



HOLDING REDLICH

Dated

21 May

2021

Independent Engineer's Deed

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Hydro Aluminium Kurri Kurri Pty Ltd (ACN 093 266 221)

SMEC Australia Pty Ltd (ACN 065 475 149)

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This Independent Engineer's Deed is dated

21 May

2021

Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

Developer

Hydro Aluminium Kurri Kurri Pty Ltd (ACN 093 266 221)
of Hart Road, Loxford NSW 2327

Independent Engineer

SMEC Australia Pty Ltd (ACN 065 475 149)
of Level 5, 20 Berry Street, North Sydney NSW 2060

Introduction:

- A** The Developer owns the Land.
- B** The Minister and the Developer have entered, or will enter, into the Voluntary Planning Agreement.
- C** The Developer has engaged, or will engage, a Remediation Contractor to carry out the Remediation Works on the Land on the terms set out in the Site Remediation Contract.
- D** The Voluntary Planning Agreement and the Site Remediation Contract contemplate that the Developer will appoint a construction quality assurance engineer to carry out services, equivalent to the IE Services.
- E** The Independent Engineer has represented that it has the experience and expertise in the carrying out of the functions, services, duties and responsibilities equivalent to the IE Services.
- F** The Independent Engineer has agreed to carry out the IE Services and its other obligations arising out of or in connection with this deed in accordance with the terms and conditions of this deed (**Deed**).

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

Access Road means the road to be constructed by the Developer providing access to the Containment Cell Land;

Address for Service means the address of each party appearing in Schedule 1 or any new address notified by any party to all other parties as its new Address for Service;

Approvals means all notices, orders, decisions, registrations, rulings, requirements, consents, permits, permissions, authorisations, certificates, licences, approvals and the like required from or given by an Authority or under any Legislative Requirement to carry out all or any part of the Remediation Works;

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; and
- (b) any other entity or person authorised by any of the above or by law to carry out or assist in the discharge of its functions in respect of Approvals;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Certificate of Compliance means the certificate (substantially in the form set out in Schedule 4 of this Deed) to be provided to the Minister and the Developer by the Independent Engineer, which, among other things, provides that the Remediation Works or relevant parts thereof:

- (a) have been constructed, installed and completed in accordance with the Project Documents, to the extent applicable to the Construction Remediation Works; and
- (b) comply with the applicable Legislative requirements;

Claim means any claim, demand, remedy, injury, damage, cost, loss, expense, liability, suit, action, proceeding, verdict, judgement, right of action or debt whether arising at law, in equity, under statute or otherwise;

Construction Remediation Works means so much of the Remediation Works as relates to:

- (a) the construction of the Containment Cell, including all design and temporary works, the construction of infrastructure associated with the Containment Cell (such as the installation of pipework for collection of groundwater, collection stumps for leachate and 'anchor' trenches) and the construction of the access road to the Containment Cell and the perimeter road, as described in State Significant Development Application SSD 6666; and
- (b) all works and activities referred to in Stage 1B;

Containment Cell means the containment cell to be constructed by or on behalf of the Developer on the Land in accordance with the Project Documents;

Containment Cell Land means that part of the Land to be transferred to the Minister, including the land on which the Containment Cell is located;

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

Developer is the party referred to in Item 2 of Schedule 1 of this Deed. A reference to the 'Landowner' in any Project Document is a reference to the Developer unless the context otherwise requires;

Development Consent has the same meaning as in the EPA Act;

EPA Act means the *Environmental Planning and Assessment Act 1979 (NSW)*;

Fee means the fee calculated in accordance with clause 2.4;

Independent Engineer is the party referred to in Item 3 of Schedule 1 of this Deed;

IE Services means those services listed or referred to in Schedule 3 of this Deed and such other services as the Independent Engineer may be required to perform and provide under this Deed or the Project Documents;

Land means the land described in Schedule 2 of this Deed;

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Remediation Works or the particular part thereof is being carried out as amended or re-enacted from time to time including any such Act, Ordinance, regulations, by-laws, orders awards and proclamations made in replacement thereof;
- (b) certificates, licences, consents, permits, Approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Remediation Works; and
- (c) fees and charges payable in connection with the foregoing;

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time;

Minister is the party referred to in Item 1 of Schedule 1 of this Deed and includes the Minister's nominee;

Project means the development of the Land generally in accordance with State Significant Development Application SSD 6666, comprising (among other things) the remediation of the former Hydro Kurri Kurri Aluminium smelter site;

Project Documents means:

- (a) the Remediation Consent;
- (b) the Voluntary Planning Agreement;
- (c) the Site Remediation Contract and any other documents between the Developer and the Remediation Contractor in relation to the Remediation Works (including any scope of works, technical specification and remedial action plan); and
- (d) any other documents the Minister and the Developer acknowledge in writing to be a Project Document;

Remediation Contractor means the contractor appointed by the Developer under the Site Remediation Contract to perform the Remediation Works;

Remediation Works means the works as defined in the Site Remediation Contract and includes, without limitation, the Construction Remediation Works;

Remediation Consent means any Development Consent granted for the Project;

Site means the Land and any other lands and places made available to the Independent Engineer for the purpose of performing the IE Services;

Site Remediation Contract means the contract between the Developer and the Remediation Contractor for the performance of the Remediation Works;

Stage 1B Works means the following works and activities forming part of stage SP2 Part 1 of the Remediation Works:

- (a) creation of main East-West Haul Road;
- (b) creation of permanent creek crossing (culverts); and
- (c) construction of 5 dams – 1 leachate dam, 3 sediment basins at containment cell site and 1 leachate dam at the capped waste stockpile;

Termination Event means:

- (a) a failure, refusal or inability of the Independent Engineer to perform all or any part of its obligations, duties and functions under this Deed, including within the time required under this Deed; or
- (b) a material breach by the Independent Engineer of any of its obligations, duties and functions under this Deed which:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy and the Independent Engineer fails promptly to rectify such breach within the period specified in a written notice issued jointly from the Minister and the Developer requesting the Independent Engineer to remedy the breach; and

Voluntary Planning Agreement means the agreement between the Minister and the Developer for the provision of development contributions by the Developer in connection with the Project.

1.2 Interpretation

In this Deed, unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (e) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this Deed;
- (f) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (g) **including** and **includes** are not words of limitation;
- (h) the singular includes the plural and vice-versa; and

- (i) words importing one gender include all other genders.

1.3 Construction

Neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Appointment of the Independent Engineer

2.1 Terms of appointment

- (a) The Developer appoints the Independent Engineer to perform the IE Services in accordance with this Deed.
- (b) Without limiting and in addition to the above, each of the Minister and the Developer appoints the Independent Engineer to perform the IE Services for the purposes of the Voluntary Planning Agreement.
- (c) The Independent Engineer's appointment under subclauses 2.1(a) and (b) commences on the date of this Deed and terminates on the date determined pursuant to subclause 3.2.
- (d) The Independent Engineer accepts such appointment under subclauses 2.1(a) and (b) and agrees to perform the IE Services in accordance with this Deed.

2.2 Standard of performance of the IE Services

In carrying out the IE Services the Independent Engineer must:

- (a) at all times act:
 - (i) in good faith, impartially, honestly and independently (without regard for the benefit of one party to the Deed over the other);
 - (ii) diligently and with a high degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a construction quality assurance engineer experienced in the performance of the same or similar services to the IE Services;
 - (iii) reasonably, fairly, professionally and honestly;
 - (iv) in a timely manner and with due expedition and without delay (and, in any event, within the times required under or contemplated by this Deed); and
 - (v) in accordance with this Deed and the Project Documents;
- (b) not waive or vary any requirements in the Project Documents;
- (c) not discharge or release a party from any of its obligations arising out of any Project Document;
- (d) comply with all Legislative Requirements;
- (e) exercise all reasonable skill, care and diligence expected of a properly qualified and competent professional rendering services of an equivalent nature to the IE Services and experienced in projects of a similar size, scope and complexity as the Project;

- (f) not infringe any intellectual property rights of the Minister, the Developer or any of their employees, officers, contractors, consultants or agents;
- (g) perform the IE Services in a manner that assists the Superintendent (as defined under the Site Remediation Contract) in carrying out its duties and functions, including in the carrying out of any checking and sign-off of quality assurance Witness Points and Hold Points for the Containment Cell, under the Site Remediation Contract;
- (h) without derogating from the Independent Engineer's obligations to the Minister under this Deed, comply with all reasonable directions and requirements of the Developer and its other contractors and consultants (including the Remediation Contractor) in relation to work health and/or safety (and/or, for the Developer only, in relation to the coordination and/or interface of activities) on or around the Site;
- (i) coordinate the performance of the IE Services with (and must not unreasonably interfere with, disrupt or impede) the activities being conducted or carried out by the Developer or its other contractors and consultants (including the Remediation Contractor) on or around the Site;
- (j) not cause or contribute to, and will take all reasonable steps to prevent, any property loss or damage, and/or any personal injury, illness or death of or to any person, on or around the Site; and
- (k) promptly provide all information and documentation reasonably requested by the Minister and/or the Developer in relation to the performance of its obligations, or discharge of its liabilities, under or in connection with this Deed, including, by the last Business Day of each month during the performance of the IE Services a written report detailing:
 - (i) the Independent Engineer's actual progress in performing the IE Services compared to planned progress;
 - (ii) any known or foreseeable circumstances that may impact the Independent Engineer's performance of the IE Services, including the Independent Engineer's plans to mitigate any actual or potential impact of those circumstances; and
 - (iii) any other information that is materially relevant to the IE Services that the Developer or the Minister should reasonably be made aware of.

2.3 Representations and warranties

The Independent Engineer represents and warrants to the Minister and the Developer that:

- (a) it has the capability, expertise, skill, experience and ability to perform the IE Services, and that it will perform the IE Services in accordance with this Deed and otherwise comply with its obligations under this Deed;
- (b) it holds the appropriate qualifications, licences and registrations in accordance with the requirements of any Legislative Requirement necessary for the performance of the IE Services;
- (c) it has the power and has taken all corporate and other action required to enter into and authorise the execution of this Deed and the performance of the IE Services under this Deed;

- (d) it has not relied upon, and will not rely upon, any statement, information, documentation or representation made or provided by or on behalf of the Minister or the Developer on or prior to the date of this Deed;
- (e) no representation, warranty or information provided by it contains any untrue statement of material fact or omits to state a material fact necessary to make such representation and warranty not misleading in light of the circumstances under which it was made;
- (f) this Deed constitutes a valid and legally binding obligation on it in accordance with its terms except to the extent of discretions of courts regarding the availability of equitable remedies and laws affecting creditors' rights generally;
- (g) the execution, delivery and performance of this Deed does not violate any existing law or any document or agreement to which it is a party or which is binding on it or any of its assets; and
- (h) it grants to the Minister and the Developer a perpetual, world-wide, irrevocable, royalty-free and transferable (including a right to sublicense) licence to use, modify, copy and distribute any and all intellectual property rights in or relating to the IE Services and/or any information, deliverables and documentation prepared and/or provided by or on behalf of the Independent Engineer under or in connection with this Deed.

2.4 Fee and payment

- (a) The Fee will be calculated by the Developer in accordance with Schedule 5, based on the IE Services performed within the relevant period pursuant to this Deed.
- (b) The Independent Engineer may only issue payment claims for the payment of the Fee to the Developer in accordance with this subclause 2.4 and, in any event must ensure that every payment claim is issued:
 - (i) on the last day of each calendar month in which the IE Services are performed, for the Fee for the IE Services performed in accordance with this Deed within that month, priced in accordance with this Deed;
 - (ii) in the form of the payment claim prescribed in this Deed or, if none is prescribed, in the form reasonably required by the Developer, and must be accompanied with a tax invoice pursuant to all relevant Legislative Requirements;
 - (iii) in such detail as to enable the Developer to assess the IE Services performed, the period within which the IE Services were performed, and the calculations used (referencing the rates and prices set out in this Deed) in order to arrive at the Fee for the IE Services (including by identifying each separate disbursement comprised in the claim);
 - (iv) so as to not include any amount which was the subject of any previous payment claim or payment in connection with this Deed; and
 - (v) so as to not include any disbursements which were not approved in writing by the Developer prior to those disbursements being incurred or suffered by the Independent Engineer.

- (c) The Independent Engineer:
- (i) must promptly, after being requested by the Developer, provide all further information and documentation relating to any payment claim, and/or any IE Services the subject of any payment claim;
 - (ii) must perform the IE Services in accordance with the Fee Estimate Build Up (being the plan attached or referred to in Schedule 5, as updated by agreement in writing between the Developer and the Independent Engineer); and
 - (iii) despite anything to the contrary, and to the maximum extent permitted by law, acknowledges and agrees that:
 - (A) it will not be entitled to claim, or be paid for, any Fee or other payment for any IE Services performed outside of, or which exceed, the Fee Estimate Build Up (or any relevant item of the Fee Estimate Build Up), except to the extent that, as soon as possible and, in any event, prior to performing any such IE Services, the Independent Engineer notifies the Developer in writing of the need for the additional IE Services (or additional resources) and the Developer issues a written direction (pursuant to clause 2.5) agreeing to the performance of those IE Services (or additional resources);
 - (B) nothing in this Deed makes the Minister liable, or creates any liability for or in the Minister, to pay any amount, including anything connected with the Fee, arising from or in connection with this Deed and/or the IE Services; and
 - (C) the Developer is not required to pay for any IE Services and/or any Fee for any IE Services not yet performed, or disbursements not yet incurred by the Independent Engineer, as at the date of the payment claim, and/or any IE Services not performed in accordance with this Deed.
- (d) The Developer will assess each payment claim and, within 10 Business Days after receiving the relevant payment claim, issue a payment schedule to the Independent Engineer certifying its assessment of the amount due to the Independent Engineer (and, if that amount is different to the amount claimed, including reasons for this difference). The Developer will, subject to any right of set-off or deduction, pay the amount so assessed and certified as due, within 15 Business Days after receiving the relevant payment claim.
- (e) The Independent Engineer acknowledges and agrees that payment by the Developer is on account only and is not evidence of the value of work completed, an admission of liability nor evidence that the IE Services have been executed satisfactorily.
- (f) Despite anything to the contrary, and to the maximum extent permitted by law, the Developer may set-off or deduct, from any payment or amount due or payable to the Independent Engineer, any amount which is due or payable to the Developer under or in connection with this Deed.

2.5 Variations to IE Services

- (a) The Developer may vary, by adding or omitting, the IE Services at any time and from time to time in writing to the Independent Engineer.
- (b) The Independent Engineer must not vary the IE Services except to the extent necessary to comply with any written direction expressed as being provided under this subclause.

- (c) Where a variation to be directed under this subclause 2.5 reduces the scope, quality or quantity, or otherwise may adversely impact the quality of the IE Services and/or the Construction Remediation Works, the Developer must first obtain the written consent of the Minister for the relevant variation. The Minister must not unreasonably withhold or delay such consent.
- (d) If the Independent Engineer reasonably considers that a variation directed by the Developer under this subclause 2.5 will adversely impact on the quality of the IE Services and/or the Construction Remediation Works then, prior to it commencing any IE Services the subject of that direction, it must, as soon as possible, notify the Developer in writing and:
 - (i) the Independent Engineer must not commence any such IE Services until it receives written confirmation from the Developer to do so (if no such confirmation is given within 15 Business Days after the issue of the relevant notice by the Independent Engineer under this subclause 2.5(c), the relevant variation is deemed to have been withdrawn by the Developer); and
 - (ii) the Developer must obtain the written consent of the Minister for the relevant variation prior to issuing any confirmation under subclause 2.5(c)(i). The Minister must not unreasonably withhold or delay such consent.
- (e) Subject to subclause 2.5(c), the Developer will determine the value of the variation in accordance with Schedule 5 and the Fee will be adjusted accordingly.

2.6 Defective IE Services

- (a) The Developer may (and must where it is reasonably requested to do so by the Minister) direct the Independent Engineer to re-perform IE Services not performed in accordance with this Deed, and may specify a reasonable time for the Independent Engineer to complete the re-performance of the IE Services. The Independent Engineer must comply with such direction.
- (b) The Developer may give a direction under subclause 2.6(a) at any time up to and including the earlier of the date that:
 - (i) the Developer has issued the Final Certificate (as defined under the Site Remediation Contract) under the Site Remediation Contract; and
 - (ii) is 10 years after the date of this Deed,
 or such longer period as agreed between the parties in writing.
- (c) The Independent Engineer is not entitled to payment, including the payment of any Fee, for the re-performance of the IE Services in accordance with any direction given pursuant to this subclause 2.6.

3. Term of appointment

3.1 Term

The appointment of the Independent Engineer under subclauses 2.1 (a) and 2.1(b) of this Deed commences on the date of this Deed and, unless terminated earlier under subclause 3.2, continues until the later of:

- (a) the date Independent Engineer has completed and discharged all of its duties and functions under this Deed to the satisfaction of the Developer and the Minister; and
- (b) the earlier of:
 - (i) the Developer has issued the Final Certificate (as defined under the Site Remediation Contract) under the Site Remediation Contract; and
 - (ii) is 10 years after the date of this Deed.

3.2 Termination

This Deed will terminate immediately on the earlier of:

- (a) the termination of the Voluntary Planning Agreement (in which case this Deed terminates automatically); or
- (b) termination of this Deed in accordance with clause 13,

save in relation to any matter which remains outstanding and in progress as at the date of termination.

4. Relationship

4.1 Nature of relationship

- (a) The Independent Engineer is an independent contractor and is not an employee or agent of either the Minister or the Developer.
- (b) The Independent Engineer's employees, consultants and agents are not the employees, consultants or agents of the Minister or the Developer.
- (c) The Independent Engineer assumes full responsibility for the acts and omissions of each of its employees, officers, contractors, consultants and agents.
- (d) The Minister and the Developer are not liable for, nor will they be taken to have a liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance of any obligation of the Independent Engineer under this Deed or any associated document.

4.2 Independence

Without limiting or derogating from subclause 2.2(a), the parties agree that the Independent Engineer will act independently of all parties in connection with the performance of the IE Services.

4.3 No conflicts of interest

The Independent Engineer represents and warrants that:

- (a) it owes a duty of care and professional responsibility to each of the Minister and the Developer in connection with the performance of the IE Services;
- (b) it has disclosed to the Minister the contractual relationship it has with the Developer and, to the extent practicable, if a conflict of interest arises between the terms of this Deed and the separate agreement between the Developer and the Independent Engineer, the terms of this Deed will prevail;
- (c) subject to subclause 4.3(b) above, at the date of signing this Deed, no conflict of interest exists or is likely to arise in connection with the performance of the IE Services and the discharge of its duties and functions under this Deed; and
- (d) if, during the term of this Deed, any such conflict or risk of conflict of interest arises, the Independent Engineer will notify the Minister and the Developer immediately in writing of that conflict or risk of conflict and:
 - (i) take such steps as may be required by the Minister and the Developer to avoid or mitigate that conflict or risk; and
 - (ii) comply with all reasonable requests or directions of the Minister and the Developer in relation to such conflict or risk of conflict.

5. Reliance

The Independent Engineer acknowledges that the Minister and the Developer:

- (a) have entered into this Deed in reliance on, and are entitled to, and will, rely on:
 - (i) the independence of the Independent Engineer;
 - (ii) the particular skill, experience and ability of the Independent Engineer to perform all of the IE Services and otherwise comply with all obligations required by this Deed;
 - (iii) all deliverables prepared and provided by or on behalf of the Independent Engineer as part of the IE Services, including all reports and all Certificates of Compliance issued by it to the Minister and Developer in accordance with clause 6 of this Deed (acknowledging and agreeing that any and all deliverables may be provided to third parties on the condition that any reliance by the relevant third party on the deliverables will be at their own risk); and
- (b) may suffer loss if the Independent Engineer does not perform the IE Services in accordance with this Deed.

6. Certificate of Compliance

The Independent Engineer acknowledges and agrees that:

- (a) as at the date of this Deed, the Remediation Works are divided into the following stages:

Stage No	Description
SP2 Part 1 (comprising Stage 1A and Stage 1B Works)	Construction of the Project infrastructure
SP2 Part 2	Construction of the containment cell stage 1 - base
SP2 Part 3	Performance of the site remediation and material transfer
SP2 Part 4	Construction of the containment cell stage 2 - capping, completion and compliance

- (b) in order to secure performance of the Remediation Works, the Developer has provided to the Minister security in the form of bank guarantees for each of the stages identified in subclause 6(a) above; and
- (c) it is a condition precedent to the release of the bank guarantee for stages SP2 Part 1, 2 and 4 that the Independent Engineer issue to the Minister and the Developer a duly executed Certificate of Compliance in respect of SP2 Part 1 (Stage 1B Works), SP2 Part 2 and SP2 Part 4.

7. Representatives

7.1 Minister's Representative

- (a) The Minister must appoint for the term of this Deed a Minister's Representative with authority to act on behalf of the Minister for the purposes of this Deed. At the date of this Deed, the Minister's Representative is specified in Item 4 of Schedule 1 of this Deed.
- (b) The Minister may replace or substitute the person appointed as the Minister's Representative by written notice to the other parties.

7.2 Developer's Representative

- (a) The Developer must appoint for the term of this Deed a Developer's Representative with authority to act on behalf of the Developer for the purposes of this Deed. At the date of this Deed, the Developer's Representative is specified in Item 5 of Schedule 1 of this Deed.
- (b) The Developer may replace or substitute the person appointed as the Developer's Representative by written notice to the other parties.

7.3 Independent Engineer's Representative

- (a) The Independent Engineer must appoint for the term of this Deed an Independent Engineer's Representative with authority to act on behalf of the Independent Engineer for the purposes of this Deed and the Project Documents. At the date of this Deed, the Independent Engineer's Representative is the person named in Item 6 of Schedule 1 of this Deed.
- (b) The Independent Engineer may replace or substitute the person appointed as the Independent Engineer's Representative by written notice to the other parties.

8. Suspension of IE Services

- (a) The Minister and the Developer may give the Independent Engineer a notice jointly instructing the Independent Engineer to suspend its performance of any or all of the IE Services under this Deed and the Project Documents until the Minister and the Developer give the Independent Engineer a notice jointly instructing the Independent Engineer to recommence performing the IE Services.
- (b) The Independent Engineer cannot make any Claim against the Minister or the Developer if any or all of the IE Services under the Deed and the Project Documents are suspended under this clause 8.

9. Indemnity

- (a) To the maximum extent permitted by law, the Independent Engineer agrees to, and must, indemnify, keep indemnified and hold harmless the Minister from and against all Claims that the Minister suffers, incurs, becomes liable for, or may suffer, incur or become liable for arising out of or in connection with:
 - (i) loss or damage to property, or personal injury, illness or death arising out of or as a consequence of any act or omission of the Independent Engineer or its employees, officers, contractors or agents; or
 - (ii) the negligence or wilful default of the Independent Engineer or its employees, officers, contractors or agents.

The Independent Engineer's liability to indemnify the Minister will be reduced proportionally to the extent that any wrongful act or omission of the Minister, or the respective employees, officers, contractors or agents of the Minister, caused or contributed to the relevant Claim.

- (b) To the maximum extent permitted by law, the Independent Engineer agrees to, and must, indemnify, keep indemnified and hold harmless the Developer from and against all Claims that the Developer suffers, incurs, becomes liable for, or may suffer, incur or become liable for arising out of or in connection with:
 - (i) loss or damage to property, or personal injury, illness or death arising out of or as a consequence of any act or omission of the Independent Engineer or its employees, officers, contractors or agents; or
 - (ii) the negligence or wilful default of the Independent Engineer or its employees, officers, contractors or agents.

The Independent Engineer's liability to indemnify the Developer will be reduced proportionally to the extent that any wrongful act or omission of the Developer, or the respective employees, officers, contractors or agents of the Developer, caused or contributed to the relevant Claim.

- (c) This clause 9 shall survive the termination of this Deed and the completion of the Independent Engineer's duties and functions under this Deed.

10. Insurance

10.1 Public liability

- (a) On or before the date of this Deed or any earlier access to the Site for the purposes of performing the IE Services including any preliminary inspections of the Site (whichever happens earliest), the Independent Engineer must effect and maintain (or otherwise be insured under) a public liability insurance policy written on an occurrence basis with a limit of indemnity of the amount stated in Item 7 of Schedule 1 for each and every occurrence, which covers the:
 - (i) Independent Engineer and its employees, officers, and agents (including for liability to each other); and
 - (ii) Minister and Developer for any vicarious liability that they may have for the acts or omissions of the Independent Engineer and its employees, officers, and agents,
 for their respective liabilities for any:
 - (iii) loss of, or damage to, or loss of use of, any tangible property (including property of the Minister or the Developer in the care, custody or control of the Independent Engineer for a sub-limit of the amount stated in Item 8 of Schedule 1 for each occurrence and in the aggregate for all occurrences in any 12 month policy period); and
 - (iv) death of or bodily injury to any person including disease or illness to any person, (other than liability which is required by law to be insured under a workers compensation policy of insurance),
 caused by, arising out of, or in connection with the performance of any obligation or the exercise of any right under this Deed.
- (b) The public liability policy must:
 - (i) be maintained until expiry of the defects liability period of the last separable portion to reach completion under the Site Remediation Contract; and
 - (ii) include cover for the insureds for liabilities assumed by them under the provisions of subclause 16.4 of this Deed.
- (c) For the avoidance of doubt, the limit of indemnity under a public liability insurance policy referred to in this subclause 10.1 may exceed the amounts stated in Item 7 or Item 8 of Schedule 1.

10.2 Worker's compensation

The Independent Engineer must effect and maintain workers' compensation insurance as required by law.

10.3 Professional indemnity insurance

- (a) Before commencing the carrying out of the IE Services, the Independent Engineer must effect and maintain (or otherwise be insured under) a professional indemnity insurance policy in a form and with an insurer acceptable to the Minister and the Developer with a limit of indemnity of the amount stated in Item 9 of Schedule 1 for any one claim and in the aggregate for all claims in any 12 month policy period.
- (b) The professional indemnity policy must:
 - (i) cover the liability of the Independent Engineer at general law arising from a breach of duty owed in a professional capacity, by reason of any act or omission of the Independent Engineer, its officers, employees, agents or subcontractors;
 - (ii) have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Independent Engineer, its officers, employees, agents or subcontractors under this Deed; and
 - (iii) extend to cover claims for unintentional breaches of intellectual property rights;
 - (iv) extend to cover claims for unintentional breaches of consumer laws;
 - (v) have a retroactive date of no later than the earlier of the commencement of the work under this Deed or any preparatory work by the Independent Engineer, its officers, employees, agents or subcontractors; and
 - (vi) include cover for the insureds for liabilities assumed by them under the provisions of clause 16.4 of this Deed.
- (c) The Independent Engineer must maintain the insurance policy required to be effected under clause 10.3(a) from the date of this Deed until the date that is 7 years after completion of the IE Services under this Deed.

10.4 Evidence of insurance

The Independent Engineer must provide to the Minister and the Developer:

- (a) certificates of currency which contain sufficient detail to enable the Minister and the Developer to confirm that the insurances required to be effected by this clause 10 have been effected and are being maintained in accordance with this Deed; and
- (b) a letter from the Independent Engineer's insurer(s) confirming all of the Independent Engineer's insurance requirements under this Deed are and have been fully met and satisfied.

11. Dispute resolution

11.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 11.

11.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other parties specifying the nature of the dispute.

11.3 Attempt to resolve

On receipt of notice under clause 11.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

11.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 11.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 11.2 then any party which has complied with the provisions of this clause 11 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

11.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 11 for any purpose other than in an attempt to settle the dispute.

11.7 No prejudice

This clause 11 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

11.8 Continued Performance

Despite the existence of a dispute, the parties must continue to perform their obligations under this Deed.

12. Assignment and subcontracting

- (a) The Independent Engineer must not assign this Deed or subcontract any part of the IE Services without the prior written consent of the Minister and the Developer, which may be given or withheld in their absolute discretion, and if given, on such terms as the relevant consenting parties think fit in their absolute discretion.

- (b) Notwithstanding any other clause of this Deed, the Independent Engineer shall be liable to the Minister and the Developer for the acts, defaults and omissions of the subcontractors, subconsultants and employees and agents of the subcontractors and subconsultants as if they were acts, defaults or omissions of the Independent Engineer.
- (c) The Developer may (and must where it is reasonably requested to do so by the Minister) direct the Independent Engineer to immediately cease using any person in the performance of any part of the IE Services if that person, in the reasonable opinion of the Developer (or the Minister):
 - (i) has acted contrary to a law, Legislative Requirement or a procedure or policy of the Developer that the Independent Engineer was required to comply with under this Deed; and/or
 - (ii) has demonstrated a failure to perform his or her part of the IE Services to the standard of care required of the Independent Engineer under this Deed.
- (d) The Independent Engineer must promptly replace any person subject to a direction under this subclause with a person acceptable to the Developer (and, where relevant, the Minister) at no additional cost to Developer.

13. Termination

- (a) The Minister and the Developer may terminate this Deed:
 - (i) immediately by written notice to the Independent Engineer if a Termination Event occurs;
 - (ii) for convenience upon 15 Business Days' written notice to the Independent Engineer; or
 - (iii) if the Minister and the Developer reasonably consider that a conflict of interest has arisen or is perceived to have arisen in connection with the Independent Engineer in relation to the Project.
- (b) Termination of this Deed does not affect any accrued rights or remedies of any party.
- (c) If the Deed is terminated, the Independent Engineer and the Developer shall hold the Minister free and harmless against any liability and all claims in connection with the termination of this Deed.

14. Confidentiality

14.1 Confidential Information

- (a) The Independent Engineer must not disclose any proprietary or confidential information relating to the IE Services, the Voluntary Planning Agreement, the Site Remediation Contract, or the Project without the prior written consent of the Minister and the Developer, except as required by law.
- (b) This clause 14 shall survive the termination of this Deed and the completion of the Independent Engineer's IE Services and functions under this Deed.

14.2 Publicity

The Independent Engineer must:

- (a) not issue any information, document, advertisement or article in respect of the Project for publication in any media (including any form of social media);
- (b) not erect or make an advertisement on or in respect of the Project without the prior written consent of the Minister and the Developer; and
- (c) refer enquiries from the media concerning the Project to the Minister and the Developer.

15. Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service (including as applicable the Developer's Legal Advisor) by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Developer or the Minister, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5pm on a Business Day, on that day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5pm on a Business Day, on that Day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

16. General provisions

16.1 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

16.2 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.3 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

16.4 Proportionate Liability

- (a) The parties agree that Part 4 of the *Civil Liability Act 2002* (NSW) does not apply.
- (b) The parties agree that their rights, obligations and liabilities will be those which would exist if Part 4 of the *Civil Liability Act 2002* (NSW) did not apply.

16.5 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

16.6 Survival

This subclause 16.6 and clauses 2, 4, 5, 9, 10.3, 14, 15, 16.1, 16.4, 16.5 and 16.10, and any other provision which ordinarily survives termination or repudiation of an agreement or deed, survive the termination or repudiation of this Deed.

16.7 Amendment

This Deed may only be varied or replaced in writing signed by each party.

16.8 Entire agreement

This Deed contains the entire agreement between the parties concerning its subject matter and supersedes all prior agreements and understandings between the parties in connection with that subject matter.

16.9 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.10 Deed poll

To the extent relevant, this Deed operates as a deed poll in favour of the Minister's nominee.

16.11 Limitation of liability

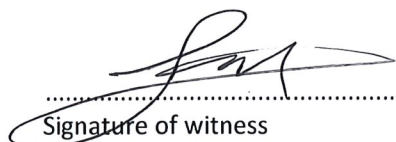
- (a) Subject to subclause 16.11 (b), the Independent Engineer's aggregate liability under this Deed to the Developer and the Minister is limited to AUD \$30,000,000.00.
- (b) Subclause 16.11(a) does not apply to any (and any calculation of liability for the purpose of subclause 16.11(a) will exclude all) liability:
 - (i) arising from or as a consequence of any criminal, malicious or fraudulent act or omission of, wilful default of, reckless or intentional misconduct (done or omitted to be done having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from such misconduct) by, the Independent Engineer or any of its employees, officers, contractors, consultants or agents;
 - (ii) arising from or as a consequence of any breach of subclause 2.2(f) and/or 2.3(h);
 - (iii) arising from or as a consequence of the payment of any fine, penalty or charge, as issued or required by any Authority arising from or in connection with the IE Services, whether levied or imposed on the Minister, the Developer or the Independent Engineer;
 - (iv) arising from or as a consequence of any personal illness, injury or death and/or any loss or damage to property, including third party property (including personal or real property);
 - (v) arising from or as a consequence of the abandonment of the IE Services by the Independent Engineer;
 - (vi) for the Independent Engineer's internal and external legal costs;
 - (vii) for which insurance proceeds are recovered or recoverable under any policy of insurance required to be effected and/or maintained under this Deed, or would have been recovered or recoverable had the Independent Engineer complied with its obligations under this Deed with respect to effecting and maintaining certain insurance policies and/or had the Independent Engineer complied with its obligations under the insurance policies so effected and maintained (the Independent Engineer's liability of which will be limited to the relevant amount of insurance specified in Schedule 1); and/or
 - (viii) which by law cannot be contracted out of.

- (c) No party will be liable to any other party under or in connection with this Deed for any loss of business, loss of production, loss of profit or revenue, loss of contract or loss of goodwill, except for any such liability of the relevant party:
- (i) arising from or as a consequence of any criminal, malicious or fraudulent act or omission of, wilful default of, reckless or intentional misconduct (done or omitted to be done having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from such misconduct) by, the Independent Engineer or any of its employees, officers, contractors, consultants or agents;
 - (ii) arising from or as a consequence of any breach of subclause 2.2(f) and/or 2.3(h);
 - (iii) arising from or as a consequence of the payment of any fine, penalty or charge, as issued or required by any Authority arising from or in connection with the IE Services, whether levied or imposed on the Minister, the Developer or the Independent Engineer;
 - (iv) arising from or as a consequence of any personal illness, injury or death and/or any loss or damage to property, including third party property (including personal or real property);
 - (v) arising from or as a consequence of the abandonment of the IE Services by the Independent Engineer;
 - (vi) for which insurance proceeds are recovered or recoverable under any policy of insurance required to be effected and/or maintained under this Deed, or would have been recovered or recoverable had the Independent Engineer complied with its obligations under this Deed with respect to effecting and maintaining certain insurance policies and/or had the Independent Engineer complied with its obligations under the insurance policies so effected and maintained (the Independent Engineer's liability of which will be limited to the relevant amount of insurance specified in Schedule 1); and/or
 - (vii) which by law cannot be contracted out of.

Execution page

Executed as a deed

**Signed, sealed and delivered by the Minister
for Planning and Public Spaces (ABN 20 770
707 468), in the presence of:**


.....
Signature of witness

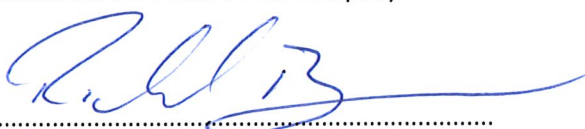

.....
Signature of the Minister for Planning and Public
Spaces or delegate

SAUSHYON YANG
.....
Name of witness in full

BRETT WHITWORTH
.....
Name of the Minister for Planning and Public
Spaces or delegate

12 DARCY ST, PARRAMATTA NSW 2150
.....
Address of witness

**Signed, sealed and delivered by Hydro
Aluminium Kurri Kurri Pty Ltd (ACN 093 266
221) in accordance with section 127 of the
Corporations Act by being signed by those
persons who are authorised to execute
documents on behalf of the company:**

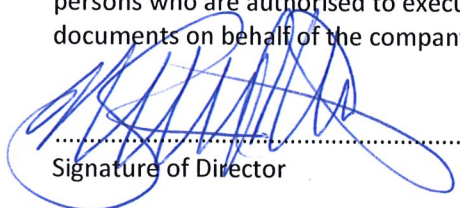

.....
Signature of Director


.....
Signature of Director/Secretary

RICHARD BROWN
.....
Name of Director

STEPHEN JAMES ROBERT
.....
Name of Director/Secretary

**Signed, sealed and delivered by SMEC
Australia Pty Ltd (ACN 065 475 149) in
accordance with section 127 of the
Corporations Act by being signed by those
persons who are authorised to execute
documents on behalf of the company:**



.....
Signature of Director

JAMES PHILLIPS
.....
Name of Director



.....
Signature of Director/Secretary

PETER HUMPHREYS
.....
Name of Director/Secretary

Schedule 1 – Deed Particulars

Item	Description	Details
1.	Minister: (subclause 1.1)	Department of Planning Industry and Environment
	Address for Service:	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
	Email:	planningagreements@planning.nsw.gov.au
	Contact	The Secretary
2.	Developer: (subclause 1.1)	Hydro Aluminium Kurri Kurri Pty Ltd
	Address for Service:	Hart Road, Loxford NSW 2326
	Email:	richard.brown@hydro.com
	Contact	The Directors
2A	Developer's Legal Advisor (subclause 15(a))	Gilbert + Tobin
	Address:	Level 35, Tower 2, International Towers Sydney 200 Barangaroo Avenue, Barangaroo NSW 2000
	Email:	info@gtlaw.com.au
	Contact	Practice Group Leader, Real Estate + Projects Group
3.	Independent Engineer: (subclause 1.1)	SMEC Australia Pty Ltd
	Address for Services:	74 Hunter Street, Newcastle NSW 2300
	Email:	newcastle@smec.com
	Contact	Eric Wingate
4.	Minister's Representative: (subclause 7.1)	The Secretary Department of Planning, Industry and Environment
5.	Developer's Representative: (subclause 7.2)	Richard Brown
6.	Independent Engineer's Representative: (subclause 7.3)	Eric Wingate
7.	Public Liability Insurance: (subclause 10.1)	\$20,000,000

Item	Description	Details
8.	The sublimit of public liability insurance for damage to property in the care, custody or control of the Independent Engineer must not be less than: (subclause 10.1(a)(iii))	\$20,000,000
9.	Professional Indemnity Insurance: (subclause 10.3)	\$20,000,000

Schedule 2 – Land

Lot	Deposited Plan	Folio Identifier
Lot 3	456769	3/456769
16	1082775	16/1082775
318	755231	318/755231
319	755231	319/755231
411	755231	411/755231
412	755231	412/755231
413	755231	413/755231
414	755231	414/755231
420	755231	420/755231
769	755231	769/755231
1	456769	1/456769
2	456769	2/456769

Schedule 3 – IE Services

Without limiting the Independent Engineer's obligations under subclauses 2.2(a)(i) and 4.2, the Independent Engineer must discharge the functions, obligations, duties and services which this Deed and the Project Documents (including, without limitation, the scope of works and the technical specification which form part of the Site Remediation Contract and the CQA Plan) require to be, or contemplate will be, discharged by the Independent Engineer (or the 'CQA Engineer' or such similar terms used in the Project Documents), including, without limitation, the following:

1. Conduct inspections, tests and verifications of the Construction Remediation Works as is necessary to enable the Independent Engineer (or a highly skilled and experienced engineer performing services similar to the IE Services on a project similar to the Project) to be satisfied that the Construction Remediation Works have been constructed in accordance with the requirements of the Project Documents, including, without limitation, all inspections, tests and verifications to enable it to issue each Certificate of Compliance required under this Deed.
2. Observe, monitor, review and assess the quality of the Construction Remediation Works, including, without limitation, so as to allow and enable timely sign-off of witness and hold points within the Site Remediation Contract.
3. Perform the IE Services in accordance with the programme provided under the Site Remediation Contract, as updated from time to time by notice in writing from the Developer, so as to not unreasonably interfere with, disrupt or impede the Remediation Works.
4. Report to the Developer promptly after first becoming aware:
 - (a) any construction issues likely to have an adverse effect or affect on the quality of the Construction Remediation Works; and
 - (b) any act, matter or thing which has or is likely to have a material adverse effect or affect on the progress and provision of the IE Services (including the issue of the Certificate of Compliance required by clause 6 of this Deed and/or any of the deliverables under the CQA Plan), together with detailed particulars on how the Independent Engineer is dealing or proposes to deal with any such act, manner or thing,

and provide all information and documentation requested by the Developer in relation to the above.
5. At all relevant times independently verify that:
 - (a) the Containment Cell as constructed; and
 - (b) the quality of the Construction Remediation Works,

complies with the requirements of the Project Documents.
6. Exercise care, skill and expertise when carrying out independent quality checks, inspections, monitoring, reviews, tests, verifications and assessments on the Construction Remediation Works (including, without limitation, any elements and specific issues of the Construction Remediation Works) to satisfy the Independent Engineer that the quality of the Construction Remediation Works meets or exceeds the requirements of the Project Documents.
7. Monitor the construction activities on Site (to the extent they relate to, or are associated with, the Construction Remediation Works) and promptly identify, raise and document all observations to the Developer, which indicate non-compliance with the requirements of the Project Documents.

8. Satisfy itself that all activities in the process of the carrying out and completion of the Construction Remediation Works, including methods of work, sequence of activities, inspections and tests comply fully with the requirements of the Project Documents.
9. At the times required by this Deed, execute and issue a completed certificate of compliance in the terms and the form set out in Schedule 4 of this Deed.

Without limiting any of the above, the Independent Engineer must discharge all other services and tasks not described in this Deed and/or the Project Documents if those services and tasks are necessary for the carrying out of the IE Services in accordance with this Deed.

References to the 'CQA Plan' are references to the document titled 'Hydro Aluminium Kurri Kurri Pty Ltd Containment Cell Design Construction Quality Assurance (CQA Plan)' prepared by GHD dated October 2017, as incorporated into Appendix 3: Detailed Design Report of the Response to Submissions Report within the Project Documents.

Schedule 4 – Certificate

Certificate of Compliance

Issued as a prerequisite to the release of the Developer's bank guarantees

To: Minister for Planning and Public Spaces (ABN 20 770 707 468) ("Minister")
Hydro Aluminium Kurri Kurri Pty Ltd (ACN 093 266 221) ("Developer")

From: SMEC Australia Pty Ltd (ACN 065 475 149) ("We", "our", "us" or "Independent Engineer")

Date of Certificate: [#insert date]

The terms used in this Certificate (unless otherwise defined) have the same meaning as in the Deed (being the deed entered into between the Minister, the Developer and the Independent Engineer dated [#insert date]).

We warrant and certify to the Minister and to the Developer that:

- (a) As at the date of this Certificate, we have carried out all periodic inspections and tests relevant to our obligations under the Deed and the Project Documents.
- (b) To the best of our knowledge and belief based on the periodic inspections and tests carried out to the date of this Certificate (and to what would reasonably be anticipated to be the best knowledge and belief of a highly skilled and experienced engineer based on the periodic inspections and tests which ought to have been carried out to the date of this Certificate under the Deed or the Project Documents), the Construction Remediation Works completed by the Remediation Contractor to the date of this Certificate:
 - (i) reflect the intent and standards of quality of, and are constructed in accordance with, those elements set out in the Project Documents;
 - (ii) comply with the Project Documents and all Approvals (including those conditions of the Remediation Consent) which are applicable to the Construction Remediation Works;
 - (iii) are fit for any purpose and function expressly stated or implied in the Project Documents;
 - (iv) are suitable, appropriate, adequate and fit for the purposes of the Project as stated in the Project Documents;
 - (v) comply with all applicable Legislative Requirements and Australian codes and standards as well as the requirements of all relevant Authorities; and
 - (vi) do not include any changes, except as a result of variations, as noted in subparagraph (c) below.

- (c) The Construction Remediation Works periodically inspected and/or tested by us to the date of this Certificate, substantially comply, to the best of our knowledge and belief based on the periodic inspections and tests carried out to the date of this Certificate (and to what would reasonably be anticipated to be the best knowledge and belief of a highly skilled and experienced engineer based on the periodic inspections and tests which ought to have been carried out to the date of this Certificate under the Deed or the Project Documents), except as noted below, with the requirements of the Project Documents:

[list any variations, departures, defects or non-conformances].

- (d) To the best of our knowledge and belief based on the periodic inspections and tests carried out to the date of this Certificate (and to what would reasonably be anticipated to be the best knowledge and belief of a highly skilled and experienced engineer based on the periodic inspections and tests which ought to have been carried out to the date of this Certificate under the Deed or the Project Documents), the Remediation Contractor has (where relevant):
- (i) complied with and satisfied the requirements in the Project Documents in respect of the quality of the Containment Cell; and
 - (ii) constructed the Containment Cell in accordance with the Project Documents.
- (e) The IE Services, as performed by us to the date of this Certificate, have been completed to the extent required by the Deed and the Project Documents, and comply with the Deed and the Project Documents.

A reference in this certificate to periodic inspections and tests includes a reference to all tests, verifications, assessments, quality checks, and monitoring referred to in Schedule 3 of the Deed

We acknowledge and agree that this Certificate is being provided for the benefit of the Minister and the Developer, jointly and severally, and that the Minister and the Developer are relying and will rely on this Certificate.

This Certificate is without limitation to, and is being provided in addition to, the Deed and does not in any way prejudice or limit the Minister's and/or the Developer's rights and entitlements under or in connection with the Deed.

Signed, sealed and delivered as a Deed Poll by
SMEC Australia Pty Ltd (ACN 065 475 149) in
accordance with section 127 of the
Corporations Act by being signed by those
persons who are authorised to execute
documents on behalf of the company:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Schedule 5 – Fee Estimate Build-up

Schedule 5

This Schedule 5 is the Fee Estimate Build Up for the purposes of clauses 2.4(c)(ii) and (iii), and this Schedule 5 is to be read subject to clauses 2.4(c)(ii) and (iii). For the avoidance of doubt, and without limiting the preceding sentence, any disbursements incurred by or on behalf of the Independent Engineer will at all times be subject to clause 2.4(c)(iii)(C).

To the extent there is any discrepancy, ambiguity or inconsistency in or between this Schedule 5 and any other document forming part of this Deed, the highest standard and/or most onerous obligation will apply to the Independent Engineer.

References to "Consultant" or "SMEC" (or similar expressions) in this Schedule 5 are deemed to be references to the Independent Engineer.

References to "Services" in this Schedule 5 are deemed to be references to the IE Services.

References to "Contract" in this Schedule 5 are deemed to be references to this Deed.

References to "Hydro" in this Schedule 5 are deemed to be references to the Developer.

5.1 Pricing

5.1.1 Target Cost

The target costs below represent the Consultants best and most accurate estimate of the total cost to deliver the Services and:

- Excludes GST and is stated in Australian currency (\$AUD);
- Is on a time and disbursement basis and shall not be exceeded except by way of an approved variation, provided in accordance with the Contract;
- Includes all subcontractor and subconsultant hours and costs if applicable;
- Is all-inclusive of the costs and disbursements associated with the Consultants satisfaction of all of its obligations arising under the Contract; and
- Is not subject to rise and fall (unless the Contract otherwise expressly requires).

SUMMARY OF TARGET COST Item	Work Description	Cost (\$AUD)	Estimated program Period of I.E./CQA involvement
1.1.1	Project Management	\$107,320	89 weeks
1.1.2	SP2 P1 – Construction of the Project Infrastructure	\$10,230	3 weeks
1.1.3	SP2 P2 – Construction of the Containment Cell Stage 1 – base	\$188,370	33 weeks
1.1.4	SP2 P3 – Performance of Site remediation and material transfer	\$35,210	29 weeks
1.1.5	SP2 P4 – Construction of the Containment Cell Stage 2 – capping, completion and compliance	\$105,170	24 weeks
1.16	Vehicle Allowance. SMEC has assumed a vehicle allowance of \$1,100 per month for a 24 month	\$26,400	24-month total period

	period (approximately the total construction period). This will be charged as a separate cost on a monthly basis		
TOTAL		\$472,700	89 weeks

Notes:

- The fee estimate is based on 2020/2021 rates.
- The fee estimate was developed in accordance with the Draft Construction program provided in Addendum 1, and SMEC estimated the average input over the period that the I.E./CQA will be involved is as follows:
 - CQA Engineer (PM) 11.7 hrs/wk
 - CQA monitor 24.0 hrs/wk
 - Senior Engineer 2.4 hrs/wk
 - PD / Technical 2.4 hrs/wk

A detailed breakdown of the fee estimate is as follows:

[illegible]

COA Engineer (PM)	COA number	Senior Engineer	PG / Technical	Further details
RATE \$/hr (2020/21)	\$ 110	\$ 110	\$ 140	\$ 220
Total hours	1060	2122	217	210
AME hrs/wk	11.7	24.0	2.4	2.4
Fee estimate	\$ 44,300	based on 2020/21 rates. Excludes per diem and fee adjusted accordingly		
plus vehicle allowance	\$ 29,652	based on total period of 24 months, at \$1,150/month		
Total	\$ 73,952	(plus fee per diem)		
PM \$/hr/wk	5	5	5	5
PM \$/hr/mo	7.5	average hrs/wk		

great days
what's used in

HYDRO ALUMINIUM SITE REMEDIATION – UPDATED CONSTRUCTION PROGRAM									
Task	Start Date	End Date	Duration	Resources	Notes	Dependencies	Precedence	Notes	Start Date
1. Site Assessment & Planning	2023-01-15	2023-02-15	31 days	10 FTE	Site Assessment & Planning				2023-01-15
2. Mobilization & Site Setup	2023-02-15	2023-03-15	30 days	15 FTE	Mobilization & Site Setup				2023-02-15
3. Groundwater Monitoring Installation	2023-03-15	2023-04-15	31 days	10 FTE	Groundwater Monitoring Installation				2023-03-15
4. Soil Sampling & Analysis	2023-04-15	2023-05-15	31 days	10 FTE	Soil Sampling & Analysis				2023-04-15
5. Groundwater Remediation System Design	2023-05-15	2023-06-15	31 days	10 FTE	Groundwater Remediation System Design				2023-05-15
6. Construction of Groundwater Remediation System	2023-06-15	2023-08-15	61 days	20 FTE	Construction of Groundwater Remediation System				2023-06-15
7. Installation of Soil Remediation System	2023-08-15	2023-09-15	31 days	15 FTE	Installation of Soil Remediation System				2023-08-15
8. Construction of Containment Cell	2023-09-15	2023-10-15	31 days	15 FTE	Construction of Containment Cell				2023-09-15
9. Installation of Containment Cell	2023-10-15	2023-11-15	31 days	15 FTE	Installation of Containment Cell				2023-10-15
10. Construction of Separable Portion 2 Part 1A	2023-11-15	2023-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 1A				2023-11-15
11. Installation of Separable Portion 2 Part 1A	2023-12-15	2024-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 1A				2023-12-15
12. Construction of Separable Portion 2 Part 1B	2024-01-15	2024-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 1B				2024-01-15
13. Installation of Separable Portion 2 Part 1B	2024-02-15	2024-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 1B				2024-02-15
14. Construction of Separable Portion 2 Part 2	2024-03-15	2024-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 2				2024-03-15
15. Installation of Separable Portion 2 Part 2	2024-04-15	2024-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 2				2024-04-15
16. Construction of Separable Portion 2 Part 3	2024-05-15	2024-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 3				2024-05-15
17. Installation of Separable Portion 2 Part 3	2024-06-15	2024-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 3				2024-06-15
18. Construction of Separable Portion 2 Part 4	2024-07-15	2024-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 4				2024-07-15
19. Installation of Separable Portion 2 Part 4	2024-08-15	2024-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 4				2024-08-15
20. Construction of Separable Portion 2 Part 5	2024-09-15	2024-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 5				2024-09-15
21. Installation of Separable Portion 2 Part 5	2024-10-15	2024-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 5				2024-10-15
22. Construction of Separable Portion 2 Part 6	2024-11-15	2024-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 6				2024-11-15
23. Installation of Separable Portion 2 Part 6	2024-12-15	2025-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 6				2024-12-15
24. Construction of Separable Portion 2 Part 7	2025-01-15	2025-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 7				2025-01-15
25. Installation of Separable Portion 2 Part 7	2025-02-15	2025-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 7				2025-02-15
26. Construction of Separable Portion 2 Part 8	2025-03-15	2025-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 8				2025-03-15
27. Installation of Separable Portion 2 Part 8	2025-04-15	2025-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 8				2025-04-15
28. Construction of Separable Portion 2 Part 9	2025-05-15	2025-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 9				2025-05-15
29. Installation of Separable Portion 2 Part 9	2025-06-15	2025-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 9				2025-06-15
30. Construction of Separable Portion 2 Part 10	2025-07-15	2025-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 10				2025-07-15
31. Installation of Separable Portion 2 Part 10	2025-08-15	2025-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 10				2025-08-15
32. Construction of Separable Portion 2 Part 11	2025-09-15	2025-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 11				2025-09-15
33. Installation of Separable Portion 2 Part 11	2025-10-15	2025-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 11				2025-10-15
34. Construction of Separable Portion 2 Part 12	2025-11-15	2025-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 12				2025-11-15
35. Installation of Separable Portion 2 Part 12	2025-12-15	2026-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 12				2025-12-15
36. Construction of Separable Portion 2 Part 13	2026-01-15	2026-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 13				2026-01-15
37. Installation of Separable Portion 2 Part 13	2026-02-15	2026-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 13				2026-02-15
38. Construction of Separable Portion 2 Part 14	2026-03-15	2026-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 14				2026-03-15
39. Installation of Separable Portion 2 Part 14	2026-04-15	2026-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 14				2026-04-15
40. Construction of Separable Portion 2 Part 15	2026-05-15	2026-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 15				2026-05-15
41. Installation of Separable Portion 2 Part 15	2026-06-15	2026-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 15				2026-06-15
42. Construction of Separable Portion 2 Part 16	2026-07-15	2026-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 16				2026-07-15
43. Installation of Separable Portion 2 Part 16	2026-08-15	2026-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 16				2026-08-15
44. Construction of Separable Portion 2 Part 17	2026-09-15	2026-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 17				2026-09-15
45. Installation of Separable Portion 2 Part 17	2026-10-15	2026-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 17				2026-10-15
46. Construction of Separable Portion 2 Part 18	2026-11-15	2026-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 18				2026-11-15
47. Installation of Separable Portion 2 Part 18	2026-12-15	2027-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 18				2026-12-15
48. Construction of Separable Portion 2 Part 19	2027-01-15	2027-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 19				2027-01-15
49. Installation of Separable Portion 2 Part 19	2027-02-15	2027-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 19				2027-02-15
50. Construction of Separable Portion 2 Part 20	2027-03-15	2027-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 20				2027-03-15
51. Installation of Separable Portion 2 Part 20	2027-04-15	2027-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 20				2027-04-15
52. Construction of Separable Portion 2 Part 21	2027-05-15	2027-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 21				2027-05-15
53. Installation of Separable Portion 2 Part 21	2027-06-15	2027-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 21				2027-06-15
54. Construction of Separable Portion 2 Part 22	2027-07-15	2027-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 22				2027-07-15
55. Installation of Separable Portion 2 Part 22	2027-08-15	2027-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 22				2027-08-15
56. Construction of Separable Portion 2 Part 23	2027-09-15	2027-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 23				2027-09-15
57. Installation of Separable Portion 2 Part 23	2027-10-15	2027-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 23				2027-10-15
58. Construction of Separable Portion 2 Part 24	2027-11-15	2027-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 24				2027-11-15
59. Installation of Separable Portion 2 Part 24	2027-12-15	2028-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 24				2027-12-15
60. Construction of Separable Portion 2 Part 25	2028-01-15	2028-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 25				2028-01-15
61. Installation of Separable Portion 2 Part 25	2028-02-15	2028-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 25				2028-02-15
62. Construction of Separable Portion 2 Part 26	2028-03-15	2028-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 26				2028-03-15
63. Installation of Separable Portion 2 Part 26	2028-04-15	2028-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 26				2028-04-15
64. Construction of Separable Portion 2 Part 27	2028-05-15	2028-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 27				2028-05-15
65. Installation of Separable Portion 2 Part 27	2028-06-15	2028-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 27				2028-06-15
66. Construction of Separable Portion 2 Part 28	2028-07-15	2028-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 28				2028-07-15
67. Installation of Separable Portion 2 Part 28	2028-08-15	2028-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 28				2028-08-15
68. Construction of Separable Portion 2 Part 29	2028-09-15	2028-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 29				2028-09-15
69. Installation of Separable Portion 2 Part 29	2028-10-15	2028-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 29				2028-10-15
70. Construction of Separable Portion 2 Part 30	2028-11-15	2028-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 30				2028-11-15
71. Installation of Separable Portion 2 Part 30	2028-12-15	2029-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 30				2028-12-15
72. Construction of Separable Portion 2 Part 31	2029-01-15	2029-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 31				2029-01-15
73. Installation of Separable Portion 2 Part 31	2029-02-15	2029-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 31				2029-02-15
74. Construction of Separable Portion 2 Part 32	2029-03-15	2029-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 32				2029-03-15
75. Installation of Separable Portion 2 Part 32	2029-04-15	2029-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 32				2029-04-15
76. Construction of Separable Portion 2 Part 33	2029-05-15	2029-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 33				2029-05-15
77. Installation of Separable Portion 2 Part 33	2029-06-15	2029-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 33				2029-06-15
78. Construction of Separable Portion 2 Part 34	2029-07-15	2029-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 34				2029-07-15
79. Installation of Separable Portion 2 Part 34	2029-08-15	2029-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 34				2029-08-15
80. Construction of Separable Portion 2 Part 35	2029-09-15	2029-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 35				2029-09-15
81. Installation of Separable Portion 2 Part 35	2029-10-15	2029-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 35				2029-10-15
82. Construction of Separable Portion 2 Part 36	2029-11-15	2029-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 36				2029-11-15
83. Installation of Separable Portion 2 Part 36	2029-12-15	2030-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 36				2029-12-15
84. Construction of Separable Portion 2 Part 37	2030-01-15	2030-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 37				2030-01-15
85. Installation of Separable Portion 2 Part 37	2030-02-15	2030-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 37				2030-02-15
86. Construction of Separable Portion 2 Part 38	2030-03-15	2030-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 38				2030-03-15
87. Installation of Separable Portion 2 Part 38	2030-04-15	2030-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 38				2030-04-15
88. Construction of Separable Portion 2 Part 39	2030-05-15	2030-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 39				2030-05-15
89. Installation of Separable Portion 2 Part 39	2030-06-15	2030-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 39				2030-06-15
90. Construction of Separable Portion 2 Part 40	2030-07-15	2030-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 40				2030-07-15
91. Installation of Separable Portion 2 Part 40	2030-08-15	2030-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 40				2030-08-15
92. Construction of Separable Portion 2 Part 41	2030-09-15	2030-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 41				2030-09-15
93. Installation of Separable Portion 2 Part 41	2030-10-15	2030-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 41				2030-10-15
94. Construction of Separable Portion 2 Part 42	2030-11-15	2030-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 42				2030-11-15
95. Installation of Separable Portion 2 Part 42	2030-12-15	2031-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 42				2030-12-15
96. Construction of Separable Portion 2 Part 43	2031-01-15	2031-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 43				2031-01-15
97. Installation of Separable Portion 2 Part 43	2031-02-15	2031-03-15	31 days	15 FTE	Installation of Separable Portion 2 Part 43				2031-02-15
98. Construction of Separable Portion 2 Part 44	2031-03-15	2031-04-15	31 days	15 FTE	Construction of Separable Portion 2 Part 44				2031-03-15
99. Installation of Separable Portion 2 Part 44	2031-04-15	2031-05-15	31 days	15 FTE	Installation of Separable Portion 2 Part 44				2031-04-15
100. Construction of Separable Portion 2 Part 45	2031-05-15	2031-06-15	31 days	15 FTE	Construction of Separable Portion 2 Part 45				2031-05-15
101. Installation of Separable Portion 2 Part 45	2031-06-15	2031-07-15	31 days	15 FTE	Installation of Separable Portion 2 Part 45				2031-06-15
102. Construction of Separable Portion 2 Part 46	2031-07-15	2031-08-15	31 days	15 FTE	Construction of Separable Portion 2 Part 46				2031-07-15
103. Installation of Separable Portion 2 Part 46	2031-08-15	2031-09-15	31 days	15 FTE	Installation of Separable Portion 2 Part 46				2031-08-15
104. Construction of Separable Portion 2 Part 47	2031-09-15	2031-10-15	31 days	15 FTE	Construction of Separable Portion 2 Part 47				2031-09-15
105. Installation of Separable Portion 2 Part 47	2031-10-15	2031-11-15	31 days	15 FTE	Installation of Separable Portion 2 Part 47				2031-10-15
106. Construction of Separable Portion 2 Part 48	2031-11-15	2031-12-15	31 days	15 FTE	Construction of Separable Portion 2 Part 48				2031-11-15
107. Installation of Separable Portion 2 Part 48	2031-12-15	2032-01-15	31 days	15 FTE	Installation of Separable Portion 2 Part 48				2031-12-15
108. Construction of Separable Portion 2 Part 49	2032-01-15	2032-02-15	31 days	15 FTE	Construction of Separable Portion 2 Part 49				2032-01-15
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5.1.2 Unit Rates Pricing

- The unit rates provided are exclusive of GST.
- The unit rates are inclusive of all costs, fees and charges howsoever arising or incurred in association with the provision of the personnel to Hydro. **Refer Table: Summary of Target Cost for separate vehicle charge**
- The rates provided are valid for 2 years from Contract execution.
- The unit rates are for work executed from either the Consultant's office and/or Hydro's site and offices.
- For clarity, services which are determined to be variations in accordance with the Contract shall be payable at the rates below unless an agreed lump sum is established between the parties.

Item	Discipline / Classification	FY2020/21	FY2021/22	FY2022/23
	Administration	Consultant Office (\$/hr)	Consultant Office (\$/hr)	Consultant Office (\$/hr)
1.2.1	Project Director	220	229	239
1.2.2	CQA Manager	130	136	142
1.2.3	Site CQA Engineer	130	136	142
1.2.4	Engineering Support (in-office / Senior Engineer)	140	146	152
1.2.5	CQA Monitor	110	115	120
1.2.6	Technical Specialist	220	229	239

Notes:

- Rates are based on the 8 hr day, 5 day working week in the Draft Construction program provided in Addendum 1
- Rates do not allow for weekend work or night works
- SMEC propose vehicle costs to be charged separately as outlined in the **Table: Summary of Target Cost**. We have listed this separately to offer full transparency to Hydro as it is a significant project cost that is separate to SMEC's professional services as an I.E./CQA.
- Rate increases, as specified in the above table for each relevant FY, shall be applied from 1 July

Where the remuneration method of the proposed Contract is a Schedule of Rates (or similar), any additional costs, expenses, fees, disbursements or charges expressly excluded from the above rates must be specifically detailed in the table below, otherwise they are deemed to have been included and fully incorporated into the above rates.

Item	Qualification and/or Additional Cost	Cost / Unit (note the + is the margin stated in section 5.1.3 below)
1	Courier of samples to lab	cost+
2	3rd party laboratory costs	cost+ Fee estimate of \$405,241
3	variable 3rd party lab costs (eg Destructive testing of seams)	cost+ note: rate depends on quantity

5.1.3 Third-Party costs margin

This section relates to the third party costs specifically set out in section 5.1.2 above.

In relation to these third party costs, the following shall apply:

- (a) where the remuneration method of the proposed Contract is Lump Sum, the rates in this section shall be used to price variation work (i.e. services which have been determined to be a variation under this Deed); or
- (b) A third-party cost includes only those costs from suppliers/contractors engaged by the Consultant and actually incurred by the Consultant, but does not include any costs from the Consultant or its officers, employees, subcontractors and/or subconsultants for which a rate, estimate or budget (including a Labour Unit Rate, Equipment Unit Rate or Material Unit Rate) is already provided in the sections above.

The third-party costs margin stated below shall be applied to the actual invoiced costs of third-party supplies/works/services multiplied by the margin (i.e. the margin is not a 'gross margin'). The margin amount is deemed to cover all of the Consultants profit and overhead costs.

Consultant's third-party costs margin:	5%
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