsibility risk assessment workshop.
- (b) Each Company's Chain of Responsibility risk assessment workshop must identify and document a register of Chain of Responsibility risks and hazards and control measures associated with the Project Activities.

- (c) Each Company's Chain of Responsibility Management Plan must reflect the outcomes reached in the Chain of Responsibility risk assessment workshop.
- (d) Each Company must hold further separate workshops at different stages of the Project Activities to address different trades, phases, work areas or processes not covered during the earlier risk assessment workshops and must be held prior to the commencement of the relevant activity, phase or section of work.
- (e) Each Company may combine the Chain of Responsibility risk assessment workshops with the work health and safety risk workshops conducted by that Company.

## **4. DRIVING AND VEHICLE SAFETY**

### **4.1 Reduction of risks to workers and public**

Each Company must comply with, and must procure that the State Works Contractor and each Subcontractor complies with, the requirements of the:

- (a) WHS Legislation;
- (b) Road Transport Legislation; and
- (c) Heavy Vehicle National Law,

and any subordinate legislation to ensure the risks to workers and the public are reduced so far as is reasonably practical when driving on the Project Site and driving to and from the Project Site on the public road network.

### **4.2 Minimum Vehicle Safety Equipment**

- (a) Each Company must ensure that, and must ensure that the State Works Contractor and each Subcontractor ensures that, all light and heavy vehicles used to transport equipment, plant, materials and people to and from the Project Site and working areas are equipped with the equipment as specified in the Chain of Responsibility Guideline, including the following:
  - (i) three-point seat belts (for the driver and all passengers);
  - (ii) rear view mirrors;
  - (iii) reversing cameras, quacker type alarms and collision/proximity sensors;
  - (iv) lights (head and tail, stop, turn signal and emergency warning);
  - (v) light and high visibility colours for vehicles;
  - (vi) daytime running lights;
  - (vii) no additional window tinting;
  - (viii) flashing lights (unless determined otherwise by risk assessment); and
  - (ix) fire safety equipment capable of suppressing or extinguishing potential vehicular fires.
- (b) Without limiting clause 4.2(a) of this Schedule 31, each Company must ensure, and must ensure that the State Works Contractor and each Subcontractor ensures, all vehicles in carrying out the Project Activities display signs approved by Transport in a prominent position on the vehicle when driven on public roads which associate the vehicle with carrying out the Project Activities.

### 4.3 Vehicle Registration, Maintenance and Inspection

Each Company must:

- (a) ensure, and must ensure that the State Works Contractor and each Subcontractor ensures, all work vehicles are registered, roadworthy and pre-start checked before being driven;
- (b) ensure, and must ensure that the State Works Contractor and each Subcontractor ensures, that all vehicles are inspected, serviced and maintained in accordance with the manufacturer's recommendations;
- (c) maintain, and must ensure that the State Works Contractor and each Subcontractor maintains, a register of company vehicles showing registration expiry dates and licence requirements; and
- (d) comply with, and must ensure that the State Works Contractor and each Subcontractor complies with, the Chain of Responsibility Guideline requirements for ensuring the roadworthiness of all heavy vehicles used in connection with the Project Activities.

### 4.4 Vehicle Drivers

- (a) Each Company must ensure, and must ensure that the State Works Contractor and each Subcontractor ensures, that all workers who drive a vehicle as part of their work in either Company's or the State Works Contractor's business or undertaking, including those persons employed by Subcontractors (including owner drivers), are licensed, fit and verified as competent to drive the vehicle they are driving.
- (b) Each Company must develop, and must ensure that the State Works Contractor develops, a "Driver Code of Conduct" which outlines minimum driver behaviour requirements to ensure compliance with:
  - (i) WHS Legislation;
  - (ii) Road Transport Legislation;
  - (iii) Heavy Vehicle National Law; and
  - (iv) the Chain of Responsibility Guideline.
- (c) Each Company must ensure that all drivers, including those employed by Subcontractors (including owner drivers) are made aware of and sign the "Driver Code of Conduct" developed by each Company in accordance with clause 4.4(b) of this Schedule 31.

### 4.5 Heavy Vehicle Requirements

Each Company must ensure, and must procure that the State Works Contractor and each Subcontractor ensures, that the on-road transport of dangerous goods is managed in accordance with Law, including the *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW) and the *Dangerous Goods (Road and Rail Transport) Regulation 2014* (NSW).

## 5. CONSTRUCTION TRAFFIC AND VULNERABLE ROAD USERS

### 5.1 Introduction

Each Company acknowledges that:

- (a) during the Project Activities, the introduction of construction Heavy Vehicle traffic to densely populated and highly used pedestrian and cyclist areas in and around

Sydney has the potential to generate road safety risks to the public, in particular vulnerable road users; and

- (b) where required under Heavy Vehicle National Law and the Chain of Responsibility Guideline, each Company must ensure, and must procure that the State Works Contractor ensures, that the specific measures in this clause 5 of Schedule 31 are implemented to minimise any impacts of construction Heavy Vehicles traffic on other road users.

## 5.2 Heavy Vehicle Operators

- (a) Each Company must ensure, and must procure that the State Works Contractor and each Subcontractor ensures, that all Heavy Vehicle operators engaged in the Project Activities, including owner drivers, are assessed and selected to ensure that they meet the minimum requirements set out in this Schedule 31 and the Chain of Responsibility Guideline.
- (b) A Heavy Vehicle operator includes each Company, the State Works Contractor and any Subcontractors engaged in the following activities:
  - (i) removing excavated material or waste; or
  - (ii) delivering concrete, equipment (including Temporary Works), plant or materials.

## 5.3 Haulage Route Compliance

- (a) Each Company must ensure, and must procure that the State Works Contractor and each Subcontractor ensures, that all Heavy Vehicles haulage routes comply with any planning approval requirements and are endorsed by the Traffic and Transport Liaison Group (as defined in section 1.1(f) of Appendix C.5 of the Scope of Works and Technical Criteria) and / or similar.
- (b) Each Company must ensure, and must procure that the State Works Contractor and each Subcontractor ensures, that approved Heavy Vehicle haulage routes are adhered to at all times by the haulage contractor and that systems are in place to monitor the location of the vehicles at all times.

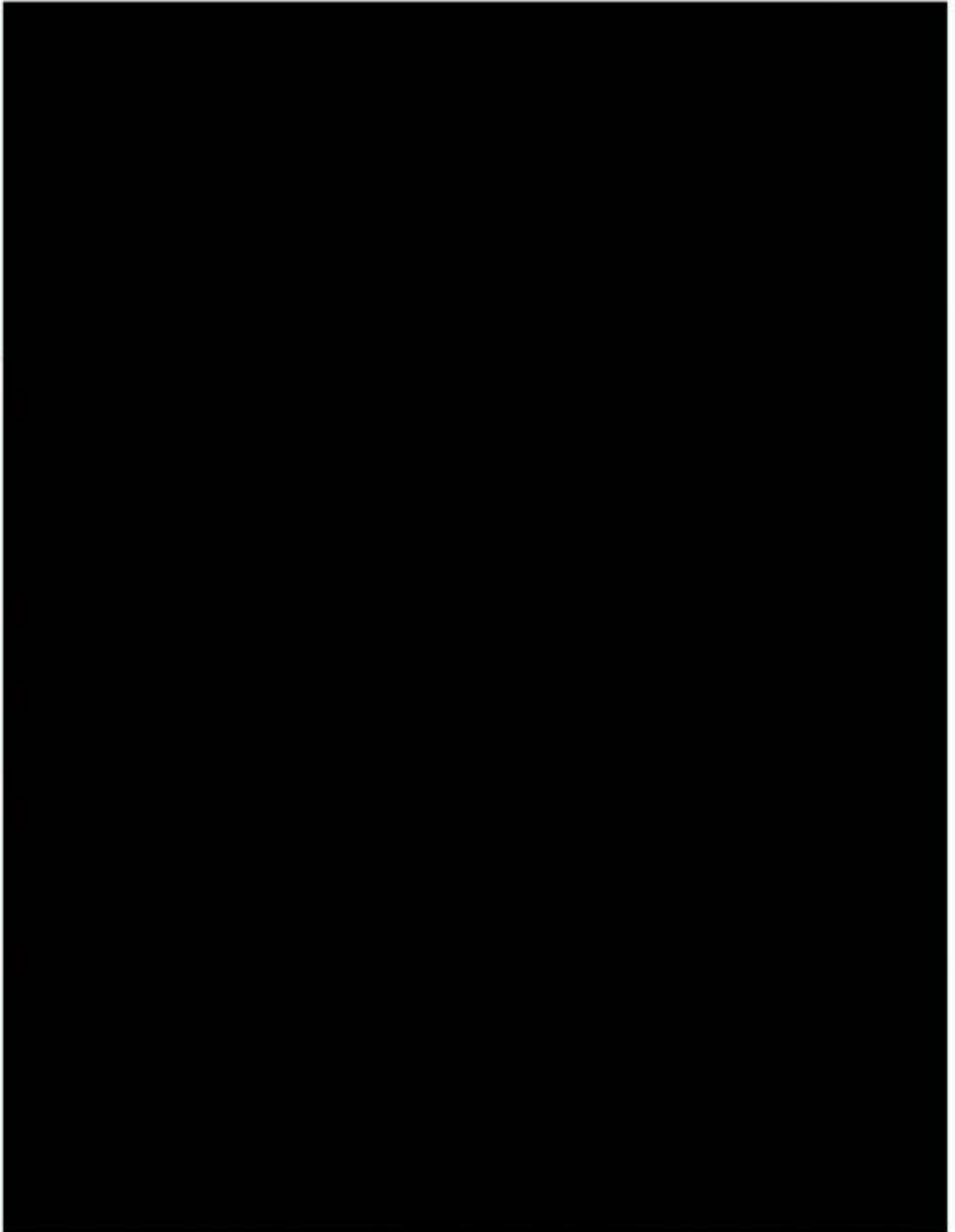
## 5.4 Heavy Vehicle Safety Equipment

- (a) Each Company must, and must procure that the State Works Contractor and each Subcontractor ensures, ensure that all Heavy Vehicles over 4.5 tonnes gross vehicle mass (GVM) are fitted with the safety equipment required in the Chain of Responsibility Guideline, as a minimum.
- (b) Each Company must ensure, and must procure that the State Works Contractor and each Subcontractor ensures, that all Heavy Vehicle drivers are provided with sufficient training, instruction and supervision to ensure the competent use of the safety equipment specified in this Schedule 31 and the Chain of Responsibility Guideline.
- (c) Each Company must conduct, and must procure that the State Works Contractor and each Subcontractor conducts, regular inspections to ensure that all Heavy Vehicles entering all Project Site locations are compliant with the above requirements in accordance with the Chain of Responsibility Guideline. Where vehicles do not meet the minimum requirements set out in this clause 5 of Schedule 31 or the Chain of Responsibility Guideline, each Company must ensure, and must procure that the State Works Contractor and each Subcontractor ensures, the vehicle is not used as part of the Project Activities.

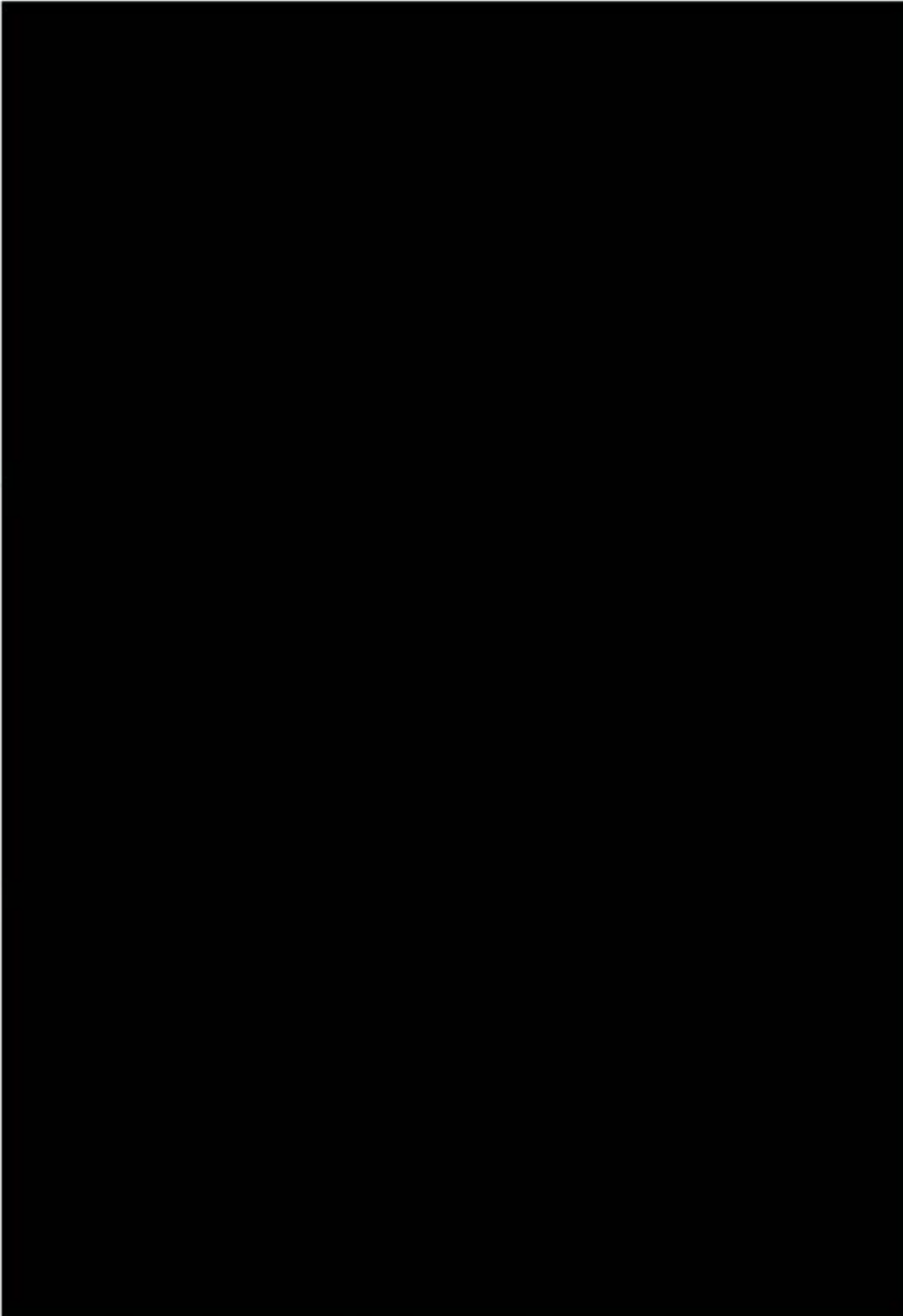
## 5.5 Heavy Vehicle Driver Training

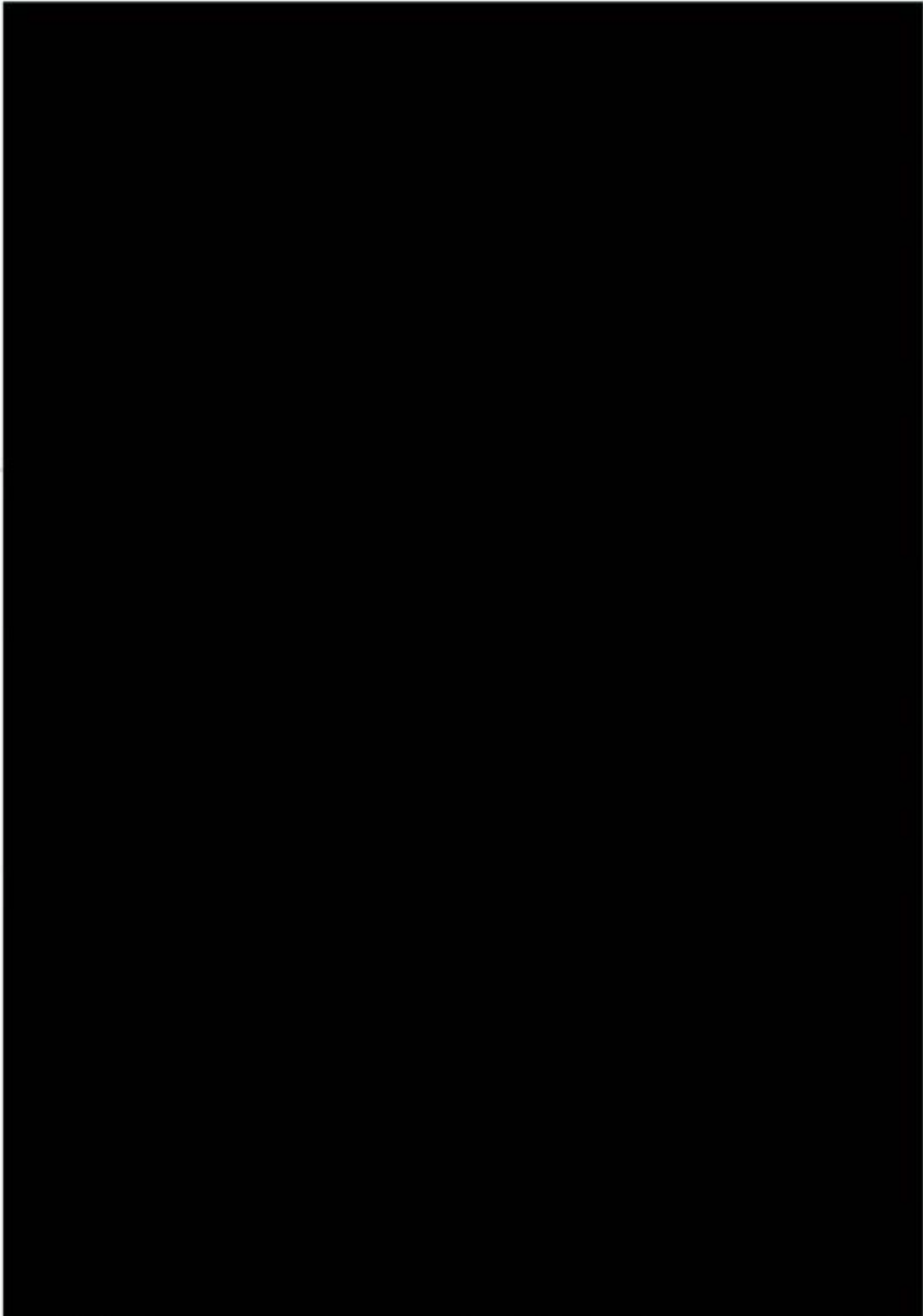
- (a) Each Company must ensure and must procure that the State Works Contractor ensures, that all Heavy Vehicle drivers engaged in carrying out the Project Activities, including those employed by Subcontractors (including owner drivers), attend an approved "Vulnerable Road User Awareness Training" before they are engaged as part of the Project Activities and otherwise comply with the Chain of Responsibility Guideline.
- (b) Each Company must prepare a safety information pack in respect of the Project Activities which outlines minimum expectations when driving on the Project Site and to and from the Project Site.
- (c) Each Company must ensure and must procure that the State Works Contractor and each Subcontractor ensures, that all other drivers (e.g. Light Vehicle Drivers) engaged as part of the Project Activities, are provided with the safety information pack prepared by each Company in accordance with clause 5.5(b) of this Schedule 31.

## Schedule 32 – Third Party Agreement Obligations

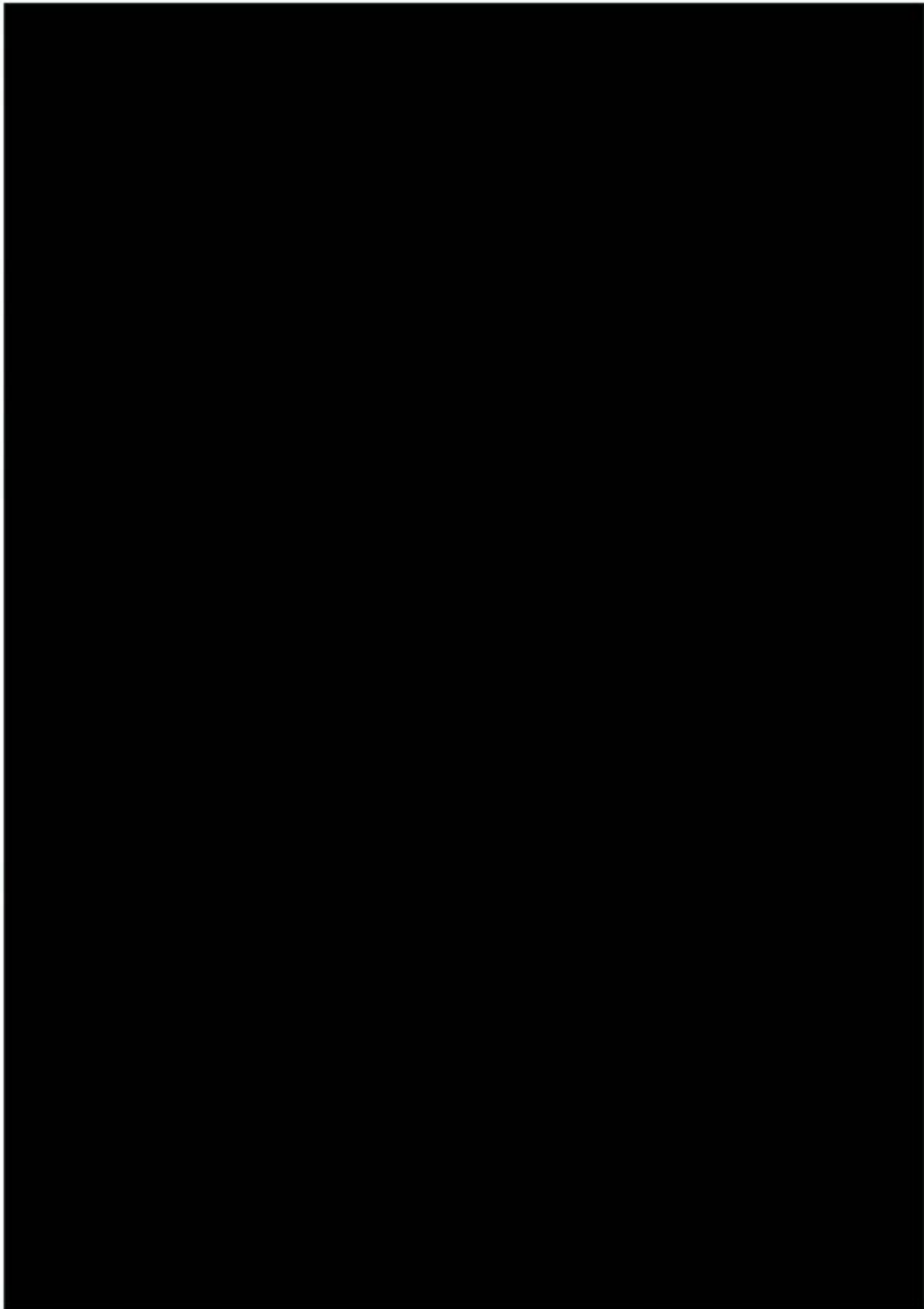


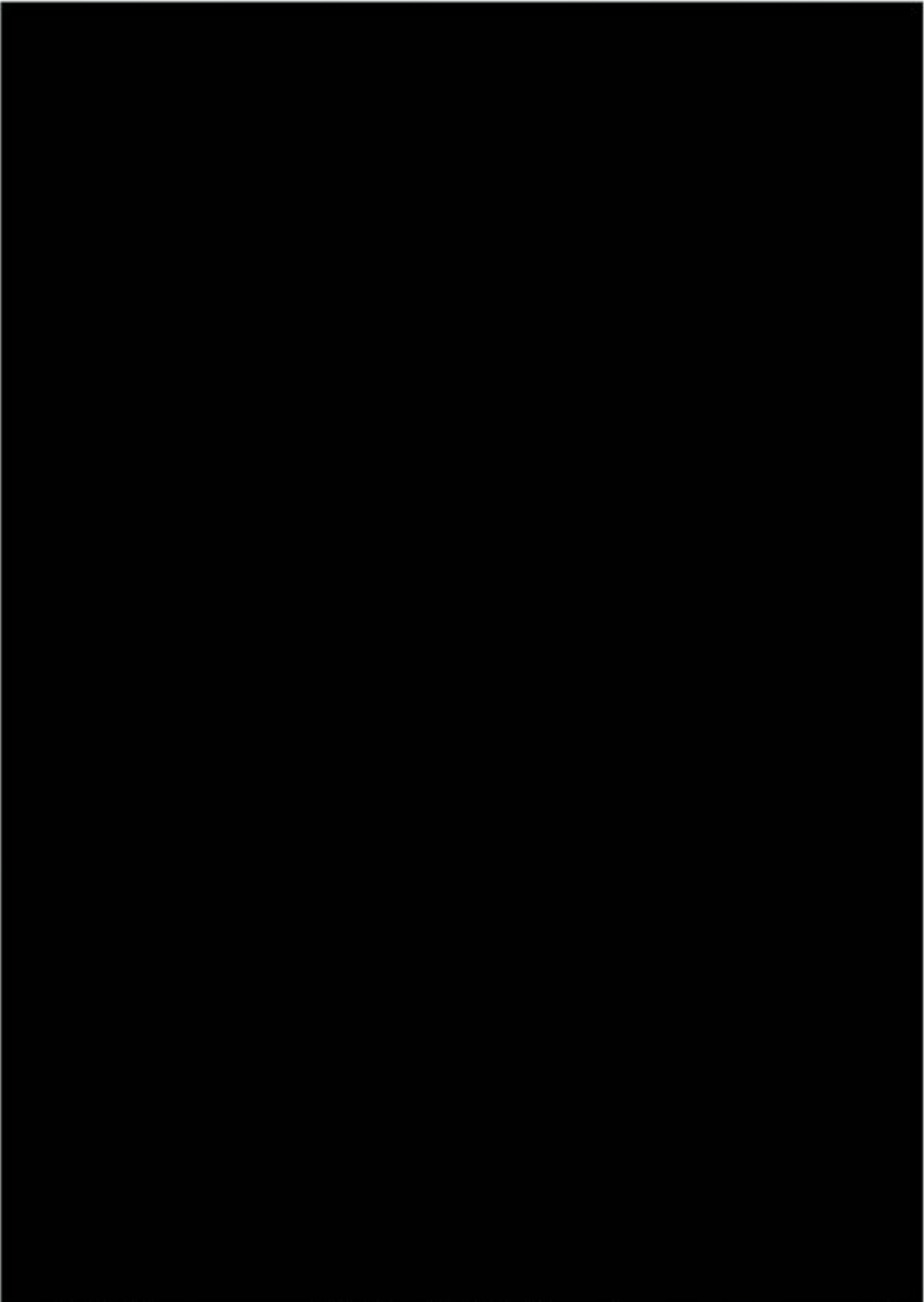


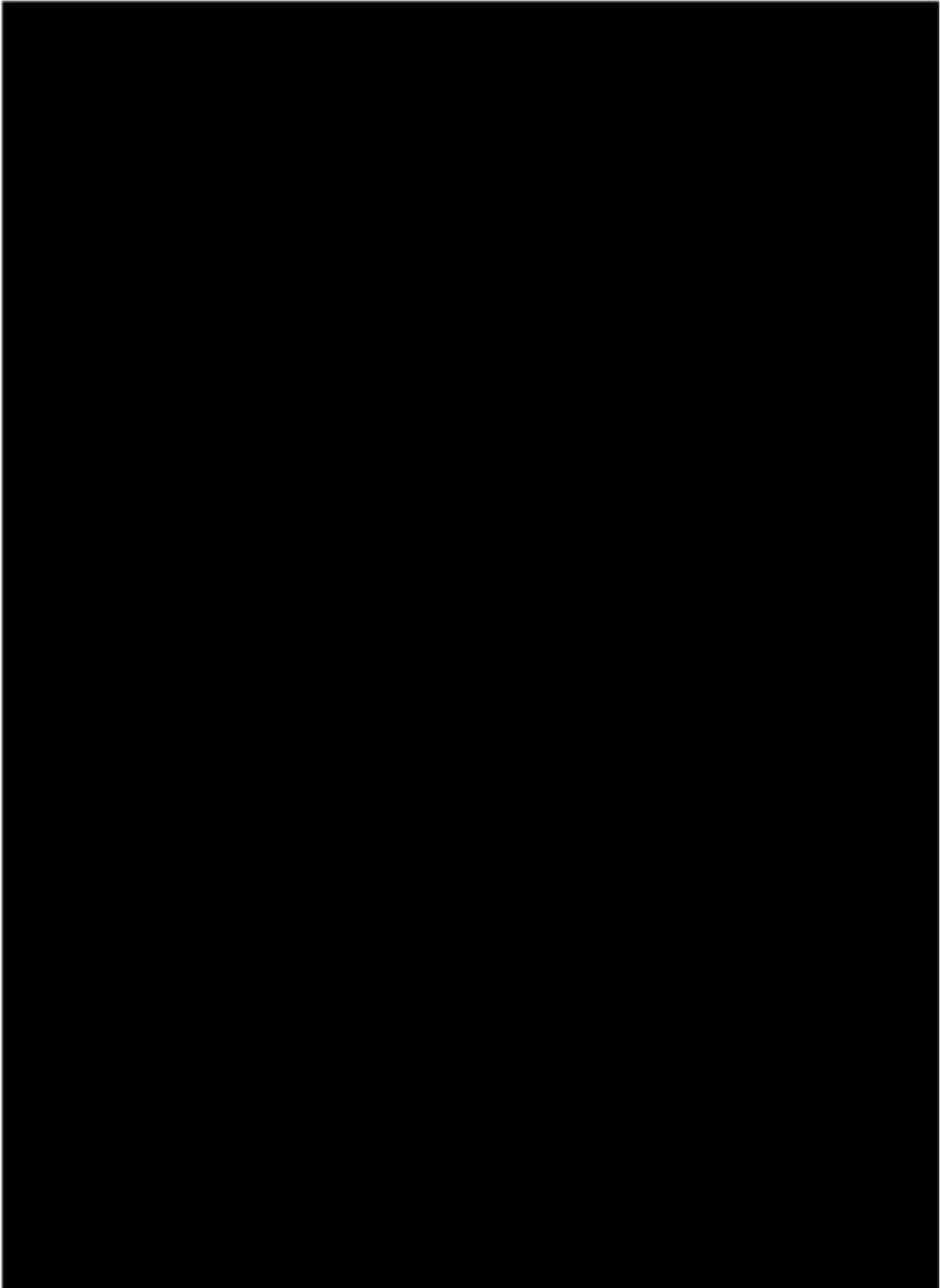


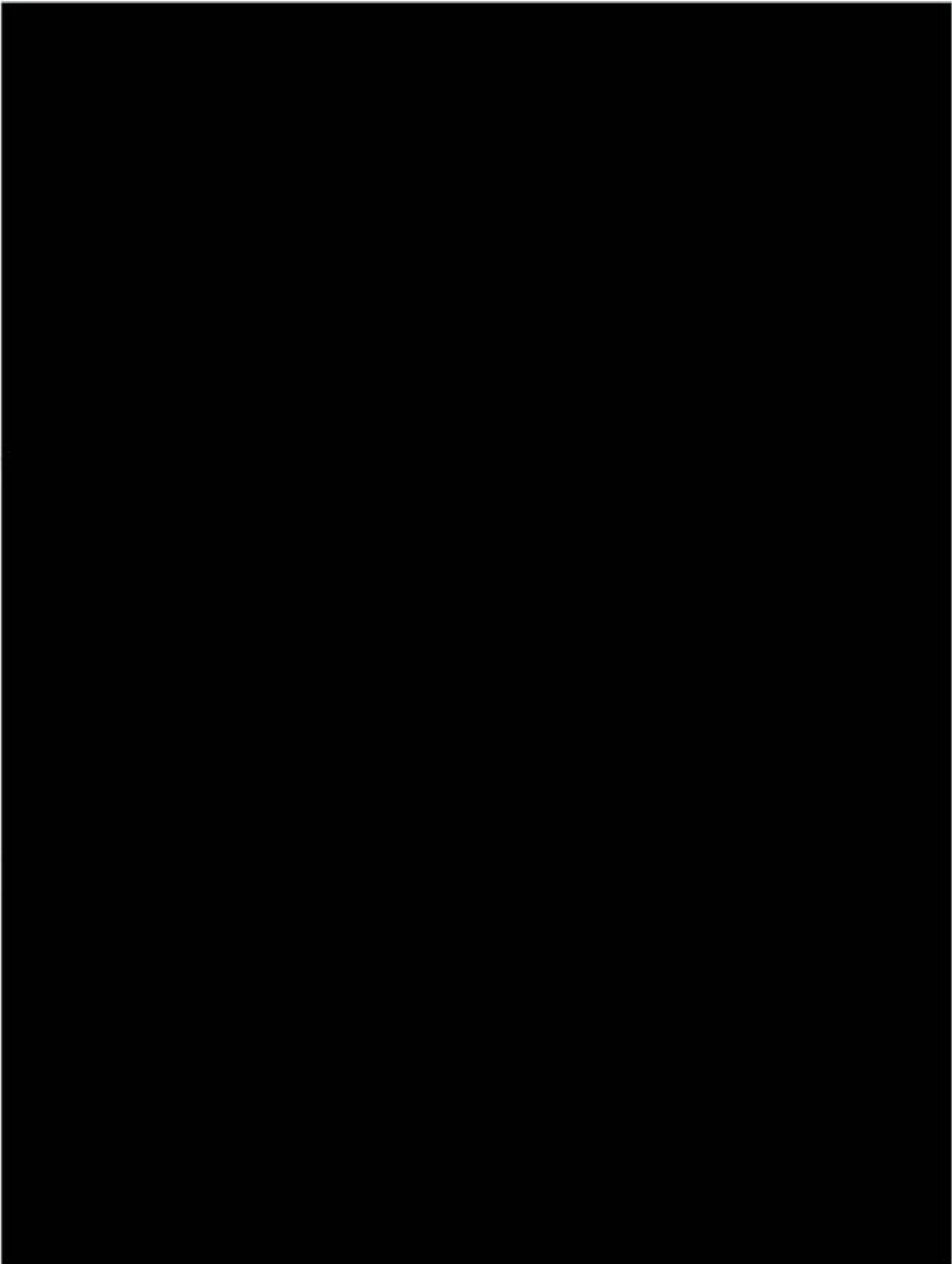






















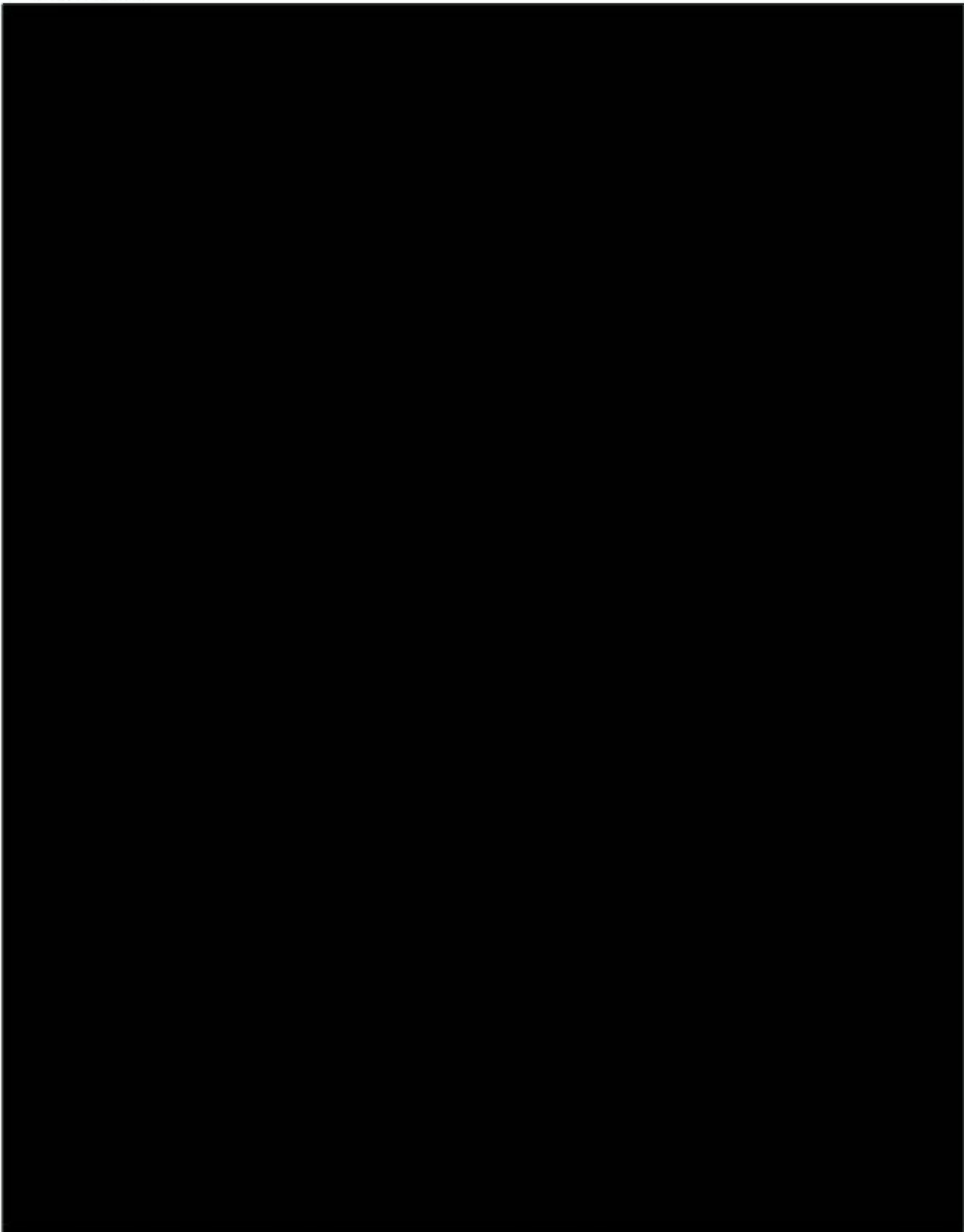


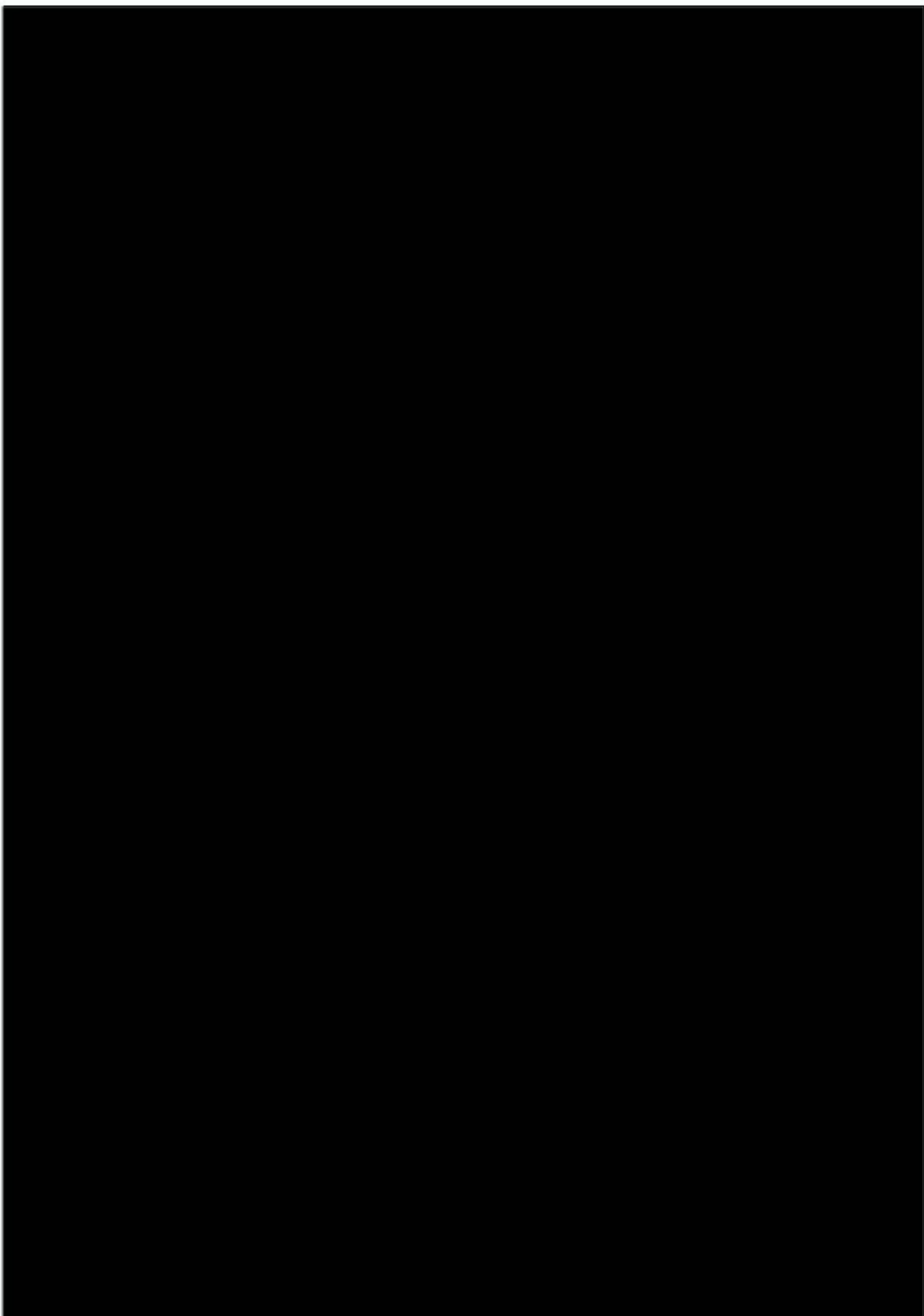


**Schedule 33 - Not used**

Schedule 34 - [REDACTED]

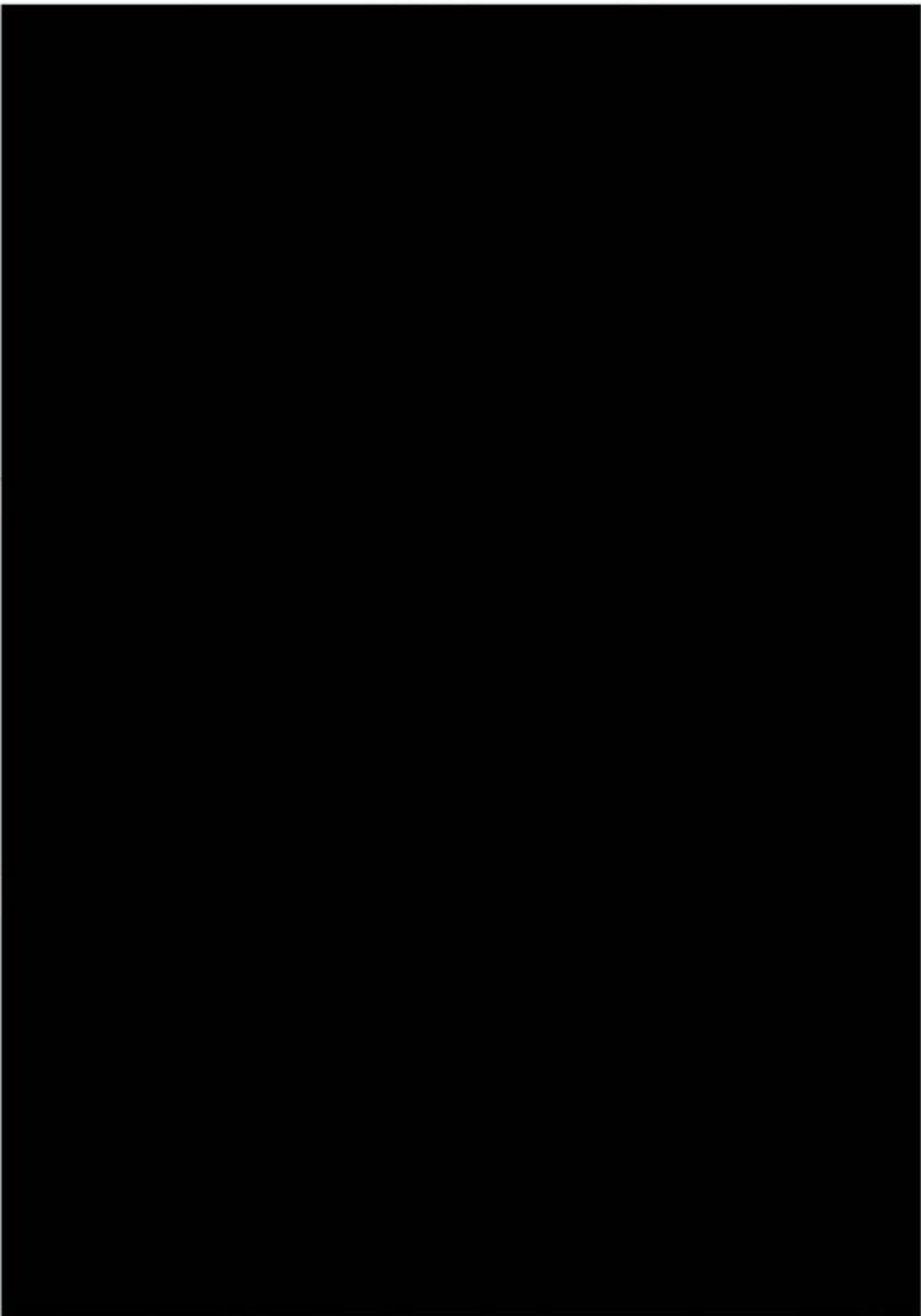
(Clause 5.19)

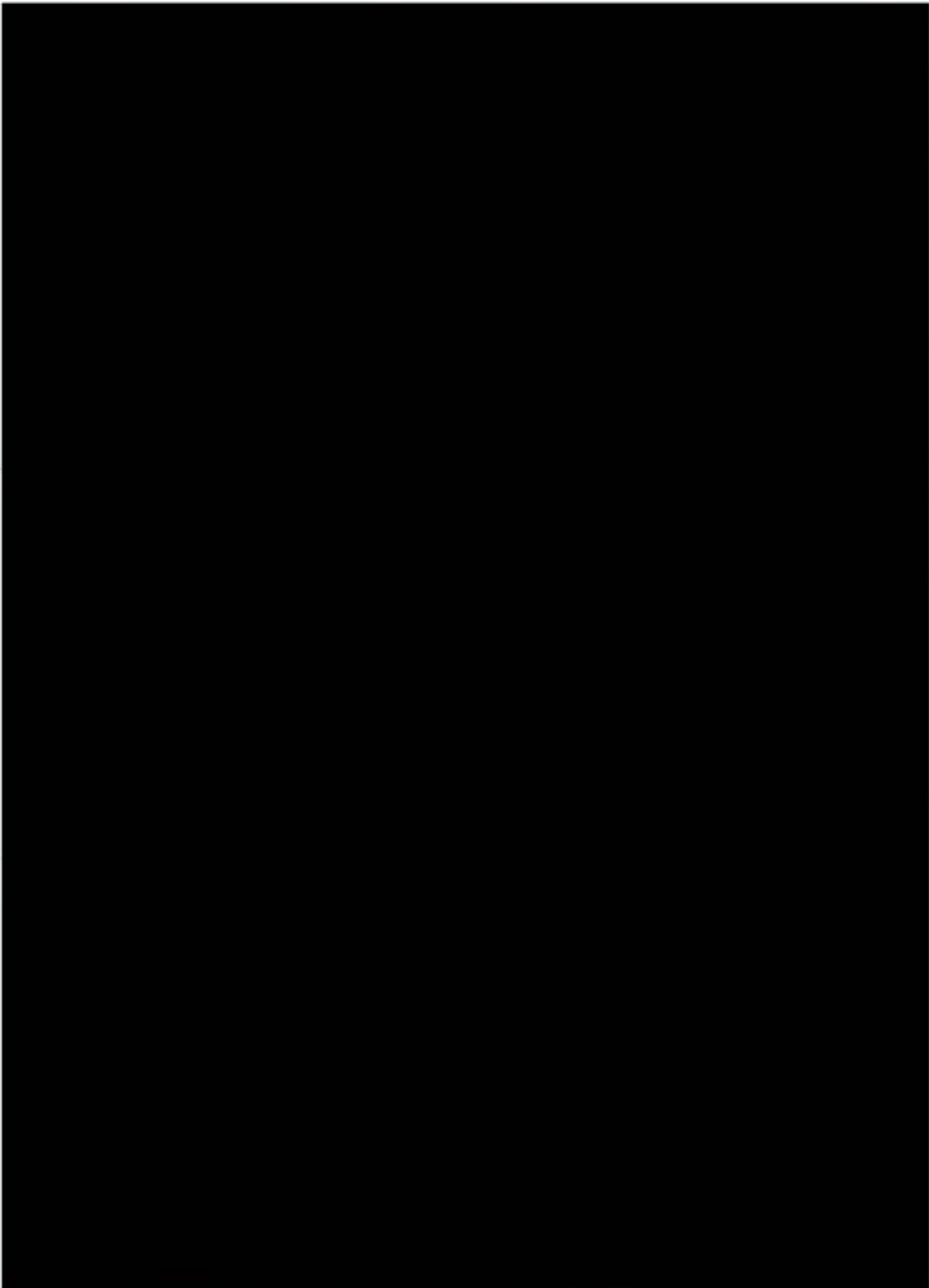










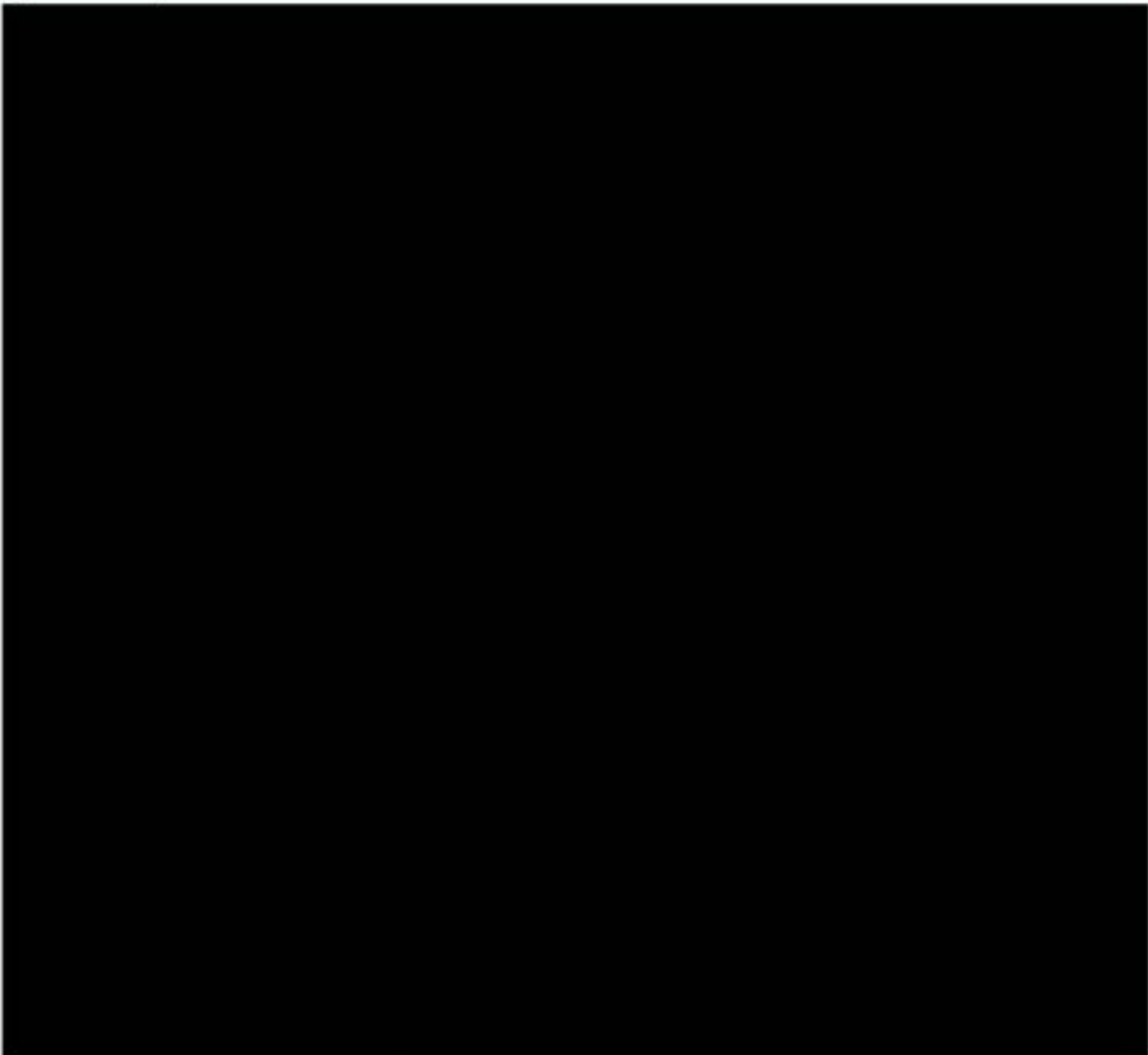


## Schedule 35 – M12 Site Plan

[The following text is completely obscured by a large black redaction box.]

Schedule 36 - [REDACTED]

(Clause 7.12)



Schedule 37 - [REDACTED]























## Schedule 38 – Pre-Agreed Changes

(Clause 10.2)

### Part 1: Pre-Agreed Change 4 – Ramp Metering

Pre-Agreed Change 4	Ramp Metering
Description:	<p>Implementation of operational ramp metering by Integration Completion at one or more of the following locations:</p> <ul style="list-style-type: none"> <li>• M12-M7 Northbound Connection</li> <li>• M12-M7 Southbound Connection</li> <li>• ED-M7 Southbound Connection.</li> </ul>
Change Cost (excl GST):	<div style="background-color: black; width: 100%; height: 20px;"></div>
Date by which Transport's Representative must give notice under clause 10.2(a) of this deed	<p>The later of:</p> <ul style="list-style-type: none"> <li>(a) 6 months from the Date of the M7-M12 Integration Project Deed; or</li> <li>(b) the Independent Certifier's Response (as pre SWTC Appendix C.2) to the relevant Substantial Detailed Design Package for road geometry and design.</li> </ul>
Amendments to General Conditions	Nil
Amendments to Deed Schedules and Exhibits	Amendments to the SWTC are set out below.
Amendments to Scope of Works and Technical Criteria (SWTC)	<p><b>Note:</b> This PAC 4 may not be executed for all ramp metering locations referenced in the amendments to the SWTC. If a location listed in the following amendments to the SWTC is not executed, the location must be removed.</p> <p><b>Appendix B.2</b></p> <p>The following requirements in SWTC Appendix B.2 would be modified:</p> <p>Replace <b>Section 7.0</b> of SWTC Appendix B.2 with the following:</p> <ul style="list-style-type: none"> <li>a) <i>The Companies must undertake all design, supply, construction, testing and commissioning works necessary to provide ramp metering and smart motorways requirements at the M7 Motorway north and south entry ramps from the M12 Motorway and Elizabeth Drive by Integration Completion, including:</i> <ul style="list-style-type: none"> <li>o <i>the minimum number of lanes at the stop line and the minimum ramp storage (queue length) as specified in Table B.2-5, unless agreed</i></li> </ul> </li> </ul>

	<p><i>otherwise with Transport;</i></p> <ul style="list-style-type: none"> <li>o <i>full depth ramp pavement in accordance with Appendix B.6 to suit the metered ramp lane and shoulder configuration;</i></li> <li>o <i>sufficient verge width and other space proofing for the installation of dynamic and static signage, ramp signals, ramp signal controllers, and associated structures and footings;</i></li> <li>o <i>installation of electrical and communications conduits and associated pits in accordance with SWTC Appendix B.12;</i></li> <li>o <i>installation of preformed loop detectors on the ramp at the stop line and within the extent of the ramp (upstream and downstream) in accordance with RMS Smart Motorway Design Guide – Vehicle Detectors and Appendix B.12; and</i></li> <li>o <i>any other specific requirements contained within the SWTC.</i></li> </ul> <p>b) <i>The Companies must provide ramp metering with:</i></p> <ul style="list-style-type: none"> <li>(i) <i>localised widening in accordance with RMS - R1010 Ramp Metering Series drawings (Appendix D.4, Document Number D8) where required to achieve the minimum number of Lanes at the stop line and the minimum ramp storage requirements;</i></li> <li>(ii) <i>ramp metering signals, signal controllers and associated ramp metering signage;</i></li> <li>(iii) <i>vehicle detection and Integrated Speed and Lane Use Signs (ISLUS) as required;</i></li> </ul>																		
	<p><b>Appendix B.9</b></p> <p>The following requirements in SWTC Appendix B.9 would be modified:</p> <p>Replace the table in Attachment B.9-1 with the following table:</p> <p><b>Attachment B.9-1: TCS Locations</b></p> <table border="1" data-bbox="475 1592 1406 1966"> <thead> <tr> <th>Status</th> <th>Facility</th> <th>Site Number</th> <th>Street 1</th> <th>Street 2</th> <th>Street 3</th> </tr> </thead> <tbody> <tr> <td>Existing - Reconstructed</td> <td>Intersection</td> <td>3860</td> <td>Elizabeth Drive</td> <td>M7 S/B Entry &amp; Exit Ramps</td> <td></td> </tr> <tr> <td>Existing - Relocated</td> <td>Intersection</td> <td>3859</td> <td>Elizabeth Drive</td> <td>M7 N/B Entry &amp; Exit Ramps</td> <td></td> </tr> </tbody> </table>	Status	Facility	Site Number	Street 1	Street 2	Street 3	Existing - Reconstructed	Intersection	3860	Elizabeth Drive	M7 S/B Entry & Exit Ramps		Existing - Relocated	Intersection	3859	Elizabeth Drive	M7 N/B Entry & Exit Ramps	
Status	Facility	Site Number	Street 1	Street 2	Street 3														
Existing - Reconstructed	Intersection	3860	Elizabeth Drive	M7 S/B Entry & Exit Ramps															
Existing - Relocated	Intersection	3859	Elizabeth Drive	M7 N/B Entry & Exit Ramps															

New	Intersection	5125	Elizabeth Drive	Wallgrove Road	M12 Westbound Entry Ramp
New	Intersection	5124	Elizabeth Drive	M12 E/B Exit Ramp	
New	Intersection	5126	Wallgrove Road	Cecil Road	
New	Ramp Meter	-	M12-M7 Northbound Connection		
New	Ramp Meter	-	M12-M7 Southbound Connection		
New	Ramp Meter	-	EDC-M7 Southbound Connection		

#### Appendix B.12

The following requirements in SWTC Appendix B.12 would be modified:

- Replace **Section 1.1 c)(xii)** of SWTC Appendix B.12 with the following:

*(xii) provision for Ramp Metering at entry ramps to the M7 Motorway including connection to the Sydney Co-ordinated Adaptive Traffic System (SCATS). Provision includes electrical conduits, communications conduits, associated pits, ramp metering signals, signal controllers, ramp metering advance warning signage, ISLUS sites, and pre-formed loop detectors to the locations at the north and south M7 Motorway entry ramps.*

- Amend this entry in **Table B.12-1 Preliminary schedule of ITS devices and indicative locations** with the following:

**Table B.12-2 Preliminary schedule of ITS devices and indicative locations [Excerpt]**

Location	Item	Function	Comment	Connection / Owner
M7-M12 Interchange	Ramp Metering	Traffic flow for M7 Motorway on ramps (e.g. vehicle detection loops, advanced warning signs, signals)	Refer to section 1.1 b)	TfNSW MMS (TfNSW owned asset)

	<ul style="list-style-type: none"> <li>• Replace <b>Section 1.4 a)(ix)</b> of SWTC Appendix B.12 with the following: <ul style="list-style-type: none"> <li><i>(ix) ramp metering on the M12-M7 NB Connection and M12-M7 SB Connection, and EDC-M7 SB Connection.</i></li> </ul> </li>   <li>• Replace <b>Section 4 a)</b> of Appendix B.12 with the following: <ul style="list-style-type: none"> <li>a) <i>Video surveillance cameras (VSC) must be provided to give 100% overlapping video coverage of the M7-M12 Interchange including all carriageways, ramps, approaches, intersections, emergency breakdown bays, ITS devices (including roadside equipment cabinets and communications node cabinets), electronic sign faces and ramp metering equipment, stop lines and signals.</i></li> </ul> </li>   <li>• Replace <b>Section 7.4</b> of Appendix B.12 with the following: <ul style="list-style-type: none"> <li>a) <i>The Companies must install the electrical conduits, communications conduits, and associated pits to the locations of ramp metering at the north and south entry ramps to the M7 Motorway. These ramp metering communication conduits must be connected to the new TfNSW node on M7 Motorway shared path and M12 Central Project WAN Node B. Refer to Appendix B.2 Section 7 for road design ramp metering requirements. These ramp metering conduits are allocated for the exclusive use of TfNSW.</i></li> <li>b) <i>Separate 12 core SMOF optical fibre must be provided in each ramp metering communications conduit and terminated at the new TfNSW node on M7 Motorway shared path and M12 Central Project WAN Node B. This optical fibre is allocated for the exclusive use of TfNSW.</i></li> <li>c) <i>The Companies must undertake all design, supply, installation, site construction, and testing and commissioning for ramp metering equipment in accordance with TfNSW Smart motorway design guidelines, standard drawing series R 1010 – ramp metering, Austroads – Guide to smart motorways, TfNSW Specification DC-TS912 and this Appendix B.12.</i></li> <li>d) <i>The ramp metering system must be connected to the TfNSW CCN for operation and control by the TfNSW MMS.</i></li> <li>e) <i>The Companies must supply and install SCATS and motorway pre-formed loop detectors, SCATS ramp metering signals and signal controllers, ramp metering advanced warning signage, and</i></li> </ul> </li> </ul>
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	<i>ISLUS as required. The type and placement of loop detectors for ramp metering must be in accordance with RMS Smart motorway guidelines for vehicle detectors.</i>
	<p><b>Appendix E.1</b></p> <p>The following requirements in SWTC Appendix E.1 would be modified:</p> <p>(ix) Replace No. 1.2 b) in Table E.1-1 with: <i>Provide all infrastructure for ramp metering to be implemented on the M12-M7 NB Connection and M12-M7 SB Connection.</i></p> <p>(x) Amend No. 1.3 h) in Table E.1-1 with: <i>Provide an updated connection from Elizabeth Drive to the M7 Motorway Southbound (<b>ED-M7 SB Connection</b>) including all infrastructure to for ramp metering to be implemented.</i></p>
<b>Amendment to any Dates for Integration Completion</b>	Not applicable

**Part 2: Pre-Agreed Change 5 – Urban Design**

<b>Pre-Agreed Change 5</b>	<b>Urban Design</b>
Description:	<p>Implementation of additional urban design enhancements, including:</p> <ul style="list-style-type: none"> <li>• A light mast at the M7-M12 Interchange</li> <li>• A hope and light sculpture at the M7-M12 Interchange</li> <li>• Enhanced landscape treatment at the M7-M12 Interchange</li> <li>• Enhanced wayfinding for the M7 shared path</li> <li>• Aboriginal environmental art installations</li> <li>• Augmentation of the Light Horse Interchange sculpture and enhanced landscape treatment.</li> </ul>
Change Cost (excl GST):	[REDACTED]
Date by which Transport's Representative must give notice under clause 10.2(a) of this deed	6 months from the Date of the M7-M12 Integration Project Deed

Amendments to General Conditions	Nil
Amendments to Deed Schedules and Exhibits	Amendments to the SWTC are set out below
Amendments to Scope of Works and Technical Criteria (SWTC)	<p><b>Appendix B.11:</b></p> <p>The following requirements in SWTC Appendix B.11 would be modified:</p> <p>Include a new <b>Section 11</b> of SWTC Appendix B.11 with the following:</p> <p><b>11 Urban Design and Landscape Enhancements</b></p> <p>a) <i>The Companies must provide a light mast at the M7-M12 Interchange that:</i></p> <ul style="list-style-type: none"> <li>i. <i>complies with the cultural interpretation requirements of this Appendix B.11;</i></li> <li>ii. <i>mitigates the impacts of obtrusive lighting in accordance with the Environmental Documents and AS 4282;</i></li> <li>iii. <i>is delivered consistent with the concept specification in SWTC Appendix E.4, section 8.3.1;</i></li> <li>iv. <i>satisfies the permissible height controls from the National Airports Safeguarding Framework (NASF) policies relevant to the location;</i></li> <li>v. <i>is installed at the location consistent with the location plan in SWTC Appendix E.4, section 8.3; and</i></li> <li>vi. <i>is consistent with the Aboriginal consultation to be undertaken and managed by the Companies regarding this element.</i></li> </ul> <p>b) <i>The Companies must provide a hope and light sculpture set out at the locations and configurations nominated in Table B.11-3. The hope and light sculpture must as a minimum:</i></p> <ul style="list-style-type: none"> <li>i. <i>provide a 50 mm tube of clear acrylic or polycarbonate post material;</i></li> <li>ii. <i>provide a Red, Green, Blue, White (RGBW) spectrum Light-emitting Diode (LED) source at the base of each post;</i></li> <li>iii. <i>allow for all light posts to be programmable;</i></li> <li>iv. <i>allow for safe and efficient replacement; be delivered consistent with the concept specification and detailed sculpture plan in SWTC Appendix E.4, section 8.3.3;</i></li> <li>v. <i>provide a planted (150mm-200mm) native grass mix in mulch beds for the length of the sculpture; and</i></li> <li>vi. <i>be installed at the location consistent with the location plan in</i></li> </ul>

SWTC Appendix E.4, section 8.3.

- vii. be consistent with the Aboriginal consultation to be undertaken and managed by the Companies regarding this element.

Table B.11-3 Hope and Light Sculpture Location Details

<b>Constellation Type</b>	<b>Location</b>	<b>Arrangement</b>
Major	<p>At the 3 major decision points for the M7-M12 Interchange:</p> <ul style="list-style-type: none"> <li>• Median in the M7 Motorway to the south of the M7-M12 Interchange</li> <li>• Median in the M7 Motorway to the north of the M7-M12 Interchange</li> <li>• Median in the M12 Motorway to the west of the M7-M12 Interchange</li> </ul>	<p>At each location:</p> <ul style="list-style-type: none"> <li>• 10 x 2 m poles</li> <li>• 9 x 4 m poles</li> <li>• 22 x 6 m poles</li> </ul>
Intermediate	<p>At 2 locations:</p> <ul style="list-style-type: none"> <li>• In the median of the M7 Motorway, immediately to the south of Elizabeth Drive</li> <li>• In the median of the M7 Motorway, immediately to the north of Elizabeth Drive</li> </ul>	<ul style="list-style-type: none"> <li>• 4 x 2 m poles</li> <li>• 10 x 4 m poles</li> <li>• 8 x 6 m poles</li> </ul>
Minor	<p>At 14 locations along the M7 Motorway between the M7-M12 Interchange the Light Horse Interchange.</p>	<ul style="list-style-type: none"> <li>• 2 x 2 m poles</li> <li>• 2 x 4 m poles</li> <li>• 3 x 6 m poles</li> </ul>

- c) The Companies must provide additional landscaping treatments at the M7-M12 Interchange, in accordance with Table B.11-4 and the Aboriginal consultation to be undertaken and managed by the Companies regarding

*this element.*

**Table B.11-4 M7-M12 Interchange Planting Details**

<b>Type</b>	<b>Min. Area</b>	<b>Change from existing Appendix E.4</b>
<i>TR1 – Woodland Trees</i>	<i>15,134 m<sup>2</sup></i>	<i>50% tubestock 50% 200mm. Note where species with 300mm pots stay as specified.</i>
<i>TR1A – Woodland Trees</i>	<i>1,062.374 m<sup>2</sup></i>	<i>No change.</i>
<i>TR2 – Hills Woodland Trees</i>	<i>17,446.853 m<sup>2</sup></i>	<i>No change.</i>
<i>TR3 – Feature Interchange Trees</i>	<i>15,828.561 m<sup>2</sup></i>	<i>Increase from 200 mm to 45-75L</i>
<i>P1 – Hills Woodland Mix</i>	<i>16,8787.154 m<sup>2</sup></i>	<i>Seeded with Mulch blanket/ Eco-Mulch blanket for erosion control on batters</i>
<i>Retaining Walls – Feature Mix (Same as P8 mix)</i>	<i>1,440.369 m<sup>2</sup></i>	<i>Tubestock to 50% 150mm 50% 200mm Specified species at 150mm to be 200mm</i>
<i>Pasture Grasses (P5)</i>	<i>53,341.573 m<sup>2</sup></i>	<i>Seeded with Mulch blanket/ Eco-Mulch blanket for erosion control on batters</i>
<i>Shale Gravel Transition Forest (P6)</i>	<i>969.127 m<sup>2</sup></i>	<i>Seeded with Mulch blanket/ Eco-Mulch blanket for erosion control on batters</i>
<i>P2 – Basin Mix</i>	<i>2,831.004 m<sup>2</sup></i>	<i>Increase from tubestock to 200mm Additional works to naturalise edges of the basins should be utilised such as use of spall and boulders. (This is captured in Base Case</i>



		also)
P3 – Vegetated Channel Mix	7,219.293 m <sup>2</sup>	Planted tubestock with erosional control measures such as gravel mulch and spall
P4 – Median Mix	11,254.42 m <sup>2</sup>	Tubestock to 50% 150mm 50% 200mm Specified species at 150mm to be 200mm
P8 – Feature Planting – Around urban design and public art elements	5,000 m <sup>2</sup>	Planted 50% 150mm 50% 200mm low native grass mix in mulched beds. Feature trees planted 200L allowance 50.

d) The Companies must provide additional wayfinding along the M7 shared path. The shared path wayfinding must:

- i. be provided at a minimum of 7 locations within M7 Widening Site;
- ii. comply with the cultural interpretation requirements of this Appendix B.11;
- iii. be consistent with the wayfinding provided as part the M12 Motorway shared paths;
- iv. be delivered to be consistent with the concept specification in SWTC Appendix E.4, section 8.3.5; and  
be provided at the locations consistent with the location plan in SWTC Appendix E.4, section 8.3; and
- v. be consistent with the Aboriginal consultation to be undertaken and managed by the Companies regarding this element.

e) The Companies must provide Aboriginal environmental art along the M7 shared path. The Aboriginal environmental art must:

- i. be provided at a minimum of 7 locations within M7 Widening Site;
- ii. comply with the cultural interpretation requirements of this Appendix B.11;
- iii. be delivered to be consistent with the concept in SWTC Appendix E.4, section 8.3.6; and
- iv. be provided at the location consistent with the location plan in SWTC Appendix E.4, section 8.3; and

	<p>v. <i>be consistent with the Aboriginal consultation to be undertaken and managed by the Companies regarding this element.</i></p> <p>f) <i>The Companies must undertake the following at the northern and southern median approaches to the Light Horse Interchange:</i></p> <ul style="list-style-type: none"> <li>i. <i>realign new poles to be consistent with the replacement poles provided in the medians modified by the M7 Widening Works;</i></li> <li>ii. <i>allow for safe and efficient replacement; and</i></li> <li>iii. <i>provide the poles with reflector material;</i></li> <li>iv. <i>maintain the existing fig trees, if the tree protection zone of the existing trees is impacted, the Companies may be required to remove, store, or transplant the existing fig tree. Any impacts to the tree protection zone must be agreed with the relevant stakeholders;</i></li> <li>v. <i>provide a planted (150mm-200mm) native grass mix in mulch beds for the length of the sculpture; and</i></li> <li>vi. <i>ensure delivery is consistent with the concept specification in SWTC Appendix E.4, section 8.3.7; and</i></li> <li>vii. <i>be consistent with the Aboriginal consultation to be undertaken and managed by the Companies regarding this element.</i></li> </ul>
	<p><b>Appendix E.4</b></p> <p>The following requirements in SWTC Appendix E.4 would be modified:</p> <p>Replace Appendix E.4 with the PAC 5 Appendix E.4 provided in Attachment A of this PAC 5.</p>
<p>Amendments to any Dates for Integration Completion</p>	<p>Not applicable</p>

Schedule 39 – NC Provisional Amounts for Non-Contestable Works

NON-CONTESTABLE WORKS		
Reference	Description	NC Provisional Amount
	<b><i>EDC Total</i></b>	
EDC	<i>Jemena high pressure gas main relocation</i>	
EDC	<i>Telstra underground network Relocation</i>	
EDC	<i>NBN underground Network Relocation</i>	
EDC	<i>Optus underground network relocation (located within the Telstra network)</i>	
EDC	<i>TPG underground network relocation (located within the Telstra network)</i>	
EDC	<i>Uecomm underground network relocation</i>	
EDC	<i>Nextgen underground network relocation (Located within the Telstra network)</i>	
EDC	<i>Vocus underground network relocation (located within the Telstra network)</i>	
EDC	<i>Relocation of aerial communications cables</i>	

Schedule 40 – [REDACTED]

















































## Schedule 41 – Principal Contractor Deed

# M7-M12 Integration Project

## Deed of Engagement of Principal Contractor

Transport for NSW  
Transport

Westlink Motorway Limited  
Westlink

WSO Co Pty Ltd  
WSO Co

John Holland Pty Ltd  
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](http://www.claytonutz.com)

Our reference 2652/81011812

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## Deed of Engagement of Principal Contractor

### Date

### Parties

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

Westlink Motorway Limited ABN 63 096 512 300 of 101 Wallgrove Road, Eastern Creek, New South Wales 2766 (Westlink) in its own capacity and as nominee and agent for the Partnership

WSO Co Pty Ltd ABN 73 102 757 924 of 101 Wallgrove Road, Eastern Creek, New South Wales 2766 (WSO Co)

John Holland Pty Ltd ABN 11 004 282 268 of Level 9, 180 Flinders Street, Melbourne, Victoria 3000 (the Contractor)

### Recitals

A. Transport and:

- (a) the Companies and others have entered into a deed entitled "M7-M12 Integration Project Deed" (**Integration Project Deed**); and
- (b) the State Works Contractor have entered into a deed entitled "M7-M12 Integration Project - State Works Deed" (**State Works Deed**),

under which the Companies and the State Works Contractor are responsible for, amongst other things, designing and constructing the Project Works (including Third Party Works) and Temporary Works.

- B. In order to carry out their respective obligations under the Integration Project Deed and the State Works Deed, the Companies and the State Works Contractor have entered into the D&C Deed with the Contractor pursuant to which the Contractor will design and construct the Project Works (other than those elements of Project Works for which the Company Group (as defined in the Contract) is responsible for delivering pursuant to Schedule 35 of the D&C Deed (**Other Works**)).
- C. Transport has agreed to engage the Contractor as the principal contractor under clause 293 of the WHS Regulation for the Construction Project(s) the subject of the D&C Deed.
- D. The Contractor has agreed to carry out the obligations of a principal contractor under the WHS Regulation for all Construction Project(s) the subject of the D&C Deed.
- E. The parties have agreed to enter into this deed to give effect to the engagement of the Contractor as the principal contractor as set out in this deed.

## Operative Provisions

With effect from the Effective Date:

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### 1. Defined terms and interpretation

#### 1.1 Definitions

In this deed:

**Construction Project** has the same meaning as in the WHS Regulation.

**Construction Work** has the same meaning as in the WHS Regulation.

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

**Effective Date** means the 'Satisfaction Date' as that term is defined in the Integration Project Deed.

**Integration Project Deed** has the meaning given to it in recital A.

**Other Works** has the meaning given to it in recital B.

**WHS Regulation** means the *Work Health and Safety Regulation 2017* (NSW).

**Workplace** has the same meaning as in the *Work Health and Safety Act 2011* (NSW).

#### 1.2 Definitions in this deed

- (a) Capitalised terms not otherwise defined in this deed have the meaning given to those terms in the D&C Deed as at the date of this deed.
- (b) To the extent terms in the D&C Deed are amended after the date of this deed, those terms will not apply in this deed unless agreed by all parties in writing.

#### 1.3 Priority of documents

To the extent of any inconsistency, ambiguity or discrepancy between this deed, the Integration Project Deed, the State Works Deed or the D&C Deed, this deed prevails.

#### 1.4 Relationship of the parties

Unless otherwise expressly provided, this deed does not:

- (a) create an additional partnership, a joint venture or a fiduciary, employment or agency relationship, between the parties; or
- (b) impose any duty of good faith on Transport.

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## 2. Principal contractor engagement

### 2.1 Engagement of principal contractor under WHS Regulation

- (a) For the purposes of Chapter 6 of the WHS Regulation Transport:
- (i) engages the Contractor as the principal contractor under clause 293 of the WHS Regulation for the Construction Project(s) to be carried out under the D&C Deed, and the Contractor accepts such engagement; and
  - (ii) authorises the Contractor to have management or control of each Workplace at which the Construction Work the subject of the D&C Deed is to be carried out, and to discharge the duties of a principal contractor under Chapter 6 of the WHS Regulation.
- (b) The Contractor:
- (i) acknowledges its engagement and appointment as principal contractor referred to in clause 2.1(a); and
  - (ii) must carry out, and ensure compliance with, its obligations as principal contractor under the WHS Regulation in respect of the engagement referred to in clause 2.1(a).
- (c) If the Contractor fails to comply with any of its obligations in clause 2.1(b)(ii), Transport may have the Contractor's principal contractor obligations carried out by Transport, the Companies or by others and the cost incurred by Transport in having those obligations carried out will be a debt due from the Contractor to Transport.
- (d) If the engagement of the Contractor as principal contractor under this clause is not effective for the reasons as set out in clause 5.7(c)(i) of Annexure A of the Integration Project Deed, Transport appoints the Companies as principal contractor in accordance with clause 5.7(c)(i)C. of Annexure A of the Integration Project Deed.
- (e) The Contractor's engagement and authorisation as principal contractor will continue:
- (i) subject to clauses 2.1(e)(ii) and 2.1(e)(iii), until the earlier of:
    - A. the termination of this deed in accordance with clause 2.1(g) or termination of the D&C Deed;
    - B. the relevant Completion Date for each discrete part of the Project Works;
    - C. in respect of any part or parts of the Returned Works, the date on which that part or parts of the Returned Works is opened prior to Returned Works Construction Completion of the EDC Works or Returned Works Construction Completion of the Returned Works (excluding the EDC Works) (as applicable) in accordance with clause 16.2 or 16.3 of the D&C Deed;
  - (ii) in respect of:
    - A. part of an "Other Project Contractor's Portion" (as defined in the M12 Central Interface Protocol), from the start time until the end time set out in the relevant "PC Change Request" (as defined in the M12 Central Interface Protocol) approved by

Transport in accordance with the M12 Central Interface Protocol;

- B. the areas specified in the Site Access Schedule set out in the D&C Deed, the termination or expiry of the rights referred to in clause 9.1 of the D&C Deed,

(unless sooner revoked by Transport); and

(iii) in respect of:

- A. any work to any part of the Returned Works which has been opened in accordance with clause 16.2 or 16.3 of the D&C Deed carried out under the D&C Deed that is Construction Work by the Contractor;

- B. any defect rectification work carried out under clause 17 of the D&C Deed that is Construction Work by the Contractor,

during the period any such work is carried out.

- (f) Each Company warrants that the Construction Work to be carried out under the D&C Deed and the Other Works encompasses all Construction Work that the Companies must carry out under the Integration Project Deed and the State Works Contractor must carry out under the State Works Deed.
- (g) Transport may terminate this deed for any reason by providing the Contractor and the Companies with not less than 8 Business Days prior written notice. Transport will consider any reasonable submissions made by the Companies in relation to that termination during that 8 Business Day period.

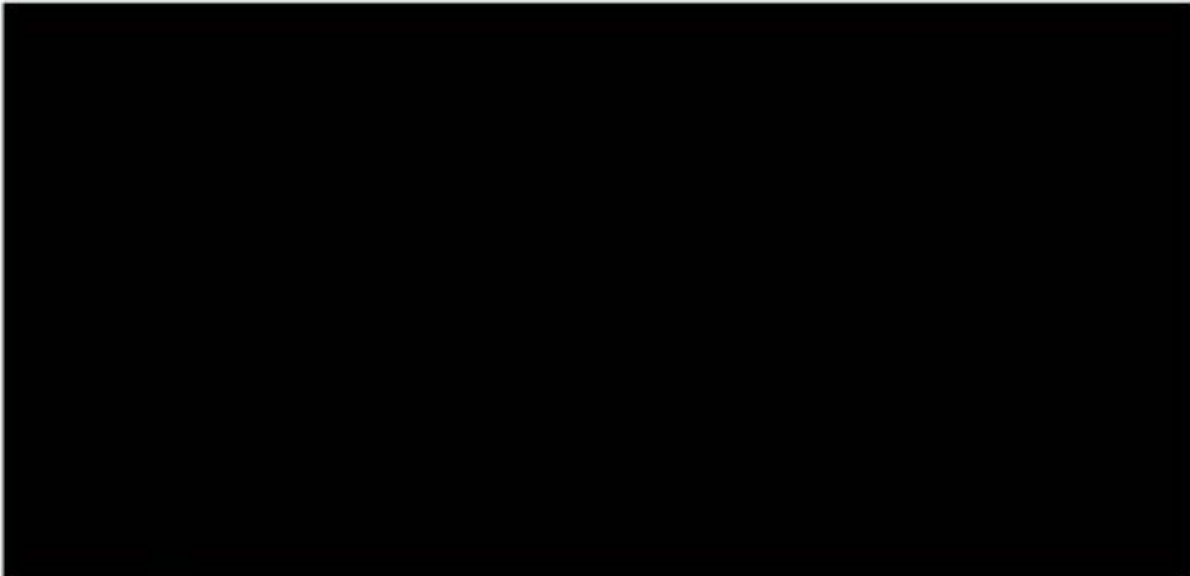
## 2.2 Transport and Companies not liable

The Contractor acknowledges and agrees that:

- (a) Transport will not be liable to the Contractor for and releases Transport from any claim in respect of any damage, expense, loss or liability suffered or incurred by it arising out of or in connection with the engagement of the Contractor as principal contractor, the performance by it of its obligations as principal contractor under the WHS Regulation or any breach thereof; and
- (b) subject to anything contrary in (including any express rights of the Contractor under) the D&C Deed, the Companies will not be liable to the Contractor for and releases the Companies from any claim in respect of any damage, expense, loss or liability suffered or incurred by it arising out of or in connection with the engagement of the Contractor as principal contractor, the performance by it of its obligations as principal contractor under the WHS Regulation or any breach thereof.

## 2.3 Indemnity





## 2.4 Manage risks

Without limiting the Contractor's obligations elsewhere under the D&C Deed or this deed, the Contractor must, so far as is reasonably practicable:

- (a) carry out, and ensure compliance with, its obligations as principal contractor under the WHS Regulation;
- (b) manage health and safety risks associated with the carrying out of the Construction Project(s) the subject of the D&C Deed; and
- (c) ensure that all Workplaces at which the Construction Work the subject of the D&C Deed is to be carried out are secured from unauthorised access, and in doing so, have regard to all relevant matters including risks to health and safety arising from unauthorised access to the Workplace, the likelihood of unauthorised access occurring and to the extent that unauthorised access to the Workplace cannot be prevented, how to isolate hazards within the Workplace.

## 2.5 Reporting

Without limiting the Contractor's reporting or other obligations elsewhere under the D&C Deed, upon request by Transport from time to time, the Contractor must promptly provide that requesting party with a copy of:

- (a) the written WHS management plan for each Workplace at which the Construction Work the subject of the D&C Deed is to be carried out, including any revisions that are made to the WHS management plan under clause 311 of the WHS Regulation;
- (b) the Contractor's records in relation to the steps the Contractor has taken to make persons carrying out work aware of the content of the WHS management plan in accordance with clause 310 of the WHS Regulation;
- (c) any safe work method statements which have been obtained under clause 312 of the WHS Regulation;
- (d) the Contractor's records in relation to the steps the Contractor has taken to comply with clause 314 of the WHS Regulation;
- (e) the Contractor's records in relation to the steps the Contractor has taken to comply with clause 315 of the WHS Regulation; and



- (f) any other registers, records and documents,

that the Contractor prepares, maintains, keeps or obtains in connection with its obligations as a principal contractor under the WHS Regulation.

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### **3. Substitution of Companies as Principal Contractor**

If the D&C Deed is terminated for any reason before all Construction Project(s) the subject of the D&C Deed are complete:

- (a) the Contractor's engagement and authorisation as principal contractor is terminated; and
- (b) Transport engages each Company as principal contractor from the date of such termination in accordance with clause 5.7(c)(i) of Annexure A of the Integration Project Deed:
- (i) on substantially the same terms as the Contractor is engaged under this deed, as principal contractor for the Construction Project(s) in connection with the Construction Work to be carried out under the D&C Deed in that Workplace; and
- (ii) authorises each Company to have management and control of that Workplace at which Construction Work the subject of the D&C Deed is to be carried out and to discharge the duties of a principal contractor under the WHS Regulation,

from the date of such termination.

---

## **4. General**

### **4.1 Governing law and 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.

### **4.2 Liability for expenses**

Each party must pay its own expenses incurred in negotiating and executing this deed.

### **4.3 Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this deed.

### **4.4 Goods and Services Tax**

- (a) A party must pay GST on a taxable supply made to it under this deed, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.

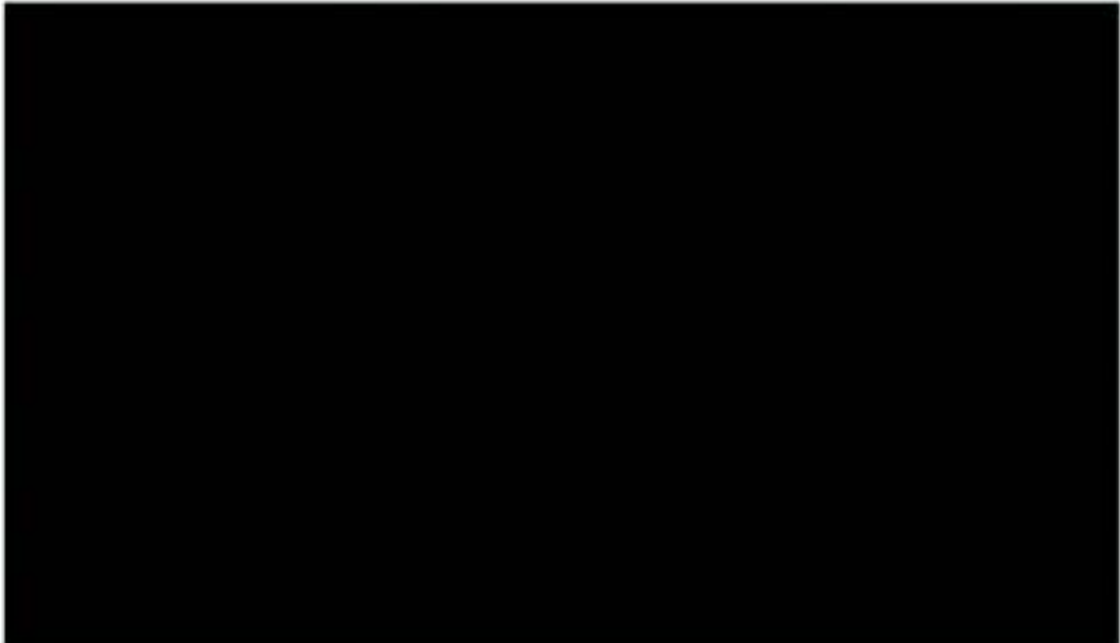
- (b) Terms used in this clause 4.4 have the meaning given to them in A New Tax System (Goods and Services Tax) Act 1999.

#### **4.5 Joint and Several Liability**

The obligations of the Contractor under this deed, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own.

---

### **5. Limit of liability**



Executed as a deed.

**TRANSPORT**

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

.....  
Signature of witness

.....  
Signature of authorised delegate

.....  
Name of witness (print)

.....  
Name of authorised delegate (print)

.....  
Position of authorised delegate (print)

**THE COMPANIES**

**WSO Co**

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

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

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

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

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

**Westlink**

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

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

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

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

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

**CONTRACTOR**

Signed, sealed and delivered by and on behalf of John Holland Pty Ltd (ACN 004 282 268) by its Attorney under a Power of Attorney dated 15 February 2023, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

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Signature of Attorney

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Signature of Witness

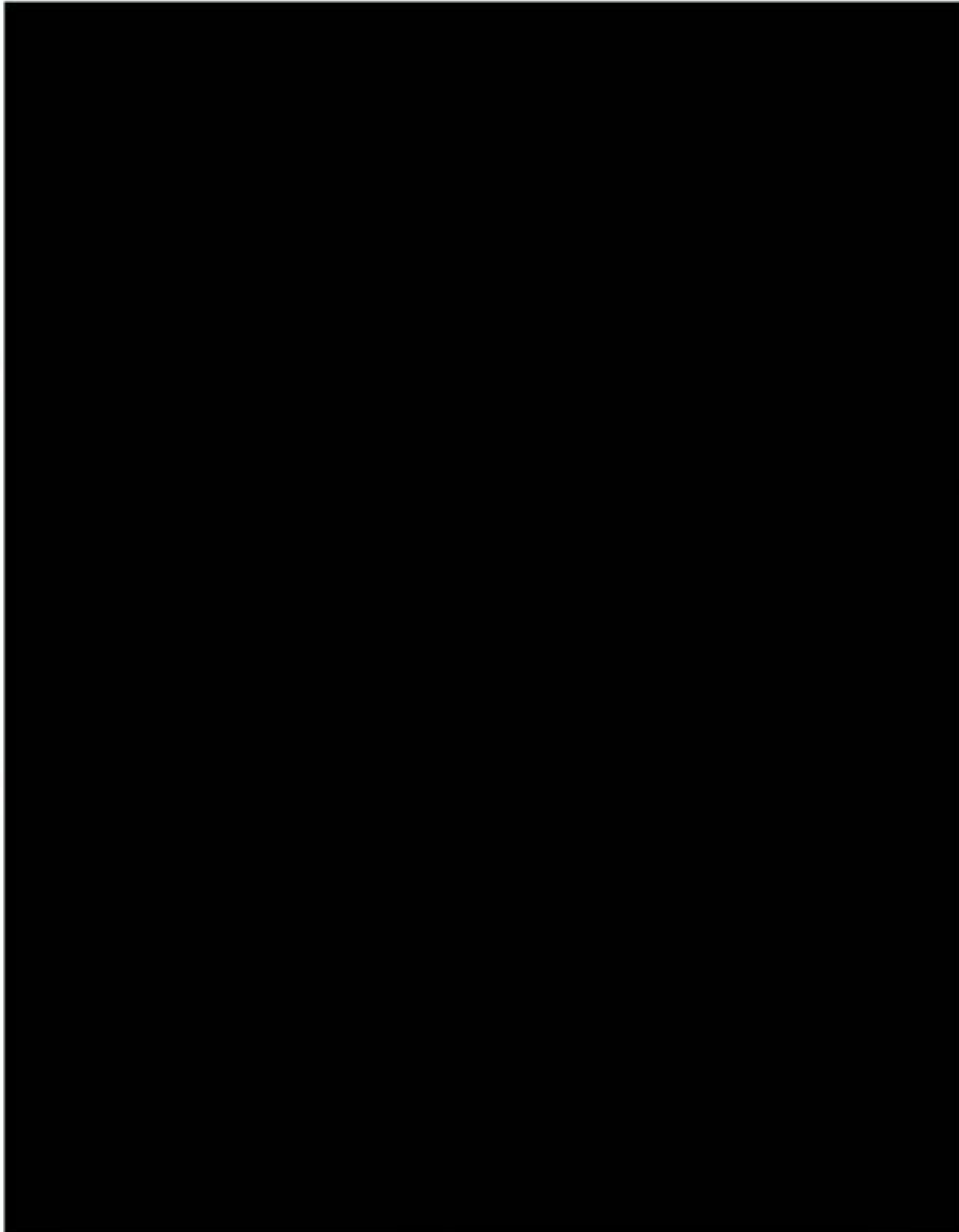
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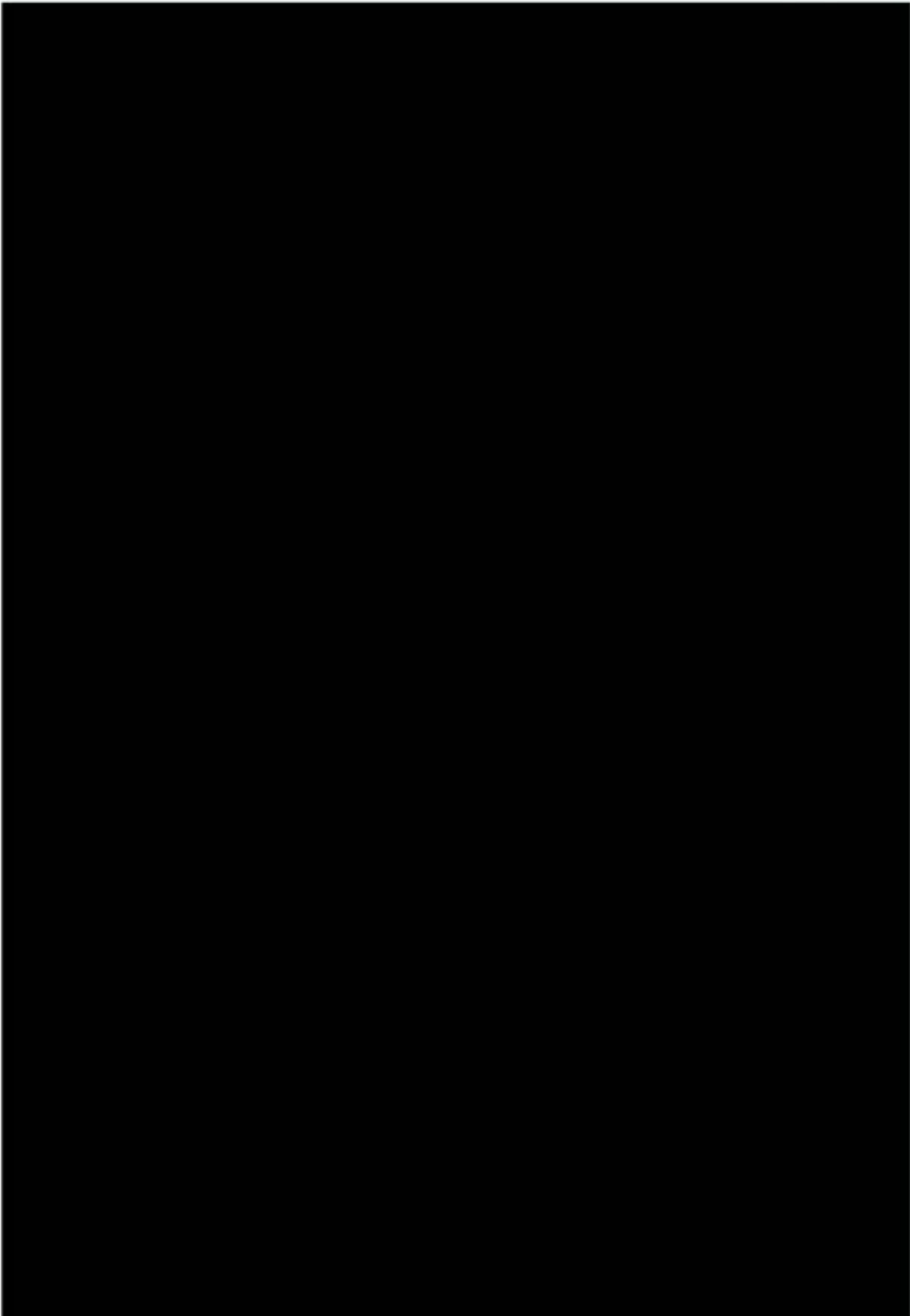
Name of Attorney in full

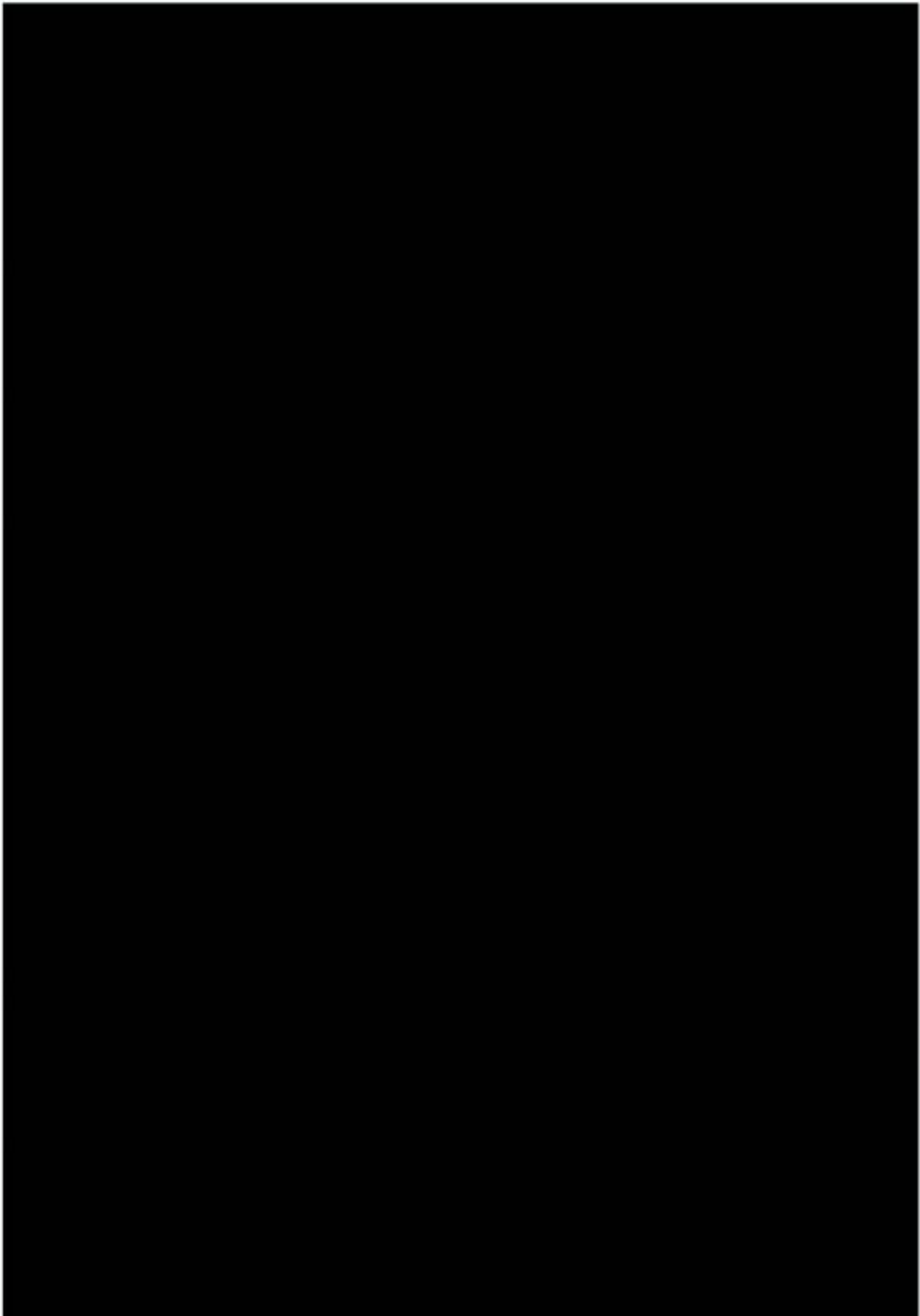
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Name of Witness in full

Schedule 42 – [REDACTED]

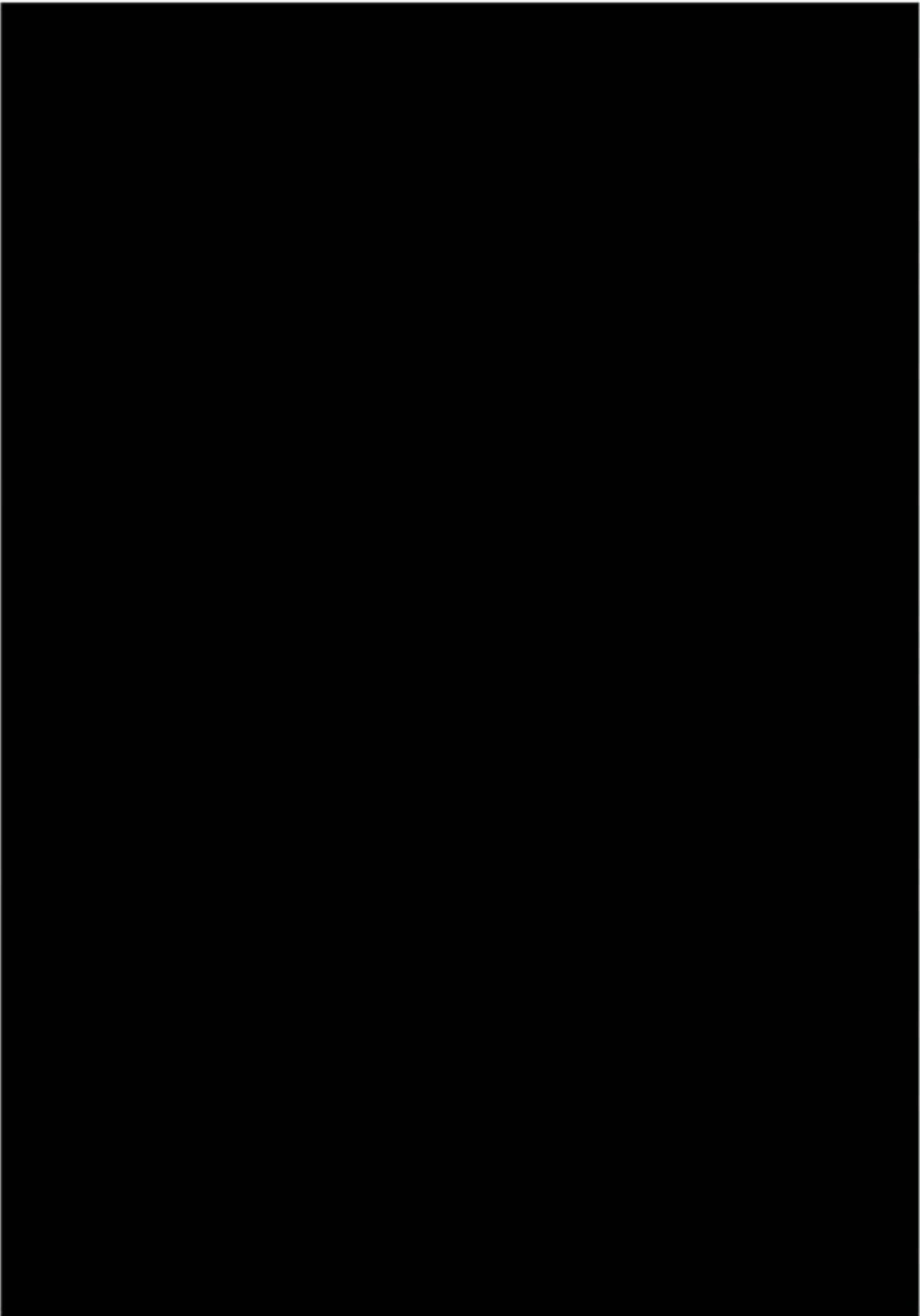




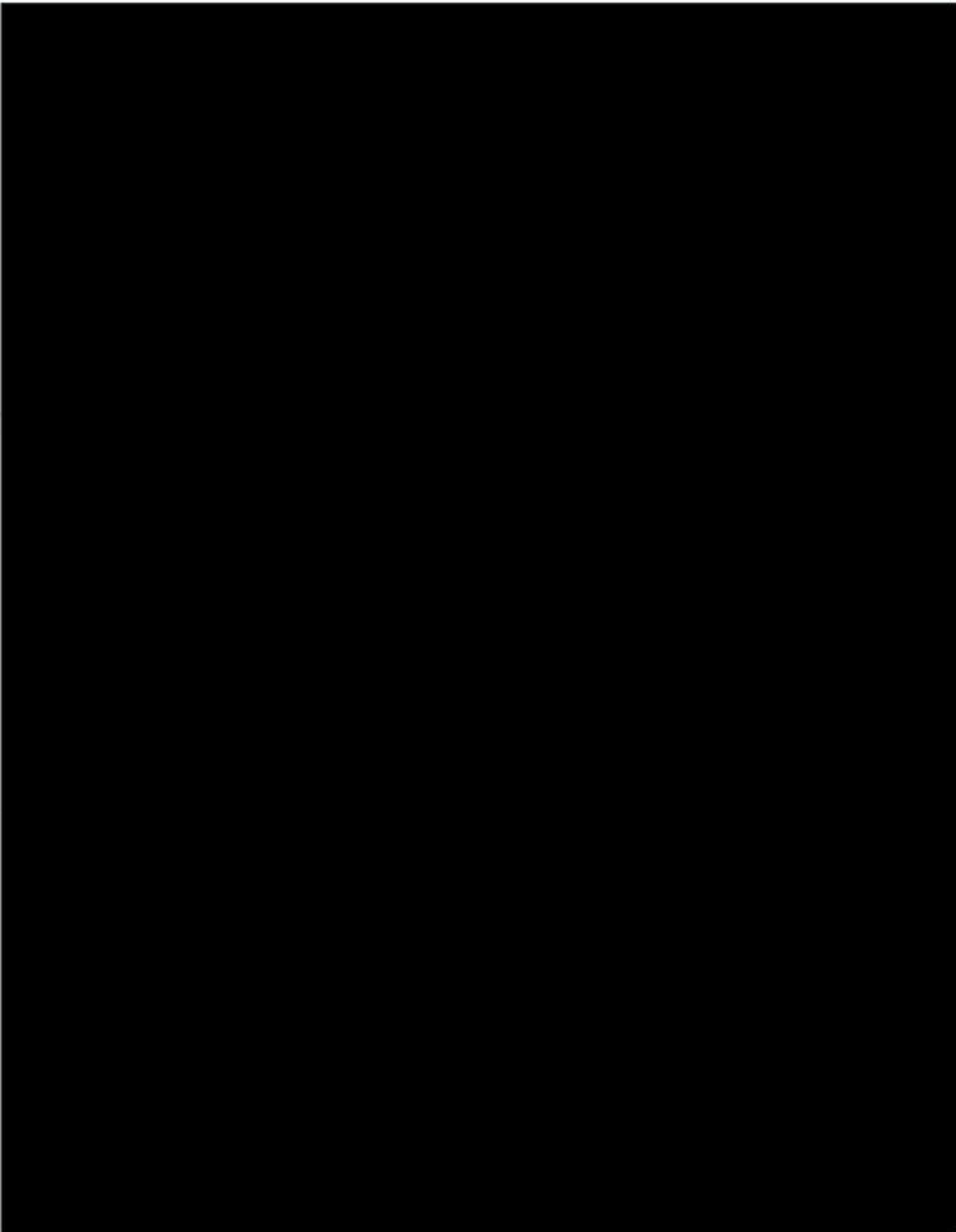


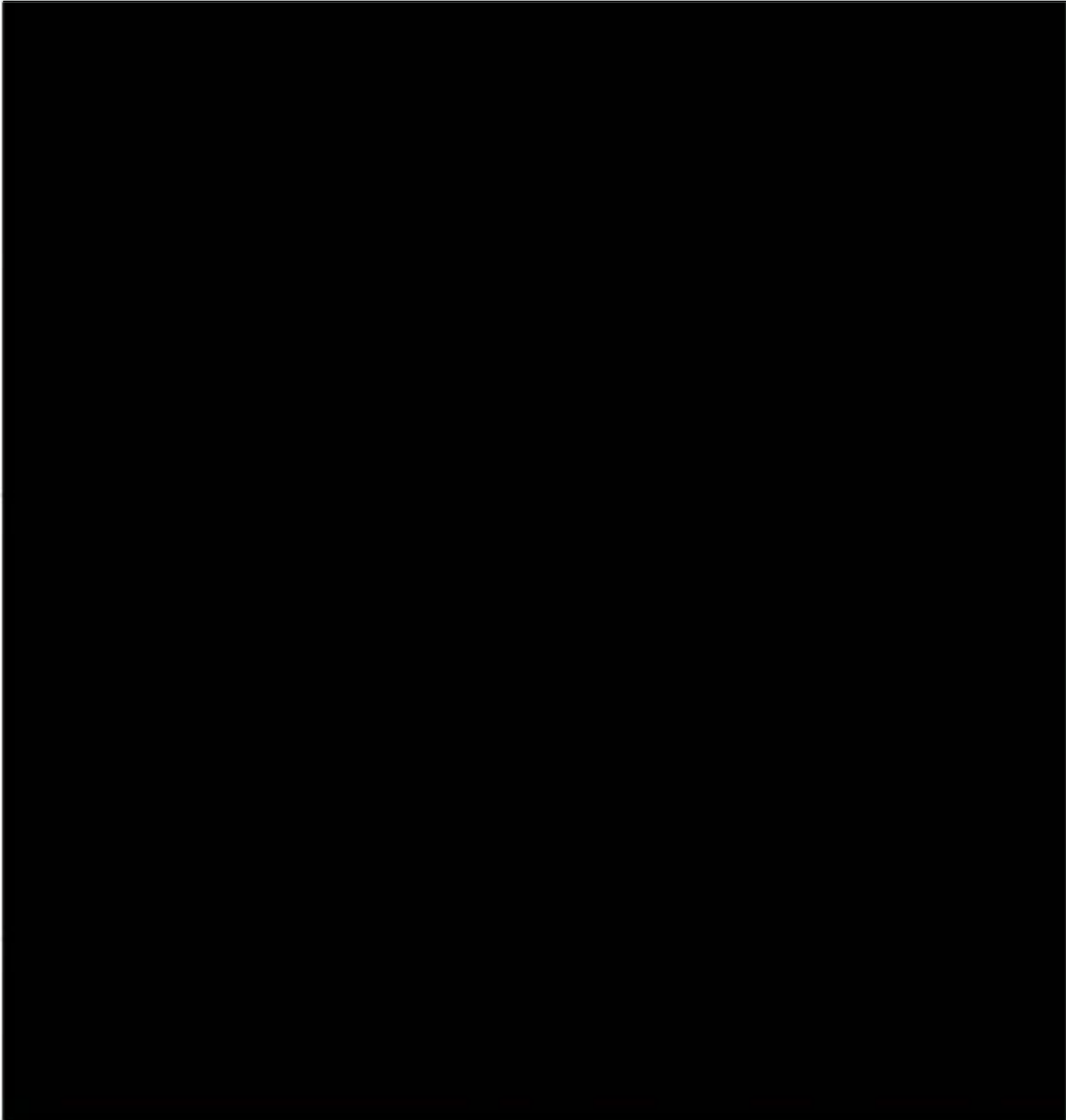






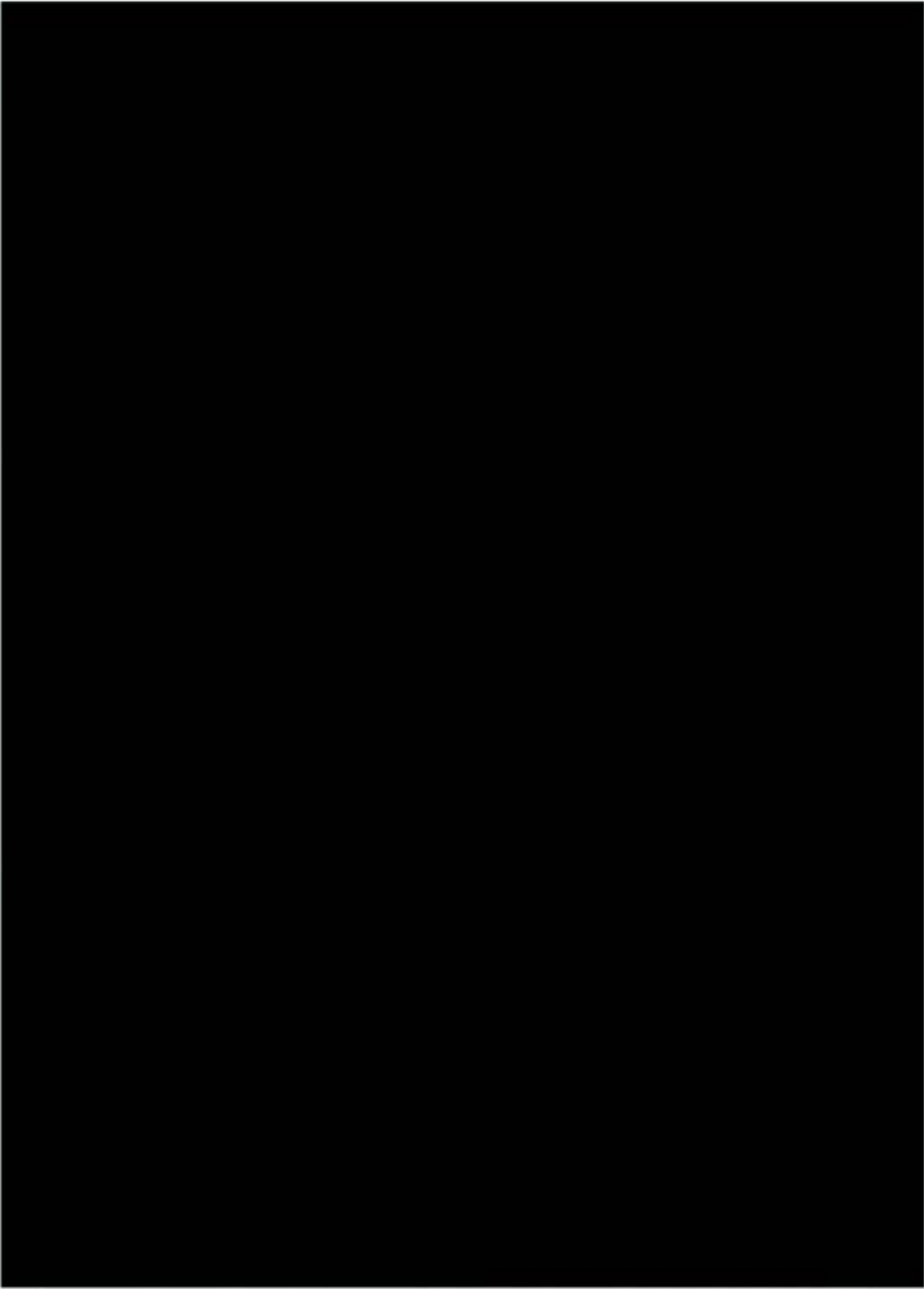














## Schedule 43 – Utility Register



































































**Schedule 44 – Not used**



## Schedule 45 – Critical Information

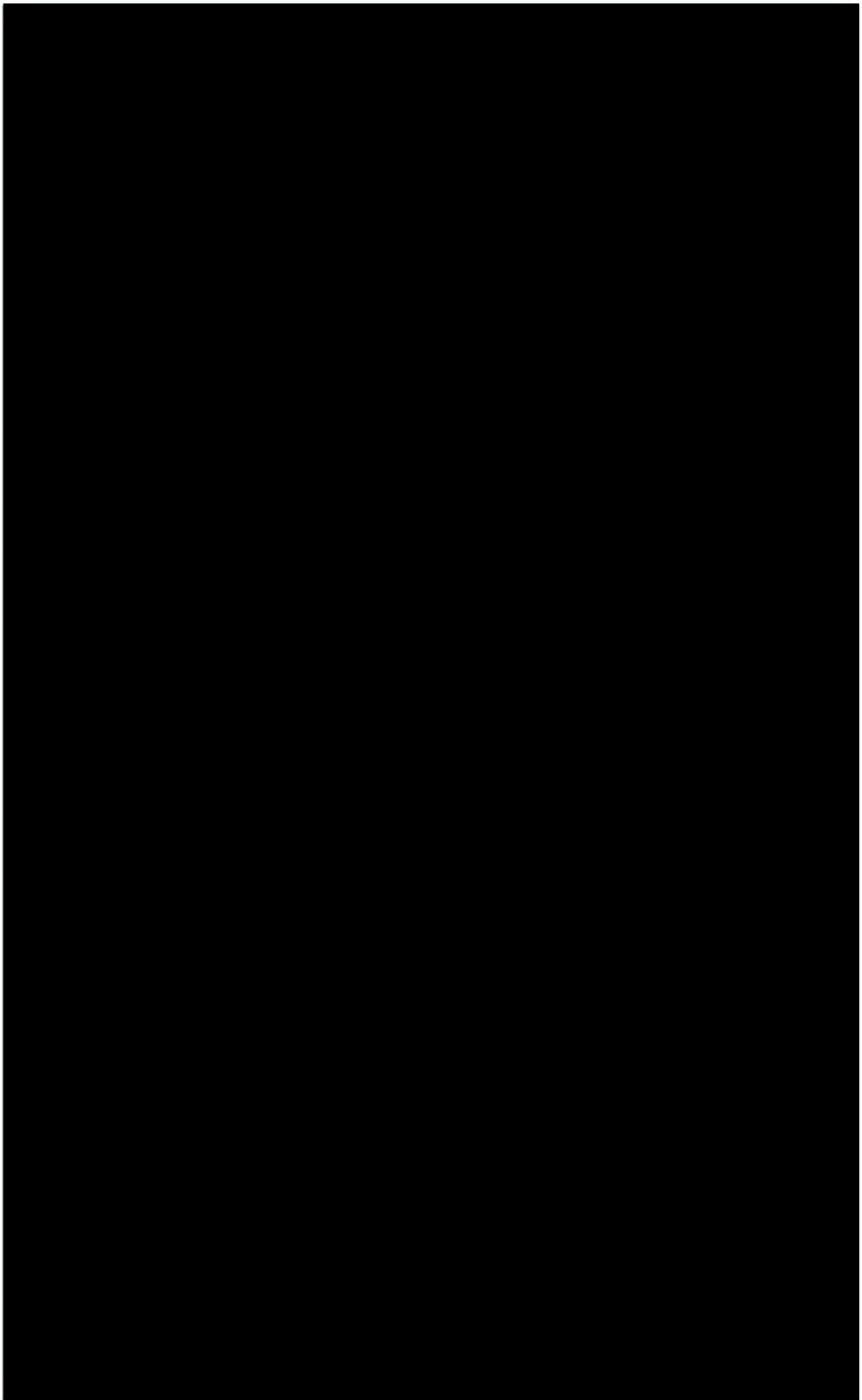
### Part A: Critical Information – Transport Land

The parties acknowledge and agree that the documents identified below are incorporated by reference to this deed.

Description	Electronic File Name
Transport's Critical Information Documents	02.498 INFO DOC 0498 - Noise Model - 2022-08-09 0001 M12 Motorway [100pc West, 100pc Central, 80pc East] (Model input parameters only with previous versions superseded. The specific model parameters are: <ul style="list-style-type: none"> <li>• Traffic volumes</li> <li>• Traffic mixes</li> <li>• Road surface corrections</li> <li>• Sensitive receivers (buildings with associated height, number of levels and land use)</li> <li>• existing noise barriers)</li> </ul>
Transport's Critical Information Documents	INFO DOC 0073 - M12 Cadastral Model Issued 20211021 (Limited to surveyed existing cadastral boundaries)
Transport's Critical Information Documents	INFO DOC 0074 - M12 Cadastral Model Issued 20211021 (Limited to surveyed existing cadastral boundaries)
Transport's Critical Information Documents	INFO DOC 0150 - M12 Central Docs M12CDD-GHDA-ALL (1) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0151 - M12 Central Docs M12CDD-GHDA-ALL (2) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0152 – M12 Central Docs M12CDD-GHDA-ML2 (1) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0153 - M12 Central Docs M12CDD-GHDA-ML2 (2) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0154 - M12 Central Docs M12CDD-GHDA-ML2 (3)
Transport's Critical Information Documents	INFO DOC 0155 - M12 Central Docs M12CDD-GHDA-ML2 (4) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0156 - M12 Central Docs

Documents	M12CDD-GHDA-ML2 (5) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0157 - M12 Central Docs M12CDD-GHDA-ML2 (6) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	INFO DOC 0158 - M12 Central Docs M12CDD-GHDA-ML2 (7) (Limited to drawings at the M12 Central and M12/East interface)
Transport's Critical Information Documents	02.507 INFO DOC 0507 - M12 East Roadworks - 100% Design Report & IFT Drawings  Limited to:  <ul style="list-style-type: none"> <li>- the drawings at the interface with M12 Central (M12EDD-WSPA-ALL-RW-DRG-009999.C.S3.C.01 (1)); and</li> <li>- the relevant factual sections of the report that detail the interface with M12 Central (M12EDD-WSPA-ALL-RW-RPT-000001.C.S3.C.01 (1))</li> </ul>
Transport's Critical Information Documents	02.512 INFO DOC 0512 - M12 East – Pavement - 100% Design Report & IFT Drawings  Limited to:  <ul style="list-style-type: none"> <li>- drawings at the interface with M12 Central (M12EDD-WSPA-ALL-PV-DRG-009999.C.S3.C.01 (1));</li> <li>- the relevant factual sections of the design report (M12EDD-WSPA-ALL-PV-RPT-000001.C.S3.C.01 (1)) that detail the interface with M12 Central;</li> <li>- Factual aspects of Appendix J of the design report(M12EDD-WSPA-ALL-PV-RPT-000001.C.S3.C.01 (1)); and</li> <li>- Closed out design comments and responses (INFO DOC 0512 - M12 - Feedback on Document Comments or Responses - M12EDD-TFNSW-ALL-PV-COM-000001.xlsx).</li> </ul>
Transport's Critical Information Documents	INFO DOC 0099 - M12EDD-WSPA-ALL-RW-RPT-000001.B.S3.B.01  (limited to Appendix C, Design Departures Register)
Transport's Critical Information Documents	INFO DOC 0101 - M12EDD-WSPA-ALL-LV-RPT-000001.B.S3.B.01  (limited to Appendix C, Design Departures Register)

**Schedule 46 – Indicative Sketch of Interim M12 Motorway and Elizabeth Drive Connection**



Schedule 47 – [REDACTED]

