



M6 Stage 1 Design and Construction Deed

Transport for NSW
(ABN 18 804 239 602)

and

CPB Contractors Pty Limited
(ABN 98 000 893 667)

Ghella Pty Ltd
(ABN 85 142 392 461)

UGL Engineering Pty Limited
(ABN 96 096 365 972)

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SCHEDULES

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35 Key Personnel

36 Not used

37 [REDACTED]

38 [REDACTED]

EXHIBITS

A Independent Certifier Deed

B Procurement Process Deed Polls

C Interface Agreements

D Deed of Appointment of Environmental Representative

E Overall D&C Program and Supporting Information

F Insurance Policies

G Information Documents

H Site Access Schedule

I Scope of Works and Technical Criteria (SWTC)

J Deed of Appointment of Acoustics Adviser

K AIP Plan

THIS DEED is made on 2021

BETWEEN:

- (1) **Transport for NSW (ABN 18 804 239 602)** a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**Principal**); and
- (2) **CPB Contractors Pty Limited (ABN 98 000 893 667)** of Level 18, 177 Pacific Highway, North Sydney, New South Wales 2060
Ghella Pty Ltd (ABN 85 142 392 461) of Level 12, 2 Elizabeth Plaza, North Sydney, New South Wales 2060; and
UGL Engineering Pty Limited (ABN 96 096 365 972) of Level 10, 40 Miller Street, North Sydney, New South Wales 2060

(together, the **Contractor**).

RECITALS:

- (A) The Principal is a NSW Government agency whose responsibilities include the planning, oversight and delivery of transport infrastructure in the State of New South Wales.
- (B) The Principal wishes to engage the Contractor to design, construct and complete the Project Works in accordance with the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this deed.

Aboriginal Participation Plan means the plan referred to as the "Aboriginal Participation Plan" in the APIC Policy.

Aboriginal Participation Report means a report referred to as an "Aboriginal Participation Report" in the APIC Policy.

ACICA means the Australian Centre for International Commercial Arbitration.

Acoustics Adviser or **AA** means the person specified in Item 26 of the Contract Particulars or any person appointed as a replacement in accordance with the Deed of Appointment of Acoustics Adviser from time to time.

Acoustics Adviser Appointment Accession Deed means the deed poll titled "M6 Stage 1 - Acoustics Adviser Appointment Accession Deed" dated on or about the date of this deed entered into by the Contractor in the form of Schedule 1 to the Deed of Appointment of Acoustics Adviser.

[REDACTED]

[REDACTED]

[REDACTED]

Accepted Contamination means:

- (a) any Contamination on, in, over, under or about (but in each case within) the Construction Site, the Maintenance Site, the Additional Property Works Areas, any Extra Land or the WestConnex Motorways but:
 - (i) only to the extent of that portion which is disturbed by or interfered with in the carrying out of the Contractor's Activities; and
 - (ii) not the entire mass of such Contamination or the source of the Contamination to the extent that wider mass or source has not been disturbed or interfered with by the carrying out of the Contractor's Activities;
- (b) any Contamination migrating into the Construction Site, the Maintenance Site, the Additional Property Works Areas, any Extra Land or the WestConnex Motorways as a result of the Contractor's Activities, excluding:
 - (i) any portion of such Contamination located outside the Construction Site, Maintenance Site, Additional Property Works Areas, Extra Land or WestConnex Motorways; and
 - (ii) the entire mass of such Contamination or source of the Contamination to the extent that wider mass or source is not migrating into the Construction Site, the Maintenance Site, the Additional Property Works Areas, any Extra Land or the WestConnex Motorways as a result of the Contractor's Activities;
- (c) any Contamination which is brought onto the Construction Site, the Maintenance Site, the Additional Property Works Areas, any Extra Land or the WestConnex Motorways, or their surrounds, by the Contractor or any of its Related Parties;
- (d) any Contamination which is ground water ingressing at the face of the Project Works or within an area of excavation (and not to the extent such ground water remains beyond the face of the Project Works and outside the area of excavation); or
- (e) any Contamination which this deed requires the Contractor to remediate or must be remediated for the Project Works to comply with this deed, unless compliance with a Contamination Notice is the sole reason that the Contamination is required to be remediated by this deed or must be remediated to comply with this deed.

For the purpose of paragraph (a) of this definition of Accepted Contamination, 'disturbed' includes conduct which:

- (a) disperses or increases an area of Contamination;

- (b) digs up, brings to the surface or otherwise disturbs Contamination by way of direct physical contact;
- (c) causes Contamination to migrate as a result of conduct referred to in paragraphs (a) or (b); or
- (d) without limiting paragraphs (a) to (c) (inclusive), alters the nature or extent of gases or odour caused by, or emanating from, Contamination that causes nuisance to the users of the relevant land and land near it.

Additional Property Works Area means any land in relation to which or upon which Property Works are to be undertaken to the extent the land is not part of the Works Site.

Affected Party has the meaning given to that term in clause 35.1(a) (*Force Majeure Event notice*).

Agreed Amount has the meaning given to that term in clause 25.2(b)(i) (*GST*).

AIP Plan means the Australian Industry Participation Plan contained in Exhibit K.

APIC Policy means the NSW Government Policy on Aboriginal Participation in Construction (June 2018) as amended or updated from time to time.

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 Contractor's Activities;
- (b) in connection with the Motorway, the Construction Site, the Maintenance Site, the Additional Property Works Areas, any Extra Land or the Project Works;
- (c) for the use and occupation of the Project Works after Opening Completion or Completion; or
- (d) otherwise to comply with Law,

including:

- (e) the Planning Approval; and
- (f) any Environment Protection Licence issued in relation to the Contractor's Activities,

but not including:

- (g) any Direction given by the Principal pursuant to this deed; or
- (h) the exercise by the Principal of its rights under this deed.

Approved Insurer means:

- (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority to conduct general insurance business in Australia with a rating specified in paragraph (e) of this definition;
- (b) Lloyds Underwriters;

- (c) an iCare managed statutory insurance scheme or a Treasury Managed Fund insurance scheme with the NSW Government;
- (d) the Comcover insurance scheme for the Australian Federal Government; or
- (e) an insurer with a rating of not less than A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc or such other rating approved by the Principal (which approval must not be unreasonably withheld or delayed).

Approved Project Works Traffic Management Plans has the meaning given to that term in clause 7.6(a)(vi) (*Control of traffic*).



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 Items has the meaning given to that term in the SWTC.

Authorised User means:

- (a) the Contractor and the Principal;
- (b) in relation to Transferred Contractor IP, any person authorised by the Principal to use the Transferred Contractor IP; and
- (c) in relation to Licensed Contractor IP, any sub-licensee of the Licensed Contractor IP permitted by the licences granted under clause 30.2.

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;
- (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 Contractor's 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.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a Law of the Commonwealth or any State to carry on banking business.

Bayside Council means Bayside Council (ABN 80 690 785 443).

Bayside Council Lease means the "Bicentennial Park Construction Lease" and the "ATC Lease", each as described in Schedule 12 (*Requirements of Interface Agreements*).

Bayside Council Works means the "Works" as defined in a Bayside Council Lease.

Bayside Council Works Completion means the stage in the execution of Bayside Council Works when the Contractor has satisfied all the conditions precedent to Bayside Council Works Completion of those Bayside Council Works set out in Part C of Schedule 16 (*Conditions Precedent to Completion Stages*).

BBSY, for a period, means the rate expressed as a yield per cent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by 10.30 am then the BBSY will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

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

Chain of Responsibility Guideline means the Chain of Responsibility Guideline in Appendix C.1 Annexure C.1-2 of the SWTC.

Chain of Responsibility Management Plan or **CoR Management Plan** means the plan to be delivered by the Contractor in accordance with the requirements of Appendix C.1 section 20 of the SWTC and this deed.

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle National Law under which the Contractor or its Subcontractors are "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

Change means any change or variation to the scope or requirements set out in this deed (including all Schedules and Exhibits) for the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance or the Contractor's Activities, and includes:

- (a) additions, increases, decreases, omissions, alterations, substitutions, demolition or removal to or from any of these; and
- (b) any change to the character or quality of any material or work.

Change Costs means "CCS" calculated in accordance with clause 13.9(a) (*Payment for Changes*), if "CCS" is a positive number.

Change in Codes and Standards means a change in Codes and Standards which takes effect after the date of this deed, other than a change in Codes and Standards that, on or before the date of this deed:

- (a) has been published or publicly notified; or
- (b) a contractor experienced and competent in the design and construction of works and services similar to the Project Works, the Temporary Works, the D&C Maintenance and the Landscaping Maintenance would have foreseen or anticipated.

Change in Control means, in respect of an entity, the occurrence of any event which results in a change in the Control of that entity.

Change in Law means (if it takes effect after the date of this Deed):

- (a) a change in an existing Law (other than an Approval or a decision of a court); or
- (b) a new Law (other than a new Approval or decision of a court),

compliance with which:

- (c) requires a Change;
- (d) has a direct effect on the Contractor carrying out the Contractor's Activities; or
- (e) directly results in an increase or decrease in the costs of carrying out the Contractor's Activities, or a delay to the Contractor achieving Opening Completion or Completion,

but excludes:

- (f) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes;
- (g) a change in an existing Law or a new Law which, as at the date of this deed:
 - (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (ii) a prudent and competent contractor in the position of the Contractor would have reasonably anticipated or foreseen at the date of this deed,

in substantially the same form as the change in an existing Law or new Law eventuating after the date of this deed; and

- (h) [REDACTED].

Change Order means a notice titled "Change Order" given by the Principal under clause 13.4(b) (*Election by the Principal*), 13.5(b) (*Rejection or negotiation of the Contractor Change Notice*), 13.5(d)(i) (*Rejection or negotiation of the Contractor Change Notice*), 13.6(a) (*Change Orders at the Principal's Election*) or 13.7(e) (*Changes proposed by the Contractor*).

Change Proposal has the meaning given in clause 13.1(a) (*Principal Change Proposal*).

Change Savings means "DCS" calculated in accordance with clause 13.9(a) (*Payment for Changes*), if "DCS" is a negative number.

Claim includes any claim, action, demand or proceeding for payment of money (including damages or an increase in the D&C Deed Sum) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, the D&C Documents;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance, the Contractor's Activities or any party's conduct prior to the date of this deed; or
- (c) otherwise at Law 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).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Codes and Standards means all codes, standards, specifications and guidelines referred to in the SWTC.

COES or Critical Operational Equipment and Systems means any WestConnex Assets and Systems that are significant to the operation of the WestConnex Motorways, including:

- (a) the COES listed in Part C of Schedule 31 (*WestConnex Integration Schedule*); and
- (b) any WestConnex Assets and Systems notified to the Contractor in accordance with clause 9.10(c) (*Motorway Stratum*).

COES Modification means any permanent modification to a COES (including any disruption or interference to that COES arising from that permanent modification).

COES Modification Proposal means a proposal for a COES Modification which complies with the requirements of clause 10C.3 (*COES Modification Proposal*).

COES Modification Readiness Review has the meaning given to that term in clause 10C.4(a) (*COES Modification Readiness Review*).

COES Temporary Disruption means any temporary modification, disruption or interference to a COES.

COES Temporary Disruption Proposal means a proposal for a COES Temporary Disruption which complies the requirements of clause 10C.6(d) (*COES Temporary Disruption Proposal*).

Collateral Warranty Deed Polls means the deed polls required by the Bayside Council Leases to be entered into by the Contractor in favour of Bayside Council in the form set out in Attachment A of the Bayside Council Leases.

Commercially Sensitive Information means:

- (a) any information relating to the Contractor's cost structure or profit margins;
- (b) any information relating to any of the Contractor's Intellectual Property Rights; or
- (c) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Contractor,

which, in respect of the information contained in the D&C Documents, is the information described in Schedule 3 (*Commercially Sensitive Information*).

Commonwealth means the Commonwealth of Australia.

Compensation Event means:

- (a) a breach of a D&C Document by the Principal;
- (b) a Change the subject of a Change Order, other than a Change proposed by the Contractor under clause 13.7 (*Changes proposed by the Contractor*);
- (c) the Contractor is required by a stop work order issued by an Authority, an order by a court or tribunal, a direction by the Principal, or Law to suspend or cease to perform any or all of its obligations under this deed as a consequence of a Legal

Challenge, or Native Title Claim in relation to the Construction Site, other than due to:

- (i) the Contractor's failure to comply with its obligations under a D&C Document;
 - (ii) a negligent or otherwise wrongful act or omission of the Contractor or any of its Related Parties; or
 - (iii) a failure by the Contractor or any of its Related Parties to comply with any applicable Law;
- (d) the Contractor suspends performance of the Contractor's Activities in accordance with clause 22.18 (*Suspension for non-payment*);
- (e) where clause 10A.4(e) (*WestConnex Interface Defects*) applies, a WestConnex Interface Defect or the WestConnex Concessionaire or WestConnex D&C Contractor carrying out rectification work on the relevant WestConnex Integration Site;
- (f) [REDACTED]
- (g) a suspension directed by the Principal in the circumstances described in clause 15.5(b)(ii) (*Suspension*); and
- (h) [REDACTED]

Completion means the stage in the execution of the Contractor's Activities when the Contractor has satisfied all the conditions precedent to Completion set out in Part B of Schedule 16 (*Conditions Precedent to Completion Stages*).

Concept Design means the concept design prepared by the Contractor and included in Appendix E.3 and Appendix E.4 of the SWTC.

Condition Precedent means a Condition Precedent (D&C Close) [REDACTED]

Condition Precedent (D&C Close) means a condition precedent set out in Item 1A of the Contract Particulars.

[REDACTED]

Confidential Information means:

- (a) any of the contents of this deed or the other D&C Documents;
- (b) any information provided by or on behalf of a party in connection with this deed or the other D&C Documents, the negotiation of this deed or the other D&C Documents or the Project; or
- (c) any Third Party Confidential Information provided by or on behalf of the Principal,

whether provided before or after the date of this deed and regardless of how such information is stored or provided.

Configuration Freeze Readiness Requirements means the stage when:

- (a) site acceptance testing for installed devices and sub-systems (level 4 commissioning) for the Project Works (as described in section 12.5 of Appendix B.12 and section 4.2 of Appendix B.31.3 of the SWTC) has been completed in accordance with this deed; and
- (b) the Contractor's plans in respect of system integration testing for the complete IOMCS and OMCS system (level 5 and 6 commissioning) for the Project Works (as described in section 12.6 of Appendix B.12 and section 4.2 of Appendix B31.3 of the SWTC) have been certified by the Independent Certifier.

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect);
- (b) increase in direct or indirect financing costs; or
- (c) any loss, damage, cost, expense or Liability that is:
 - (i) not a loss, damage, cost, expense or Liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
 - (ii) not fairly and reasonably contemplated by both the Principal and the Contractor at the date of this deed as the probable result of the breach or relevant matter,

whether present or future, fixed or unascertained, actual or contingent, or suffered or incurred by a party or a third party to which the party is liable.

Construction Compliance Unit or CCU means the unit of that name forming part of NSW Industrial Relations.

Construction Management Plan means the Project Plan of that name, the initial version of which is set out in Appendix C.1 of the SWTC.

Construction Plant means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things (whether owned, leased, hired or otherwise) used in the carrying out of the Contractor's Activities but not forming part of the Project Works.

Construction Site means the Works Site, the Local Areas identified in the Site Access Schedule as forming part of the Construction Site and the Temporary Areas.

Contamination means:

- (a) any Pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance in any water, soil or in the air including acid sulphate soils; and
- (b) without limiting paragraph (a), any "contamination" as defined in the *Contaminated Land Management Act 1997* (NSW).

Contamination Notice means a notice, requirement or direction given or imposed, or purporting to have been given or imposed, 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 Particulars means Schedule 1 (*Contract Particulars*).

Contractor Change Notice has the meaning given in clause 13.3(a) (*Contractor Change Notice*).

Contractor Documentation and Deliverables means the Design Documentation, the Project Plans, the Software, the Deliverables and all other information, documents, reports, images, software, inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever which the Contractor or its Related Parties prepares, obtains, uses or provides to the Principal in the performance of the Contractor's Activities.

Contractor Documentation Schedule means Appendix C.2 of the SWTC.

Contractor Guarantor means each person specified in Item 42 of the Contract Particulars.

Contractor's Activities means all things and tasks which the Contractor is, or may be, required to carry out or do under the D&C Documents to comply with its obligations under the D&C Documents, whether or not the performance of such things or tasks is subcontracted by the Contractor to another person, including carrying out the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance and the Contractor's obligations under Schedule 2 (*Allocation of responsibility for SWTC*) and the SWTC.

Contractor's Delay Costs means the reasonable net incremental costs and associated on-site overheads reasonably incurred, or which will be reasonably incurred, by the Contractor that are directly attributable to a delay to the achievement of Opening Completion or Completion caused by a Compensation Event for which the Contractor is entitled to an extension of time, but excluding:

- (a) any amount on account of profit, loss of profit or offsite overheads; and
- (b) any amounts payable by the Contractor to a Related Body Corporate of the Contractor, to the extent that the Related Body Corporate is not engaged by the Contractor on an arm's length basis and on commercial terms.

Contractor's Representative means the person specified in Item 49 of the Contract Particulars or any other person appointed from time to time by the Contractor under clause 6.2(b) (*Contractor's representatives*) or clause 6.2(c) (*Contractor's representatives*).

Contractor's Statement means:

- (a) a statement comprising the statement under section 127 of the *Industrial Relations Act 1996* (NSW);
- (b) a statement comprising the statement under section Schedule 2 Part 5 of the *Pay-Roll Tax Act 2007* (NSW); and

- (c) a statement comprising the statement under section 175B of the *Workers Compensation Act 1987* (NSW),

in the form set out in Schedule 27 (*Contractor's Statements*) (or other form required by the applicable legislation) and providing the detail required by the applicable legislation.

Control has the meaning given in section 50AA of the Corporations Act.

Corporate WHS Management System has the meaning given in the WHS Management Systems and Auditing Guidelines.

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

[REDACTED]

[REDACTED]

[REDACTED]

Critical Non-Contestable Utilities Work means the Non-Contestable Utilities Work specified in Appendix B.40 of the SWTC as "critical non-contestable work".

DAB Agreement means the agreement entered into between the Contractor, the Principal and each member of the Dispute Avoidance Board and substantially in the form of Schedule 4 (*Form of Dispute Avoidance Board Agreement*).

[REDACTED]

D&C Close means the date on which the last of the Conditions Precedent (D&C Close) have been satisfied or waived in accordance with clause 4.2 (*Satisfaction of conditions precedent*).

D&C Deed Sum means the amount set out in Item 3 of the Contract Particulars or as otherwise adjusted in accordance with this deed.

D&C Documents means:

- (a) this deed;
- (b) the D&C Guarantees;
- (c) the Independent Certifier Deed;
- (d) the Deed of Appointment of Environmental Representative;
- (e) the Deed of Appointment of Acoustics Adviser;
- (f) the Acoustics Adviser Appointment Accession Deed;
- (g) the Significant Subcontracts;

- (h) any Moral Rights Consent;
- (i) the Escrow Agreements;
- (j) DAB Agreement;
- (k) the Collateral Warranty Deed Polls; and
- (l) any other document the parties agree in writing is a D&C Document.

D&C Guarantee means:

- (a) the deed of guarantee and indemnity dated on or about the date of this deed given by CIMIC Group Limited (ABN 57 004 482 982) to the Principal in respect of the obligations of CPB Contractors Pty Limited (ABN 98 000 893 667) and UGL Engineering Pty Limited (ABN 96 096 365 972) under the D&C Documents, substantially in the form set out in Part A of Schedule 6 (*Form of D&C Guarantee*); and
- (b) the deed of guarantee and indemnity dated on or about the date of this deed given by Ghella S.p.A, (registration number 00462220583) of Via Pietro Borsieri, 2/A, 00195, Rome, Italy to the Principal in respect of the obligations of the Ghella Pty Ltd (ABN 85 142 392 461) under the D&C Documents, substantially in the form set out in Part B of Schedule 6 (*Form of D&C Guarantee*).

D&C Margin means the applicable percentage set out in Item 7 of the Contract Particulars, which is on account of profit and offsite overheads in respect of a Change.

D&C Phase Maintenance means the services described in clause 20.1 (*Maintenance during construction*).

Date for Opening Completion means the date set out in Item 19 of the Contract Particulars, or such later date determined in accordance with the terms of this deed.

Date for Completion means the date set out in Item 18 of the Contract Particulars, or such later date determined in accordance with this deed.

Date of Bayside Council Works Completion means, in relation to Bayside Council Works, the date notified in a Notice of Bayside Council Works Completion as the date Bayside Council Works Completion was achieved for those Bayside Council Works.

Date of Opening Completion means the date notified in a Notice of Opening Completion as the date Opening Completion was achieved.

Date of Completion means the date notified in a Notice of Completion as the date Completion was achieved.

Day 1 Clauses means clauses 1 (*Definitions and Interpretation*), 2.3 (*Information Documents*), 3 (*Project Risks*), 4 (*Conditions Precedent*), 5.1 (*Compliance with Law*), 5.2 (*Consents and Approvals*), 5.4 (*Modifications to the Planning Approval*), 5.5 (*Planning Approval Change Events*), 8 (*Security*), 13 (*Changes*), 15.3 (*Contractor's programming obligations*), 22.2 (*Initial Payment*), 27.5 (*Project Insurances*), 27.11(c) (*Procedure for Third Party Claims*), 28 (*Indemnity and Liability Exclusions*), 29 (*Cap on Liability*), 31 (*Confidentiality, Publicity and Privacy*), 33 (*Dispute Avoidance*), 34 (*Dispute Resolution*), 37 (*Representations, Warranties and Covenants*), 38 (*Amendments to this Deed*), 39 (*Assignment and Change in Control*), 41 (*Notification of Claims*), 44 (*Notices*) and 45

(*General*) and any other clauses or schedules required to have commenced in order to give effect to those clauses.

Dealing means a sale, transfer, assignment or any other disposal or dealing with shares, units, partnership interests or other form of equity.

Deed of Appointment of Acoustics Adviser means the deed titled "M6 Stages 1 - Deed of Appointment of Acoustics Adviser" entered into between the Principal and the Acoustics Adviser before the date of this deed, substantially in the form set out in Exhibit J.

Deed of Appointment of Environmental Representative means the deed titled "M6 Stage 1 - Deed of Appointment of Environmental Representative" entered into between the Principal, the Contractor and the Environmental Representative on or about the date of this deed, substantially in the form set out in Exhibit D.

Deemed Change Events means the events expressly stated in this deed to be Deemed Change Events.

Defect means:

- (a) any defect, deficiency, fault, error or omission in the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance;
- (b) any cracking, shrinkage, movement or subsidence in the Project Works or the Temporary Works; or
- (c) any other aspect of the Contractor's Activities, the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance,

which is not in accordance with the requirements of the D&C Documents, except where, following Opening Completion, it is caused by:

- (d) a Force Majeure Event;
- (e) fair wear and tear;
- (f) a failure to operate and maintain the Project Works in accordance with the O&M Manuals (except where the relevant O&M Contractor is the Contractor or a related entity of the Contractor); or
- (g) the occurrence of an event giving rise to loss of or damage to the Project Works (including the Motorway or any part of it after the Date of Opening Completion) to the extent that event is not caused by or contributed to by the Contractor or its Related Parties.

Defects Correction Period means a period referred to in clause 18.6 (*Motorway Works*), 18.7 (*Local Area Works*), 18.8 (*Utility Service Works*), 18.9 (*Property Works*) or 18.10 (*Defects in D&C Phase Maintenance*).

Deliverable means the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance and any other deliverable required to be delivered or goods and services required to be provided by or for the Contractor to the Principal under the D&C Documents (or any part of them).

Design Documentation means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including any MX GENIO models prepared in relation to the Project Works, the Temporary Works or the Contractor's Activities), samples, prototypes, calculations, drawings, shop 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 Contractor's Activities or which the Contractor or any other person creates in performing the Contractor's Activities (including the design of the Temporary Works); 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 Contractor's Activities.

Design Management Plan has the meaning given to that term in Appendix C.1 of the SWTC.

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

Direct Costs means reasonable additional direct costs (which may include additional on-site overheads) incurred in carrying out the relevant Change, but excluding any:

- (a) amount on account of profit, loss of profit or offsite overheads; and
- (b) Contractor's Delay Costs.

Direct Savings means the reasonable direct costs (which may include on-site overheads) which the Contractor will not be required to expend as a result of the Change, but excluding any amount on account of profit, loss of profit or offsite overheads.

Dispute has the meaning given to that term in clause 34.1 (*General*).

Dispute Avoidance Board means the board consisting of the members nominated in accordance with clause 33 (*Dispute Avoidance*) or his or her replacements referred to in clause 33.2 (*Replacement of DAB Member*).

Dispute Resolution Procedure means the procedure for resolving Disputes set out in clauses 34.2 (*Notice of Dispute*) to 34.10 (*Modification of the ACICA Arbitration Rules*).

Easements means the easements, restrictions on use, covenants, agreements or arrangements, together with any leases, sub-leases, licences and rights and privileges, to benefit or burden the Construction Site, Extra Land or the Motorway Stratum.

Enabling Works has the meaning given to that term in the SWTC.

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 the Planning Approval and Appendix D.1 of the SWTC.

Environmental Law means a Law of the Commonwealth or a State Law which expressly requires or necessitates the installation, modification or enhancement of air filtration, or Contamination or other environmental control measures, in respect of the operation of the Motorway and which directly affects the Motorway.

Environmental Management System means the system referred to in section 3.3.1 of the SWTC.

Environmental Manager means the individual referred to in section 3.3.2 of the SWTC.

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 specified in Item 25 of the Contract Particulars or any person appointed as a replacement in accordance with the Deed of Appointment of Environmental Representative from time to time.

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

EPA means the Environment Protection Authority as constituted under the *Protection of the Environment Administration Act 1991* (NSW).

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

EPBC Act Approval means:

- (a) an approval granted by the Minister responsible for administering the EPBC Act, 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.

EPL means an environment protection licence issued by the EPA in accordance with the *Protection of the Environment Operations Act 1997* (NSW).

Escrow Agent means an escrow agent nominated by the Contractor, and approved by the Principal in writing, for the relevant Escrow Material.

Escrow Agreement means an escrow agreement substantially in the form set out in Schedule 9 (*Escrow Agreement*) to be entered into under clause 30.7 (*Escrow Agreement*) in relation to the Escrow Material.

Escrow Materials means the Source Code for the Software listed in Item 45 of the Contract Particulars and all passwords, keys, tools, documentation and other material necessary to enable a reasonably skilled software engineer to maintain such Software without reference to the Contractor, its Related Parties or any other third party with an interest in the software.

Escrow Term means the period commencing on the execution of the relevant Escrow Agreement and ending on the earlier of:

- (a) the date specified in Item 44 of the Contract Particulars; and
- (b) the date on which the Software ceases to be used as part of the Motorway.

Event of Default means any event specified in clause 32.1 (*Events of Default*).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Excluded Works has the meaning given in clause 13.2(a) (*Omission by Principal*).

Excusable Cause of Delay means:

- (a) a Compensation Event;
- (b) an act or omission by the Principal or its Related Parties, not being an act or omission:
 - (i) expressly permitted, allowed or required by any D&C Document and which is carried out within the timeframe expressly permitted or allowed by that D&C Document;

- (ii) to the extent the act or omission is caused or contributed to by a breach by the Contractor of this deed or the D&C Documents, or any negligent or unlawful act or omission of the Contractor or its Related Parties;
 - (iii) required in order to comply with any Law; or
 - (iv) which is the exercise by the Principal of any of its functions and powers pursuant to, or required in order to comply with, any Law;
- (c) a Force Majeure Event;
- (d) [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- (e) a test is directed by the Principal under clause 11.2(a)(ii) (*Additional testing*) and not otherwise required by this deed, unless the test detects a Defect or is upon a Defect;
- (f) an "Excusable Cause of Delay" described in the table relating to the WestConnex Interface Agreement set out in Schedule 12 (*Requirements of Interface Agreements*); or
- (g) [REDACTED]

Exempt Subcontractor means a supplier engaged to provide only standard 'off the shelf' information and communication technology hardware or retail software which are customarily supplied on standard form terms and conditions.

Existing Handover Assets means the items and works listed in Part D of the Site Access Schedule.

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 Construction Site.

Existing Operator means a person specified in Item 30 of the Contract Particulars, and any other person notified by the Principal to the Contractor or by the Contractor to the

Principal after the date of this deed who owns, operates or controls any infrastructure (including existing infrastructure and Utility Services) or undertakes any business or operation on or in the vicinity of the Construction Site, and any of their Related Bodies Corporate.

Extra Land means the land referred to in clauses 9.5(a)(ii) (*Extra Land*), 9.5(b)(i) (*Extra Land*) and clause 4.2(i) and 4.3(d) of the Site Access Schedule.

Final Design Documentation Stage is the design stage described in section 2 of the Contractor Documentation Schedule.

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 the Contractor from undertaking the Contractor's Activities in accordance with this deed.

Final Payment Statement means a final instalment payment statement issued by the Independent Certifier in accordance with clause 22.9(c) (*Final Payment*) in the form of Schedule 26 (*Form of Payment Statement for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*).

[REDACTED]

[REDACTED]

[REDACTED]

Force Majeure Event means:

- (a) earthquake, cyclone, fire, explosion, flood (caused by the overflow of a river, lake or other inland or tidal water body);
- (b) malicious damage, sabotage, act of a public enemy, terrorism or civil unrest taking place in Australia or any Key Plant and Equipment Place of Manufacture;
- (c) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;
- (d) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel taking place in Australia;
- (e) confiscation, nationalisation, requisition or property damage under the order of any government taking place in Australia; or
- (f) a state-wide or nationwide strike or lockout taking place in Australia,

which is beyond the reasonable control of the parties and their respective Related Parties, and which is an event which, or an event the effects of which, both:

- (g) prevents or delays the Contractor or the Principal from performing an obligation under the D&C Documents; and
- (h) could not have been wholly mitigated, prevented, avoided, remedied or overcome by the party affected by the Force Majeure Event or its respective Related Parties taking those steps which a prudent, experienced and competent design and construction contractor (in the case of the Contractor) or owner of a motorway (in the case of the Principal) would have taken.

Forecast Cumulative Limit has the meaning given to it in section 1 of Schedule 21 (*D&C Payment Schedule*).

Future M6 Stage means a future motorway project to create any stage of a link between the Motorway and the Princes Highway at Loftus, to the extent and as described in the SWTC.

Future M6 Stage Contractor means a person engaged to design and construct a Future M6 Stage.

General Cap means the amount specified in Item 38 of the Contract Particulars, as increased by the Principal and the Contractor in accordance with clause 32.4(c)(iii) (*Termination by the Principal*).

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

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 the Contractor or its Related Parties, as the case may be, under the same or similar circumstances as the performance of the Contractor's Activities.

GST and **GST law** and other terms used in clause 25.2 (*GST*) have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except **GST law** also includes any applicable Australian Tax Office rulings and any reference to GST payable by the Supplier (as defined in clause 25.2(b) (*GST*)) includes GST payable by the representative member of any GST group of which the Supplier is a member.

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.

Heavy Vehicle National Law means:

- (a) the *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 Act 2012* (Qld) and as they apply through being adopted in other States and Territories, including through, *inter alia*, Heavy Vehicle National Law (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.

iCare means the NSW Self Insurance Corporation (Construction Risks Insurance Fund) through its statutory service provider Insurance and Care NSW.

Immediate Termination Event has the meaning given to that term in clause 32.4(c) (*Termination by the Principal*).

Included Open Source Software means the Open Source Software specified as 'Included Open Source Software' in listed in Item 46 of the Contract Particulars and all Updates and New Releases to that Software accepted by the Principal.

Indemnified Party has the meaning given to that term in clause 28.1(a) (*Indemnities from the Contractor*).

Independent Certifier means the person specified in Item 24 of the Contract Particulars, or such other person(s) as may be engaged by the Principal and the Contractor to act as independent certifier in respect of the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance.

Independent Certifier Deed means the deed titled "M6 Stage 1 Independent Certifier Deed" entered into between the Principal, the Contractor and the Independent Certifier on or about the date of this deed, substantially in the form set out in Exhibit A.

Independent Checking Engineer means the person or persons as may be engaged from time to time by the Contractor to perform the role of Independent Checking Engineer, and approved by the Principal.

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

- (a) referred to in Exhibit G; or
- (b) made, provided or made available by, or on behalf of, the Principal or the NSW Government to the Contractor in connection with the Contractor's Activities or procurement process for them,

regardless of whether it was:

- (c) expressly classified or stated to be an "Information Document";
- (d) referred to, or incorporated by reference, in an Information Document; or
- (e) made, provided or made available on, before or after the date of this deed,

unless such information, data, document or material is otherwise expressly stated to form part of this deed.

Initial Payment has the meaning given in clause 22.2(a) (*Initial Payment*).

Insolvency Event means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
 or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Insured Liability has the meaning given to that term in clause 27.3(b) (*Insured Liability*).

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, trademarks 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.

Interface Agreements means each agreement specified in section 2(a) of Schedule 12 (*Requirements of Interface Agreements*) and any other agreement to which clause 7.17(b) (*Interface Agreements*) applies.

Interface Party means a party to an Interface Agreement other than the Principal.

Interface Protocol means an interface protocol developed by the Contractor pursuant to clause 24.1 (*Interface Protocols*), in each case being a protocol related to interface and coordination issues, including:

- (a) design, construction, maintenance, services and operation management, coordination and compatibility of works, services and other activities;
- (b) monitoring, including agreed alert levels and the processes to apply in the event of exceedances;
- (c) timing and programming of works, services and other activities;
- (d) access arrangements to relevant parts of the Construction Site and other areas as required to carry out the Contractor's Activities, including the WestConnex Motorways;
- (e) processes and procedures for managing and minimising:
 - (i) impacts and interface issues; and
 - (ii) changes arising from interface issues,
 including setting up an interface working group which meets regularly;
- (f) exchange of information and dispute resolution;
- (g) management of work health and safety issues; and
- (h) the transition of services to and from the Contractor.

IOMCS or Integrated Operations Management Control System means the integrated operations management control system described in the SWTC.

IOMCS and OMCS IP means the parts of the Contractor Documentation and Deliverables which the IOMCS and OMCS Subcontractor or its Related Parties prepares, obtains, uses or provides to the Contractor in the performance of the IOMCS and OMCS Works.

IOMCS and OMCS Software means all Software which forms, or is provided as, part of the IOMCS and OMCS Works.

IOMCS and OMCS Subcontract means the agreement titled "M6 Stage 1 IOMCS and OMCS Subcontract" between the Contractor and the IOMCS and OMCS Subcontractor.

IOMCS and OMCS Subcontractor means SICE Pty Ltd (ABN 75 113 609 055) or such replacement Subcontractor as may be approved by the Principal in writing from time to time to carry out the IOMCS and OMCS Works.

IOMCS and OMCS Works means the works to be undertaken by the Contractor in respect of the IOMCS and the WestConnex OMCS as set out in the SWTC.

Key Interfaces has the meaning given to that term in Appendix B.34 of the SWTC.

Key Personnel means the personnel so named in Item 29 of the Contract Particulars as replaced (if at all) in accordance with clause 7.18 (*Personnel*).

Key Plant and Equipment means that plant and equipment identified in Schedule 22 (*Key Plant and Equipment*).

Key Plant and Equipment Place of Manufacture means any country where the Contractor is undertaking or procuring the manufacturing of the Key Plant and Equipment as set out in Schedule 22 (*Key Plant and Equipment*).

Landscaping Maintenance means the landscaping maintenance services described in section 6.23 (*Nature and Extent of Landscaping Maintenance*) of the Main Body of the SWTC.


Landscaping Maintenance Period means the period commencing on the earlier of:

- (a) the Date of Opening Completion;
- (b) in relation to Project Works for which Landscaping Maintenance is to be provided, completion of those Project Works; and
- (c) in relation to Local Area Works, Utility Service Works or Property Works for which Landscaping Maintenance is to be provided, commencement of the Defects Correction Period for those works,

and ending the period specified in Item 37 of the Contract Particulars after the Date of Opening Completion.

Lane Occupancy Fees means lane occupancy fees payable by the Contractor to the Principal, as calculated in accordance with Schedule 18 (*Lane Occupancy Fees*).

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
- (d) 

Legal Challenge has the meaning given to that term in clause 5.6(a) (*Environmental assessment*).

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.

Licensed Contractor IP means the parts of the Contractor Documentation and Deliverables which are not Transferred Contractor IP, which will include the IOMCS and OMCS IP and the Tolling Equipment IP.

Licensed Maintenance Areas means the areas necessary to operate the Motorway (such as variable message signs, closed circuit television, tunnel closure traffic lights, moveable medians, static signs and pavements) which are located outside of the Motorway Stratum, as agreed by the parties or determined by the Principal under clause 9.9.

Liquidated Damages has the meaning given in clause 16.10(a) (*Liquidated Damages*).

Liquidated Damages Cap means the amount set out in Item 39 of the Contract Particulars, as increased by the Principal and the Contractor in accordance with clause 32.4(c)(iv) (*Termination by the Principal*).

Local Area Works means the modification, reinstatement and improvement of Local Areas which the Contractor must design, construct and hand over to the Principal or the relevant Authority in accordance with this deed (and including, to the extent relevant to such works, Changes directed in accordance with this deed), which includes the Bayside Council Works.

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 and areas acquired or made available for the purposes of Local Area Works (and designated in the Site Access Schedule as Local Areas), 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.

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, which for the avoidance of doubt includes Consequential Loss.

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

M4 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M4 Motorway'.

M4 Trustees means the M4 Asset Trustee and the M4 Project Trustee (as those terms are defined in the WestConnex Interface Agreement).

M4-M5 Link Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M4-M5 Link Motorway', including 'Main Tunnel' and 'Rozelle Interchange' (as those terms are defined in the SWTC).

M4-M5 Link Trustees means the M4-M5 Link Asset Trustee and the M4-M5 Link Project Trustee (as those terms are defined in the WestConnex Interface Agreement).

M5 East Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M5 East Motorway'.

M5 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M5 Motorway', including the M5 East Motorway and, on and from the M5 West Transfer Date, the M5 West Motorway.

M5 Trustees means the M5 Asset Trustee and the M5 Project Trustee (as those terms are defined in the WestConnex Interface Agreement).

M5 West Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M5 West Motorway'.

M5 West Transfer Date means 11 December 2026 or such other date notified to the Contractor by the Principal on which the M5 West Motorway will be leased and transferred (as applicable) to the relevant WestConnex Concessionaires.

M8 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M8 Motorway' (previously referred to as the 'New M5 Motorway'), and includes the 'New M5 Motorway Stubs' (as that term is defined in the SWTC).

Maintenance Site means all areas affected by the O&M Activities, or on which the O&M Activities are carried out, including:

- (a) the Motorway Stratum;
- (b) the Licensed Maintenance Areas; and
- (c) for a period of 12 months commencing on the date on which the Defects Correction Period begins for the Local Area Works, the landscaped areas of the Local Area Works.

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

Major Closure means either:

- (a) any complete closure of a carriageway; or
- (b) only one lane of a carriageway will be available and that lane has a posted speed limit of 40km/h or less.

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts and other items incorporated or to be incorporated into the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance.

Minimum Aboriginal Participation Spend means the amount set out in Item 5 of the Contract Particulars, which represents 1.5% of the D&C Deed Sum at the date of this deed (excluding GST) less allowable exclusions, in line with APIC Policy goals. Allowable exclusions have been approved by the Principal and are costs incurred by the Contractor over which it has little or no control, for example:

- (a) specialised capital equipment (such as tunnel exhaust fans, tunnel forming machines, batch plants) and imported materials, where no suitable Australian supplier exists in the market;
- (b) the value of existing and new non project specific assets apportioned to this deed or to the Project, where they are used in delivery of the Contractor's Activities or the Project;

- (c) property acquisitions, indirect leasing costs, extra land, adjustments; and
- (d) non-construction related services.

Mitigate means, in respect of any event, taking all reasonable steps to preclude the cause of the event and avoiding or minimising the consequences of the event, including (to the extent a prudent, experienced and competent contractor in the position of the Contractor would do so) by:

- (a) expending reasonable sums of money; and
- (b) changing the sequencing or timing of, or the construction methodologies used by the Contractor in carrying out, the Contractor's Activities,

but excluding any acceleration.

Modification Application Documents has the meaning given to that term in clause 5.4(a) (*Modifications to the Planning Approval*).

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 set out in Schedule 5 (*Moral Rights Consent*).

Motorway means, on and from the Date of Opening Completion, the roads, tunnels and other physical works, facilities, systems and Utility Services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Motorway Stratum.

Motorway Stratum means the stratum of real property on which the Motorway will be located, as agreed by the parties or determined by the Principal under clause 9.9.

Motorway Works means the road, tunnel and other physical works, facilities, systems and Utility Services described in section 2.3.1 of the SWTC, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements provided by the Contractor as part of the Project Works (including the Enabling Works, Tolling Equipment Works, IOMCS and OMCS Works and WestConnex Integration Works).

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.

[REDACTED]

[REDACTED]

[REDACTED]



New Release means, in respect of any Software, software produced primarily to extend, alter or improve that Software by providing additional functionality or performance enhancement (whether or not Defects in the Software are also corrected) while still retaining the original designated purpose of that Software.

Non-Contestable Utilities Work means that part of the Project Works and Temporary Works specified as Non-Contestable Utilities Work in Appendix B.40 of the SWTC and for which payment will be made in accordance with clause 22.4 (*Non-Contestable Utilities Work*).

Notice has the meaning given to that term in clause 44.1 (*How to give a notice*).

Notice of Dispute has the meaning given in clause 34.2 (*Notice of Dispute*).

Notice of Bayside Council Works Completion means a notice in the form of Part V of Schedule 14 (*Form of Certificates*) issued by the Independent Certifier pursuant to clause 17.5(f)(i) (*Early completion of Bayside Council Works*).

Notice of Completion means a notice in the form of Part O of Schedule 14 (*Form of Certificates*) issued by the Independent Certifier pursuant to clause 17.1(e)(i) (*Process for Opening Completion and Completion*).

Notice of Opening Completion means a notice in the form of Part O of Schedule 14 (*Form of Certificates*) issued by the Independent Certifier pursuant to clause 17.1(e)(i) (*Process for Opening Completion and Completion*).

Notifiable Claim has the meaning given to that term in clause 27.7(a) (*Dealing with claims*).

NSW Code means the NSW Government Supplier Code of Conduct (November 2019) or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

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 Government Procurement Guideline Skills and Training in Construction Industry means the NSW Government Procurement Guideline "Skills and Training in the Construction Industry" (attached to NSW Procurement Board Direction PBD 2017-05-Construction training and skills development).

NSW Guidelines means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (September 2017 or later update).

O&M Activities means the operation, maintenance and repair of the Motorway, including any preparatory, establishment and mobilisation activities.

O&M Completion Obligations means the O&M Activities referred to in section 3.12 of Appendix G.2 of the SWTC which must be performed to enable Opening Completion or Completion to be achieved.

O&M Contractor means a person or persons engaged by the Principal to operate or maintain the Motorway (or any part of it), or to provide services or advice in relation to any O&M Activities, as notified to the Contractor by the Principal.

O&M Manuals means the manuals developed in accordance with clause 20.2 (*O&M Manuals*) including the Project Plans incorporated into them as required by Appendix G.2 of the SWTC, which describe the policy, practices and procedures for the operation, maintenance and repair of the Motorway Works and the maintenance of the Third Party Works.

Office of the Federal Safety Commissioner's Audit Criteria Guidelines means the Office of the Federal Safety Commissioner's Audit Criteria Guidelines (last updated 4 May 2015) as amended from time to time.

Off-Peak Period means any period of time that is not a Peak Period.

OMCS or Operations Management and Control System means the operations management control system for the Motorway described in the SWTC.

Open Book Basis means the provision of primary records of any pricing, costing, calculations and other information (including quotes, invoices and timesheets) to enable an assessment of actual impacts, costs and margins (including discount rates used to calculate net present values).

Open Source Licence means a licence which meets the requirements of the Open Source Definition published by the Open Source Institute (www.opensource.org).

Open Source Software means software which is licensed under the terms of an Open Source Licence.

Opening Completion means the stage in the execution of the Contractor's Activities when the Contractor has satisfied all the conditions precedent to Opening Completion set out in Part A of Schedule 16 (*Conditions precedent to Completion Stages*).

Operational Acceptance Tests means the tests of the same name applicable to the Roadside Tolling Equipment described in the SWTC, Appendix B.10 (*Toll Collection System*), Attachment B.10-1, section 5.3.4.

Operational Readiness Evaluation or ORE means the series of tests required by the SWTC to ensure that all of:

- (a) the Motorway Works physical assets;

- (b) the personnel that will be involved in carrying out the O&M Activities which the Contractor is required to train as set out under the SWTC; and
- (c) the processes documented in the O&M Manuals and all other documents related to the O&M Activities that the Contractor is required to prepare under the SWTC,

function seamlessly and correctly to facilitate safe traffic operations.

Overall D&C Program means the overall program for design and construction activities which is contained in Exhibit E, as updated in accordance with clause 15.3(b) (*Contractor's programming obligations*).

Payment Amount means the instalment payment amount certified by the Independent Certifier under 22.5 (*Payment Statements*) and to be paid to the Contractor under clause 22.8 (*Payment of the instalment Payment Amount*).

Payment Claim means an instalment payment progress claim in respect of the D&C Deed Sum submitted by the Contractor in accordance with clause 22.3 (*Payment Claims*) in the form of Schedule 24 (*Payment Claim for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*).

Payment Statement means an instalment payment statement issued by the Independent Certifier in accordance with clause 22.3 (*Payment Claims*) in the form of Schedule 26 (*Form of Payment Statement for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*).

PDCS means the web based project data and collaboration system nominated by the Principal for the purposes of this deed or any other communications system agreed by the parties from time to time.

Peak Period means, on any day, 5am to 9.30pm.

Permanent Power Supply Construction Management Work means the Permanent Power Supply Work which clause 3 of Schedule 21 (*D&C Payment Schedule*) states is included in the Permanent Power Supply Margin.

Permanent Power Supply Margin means the percentage set out in Item 8 of the Contract Particulars, which is on account of the Permanent Power Supply Construction Management Work, and profit and offsite overheads in respect of that work.

Permanent Power Supply Overrun Margin means the percentage set out in Item 9 of the Contract Particulars.

Permanent Power Supply Savings Percentage means the percentage set out in Item 10 of the Contract Particulars.

Permanent Power Supply Target Cost means the amount set out in Item 4 of the Contract Particulars (which does not include the Permanent Power Supply Margin) or as otherwise adjusted in accordance with clause 13.13(a) (*Adjustment to Permanent Power Supply Target Price*).

Permanent Power Supply Target Price means the Permanent Power Supply Target Cost (as adjusted in accordance with this deed) plus the Permanent Power Supply Margin.

Permanent Power Supply Tendered Cost means the amount determined in accordance with clause 22.4B(m) (*Permanent Power Supply Work*).

Permanent Power Supply Tendered Price means the amount determined in accordance with clause 22.4B(n) (*Permanent Power Supply Work*).

Permanent Power Supply Tendered Work means the construction, testing and commissioning of the Permanent Power Supply Work excluding:

- (a) the Permanent Power Supply Construction Management Work; and
- (b) any Non-Contestable Utilities Work.

Permanent Power Supply Work means the Contractor's Activities in respect of the Utility Service Works for the design, supply and installation of 33kV transmission ducts and cable feeders as described within Appendix B.39 of the Scope of Works and Technical Criteria, including the supply and installation of six transmission conduits and two cable feeders between Canterbury STS to the Rockdale Ventilation Facility at West Botany St, including the provision of Future M6 Stages, where three of the six conduits are to terminate at West Botany St depot.

Permitted Noise and Vibration Limits means the permitted noise and vibration limits specified in the Planning Approval.

Permitted Working Parameters means the permitted working hours, truck movements and truck haulage routes specified in the Planning Approval.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).



Planned Lane Closure has the meaning given in Schedule 18 (*Lane Occupancy Fees*).

Planning Approval means:

- (a) the Primary Planning Approval;
- (b) any modification to the Primary Planning Approval; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Primary Planning Approval 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.

Planning Approval Application means the application for approval under Division 5.2, section 5.15 of the EP&A Act for the construction and operation of the Motorway as submitted by the Principal to the Minister responsible for administering the EP&A Act on or about 27 November 2017.

Planning Approval Change means:

- (a) the Primary Planning Approval or any modification to the Primary Planning Approval is modified under the EP&A Act;
- (b) where the Minister responsible for administering the EP&A Act issues a new Approval in respect of the Project Works in substitution for, or replacement of, the Primary Planning Approval or any modification to the Primary Planning Approval;

- (c) any new Approval referred to in paragraph (b) of this definition is modified under the EP&A Act;
- (d) an EPBC Act Approval is issued in respect of the Project Works; or
- (e) any EPBC Act Approval referred to in paragraph (d) of this definition is modified under the EPBC Act.

Planning Approval Change Event means the occurrence of a Planning Approval Change [REDACTED] not arising as a consequence of:

- (a) the Contractor's failure to comply with its obligations under a D&C Document;
- (b) a breach by the Contractor of its warranties under clause 5.4(d) (*WestConnex Planning Approvals*);
- (c) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties;
- (d) a failure by the Contractor or any of its Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation; or
- (e) any change or amendment requested or instigated by the Contractor or which results from any direct action of the Contractor (including any Change requested by the Contractor under this deed), but excluding any conditions or modifications to conditions imposed that are not related to the change or amendment requested or instigated by, or direct action of, the Contractor (which will constitute a Planning Approval Change Event).

Pollution includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

Portion means a part of the Contractor's Activities or Project Works, as directed under clause 19.1 (*Principal may direct Portions*).

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

PPS Register has the meaning given to the term "Register" in the PPS Act.

Pre-Agreed Change means any of the Changes described in Schedule 15 (*Pre-Agreed Changes*).

Preferred Product means, with respect to each Asset Item listed in Schedule 33 (*Preferred Suppliers and Products*) to this deed, the product listed in Schedule 33 (*Preferred Suppliers and Products*) for that Asset Item.

Preferred Supplier means, with respect to each Asset Item listed in Schedule 33 to this deed, the supplier listed in Schedule 33 (*Preferred Suppliers and Products*) for that Asset Item.

Primary Planning Approval means the approval granted by the Minister responsible for administering the EP&A Act in relation to the Planning Approval Application, including all conditions to such approval and documents incorporated by reference.

Principal Contractor means the person specified in Item 23 of the Contract Particulars.

Principal Geotechnical Data means raw factual data which is:

- (a) within the categories specified in Schedule 34 (*Principal Geotechnical Data*) as raw factual data for the purposes of this paragraph; and
- (b) contained in Information Documents that are specified in Schedule 34 (*Principal Geotechnical Data*) as geotechnical reports for the purposes of this paragraph,

but does not include any interpretation, extrapolation, conclusion, assumption, projection or analysis of the Principal Geotechnical Data, whether it is contained or stated in the Information Documents or made, drawn or undertaken by the Contractor.

Principal's Nominee has the meaning given in clause 33.1 (*Dispute Avoidance Board Formation*).

Principal's Representative means the person specified in Item 50 of the Contract Particulars or any other person appointed from time to time by the Principal under clause 6.1(a)(ii) (*Principal's Representative and Principal's Surveillance Officer*), and includes any appointee under clauses 6.1(b) or 6.1(d) (*Principal's Representative and Principal's Surveillance Officer*).

Principal's Surveillance Officer has the meaning given in clause 6.1(e)(i) (*Principal's Representative and Principal's Surveillance Officer*).

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (c) any other current or future legislation, mandatory codes and policies (where such codes and policies have been notified by an affected party to the other party) relating to the handling of Personal Information which may apply from time to time to a party or to any other recipient of Personal Information permitted under the D&C Documents.

Procurement Process Deed Polls means:

- (a) the deed poll titled "Confidentiality and Disclaimer Deed Poll" dated 27 May 2019 executed by CPB Contractors Pty Limited;
- (b) the deed poll titled "Confidentiality and Disclaimer Deed Poll" dated 4 March 2020 executed by Ghella Pty Ltd; and
- (c) the deed poll titled "Procurement Process Deed Poll" dated 22 July 2020 executed by the Contractor,

copies of which are set out in Exhibit B.

Project means:

- (a) the investigation, funding, planning, design, construction, commissioning and maintenance of the Project Works and the Temporary Works;
- (b) the operation, maintenance and repair of the Motorway; and
- (c) the levying and collection of tolls on the Motorway,

which includes the Contractor's Activities.

Project Insurance means, in relation to a party, a policy or policies of insurance which that party is obliged to obtain or cause to be obtained under clause 27.5 (*Project Insurances*) and Schedule 19 (*Project Insurances*).

Project Plan means any plan of the kind referred to in Appendix C.1 of the SWTC and the Chain of Responsibility Management Plan, as that plan may be updated, amended and further developed under Appendix C.1 of the SWTC.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Project Works means the physical works which the Contractor must design, construct and complete under the D&C Documents (including, to the extent relevant to such works, Changes directed in accordance with this deed) including:

- (a) the Motorway Works;
- (b) the Utility Service Works;
- (c) the Local Area Works; and
- (d) the Property Works,

but excluding the Temporary Works, D&C Phase Maintenance and Landscaping Maintenance.

Project Works Traffic Management Plan has the meaning given to that term in clause 7.6(a)(ii) (*Control of traffic*).

Proof Engineer means the person or persons as may be engaged from time to time by the Contractor to perform the role of Proof Engineer, and approved by the Principal.

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of the Contractor's Activities as described or specified in the SWTC, including in section 2.3.2 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Pure Economic Loss means Consequential Loss other than Consequential Loss arising from:

- (a) any injury to, or disease or death of, persons;
- (b) the loss of (whether total or partial), or destruction of or damage to, any real or personal property; or
- (c) loss of use or access to any real or personal property where such loss of use or access is an Insured Liability and caused by the Contractor's or a Contractor's Related Party's negligent or otherwise wrongful act or omission or breach of any D&C Document.

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 specified as such in Item 27 of the Contract Particulars or such other persons engaged as Quality Manager from time to time.

Quality Management Plan has the meaning given to that term in Appendix C.1 of the SWTC.

RAM Activity means the Reliability, Availability and Maintainability activity the Contractor is required to complete in accordance with section 4.5 of Appendix B.14 of the SWTC.

RCTI has the meaning given to that term in clause 22.6 (*Tax invoice*).

Reasonably Anticipated means reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 10.1 (*Physical conditions*) that it has done.

Recipient has the meaning given to that term in clause 25.2(b)(ii) (*GST*).

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

Related Parties means:

- (a) in respect of the Contractor, its Related Bodies Corporate, Subcontractors and the employees, agents and officers of the Contractor, its Related Bodies Corporate and its Subcontractors, but excludes:
 - (i) the Principal;
 - (ii) the Principal's Representative;
 - (iii) the Independent Certifier;
 - (iv) the Environmental Representative;
 - (v) the Acoustics Adviser;

- (vi) the O&M Contractors;
 - (vii) the parties to the Interface Agreements;
 - (viii) the WestConnex Concessionaires and their contractors of any tier (in their capacity as contractors in respect of the WestConnex Activities);
 - (ix) a Future M6 Stage Contractor and its contractors of any tier (in their capacity as contractors in respect of the relevant Future M6 Stage);
 - (x) contractors of any tier of the persons listed in paragraphs (a)(i) to (a)(vii) (inclusive) of this definition; and
 - (xi) employees, agents and officers of the persons listed in paragraphs (a)(i) to (a)(x) (inclusive) of this definition;
- (b) in respect of the Principal, the Principal's Representative, any Future M6 Stage Contractor, any O&M Contractor and the employees, agents, contractors and officers of the Principal, the Principal's Representative, any Future M6 Stage Contractor and any O&M Contractor, but excludes:
- (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the Acoustics Adviser;
 - (iv) the Contractor and its Subcontractors (in their capacity as contractors in respect of the Contractor's Activities);
 - (v) the parties to the Interface Agreements (other than any additional Interface Agreement with a Future M6 Stage Contractor, O&M Contractor or WestConnex O&M Contractor to which clause 7.17(b)(i) (*Interface Agreements*) applies);
 - (vi) the WestConnex Concessionaires and their contractors of any tier (in their capacity as contractors in respect of the WestConnex Activities);
 - (vii) contractors of any tier of the persons listed in paragraphs (b)(i), (b)(ii) and (b)(v) of this definition; and
 - (viii) employees, agents and officers of the persons listed in paragraphs (b)(i) to (b)(vii) (inclusive) of this definition;
- (c) in respect of a WestConnex Concessionaire, its Related Bodies Corporate, its contractors of any tier (in their capacity as contractors in respect of the relevant WestConnex Activities) and the employees, agents and officers of the WestConnex Concessionaire, its Related Bodies Corporate and those contractors, but excluding:
- (i) the Principal;
 - (ii) the Principal's Representative;
 - (iii) the O&M Contractors;
 - (iv) contractors of any tier of the persons listed in paragraphs (c)(i) to (c)(iii) (inclusive) of this definition; and

- (v) employees, agents and officers of the persons listed in paragraphs (c)(i) to (c)(iv) (inclusive) of this definition; and
- (d) in respect of an entity (other than the Principal, the Contractor and the WestConnex Concessionaires), its Related Bodies Corporate, its contractors of any tier and the employees, agents and officers of that entity, its Related Bodies Corporate and those contractors.

Related Road Project means any road project undertaken by the Principal, the NSW Government, any New South Wales Authority, any concessionaire of the Motorway or a WestConnex Motorway, or any entity owned or controlled by any of them which will connect to (whether directly or through another road), have an interface with, be integrated with, require modifications to, require access to land used for, or otherwise impact or be impacted by, the Motorway.

Relevant Insurer means an insurance company having a financial performance rating of at least A by Standard and Poor's (Australia) Pty Limited (or equivalent rating).

Remediable Termination Event has the meaning given to that term in clause 32.4(a) (*Termination by the Principal*).

Remedy means to remedy or cure the Event of Default or, if the Event of Default is not capable of being remedied or cured, to overcome the consequences of the Event of Default.

Remedy Notice has the meaning given to that term in clause 32.2(c) (*Notice of Event of Default*).

Remedy Period has the meaning given to that term in clause 32.2(a) (*Notice of Event of Default*).

Remedy Plan has the meaning given to that term in clause 32.2(c)(ii)(A) (*Notice of Event of Default*).

Request for Tender means the documents specified in Item 48 of the Contract Particulars.

Required Rating means a credit rating of at least A by Standard and Poor's (Australia) Pty Limited, A2 by Moody's Investors Service Inc, or A by Fitch Ratings.

Revenue means the revenue, including tolling revenue, derived or expected to be derived from the Project or the WestConnex Motorways.

Reviewer means:

- (a) the Principal and the Independent Certifier; and
- (b) any other stakeholders (including WestConnex Concessionaires and O&M Contractors) required by the Principal in relation to the relevant document.

Road Occupancy Licence or **ROL** means a road occupancy licence issued by TMC in accordance with the requirements of Appendix C.4 of the SWTC.

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 (NSW)).

Security Bond means each of Security Bond 1, Security Bond 2, Security Bond 3, Security Bond 4 and any unconditional undertaking provided under clauses 22.13 (*Payment for Key Plant and Equipment*) and 22.14 (*Unfixed or offsite Materials*).

Security Bond 1 has the meaning given in Item 40 of the Contract Particulars.

Security Bond 2 has the meaning given in Item 40 of the Contract Particulars.

Security Bond 3 has the meaning given in Item 40 of the Contract Particulars.

Security Bond 4 has the meaning given in Item 40 of the Contract Particulars.

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.

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

Significant Subcontract means a Subcontract specified in Item 28 of the Contract Particulars.

Significant Subcontractor means a Subcontractor engaged under a Significant Subcontract.

Site Access Schedule means Exhibit H.

Site Conditions means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Construction Site, any Extra Land, the WestConnex Motorways 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 the Principal or others;
- (d) the Existing Handover Assets, including their condition, location, adequacy and suitability;
- (e) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (f) any Contamination, Hazardous Substance or other spoil or waste;
- (g) topography of the Construction Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;

- (h) geological, geotechnical and subsurface conditions or characteristics;
- (i) neighbouring properties, any underground strata and any easements, rights of way or other property rights in existence or which may be required;
- (j) all Utility Services, systems and facilities, above or below ground level, in existence and which may be required and all facilities with which such Utility Services and systems are connected;
- (k) the Environment, water and weather or climatic conditions, including temperature, rain, surface water runoff and drainage, water seepage, wind blown dust and sand and seasons;
- (l) any latent conditions; and
- (m) local traffic conditions.

[REDACTED]

Software means all software which forms, or is provided as, part of the Project Works, including all Updates and New Releases to it provided to the Principal under this deed.

Source Code means the complete high level language computer programs which, when compiled, generate the object and executable program that constitutes the useable software product. Source Code includes the make files, flow charts, programming notes and other necessary instructions to the compiler and linker.

Spare Parts means the spares parts listed in Schedule 30 (*Spare Parts List*).

Spare Allowance has the meaning given to that term in clause 14.8(a)(iii) (*Spare Parts*).

Spare Finalisation Date has the meaning given to that term in clause 14.8(c) (*Spare Parts*).

Spare List has the meaning given to that term in clause 14.8(a)(i) (*Spare Parts*).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Stakeholders has the meaning given to that term in clause 7.15(b) (*Management of customers, stakeholders and other affected parties*).

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

Subcontract means a contract between the Contractor and a Subcontractor or between two or more Subcontractors and includes an agreement for supply of goods or services (including professional services and Construction Plant hire) or both.

Subcontractor means a subcontractor, sub-subcontractor and so on right down the contracting chain of the Contractor in performing the Contractor's Activities and includes a supplier of goods or services (including professional services and Construction Plant hire) or both.

Subcontractors Proof of Payment Procedure means an administrative procedure by which the Contractor provides proof to the Principal that it has paid Subcontractors and implements the monthly process set out in Schedule 29 (*Subcontractors Proof of Payment of Payment Procedure*).

Sunset Date means the date set out in Item 20 of the Contract Particulars.

Supplier has the meaning given to that term in clause 25.2(b) (*GST*).

Supporting Statement means a statement required by section 13(7) of the Security of Payment Act in the form set out in Schedule 28 (*Supporting Statement*) (or other form required by the Security of Payment Act) and providing the detail required by the Security of Payment Act.

Surviving Clauses has the meaning given to that term in clause 45.16(a) (*Survival of certain provisions*).

SWTC or **Scope of Works and Technical Criteria** means Exhibit I, updated in accordance with this deed including for any Changes directed by the Principal under this deed.

Sydney Coordination Office or **SCO** means the Sydney Coordination Office of TfNSW, which oversees traffic and transport during the transformation of the Sydney CBD and is a delivery office of TfNSW.

Target Satisfaction Date means the date set out in Item 2 of the Contract Particulars.

Taxes means income, stamp, indirect or other taxes (including payroll tax, goods and services tax and land tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Temporary Areas means the land described as such in the Site Access Schedule.

Temporary Works means any temporary physical works required for the purpose of carrying out the Contractor's Activities, but which does not form part of the Project Works including any such works specified in section 2.4 of the SWTC, the Existing Handover Assets and, to the extent relevant to such works, Changes directed in accordance with this deed.

Tender means the Contractor's tender submitted on the date specified in Item 47 of the Contract Particulars in response to the Request for Tender.

Third Party Claim has the meaning given to that term in clause 27.11(a) (*Procedure for Third Party Claims*).

Third Party Confidential Information means information provided to the Principal by any third party which the Principal has given the Contractor prior written notice is confidential.

Third Party Software means all Software the copyright in which is owned by a person other than the Contractor.

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

Toll Collection System means the system proposed to be used or used (as the case may be) for imposing and collecting tolls in relation to the use of the Motorway, as described in section 5.13 and Appendix B.10 of the SWTC.

Tolling Equipment means any roadside tolling equipment specified in the SWTC, including the gantries and associated equipment.

Tolling Equipment IP means the parts of the Contractor Documentation and Deliverables which the Tolling Equipment Subcontractor or its Related Parties prepares, obtains, uses or provides to the Contractor in the performance of the Tolling Equipment Works.

Tolling Equipment Software means all Software which forms, or is provided as, part of the Tolling Equipment Works.

Tolling Equipment Subcontractor means Kapsch TrafficCom Australia Pty Ltd (ABN 84 081 653 429) or such replacement Subcontractor as may be approved by the Principal in writing from time to time to carry out the Tolling Equipment Works.

Tolling Equipment Subcontract means the agreement titled "M6 Stage 1 Tolling Equipment Subcontract" between the Contractor and the Tolling Equipment Subcontractor.

Tolling Equipment Works means the works to be undertaken by the Contractor in respect of the Toll Collection System for the Motorway as set out in section 5.12 and Appendix B.10 of the SWTC.

Tolling System Functionality Impacts has the meaning given in Schedule 18 (*Lane Occupancy Fees*).

Traffic or Tolling Impact has the meaning given in Schedule 18 (*Lane Occupancy Fees*).

Transferred Contractor IP means the parts of the Contractor Documentation and Deliverables which are newly created by or on behalf of the Contractor or its Related Parties in carrying out the Contractor's Activities (including before the date of this deed), which may be developed, adapted, customised or derived from the Licensed Background IP, other than the IOMCS and OMCS IP and the Tolling Equipment IP.

Transport for New South Wales or **TfNSW** means Transport for NSW ABN 18 804 239 602.

Transport Management Centre or **TMC** means the TfNSW Transport Management Centre, which forms part of the infrastructure and services division of TfNSW and includes, where relevant, the Sydney Coordination Office of TfNSW.

Traffic Adjustment means a traffic adjustment described in Table 1, Table 2, Table 3 or Table 4 of Schedule 18 (*Lane Occupancy Fees*), excluding any traffic adjustment to the extent it can be accommodated within a planned maintenance period.

Unauthorised Closure Default has the meaning given to that term in clause 32.1(a) (*Events of Default*).

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 owners,

cessionaires, designers, contractors or operators (as applicable) of motorways or toll roads,

at the time that the insurance is sought to be obtained or renewed.

Uninsurable Force Majeure Event means, at any time:

- (a) a Force Majeure Event referred to in paragraphs (c), (d) or (e) of the definition of "Force Majeure Event" or sabotage, act of public enemy or terrorism (to the extent not covered by the *Terrorism Insurance Act 2003* (Cth)); or
- (b) a Force Majeure Event which causes physical loss or damage to the Project Works or the Temporary Works,

in respect of which neither the Principal nor the Contractor is insured and which is Uninsurable.

Unknown Artefacts means an Artefact to the extent that the Artefact:

- (a) at the date of this deed was:
 - (i) in existence on the Construction Site; and
 - (ii) not known, or substantially known, to the Contractor; and
- (b) differs materially in nature, extent, type, location or scope from what could have been Reasonably Anticipated.

Unknown Contamination means Accepted Contamination to the extent that:

- (a) in the case of Accepted Contamination in existence within the Construction Site [REDACTED] at the date of this deed, or which migrates onto the Construction Site [REDACTED] after the date of this deed, such Accepted Contamination:
 - (i) was not known, or substantially known, to the Contractor at the date of this deed; and
 - (ii) differs materially in nature, extent, volume, type, location or scope from what could have been Reasonably Anticipated; or
- (b) in the case of Accepted Contamination in existence outside the Construction Site at the date of this deed which migrates onto the Construction Site [REDACTED] after the date of this deed, it could not have been Reasonably Anticipated that such Accepted Contamination would migrate onto the Construction Site as a result of the Contractor's Activities,

excluding:

- (c) any groundwater containing Contamination that is able to be remediated or treated to the standard required by this deed using treatment facilities already in existence or otherwise required by this deed; and
- (d) [REDACTED]

Unknown Easement means an Easement burdening the Construction Site, or any release, variation, modification or waiver of or to any such Easement, created or effected by the Principal under clause 9.8(a) after the date of this deed to the extent that the Easement, release, variation, modification or waiver:

- (a) is not requested by the Principal from a third party for the Project Works or Temporary Works or required by a third party as a result of the Project Works or Temporary Works;
- (b) differs materially in nature, extent, type or location from what is described or contemplated in the SWTC and what could have been Reasonably Anticipated; and
- (c) is not requested by the Contractor or required as a result of any failure by the Contractor to comply with a D&C Document.



Unknown Inaccurate Principal Geotechnical Data means a material inaccuracy in the Principal Geotechnical Data to the extent the inaccuracy:

- (a) was not known, or substantially known, to the Contractor at the date of this deed; and
- (b) could not have been Reasonably Anticipated.

Unknown Site Condition means:

- (a) an Unknown Utility Service;
- (b) Unknown Contamination;
- (c) Unknown Inaccurate Principal Geotechnical Data; or
- (d) an Unknown Artefact.

Unknown Site Condition Notice has the meaning given in clause 10.5(a)(ii) (*Unknown Site Conditions*).

Unknown Utility Service means a Utility Service to the extent that the Utility Service is in existence on the Construction Site [REDACTED] and:

- (a) the existence of the Utility Service could not have been Reasonably Anticipated;
- (b) [REDACTED]
- (c) the Principal, or an Authority lawfully, requires the Contractor to increase the capability or performance of the Utility Service to a standard or requirement which is higher than the applicable standard or requirement under this deed or Law, or which could have been Reasonably Anticipated, except to the extent an inevitable consequence of carrying out the Project Works.

An Unknown Utility Service does not include:

- (d) a Utility Service that is redundant, except to the extent:

- (i) the Utility Service must be removed to enable the Contractor's Activities to be performed in accordance with this deed; and
 - (ii) the removal of the Utility Service requires the consent of the owner, operator or controller of the Utility Service; or
- (e) a Utility Service connecting a property to a main or common Utility Service.

Unplanned Lane Closure has the meaning given in Schedule 18 (*Lane Occupancy Fees*).

Update means software which has been produced primarily to overcome defects in, or to improve the operation of, Software.

Urgent WestConnex Interface Defect means a WestConnex Interface Defect which, if not urgently rectified, will have an adverse impact on the ability of the Contractor to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion.

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, and includes any such service, facility, or item of infrastructure that comes into existence after the date of this deed.

Utility Service Works means the construction, modification or relocation of Utility Services all of which are to be designed and constructed by the Contractor and handed over to the Principal, an Authority or any other person in accordance with the D&C Documents including any such works specified in the SWTC, including in section 2.3.4 (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Utility Services Information has the meaning given in section 4 of Schedule 38 (*Unknown Utility Services*).

Validity Period has the meaning given in clause 13.3(b) (*Contractor Change Notice*).

Warranty Life means the period specified in Item 16 of the Contract Particulars from the Date of Opening Completion.

WestConnex Activities means the design, construction, operation, use, maintenance and ownership of the WestConnex Motorways or any part of them.

WestConnex Assets and Systems means all assets and systems which comprise or are intended to form part of the WestConnex Motorways, including facilities, buildings, structures, finishes, plant, equipment, hardware and software (including the tunnel structures, civil systems and mechanical and electrical systems).

WestConnex Concessionaire means a concessionaire of a WestConnex Motorway (including each of the M4 Trustees, M5 Trustees and M4-M5 Link Trustees).

WestConnex D&C Contractor means the entity or entities engaged by a WestConnex Concessionaire or the Principal to design and construct a WestConnex Motorway.

WestConnex Integration Site means any area indicated as a "WestConnex Integration Site" in the Site Access Schedule.

WestConnex Integration Works means the works required by the SWTC to be carried out by the Contractor which are necessary to ensure the safe and efficient integration and

integrated operation of the Motorway together with the WestConnex Motorways, which will include modifications to the WestConnex Assets and Systems.

WestConnex Interface Agreement has the meaning given in Schedule 12 (Requirements of Interface Agreements).

WestConnex Interface Assets and Systems means the WestConnex Assets and Systems to or with which the Project Works will connect, integrate or interface, as described in the SWTC.

WestConnex Interface Defect means any material failure of any part of the WestConnex Interface Assets and Systems (excluding any Existing Handover Assets) to comply with the requirements of the applicable WestConnex Interface Specifications, which:

- (a) where the relevant non-compliant WestConnex Interface Assets and Systems are physical assets and systems that existed at the date of this deed:
 - (i) was not known, or substantially known, to the Contractor at the date of this deed;
 - (ii) was not shown, or substantially shown, in any WestConnex Interface Reference Document provided to the Contractor on or before the date of this deed; and
 - (iii) could not have been Reasonably Anticipated; and
- (b) has a material adverse effect on the Contractor's ability to comply with its obligations under this deed, the time required to achieve Opening Completion or Completion or the cost of performing its obligations under this deed,

except to the extent that failure is due to:

- (c) fair wear and tear;
- (d) deviations from design documentation in accordance with construction tolerances that would be reasonable for a contractor acting in accordance with Good Industry Practice to make; or
- (e) an act or omission of the Contractor or its Related Parties.

WestConnex Interface Milestone means a deliverable identified in Part A of Schedule 31 (*WestConnex Integration Schedule*).

WestConnex Interface Milestone Date means a date identified in Part A of Schedule 31 (*WestConnex Integration Schedule*).

WestConnex Interface Reference Documents means the documents listed in Part B of Schedule 31 (*WestConnex Integration Schedule*), as updated in accordance with clauses 10A.3(c) and 10A.3(h) (*WestConnex interface information*).

WestConnex Interface Specifications means the specifications for the WestConnex Interface Assets and Systems listed in Part D of Schedule 31 (*WestConnex Integration Schedule*), as updated in accordance with clause 10A.3(f) (*WestConnex interface information*).

WestConnex Interface Works means the WestConnex Interface Assets and Systems which are to be completed after the date of this deed.

WestConnex IOMCS and OMCS Assets and Systems means the following WestConnex Assets and Systems:

- (a) IOMCS hardware, software and configurable parameters;
- (b) integrated subsystems including voice communications, video management systems and automatic video incident detection systems,
- (c) WestConnex OMCS workstation hardware, software and configurable parameters, and server hardware, software and configurable parameters, for the WestConnex Motorways; and
- (d) I-MNCS hardware, software and configuration configurable parameters.

WestConnex IOMCS and OMCS Configuration Freeze has the meaning given in clause 10D.2 (*Scope of Configuration Freeze*).

WestConnex Motorways means:

- (a) the M4 Motorway;
- (b) the M5 Motorway;
- (c) the M4-M5 Link Motorway; or
- (d) the M8 Motorway,

or any combination of them if the context so requires.

WestConnex O&M Contractor means an entity engaged by a WestConnex Concessionaire or the Principal to operate or maintain a WestConnex Motorway or, to the extent a WestConnex Concessionaire operates or maintains a WestConnex Motorway, the WestConnex Concessionaire.

WestConnex OMCS means the operations management control system for a WestConnex Motorway.

WestConnex Planning Approvals means:

- (a) the approvals granted under the EP&A Act in relation to the WestConnex Motorways, including all conditions to such approvals and documents incorporated by reference;
- (b) the approvals granted under the EPBC Act in respect of the WestConnex Motorways, including all conditions to such approvals and documents incorporated by reference;
- (c) any modification to an approval referred to in paragraph (a) or (b) of this definition; and
- (d) 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) or (b) 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.

WestConnex Project Deed means a project deed entered into by the Principal and the relevant WestConnex Concessionaires in relation to a WestConnex Motorway.

WHS Legislation means:

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

WHS Management Plan has the meaning given to that term in Appendix C.1 of the SWTC.

WHS Management Systems and Auditing Guidelines means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines 5th edition (September 2013, updated May 2014), or any document issued from time to time which amends or replaces that document.

Wilful Default means a deliberate or intentional breach of the D&C Documents by the Contractor or a breach by the Contractor in deliberate disregard of, or deliberate indifference to, the consequences, excluding any innocent act, omission, mistake or error of judgement.

Wilful Misconduct means an act or failure to act by the relevant party or its Related Parties that was intended to cause, or was in deliberate disregard of or deliberate indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

Workplace Relations Management Plan means the workplace relations management plan prepared by the Contractor in accordance with clause 42.6 (*Workplace Relations Management Plan*).

Works Site means:

- (a) the land described as the Works Site in the Site Access Schedule; and
- (b) the tunnel substratum shown in the Site Access Schedule as forming part of the Works Site,

and includes the WestConnex Integration Sites.

1.2 Interpretation

In this deed:

- (a) **(Headings)**: headings are for convenience only and do not affect the interpretation of this deed;

and unless the context indicates a contrary intention:

- (b) **(Persons)**: references to a person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) **(Parties)**: a reference to a party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) **(Includes)**: 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';
- (e) **(Authorities)**: where there is a reference to an Authority, institute or association or other body referred to in this deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
- (f) **(Documents)**: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) **(Statutes)**: a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) **(References relate to this deed)**: a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) **(Documents included in this deed)**: a reference to:
 - (i) this deed includes all schedules, exhibits, attachments and annexures to it, including the SWTC; and
 - (ii) the SWTC includes all Appendices to the SWTC;
- (j) **(Number and gender)**: a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) **(Other forms of words)**: if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) **(Public holidays excluded)**: for the purposes of clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*):

- (i) any extension of time stated in days; or
 - (ii) any reference to "day",
- will exclude days which are public holidays in Sydney;
- (m) **(Days)**: for all purposes other than as set out in clause 1.2(l), "day" means calendar day;
 - (n) **(Courts and tribunals)**: a reference to a court or tribunal is to an Australian court or tribunal;
 - (o) **(Groups)**: a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - (p) **(Months)**: a reference to a "month" is a reference to a calendar month;
 - (q) **(Dollars)**: a reference to "\$" or "dollar" is to Australian currency;
 - (r) **(Environmental Representative)**: the Environmental Representative will perform the functions of the Environmental Representative or the ER under the Planning Approval (to the extent relevant to the Project Works) and this deed;
 - (s) **(Acoustics Adviser)**: the Acoustics Adviser will perform the functions of the Acoustics Adviser or the AA under the Planning Approval (to the extent relevant to the Project Works) and this deed;
 - (t) **(Intended purpose or use)**: any reference to:
 - (i) the Project Works (including the Third Party Works);
 - (ii) the Temporary Works;
 - (iii) the D&C Phase Maintenance;
 - (iv) the Landscaping Maintenance;
 - (v) the Project Plans;
 - (vi) the SWTC;
 - (vii) the Design Documentation; or
 - (viii) any other document or thing,

or any part of any of them:

 - (ix) being fit for its purpose or for its intended purpose; or
 - (x) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use stated in, contemplated by or ascertainable prior to and at the Date of Opening Completion from:

 - (xi) the D&C Documents; or

- (xii) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change) the Change Order, the documents referred to in the Change Order and documents issued by the Principal in connection with the Change Order;
- (u) **(Information)**: any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (v) **(Project Plans)**: any obligation of the Contractor under this deed with respect to a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the Contractor to the Principal under Appendix C.1 of the SWTC in respect of which the Principal has not given a notice under section 3 of Appendix C.1 of the SWTC;
- (w) **(Terms defined in SWTC)**: references to defined terms in the SWTC will be read in accordance with the relevant interpretation section in the SWTC; and
- (x) **(Contractor's capacity)**: references to the Contractor and its Related Parties are references to the Contractor and its Related Parties in their capacities in relation to the Project.

1.3 Contra proferentem

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

1.4 Business Day

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

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

1.5 Certification

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

1.6 Ambiguous terms

- (a) **(Direction from Principal)**: If the Principal considers, or if the Contractor notifies the Principal that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any schedules, exhibits or annexures), the Principal must, subject to clause 1.7 (*Order of precedence*), direct the interpretation of this deed which the Contractor must follow.
- (b) **(Determination not required)**: The Principal, in giving a direction in accordance with clause 1.6(a), is not required to determine whether or not there is an

omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed.

- (c) **(Effect of direction)**: Any direction which the Principal gives in accordance with clause 1.6(a):
- (i) will not relieve the Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;
 - (ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
 - (iii) will not limit or otherwise affect the Principal's rights against the Contractor, whether under this deed or otherwise according to Law; and
 - (iv) must, in respect of a notice given by the Contractor under clause 1.6(a), be given within 20 Business Days of receipt of that notice.

1.7 Order of precedence

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

- (a) **(Between parts of this deed)**: if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
- (i) this deed excluding the Schedules and Exhibits;
 - (ii) Schedules 1, 10, 12, 18 and 31, and Exhibits C and H; and
 - (iii) the remaining Schedules and Exhibits;
- (b) **(Between different standards)**: to the extent that clause 1.7(a) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different codes, standards, specifications or guidelines with which the Contractor must comply, the order of precedence set out in section 1.6 of the SWTC will apply; and
- (c) **(Higher standard)**: to the extent that clauses 1.7(a) and 1.7(b) do not apply or resolve the ambiguity, discrepancy or inconsistency, that part of the deed, SWTC or Environmental Documents which prescribes or requires the highest standard of compliance, the highest quality or standard or the more onerous obligation will take precedence (unless directed otherwise by the Principal).

1.8 Severability

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

- (a) **(Legality not affected)**: that will not affect or impair:
- (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

- (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) **(Construction of provision)**: the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 1.8(b)(i), preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this deed; and
 - (B) the original effect and intent of this deed.

1.9 Electronic file

Where this deed (including the SWTC) refers to an electronic file on a storage device, such electronic files form part of this deed.

2. D&C Documents

2.1 Consent or Approvals

Unless the context requires otherwise, any endorsement, review, consent, approval or rejection by the Principal or the Independent Certifier in accordance with the D&C Documents or otherwise is solely to monitor the performance of the Contractor and will not relieve the Contractor from its total responsibility for its obligations under the D&C Documents, including the design and construction of the Project Works and the Temporary Works and the performance of the D&C Phase Maintenance and the Landscaping Maintenance.

2.2 Scope of Works and Technical Criteria

- (a) **(Compliance with SWTC)**: The Contractor must, subject to the allocation in Schedule 2 (*Allocation of responsibility for SWTC*), comply with any obligation imposed on it by the SWTC relating to the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance or the Contractor's Activities; and
- (b) **(Keep Principal informed)**: The Contractor must send a copy of any document to the Principal, which the Contractor:
 - (i) sends to the Independent Certifier in connection with the Contractor's Activities, at the same time that the Contractor sends it to the Independent Certifier; and
 - (ii) receives from the Independent Certifier in connection with the Contractor's Activities, promptly following receipt of that document from the Independent Certifier,

and keep the Principal fully informed of any other communications between the Contractor and the Independent Certifier in connection with the Contractor's Activities.

2.3 Information Documents

- (a) **(No representations by Principal):** The Information Documents are provided by or on behalf of the Principal for information only and on a non-reliance basis. The Principal does not warrant, guarantee or assume any duty of care or other responsibility for or make any representation about:
- (i) the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of the Information Documents; or
 - (ii) the feasibility or fitness for purpose of the Tender,
- whether or not the Information Documents form part of this deed (in a schedule or otherwise).
- (b) **(Warranties by Contractor):** The Contractor warrants that:
- (i) it did not and will not rely upon the Information Documents or the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of the Information Documents for the purposes of entering into the D&C Documents or carrying out the Contractor's Activities;
 - (ii) it was given sufficient opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (A) relating to the subject matter of the Information Documents; and
 - (B) for design purposes and otherwise;
 - (iii) it has sufficient information and a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the D&C Documents and assume the obligations and potential risks and Liabilities which they impose on the Contractor;
 - (iv) it enters into the D&C Documents, and assessed the risks, contingencies and other circumstances having an effect on its Tender and its obligations under the D&C Documents, based on its own investigations, enquiries, interpretations, assessments, deductions, information, determinations, skill and expertise;
 - (v) it has satisfied itself as to the correctness and sufficiency of its Tender and its allowances and contingencies for the performance of its obligations and its potential Liabilities under the D&C Documents; and
 - (vi) it is aware that the Principal has entered into the D&C Documents relying upon the warranties, acknowledgements and agreements of the Contractor in this clause 2.3 and the Procurement Process Deed Polls.
- (c) **(Release by Contractor):** To the maximum extent permitted by Law, but subject to the Contractor's express rights under this deed, the Contractor unconditionally and irrevocably releases, discharges and indemnifies the Principal from and against any Claim against, or Loss suffered or incurred by, the Principal arising in any way out of or in any way in connection with the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed by the Contractor or a failure by the Principal or any other party to provide any information to the

Contractor including to the extent such Claim or Loss arises in any way from or relates in any way to:

- (i) the accuracy, adequacy, currency, suitability, fitness for purpose, reasonableness, completeness or reliability of any of the Information Documents;
 - (ii) the reasonableness, or possibility of achievement of, any forecasts which may be included in, or which may be or are capable of being derived in any way from, any of the Information Documents; or
 - (iii) the use of any of the Information Documents in any way whatsoever in connection with the decision to enter into the D&C Documents or perform the Contractor's obligations under them.
- (d) **(Release not affected)**: The release, discharge and indemnity given by the Contractor under clause 2.3(c) will not be adversely affected in any way, including by:
- (i) any action, inaction or omission by or on behalf of the Principal in connection with the preparation and distribution of the Information Documents; or
 - (ii) any actual or constructive knowledge the Principal may have or should have had relating to the Information Documents or any of their subject matters.
- (e) **(Traffic volumes for design purposes)**: The parties acknowledge and agree that the Contractor is obliged under this deed to design and construct the Project Works to meet anticipated traffic volumes for the Motorway as detailed in the SWTC and (despite any contrary provision in the D&C Documents) is not obliged to meet (for the purposes of clause 1.2(t) (*Interpretation*) or otherwise) any other traffic volumes.
- (f) **(Rights not affected)**: Nothing in this clause 2.3 extinguishes or reduces the Contractor's express rights under this deed in relation to Unknown Site Conditions, updates to WestConnex Interface Specifications and WestConnex Interface Defects, including under clause 10.5 (*Unknown Site Conditions*).

2.4 Procurement Process Deed Polls

- (a) **(Provided by Contractor)**: The parties acknowledge and agree that the Contractor or relevant entity comprising the Contractor entered into the Procurement Process Deed Polls during the procurement process for the Contractor's Activities.
- (b) **(Deed polls not affected)**: Subject to clause 2.4(c), the D&C Documents do not extinguish or adversely affect the Procurement Process Deed Polls, and the Procurement Process Deed Polls continue to be effective and apply in addition the D&C Documents.
- (c) **(Rights not affected)**: Nothing in the Procurement Process Deed Polls extinguishes or reduces the Contractor's express rights under this deed including in relation to Unknown Site Conditions, updates to WestConnex Interface Specifications and WestConnex Interface Defects, including under clauses 10A.3 (*WestConnex interface information*) and 10A.4 (*WestConnex Interface Defects*) and 10.5 (*Unknown Site Conditions*).

3. Project Risks

Subject to the express provisions of this deed, the Contractor accepts:

- (a) **(General risks)**: all risks and any Loss it suffers or incurs associated with the Contractor's Activities;
- (b) **(Specific risks)**: without limiting clause 3(a), all risks and any Loss it suffers or incurs associated with the Contractor's Activities including:
 - (i) the cost of the Contractor's Activities, including the cost of all Subcontractors and increases in the cost of Materials, Construction Plant, Utility Services and labour required for the performance of the Contractor's Activities;
 - (ii) the performance of Subcontractors;
 - (iii) obtaining access to all areas other than the Construction Site and the occupation and use of such areas;
 - (iv) the occupation and use of the Construction Site, the Maintenance Site, the Additional Property Works Areas, the Extra Land, the WestConnex Motorways and the Motorway by the Contractor (including the risk of any Lane Occupancy Fees that may be payable in connection with such occupation or use);
 - (v) the Site Conditions encountered;
 - (vi) all information provided or not provided by the Principal about the Motorway, the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance, the Construction Site, the Maintenance Site, the Additional Property Works Areas, the Extra Land and the WestConnex Motorways;
 - (vii) traffic conditions on approach roads to the Construction Site and Extra Land (including the WestConnex Motorways), and any other difficulties with obtaining access to and from the Construction Site or Extra Land;
 - (viii) complying with all Laws, Approvals and requirements of Authorities;
 - (ix) reliance upon or the use of the Concept Design;
 - (x) providing all things necessary for the Contractor's Activities, including all Materials, Construction Plant, Utility Services and labour;
 - (xi) industrial relations issues;
 - (xii) foreign exchange movements in any currencies adverse to the Contractor;
 - (xiii) damage to the Project Works, the Temporary Works, the D&C Phase Maintenance, the Landscaping Maintenance, the Construction Site, the Maintenance Site, the Additional Property Works Areas, the Extra Land, the WestConnex Motorways or the Motorway;
 - (xiv) the time taken to achieve Opening Completion and Completion;
 - (xv) third party claims;

- (xvi) the interfaces between the Contractor and interfacing parties, and the integration of, the Motorway Works with surrounding sites, including:
 - (A) the condition of the WestConnex Motorways; and
 - (B) the performance of the WestConnex Concessionaires and their Related Parties with respect to the WestConnex Motorways and any delays in completion of the WestConnex Motorways; and
- (xvii) Liability for Taxes, including the risk that Liability for Taxes is greater than estimated by the Contractor or its advisers.

4. Conditions Precedent

4.1 Commencement of obligations

The rights and obligations of the parties under this deed (other than Day 1 Clauses which commence on the date of this deed [REDACTED]) will commence on D&C Close.

4.2 Satisfaction of conditions precedent

- (a) **(Contractor to satisfy)**: To the extent this deed does not expressly impose a more onerous requirement, the Contractor must use all reasonable endeavours to satisfy the Conditions Precedent by the Target Satisfaction Date.
- (b) **(Principal may waive)**: The Principal may waive in writing any of the Conditions Precedent.
- (c) **(Notice of satisfaction)**: The Principal must give the Contractor notice when the Principal has reasonably formed the view that a Condition Precedent has been satisfied, and the Contractor must give notice to the Principal of whether or not it agrees with such notice.
- (d) **(Notice of D&C Close)**: The Principal will notify the Contractor promptly of the date on which the Principal is satisfied that all Conditions Precedent (D&C Close) have been satisfied or unconditionally waived and that D&C Close has occurred.

4.3 Target Satisfaction Date

- (a) **(Option to terminate)**: If any of the Conditions Precedent (D&C Close) is still not satisfied (or waived under clause 4.2 (*Satisfaction of conditions precedent*)) by 11:59pm on the Target Satisfaction Date, then the Principal may terminate this deed by prior notice to the Contractor.
- (b) **(Timing of termination)**: The period of the notice referred to in clause 4.3(a) will expire 1 Business Day after 11.59 pm on the date of a notice under clause 4.3(a) and this deed will only be terminated if the Conditions Precedent have not been satisfied (or waived under clause 4.2 (*Satisfaction of conditions precedent*)) within that period.
- (c) **(Effects of termination)**: If this deed is terminated pursuant to this clause 4.3:
 - (i) the Principal must return all unconditional undertakings provided by the Contractor within 7 Business Days after the date of termination of this deed; and

- (ii) no party will have any Claim against any other party under or in respect of this deed or in respect of the reimbursement of costs or expenses or otherwise in connection with this deed or the Contractor's Activities, except for any Claim in relation to breaches of any Day 1 Clause.

4.4 Legal opinions

Prior to D&C Close, the Contractor must provide the legal opinions required by Item 43 of the Contract Particulars.

5. Compliance with Law and Approvals

5.1 Compliance with Law

- (a) **(Compliance)**: The Contractor must:
 - (i) in carrying out the Contractor's Activities, comply with;
 - (ii) ensure that its Related Parties, in carrying out the Contractor's Activities, comply with;
 - (iii) ensure that, at the Date of Opening Completion and with reference to Laws existing at that date, the Project Works comply with and are capable of continuing to comply with;
 - (iv) ensure that the Temporary Works, D&C Phase Maintenance Landscaping Maintenance comply with; and
 - (v) provide the Principal with such assistance as may reasonably be required by it to enable the Principal to comply with,

all applicable Laws (including the Heavy Vehicle National Law), including any change in Law [REDACTED] after the date of this deed and all NSW Government Policies.
- (b) **(No corruption)**: The Contractor must not engage in, and must ensure that its Related Parties in carrying out the Contractor's Activities do not engage in, any fraud, bribery or corruption.

5.2 Consents and Approvals

- (a) **(Primary Planning Approval)**: The parties acknowledge and agree that, as at the date of this deed, the Principal has received the Primary Planning Approval for the Project Works.
- (b) **(Documents for Authorities)**: In relation to any document required to be prepared pursuant to the Planning Approval which relates to the Contractor's Activities and which is also required to be submitted to an Authority, the Contractor warrants that:
 - (i) each document prepared by the Contractor or its Related Parties will comply with the EP&A Act and any other applicable legislation; and
 - (ii) it will prepare each document in accordance with Good Industry Practice.
- (c) **(Contractor compliance)**: The Contractor must:

- (i) expeditiously apply for and obtain from each relevant Authority all Approvals required to perform the Contractor's Activities (other than the Planning Approval, the EPBC Act Approval (if any) and the Approvals specified in Part A of Schedule 10 (*Approvals*));
- (ii) comply with the lawful requirements of each such Authority to permit their proper consideration of the applications for Approvals;
- (iii) comply with, carry out and fulfil, all conditions and requirements of all Approvals (including those which the Principal is expressed under the terms of the Approval to be required to comply with, carry out and fulfil) to the extent relevant to the Contractor's Activities, (other than in respect of a condition of the Planning Approval that the Contractor is not required to comply with pursuant to Part B of Schedule 10 (*Approvals*));
- (iv) in respect of any Approval relating to the Contractor's Activities, pay all fees, effect all insurances other than the Principal's Project Insurances, take reasonable steps to verify that all of the Principal's Project Insurances have been effected, provide any bonds and execute any undertakings or agreements required by any relevant Authority;
- (v) without limiting the Principal's obligation to satisfy or fulfil the conditions and requirements of the Planning Approval allocated to the Principal under Schedule 10 (*Approvals*), provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to obtain, or satisfy or fulfil the conditions and requirements of any Approvals which are:
 - (A) obtained by the Principal after the date of this deed; or
 - (B) as between the Principal and the Contractor, required to be satisfied or fulfilled by the Principal pursuant to Schedule 10 (*Approvals*),

provided that the Principal must issue a Change Order under clause 13.1 (*Principal Change Proposal*) in connection with providing such assistance to the Principal; and
- (vi) otherwise comply with clause 5.1 (*Compliance with Law*).
- (d) **(Principal is proponent)**: The Contractor acknowledges that:
 - (i) the Principal is the proponent under the EP&A Act in respect of the submission of any such document; and
 - (ii) the Principal will rely upon the Contractor's warranties in this clause 5.2.
- (e) **(Approvals under EPBC Act)**: Subject to clause 9.5(c) (*Extra Land*), but despite anything else to the contrary in the D&C Documents, the Contractor is not responsible for applying for or obtaining any Approvals under the EPBC Act [REDACTED]

5.3 WestConnex Planning Approvals

- (a) **(Contractor review)**: The Contractor acknowledges and agrees the Contractor has reviewed the WestConnex Planning Approvals as at the date of this deed.
- (b) **(Contractor compliance)**: The Contractor must comply with the WestConnex Planning Approvals to the extent relevant to the Contractor's Activities.

- (c) **(Contractor warranties):** The Contractor warrants that:
- (i) the design and construction of the Project Works and Temporary Works and the performance of the D&C Phase Maintenance and the Landscaping Maintenance will not cause the Principal or the relevant WestConnex Concessionaires to be in breach of a condition of the WestConnex Planning Approvals; and
 - (ii) in carrying out the Contractor's Activities, it will not do anything that will cause the Principal or the relevant WestConnex Concessionaires to be in breach of a condition of the WestConnex Planning Approvals.

5.4 Modifications to the Planning Approval

- (a) **(Modification Application Documents):** Subject to the terms of Part B of Schedule 10 (*Approvals*), the Contractor must:
- (i) prepare any applications, documentation, plans or reports (including any consistency assessments) required to be prepared in respect of any proposed modification to the Planning Approval relating to the Project Works (including, if applicable, the documents referred to in clause 5.2(b) (*Consents and Approvals*) and any other documents required to be submitted with the application for modification); and
 - (ii) carry out and provide to the Principal all surveys, investigations, reports and studies reasonably requested by the Principal in respect of any proposed modification to the Planning Approval relating to the Project Works, to such standard and within such time as reasonably directed by the Principal,
- (together, **Modification Application Documents**).
- (b) **(Cooperation and assistance):** The Contractor must:
- (i) cooperate with the Principal in relation to any modification to the Planning Approval; and
 - (ii) provide whatever other assistance and information the Principal reasonably requests to allow it to obtain any necessary amendments or modifications to the Planning Approval, including by attending any relevant meeting as required by the Principal and providing any information available to the Contractor or its Associates.
- (c) **(Principal's discretion):** Without limiting clauses 5.4(a) and 5.4(b), the Contractor acknowledges and agrees that:
- (i) as between the Principal and the Contractor, only the Principal is permitted to make or apply for modifications to the Planning Approval;
 - (ii) the Contractor must not make, seek or apply for any modification to the Planning Approval other than through the Principal;
 - (iii) the Contractor may submit a proposal for modification to the Planning Approval to the Principal for its review;
 - (iv) subject to clause 5.4(g), the Principal may refuse to make, seek or apply for such modification or discontinue or withdraw or change an application for such modification at any time in its sole discretion; and

(v) if the Principal does agree to a request by the Contractor to apply for a modification to the Planning Approval, the Contractor must pay to the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification to the Planning Approval instigated or requested by the Contractor.

(d) **(Contractor warranty):** The Contractor warrants that:

- (i) each Modification Application Document that it prepares 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.

(e) **(Contractor acknowledgement):** The Contractor acknowledges that:

- (i) the Principal is the proponent under the EP&A Act in respect of the submission of any Modification Application Documents; and
- (ii) the Principal will rely upon the Contractor's warranties in this clause 5.4.

(f) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

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

5.5 Planning Approval Change Events

- (a) **(Deemed Change Event):** Without limiting clause 5.5(b), to the extent a Planning Approval Change Event occurs after the date of this deed and prior to the Date of Opening Completion and requires:
 - (i) a Change to be made; or
 - (ii) a reduction in the Permitted Working Parameters or Permitted Noise and Vibration Limits,the Planning Approval Change Event will be a Deemed Change Event and clause 41.2 (*Notice of Deemed Change Events*) will apply.
- (b) **(Other claims excluded):** Except to the extent expressly stated otherwise in this clause 5.5 (*Planning Approval Change Events*), the Contractor will not be entitled to

make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

- (i) a modification to the Planning Approval; or
- (ii) a Planning Approval Change Event.

5.6 Environmental assessment

(a) **(Legal challenge)**: If there is a legal challenge brought about by way of commencement of court proceedings in relation to the environmental assessment or determination in respect of the Project, the Project Works, the Temporary Works or the Motorway under:

- (i) the EP&A Act;
- (ii) the EPBC Act; or
- (iii) any other Law,

(including a legal challenge to the Planning Approval or a stop work order issued by an Authority, [REDACTED])

(Legal Challenge), the Contractor must continue to perform its obligations under this deed unless, as a result of that Legal Challenge, it is otherwise ordered by a court or directed by the Principal.

(b) **(Principal responsible)**: Subject to clause 5.6(c), as between the Principal and the Contractor, the Principal is responsible for dealing with the Legal Challenge as it sees fit in its absolute discretion.

(c) **(Contractor assistance)**: If requested to do so by the Principal, the Contractor must provide reasonable assistance to the Principal dealing with any Legal Challenge, including by attending any relevant meetings and providing any information available to the Contractor, at the Contractor's cost.

(d) **(Suspension of Contractor's obligations)**: For the purposes of clause 5.6(a), the Principal may by notice direct the Contractor to suspend any or all of its obligations under this deed until such time as the Principal gives the Contractor further notice and the Contractor must comply with that notice.

(e) **(Exclusions)**: The Principal will have no liability to the Contractor in respect of an order by a court or direction by the Principal that the Contractor cease to perform all or part of its obligations under this deed as a result of a Legal Challenge (including under clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*)) to the extent that the Legal Challenge:

- (i) is initiated or upheld, or the court order is made, due to:
 - (A) the Contractor's failure to comply with its obligations under a D&C Document;
 - (B) a breach of the Contractor's warranties under clause 5.4(d) (*Modifications to the Planning Approval*);
 - (C) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or

- (D) a failure by the Contractor or any of its Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation; or
- (ii) relates to or arises out of or in connection with any Change proposed by the Contractor in accordance with clause 13.6 (*Change Orders at the Principal's Election*) or otherwise carried out by the Contractor without the Principal having issued a Change Order in respect of that Change.

6. Relationship of the Principal and the Contractor

6.1 Principal's Representative and Principal's Surveillance Officer

- (a) **(Appointment of Principal's Representative):** The Principal:
 - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
 - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
 - (iii) must give notice of all appointments under clauses 6.1(a)(i) and 6.1(a)(ii) to the Contractor.
- (b) **(Delegation by Principal's Representative):** The Principal's Representative may:
 - (i) by notice to the Contractor appoint persons to exercise any of the Principal'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 6.1(b)(i) by notice to the Contractor.
- (c) **(Principal's Representative retains functions):** The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 6.1(b).
- (d) **(Sub-delegation by appointee):** An appointee of the Principal's Representative under clause 6.1(b) may:
 - (i) by notice to the Contractor 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 6.1(d)(i) by notice to the Contractor.
- (e) **(Appointment of Principal's Surveillance Officer):** The Principal's Representative may:
 - (i) by written notice to the Contractor appoint one or a number of officers to perform the functions identified in clause 6.1(f) (each a Principal's Surveillance Officer);

- (ii) revoke or vary any appointment under clause 6.1(e)(i) by notice in writing to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a Principal's Surveillance Officer to exercise the function under clause 6.1(e)(i).
- (f) **(Functions of Principal's Surveillance Officer):** The functions of a Principal's Surveillance Officer may be all or any of the following:
- (i) monitoring the Contractor's Activities, Project Works and Temporary Works including:
 - (A) product quality;
 - (B) quality management and verification;
 - (C) environmental management;
 - (D) work health and safety;
 - (E) Chain of Responsibility Provisions compliance;
 - (F) control of traffic;
 - (G) community relations;
 - (H) defects and defect rectification;
 - (I) compliance with Interface Agreements; and
 - (J) commissioning and testing;
 - (ii) monitoring the Contractor's compliance with the D&C Documents;
 - (iii) monitoring the Independent Certifier's surveillance of the Contractor's Activities, Project Works Temporary Works, D&C Phase Maintenance and the Landscaping Maintenance; and
 - (iv) reporting the findings of its monitoring activities under clauses 6.1(f)(i), 6.1(f)(ii) and 6.1(f)(iii) from time to time to the Principal.
- (g) **(Agent of Principal):** The parties acknowledge and agree that:
- (i) the Principal's Representative and Principal's Surveillance Officers act at all times as the servant or agent of the Principal and are subject to the directions of the Principal and will act solely in the interests of the Principal;
 - (ii) the Principal's Representative may exercise the rights, powers and functions of the Principal under this deed;
 - (iii) subject to clauses 6.1(g)(iv) and 6.1(g)(v), a Principal's Surveillance Officer is not entitled to issue a Direction to the Contractor, and if a Principal's Surveillance Officer purports to do so:
 - (A) the Contractor must not comply with, and the Principal is not bound by, the purported Direction; and

- (B) the Principal will not be liable for any Claim arising out of or in connection with any such purported Direction;
- (iv) a Principal's Surveillance Officer is entitled to issue a Direction to the Contractor under clause 7.8(b) (*Work health and safety*) and the Contractor must comply with any Direction by a Principal's Surveillance Officer given or purported to be given under clause 7.8(b) (*Work health and safety*); and
- (v) a Principal's Surveillance Officer is entitled to issue a Direction to the Contractor under this deed on behalf of the Principal in relation to a Defect or failure to comply with a requirement of this deed relating to quality, health and safety or the Environment.
- (h) **(No obligation to review)**: Unless expressly provided otherwise in this deed, a representative of the Principal appointed pursuant to this clause 6.1 is not obliged to review, or comment upon, any documentation or information which the Contractor gives to the Principal in respect of the Contractor's Activities.

6.2 Contractor's representatives

- (a) **(Representative required)**: The Contractor must ensure there is a Contractor's Representative for the purposes of this deed who will act as a representative of and be authorised to act on behalf of the Contractor in discharging the Contractor's functions under this deed.
- (b) **(Multiple representatives)**: The Contractor may nominate more than one person as the Contractor's Representative, and if so, it must in its notice specify the functions which each person is authorised to discharge. The Contractor may not nominate more than one person to discharge the same function or functions under this deed.
- (c) **(Contractor may substitute)**: The Contractor may by notice to the Principal substitute the Contractor's Representative(s) with another person(s).

6.3 Authorities

- (a) **(No unlawful restriction)**: The D&C Documents will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) **(Functions under law)**: The Contractor acknowledges and agrees that, without limiting clause 6.3(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed or any D&C Document and will not entitle the Contractor to make any Claim against the Principal.
- (c) **(Liability not affected)**: Clauses 6.3(a) and 6.3(b) do not limit any Liability which the Principal would have had to the Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 6.3(a) and 6.3(b).
- (d) **(Other Authorities)**: The Contractor acknowledges and agrees that:
 - (i) there are Authorities (other than the Principal) with jurisdiction over aspects of the Contractor's Activities, parts of the Construction Site and other areas affected by the Contractor's Activities (including Extra Land);

- (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers);
- (iii) despite any other provision of this deed, the Principal is not authorised to exercise any power, function or duty within the responsibility of any other Authority;
- (iv) despite any obligation under this deed that the Principal use its best endeavours or reasonable endeavours to do anything or bring about any outcome under any D&C Document, the Principal is not obliged to:
 - (A) interfere with or influence the exercise by any Authority of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that it regards as not being in the public interest; or
 - (C) develop policy or legislate by reference only, or predominantly, to the interests of the Project Works or Contractor's Activities; and
- (v) except to the extent expressly stated otherwise in this deed, it accepts the full risk of all occurrences of the kind referred to in clause 6.3(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

6.4 Environmental Representative

- (a) **(Engagement):** The Environmental Representative has been or will be engaged by the Principal and the Contractor on the terms of the Deed of Appointment of Environmental Representative. The Contractor must execute a Deed of Appointment of Environmental Representative upon request by the Principal. The cost of engaging the Environmental Representative will be shared equally between the Principal and the Contractor.
- (b) **(Requirements):** The Contractor acknowledges that the Environmental Representative is:
 - (i) obliged to act independently of the Principal, 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 oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval; and
 - (iv) required to advise the Principal on the Contractor's compliance with the Planning Approval.

- (c) **(Information and access)**: The 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 or the Principal 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 Principal.
- (d) **(Requirements and functions)**: The Contractor must:
- (i) comply 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 the Environmental Representative in the performance of any of its functions in connection with the Planning Approval.
- (e) **(No Claim)**: 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 the Contractor to make any Claim against the Principal.

6.5 Acoustics Adviser

- (a) **(Engagement)**: The Acoustics Adviser has been engaged by the Principal on the terms of the Deed of Appointment of Acoustics Adviser. The Contractor must execute the Acoustics Adviser Appointment Accession Deed on or before the date of this deed to become a party to the Deed of Appointment of Acoustics Adviser. The cost of engaging the Acoustic Adviser will be shared equally between the Principal and the Contractor.
- (b) **(Requirements)**: The Contractor acknowledges that the Acoustics Adviser is:
- (i) obliged to act independently of the Principal, the Contractor and any of their subcontractors; and
 - (ii) required to discharge certain functions as identified in the Planning Approval and in accordance with the Deed of Appointment of Acoustics Adviser.
- (c) **(Information and access)**: The Contractor must provide the Acoustics Adviser with all information and documents and allow the Acoustics Adviser:
- (i) to attend meetings; and
 - (ii) to access such premises,

as may be:

- (iii) necessary or reasonably required by the Acoustics Adviser or the Principal to allow the Acoustics Adviser to perform its obligations under the Deed of Appointment of Acoustics Adviser; or
 - (iv) lawfully requested by the Acoustics Adviser or directed by the Principal.
- (d) **(Requirements and functions)**: The Contractor must:
- (i) comply with the lawful requirements of the Acoustics Adviser, including so as to allow the Acoustics Adviser to discharge any functions of the Acoustics Adviser provided for in the Planning Approval; and
 - (ii) not interfere with or improperly influence the Acoustics Adviser in the performance of any of its functions in connection with the Planning Approval.
- (e) **(No Claim)**: Nothing that the Acoustics Adviser does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of the Acoustics Adviser will entitle the Contractor to make any Claim against the Principal.

6.6 Project Groups

- (a) **(Senior Project Group)**: A Senior Project Group will be established, and the parties must participate in the Senior Project Group, in accordance with section 3.18.4 of the SWTC.
- (b) **(Project Group)**: A Project Group will be established, and the parties must participate in the Project Group, in accordance with section 3.18.1 of the SWTC.

6.7 Document management and transmission

- (a) **(Use of PDCS)**: Without limiting clause 44.1 (*How to give a notice*), the Contractor must:
 - (i) implement and use the PDCS to manage and transmit all documentation connected with the Contractor's Activities in accordance with the processes, procedures and systems in the SWTC or as otherwise reasonably required by the Principal;
 - (ii) align its document management and quality processes to complement and utilise the functions and features of the PDCS;
 - (iii) use the PDCS mail module for all correspondence relating to the Contractor's Activities between the Contractor and the Principal;
 - (iv) upload all Design Documentation and other documentation which is required for the performance of the Contractor's Activities to the PDCS; and
 - (v) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (b) **(Principal's documents)**: Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor to the Principal on demand in writing, provided that the Contractor is not required to return a document to the Principal whilst the document is necessarily required to enable the Contractor to perform the Contractor's Activities in accordance with this deed. The

documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Contractor's Activities.

- (c) **(Records)**: The Contractor must keep all the Contractor's records relating to the Contractor's Activities in a secure and fire proof storage.
- (d) **(No Claim)**: The Contractor is not entitled to make, and the Principal is not liable for, any Claim arising out of or in any way in connection with complying with the Contractor's obligations under this clause 6.7.
- (e) **(No virus or malicious code)**: The Contractor must ensure that any documentation that it provides to the Principal 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 the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

7. Contractor's Fundamental Obligations

7.1 Contractor's general obligations

- (a) **(Contractor's Activities)**: The Contractor must carry out the Contractor's Activities in accordance with the D&C Documents and Good Industry Practice, including:
 - (i) investigating, planning, designing, constructing and commissioning the Project Works and the Temporary Works;
 - (ii) 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;
 - (iii) performing the D&C Phase Maintenance and the Landscaping Maintenance in accordance with this deed; and
 - (iv) unless otherwise expressly permitted by this deed, keeping all traffic lanes of the Motorway open to the public for the safe, efficient and continuous passage of vehicles at all times when undertaking Contractor's Activities after the Date of Opening Completion.
- (b) **(Contractor warranties)**: The Contractor warrants that:
 - (i) the Project Works and Temporary Works will be designed so that, when constructed in accordance with that design, they will satisfy the requirements of this deed;
 - (ii) the Project Works and Temporary Works will be completed in accordance with, and at all relevant times satisfy the requirements of, this deed;
 - (iii) the Project Works, upon Opening Completion will be fit for their intended purposes;

- (iv) the Project Works thereafter will be capable of remaining fit for their intended purposes at all relevant times during the Warranty Life, provided they are operated and maintained in accordance with the operation and maintenance requirements in the SWTC, original equipment manufacturer requirements and usual industry practice for operation and maintenance of similar works;
 - (v) the Temporary Works will at all relevant times be fit for their intended purposes;
 - (vi) the D&C Phase Maintenance and the Landscaping Maintenance will be completed in accordance with, and satisfy the requirements of, this deed;
 - (vii) upon Opening Completion, the design life of each part of the Project Works will meet or exceed the design life standards specified in section 5.9 of the SWTC;
 - (viii) any modification to the WestConnex Assets and Systems by the Contractor will be completed in accordance with, and satisfy the requirements of, this deed;
 - (ix) where the Contractor integrates the Motorway Works with the WestConnex Assets and Systems, it will be completed in accordance with, and upon Opening Completion satisfy the requirements of, this deed; and
 - (x) upon Opening Completion, the Motorway Works comply with and are capable of continuing to comply with all relevant Laws and Approvals, including relevant Planning Approval conditions, to the extent required by this deed and with reference to Laws and Approvals existing at Opening Completion.
- (c) **(Contractor's Related Parties):** The Contractor is liable to the Principal for the acts and omissions of the Contractor's Related Parties and their respective employees and agents as if such acts or omissions were acts or omissions of the Contractor.

7.2 Subcontracts

- (a) **(Liability not reduced):** The engagement by the Contractor of any Subcontractor to perform some or all of the Contractor's obligations under this deed will not limit or affect the Contractor's obligations or Liability under any D&C Document.
- (b) **(Principal's awareness):** The Principal and the Contractor acknowledge and agree that the Contractor's obligations under this deed are not lessened or otherwise affected by the Principal's awareness of the terms of any Subcontract.
- (c) **(Notice):** The Contractor must notify the Principal of any proposed contract to which the Contractor is a party with a contract sum of more than [REDACTED] in respect of the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance, and if the Principal requires, give the Principal access to, or a copy of any such contract (including to all plans, specifications and drawings relating to that contract but excluding confidential pricing information).
- (d) **(Novation):** The Contractor acknowledges and agrees that if this deed is terminated or rescinded or otherwise comes to an end before it has been fully performed for any reason, or the Principal takes over the Contractor's Activities, the Contractor must, after the Principal has given a Direction to do so, consent to a

novation of any Subcontract to the Principal and execute a deed of novation in the form reasonably required by the Principal.

- (e) **(Significant Subcontracts)**: The Contractor must not:
- (i) enter into (except in accordance with clause 22.4B(1) (*Permanent Power Supply Work*));
 - (ii) terminate, surrender, rescind or accept the repudiation of;
 - (iii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
 - (iv) where it may impact the rights or increase the liabilities or obligations of the Principal:
 - (A) enter into any agreement or arrangement which affects the operation or interpretation of; or
 - (B) make or permit any amendment to, or replacement of or waiver of a provision of,

a Significant Subcontract without obtaining the Principal's prior written consent (which consent must not be unreasonably withheld or delayed).

- (f) **(Subcontract requirements)**: The Contractor must:
- (i) in respect of each Subcontract to which the Contractor is a party (including Significant Subcontracts and regardless of the contract value):
 - (A) give the Principal details of the Subcontract, including the name of the Subcontractor and the goods or services being provided under the Subcontract;
 - (B) satisfy itself and warrants to the Principal that the proposed Subcontractor has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the work to be subcontracted; and
 - (C) include the provisions required by Part A of Schedule 8 (*Subcontractor Requirements*) in the Subcontract;
 - (ii) without limiting clause 7.2(f)(i), in each Subcontract to which the Contractor is a party with a contract value less than [REDACTED] (excluding GST), include a provision requiring the Contractor to pay the Subcontractor within 30 Business Days after the Subcontractor has claimed payment in accordance with the Subcontract; and
 - (iii) without limiting clause 7.2(f)(i), in each Subcontract to which the Contractor is a party with a contract value of [REDACTED] (excluding GST) or more, include the provisions required by Part B of Schedule 8 (*Subcontractor Requirements*) in the Subcontract,

and, in each case, include a clause to the same effect as this clause 7.2(f) and 7.2(j) (including this paragraph) which is binding on the Subcontractor, and provide evidence of this to the Principal when requested by the Principal.

- (g) **(Contractor to provide proof of payment)**: The Contractor agrees that if required by the Principal it will, at no additional cost and to the Principal's reasonable satisfaction:
- (i) implement a Subcontractors Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors Proof of Payment Procedure and which are identified in Schedule 29 (*Subcontractors Proof of Payment Procedure*).
- (h) **(Additional proof of payment requirements)**: If required to implement the Subcontractors Proof of Payment Procedure, in addition to implementing the process set out in Schedule 29 (*Subcontractors Proof of Payment Procedure*), the Contractor acknowledges and agrees:
- (i) to pay, within 3 Business Days of receiving payment of a Payment Amount, all outstanding amounts due and payable to Subcontractors listed in the Supporting Statement and Contractor's Statement for each of its Payment Claims;
 - (ii) within 5 Business Days of receiving payment of a Payment Amount to:
 - (A) provide proof, to the Principal's satisfaction, of payment of all outstanding amounts due and payable to Subcontractors; and
 - (B) confirm that no monies due and payable remain outstanding to Subcontractors in respect of each Payment Claim;
 - (iii) that if it fails to provide the required proof of payment:
 - (A) it will issue, no later than the 5th Business Day from receipt of payment from the Principal, an irrevocable payment direction in the form of an irrevocable authority in writing to the Principal in favour of each unpaid Subcontractor identified on the Supporting Statement and Contractor's Statement; and
 - (B) that the Principal will be entitled to rely on any irrevocable payment directions as a reason for withholding an amount from the Contractor in the next month's Payment Schedule; and
 - (iv) that if it fails to either provide the required proof of payment or issue an irrevocable payment direction as required by this clause 7.2(h) the Principal may have recourse to the Security Bonds.
- (i) **(Non-payment of Subcontractors)**: Without limiting clauses 22.15 (Payment of subcontractors) and 22.16 (*Security of Payment Act*), the Contractor must immediately inform the Principal and provide a copy of the relevant documents, if it receives:
- (i) a Contractor's Statement or Supporting Statement with a payment claim that identifies as unpaid any Subcontractor to another Subcontractor;
 - (ii) a payment withholding request (as defined in and served under the Security of Payment Act); or
 - (iii) any other written advice received by the Contractor in relation to the non-payment of a Subcontractor.

- (j) **(Subcontractor to provide proof of payment):** The Contractor agrees that if required by the Principal it will, at no additional cost and to the Principal's reasonable satisfaction, instruct a Subcontractor with which it has a Subcontract with a value of [REDACTED] (excluding GST) or more but excluding any Exempt Subcontractor to:
- (i) implement a Subcontractors Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors Proof of Payment Procedure.
- (k) **(Disputes with Subcontractors):** The Contractor must:
- (i) promptly notify the Principal in writing of any material dispute between it and a Subcontractor in connection with the Contractor's Activities;
 - (ii) promptly give the Principal general details of any such dispute, including the amount in dispute (to the extent known);
 - (iii) keep the Principal regularly updated regarding any such dispute and the resolution of it; and
 - (iv) promptly give the Principal any additional information regarding any such dispute reasonably requested by the Principal (except to the extent subject to legal professional privilege).
- (l) **(Exempt Subcontractors):** The Contractor is only required to use its best endeavours to comply with clauses 7.2(f)(i)(C), 7.2(f)(iii) and 7.2(j) in relation to an Exempt Subcontractor.

7.3 Utility Services

- (a) **(Obligations):** The Contractor must:
- (i) obtain and pay for any Utility Services and all connections for all Utility Services the Contractor needs to perform its obligations under the D&C Documents, and if required, install meters to record the Contractor's usage of Utility Services;
 - (ii) investigate, protect, relocate, remove, modify, support, reinstate and provide for all Utility Services necessary for the Contractor to comply with its obligations under the D&C Documents; and
 - (iii) ensure there are no unplanned disruptions to the Utility Services in carrying out the Contractor's 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 Contractor's Activities.
- (b) **(Indemnity):** The Contractor, to the extent not prohibited by Law, indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in connection with 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 any act or omission of the Contractor or its Related Parties.
- (c) **(Exceptions):** Without limiting clause 7.3(a):

- (i) clause 10.5 (*Unknown Site Conditions*) will apply to Unknown Utility Services; and
- (ii) clause 22.4 (*Non-Contestable Utilities Work*) will apply to Non-Contestable Utilities Work.

7.4 Project Plans

- (a) **(Contractor to prepare)**: The Contractor must develop, complete, review and update all Project Plans in accordance with this deed.
- (b) **(Restrictions on use)**: Unless otherwise agreed in writing by the Principal, the Contractor must only use parts of the Project Plans which:
 - (i) have been submitted to the Principal and the Independent Certifier in accordance with the Contractor Documentation Schedule; and
 - (ii) the Contractor Documentation Schedule permits the Contractor to use.
- (c) **(Contractor warranties)**: The Contractor warrants to the Principal that:
 - (i) each Project Plan will be fit for its intended purpose;
 - (ii) the Contractor's Activities will be carried out in accordance with the Project Plans which the Contractor is entitled to use under clause 7.4(b); and
 - (iii) the performance of the Contractor's Activities in accordance with the Project Plans which the Contractor is entitled to use under clause 7.4(b) will enable the Contractor to fulfil its obligations under this deed.
- (d) **(No duty to review)**: No review of, comments upon or notice in respect of any Project Plan, or any other act or omission of the Principal or the Independent Certifier regarding any Project Plan will lessen or otherwise affect:
 - (i) the Contractor's Liabilities or responsibilities whether under the D&C Documents or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under the D&C Documents or otherwise according to Law.

7.5 Long service levy

Before any construction work commences under this deed, the Contractor must:

- (a) **(Payment)**: pay (or procure payment) to the Long Service Corporation being the corporation of the name constituted by the *Long Service Corporation Act 2010* (NSW) or that body's agent all amounts due and payable for the long service levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) **(Evidence)**: produce to the Principal the documents evidencing payment of the amounts referred to in clause 7.5(a).

7.6 Control of traffic

- (a) **(Contractor responsible)**: Without limiting its obligations under clause 18.13 (*Access for defects*), before the Contractor undertakes any Project Works,

Temporary Works, D&C Phase Maintenance or Landscaping Maintenance which would have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any road, the Contractor must undertake all matters necessary to carry out such Project Works, Temporary Works, D&C Phase Maintenance or the Landscaping Maintenance, including:

- (i) obtaining all relevant Approvals (subject to clause 5.2 (*Consents and Approvals*));
 - (ii) preparing and submitting a traffic management plan for each stage of the Project Works (**Project Works Traffic Management Plan**) to the Sydney Coordination Office, the TMC and the Principal:
 - (A) in a timely manner (and in any event at least 25 Business Days prior to the commencement of physical works for that stage) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the Project Works Traffic Management Plan prior to the commencement of physical works for that stage; and
 - (B) in accordance with Good Industry Practice;
 - (iii) preparing and submitting all applications for a ROL to TMC or the relevant local council (as applicable) (with a copy to the Principal):
 - (A) in a timely manner (and in any event at least 10 Business Days prior to any road occupancy that requires a ROL or any shorter period agreed by the Principal in writing) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the ROL prior to any road occupancy that requires a ROL;
 - (B) in accordance with the requirements of Appendix C.4 of the SWTC; and
 - (C) in accordance with Good Industry Practice;
 - (iv) using all reasonable endeavours in accordance with Good Industry Practice to agree and obtain approved Project Works Traffic Management Plans and ROLs, or where it has been unable to agree and obtain approved Project Works Traffic Management Plans and ROLs, providing the Principal with evidence of the reasonable endeavours taken by the Contractor to obtain them;
 - (v) complying with road occupancy requirements, including all Project Works Traffic Management Plans and ROLs; and
 - (vi) accepting and implementing the reasonable requirements of the parties who have input into the approval of the Project Works Traffic Management Plans (once approved, the **Approved Project Works Traffic Management Plans**) and ROLs.
- (b) **(Traffic management):**
- (i) The Contractor is responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the Contractor's Activities.
 - (ii) The Contractor must manage all such traffic to ensure:

- (A) its continuous, safe and efficient movement;
 - (B) 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) The Contractor 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) The Contractor must at all times comply with the approved construction traffic management plan prepared in accordance with the Planning Approval and the requirements of the SWTC and any Interface Agreement in respect of road traffic management and safety.
- (v) The Contractor must comply with the directions of any relevant Authority (including the Sydney Coordination Office, the TMC and the Principal in its capacity as an Authority) and the Principal with respect to such management and safety.
- (vi) The Contractor acknowledges and agrees that the Sydney Coordination Office and the TMC each exercise their own discretion in the exercise of delegated statutory functions and powers of the Principal, and that nothing that the Sydney Coordination Office or the TMC do, fail to do or purport to do pursuant to such delegation (including a decision not to grant a ROL) will:
- (A) be considered as an act or omission of the Principal;
 - (B) constitute a breach of this deed by the Principal; or
 - (C) entitle the Contractor to make any Claim.
- (c) **(WestConnex Motorways):** The Contractor must carry out the Project Works, the Temporary Works and the Contractor's Activities in a way which minimises interference with the operation and use of the WestConnex Motorways, including by:
- (i) scheduling work arising out of or in connection with the Project Works, the Temporary Works and the Contractor's Activities at a time and in a way that minimises the impact on traffic on the WestConnex Motorways;
 - (ii) not closing or materially reducing the carriageway, any lane or any ramps of the WestConnex Motorways in connection with the Project Works, the Temporary Works and the Contractor's Activities (except to the extent permitted under this deed);
 - (iii) ensuring that any Project Works, Temporary Works or Contractor's Activities that involve construction activities on the WestConnex Motorways are carried out so as to minimise any adverse effect on the free flow of traffic on all lanes on the carriageway and all ramps of the WestConnex Motorways to the extent reasonably practicable having regard to the nature of the works or activities being carried out from time to time;
 - (iv) ensuring that there is no Planned Lane Closure of a lane on the carriageway or any ramp of the WestConnex Motorways during a Peak Period at any time

in connection with the Project Works, Temporary Works and the Contractor's Activities;

- (v) using its best endeavours to ensure there is no Unplanned Lane Closure of a lane on the carriageway or any ramp of the WestConnex Motorways at any time in connection with the Project Works, the Temporary Works and the Contractor's Activities; and
 - (vi) complying with clause 9.10 (*Access to WestConnex Assets and Systems*).
- (d) **(Minimise disruption):** The Contractor must:
- (i) give the public sufficient notice of the arrangements agreed under clause 7.6(a); and
 - (ii) in designing and implementing the Project Works Traffic Management Plans and all aspects of the Contractor's Activities, seek to minimise delays and disruption to traffic to the extent consistent with the performance of the Contractor's Activities in accordance with this deed.
- (e) **(Principal may re-open):** Despite any ROL issued for any lane or shoulder closure, the Principal may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder. Except as expressly stated in this deed, the Contractor is not entitled to make any Claim against the Principal in respect of such direction.

7.7 Principal contractor

- (a) **(Definitions):** In this clause 7.7 and clause 7.8 (*Work health and safety*), the terms "principal contractor", "workplace", "construction project", "high risk construction work" and "construction work" have the same meaning as assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed, the Project Works and the Temporary Works are taken to be part of the same "construction project".
- (b) **(Engagement and authority):** For the purposes of the WHS Legislation:
- (i) the Principal engages the Principal Contractor as the principal contractor under the WHS Legislation in respect of the construction project(s) that comprise the Contractor's Activities and the Principal Contractor accepts such engagement; and
 - (ii) the Principal authorises the Principal Contractor to have management or control of each workplace at which the construction project(s) that comprise(s) the Contractor's Activities is to be carried out, and to discharge the duties of a principal contractor under the WHS Legislation.
- (c) **(Compliance):** The Contractor must ensure that the Principal Contractor carries out and complies with its obligations as principal contractor under the WHS Legislation in respect of the engagement referred to in clause 7.7(b). If the Principal Contractor fails to comply with any of its obligations in clause 7.7(b) or if for any reason the engagement of the Contractor as the principal contractor is not effective, the Principal may either itself carry out the Contractor's obligations or have the Principal Contractor's obligations as principal contractor carried out by others, and the cost incurred by the Principal in carrying out such obligations or having others carry out such obligations will be a debt due and payable from the Contractor to the Principal.

- (d) **(Engagement and duties):** The Contractor acknowledges and agrees that:
- (i) the Principal has engaged the Principal Contractor as the principal contractor in respect of the construction project(s) that comprises the Contractor's Activities; and
 - (ii) without limiting this clause 7.7, the Principal Contractor has undertaken to discharge the duties imposed on a principal contractor by the WHS Legislation in respect of the construction project(s) that comprises the Contractor's Activities.
- (e) **(Term of engagement):** The Principal Contractor's engagement and authorisation as principal contractor pursuant to clause 7.7(b) and the performance of its obligations under clause 7.7(b) will continue:
- (i) subject to clause 7.7(e)(ii), until the earlier of:
 - (A) the termination of this deed;
 - (B) the Date of Opening Completion; and
 - (C) in respect of each discrete part of the Third Party Works, the point in time when:
 - (aa) if the Third Party Works are Local Area Works (other than Bayside Council Works) or Utility Service Works, the Principal and the Independent Certifier have been provided with a copy of the notice referred to in clause 18.7(a)(ii) (*Local Area Works*) or 18.8(a)(ii) (*Utility Service Works*) (as applicable); or
 - (bb) if the Third Party Works are Property Works, the Principal has been provided with a certificate or statement referred to in clause 18.9(a)(ii) (*Property Works*),
 (unless sooner revoked by the Principal); and
 - (ii) in respect of any construction work the subject of clauses 27.1(c) (*Risk of loss or damage*) or 27.1(d) (*Risk of loss or damage*) or rectification work carried out by the Contractor under clause 18.2(a) (*Principal's Direction*) which is construction work, during the period any such construction work is carried out, unless an O&M Contractor has possession of the part of the Construction Site where such construction work is carried out at the time the construction work is carried out, in which case:
 - (A) the Principal Contractor's engagement and authorisation as principal contractor under clause 7.7(b) or the performance of its obligations under clause 7.7(b) will end immediately before any construction work is commenced; and
 - (B) the O&M Contractor will be the principal contractor for any construction project that the construction work comprises.
- (f) **(Authority and licences):**
- (i) The Contractor must ensure that if any Law, including in the State or Territory in which the Project Works, the Temporary Works, the D&C Phase

Maintenance or the Landscaping Maintenance are situated or being carried out (as the case may be) requires that:

- (A) a person 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;
 - (B) a person 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; and
 - (C) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed.
- (ii) The Contractor must not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of clause 7.7(f)(i) (as applicable) are met.
 - (iii) The Contractor must, if requested by the Principal 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 the Principal before the Contractor or a Subcontractor (as the case may be) commences such work.
- (g) **(Engagement not effective):** If the engagement of the Principal Contractor as principal contractor under this deed is not effective for any reason, the Contractor 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 this deed (except to the extent the Principal does so under clause 7.7(c)).
 - (h) **(O&M Contractors' requirements):** The Contractor must, and must ensure its Subcontractors and their respective employees and agents, while they are carrying out any Contractor's Activities on the Maintenance Site or a maintenance site in respect of the WestConnex Motorways:
 - (i) subject to clause 7.7(h)(iii), comply with any site safety regulations, rules and all directions of the O&M Contractors or relevant WestConnex O&M Contractor (as applicable) with respect to work health and safety, including those described in clause 7.7(i);
 - (ii) comply in a timely manner with directions of the O&M Contractors or relevant WestConnex O&M Contractor (as applicable) so that the O&M Contractors and WestConnex O&M Contractors can discharge their obligations as principal contractors;
 - (iii) consult, cooperate and coordinate activities with the O&M Contractors, WestConnex O&M Contractors, and all other persons who have a work health and safety duty in relation to the same matter, including by entering into and complying with a safety interface;
 - (iv) subject to clause 7.7(h)(iii), comply with the work health and safety plan(s) prepared by the relevant O&M Contractor or relevant WestConnex O&M

Contractor (as applicable) while carrying out any Contractor's Activities on the Maintenance Site or the maintenance sites in respect of the WestConnex Motorways (as applicable); and

- (v) subject to clause 7.7(h)(iii), where high risk construction work is to be carried out in the performance of the Project Works and Temporary Works on the Maintenance Site or the maintenance sites in respect of the WestConnex Motorways (as applicable):
 - (A) prepare or procure its Subcontractors to prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (B) provide a copy of the safe work method statement to the relevant O&M Contractor or relevant WestConnex O&M Contractor (as applicable) prior to the commencement of high risk construction work;
 - (C) revise or procure its Subcontractors to revise the safe work method statement in accordance with WHS Legislation;
 - (D) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (E) where so directed by an O&M Contractor or a WestConnex O&M Contractor, suspend the performance of any high risk construction work.
- (i) **(O&M Contractor as principal contractor):** The Contractor, while carrying out any Contractor's Activities on the Maintenance Site or the maintenance sites in respect of the WestConnex Motorways acknowledges that:
 - (i) an O&M Contractor or a WestConnex O&M Contractor (as applicable) has been engaged by the Principal or a WestConnex Concessionaire (as applicable) as principal contractor for the purposes of the WHS Legislation and is authorised by the Principal to have management and control of the Maintenance Site in respect of the Motorway or the maintenance sites in respect of the WestConnex Motorways (as applicable) for the purpose of discharging the duties imposed on a principal contractor to the extent that the O&M Contractor's work or WestConnex O&M Contractor's work (as applicable) includes construction works;
 - (ii) an O&M Contractor or a WestConnex O&M Contractor (as applicable) may exclude the Contractor, any of its Subcontractors and their respective employees and agents from the Maintenance Site or the maintenance sites in respect of the WestConnex Motorways (as applicable) for work health and safety reasons;
 - (iii) an O&M Contractor or a WestConnex O&M Contractor (as applicable) may direct the Contractor, any of its Subcontractors and their respective employees and agents to perform or not perform certain acts in the Maintenance Site or the maintenance sites in respect of the WestConnex Motorways (as applicable) in performing its role as principal contractor or for work health and safety reasons; and
 - (iv) except as expressly stated in this deed, the Contractor is not entitled to make any Claim against the Principal in respect of any such direction.

7.8 Work health and safety

- (a) **(Manner of performance)**: The Contractor must carry out the Contractor's Activities:
- (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) **(Work directions)**: If there is a risk of injury to people or damage to property arising from the Contractor's Activities:
- (i) the Principal's Representative or Principal's Surveillance Officers may direct the Contractor to change its manner of working or to cease working to minimise that risk; and
 - (ii) the Contractor must, at its cost, comply with any direction by the Principal's Representative or Principal's Surveillance Officers under clause 7.8(b)(i).
- (c) **(WHS requirements)**: The Contractor must:
- (i) ensure that in carrying out the Contractor's Activities:
 - (A) it complies with all Laws and other requirements of this deed for work, health, safety and rehabilitation management;
 - (B) all Subcontractors and consultants engaged by the Contractor comply with their respective obligations under the WHS Legislation; and
 - (C) it complies with its 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 a Corporate WHS Management System which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and WHS Management Systems and Auditing Guidelines;
 - (iii) exercise and fulfil, or procure that the Principal Contractor 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 the Principal to satisfy its obligations under the WHS Legislation in connection with the Construction Site;
 - (iv) notify the Principal 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 Contractor's Activities;
 - (v) institute 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 the Principal with the written assurances referred to in clause 7.8(c)(v), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (vii) provide the Principal 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 7.7 (*Principal contractor*) and this clause 7.8) or any other relevant matters as the Principal may reasonably require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
 - (viii) cooperate with the Principal 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 the Principal in carrying out the Contractor's Activities to enable the Principal to discharge its duties under the WHS Legislation;
 - (x) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (xi) ensure that each Subcontract includes provisions equivalent to this clause 7.8.
- (d) **(Indemnity)**: To the extent not prohibited by Law, the Contractor indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
- (i) the failure of the Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under WHS Legislation; or
 - (ii) the Contractor's failure to otherwise comply with clause 7.7 (*Principal contractor*) or this clause 7.8,

provided that in respect of clause 7.8(d)(i), to the extent the appointment or engagement of the Principal Contractor as principal contractor is revoked, the Contractor indemnifies the Principal (to the extent not prohibited by Law) from and against any Claim against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a failure by the Principal Contractor referred to in clause 7.8(d)(i) before that revocation.

7.9 WHS Management Plan

- (a) **(Condition precedent to access)**: The Contractor acknowledges that preparation of the WHS Management Plan in accordance with Appendix C.1 of the SWTC is a condition precedent to the commencement of the Principal's obligations to provide access under clause 9.1 (*Construction Site*).
- (b) **(Requirements)**: Without limiting any requirement of the WHS Legislation or this deed, the WHS Management Plan must:
 - (i) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities, the Project Works, the Temporary Works, the D&C Phase Maintenance and the Landscaping Maintenance from a work health and safety perspective;

- (ii) describe how the Contractor proposes to ensure that the Contractor's Activities, the Project Works, the Temporary Works, the D&C Phase Maintenance and the Landscaping Maintenance 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 "Project WHS Management Plan" set out in the Office of the Federal Safety Commissioner's WHS Management Systems and Auditing Guidelines.
- (c) **(Records)**: The Contractor must document and maintain detailed records of inspections or audits undertaken as part of the WHS Management Plan.
 - (d) **(Implement)**: The Contractor must carry out the Contractor's Activities in accordance with, and otherwise implement, the latest WHS Management Plan.

7.10 Site induction

- (a) **(Contractor to provide)**: Without limiting the Contractor's obligations under clause 5.2(c) (*Consents and Approvals*) to comply with the conditions and requirements of all Approvals, the Contractor must:
 - (i) provide safety and environmental site induction for persons nominated by the Principal on the Construction Site and for all personnel directly or indirectly engaged by the Contractor and requiring access to the Construction Site, any Extra Land and any other land upon which the Contractor's 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) **(Induction requirements)**: The induction must:
 - (i) comply with all applicable Law, Project Plans and the Principal's procedures, policies and rules; and
 - (ii) otherwise be in accordance with the requirements of this deed.
- (c) **(Induction records)**: The Contractor must keep and maintain comprehensive and detailed induction records and provide the Principal or its nominee, upon request, with access to such records.

7.11 Community relations

The Contractor must plan, implement, manage and participate in all community relations and involvement programs and activities as:

- (a) **(Planning Approval)**: required by the Planning Approval;
- (b) **(SWTC)**: required by the SWTC;

- (c) **(Communications Management Plan)**: contained in the Communications Management Plan; or
- (d) **(Principal requirements)**: reasonably required by the Principal from time to time.

7.12 Environmental Requirements

The parties must comply with the Environmental Requirements as set out in Appendix D.1 of the SWTC.

7.13 Aboriginal participation in construction

- (a) **(Minimum Aboriginal Participation Spend)**: The Minimum Aboriginal Participation Spend amount is stated in Item 5 of the Contract Particulars.
- (b) **(Aboriginal Participation Plan)**: As a condition precedent to D&C Close, the Contractor must prepare, submit to the Principal and obtain the Principal's approval to, an Aboriginal Participation Plan which shows how the Contractor intends to direct the Minimum Aboriginal Participation Spend to the eligible spend categories and is based on the template set out in Part B of Schedule 17 (*Aboriginal Participation Reporting Templates*). The Contractor must comply with the plan approved by the Principal.
- (c) **(Aboriginal Participation Reports)**: The Contractor must prepare and submit:
 - (i) to the Principal monthly, an Aboriginal Participation Report which provides details of the implementation of the APIC Policy and achievement of targets and is based on the template set out in Part A of Schedule 17 (*Aboriginal Participation Reporting Templates*);
 - (ii) to the Principal as a condition precedent to Opening Completion, the final Aboriginal Participation Report describing and explaining:
 - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (B) what actual outcomes have been achieved;
 - (C) whether the Minimum Aboriginal Participation Spend amount in the Aboriginal Participation Plan has been achieved; and
 - (D) the allocation of any unspent amounts from the Minimum Aboriginal Participation Spend to the APIC Policy's list of approved organisations.

7.14 Heavy Vehicle National Law

- (a) **(Compliance)**: The Contractor must, at all times during the term of this deed and without limiting any other provisions of this deed, including Schedule 32 (*Heavy Vehicle National Law Requirements*):
 - (i) comply with, and ensure that 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 the Contractor's and any Subcontractors' transport activities relating to the use of any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities;
 - (iii) ensure 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 the Principal under this clause 7.14; and
 - (iv) invite and permit the Principal 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) **(Subcontractors' roles):** The Contractor 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 (as those terms are defined in the Heavy Vehicle National Law).
- (c) **(Development of plan):** Before the Contractor undertakes any Contractor's Activities which involve the Contractor or any Subcontractor using any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities, the Contractor must develop a Chain of Responsibility Management Plan.
- (d) **(Requirements for plan):** Without limiting the requirements set out in Schedule 32 (*Heavy Vehicle National Law Requirements*), the Chain of Responsibility Management Plan must (at a minimum):
- (i) identify and assess the aspects of the Contractor's Activities and any activities performed by a Subcontractor that may lead to a contravention of the Heavy Vehicle National Law and undertake this identification and assessment at least annually and, in any event, after any event which reasonably indicates that the way that the Contractor has identified and assessed any such risks has led or may lead to a breach of the Heavy Vehicle National Law, whether by act or omission;
 - (ii) for any such risks identified under clause 7.14(d)(i), set out the measures that the Contractor or any Subcontractors may take to eliminate any such risk, or if it is not reasonably practicable to eliminate any such risk, to minimise it;
 - (iii) identify how the Contractor will ensure so far as is reasonably practicable, that the condition of all Construction Plant used in performing the Contractor's Activities meets, and will continue to meet, the requirements of the Heavy Vehicle National Law;
 - (iv) identify the systems to be developed by the Contractor to ensure that the Contractor and any Subcontractors meet their duties in respect of speed, fatigue, mass, dimension, maintenance and loading requirements under the Heavy Vehicle National Law (including the Chain of Responsibility Provisions);

- (v) set out a process for notifying the Principal of any suspected, alleged or actual breaches of the Heavy Vehicle National Law by the Contractor or a Subcontractor;
 - (vi) identify how the Contractor will address and remedy any suspected or actual incident of non-compliance with the Heavy Vehicle National Law; and
 - (vii) address each of the matters and meet or exceed each of the compliance measures set out in the Chain of Responsibility Guideline.
- (e) **(Submission of plan)**: The Chain of Responsibility Management Plan must be submitted to the Principal for its review at least 25 Business Days prior to the commencement of any of the Contractor's Activities using any Construction Plant governed by the Heavy Vehicle National Law on a road.
- (f) **(Compliance with plan)**: The Contractor must comply with and ensure that any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to the Principal under this clause 7.14.
- (g) **(Liabilities not affected)**: The Contractor agrees that:
- (i) any review of, comments upon or any other act or omission of the Principal about a Chain of Responsibility Management Plan; and
 - (ii) compliance with the Chain of Responsibility Management Plan by the Contractor,
- will not in any way lessen or affect:
- (iii) the Liabilities or responsibilities of the Contractor under the D&C Documents or otherwise according to Law; or
 - (iv) the Principal's rights against the Contractor, whether under the D&C Documents or otherwise according to Law.
- (h) **(Training)**: The Contractor must ensure that its personnel, and its 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 relevant personnel's commencement of their involvement in the Contractor's Activities; and
 - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (i) **(Breach, warning or notice)**: Where the Contractor becomes aware of any suspected, alleged or actual breach by the 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 Construction Plant used in performing the Contractor's Activities, the Contractor must:
- (i) promptly give the Principal 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 WHS Management Plan, the Chain of Responsibility Management Plan and the Communications Management Plan).
- (j) **(Show cause notice)**: The Principal may, if it reasonably believes that the Contractor is not in compliance with, or the Contractor has not procured a Subcontractor's compliance with, its obligations under this clause 7.14 or Schedule 32 (*Heavy Vehicle National Law Requirements*), by written notice direct the Contractor to show cause why the Contractor should not be directed to suspend any or all of the Contractor's Activities (including any activities carried out by any non-compliant Subcontractor) until such time as the Principal can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, the Principal may also, in its sole and absolute discretion:
- (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are not used or engaged to provide any further goods or services in respect of the Contractor's 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.
- (k) **(No liability)**: The Principal has no Liability to the Contractor in respect of an order by a court or direction by the Principal that the Contractor cease to perform its obligations under the D&C Documents as a result of a suspected, alleged or actual breach of this clause 7.14, Schedule 32 (*Heavy Vehicle National Law Requirements*) or the Heavy Vehicle National Law.
- (l) **(Injury or damage)**: The Contractor is responsible for preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site and any other areas affected by the Contractor's Activities, including personal injury or death or loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site or any other areas affected by the Contractor's Activities of items that require transport services or the movement on any road of any Construction Plant, whether loaded or not.
- (m) **(Records and audit)**: The Contractor must:
- (i) keep and must ensure that any Subcontractors keep records of any steps taken in compliance with this clause 7.14, 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 independently audited, and provide the Principal with an independent audit report in relation to the Contractor's compliance with this clause 7.14, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.

7.15 Management of customers, stakeholders and other affected parties

- (a) **(Minimise disturbance)**: The Contractor must, in carrying out the Contractor's Activities:

- (i) do all things reasonably possible to minimise the disturbance, nuisance or inconvenience to the occupants of land adjoining the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site or located in the vicinity of the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site (including Existing Operations and Utility Services);
 - (ii) to the extent reasonably possible in performing the Contractor's Activities, not interfere with the free movement of traffic into and out of, adjacent to, around, on or about the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site, or block or impair access to any premises, car parks, roadways, pedestrian ways, public spaces, parks, bicycle paths or facilities associated with the Existing Operations and Utility Services and must comply with the Principal's reasonable directions in relation to them; and
 - (iii) program and coordinate the Contractor's Activities using best practices so as to minimise the effect of the Contractor's Activities on occupants of land adjoining the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site or located in the vicinity of the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site (including Existing Operations and Utility Services).
- (b) **(Stakeholders):** The Contractor must, in dealing with customers of the Motorway, stakeholders and other third parties affected by the Contractor's Activities **(Stakeholders):**
- (i) ensure that a representative of the Contractor can be contacted by Stakeholders during normal business hours and that the Contractor's contact details are publicly available, including on the Contractor's website;
 - (ii) give reasonable consideration to all feedback received from Stakeholders; and
 - (iii) actively manage any issues raised by Stakeholders,
- and without limit, the Contractor must, subject to Schedule 2 (*Allocation of responsibility for SWTC*), comply its obligations under Appendix D.2 of the SWTC.
- (c) **(Complaint, demand or order):** The Contractor must immediately notify the Principal 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 on or near the Construction Site, Additional Property Works Areas, Extra Land or Maintenance Site) against the Contractor or any of its Related Parties in respect of any aspect of the carrying out of the Contractor's Activities, including:
- (iv) Contamination, noise or vibration arising out of, or in any way in connection with, the Contractor's Activities;

- (v) the Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder), any Project Plan or any Law regarding the Environment;
 - (vi) the Contractor's use or occupation of the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site;
 - (vii) Loss or damage of the kind referred to in clause 27.2 (*Certain third party claims*); or
 - (viii) the supply chain for the Contractor's Activities, including:
 - (A) any Subcontractor; and
 - (B) the bringing to and removal from the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site or any other areas affected by the Contractor's Activities of items that require transport services.
- (d) **(Resolution of complaints)**: Without limiting the Contractor's obligations under section 2.7 of the SWTC, the Contractor must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clauses 7.15(b) and 7.15(c);
 - (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 7.15(c), which:
 - (A) contains full details of each complaint, proceedings, letter of demand, order and direction, and the action taken by the Contractor with respect to it;
 - (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 the Principal whenever the Principal reasonably requires.
- (e) **(Advance notice)**: The Contractor must notify anyone who may be affected by the Contractor's Activities in accordance with the requirements of the Environmental Documents, and in any event before the relevant work is carried out including notification of:
- (i) the type and sequencing of works;
 - (ii) the hours of work;
 - (iii) the likely duration of that work;
 - (iv) the mitigation measures that will be implemented on site; and
 - (v) the 24 hour telephone number, postal address and email address established by the Principal, in case any person wishes to make a complaint.

7.16 Existing Operations

- (a) **(No disruption):** The Contractor acknowledges and agrees that:
- (i) Existing Operators must not be prevented from continuing their Existing Operations during the course of the carrying out of the Contractor's Activities; and
 - (ii) the access ways to the Construction Site are used by other persons (including in connection with the Existing Operations) and will not be available exclusively to the Contractor.
- (b) **(Coordination risk):** The Contractor accepts the risk of coordinating its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site.
- (c) **(Requirements):** Without limiting any other obligations of the Contractor under the D&C Documents, the Contractor must:
- (i) comply with the Principal's reasonable directions in connection with:
 - (A) the Existing Operations (including access to and use of the Construction Site); and
 - (B) work health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to work health and safety;
 - (ii) comply with all reasonable policies, procedures and rules applying from time to time as notified by the Principal, in respect of the Existing Operations (including in relation to workplace health and safety or the Environment or both (as applicable));
 - (iii) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Construction Site;
 - (iv) ensure that in carrying out and completing the Contractor's Activities, 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;
 - (v) immediately:
 - (A) repair and make 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 Contractor's Activities; and
 - (B) when directed by the Principal, take such action as is required to ensure that its obligations in this clause 7.16(c) are complied with; and
 - (vi) without limiting clause 7.16(c)(iv), procure access to land in connection with Existing Operations (and comply with any terms or conditions of that access) and otherwise liaise with the Existing Operators as required to carry out and complete the Contractor's Activities.

- (d) **(Related Parties)**: The Contractor must ensure that its Related Parties at all times comply with this clause 7.16.

7.17 Interface Agreements

- (a) **(Compliance)**: The Contractor:
- (i) acknowledges that it has reviewed and carefully considered the Interface Agreements, the forms of which are included in Exhibit C; and
 - (ii) must comply with its obligations in Schedule 12 (*Requirements of Interface Agreements*).
- (b) **(Additional or amended agreements)**: The Contractor acknowledges and agrees that after the date of this deed the Principal may:
- (i) enter into another Interface Agreement (**Additional Interface Agreement**); or
 - (ii) amend an existing Interface Agreement (the form of which are included in Exhibit C) (**Amendments to Interface Agreement**).

in which case, the Principal must, if it requires:

- (iii) this clause 7.17 and Schedule 12 (*Requirements of Interface Agreements*) to apply to the Additional Interface Agreement or Amendments to Interface Agreement; and
 - (iv) any amendments to Schedule 12 (*Requirements of Interface Agreements*) which are reasonable and necessary to reflect the Additional Interface Agreement or Amendments to Interface Agreement,
- issue a Change in accordance with clause 13 (*Changes*).
- (c) **(Change Proposal or Order)**: The Principal will provide to the Contractor a copy of the Additional Interface Agreement or Amendments to Interface Agreement and a revised version of Schedule 12 (*Requirements of Interface Agreements*) with the amendments (if any) with any Change Proposal or Change Order for a Change under clause 7.17(b).
- (d) **(Further third party agreements)**: The Contractor is responsible for negotiating and entering into any agreements with third parties (including landowners, Existing Operators and owners, operators and controllers of Utilities Services) required in addition to the Interface Agreements to perform the Contractor's Activities in accordance with this deed.

7.18 Personnel

- (a) **(Experienced and skilled)**: The Contractor must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) **(Engagement of Key Personnel)**: The Contractor must:
- (i) employ, or ensure that its Subcontractors employ, the Key Personnel in the relevant positions specified in Item 29 of the Contract Particulars;

- (ii) subject to clause 7.18(b)(iii), only replace the Key Personnel with personnel which comply with the applicable requirements in Schedule 35 (*Key Personnel*) where the Principal has given its prior written approval to the replacement and the new personnel (which must not be unreasonably withheld or delayed); and
- (iii) if any of the Key Personnel:
 - (A) die;
 - (B) become seriously ill;
 - (C) resign from the employment of the Contractor or resign from the employment of a Subcontractor; or
 - (D) become the subject of a direction under clause 7.18(e),
 replace them, or procure that they are replaced, with personnel of at least equivalent experience, ability, competency and expertise which comply with the applicable requirements in Schedule 35 (*Key Personnel*).
- (c) **(Functions of Key Personnel)**: The Contractor must ensure that the Key Personnel:
 - (i) carry out the functions and are given the authorities and responsibilities specified for them in this deed; and
 - (ii) otherwise are available for consultation with the Principal when the Principal reasonably requires.
- (d) **(Project Director)**: The Contractor must ensure that the person appointed to the position of "Project Director" (including any replacement):
 - (i) at all times has the authority to act on behalf of and to bind the Contractor in respect of the Contractor's Activities;
 - (ii) has full authority to promptly execute directions of the Principal and to promptly make decisions in relation to the Contractor's Activities; and
 - (iii) without limiting clause 7.18(c)(i) or 7.18(c)(ii), has delegated authority to bind the Contractor in relation to any matter relating to the Contractor's Activities which has a financial impact of [REDACTED] or less without the need to obtain any additional internal or corporate approvals from the Contractor or any entity that comprises the Contractor.
- (e) **(Direction to remove)**: The Principal may, in its absolute discretion and without being obliged to give any reasons, by notice direct the Contractor to remove any person from the Construction Site or from the performance of the Contractor's Activities.
- (f) **(Removal of personnel)**: The Contractor must ensure that any person the subject of a direction under clause 7.18(d) is not again employed on the Construction Site or in the performance of the Contractor's Activities.

7.19 AIP Plan

- (a) **(Compliance)**: The Contractor must:

- (i) take reasonable steps directed towards allowing Australian entities to have full, fair and reasonable opportunities to bid for the supply of key goods and services required for the Contractor's Activities; and
 - (ii) without limiting clause 5.1 (*Compliance with Law*), comply with, and cooperate with the Principal in relation to compliance with, the requirements of the AIP Plan, which includes providing any information requested by the Principal to enable the Principal to meet its reporting obligations under the AIP Plan.
- (b) **(Publication)**: Without limiting clause 7.19(a), the Contractor must:
- (i) within 30 days of this deed, establish a publicly accessible page on its website of all available opportunities for Australian entities to supply key goods or services for the Project Works, Temporary Works or the Contractor's Activities as they arise (including details of the standards for such goods or services);
 - (ii) update the list of goods and services on this webpage on a regular basis to ensure Australian entities are provided up-to-date information on all opportunities to participate in the Contractor's Activities; and
 - (iii) provide promptly upon request evidence to the reasonable satisfaction of the Principal that the Contractor is complying with its obligation under this clause 7.19(b).

7.20 Media events

- (a) **(Contractor to permit)**: The Contractor must:
- (i) permit the Principal and the NSW Government to hold media events on the Construction Site:
 - (A) on or about the Date of Opening Completion and Date of Completion; and
 - (B) at such other times as may be reasonably requested by the Principal, provided that the attendees comply with the Contractor's reasonable site access requirements; and
 - (ii) co-operate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.
- (b) **(Principal to liaise)**: The Principal must liaise with the Contractor in relation to any such media events, including the planned date and time for any such media events.
- (c) **(Responsibility for costs)**: Where the Principal holds a media event:
- (i) under clause 7.20(a)(i)(A), the Contractor is not entitled to make, and the Principal will not be liable for, any Claim arising out of or in connection with such media event; or
 - (ii) under clause 7.20(a)(i)(B), the Contractor may claim the reasonable additional costs that it incurs in connection with the media event, but is not

otherwise entitled to make, and the Principal will not otherwise be liable for, any Claim arising out of or in connection with the media event.

7.21

[REDACTED]

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

8. Security

8.1 Provision of Security Bonds

- (a) **(Contractor to provide)**: Prior to D&C Close, the Contractor must provide Security Bond 1, Security Bond 2, Security Bond 3 and Security Bond 4 to the Principal.
- (b) **(Form of bonds)**: Each Security Bond must be:
- (i) one or more bank guarantees and insurance bonds;
 - (ii) unconditional, irrevocable and payable on demand;
 - (iii) in the form of Schedule 20 (*Form of Unconditional Undertaking*);
 - (iv) in favour of the Principal;
 - (v) where required, duly stamped;
 - (vi) in the case of at least [REDACTED] of the total required value of the Security Bond, issued by a bank that is the holder of a current licence issued by the Australian Prudential Regulation Authority with the Required Rating, or as otherwise approved by the Principal in its absolute discretion;
 - (vii) in the case of the remaining total required value of the Security Bond, issued by a financial institution licensed in Australia with a credit rating of no less than the Required Rating, or as otherwise approved by the Principal in its absolute discretion; and
 - (viii) payable at an office of the issuer in Sydney (or such other place as the Principal may approve).

8.2 Release of Security Bonds

- (a) **(Times for release)**: Subject to clauses 8.2(b), 22.13 and 22.14 and to the Principal's rights to have recourse to the Security Bonds (and to the cash proceeds if one or more of the Security Bonds are converted into cash), the Principal must release each Security Bond (or the remaining proceeds of the Security Bond if it has been converted into cash) in accordance with Item 41 of the Contract Particulars.
- (b) **(Principal may retain)**: Despite any other provision of this deed to the contrary, where:
- (i) this deed may otherwise require the Principal to release or procure the release of an Security Bond; or
 - (ii) this deed is terminated by the Principal,

the Principal may continue to hold, after the date for its release or the termination of this deed any Security Bond provided under clauses 8.1(a) (*Provision of Security Bonds*) to the extent of the value of [REDACTED] of any bona fide Claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this deed or the Contractor's Activities whether for damages (including liquidated damages) or otherwise. However, the Security Bond must be

released within 6 months of such date if the Claim is not notified to the Contractor and made within that time.

8.3 Recourse to Security Bonds

- (a) **(Recourse by Principal)**: The Principal may at any time, without notice, only convert and have recourse to any Security Bond or the proceeds of any Security Bond if it has been converted into cash:
- (i) to the extent that the Contractor fails to pay an amount which is due and payable by the Contractor to the Principal under a D&C Document; and
 - (ii) to the extent of a bona fide Claim arising out of or in connection with, or for breach of, this deed or any other D&C Documents,
- provided that:
- (iii) in the case of any Security Bond provided under clause 22.13 (*Payment for Key Plant and Equipment*), the amount or Claim arises out of or in connection with the Contractor's failure to comply with its obligations under this deed in respect of the relevant item of Key Plant and Equipment, including to perform the Contractor's Activities for which the Key Plant and Equipment are required; and
 - (iv) in the case of any Security Bond provided under clause 22.14 (*Unfixed or offsite Materials*), the amount or Claim arises out of or in connection with the Contractor's failure to comply with its obligations under this deed in respect of the relevant unfixed or offsite Materials, including to supply them to the Principal and incorporate them into the Project Works.
- (b) **(No interest)**: The Principal is not obliged to pay the Contractor or any Related Party of the Contractor interest on:
- (i) any Security Bond; or
 - (ii) the proceeds of any Security Bond if it has been converted into cash.
- (c) **(No trust)**: The Principal does not hold the proceeds referred to in clause 8.3(a)(iii) on trust for the Contractor or any Related Party of the Contractor.

8.4 Replacement of Security Bonds

- (a) **(Issuer does not comply)**: If the issuer of a Security Bond ceases to:
- (i) have the Required Rating; or
 - (ii) be the holder of a current licence issued by the Australian Prudential Regulation Authority,
- then the Contractor must:
- (iii) promptly and within 3 Business Days of the Contractor becoming aware of that circumstance, notify the Principal of that circumstance;
 - (iv) subject to clause 8.4(a)(v), within 10 Business Days of being requested to do so by the Principal, procure the issue to the Principal of a replacement Security Bond which satisfies the requirements of clause 8.1 (*Provision of*

Security Bonds) applicable to the relevant Security Bond (subject to any reduction in the amount of the Security Bond in accordance with clause 8.3 (*Recourse to Security Bonds*)), provided that, if at that time, at least 3 of the 4 Major Australian Banks no longer have the Required Rating, the Contractor may procure a replacement Security Bond from the Major Australian Bank with the then highest rating. However, if the conditions applying to such replacement Security Bond are materially different to the Security Bond which it is replacing, the Contractor may seek the Principal's consent (not to be unreasonably withheld or delayed) to procure a replacement Security Bond from a foreign bank with a branch in Sydney which has at least the same rating; and

- (v) if, at any time after the Contractor has procured a replacement Security Bond from a Major Australian Bank which does not have the Required Rating or a foreign bank pursuant to clause 8.4(a)(iv), at least 2 of the 4 Major Australian Banks have the Required Rating, the Contractor must:
 - (A) promptly, and within 2 Business Days of becoming aware of that circumstance, notify the Principal of that circumstance; and
 - (B) within 10 Business Days of becoming aware of that circumstance, procure the issue to the Principal of a replacement Security Bond for the undrawn amount of the affected Security Bond from a Major Australian Bank with the Required Rating which satisfies the requirements of clause 8.1 (*Provision of Security Bonds*) applicable to the relevant Security Bond and this clause 8.4 (*Replacement of Security Bonds*).
- (b) **(Security Bond will expire)**: Not less than 20 Business Days before the expiry of any Security Bond, the Contractor must procure the issue to the Principal of a replacement Security Bond for the undrawn amount of the Security Bond that it is to replace which satisfies the requirements of clause 8.1 (*Provision of Security Bonds*) which are applicable to the relevant Security Bond.
- (c) **(Return of Security Bond)**: Where the Contractor provides a replacement Security Bond in accordance with this clause 8.4, following receipt of such replacement Security Bond, the Principal must promptly surrender (or procure the surrender of) the Security Bond that has been replaced.
- (d) **(Failure to replace)**: If the Contractor fails to replace a Security Bond in accordance with this deed, the Principal may have recourse to the relevant Security Bond and hold the proceeds as cash security until the relevant Security Bond is replaced in accordance with this deed.

8.5 No injunction

The Contractor must not, and must procure that its Related Parties do not, take any steps to injunct or otherwise restrain:

- (a) **(Payment by issuer)**: any issuer of any Security Bond provided by the Contractor under this clause 8 from paying the Principal pursuant to the relevant Security Bond;
- (b) **(Demand by Principal)**: the Principal from taking steps for the purposes of making a demand under any Security Bond provided under this clause 8, clauses 22.13 (*Payment for Key Plant and Equipment*) or 22.14 (*Unfixed or offsite Materials*), or receiving payment under any such Security Bond; or

- (c) **(Use of proceeds by Principal)**: the Principal using the proceeds received under any Security Bond provided under this clause 8, or clauses 22.13 (*Payment for Key Plant and Equipment*) or 22.14 (*Unfixed or offsite Materials*).

8.6 Replacement on expiry of initial Defects Correction Period

If upon expiry of the initial Defects Correction Period in respect of the Motorway Works, there are Defects in respect of the Project Works:

- (a) **(Outstanding Defects)**: outstanding or claimed by the Principal to be outstanding which are the subject of a direction by the Principal under clause 18.2(a) (*Principal's Direction*); or
- (b) **(Unexpired Defects Correction Periods)**: which are the subject of a Defects Correction Period (including a further Defects Correction Period) under clause 18 (*Defects Correction Periods*) which has not expired,

with an aggregate value greater than the undrawn amount of Security Bond 4, the Contractor must procure a replacement Security Bond 4 in the Principal's favour which:

- (c) **(Required amount)**: is for an amount equal to the lesser of:
- (i) ■■■% of the aggregate value of such Defects, as reasonably determined by the Independent Certifier; and
 - (ii) the aggregate undrawn amount of Security Bond 3 and Security Bond 4; and
- (d) **(Other requirements)**: otherwise satisfies the requirements of clause 8.1 (*Provision of Security Bonds*).

8.7 D&C Guarantee

- (a) **(Provision by Contractor)**: The Contractor must procure that prior to D&C Close, the Principal is given the executed D&C Guarantees (stamped if required by Law) from the Contractor Guarantors and that all stampings, registrations and filings required by Law or by the law of any foreign jurisdiction in relation to each D&C Guarantee, have been stamped, registered or filed in form and substance satisfactory to the Principal (in its absolute discretion).
- (b) **(Change in Law)**: If, after D&C Close, the Principal (in its absolute discretion) considers that, due to a Change in Law or change in law of any jurisdiction, it has become necessary or desirable to make any stamping, registration or filing with any Authority to support the enforceability of any D&C Guarantee or the performance of any obligations under any D&C Guarantee (including expatriation of amounts payable under any D&C Guarantee), the Contractor must take such action as is requested by the Principal (in its absolute discretion) to make that stamping, registration or filing.

9. Access

9.1 Construction Site

- (a) **(Access to Construction Site)**: Without limiting any other provision of this deed, subject to clause 7.9(a) (*WHS Management Plan*) and this clause 9.1, and the Contractor's compliance with clauses 7.6 (*Control of traffic*), 8.1(a) (*Provision of Security Bonds*), 8.7 (*D&C Guarantee*) and 27.5 (*Project Insurances*), the Planning

Approval, the EPBC Act Approval (if any) and any other Approval affecting access to land, the Principal must:

- (i) give, or ensure the Contractor and its Related Parties and invitees have, access to each area of the Construction Site specified in the Site Access Schedule:
 - (A) 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 Construction Site, then by the last day of that period); and
 - (B) in accordance with the conditions of access as set out in the Site Access Schedule (if applicable); and
 - (ii) thereafter continue to allow, or ensure that the Contractor and its Related Parties and invitees continue to be allowed, access to each such area of the Construction Site specified in the Site Access Schedule in accordance with the conditions of access set out in the Site Access Schedule (if applicable).
- (b) **(Contractor acknowledgements):** The Contractor acknowledges and agrees that:
- (i) it may not be given exclusive access to the Construction Site;
 - (ii) access to the Construction Site or any part thereof will be subject to the Contractor complying with this clause 9.1 and the Site Access Schedule;
 - (iii) its rights under this clause 9.1 are subject to any restrictions upon the access, possession and use of the Construction Site and the Motorway imposed by the Principal under the express terms of this deed; and
 - (iv) it must comply with:
 - (A) all access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule;
 - (B) all terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening the land contained in the Construction Site as recorded in the register maintained by NSW Land Registry Services under the *Real Property Act 1900* (NSW); and
 - (C) clause 9.10 (*Access to WestConnex Assets and Systems*) to the extent the access relates to a WestConnex Integration Site.
- (c) **(WHS Management Plan):** The Contractor acknowledges that it will have no entitlement to access the Construction Site under this clause 9.1 until the Contractor has submitted the WHS Management Plan to the Principal and the Principal has had 20 Business Days to review the WHS Management Plan and has not rejected the WHS Management Plan.
- (d) **(No warranty):** Subject to the express terms of this deed, the Principal makes no express or implied warranty that the Construction Site is now or will remain suitable or adequate for all or any of the purposes contemplated in this deed and all warranties (if any) implied by Law or otherwise are, to the extent permitted by Law, excluded.

- (e) **(Expiry of access)**: Subject to clause 17.4(b) (*Early completion of part of Project Works*), the rights under clause 9.1(a) in respect of the areas of the Construction Site (or any part of them) specified in the Site Access Schedule will expire upon:
- (i) if an expiry date is specified in the Site Access Schedule, the date specified in the Site Access Schedule; or
 - (ii) if an expiry date is not specified in the Site Access Schedule:
 - (A) in respect of the Temporary Areas, three months after the Date of Completion; and
 - (B) in respect of all other parts of the Construction Site, the Date of Opening Completion.
- (f) **(Right to manage and control)**: The parties agree that access to the Construction Site or any part of it in accordance with the Site Access Schedule pursuant to this clause 9.1 and clause 9.10 (*Access to WestConnex Assets and Systems*) will confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including, where applicable as principal contractor.
- (g) **(Responsibility for ingress and egress)**: The Contractor is responsible, at its own cost, for securing all rights of ingress to and egress from the Construction Site as required to allow the Contractor to carry out the Contractor's Activities.
- (h) **(Roads and facilities to remain open)**: The Contractor acknowledges that the Construction Site incorporates other roads and facilities associated with motorways that will (subject to the terms of this deed) remain open to traffic at all times.
- (i) **(Early access)**: If the Principal agrees to give access to any part of the Construction Site earlier than the relevant dates set out in the Site Access Schedule:
- (i) the Contractor accepts the sole risk of such earlier access; and
 - (ii) the Principal will not be liable upon any Claim (insofar as permitted by Law) by the Contractor arising out of or in any way in connection with:
 - (A) obtaining such earlier access (including a failure of the Principal to grant such earlier access); or
 - (B) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain such earlier access to the Construction Site.
- (j) **(Assessment of delay)**: If an Excusable Cause of Delay arises during the period in which the Contractor is granted earlier access to a part of the Construction Site, for the purposes of determining the Contractor's entitlements under clause 15 (*Time and Progress*) and 16 (*Delay During Construction*) whether the Excusable Cause of Delay has caused a delay to Opening Completion, Completion or both (as applicable) will be assessed on the basis of the Contractor did not receive such earlier access.

9.2 Mitigation

The Contractor must take all reasonable steps to Mitigate any delay caused by, or any other effect of, a failure by the Principal to give, or ensure that the Contractor has, access to the Construction Site in accordance with the Site Access Schedule pursuant to clause 9.1 (*Construction Site*), including making any reasonable changes to the sequencing or timing of, or the construction methodologies used in, the Contractor's Activities and, where reasonably practicable, changing the Overall D&C Program to reflect this.

9.3 Property Works

- (a) **(Notice to owners)**: Where any Property Works are required to be carried out on an Additional Property Works Area, the Contractor must give a written notice to the owner or owners of the relevant property (with a copy to the Principal) 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 20 Business Days prior to the day on which the Contractor intends to commence the Property Works. The Principal will provide reasonable assistance to the Contractor in its requests to the owners of the relevant property.
- (b) **(Disruption to be minimised)**: Upon being given access to any property for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the property.
- (c) **(Rehabilitate and repair)**: After accessing any Additional Property Works Area, the Contractor must:
- (i) rehabilitate the Additional Property Works Area to the state agreed with the owner of the relevant property prior to commencing the relevant Property Works or, if no such agreement was reached, the state it was in immediately prior to the Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to the Additional Property Works Area arising out of or in any way in connection with the Contractor accessing and performing Property Works on the Additional Property Works Area.
- (d) **(Owners' certificates)**: The Contractor must, after completion of the Property Works with respect to an Additional Property Works Area (including the work described in clause 9.3(c)), provide to the Principal:
- (i) a certificate in the form of Schedule 11 (*Property Owner's Certificate*), duly executed by the owner or owners of the relevant property; or
 - (ii) if the Principal is reasonably satisfied that the Contractor was unable to obtain such a certificate within 10 Business Days of it being provided by the Contractor to the owner or owners following completion of such Property Works, despite using all reasonable endeavours to do so, a statement signed by the Contractor which:

- (A) confirms that the Contractor used all reasonable endeavours to obtain the certificate but was unable to do so;
 - (B) includes details of the actions taken by the Contractor to obtain the certificate; and
 - (C) attaches the relevant written correspondence between the Contractor and the owner or owners.
- (e) **(Indemnity)**: The Contractor indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a Claim by the owner or owners of any Additional Property Works Area where:
- (i) such owner or owners have not duly signed a certificate in the form of Schedule 11 (*Property Owner's Certificate*); and
 - (ii) such Claim by the owner or owners is that Property Works, including the work described in clause 9.3(c), have been carried out in a manner that would not comply with this deed.
- (f) **(Acceptance not approval)**: The acceptance of a certificate or statement provided by the Contractor under clause 9.3(d) by the Principal is not approval by the Principal of the Contractor's performance of its obligations under this clause 9.3 or the relevant Property Works.
- (g) **(Notice of issues)**: The Contractor must promptly give the Principal written notice including reasonable details if the owner or owners of an Additional Property Works Area:
- (i) do not provide access to the Contractor on the date requested by the Contractor (including under clause 9.3(a)) or, where the owner or owners agree an alternative date for access with the Contractor, on that alternative date; or
 - (ii) withdraw the Contractor's access, make a complaint in relation to the Contractor's access or performance of the Property Works, or request the Contractor to suspend performance of Property Works.
- If requested by the Principal, the Contractor must promptly provide a written update on any of the matters referred to in clause 9.3(g)(i) or 9.3(g)(ii).
- (h) **(Insufficient access)**: If, despite the Contractor taking all reasonable steps to obtain sufficient access to carry out the Property Works, the owner or owners of an Additional Property Works Area:
- (i) do not provide such access within 5 Business Days after the date requested by the Contractor under clause 9.3(a) or, where the owner or owners agree an alternative date for access with the Contractor, on that alternative date; or
 - (ii) withdraws and does not re-provide such access within 5 Business Days after written request by the Contractor,

and the Contractor has given notice under clause 9.3(g), the Contractor is not required to carry out further Property Works on the Additional Property Works Area

until the Principal gives the Contractor written notice that the owner or owners have agreed to provide access, in which event clause 9.3(a) will reapply.

- (i) **(Deferral of Property Works):** If:
- (i) the Contractor is not required to carry out Property Works under clause 9.3(h);
 - (ii) the Contractor has otherwise achieved the requirements for Opening Completion; and
 - (iii) the Contractor has otherwise complied with its obligations under this clause 9.3,

the Contractor will not be required to complete the relevant Property Works as a condition precedent to Opening Completion, and the Principal may specify a reasonable period after Opening Completion within which the relevant Property Works must be completed.

- (j) **(Omission of Property Works):** If clause 9.3(i) applies, and the owner or owners of the relevant Additional Property Works Area do not provide the Contractor with sufficient access to carry out the relevant Property Works prior to the date which is 12 months after the Date of Opening Completion, the Principal may direct a Change to omit those Property Works in accordance with clause 13 (*Changes*).

9.4 Access for Landscaping Maintenance

- (a) **(Landscaping Maintenance Period):** After the commencement of the Landscaping Maintenance Period in respect of Project Works, but subject to:
- (i) any constraints on and qualifications to access imposed on the Contractor under this deed, including clause 8 (*Security*); and
 - (ii) the Contractor's compliance with the O&M Contractors' reasonable protection and security measures in place with respect to the O&M Activities and the Motorway, the Project Plans and other reasonable access and management requirements of the Principal or the O&M Contractors, including the Contractor (to the extent applicable):
 - (A) complying with its obligations under clause 7.6 (*Control of traffic*), and clauses 9.1(b) (*Construction Site*) and 9.10(e) (*Access to WestConnex Assets and Systems*);
 - (B) submitting Project Works Traffic Management Plans and complying with the Approved Project Works Traffic Management Plans;
 - (C) complying with its obligations under this deed in respect of a road occupancy, including obtaining a ROL from the Transport Management Centre in accordance with the requirements of Appendix C.4 of the SWTC and submitting an application for a work permit in respect of the Motorway from the O&M Contractors; and
 - (D) complying with any applicable Interface Protocols agreed with the O&M Contractors; and
 - (iii) the Contractor's obligation to pay the relevant Lane Occupancy Fees calculated in accordance with Schedule 18 (*Lane Occupancy Fees*),

the Principal must give the Contractor and its Related Parties, or procure that the Contractor and its Related Parties are given, such access to the Project Works the subject of the Landscaping Maintenance as is necessary for the Contractor to comply with its obligations under clause 20.4 (*Landscaping Maintenance*) during the Landscaping Maintenance Period, during the permitted times stated in the ROLs and the Approved Project Works Traffic Management Plan (where applicable) or on reasonable notice.

- (b) **(Principal may re-open)**: Despite any ROL issued for any lane or shoulder closure, the Principal may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder.

9.5 Extra Land

- (a) **(Access to Extra Land)**:

- (i) The Contractor must, subject to this clause 9.5 (*Extra Land*), carry out the Project Works to ensure that, on Opening Completion, the whole of the Motorway Works, excluding associated ancillary infrastructure including cables, signage, conduits and cameras, are located within the Works Site.
- (ii) The Contractor must procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the Contractor's Activities (which may include additional land or buildings required for the Third Party Works or any ancillary infrastructure referred to in clause 9.5(a)(i)).
- (iii) To the extent Extra Land is owned by the Principal, the Principal will be under no obligation to allow the Contractor to occupy or use, or grant the Contractor rights over, the Extra Land. To the extent the Principal does allow the Contractor to occupy or use, or grants the Contractor rights over, the Extra Land, the Principal may impose such conditions as it considers appropriate (acting reasonably as an owner and occupier of the Extra Land, and not the proponent of the Project or principal under this deed) and may require the Contractor to enter into an access licence with the Principal to document those conditions.
- (iv) Conditions of which the Principal may impose under clause 9.5(a)(iii) include:
- (A) conditions consistent with any Law applicable to the Contractor's Activities;
- (B) payment of a licence fee;
- (C) payment of compensation where any permanent works will remain on the Extra Land;
- (D) an obligation to remediate the Extra Land;
- (E) agreement that the Extra Land does not form part of the Construction Site; and
- (F) agreement that any act or omission of the Principal in its role as licensor (including any breach of the licence) does not entitle the Contractor to make any Claim against the Principal under this deed.

- (v) To the extent the Extra Land is not owned by the Principal, the Contractor indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a Claim by the owner or occupier of any part of the Extra Land where:
 - (A) such owner or occupier has not duly signed a certificate in the form of Schedule 11 (*Property Owner's Certificate*); and
 - (B) the Claim or Loss arises out of or in connection with the Contractor's Activities.
- (b) **(Obtaining Extra Land)**: Without limiting clause 9.5(a):
 - (i) to the extent that:
 - (A) the Contractor is not able to comply, or has not complied, with clause 9.5(a)(i); or
 - (B) any ancillary infrastructure referred to in clause 9.5(a)(i) is located outside the Works Site,

the Contractor must procure at the Contractor's cost, and transfer to the Principal or its nominee by the Date of Opening Completion, any land outside the boundaries of the Works Site on which the Motorway Works (including any ancillary infrastructure referred to in clause 9.5(a)(i) located outside the Works Site) are located;
 - (ii) the Contractor must, promptly after becoming aware that any Extra Land is required, give a notice to the Principal containing details of the Extra Land;
 - (iii) to the extent Extra Land is owned by the Principal:
 - (A) the Principal will be under no obligation to permit the Motorway Works to remain on the Extra Land; and
 - (B) the Principal may impose such conditions as it considers appropriate (acting reasonably as an owner and occupier of the Extra Land, and not the proponent of the Project or principal under this deed), which may include the payment of compensation to the Principal; and
 - (iv) to the extent Extra Land is not owned by the Principal, the Principal may give a notice to the Contractor that the Principal will procure all or part of the Extra Land the subject of the Contractor's notice.
- (c) **(Risks associated with Extra Land)**: The Contractor acknowledges and agrees that:
 - (i) if the Contractor procures for itself any occupation, use or rights over Extra Land, the Contractor is responsible for obtaining any Approval or any modification to an Approval which may be required for that occupation or use or to exercise those rights, including obtaining any EPBC Act Approval or modification to the Primary Planning Approval (despite clause 5.2(c)(i)) (*Consents and Approvals*);
 - (ii) integration of, and the requirements for access to, Extra Land is at the sole risk of the Contractor; and

- (iii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with:
 - (A) identifying and obtaining access to Extra Land;
 - (B) obtaining any Approval (including any EPBC Act Approval) or any modification to an Approval (including the Planning Approval) in respect of Extra Land; or
 - (C) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to Extra Land.
- (d) **(Indemnity)**: If the Principal gives the Contractor a notice pursuant to clause 9.5(b)(iv), the Contractor indemnifies the Principal against the costs incurred by the Principal in procuring the relevant land, including:
 - (i) any compensation payable by the Principal 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 the Principal in connection with the procurement of the land and any reasonable surveyor's fees.
- (e) **(Further information)**: As soon as reasonably practicable after the Contractor gives notice of Extra Land under clause 9.5(b)(ii), the Contractor must give the Principal the following details regarding the Extra Land:
 - (i) a description of the Extra Land, including full street name, address and suburb and, if applicable, Lot and DP numbers;
 - (ii) a title search (from NSW Land Registry Services under the *Real Property Act 1900* (NSW)) identifying the ownership of the Extra Land (if not a road);
 - (iii) a description of the Contractor's Activities to be performed on the Extra Land;
 - (iv) a description of any Project Works or Temporary Works which will be located on the Extra Land;
 - (v) details of whether any part of the Extra Land will be fenced and, if so, how;
 - (vi) a description of any Construction Plant which will be used to perform the Contractor's Activities on the Extra Land;
 - (vii) a map based on an aerial image which includes:
 - (A) the location and boundary of the Extra Land clearly shown and labelled;
 - (B) a north point, scale bar and legend;
 - (C) all streets marked by name and the suburb name;
 - (D) if applicable, cadastral details (Lot and DP); and

- (E) the location and boundary of the work zone, any access zone, any fencing, any Project Works and any Temporary Works clearly shown and labelled;
 - (viii) details of the period over which and hours during which the Contractor's Activities are proposed to be performed on the Extra Land;
 - (ix) details of the Planning Approval under which the Contractor's Activities on the Extra Land will be undertaken;
 - (x) a description of the proposed traffic and pedestrian control to be implemented on the Extra Land during the Contractor's Activities, if required;
 - (xi) a description of the environmental impacts of the Contractor's Activities to be performed on the Extra Land and how they will be mitigated by the Contractor;
 - (xii) a description of the safety measures which will be adopted in performing the Contractor's Activities on the Extra Land;
 - (xiii) how the Extra Land will be handed back or reinstated once the Contractor's Activities on the Extra Land have been completed;
 - (xiv) details of the communications which have been undertaken to date, and which will be undertaken, with the community in the vicinity of the Extra Land; and
 - (xv) if Extra Land is in a park or is a park, names, company and role of personnel who will be accessing the Extra Land.
- (f) **(Request for assistance):** If the Contractor wishes to request that TfNSW procures all or part of Extra Land as contemplated under clause 9.5(b)(iv), the Contractor must give the Principal evidence that:
- (i) the Contractor has requested access to the Extra Land from the relevant landowner and consulted with the relevant landowner; and
 - (ii) the relevant landowner has refused to grant the access to the Extra Land,
- including copies of material correspondence with the relevant landowner. The Principal may, in its absolute discretion, issue a notice under clause 9.5(b)(iv) in relation to all or part of the Extra Land the subject of the Contractor's request.

9.6 Access and inspection by the Principal

- (a) **(Access for Principal):** The Contractor must ensure that at all times the Principal, any person authorised or nominated by the Principal (including visitors invited by the Principal, who may include the Principal's Related Parties, a representative of a WestConnex Concessionaire, an O&M Contractor, existing or prospective contractors, financiers or equity investors in relation to the Motorway or a WestConnex Motorway and other contractors and consultants who are to perform work on the Construction Site), the Environmental Representative, Acoustics Adviser, Independent Certifier, Proof Engineer, Independent Checking Engineer, Principal's Surveillance Officers and the personnel referred to in clause 42.3(b) (*Access and information*):

- (i) have safe, convenient, prompt and unimpeded access during work hours, or at other times on reasonable notice, (except in the case of an emergency, when the right of access will be immediate) to:
 - (A) the Construction Site and Extra Land (with such access rights to commence immediately after the Contractor is first given access under clause 9.1 (*Construction Site*) or accesses the relevant area);
 - (B) the Project Works and the Temporary Works;
 - (C) the Contractor's Activities and all other areas relevant to the Contractor's Activities, including other locations where the Contractor is manufacturing or fabricating Materials for incorporation into the Project Works or Temporary Works; and
 - (D) the Design Documentation and any other documentation created for the purposes of the Contractor's Activities; and
- (ii) be entitled to exercise this right of access for the purposes of:
 - (A) observing progress in and inspecting the Contractor's Activities and monitoring compliance by the Contractor of its obligations under this deed;
 - (B) seeking comments from others in respect of the Contractor's Activities;
 - (C) exercising any right or performing any obligation the relevant party has under any this deed or any other D&C Document;
 - (D) in the case of the Principal's Related Parties, performing the O&M Activities and any other work or activities authorised by the Principal, provided the Principal must procure that such access does not delay Opening Completion or Completion; and
 - (E) in the case of the WestConnex Concessionaires and their Related Parties, performing the WestConnex Activities and any other work or activities authorised by the WestConnex Concessionaires, provided the Principal must procure that such access does not delay Opening Completion or Completion.
- (b) **(Facilities for inspection)**: The Contractor must provide the Principal, the Principal's Representative, Principal's Surveillance Officers, the Environmental Representative, the Acoustics Adviser, the Independent Certifier, the Proof Engineer and the Independent Checking Engineer with every reasonable facility necessary for the inspection of the Contractor's Activities.
- (c) **(Safety and security requirements)**: When accessing any area or thing referred to in clause 9.6(a)(i), the Principal must comply with and use best endeavours to ensure that any persons authorised by it to access that area or thing comply with, the Contractor's reasonable safety and security constraints (including compliance with the Contractor's reasonable access rules, site induction requirements, and safety and security procedures).
- (d) **(No duty to inspect or review)**: Neither the Principal, the Principal's Representative, the Principal's Surveillance Officers, nor any person authorised under clause 9.6(a) owes any duty to the Contractor to:

- (i) inspect the Contractor's Activities; or
 - (ii) review any construction, maintenance or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (e) **(Obligations unaffected)**: No inspection or review of the Contractor's Activities or of any construction, maintenance or repair by the Principal, the Principal's Representative, the Principal's Surveillance Officers, or any person authorised under clause 9.6(a) will in any way lessen or otherwise affect:
- (i) the Contractor's obligations or warranties under the D&C Documents or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor whether under the D&C Documents or otherwise according to Law.

9.7 Non-conformances

- (a) **(Comments to Independent Certifier)**: The Principal may at any time provide comments to the Independent Certifier in respect of the Contractor's Activities (with a copy to the Contractor).
- (b) **(Notice of non-conformance)**: If the Principal believes that the Project Works or the Temporary Works are not being constructed, or the Contractor's Activities are not being carried out, in accordance with the requirements of the D&C Documents, the Principal may give a notice to the Contractor specifying the non-conformance or the Defect.
- (c) **(Notice of disagreement)**: If the Contractor disagrees with any notice given by the Principal pursuant to clause 9.7(b), it must within 5 Business Days after receipt of such a notice give notice of its disagreement to the Principal. The Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement.
- (d) **(Referral to Independent Certifier)**: If the matter is not resolved within 8 Business Days of the Contractor giving its notice under clause 9.7(c), either party may by notice to the other party and the Independent Certifier refer the matter for determination by the Independent Certifier, who must within 8 Business Days make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.
- (e) **(Correction)**: If the Principal gives a notice under clause 9.7(b) and the Contractor does not give a notice under clause 9.7(c) (or if the Contractor does give a notice under clause 9.7(c) and the Independent Certifier, or the resolution of the issue between the Principal and the Contractor, as applicable, determines that the Project Works or the Temporary Works are not being constructed, or the Contractor's Activities are not being carried out, in accordance with the requirements of the D&C Documents), the Contractor must correct the non-conformance or the Defect the subject of the notice under clause 9.7(b).

9.8 Easements

- (a) **(Principal's rights)**: The Contractor acknowledges and agrees that the Principal reserves the right at all times to:

- (i) create Easements benefiting or burdening any part of the Construction Site or Extra Land and to release, vary, modify or give waivers of such Easements; and
- (ii) dedicate land of which it is the owner of the fee simple estate for road, rail and other purposes,

upon such terms and conditions as the Principal sees fit.

- (b) **(Unknown Easement)**: If an Unknown Easement will have an impact on the Contractor's ability to comply with its obligations under this deed, it will be a Deemed Change Event and the Contractor is entitled to make a claim under clause 41.2 (*Notice of Deemed Change Events*).

9.9 Motorway Stratum and Licensed Maintenance Areas

- (a) **(Indicative description)**: The land which is expected to comprise the Motorway Stratum and Licensed Maintenance Areas is generally described in Schedule 13 (*Motorway Stratum and Licensed Maintenance Areas*). However, the Motorway Stratum and Licensed Maintenance Areas will require refinement and adjustment based on the final design and as-built location of the Motorway Works.
- (b) **(Consultation)**: During the performance of the Contractor's Activities, the parties must consult with each other regarding, and endeavour to agree, any refinements and adjustments to the Motorway Stratum and Licensed Maintenance Areas based on the principles set out in Schedule 13 (*Motorway Stratum and Licensed Maintenance Areas*).
- (c) **(Determination)**: To the extent that the parties are unable to agree any refinements and adjustments to the Motorway Stratum or Licensed Maintenance Areas under clause 9.9(b), the Principal must determine the Motorway Stratum and Licensed Maintenance Areas based on the principles set out in Schedule 13 (*Motorway Stratum and Licensed Maintenance Areas*) and notify the Contractor in writing.
- (d) **(Tunnel substratum)**: Any refinements and adjustments to the tunnel substratum which forms part of the Motorway Stratum will be determined in accordance with clauses 4.2 and 4.3 of the Site Access Schedule, and not clauses 9.9(b) and 9.9(c).

9.10 Access to WestConnex Assets and Systems

- (a) **(No liability)** The Contractor acknowledges and agrees that:
 - (i) other than the WestConnex Integration Sites, the WestConnex Motorways (including the WestConnex Assets and Systems) do not form part of the Construction Site; and
 - (ii) subject to clause 10A (*WestConnex Integration*), the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to any WestConnex Assets and Systems (other than the WestConnex Integration Sites), except to the extent caused or contributed to by breach by the Principal of this clause 9.10.

- (b) **(Access request):** If the Contractor needs to access, modify, test any aspect of or otherwise interface with any WestConnex Assets and Systems as part of carrying out the Project Works or the Contractor's Activities, it must (within a reasonable time sufficient for the Principal to provide reasonable notice to the relevant WestConnex Concessionaire) provide a request to the Principal detailing:
- (i) the aspects of the WestConnex Assets and Systems the Contractor requires access to;
 - (ii) whether, in the Contractor's opinion, any of the WestConnex Assets and Systems it requires access to constitute a COES;
 - (iii) the type of access required and the nature of the works (including inspection activities, modification works or testing and commissioning activities) that the Contractor intends to carry out on the WestConnex Assets and Systems;
 - (iv) the Contractor's preferred time and date for access, which must be at least 20 Business Days (or, in the case of a Major Closure, at least 90 calendar days) after the date of the Contractor's request, unless otherwise agreed by the Principal (acting reasonably, provided that it will be deemed reasonable to refuse agreement if the relevant WestConnex Concessionaire has not agreed to the earlier access requested by the Contractor);
 - (v) the anticipated duration of the access and the works;
 - (vi) whether the access and the works will require any traffic adjustments to any WestConnex Motorway in order to continue safe motorway operations; and
 - (vii) any expected impact of the access and the works on the performance or availability of the relevant WestConnex Motorway and the WestConnex Assets and Systems.
- (c) **(Response to request):** To the extent the WestConnex Assets and Systems to which the Contractor has requested access are not listed in Part C of Schedule 31 (*WestConnex Integration Schedule*), within 15 Business Days of the Contractor's request, the Principal will confirm whether it considers any of the WestConnex Assets and Systems constitute a COES, in which case the process in clause 10C will apply (Critical Operational Equipment and Systems).
- (d) **(Provision of access):** The Principal will procure that the relevant WestConnex Concessionaire provides the access requested by the Contractor in accordance with clause 9.10(b) and consistent with the access requirements set out in 9.10(e), provided that:
- (i) the Contractor's proposed date for such access is after the date the relevant WestConnex Motorway is opened to traffic;
 - (ii) the Contractor has obtained all relevant Approvals (including a ROL) and a 'WestConnex Work Permit' in accordance with Appendix B.34 of the SWTC and has otherwise complied with clause 7.6 (*Control of traffic*);
 - (iii) where the Principal is of the opinion that the access would require a traffic adjustments or could impact on the relevant WestConnex Concessionaire's ability to toll the relevant WestConnex Motorway, the access and the works are carried out during an Off-Peak Period; and

- (iv) the Contractor agrees to reimburse the Principal for the relevant Lane Occupancy Fees in accordance with Schedule 18 (*Lane Occupancy Fees*).
- (e) **(Conditions of access)**: Without limiting the Contractor's other obligations under this deed, the Contractor must:
 - (i) ensure that the access under this clause 9.10 to WestConnex Assets and Systems in respect of the WestConnex Motorways does not:
 - (A) prevent the relevant WestConnex Concessionaire from undertaking the relevant WestConnex Motorway project in accordance with the applicable WestConnex Project Deed;
 - (B) materially adversely affect the workmanship, durability or functional integrity of any element of the relevant WestConnex Motorway;
 - (C) materially adversely affect the relevant WestConnex Concessionaire's ability to achieve "Final Handover" (as defined under the applicable WestConnex Project Deed) of the relevant WestConnex Motorway in accordance with the requirements of the applicable WestConnex Project Deed;
 - (D) permit any untolled use of any section of any WestConnex Motorway, or any unmetered use of any Utility Service by the WestConnex Concessionaires or any of their contractors; or
 - (E) except as a necessary consequence of the Project Works, Temporary Works, D&C Phase Maintenance or the Landscaping Maintenance being carried out in accordance with this deed, impede the free flow of traffic along, onto or from the WestConnex Motorways at their normal operational speeds and volumes;
 - (ii) co-ordinate all activities associated with access to the WestConnex Asset or System in respect of the WestConnex Motorway;
 - (iii) minimise any interference with the construction, operation and use of the WestConnex Motorway;
 - (iv) pay the relevant Lane Occupancy Fees calculated in accordance with Schedule 18 (*Lane Occupancy Fees*); and
 - (v) ensure that its Related Parties comply with the requirements of this clause 9.10.

9.11 Access to Construction Site by Future M6 Stage Contractors

- (a) **(Access request)** If, prior to the Date of Opening Completion, a Future M6 Stage Contractor needs to access an area of the Construction Site (or any part of it) as part of designing and constructing a Future M6 Stage:
 - (i) the Principal must provide a request to the Contractor detailing:
 - (A) the type of access required;
 - (B) the nature of the works that the Future M6 Stage Contractor intends to carry out;

- (C) the anticipated duration of the access and the works; and
 - (D) the Future M6 Stage Contractor's preferred time and date for access, which must be at least 10 Business Days after the date of the Principal's request, unless otherwise agreed by the Contractor (acting reasonably); and
- (ii) the Contractor must provide the access requested by the Principal in accordance with this clause 9.11 subject to the Future M6 Stage Contractor complying with the Contractor's reasonable site access and work, health and safety procedures.
- (b) **(Handover control):** To the extent that part of the Construction Site is no longer reasonably required to perform the Contractor's Activities, the Contractor must, if requested by the Principal, handover control of that part of the Construction Site to a Future M6 Stage Contractor. If requested by the Principal, the Contractor must take reasonable steps to perform the Contractor's Activities so that part of the Construction Site required by the Principal is no longer reasonably required to perform the Contractor's Activities.

9.12 Existing Handover Assets

- (a) **(Title):** Title in the Existing Handover Assets left for the Contractor which were not hired will transfer to the Contractor on the date the Contractor first receives access to the Existing Handover Assets in accordance with the Site Access Schedule.
- (b) **(Hire):** The Contractor is responsible for taking over the hire of the Existing Handover Assets left for the Contractor which were hired on and from the date the Contractor first receives access to the Existing Handover Assets in accordance with the Site Access Schedule.
- (c) **(Maintenance and disposal):** The Contractor will be responsible for the maintenance and disposal of the Existing Handover Assets left for the Contractor as part of the Temporary Works.
- (d) **(Further Temporary Works):** The Contractor will be responsible for providing all additional or alternative Temporary Works required to perform the Contractor's Activities in accordance with this deed.

10. Construction Site

10.1 Physical conditions

- (a) **(Contractor to inform itself):** Without limiting clauses 2.3 (*Information Documents*) and 10.1(b), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, the Contractor has examined and assessed:
 - (i) the D&C Documents and the Information Documents;
 - (ii) the Construction Site, Extra Land, the Maintenance Site, the WestConnex Motorways and their surroundings; and
 - (iii) any other information that a prudent and competent contractor in the position of the Contractor could reasonably have been expected to obtain,

for the purposes of assessing the Site Conditions and risks associated with them, and ensuring it has made sufficient allowances and contingencies in its Tender for those risks.

- (b) **(No representations by Principal)**: Without limiting the other provisions of this deed, the Principal makes no representation and gives no warranty to the Contractor in respect of the Site Conditions likely to be encountered during the execution of the Contractor's Activities.
- (c) **(Contractor accepts site)**: Without limiting clause 2.3 (*Information Documents*) but subject to clauses 10.5 (*Unknown Site Conditions*) and 10A.4 (*WestConnex Interface Defects*), the Contractor accepts the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site, the WestConnex Motorways and the Site Conditions in their present condition and agrees that it is responsible for, and assumes the risk of:
 - (i) all Loss, delay or disruption it suffers or incurs; and
 - (ii) 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 in performing the Contractor's Activities.
- (d) **(Contractor not relieved)**: The Contractor must investigate, design and construct the Project Works and the Temporary Works in accordance with this deed and acknowledges that it will not be relieved of its obligations under this deed, irrespective of:
 - (i) without limiting the Contractor's rights under clauses 10.5 (*Unknown Site Conditions*) and 10A.4 (*WestConnex Interface Defects*), the Site Conditions encountered in performing the Contractor's Activities; and
 - (ii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions.

10.2 Artefacts

- (a) **(Ownership)**: As between the Principal and the Contractor, any Artefacts found on or under the surface of the Construction Site, the Maintenance Site or the WestConnex Motorways are the property of the Principal.
- (b) **(Obligations)**: The Contractor must upon the discovery of any Artefact on or under the surface of the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site or the WestConnex Motorways:
 - (i) ensure that the Artefact is protected and not disturbed any further;
 - (ii) comply with all requirements of Authorities and Directions of the Principal in relation to the Artefact; and
 - (iii) continue to perform the Contractor's Activities except to the extent otherwise:
 - (A) directed by the Principal;
 - (B) ordered by a court or tribunal; or

(C) required by Law.

- (c) **(Unknown Artefacts)**: Clause 10.5 (*Unknown Site Conditions*) will apply to any Unknown Artefact discovered in addition to this clause 10.2, and the Contractor's compliance with clauses 10.2(b)(ii) and 10.2(b)(iii) will form part of any Change directed by the Principal under clause 10.5(e) (*Unknown Site Conditions*).

10.3 Native Title Claim

- (a) **(Obligations)**: If there is a Native Title Claim with respect to the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site, the WestConnex Motorways, or any part of them, the Contractor must continue to perform its obligations under the D&C Documents, unless otherwise:
- (i) directed by the Principal;
 - (ii) ordered by an Authority, a court or tribunal; or
 - (iii) required by Law.
- (b) **(Principal may direct)**: For the purposes of clause 10.3(a)(i), the Principal may give a notice directing the Contractor to suspend any or all of its obligations under this deed and the Contractor must comply until such time as the Principal gives the Contractor a further notice.

10.4 Contamination

- (a) **(Contractor to notify)**: If the Contractor discovers any Contamination or potential Contamination in, on or under the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site or the WestConnex Motorways (whether or not the Contractor or its Related Parties have caused or contributed to that Contamination), it must:
- (i) notify the Principal immediately of the discovery of the Contamination or potential Contamination; and
 - (ii) give any notice required by Law.
- (b) **(Accepted Contamination)**: Prior to the Date of Opening Completion, the Contractor must comply, and ensure that its Related Parties comply, with any Contamination Notice relating to Accepted Contamination, regardless of whether:
- (i) the Contamination Notice is addressed to the Principal, the Contractor or some other person; or
 - (ii) the Contamination occurred before or after the Contractor or its Related Parties were given access to the relevant land.
- (c) **(Other Contamination)**: If the Principal, the Contractor or any other person receives a Contamination Notice relating to Contamination other than Accepted Contamination, the Principal must either:
- (i) direct the Contractor to provide the Principal and any person authorised by the Principal with such access to the Construction Site, the Maintenance Site, the Additional Property Works Areas or any Extra Land as is required to enable the Principal to comply with that Contamination Notice, in which case the Contractor must promptly comply with the Principal's direction; or

- (ii) propose a Change in accordance with 13 (*Changes*) to require the Contractor to comply with that Contamination Notice.
- (d) **(Parties not to cause Contamination Notices)**: 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) **(Contractor obligations)**: The Contractor must:
- (i) prevent Accepted Contamination from migrating from or through the Construction Site, Additional Property Works Areas, Extra Land, Maintenance Site or WestConnex Motorways to other land;
 - (ii) perform the Contractor's Activities in a manner that does not cause Contamination in existence outside the Construction Site, Additional Property Works Areas, Extra Land, Maintenance Site or WestConnex Motorways to migrate to the extent:
 - (A) such Contamination is known, or substantially known, to the Contractor at the date of this deed or could have been Reasonably Anticipated; and
 - (B) such migration could have been Reasonably Anticipated;
 - (iii) dispose of, or otherwise deal with, Accepted Contamination in accordance with Law and the Environmental Documents; and
 - (iv) remediate the relevant part of the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site and the WestConnex Motorways to the standard required by Law and the Environmental Documents to the extent that:
 - (A) it is in any way degraded by Accepted Contamination;
 - (B) the Accepted Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated; or
 - (C) such remediation is otherwise required by this deed.
- (f) **(Indemnity by Contractor)**: Except to the extent prohibited by Law, the Contractor indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
- (i) a failure by the Contractor to comply with this clause 10.4 (*Contamination*);
 - (ii) to the extent any Contamination has been brought onto the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site or WestConnex Motorways by the Contractor or any of its Related Parties; or
 - (iii) to the extent any Contamination has been caused or contributed to by a negligent or wrongful act or omission by the Contractor or its Related Parties.
- (g) **(Standard of remediation)**: The requirement that the relevant part of the Construction Site, the Additional Property Works Areas, Extra Land, Maintenance



10.5 Unknown Site Conditions

- (a) **(Notices):** If the Contractor becomes aware of an Unknown Site Condition, the Contractor must:
- (i) notify the Principal of the existence and if possible the scope of the Unknown Site Condition as soon as practicable and in any event within 1 Business Day after becoming aware of the Unknown Site Condition; and
 - (ii) within 10 Business Days after becoming aware of the Unknown Site Condition, provide a notice to the Principal 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 the Contractor believes the relevant characteristic or condition constitutes or involves an Unknown Site Condition which entitles the Contractor to make a Claim under this clause 10.5;
 - (E) [REDACTED] the alternative measures that the Contractor 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) if the Unknown Site Condition is Unknown Contamination which is groundwater contamination, evidence that the Contamination is not able to be remediated to the standard required by Law and the Environmental Documents using existing treatment plants; and
 - (G) any other information that the Contractor considers is relevant in the circumstances,

(Unknown Site Condition Notice).

- (b) **(Additional information):** Following receipt of an Unknown Site Condition Notice under clause 10.5(a) [REDACTED], the Principal may request any additional information it reasonably requires from the Contractor to assess the Unknown Site Condition Notice, Unknown Site Condition, [REDACTED]
- (c) **(Response):** Within:

(i) [REDACTED] 5 Business Days after receipt of:

(A) the Unknown Site Condition Notice; and

(B) any additional information requested by the Principal pursuant to clause 10.5(b); or

(ii)

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

whichever is later, the Principal must notify the Contractor whether it believes that the Unknown Site Condition Notice [REDACTED] identifies an Unknown Site Condition.

(d) **(Failure to respond)**: If the Principal does not give a notice under clause 10.5(b) within the time required by clause 10.5(b), the Principal is deemed to have notified the Contractor that it believes the Unknown Site Condition Notice or options report does not identify an Unknown Site Condition.

(e) **(Principal to direct Change)**: Subject to clauses 10.5(f) and 10.5(g), if the Contractor gives an Unknown Site Condition Notice [REDACTED] and the Principal agrees or it is determined that there is an Unknown Site Condition, the Principal must issue a Change Order under clause 13.6 (*Change Orders at the Principal's Election*) which overcomes the Unknown Site Condition. [REDACTED]

(f) **(Restrictions on entitlements)**: Despite any other provision of this deed, the Change Costs in respect of any Change directed under clause 10.5(e) will be determined disregarding:

(i) [REDACTED] any work performed, amount incurred or delay to the Contractor's Activities arising more than 10 Business Days before the Contractor gave a notice to the Principal in respect of the relevant Unknown Site Condition in accordance with clause 10.5(a)(ii) (but failure to comply with clause 10.5(a)(i) will not otherwise bar or affect the Contractor's Claim);

(ii) any work performed, amounts incurred or delay arising to the extent caused or made necessary by the Contractor's breach of the D&C Documents or a negligent or wrongful act or omission of the Contractor or its Related Parties; and

- (iii) any amounts incurred or delay arising to the extent the amounts or delay would have been avoided if the Contractor had Mitigated them,

and the Contractor is not entitled to make any Claim against the Principal, and the Principal has no liability to the Contractor, in respect of work, amounts or delay disregarded pursuant to this clause 10.5(f).

- (g) **(Exclusions for specific conditions):** Despite any other provision of this deed, the Contractor is not entitled to make any Claim against the Principal, and the Principal has no liability to the Contractor, in respect of:

- (i) any extension of time or Contractor's Delay Costs as a result of a Change directed under clause 10.5(e) in relation to Unknown Contamination, except to the extent a Change to groundwater treatment facilities is required to remediate or treat Unknown Contamination in groundwater to the standard required by this deed;
- (ii) any Contractor's Delay Costs as a result of a Change directed under clause 10.5(e) in relation to Unknown Utility Services;
- (iii) any extension of time as a result of a Change directed under clause 10.5(e) in relation to Unknown Artefacts, except to the extent the Contractor is directed, ordered or required by the Principal, an Authority, a court, or tribunal or by Law to suspend or cease to perform any or all of the Contractor's Activities as a result of the Unknown Artefacts; and
- (iv) any Contractor's Delay Costs as a result of a Change directed under clause 10.5(e) in relation to Unknown Artefacts.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

10A WestConnex Integration

10A.1 Overview

This clause 10A:

- (a) **(Integration)**: describes how the Contractor will integrate the Motorway into the WestConnex Motorways;
- (b) **(Information)**: establishes the process for the Principal to provide information regarding the WestConnex Interface Assets and Systems to assist with integration;
- (c) **(Requirements)**: specifies the requirements which the WestConnex Interface Assets and Systems must meet to enable integration; and
- (d) **(WestConnex Interface Defects)**: establishes the process for dealing with any WestConnex Interface Defects.

10A.2 WestConnex integration

The Contractor must carry out the WestConnex Integration Works to enable the Motorway to integrate with the WestConnex Motorways as required by this deed including the SWTC,

and so that, to the extent specified by the SWTC, the Motorway and the WestConnex Motorways operate as a single, integrated tunnel asset.

10A.3 WestConnex interface information

- (a) **(WestConnex Interface Specifications):** The Contractor warrants that it has reviewed and carefully considered the WestConnex Interface Specifications and it has satisfied itself that they are suitable for the purposes of the performance of its obligations under this deed.
- (b) **(WestConnex Interface Reference Documents):** The Contractor acknowledges and agrees that:
 - (i) it has been provided with the WestConnex Interface Reference Documents as Information Documents prior to the date of this deed;
 - (ii) it has reviewed the WestConnex Interface Reference Documents as at the date of this deed and is satisfied that they are suitable for the purposes of the performance of its obligations under this deed;
 - (iii) the design and construction of certain WestConnex Assets and Systems may not be complete at the date of this deed; and
 - (iv) the WestConnex Interface Reference Documents may be updated from time to time, including due to further design development, differences between the relevant WestConnex Interface Assets and Systems as designed and as built and changes to the relevant WestConnex Interface Assets and Systems.
- (c) **(Updated documents):** The Principal will provide the Contractor with updated WestConnex Interface Reference Documents after the date of this deed:
 - (i) to the extent the updated WestConnex Interface Reference Documents are required as part of a WestConnex Interface Milestone, on or before the relevant WestConnex Interface Milestone Date; and
 - (ii) otherwise, within 5 Business Days after the final version of those documents are provided to the Principal.
- (d) **(Notice of Change):** On provision of updated WestConnex Interface Reference Documents pursuant to clause 10A.3(c), the Contractor must review the further or updated WestConnex Interface Reference Documents and, to the extent that the Contractor considers that the updated WestConnex Interface Reference Documents are inconsistent with the WestConnex Interface Specifications such that the updated WestConnex Interface Reference Documents require or constitute a Change, the Contractor must give the Principal written notice setting out reasonable details of the Change within 10 Business Days of receipt of the updated WestConnex Interface Reference Documents.
- (e) **(Response to Notice):** Within 10 Business Days of receipt of the Contractor's notice under clause 10A.3(d), the Principal must notify the Contractor that:
 - (i) the Principal agrees that the updated WestConnex Interface Reference Documents are inconsistent with the WestConnex Interface Specifications such that they require or constitute a Change, in which case clause 10A.3(f) will apply;

- (ii) the Principal does not agree that the updated WestConnex Interface Reference Documents are inconsistent with the WestConnex Interface Specifications such that they require or constitute a Change, in which case clause 10A.3(g) will apply; or
 - (iii) the Principal will have the WestConnex Interface Reference Documents amended, in which case clause 10A.3(h) will apply.
- (f) **(Principal agrees Change required):** If the Principal gives notice under clause 10A.3(e)(i) or clause 10A.3(g)(iii)(A):
- (i) the Principal must issue a Change Order in accordance with clause 13.6 (*Change Orders at the Principal's Election*) for the relevant Change; and
 - (ii) the WestConnex Interface Specifications will be updated in accordance with the relevant updated WestConnex Interface Reference Documents to the extent of the inconsistency.
- (g) **(Principal disagrees Change required):** If the Principal gives notice under clause 10A.3(e)(ii):
- (i) the Contractor may, if it disagrees with the Principal's determination, within 8 Business Days after the receipt of the notice under clause 10A.3(e)(ii) issue a notice of dispute under the Dispute Resolution Procedure;
 - (ii) if the Contractor does not issue a notice of dispute under clause 10.3(g)(ii) or it is determined pursuant to the Dispute Resolution Procedure that the updated WestConnex Interface Reference Documents are consistent with the WestConnex Interface Specifications or do not require or constitute a Change, the WestConnex Interface Reference Documents are taken to be updated in accordance with the updated WestConnex Interface Reference Documents; and
 - (iii) if it is determined pursuant to the Dispute Resolution Procedure that the updated WestConnex Interface Reference Documents are inconsistent with the WestConnex Interface Specifications such that they require or constitute a Change, the Principal must notify the Contractor that:
 - (A) the Principal will proceed with the updated WestConnex Interface Reference Documents, in which case clause 10A.3(f) will apply; or
 - (B) the Principal will have the WestConnex Interface Reference Documents amended so that they are consistent with the WestConnex Interface Specifications or do not require or constitute a Change, in which case clause 10A.3(h) will apply.
- (h) **(Principal amends documents):** If the Principal gives notice under clause 10A.3(e)(iii), the Principal must provide amended WestConnex Interface Reference Documents to the Contractor which are consistent with the WestConnex Interface Specifications or do not require or constitute a Change, in which case clause 10A.3(c) will re-apply.
- (i) **(Requests for other documents):** If the Contractor considers that it requires copies of the existing design or as built documentation for any WestConnex Assets and Systems in order to comply with its obligations under this deed, the Contractor must give a notice to the Principal detailing:

- (i) the specific design or as built documentation for the WestConnex Assets and Systems that the Contractor requires; and
 - (ii) why the Contractor requires copies of such design or as built documentation.
- (j) **(Provision of other documents):** If the Principal considers (acting reasonably) that the Contractor requires copies of the design or as built documentation requested by the Contractor under clause 10A.3(i) in order to comply with its obligations under this deed, the Principal will use best endeavours to procure that design or as built documentation from the relevant WestConnex Concessionaire as Information Documents.
- (k) **(Review standard):** The Contractor must review any WestConnex Interface Reference Documents provided by the Principal pursuant to this clause 10A.3 in accordance with Good Industry Practice.

10A.4 WestConnex Interface Defects

- (a) **(Reviews and inspections):** For the purposes of identifying any WestConnex Interface Defects:
- (i) the Principal may, and will if requested by the Contractor, provide the Contractor with any testing and commissioning results, surveys, samples and any other information or documentation that the Principal has in respect of the WestConnex Interface Works, and the Contractor must promptly review the information or documentation provided;
 - (ii) the Principal may, and will if requested by the Contractor and to the extent it is entitled to do so, allow the Contractor to perform inspections of the WestConnex Interface Works, and the Contractor must perform such inspections; and
 - (iii) the Contractor must perform reviews and inspections under clauses 10A.4(a)(i) and 10A.4(a)(ii) in accordance with Good Industry Practice.
- (b) **(Form of inspection):** The Contractor acknowledges and agrees that:
- (i) the Principal will be entitled to determine the inspection methodology and the number of attendees for each inspection carried out in accordance with clause 10A.4(a)(ii) (and without limitation, such inspections may be restricted to visual inspection of the WestConnex Interface Works only, with invasive testing or inspection not permitted); and
 - (ii) in the case of WestConnex Interface Works located on a WestConnex Integration Site, following the Principal granting the Contractor access to the WestConnex Integration Site in accordance with clause 9.1 (*Construction Site*), the Contractor may carry out any form of non-destructive testing or inspection for the purposes of identifying any WestConnex Interface Defects.
- (c) **(Notice of defect):** If the Contractor discovers or believes that there is a WestConnex Interface Defect (including as a result of any review or inspection under clause 10A.4(a)), the Contractor must:
- (i) promptly (and where the Contractor discovers a WestConnex Interface Defect during an inspection referred to in this clause 10A.4, within 5 Business Days of that inspection) after the Contractor first became aware of

- the WestConnex Interface Defect, give notice to the Principal of the WestConnex Interface Defect; and
- (ii) promptly (and where the Contractor discovers a WestConnex Interface Defect during an inspection referred to in this clause 10A.4, within 7 Business Days of that inspection), give a notice to the Principal of the WestConnex Interface Defect containing details of:
 - (A) the estimated time required to rectify the WestConnex Interface Defect (to the extent known);
 - (B) whether the Contractor considers that the WestConnex Interface Defect is an Urgent WestConnex Interface Defect; and
 - (C) the impact of the WestConnex Interface Defect on the Contractor's ability to comply with its obligations under this deed, including on the Contractor's ability to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion.
- (d) **(Response to notice)**: If the Contractor gives a notice to the Principal in accordance with clause 10A.4(c), then the Principal must:
- (i) procure that the applicable WestConnex Concessionaire or WestConnex D&C Contractor rectifies the WestConnex Interface Defect;
 - (ii) direct a Change in accordance with clause 13.6 (*Change Orders at the Principal's Election*) requiring the Contractor to either rectify the WestConnex Interface Defect or to modify the Project Works or the Contractor's Activities to accommodate the WestConnex Interface Defect;
 - (iii) advise the Contractor that it disagrees that the alleged defect is a WestConnex Interface Defect or an Urgent WestConnex Interface Defect (as applicable); or
 - (iv) notify the Contractor that it is not entitled to any Claim in respect of the WestConnex Interface Defect due to the operation of clause 10A.4(g)(i).
- (e) **(Access and Compensation Event)**: Where the Principal procures the WestConnex Concessionaire or WestConnex D&C Contractor to rectify the WestConnex Interface Defect pursuant to clause 10A.4(d)(i):
- (i) to the extent the WestConnex Interface Defect is located on a WestConnex Integration Site, the Contractor must give the WestConnex Concessionaire or WestConnex D&C Contractor safe and convenient access to the relevant WestConnex Integration Site for the purpose of the relevant contractor rectifying the WestConnex Interface Defect, including in accordance with clause 9.6 (*Access and inspection by the Principal*); and
 - (ii) the WestConnex Interface Defect and the WestConnex Concessionaire or WestConnex D&C Contractor carrying out rectification work on the relevant WestConnex Integration Site will be a Compensation Event.
- (f) **(Disagreement on defect)**: Where the Principal advises the Contractor that it disagrees that the alleged defect is a WestConnex Interface Defect or that the alleged defect is an Urgent WestConnex Interface Defect pursuant to clause 10A.4(d)(iv):

- (i) the Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 5 Business Days after the date of the Principal's notice to the Contractor, either the Principal or the Contractor may, by notice to the other party and the Independent Certifier, refer the matter for determination by the Independent Certifier, who must within 10 Business Days after receipt of the referral make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination, and the parties agree to be bound by the determination of the Independent Certifier under this clause;
 - (ii) the Contractor must continue to perform its obligations under this deed; and
 - (iii) where it is determined that a WestConnex Interface Defect exists, the Principal must (at the Principal's discretion) procure rectification pursuant to clause 10A.4(d)(i), direct a Change pursuant to clause 10A.4(d)(ii) or give notice under clause 10A.4(d)(iv).
- (g) **(No Claim):** The Contractor will not have any Claim (including for an extension of time or other form of relief for any delay) against the Principal in respect of a WestConnex Interface Defect:
- (i) to the extent it is not necessary for the WestConnex Interface Defect to be rectified in order for the Contractor to comply with its obligations under this deed or to avoid a material adverse effect on the cost or timing of the Contractor performing any of those obligations; or
 - (ii) for Loss incurred by the IOMCS and OMCS Subcontractor where the WestConnex System Defect occurs in any WestConnex Assets and Systems that were supplied, installed, tested or commissioned by the IOMCS and OMCS Subcontractor (including for a WestConnex Concessionaire or WestConnex D&C Contractor).
- (h) **(Claim reduced):** The Contractor's failure to perform a review or inspection in accordance with clause 10A.4(a), or to give notice in respect of a WestConnex Interface Defect of which the Contractor is aware in accordance with clause 10A.4(c), does not relieve the Principal from any obligation under this clause 10A.4 to procure the rectification of the WestConnex Interface Defect pursuant to clause 10A.4(d)(i) or direct a Change pursuant to clause 10A.4(d)(ii). However, the Contractor will not have any Claim against the Principal in respect of the WestConnex Interface Defect to the extent that failure resulted in or contributed to the Claim.
- (i) **(Right to direct a Change):** Nothing in this clause 10A.4 prevents the Principal from directing a Change in accordance with clause 13.6 (*Change Orders at the Principal's Election*) requiring the Contractor to rectify a WestConnex Interface Defect whether or not the Principal has issued a notice pursuant to clause 10A.4(d) and the Contractor's entitlement to any Change Costs and any extension of time will be adjusted to reflect any subsequent determination (and for the avoidance of doubt, the Contractor will have no Claim if this deed provides that it will not have a Claim in respect of any WestConnex Interface Defect).
- (j) **(Performance of Works)** Where the Principal directs a Change under this clause 10A.4 requiring the Contractor to rectify a WestConnex Interface Defect, the Contractor must (without limiting any requirements imposed on the Contractor under clause 13 (*Changes*) in relation to how the Contractor carries out such works) carry out such works:

- (i) so as to minimise the impact on the use of the WestConnex Motorways;
 - (ii) so as to minimise the inconvenience to possible users of the WestConnex Motorways, any Local Area, a Utility Service, the Property Works or any access to them and the adjacent community;
 - (iii) in accordance with the requirements of any relevant Authority; and
 - (iv) in a manner which causes as little inconvenience as possible to the WestConnex Activities.
- (k) **(Responsibility for Defects)** For the avoidance of doubt, the Contractor will be responsible for any Defects in the works that it carries out to the WestConnex Assets and Systems or the WestConnex Integration Sites.

10A.5 WestConnex Interface Works

- (a) **(Works to interface)**: The Contractor acknowledges that:
- (i) the Contractor's Activities will interface with the performance of the WestConnex Interface Works; and
 - (ii) the WestConnex Interface Works will be performed after the date of this deed, in some cases at the same time as the Contractor's Activities.
- (b) **(Information requests)**: Either:
- (i) the Principal may request the Contractor to provide information to the Principal (including for provision to the WestConnex Concessionaires and the WestConnex D&C Contractors); or
 - (ii) the Contractor may request the Principal to provide information to the Contractor,
- to coordinate the WestConnex Interface Works with the Project Works and the Temporary Works. The Contractor must comply with any such request in a timely manner.
- (c) **(Cooperate and coordinate)**: The Contractor will:
- (i) cooperate with the WestConnex Concessionaires and the WestConnex D&C Contractors to ensure the effective coordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the WestConnex Interface Works;
 - (ii) carefully coordinate the Contractor's Activities with the WestConnex Interface Works;
 - (iii) be responsible for coordinating the Contractor's Activities, including work sequencing, access timing, construction methods, safety, industrial relations matters, commissioning and testing, acceptance, completion and defects management and resolution with those affecting, and influenced by, the WestConnex Interface Works;
 - (iv) attend coordination meetings with the WestConnex Concessionaires and the WestConnex D&C Contractors and others in respect of the WestConnex

Interface Works at such times as may be reasonably required by the Principal, to review current and future issues; and

- (v) must promptly advise the Principal of all matters arising out of the liaison with the WestConnex Concessionaires and the WestConnex D&C Contractors that may have an adverse effect upon the Contractor's Activities and the WestConnex Interface Works.

10A.6 No Claim

Except as expressly set out in this clause 10A, the Contractor will have no Claim against the Principal arising out of or in any way in connection with the condition of the WestConnex Assets and Systems (including in relation to the WestConnex Interface Assets and Systems not being fit for the purposes of enabling the Contractor to comply with its obligations under this deed).

10B Liability for Impacts on WestConnex Motorways

10B.1 Purpose

This clause 10B specifies the compensation payable by the Contractor in accordance with this clause 10B and Schedule 18 (*Lane Occupancy Fees*) for adverse traffic or tolling impacts on:

- (a) (**WestConnex**): the WestConnex Motorways; and
- (b) (**M6 Motorway**): the Motorway after Opening Completion.

10B.2 Contractor liability for adverse traffic impacts

- (a) (**Traffic or tolling impact**): Subject to clause 10B.2(b), if:
 - (i) any Traffic or Tolling Impact is caused or required on the Motorway after Opening Completion or on a WestConnex Motorway or a WestConnex Asset or System, and the Traffic or Tolling Impact causes or requires a Traffic Adjustment or Tolling System Functionality Impact;
 - (ii) the Principal or a WestConnex Concessionaire to incur additional expenditure (including increased operation costs) to mitigate the potential Lane Occupancy Fees that would be payable by the Contractor as a result of any such Traffic or Tolling Impact,

then the Contractor, provided section 2(a) of Schedule 18 (*Lane Occupancy Fees*) applies, will be liable to pay the Principal on demand the following amounts:

- (iii) the Lane Occupancy Fees calculated in accordance with Schedule 18 (*Lane Occupancy Fees*) as a result; and
- (iv) the additional reasonable costs incurred by the Principal or a WestConnex Concessionaire in connection with taking steps to mitigate the potential Lane Occupancy Fees that would be payable by the Contractor as a result of any such Traffic or Tolling Impact,

provided that the aggregate amounts for which the Contractor is liable under clauses 10B.2(a)(iii) and 10B.2(a)(iv) are capped at an amount equivalent to the Lane Occupancy Fees that would have been payable by the Contractor in connection with the Traffic or Tolling Impact if not for the mitigation action taken

by the Principal or the WestConnex Concessionaire (as applicable). This applies to both Planned Lane Closures and Unplanned Lane Closures.

- (b) **(Defects)**: The Contractor is not liable to the Principal for Lane Occupancy Fees or additional costs under clauses 10B.2(a)(iii) or 10B.2(a)(iv) to the extent the Traffic or Tolling Impact causing or requiring the Traffic Adjustment or Tolling System Functionality Impact:
- (i) is caused by or required as a result of:
- (A) a Defect in Motorway Works, Local Area Works, Utility Service Works, Property Works, D&C Phase Maintenance or Landscaping Maintenance during an applicable Defects Correction Period or Landscaping Maintenance Period, but only to the extent the Traffic or Tolling Impact occurs in the period before the Principal, a WestConnex Concessionaire or a Related Party of either of them gives the Contractor notice of the Defect or Traffic or Tolling Impact; or
- (B) a Defect in Motorway Works, Local Area Works, Utility Service Works, Property Works, D&C Phase Maintenance or Landscaping Maintenance after all applicable Defects Correction Periods or Landscaping Maintenance Period have expired, provided that the Principal did not direct the Contractor to correct the Defect under clause 18.2 (*Principal's Direction*) during the applicable Defects Correction Period or Landscaping Maintenance Period,
- and in each case, excluding any Traffic or Tolling Impact caused by or required as a result of the rectification of the Defect under this deed; or
- (ii) occurs after Opening Completion and is not caused by or required as a result of:
- (A) a Defect in Motorway Works, Local Area Works, Utility Service Works, Property Works, D&C Phase Maintenance or Landscaping Maintenance; or
- (B) the Contractor's Activities during their performance after Opening Completion.

10C Critical Operational Equipment and Systems

10C.1 Purpose

This clause 10C sets out the process for modifying or disrupting Critical Operational Equipment and System to minimise the risk of any unplanned disruption or adverse impact as a result of the WestConnex Integration Works.

10C.2 Integration Works carried out on a COES

The Contractor must not carry out:

- (a) **(COES Modification)**: any COES Modification until a COES Modification Readiness Review has been completed in accordance with clause 10C.4 and:
- (i) the Independent Certifier notifies the Principal and the Contractor that:

- (A) it has no comments in respect of the relevant COES Modification Proposal in accordance with clause 10C.5(b)(ii); or
 - (B) the Contractor has addressed any comments notified by the Independent Certifier in accordance with clause 10C.5(b)(i); or
 - (ii) the Principal provides consent in accordance with clause 10C.5(b)(iii).
- (b) **(COES Temporary Disruption)**: any COES Temporary Disruption until:
- (i) the Independent Certifier notifies the Principal and the Contractor that:
 - (A) it has no comments in respect of the COES Temporary Disruption Proposal in accordance with clause 10C.6(d)(ii); or
 - (B) the Contractor has addressed any comments notified by the Independent Certifier in accordance with clause 10C.6(d)(i); or
 - (ii) the Principal provides consent in accordance with clause 10C.6(d)(iii).

10C.3 COES Modification Proposal

For each proposed COES Modification, the Contractor must prepare a COES Modification Proposal that:

- (a) **(Scope)**: documents the scope of the proposed COES Modification, including:
 - (i) specifications and software release notes;
 - (ii) any particular hold point that the Contractor seeks to the IOMCS and WestConnex OMCS including the duration thereof
 - (iii) approved Design Documentation for the COES Modification; and
 - (iv) evidence that the COES Modification has been approved by the Contractor's design authority;
- (b) **(Testing, proposal and personnel)**: demonstrates that:
 - (i) the COES Modification has been adequately verified and tested through the provision of:
 - (A) test procedures;
 - (B) inspection and test results; and
 - (C) inspection and test reports;
 - (ii) the Contractor's proposal for the COES Modification, including its proposed mitigation measures and safeguards, are appropriate (in accordance with the standards of this deed) for ensuring that the COES Modification will not result in any adverse impact on the COES or the operations of any WestConnex Motorways; and
 - (iii) the Contractor will have competent personnel available to execute the COES Modification and support any recovery procedures that may need to be implemented;

- (c) **(Program, systems and procedure)**: includes:
- (i) the detailed implementation program for the COES Modification;
 - (ii) the procedures the Contractor will use to implement the COES Modification including all hold points;
 - (iii) details of any systems other than a COES that may be disturbed, impacted or interfered with as part of the COES Modification;
 - (iv) details of whether the WestConnex IOMCS and OMCS Configuration Freeze will be in effect when the COES Modification is implemented;
 - (v) the testing procedures the Contractor will use to test the COES Modification, once implemented (including any regression testing to any disturbed systems);
 - (vi) automated scripts, if applicable, to implement and reverse the COES Modification; and
 - (vii) the procedures to reinstate and retest any COES that is adversely affected by the COES Modification (including any automated scripts);
- (d) **(Training)**: demonstrates that personnel who will operate or maintain the modified COES have successfully completed any necessary training (if applicable); and
- (e) **(Amendments)**: demonstrates that amendments to manuals and procedures relevant to the COES Modification have been completed.

10C.4 COES Modification Readiness Review

- (f) **(Review meeting)**: For each COES Modification Proposal, the Contractor must facilitate a review meeting (**COES Modification Readiness Review**). The purpose of the COES Modification Readiness Review is:
- (i) for the Contractor to present its initial COES Modification Proposal to:
 - (A) the Principal's Representative and the Principal's invitees;
 - (B) the representatives of the relevant WestConnex Concessionaires and the WestConnex O&M Contractors (as applicable) and their respective invitees; and
 - (C) the Independent Certifier; and
 - (ii) for those parties to review and discuss the COES Modification Proposal, its implications and the risks and mitigants associated with it.
- (g) **(Notice)**: The Contractor must give the Principal and the Independent Certifier at least 10 Business Days' notice (or such other period as is agreed between the parties), following the submission of its initial COES Modification Proposal, of the date, time and place of the relevant COES Modification Readiness Review.
- (h) **(Stakeholders)**: The Principal and the Independent Certifier may invite any of the WestConnex Concessionaires, the WestConnex O&M Contractors and any other affected stakeholder to attend the COES Modification Readiness Review.

- (i) **(Comments):** The Principal, the Independent Certifier and any of the other parties attending the COES Modification Readiness Review may comment on or raise any concerns in respect of any aspect of the COES Modification Proposal as part of the COES Modification Readiness Review.

10C.5 Revised COES Modification Proposal

- (a) **(Revised proposal):** The Contractor must have due regard to any comments raised in the COES Modification Readiness Review and must, as soon as reasonably practicable after the COES Modification Readiness Review, submit a revised COES Modification Proposal to the Independent Certifier and the Principal (or, if the Contractor considers that no revision is necessary to the COES Modification Proposal, advise the Independent Certifier and the Principal of that fact).
- (b) **(Review):** Subject to clause 10C.5(d), the Independent Certifier must, within 10 Business Days after the date on which it receives the revised COES Modification Proposal (or Contractor's notification under clause 10C.5(a)), review the revised COES Modification Proposal and:
 - (i) if the Independent Certifier considers that the COES Modification Proposal does not:
 - (A) comply with the requirements of this deed;
 - (B) address the comments raised in the COES Modification Readiness Review (to the extent required for the COES Modification Proposal to satisfy the requirements of this deed); or
 - (C) include responses to the comments raised in the COES Modification Readiness Review to the extent not addressed,

the Independent Certifier will notify the Principal and the Contractor of its response in the form of:

 - (D) a "rejection" of the COES Modification Proposal, including details of the non-compliances, in which case the Contractor may not proceed with the COES Modification and must submit a further revised COES Modification Proposal to the Independent Certifier and the Principal whereupon the provisions of clauses 10C.3 and 10C.4 and this clause 10C.5 will re-apply; or
 - (E) "comments" on the COES Modification Proposal, in which case the Contractor may proceed with the COES Modification provided the Contractor first addresses the comments raised by the Independent Certifier in its notice; or
 - (ii) if the Independent Certifier considers that the COES Modification Proposal:
 - (A) does comply with the requirements of this deed;
 - (B) addresses the comments raised in the COES Modification Readiness Review (to the extent required for the COES Modification Proposal to satisfy the requirements of this deed); and
 - (C) includes responses to the comments raised in the COES Modification Readiness Review to the extent not addressed;

then:

- (D) the Independent Certifier will notify the Principal and the Contractor that it has no comments in relation to the COES Modification Proposal; and
 - (E) the Contractor may proceed with the COES Modification in accordance with the COES Modification Proposal; or
- (iii) if the Independent Certifier does not give any notice within the relevant 10 Business Day period, the Principal may provide its consent to the Contractor proceeding with the COES Modification in accordance with the COES Modification Proposal (such consent to be withheld or delayed only if the Principal reasonably considers that the COES Modification Proposal does not satisfy the requirements of this deed).
- (c) **(Consultation):** The Contractor acknowledges that the Independent Certifier must consult with any parties that may be impacted by the COES Modification, including the relevant WestConnex Concessionaires or the WestConnex O&M Contractors before giving any notice under this clause 10C.5.
- (d) **(Reject proposal):** Despite any provision in this deed to the contrary, the Contractor acknowledges that if the Principal or the WestConnex Concessionaires reasonably considers that:
- (i) the testing procedures that the Contractor will use to test the COES Modification once implemented;
 - (ii) the automated scripts to implement and reverse the COES Modification; or
 - (iii) the procedures to reinstate and retest any COES that is adversely affected by the COES Modification,
- as set out in the COES Modification Proposal, are likely to result in:
- (iv) an adverse impact on the safety of WestConnex Motorway operations; or
 - (v) in the event a COES Modification needs to be reversed, any WestConnex Motorway not being returned to normal operation within the timeframe specified in the COES Modification Proposal,
- then the Principal may instruct the Independent Certifier to reject the COES Modification Proposal, in which case:
- (vi) the Principal must promptly instruct the Independent Certifier to reject the COES Modification Proposal;
 - (vii) the Independent Certifier must promptly reject the COES Modification Proposal and notify the parties of the rejection of the COES Modification Proposal;
 - (viii) the Contractor may not proceed with the COES Modification in accordance with the COES Modification Proposal; and
 - (ix) the Contractor may submit a revised COES Modification Proposal whereupon clauses 10C.3 and 10C.4 and this clause 10C.5 will re-apply.

10C.6 COES Temporary Disruption Proposal

- (a) **(Requirements):** For each proposed COES Temporary Disruption, the Contractor must prepare a COES Temporary Disruption Proposal that:
- (i) details:
 - (A) how the COES will be modified, disrupted or interfered with;
 - (B) over what timeframe the COES will be modified, disrupted or interfered with;
 - (C) of the potential impacts to the operation of the COES; and
 - (D) the Contractor's proposed mitigation measures and safeguards;
 - (E) whether the WestConnex IOMCS and OMCS Configuration Freeze will be in effect when the COES Temporary Disruption is implemented; and
 - (ii) demonstrates that:
 - (A) the Contractor's proposal for the COES Temporary Disruption, including its proposed mitigation measures and safeguards, are appropriate (in accordance with the standards of this deed) for ensuring that the COES Temporary Disruption will not result in any adverse impact on the COES or the operation of the WestConnex Motorways; and
 - (B) the Contractor will have competent personnel available to execute the COES Temporary Disruption and support any recovery procedures that may need to be implemented; and
 - (iii) includes the procedures the Contractor will use to:
 - (A) modify the COES; and
 - (B) to reinstate and retest any COES that is modified, disturbed or affected by the COES Temporary Disruption (including any automated scripts).
- (b) **(Submit):** The Contractor must submit the COES Temporary Disruption Proposal to the Principal and the Independent Certifier at least 9 Business Days prior to the date on which the Contractor proposes to carry out the COES Temporary Disruption.
- (c) **(Review by Principal):** The Principal may (but is not obliged to):
- (i) review any COES Temporary Disruption Proposal submitted under this clause 10C.6; and
 - (ii) notify the Independent Certifier in writing (with a copy to the Contractor) of any comments which the Principal has in respect of the COES Temporary Disruption Proposal,
- within 9 Business Days of the date on which the COES Temporary Disruption Proposal is submitted to the Principal.

(d) **(Review by Independent Certifier):** Subject to clause 10C.6(f), the Independent Certifier must, within 10 Business Days after the date on which it receives the COES Temporary Disruption Proposal under this clause 10C.6, review that COES Temporary Disruption Proposal and:

(i) if the Independent Certifier considers that the COES Temporary Disruption Proposal does not:

(A) comply with the requirements of this deed;

(B) address the comments provided by the Principal under clause 10C.6(c) (to the extent required for the COES Temporary Disruption Proposal to satisfy the requirements of this deed); or

(C) include responses to the comments provided by the Principal under clause 10C.6(c) to the extent not addressed,

the Independent Certifier will notify the Principal and the Contractor of its response in the form of:

(D) a "rejection" of the COES Temporary Disruption Proposal, including details of the non-compliances, in which case the Contractor may not proceed with the COES Temporary Disruption and must submit a further revised COES Temporary Disruption Proposal to the Independent Certifier and the Principal whereupon the provisions of this clause 10C.6 will re-apply; or

(E) "comments" on the COES Temporary Disruption Proposal, in which case the Contractor will be able to proceed with the COES Temporary Disruption provided the Contractor first addresses the comments raised by the Independent Certifier in its notice and submits a revised COES Temporary Disruption Proposal which addresses those comments; or

(ii) if the Independent Certifier considers that the COES Temporary Disruption Proposal:

(A) does comply with the requirements of this deed;

(B) address the comments provided by the Principal under clause 10C.6(c) (to the extent required for the COES Temporary Disruption Proposal to satisfy the requirements of this deed); or

(C) includes responses to the comments provided by the Principal under clause 10C.6(c) to the extent not addressed,

then:

(D) the Independent Certifier will notify the Principal and the Contractor that it has no comments in relation to the COES Temporary Disruption Proposal; and

(E) the Contractor may proceed with the COES Temporary Disruption in accordance with the COES Temporary Disruption Proposal; or

(iii) if the Independent Certifier does not give any notice within the relevant 10 Business Day period, the Principal may provide its consent to the Contractor

proceeding with the COES Temporary Disruption in accordance with the COES Temporary Disruption Proposal (such consent to be withheld or delayed only if the Principal reasonably considers that the COES Temporary Disruption Proposal does not satisfy the requirements of this deed).

- (e) **(Consultation)**: The Contractor acknowledges and agrees that the Independent Certifier may consult with any parties that may be impacted by the COES Temporary Disruption, including the WestConnex Concessionaires, the O&M Contractors and the WestConnex O&M Contractors before giving any notice under this clause 10C.6.
- (f) **(Reject proposal)**: Despite any provision in this deed to the contrary, the Contractor acknowledges that if the Principal or the WestConnex Concessionaires reasonably considers that the procedures that the Contractor will use to modify the COES and reinstate and retest any COES that is modified, disturbed or affected by the COES Temporary Disruption Proposal are likely to result in:
- (i) an adverse impact on the safety of WestConnex Motorway operations; or
 - (ii) in the event the COES Temporary Disruption needs to be reversed, any WestConnex Motorway not being returned to normal operation within the timeframe specified in the COES Modification Proposal,

then the Principal may instruct the Independent Certifier to reject the COES Temporary Disruption Proposal, in which case:

- (iii) the Principal must promptly instruct the Independent Certifier to reject the COES Temporary Disruption Proposal;
- (iv) the Independent Certifier must promptly reject the COES Temporary Disruption Proposal and notify the parties of the rejection of the COES Temporary Disruption Proposal;
- (v) the Contractor may not proceed with the COES Temporary Disruption in accordance with the COES Temporary Disruption Proposal; and
- (vi) the Contractor may submit a revised COES Temporary Disruption Proposal whereupon this clause 10C.6 will re-apply.

10C.7 Urgent Action

Nothing in this clause 10C limits the rights and entitlement of the WestConnex Concessionaires to take urgent action in accordance with the WestConnex Interface Agreement.

10D WestConnex IOMCS and OMCS Configuration Freeze

10D.1 Purpose

This clause 10D details the configuration freeze which will be implemented for the IOMCS and WestConnex OMCS to assist with the integration of the Motorway into the WestConnex Motorways.

10D.2 Scope of Configuration Freeze

- (a) **(Scope)**: The **WestConnex** IOMCS and OMCS Configuration Freeze consists of a stop to all changes to the WestConnex IOMCS and OMCS Assets and Systems,

except to the extent permitted by clause 10D.3 (*Exceptions to Configuration Freeze*).

- (b) **(Notification)**: The Contractor must:
- (i) give the Principal and the Independent Certifier:
 - (A) 6 months and 2 Business Days’;
 - (B) 3 months and 2 Business Days’; and
 - (C) 12 Business Days’,

prior notice of the date the Configuration Freeze Readiness Requirements are expected to be achieved.
 - (ii) promptly notify the Principal if a date identified in any notice provided in accordance with clause 10D.2(b) or this clause 10D.2(c) changes; and
 - (iii) promptly notify the Principal and the Independent Certifier when it considers the Configuration Freeze Readiness Requirements have been achieved.
- (c) Within 5 Business Days’ after receipt of a notice under clause 10D.3(b)(iii), the Independent Certifier will determine whether the Configuration Freeze Readiness Requirements have been achieved and:
- (i) if the Configuration Freeze Readiness Requirements have been achieved, give the Principal and the Contractor a certificate which states that; or
 - (ii) if the Configuration Freeze Readiness Requirements have not been achieved, issue a notice to the Principal and the Contractor which states:
 - (A) the items which remain to be completed before the Configuration Freeze Readiness Requirements have been achieved; or
 - (B) that the Configuration Freeze Readiness Requirements are so far from being achieved that it is not practicable to list the items which remain to be completed as contemplated by clause 10D.2(c)(iii)(A),

in which case clause 10D.2(b)(iii) and this clause 10D.2(c) will reapply,
- (d) At least:
- (i) 24 Business Days before the date the Configuration Freeze Readiness Requirements are expected to be achieved, as notified to the Principal under clause 10D.2(b)(i)(A) or (B); and
 - (ii) 4 Business Days before the date the Configuration Freeze Readiness Requirements are expected to be achieved, as notified to the Principal under clause 10D.2(b)(i)(C),
- the Principal must give the Contractor notice setting out reasonable details of:
- (iii) any material instability of or other issues with the WestConnex IOMCS and OMCS Assets and Systems which the WestConnex Concessionaires believe will be relevant to the WestConnex IOMCS and OMCS Configuration Freeze or WestConnex Integration Works;

- (iv) any adverse impacts on the WestConnex IOMCS and OMCS Assets and Systems, or the availability or operation of them, which the WestConnex Concessionaires believe the WestConnex IOMCS and OMCS Configuration Freeze or WestConnex Integration Works will have; and
- (v) any changes to the WestConnex IOMCS and OMCS Assets and Systems which the WestConnex Concessionaires expect to make during the WestConnex IOMCS and OMCS Configuration Freeze in accordance with clause 10D.3,

and:

- (vi) within 13 Business Days after a notice is provided by the Principal in accordance with clause 10D.2(d)(i); and
- (vii) within 1 Business Day after a notice is provided by the Principal in accordance with clause 10D.2(d)(ii),

the Contractor must provide a response to the comments raised in that notice. However, nothing in this clause 10D.2 requires the Contractor to address or remedy any issues notified to it by the Principal under this clause 10D.2(d).

10D.3 Exceptions to Configuration Freeze

- (a) **(Permitted changes):** The WestConnex IOMCS and OMCS Configuration Freeze does not restrict the following changes to the WestConnex IOMCS and OMCS Assets and Systems:
 - (i) changes to the IOMCS and WestConnex OMCS for the M8 Motorway performed as part of the Contractor's Activities;
 - (ii) changes required to ensure that the WestConnex Motorways comply, and are operated and maintained in compliance with, all applicable Laws (including the WestConnex Planning Approvals);
 - (iii) changes required to ensure the WestConnex Motorways comply, and are operated and maintained in compliance with, the WestConnex Project Deeds and relevant 'Project Documents' (as that term is defined in those deeds);
 - (iv) changes required to rectify or mitigate any material risk to people, property or the Environment;
 - (v) changes required to rectify or mitigate any material risk to the availability or operation of the IOMCS or WestConnex OMCS;
 - (vi) changes required as a result of the replacement of unserviceable equipment;
 - (vii) changes to IOMCS and WestConnex OMCS user accounts;
 - (viii) changes permitted by clause 10D.3(d); and
 - (ix) changes directed by the Principal as a Change pursuant to a Change Order.
- (b) **(Request for change):** The Principal may give the Contractor a written request to make a change to the WestConnex IOMCS and OMCS Assets and Systems not permitted by clauses 10D.3(a)(i) to 10D.3(a)(vii) (inclusive). The Principal's request must include reasonable details of the proposed change.

- (c) **(Response to request):** As soon as reasonably practicable, and in any event within 10 Business Days, after receipt of a request under clause 10D.3(b), the Contractor must give the Principal written notice setting out detailed particulars of any adverse effect the change will have on the Contractor's ability to comply with its obligations under this deed, the time required to achieve Opening Completion or Completion or the cost of the Contractor performing its obligations under this deed.
- (d) **(No adverse effect):** To the extent that a change to the WestConnex IOMCS and OMCS Assets and Systems will not have an adverse effect on the Contractor's ability to comply with its obligations under this deed, the time required to achieve Opening Completion or Completion or the cost of the Contractor performing its obligations under this deed the Principal may proceed with the change.

10D.4 Implementation of Configuration Freeze

- (a) **(Start of freeze):** Subject to the Principal having received the notices required under clause 10D.2(b), the Principal must ensure that a WestConnex IOMCS and OMCS Configuration Freeze:
 - (i) commences within 4 Business Days after the Independent Certifier provides a certificate stating that the Configuration Freeze Readiness Requirements have been achieved under clause 10D.2(c)(i); and
 - (ii) continues until 1 month after the Date of Opening Completion (or such other date as is agreed by the parties in writing).
- (b) **(Notice):** The Principal must give the Contractor written notice of any change to the WestConnex IOMCS and OMCS Assets and Systems made in accordance with clause 10D.3:
 - (i) where reasonably practicable, at least 10 Business Days before the change is implemented; and
 - (ii) where not reasonably practicable to provide under clause 10D.4(c)(i), as soon as reasonably practicable, but in any event no later than 3 Business Days after the change is implemented.

11. Quality

11.1 Quality Management

- (a) **(Quality Management System):** The Contractor must implement a Quality Management System for the management of all aspects of the Contractor's obligations under this deed in accordance with the applicable requirements of the SWTC, including section 3.7 of the SWTC and the Quality Management Plan.
- (b) **(Quality Management Plan):** The Contractor must develop and implement a Quality Management Plan in accordance with this deed, including the SWTC.
- (c) **(Acknowledgments):** The Contractor acknowledges and agrees that the design and construct project delivery method chosen for the Contractor's Activities, the Project Works and the Temporary Works:
 - (i) requires the Contractor to assume responsibility for all aspects of quality for the Contractor's 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 Contractor's Activities and the durability of the Project Works and the Temporary Works to certify compliance with the requirements of this deed;
 - (iii) requires the Independent Certifier by reviewing and assessing quality in the Contractor's Activities and the durability of the Project Works, the Temporary Works and the Motorway, to certify the Contractor's compliance with the requirements of this deed; and
 - (iv) allows the Principal to monitor compliance of the Contractor's Activities with the requirements of this deed.
- (d) **(Certificates):** The Contractor must provide to the Principal certificates executed by:
- (i) the Quality Manager:
 - (A) in the form of Part A of Schedule 14 (*Form of Certificates*), within 60 Business Days after the date of this deed;
 - (B) in the form of Part B of Schedule 14 (*Form of Certificates*), every 60 Business Days from the date of this deed until the Date of Opening Completion;
 - (C) in the form of Part C of Schedule 14 (*Form of Certificates*), as a condition precedent to Opening Completion; and
 - (D) in the form of Part D of Schedule 14 (*Form of Certificates*), upon the expiry of the last Defects Correction Period;
 - (ii) the Independent Certifier:
 - (A) in the form of Part E of Schedule 14 (*Form of Certificates*), within 60 Business Days after the date of this deed;
 - (B) in the form of Part F of Schedule 14 (*Form of Certificates*), every 60 Business Days from the date of this deed until the Date of Opening Completion; and
 - (C) in the form of Part G of Schedule 14 (*Form of Certificates*), upon the expiry of the last Defects Correction Period;
 - (iii) the Contractor's Environmental Manager in the form of Part H of Schedule 14 (*Form of Certificates*) every 85 Business Days from the date of this deed until the Date of Opening Completion;
 - (iv) the Contractor in the form of Part I of Schedule 14 (*Form of Certificates*), in accordance with section 2.3 of the Contractor Documentation Schedule;
 - (v) the relevant Subcontractor in the form of Part J of Schedule 14 (*Form of Certificates*), in accordance with section 2.3 of the Contractor Documentation Schedule;
 - (vi) the Independent Certifier in the form of Part K of Schedule 14 (*Form of Certificates*), in accordance with section 2.4.5 of the Contractor Documentation Schedule;

- (vii) the Proof Engineer in the form of Part L of Schedule 14 (*Form of Certificates*), in accordance with section 2.7 of the Contractor Documentation Schedule;
- (viii) the Independent Checking Engineer in the form of Part M of Schedule 14 (*Form of Certificates*), in accordance with section 2.7 of the Contractor Documentation Schedule; and
- (ix) the Contractor in the form of Part P of Schedule 14 (*Form of Certificates*) within 10 Business Days before the expiry of the Landscaping Maintenance Period.

11.2 Additional testing

- (a) **(Required tests)**: The Contractor must carry out all tests:
 - (i) required by this deed; or
 - (ii) otherwise directed by the Principal.
- (b) **(Costs of testing)**: The reasonable costs of a test directed by the Principal and not otherwise required by this deed will be borne by the Principal subject to the Contractor substantiating those costs to the satisfaction of the Principal, unless the test detects a Defect or is upon a Defect (in which case all such costs will be borne by the Contractor).
- (c) **(Delay)**: Where any test that is not otherwise required by this deed is directed by the Principal under clause 11.2(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify the Principal if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Opening Completion or Completion, giving details of the estimated delay and how the Date of Opening Completion and the Date of Completion are likely to be affected (if at all).
- (d) **(Extension of time)**: The requirement to notify the Principal in accordance with clause 11.2(c) is a condition precedent to the Contractor's entitlement to any extension of time in connection with a test directed by the Principal under clause 11.2(a)(ii).

11.3 Access to information

- (a) **(Information)**: Without limiting any other provision of this deed:
 - (i) the Principal may at any time notify the Contractor that it requires access to any information held by the Contractor or a Significant Subcontractor which relates to the Contractor's Activities;
 - (ii) upon receipt of a notice under clause 11.3(a)(i), the Contractor must immediately provide the Principal (and any person authorised by the Principal) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
 - (iii) the Principal (and any person authorised by the Principal) may review, copy, retain or otherwise deal with such information.
- (b) **(Permitted uses)**: The Contractor acknowledges that the Principal may require information pursuant to this clause 11.3 to facilitate the procurement of other

contracts as part of the Motorway, a Future M6 Stage or other projects, or to provide to an existing or prospective financier or equity investor in the Motorway, a Future M6 Stage or other projects.

11.4 Independent Certifier

- (a) **(Engagement):** The Independent Certifier is to be engaged by the Principal and the Contractor on the terms of the Independent Certifier Deed at the Principal's cost.
- (b) **(Role):** 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;
 - (ii) independently certify Payment Claims and issue Payment Statements in accordance with the requirements of this deed; and
 - (iii) make determinations on matters that this deed expressly requires be determined by the Independent Certifier.
- (c) **(Acknowledgements):** 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, the Independent Certifier does not have any power to give any Directions to either the Principal or the Contractor;
 - (ii) the Independent Certifier is obliged to act independently of the Principal and the Contractor and any of their Related Parties, and is not an employee, agent or consultant of the Principal or the Contractor;
 - (iii) any determination by the Independent Certifier in respect of a matter required by this deed to be determined by the Independent Certifier will be final and binding upon the Principal and the Contractor, except in the case of:
 - (A) manifest error;
 - (B) determinations under clauses 10A.4(f) (*WestConnex System Defect*), 16 (*Delay During Construction*), 18.2 (*Principal's Direction*) or 22 (*Payment*);
 - (C) to the extent stated in section 2.6.5 of the Contractor Documentation Schedule; or
 - (D) a determination regarding liability for, or the quantum of any amounts which the Principal is entitled to set-off under this deed, based on a direction of the Principal under clause 4.5 of the Independent Certifier Deed;
 - (iv) a certification or determination by the Independent Certifier (including one that is final and binding) will not:

- (A) constitute an approval by the Principal of the Contractor's performance of the Contractor's obligations under this deed;
 - (B) be taken as an admission or evidence that the Project Works, the Temporary Works or any other matters certified or determined by the Independent Certifier comply with this deed; or
 - (C) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects;
- (v) no act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier, whether or not such certification or determination:
- (A) is final and binding;
 - (B) contains a manifest error; or
 - (C) is overturned in subsequent dispute resolution proceedings,
- will:
- (D) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the D&C Documents; or
 - (E) entitle the Contractor to make any Claim against the Principal; and
- (vi) without limiting clause 11.4(c)(v), an act or omission (including negligence) of the Independent Certifier will not:
- (A) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under the D&C Documents or otherwise according to Law; or
 - (B) prejudice or limit a party's rights against the other party whether under the D&C Documents or otherwise according to Law.
- (d) **(Information and access)**: The Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier access to:
- (i) attend design meetings;
 - (ii) all premises where the Contractor's Activities are being carried out;
 - (iii) insert Hold Points in the Project Plans; and
 - (iv) release the Hold Points (unless the Principal has directed the Contractor that another authority will release the Hold Point),
- all as may be:
- (v) necessary or reasonably required by the Independent Certifier or the Principal, to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed; or

- (vi) reasonably requested by the Independent Certifier.
- (e) **(Comments by party)**: Either party may provide comments to the Independent Certifier in respect of the Contractor's Activities, but must give the other party a copy of such comments at the same time.

11.5 Replacement of the Independent Certifier

- (a) **(Replacement)**: If the Independent Certifier Deed is terminated before its scheduled expiry, or if any incumbent Independent Certifier ceases to act as Independent Certifier, the Principal and the Contractor must, unless otherwise agreed by the Principal and the 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) **(Requirements)**: In the circumstances described in clause 11.5(a), a replacement Independent Certifier to be appointed must meet any requirements set out in this deed.
- (c) **(Disagreement)**: If the Principal and the Contractor cannot agree such appointment under this deed, the Principal and the 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 by the Principal and the Contractor as soon as practicable on substantially the same terms as previous Independent Certifier Deed.

11.6 No relief from obligations

The Contractor will not be relieved from any of its Liabilities or responsibilities under the D&C Documents (including under clause 18 (*Defects Correction Periods*)) or otherwise according to Law nor will the rights of the Principal against the Contractor, whether under the D&C Documents or otherwise according to Law, be limited or otherwise affected by or as a consequence of any of the following:

- (a) **(Quality Plans)**: the implementation of, and compliance with, any Quality Management System or the Quality Management Plan by the Contractor;
- (b) **(Independent Certifier Deed)**: compliance with any requirements of the Independent Certifier Deed;
- (c) **(Release by Principal)**: any release, authorisation, approval or agreement by the Principal, or any other person acting on behalf of the Principal;
- (d) **(Failure to detect defect)**: any failure by the Principal or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect; or
- (e) **(Monitoring or audit)**: any monitoring or audit arranged by the Principal under, or any discussions between the Quality Manager and the Principal as contemplated under Appendix C.7 of the SWTC.

11.7 Monitoring and audits by the Principal

- (a) **(Compliance with deed)**: The Contractor acknowledges that the Principal may, at any time up to the Date of Completion, arrange monitoring and audits (including

testing) to see if the Contractor is complying with this deed (including the Quality Management Plan, the WHS Management Plan, the Chain of Responsibility Management Plan and the other Project Plans).

- (b) **(Access and availability)**: The Contractor must:
- (i) make arrangements to ensure that the Principal (or its nominee, including (without limitation) the Principal's Representative) and the Principal's Surveillance Officer has access to all facilities, documentation, records and personnel (including those of Subcontractors) at any time that they are needed by the Principal (or its nominee as applicable) for the carrying out of the monitoring and audits referred to in clause 11.7(a); and
 - (ii) ensure that the Quality Manager, the Environmental Manager, the Contractor's work health and safety representatives and the Contractor's personnel responsible for compliance with the Chain of Responsibility Provisions or any Plans referred to in clause 11.7(a) are available, as necessary, to discuss details of quality matters with the Principal during the above monitoring and audits.

12. Design and Design Documentation

12.1 Design Documentation

- (a) **(Contractor to prepare)**: The Contractor must develop and complete all Design Documentation in accordance with this deed and the Design Management Plan.
- (b) **(Restrictions on use)**: Unless otherwise agreed in writing by the Principal, the Contractor must only use for construction purposes parts of the Design Documentation which:
- (i) have been submitted to the Principal and the Independent Certifier in accordance with the Contractor Documentation Schedule; and
 - (ii) the Contractor Documentation Schedule either states the Contractor is entitled to proceed with the Contractor's Activities using or does not prevent the Contractor from proceeding to use.
- (c) **(No duty to review)**: The Principal and the Contractor acknowledge and agree that:
- (i) the receipt or review of, or any consultation or comments regarding, any Design Documentation by the Principal and the Independent Certifier is solely for the purpose of monitoring the performance of the Contractor;
 - (ii) the Reviewers do not assume a duty or owe a duty to the Contractor to review the SWTC, Concept Design or Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation; and
 - (iii) any receipt, review, certification, rejection, consultation, comments, failure to respond or silence by a Reviewer regarding any Design Documentation will not lessen or otherwise affect:

- (A) the Contractor's warranties under this clause 12.1 or any of the Contractor's other Liabilities or responsibilities under the D&C Documents or otherwise according to Law; or
- (B) a Reviewer's rights against the Contractor whether under the D&C Documents or otherwise according to Law.

12.2 Design responsibility and warranties

- (a) **(Concept Design does not impact design responsibility):** The Contractor acknowledges and agrees that, prior to the date of this deed, it prepared the Concept Design and that the Contractor's use of and reliance on the Concept Design in performing the Contractor's Activities will not lessen or otherwise affect the Contractor's Liabilities or responsibilities under the D&C Documents or otherwise according to Law.
- (b) **(Contractor assumes risk of Concept Design):** The Contractor is responsible for, and assumes the risk of, and any Loss it suffers or incurs arising out of or in connection with:
 - (i) the Concept Design, including 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 the Contractor is required to design and construct to comply with this deed and the Concept Design (excluding any Changes the subject of a Change Order).
- (c) **(Design warranties – Concept Design):** Without limiting clauses 12.2(a) and 12.2(b), the Contractor warrants to the Principal that:
 - (i) if the Project Works and the Temporary Works are designed and constructed in accordance with the Concept Design, the Project Works and the Temporary Works will satisfy the requirements of this deed;
 - (ii) the Contractor will carry out and complete the Contractor's Activities in accordance with the Concept Design; and
 - (iii) the Contractor will not make any changes to the Concept Design without the prior written approval of the Principal, except to the extent required as part of a Change directed pursuant to a Change Order.

The Principal will not withhold its approval under clause 12.2(c)(iii) to the extent the change to the Concept Design is necessary for the Project Works to comply with the SWTC, provided that, where there are different ways to comply with the SWTC, the change achieves the standards, performance and outcomes of the Concept Design to the extent reasonable possible.

- (d) **(Design warranties – SWTC and Environmental Documents):** Without limiting clauses 12.2(a) and 12.2(b), the Contractor warrants to the Principal that the Contractor has checked, examined, analysed and carefully considered the SWTC and the Environmental Documents and that:
 - (i) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC;

- (ii) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
 - (iii) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or the Principal in accordance with this deed;
 - (iv) without limiting clause 2.3(e) (*Information Documents*), it will be fully and exclusively responsible and liable for all risks associated with and any Loss it suffers or incurs as a result of the use by the Contractor of, or reliance upon, the SWTC;
 - (v) without limiting clause 2.3(e) (*Information Documents*), the use of, or reliance upon, the SWTC does not affect any of its obligations under this deed or entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the SWTC; and
 - (vi) the Design Documentation will satisfy the requirements of this deed and will be, and will remain at all relevant times, fit for its intended purpose.
- (e) **(Design warranties – Compliance):** Without limiting clauses 12.2(a) and 12.2(b), the Contractor warrants to the Principal that:
- (i) construction will be carried out in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 12.1(b) (*Design Documentation*); and
 - (ii) construction carried out in accordance with the Design Documentation which the Contractor is entitled to use in accordance with clause 12.1(b) (*Design Documentation*) will satisfy the requirements of this deed.
- (f) **(Design warranties – Unaffected):** Without limiting the Contractor's rights under clause 10A.3 (*WestConnex interface information*), the Contractor agrees that its obligations under, and the warranties given in, this clause 12.2 will remain unaffected and that it will accept the risks associated with, and Liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works despite:
- (i) any design work carried out by others (including any design work carried out by the Principal, the WestConnex Concessionaires and any of their Related Parties) and incorporated into the Concept Design, the Design Documentation or this deed;
 - (ii) any Change the subject of a Change Order by the Principal; or
 - (iii) the termination (for any reason) of this deed.

12.3 Change in Codes and Standards

- (a) **(Response to change):** Where there is a Change in Codes and Standards:
- (i) the Contractor must give a notice to the Principal within the later of 15 Business Days after the Change in Codes and Standards or when the Contractor first became aware (or ought reasonably to have first become aware) of the change containing details of the Change in Codes and

Standards and the information specified in clause 13.3(a) (*Contractor Change Notice*) in respect of the proposed Change in Codes and Standards (even though the notice under this clause 12.3(a) is not a Contractor Change Notice); and

- (ii) if a notice is given by the Contractor which complies with clause 12.3(a)(i), then within 12 Business Days after the notice having been given, the Principal will either:
 - (A) direct the Contractor to disregard the Change in Codes and Standards where doing so will not result in the Project Works not complying with the requirements of Law;
 - (B) direct a Change in respect of the Change in Codes and Standards; or
 - (C) notify the Contractor it requires additional information from the Contractor regarding the Change in Codes and Standards, in which event:
 - (aa) the Contractor must provide the additional information sought by the Principal within a further period of 7 Business Days; and
 - (bb) this clause 12.3(a)(ii), will reapply as if the additional information were the notice given by the Contractor under clause 12.3(a)(i),

provided that, if it is not reasonably practicable for the Contractor to provide the additional information sought by the Principal within the 7 Business Days period and the Contractor gives the Principal written notice of that within that period, the 7 Business Days period will be extended by a further 5 Business Days.

- (b) **(Contractor to disregard)**: If the Principal gives a notice under clause 12.3(a)(ii)(A):
 - (i) the Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards; and
 - (ii) the Principal will not be precluded from subsequently issuing a Change Proposal or a Change Order under clause 13 (*Changes*) in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 12.3(a)(i).
- (c) **(Deemed response)**: If the Principal fails to give a direction or notice under clause 12.3(a)(ii) within the time required by clause 12.3(a)(ii), then the Principal will be deemed to have issued a notice under clause 12.3(a)(ii)(A) and clause 12.3(b) will apply.
- (d) **(No Claim for Change Costs)**: If the Principal gives a notice under clause 12.3(a)(ii)(B) or otherwise issues a Change Proposal or a Change Order under clause 13 (*Changes*) in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 12.3(a)(i), the Contractor will not have any Claim for Change Costs against the Principal:
 - (i) for Change Costs incurred in relation to changes to Design Documentation or changes to the Project Works or Temporary Works to the extent a result of

such changes to Design Documentation, except to the extent that the relevant Design Documentation, before the issue of:

- (A) a notice under clause 12.3(a)(ii)(B); or
 - (B) a Change Proposal or a Change Order under clause 13 (*Changes*),
as applicable, complied, or would have complied, with the requirements of this deed, including any requirement that the Design Documentation be fit for its intended purpose (or any similar reference); or
- (ii) to the extent that, despite the Change in Codes and Standards, the Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that:
 - (A) the Project Works be fit for their intended purposes (or any similar reference) at Opening Completion; and
 - (B) the Temporary Works be fit for their intended purposes (or any similar reference).
- (e) **(Change Proposal or Order)**: The Contractor acknowledges and agrees that nothing in this clause 12.3 prevents the Principal from issuing a Change Proposal or a Change Order under clause 13 (*Changes*) in respect of any Change in Codes and Standards that the Principal becomes aware of that the Contractor does not notify the Principal of in accordance with clause 12.3(a)(i).

13. Changes

13.1 Principal Change Proposal

- (a) **(Principal may issue)**: The Principal may at any time prior to the end of the initial Defects Correction Period issue to the Contractor a notice titled "Change Proposal" setting out the details of a proposed Change, which the Principal is considering, including:
 - (i) the proposed requirements for the implementation of the proposed Change; and
 - (ii) any specific information that
 - (A) the Principal requires the Contractor to include in the Contractor Change Notice; or
 - (B) that may be relevant to the preparation of the Contractor Change Notice in accordance with clause 13.3(a)(xi) (*Contractor Change Notice*) (in addition to the other requirements set out in clause 13.3 (*Contractor Change Notice*)).
- (b) **(No obligation to proceed)**: The Principal will not be obliged to proceed with any Change proposed in a Change Proposal.

13.2 Omission by Principal

- (a) **(Principal may omit):** The Contractor acknowledges and agrees that the Principal may issue a Change Proposal that decreases, omits, deletes or removes work from the scope of:
- (i) the Contractor's Activities;
 - (ii) the Project Works;
 - (iii) the Temporary Works;
 - (iv) the D&C Phase Maintenance; or
 - (v) the Landscaping Maintenance,
- (Excluded Works).**
- (b) **(Excluded Works):** If the Principal issues a Change Order in respect of Excluded Works, the Principal may:
- (i) carry out the Excluded Works itself or may engage another person to carry out the Excluded Works on its behalf, and the Contractor must cooperate with the Principal and its contractor in carrying out the Excluded Works; or
 - (ii) decide not to carry out the Excluded Works if the Principal determines (acting reasonably) that they are not required.

13.3 Contractor Change Notice

- (a) **(Contractor must provide):** Within:
- (i) 10 Business Days after receipt of a Change Proposal; or
 - (ii) such longer period as is agreed by the Principal (acting reasonably, taking into account the size and complexity of the proposed Change and the information to be included in a Contractor Change Notice),

the Contractor must provide the Principal with a notice titled "Contractor Change Notice" (**Contractor Change Notice**) setting out detailed particulars of:

- (iii) estimated Change Costs it will incur, or the Change Savings it will derive, by carrying out the proposed Change, substantiated with a detailed breakdown in accordance with Schedule 21 (*D&C Payment Schedule*) (including an indicative program of when costs will be incurred and any changes proposed to the Forecast Cumulative Limits as a result);
- (iv) the time in which the Contractor anticipates that the Change will be completed, and the effect (if any) the Contractor anticipates the Change will have on the Overall D&C Program;
- (v) if the proposed Change will delay the Contractor in achieving Opening Completion or Completion, the number of days for which the extension of time to either or both the Date for Opening Completion and Date for Completion is claimed, together with the basis of calculating that period, in accordance with the requirements of clause 16.5(a), 16.5(b) and 16.5(c)

(Claim for extension of time) (and, in accordance with clause 16.5(g), the Contractor is not required to provide a separate claim under clause 16.5);

- (vi) to the extent not captured by clauses 13.3(a)(iii) to 13.3(a)(v) above, the effect the Contractor anticipates the Change will have on the performance of the Contractor's Activities (including specific details of the work that will be affected and how and to what extent it will be affected);
 - (vii) the effect the Contractor anticipates the Change will have on the functionality or integrity of the elements of the Contractor's Activities, the Project Works or the Temporary Works, and the quality or performance standards required by this deed, including specific details of:
 - (A) the elements of the Contractor's Activities, the Project Works or 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; and
 - (D) any adverse effect which the Change will have on the Contractor's ability to satisfy its obligations under this deed (including any warranties the Contractor is required to give under this deed);
 - (viii) whether any land in addition to the Construction Site is required to implement the Change;
 - (ix) whether any additional Approvals, or changes to existing Approvals, will be required as a consequence of the Change;
 - (x) the information required by clauses 13.13(b) (*Adjustment to Permanent Power Supply Target Cost*) and [REDACTED], if applicable; and
 - (xi) any other information concerning the proposed Change which the Principal reasonably requires.
- (b) **(Contractor Change Notice requirements):** The Contractor must ensure that the Contractor 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 the basis that any third parties are engaged by the Contractor on an arm's length basis and on commercial terms;
 - (iii) using the agreed rates and prices in Schedule 21 (*D&C Payment Schedule*), to the extent they are applicable or it is reasonable to use them;
 - (iv) to the extent that clause 13.3(b)(iii) does not apply, on an Open Book Basis with respect to the Contractor's costs (including Subcontractor costs), and to this end the Contractor must allow the Principal review and audit rights sufficient to verify that the Contractor Change Notice has been prepared in accordance with the requirements of this deed (including the definitions of "Direct Costs" and "Direct Savings");

- (v) in a manner which is consistent with the reasonable requirements of the Principal for the implementation of the Change and which includes any specific information required by the Principal in the Change Proposal;
 - (vi) having regard to minimising:
 - (A) the disruption to the Contractor's Activities and to road users;
 - (B) delay in achieving Opening Completion or Completion (or both, as applicable), to the extent that it has not yet been achieved; and
 - (C) any adverse safety impacts of the Change;
 - (vii) in a manner which ensures that all appropriate insurances relevant to the Change are taken out and maintained consistently with those that would have been required by the Principal if the Change had been included in the Contractor's Activities, the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance as applicable, as at the date of this deed (unless the Principal otherwise determines); and
 - (viii) in a manner so that there is no double counting.
- (c) **(Validity):** The Contractor Change Notice must remain valid for acceptance by the Principal for not less than 35 Business Days after the date of the Contractor Change Notice (**Validity Period**).

13.4 Election by the Principal

Within the Validity Period, the Principal must by written notice to the Contractor, do one of the following:

- (a) **(Request further information):** advise the Contractor that the Principal:
 - (i) requires further information or clarification with respect to the Contractor Change Notice; or
 - (ii) has altered the scope of the Change Proposal,

in which case the Contractor must provide the Principal with an updated Contractor Change Notice addressing the issues raised by the Principal within 10 Business Days of receiving the Principal's notice;
- (b) **(Accept):** issue a notice titled "Change Order" which accepts the Contractor Change Notice and directs the Contractor to carry out the Change as specified in the Contractor's Change Notice and, if the Contractor Change Notice contains any options, nominate which option or options the Principal accepts;
- (c) **(Reject or negotiate):** notify the Contractor that it rejects, or wishes to negotiate, the Contractor Change Notice, in which case clause 13.5 (*Rejection or negotiation of the Contractor Change Notice*) will apply; or
- (d) **(Withdraw)** except in the case of a Change required by clauses 5.5(a), 26.2, 27.12, 41.1(c)(i) or 41.2(b)(ii), withdraw the proposed Change, in which case the Contractor must not carry out the Change.

13.5 Rejection or negotiation of the Contractor Change Notice

- (a) **(Negotiation or resubmission)**: If the Principal rejects or wishes to negotiate the Contractor Change Notice in accordance with clause 13.4(c) (*Election by the Principal*), if requested by the Principal:
- (i) the parties must, within 5 Business Days after the date of the Principal's notice under clause 13.3(c) (*Contractor Change Notice*), commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Contractor Change Notice which are in dispute; or
 - (ii) if the Contractor Change Notice does not accurately set out the Contractor's entitlements in accordance with the requirements of this deed or comply with the requirements of the Change Proposal, the Contractor must amend and resubmit the Contractor Change Notice.
- (b) **(Change Order where agreed)**: If the parties reach agreement on the disputed matters in the Contractor Change Notice, the Principal may issue a notice titled "Change Order" which directs the Contractor to carry out the Change as specified in the Contractor's Change Notice, as varied by the parties' agreement.
- (c) **(Dispute resolution)**: If the parties are unable to reach agreement under clause 13.5(a) within 15 Business Days after Principal's notice of rejection or negotiation under clause 13.4(c) (*Election by the Principal*), the Principal may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure. In resolving the dispute in accordance with the Dispute Resolution Procedure, the parties must, and must direct the arbitrator to:
- (i) have regard to the requirements set out in clause 13.3(b) (*Contractor Change Notice*), to the extent relevant;
 - (ii) assume that funding for the relevant Change will be provided by the Principal, unless the parties otherwise agree; and
 - (iii) determine all matters required to enable the relevant Change to be implemented.
- (d) **(Principal election)**: Following resolution of the dispute referred for dispute resolution under clause 13.5(c), the Principal may (unless it has already exercised its right under clause 13.6(a) (*Change Orders at the Principal's Election*)) elect to do either of the following:
- (i) require the Contractor to proceed to implement the Change by issuing a notice titled "Change Order" which directs the Contractor to carry out the Change as specified in the Contractor's Change Notice as varied by the resolution; or
 - (ii) except in the case of a Change required by clauses 5.5(a), 26.2, 27.12, 41.1(c)(i) or 41.2(b)(ii), withdraw the proposed Change.

13.6 Change Orders at the Principal's Election

- (a) **(Principal may issue)**: Whether or not:
- (i) the Principal has issued a Change Proposal under clause 13.1(a) (*Principal Change Proposal*);

- (ii) the Contractor has issued a Contractor Change Notice under clause 13.3(a) (*Contractor Change Notice*); or
- (iii) a Contractor Change Notice has been referred to dispute resolution in accordance with clause 13.5(c) (*Rejection or negotiation of the Contractor Change Notice*),

the Principal may at any time instruct the Contractor to implement a Change by issuing a notice titled "Change Order" setting out the scope of the Change.

- (b) **(Contractor notice)**: Unless the Contractor has already provided a Contractor Change Notice in respect of the Change the subject of a Change Order under clause 13.6(a), if requested by the Principal in the Change Order, the Contractor must provide a notice to the Principal setting out the information specified in clause 13.3(a) (*Contractor Change Notice*) in respect of the Change within:
 - (i) 10 Business Days after receipt of the Change Order; or
 - (ii) such longer period as is agreed by the Principal (acting reasonably, taking into account the size and complexity of the Change and the information to be included in a Contractor Change Notice),

but the notice under this clause 13.6(b) is not a Contractor Change Notice.

- (c) **(Determination by Principal)**: If the Principal issues a Change Order under clause 13.6(a):
 - (i) the Change Costs payable to the Contractor (if any) or the Change Savings to be deducted from the D&C Deed Sum (if any);
 - (ii) any changes to the Forecast Cumulative Limits as a result of the Change Costs or Change Savings;
 - (iii) any extension to the Date for Opening Completion or the Date for Completion (or both);
 - (iv) the extent to which the Contractor will be relieved of any of its obligations under this deed; and
 - (v) the other matters set out in clause 13.3(a) (*Contractor Change Notice*),

will, until the Principal and the Contractor otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure, be reasonably determined by the Principal in accordance with this clause 13.6.

- (d) **(Requirements for Principal's determination)**: In making its determination under clause 13.6(c), the Principal must:
 - (i) have regard to the requirements set out in clause 13.3(b) (*Contractor Change Notice*), to the extent relevant;
 - (ii) determine the Change Costs or Change Savings in accordance with clause 13.9 (*Payment for Changes*);
 - (iii) determine any extension to the Date for Opening Completion, Date for Completion (or both) in accordance with clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*);

- (iv) assume that funding for the relevant Change will be provided by the Principal, unless the parties otherwise agree; and
- (v) determine all matters required to enable the relevant Change to be implemented, and issue a written notice of such determination, within:
 - (A) 20 Business Days of issue of the relevant Change Order referred to in clause 13.6(a); or
 - (B) where clause 13.6(c) applies, within 20 Business Days of receiving the Contractor's notice under that clause.
- (e) **(Dispute resolution):** If the Contractor disagrees with a matter determined by the Principal under clause 13.6(c):
 - (i) the Contractor may notify the Principal in writing that it wishes to negotiate the relevant matter (including reasons for the disagreement, and supporting evidence), and the parties must meet within 5 Business Days after such notice and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Principal's determination which are in dispute;
 - (ii) if the parties are unable to reach agreement under clause 13.6(e)(i) within 15 Business Days after the Contractor's notice under clause 13.6(e)(i), either party may refer the matter for resolution in accordance with the Dispute Resolution Procedure;
 - (iii) the Contractor must proceed to implement the Change on the basis determined by the Principal despite that the matters in dispute have not been agreed, or determined in accordance with the Dispute Resolution Procedure; and
 - (iv) any necessary adjustments will be made following the resolution of the matters in dispute.

13.7 Changes proposed by the Contractor

- (a) **(No Change without consent):** The Contractor must not (and must procure that its Related Parties do not) undertake any Change without the Principal's prior written consent.
- (b) **(Contractor may propose a Change):** The Contractor may, at any time prior to Opening Completion, propose a Change to the Principal by giving the Principal a written notice with details of:
 - (i) the proposed Change;
 - (ii) the reason for the proposed Change; and
 - (iii) the other particulars required for a Contractor Change Notice under clause 13.3(a) (*Contractor Change Notice*).
- (c) **(Principal may request written statement):** If the Contractor proposes a Change under this clause 13.7, the Contractor must, if required by the Principal, give to the Principal:
 - (i) a written statement from the Contractor stating that the proposed Change:

- (A) will not adversely affect the functional integrity of any of the elements of the Contractor's Activities, the Project Works or the Temporary Works and the performance standards required by this deed; and
- (B) will not adversely affect the quality standards, warranties and other obligations required under this deed;
- (ii) a written statement confirming that the Contractor has appropriate financial and technical resources to undertake the proposed Change; and
- (iii) any other information and supporting documentation the Principal reasonably requires.

The Principal may provide such written statements and information to the Independent Certifier and require the Independent Certifier to confirm the matters in clause 13.7(c)(i).

- (d) **(Principal may approve or reject):** Subject to clause 13.7(g), the Principal:
 - (i) may (in its absolute discretion), by notice in writing, approve (with or without conditions), reject, or negotiate any Change the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the Contractor.
- (e) **(Requirement for Change Order):** If the Principal approves a Change proposed by the Contractor, the Principal will issue a written notice entitled "Change Order" which directs the Contractor to carry out the Change as specified in the Contractor's notice of proposed Change issued under clause 13.7(b), or as otherwise agreed by the parties.
- (f) **(Contractor's risk):** Unless specified in a Change Order under clause 13.7(e), or otherwise agreed in writing by the Principal, the Contractor will:
 - (i) accept all risk and any Loss:
 - (A) associated with proposing a Change under this clause 13.7;
 - (B) reasonably incurred by the Principal in assessing the proposed Change (such costs to be a debt due and payable from the Contractor to the Principal);
 - (C) associated with implementing the proposed Change, including obtaining and maintaining any Approvals necessary to implement the Change; and
 - (ii) not be entitled to make any Claim against the Principal arising out of or in connection with the Change proposed by the Contractor (including for an adjustment to the Permanent Power Supply Target Cost or [REDACTED])
- (g) **(Principal to act reasonably):** If, prior to the Date of Opening Completion:
 - (i) an event or circumstance occurs such that it becomes impossible for the Project Works or Temporary Works to comply with the requirements of the

D&C Documents, other than an event or circumstance arising as a consequence of:

- (A) the Contractor's failure to comply with its obligations under a D&C Document;
 - (B) a breach by the Contractor of its warranties under a D&C Document;
 - (C) a wrongful act or omission of the Contractor or its Related Parties; or
 - (D) a failure by the Contractor or any of its Related Parties to comply with any Law; and
- (ii) the Contractor proposes a Change to the SWTC pursuant to clause 13.7(b) to enable the Contractor to complete the Project Works, the Temporary Works, the D&C Phase Maintenance and the Landscaping Maintenance at the Contractor's cost and risk,

then the Principal must act reasonably in considering the proposed Change.

13.8 Pre-Agreed Changes

- (a) **(Principal may direct)**: Subject to clauses 13.8(e) and 13.8(f), the Principal 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 Contractor.
- (b) **(Deemed amendment)**: The parties agree that if a notice pursuant to clause 13.8(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule 15 (*Pre-Agreed Changes*), this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 15 (*Pre-Agreed Changes*) from the date the Contractor receives such notice.
- (c) **(Contractor must comply)**: Where the Principal directs a Pre-Agreed Change by giving notice to the Contractor by the relevant date referred to in clause 13.8(b):
 - (i) the Contractor, must carry out its obligations under this deed as amended by clause 13.8(b);
 - (ii) the Change Costs for each Pre-Agreed Change and any changes to the Forecast Cumulative Limits will be as set out in Schedule 15 (*Pre-Agreed Changes*);
 - (iii) the payment of the Change Costs set out in Schedule 15 (*Pre-Agreed Changes*) in respect of a Pre-Agreed Change by the Principal to the Contractor will be full compensation for any Loss or delay the Contractor suffers or incurs arising out of or in connection with the issue of such a notice and the Contractor will not be entitled to be paid any further amount in respect of the Pre-Agreed Change; and
 - (iv) the Contractor is not entitled to make any Claim for:
 - (A) any acceleration to the carrying out of the Contractor's Activities which the Contractor must perform at any time in order to achieve Opening Completion by the Date for Opening Completion and Completion by the Date for Completion; or
 - (B) any delay to the carrying out of the Contractor's Activities,

in connection with the issue of such a notice or the amendment of this deed pursuant to clause 13.8(b).

- (d) **(Change Order after relevant date)**: Nothing in this clause 13.8 prevents the Principal from issuing a Change Proposal pursuant to clause 13.1(a) (*Principal Change Proposal*) or a Change Order pursuant to clause 13.6(a) (*Change Orders*) 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 15 (*Pre-Agreed Changes*), in which case clause 13.9 (*Payment for Changes*) will apply.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

13.9 Payment for Changes

- (a) **(Calculation of Change Costs or Change Savings)**: The Change Costs or Change Savings in relation to a Change will be calculated as follows (without double counting):

CCS = DCS + D&CM + CDC

where:

- (i) **CCS** is the Change Costs (if "CCS" is a positive number) or Change Savings (if "CCS" is a negative number);
- (ii) **DCS** is the Direct Costs minus the Direct Savings;
- (iii) **D&CM** is the applicable D&C Margin multiplied by "DCS" (which will be a positive number where "DCS" is a positive number and a negative number where "DCS" is a negative number); and
- (iv) if the Change results in an extension to the Date for Opening Completion or Date for Completion (or both), **CDC** is the amount of Contractor's Delay

Costs in respect of the delay to Opening Completion or Completion (or both) caused by the Change, calculated in accordance with clause 16.8 (*Compensation Events*).

- (b) **(Change Costs)**: If the amount calculated under clause 13.9(a) results in Change Costs, the Contractor will be entitled to be paid the Change Costs progressively under clause 22.3 (*Payment Claims*) after each month in which the relevant work is undertaken unless otherwise agreed between the parties.
- (c) **(Change Savings)**: If the amount calculated under clause 13.9(b) results in Change Savings:
 - (i) in the case of a Change directed by the Principal in response to a Change proposed by the Contractor under clause 13.7(b) (*Changes proposed by the Contractor*), the D&C Deed Sum will be reduced by [REDACTED] of the Change Savings; and
 - (ii) in all other cases, the D&C Deed Sum will be reduced by [REDACTED] of the Change Savings.
- (d) **(Determination of costs or savings)**: The amount of Change Costs or Change Savings calculated under clause 13.9(a) will be determined:
 - (i) by agreement between the parties;
 - (ii) to the extent the parties fail to agree and subject to clause 13.9(d)(iii), by the Principal acting reasonably; or
 - (iii) to the extent the Contractor disagrees with the Principal's determination, in accordance with the Dispute Resolution Procedure,

in each case having regard to the principles set out in clause 13.3(b) (*Contractor Change Notice*) to the extent they are relevant.
- (e) **(Schedule of rates and prices)**: When determining Direct Costs or Direct Savings under clause 13.9(d)(ii) or 13.9(d)(iii):
 - (i) the rates and prices set out in Schedule 21 (*D&C Payment Schedule*) will be used to the extent they are applicable or it is reasonable to use them; and
 - (ii) to the extent the Change is in respect of a Permanent Power Supply Tendered Work package after the successful tender for the package has been selected in accordance with clause 22.4B(n) (*Permanent Power Supply Work*), the tendered schedule of rates will be used to the extent they are applicable or it is reasonable to use them.

13.10 Implementation of Changes

- (a) **(Change Order issued)**: If the Principal issues a Change Order:
 - (i) the Contractor must implement the Change on the terms set out in that Change Order;
 - (ii) the Date for Opening Completion, Date for Completion (or both) and the D&C Deed Sum will be deemed to be adjusted as set out in the Change Order (or as subsequently agreed or determined); and

- (iii) the Contractor will be relieved from its obligations under this deed to the extent specified in the Change Order (or as subsequently agreed or determined).
- (b) **(Multiple Changes)**: Nothing in this clause 13 prevents the Principal from issuing several Change Proposals or Change Orders (or both) in order to implement a single physical change to the Project Works or Temporary Works in stages.

13.11 Contractor's entitlements

- (a) **(Rights exhaustive)**: Subject to clause 41.1 (*Notice of Change*), this clause 13 is an exhaustive code of the Contractor's rights in any way in connection with any Change.
- (b) **(Waiver)**: The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 13 otherwise than in accordance with the terms of this deed.
- (c) **(Unknown Site Conditions)**: Clause 10.5 (*Unknown Site Conditions*) will apply to restrict the Contractor's entitlements in relation to any Change directed by the Principal pursuant to a Change Order in respect of an Unknown Site Condition.

13.12 Approvals for Changes

- (a) **(Contractor must obtain)**: Subject to clause 13.12(b), the Contractor must apply for and obtain 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) **(Planning Approval)**: Where the amendment or modification to any Approval required for the execution of the Change relates to the Planning Approval, clauses 5.4 (*Modifications to the Planning Approval*) and 5.5 (*Planning Approval Change Events*) will apply.
- (c) **(Implementation)**: To the extent an amendment or modification to any existing Approval, or a new Approval, is required with respect to a Change, the Contractor must only implement the Change once such Approvals have been amended, modified or granted.

13.13 Adjustment to Permanent Power Supply Target Cost

- (a) **(Adjustment)**: Subject to clause 13.13(e), if the Principal issues a Change Order for a Change to the Utility Services Works required for a Permanent Power Supply Work package before the successful tender for that package has been selected under clause 22.4B(k) (*Permanent Power Supply Work*), the Permanent Power Supply Target Cost will be adjusted in accordance with clause 13.13(b).
- (b) **(Basis for determining)**: Where clause 13.13(a) requires the Permanent Power Supply Target Cost to be adjusted, the Permanent Power Supply Target Cost will be increased for any Change Costs or decreased for any Change Savings resulting from the Change to the Permanent Power Supply Work package determined in accordance with clause 13.9 (*Payment for Changes*), except:

- (i) only changes to the direct costs of the Permanent Power Supply Tendered Work package as a result of the Change will be taken into account when determining the Direct Costs and Direct Savings;
 - (ii) the Direct Costs and Direct Savings will not include any direct costs which will be incurred or not required to be expended in respect of other Permanent Power Supply Work, including Permanent Power Supply Construction Management Work; and
 - (iii) no D&C Margin will be applied.
- (c) **(D&C Deed Sum)**: If the Permanent Power Supply Target Cost is adjusted in accordance with clause 13.13(a):
- (i) the Permanent Power Supply Target Price will change as a result; and
 - (ii) the D&C Deed Sum will be adjusted to reflect the change to the Permanent Power Supply Target Price.
- (d) **(Contractor's notices)**: Where the Contractor provides:
- (i) a Contractor Change Notice under clause 13.3 (*Contractor Change Notice*);
 - (ii) a notice under clause 13.6(b) (*Change Orders at the Principal's Election*); or
 - (iii) a notice under clause 13.7(b) (*Changes proposed by the Contractor*),
- in relation to a Change to which clause 13.13(a) may apply, the Contractor Change Notice or notice must additionally set out detailed particulars of:
- (iv) the adjustment to the Permanent Power Supply Target Cost required under clause 13.13(b) as a result of the Change; and
 - (v) the change to the Permanent Power Supply Target Price under clause 13.13(c)(i); and
 - (vi) the adjustment to the D&C Deed Sum required under clause 13.13(c)(ii).
- (e) **(Excluded Changes)**: Clause 13.13(a) does not apply to:
- (i) any Change required by clause 10.4(c) (*Contamination*) in relation to a Contamination Notice;
 - (ii) any Change required by clause 10.5 (*Unknown Site Conditions*) in relation to an Unknown Site Condition;
 - (iii) any Change required by clause 12.3(a)(ii)(B) (*Change in Codes and Standards*) in relation to a Change in Codes and Standards;
 - (iv) any Change proposed by the Contractor under clause 13.7 (*Changes proposed by the Contractor*); or
 - (v) any Deemed Change [REDACTED].

- (B) the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 12.1(b) (*Design Documentation*); and
 - (C) any Direction of the Principal given under a provision of this deed, including any Change directed or approved by the Principal in accordance with the clause 13 (*Changes*); and
- (ii) using good workmanship and Materials which are:
- (A) free of Defects and other imperfections; and
 - (B) of the quality specified in the SWTC,
- so that:
- (C) the Project Works will:
 - (aa) upon Opening Completion, be fit for their intended purpose; and
 - (bb) thereafter, be capable of remaining fit for their intended purpose at all relevant times during the Warranty Life, provided they are operated and maintained in accordance with the operation and maintenance requirements in the SWTC, original equipment manufacturer requirements and usual industry practice for operation and maintenance of similar works; and
 - (D) the Temporary Works will at all relevant times be fit for their intended purpose.
- (b) **(Protection and disturbance):** In carrying out the Contractor's Activities, the Contractor must:
- (i) provide all things and take all measures necessary to protect people, property and the Environment;
 - (ii) avoid unnecessary or unreasonable interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance (and such noise or disturbance will not be unreasonable to the extent that it is of a type addressed in, and which complies with, the Environmental Documents, relevant Approvals and the Law).

14.2 Performance of Contractor's Activities

- (a) **(Timing):** Without limiting clause 14.1 (*Construction*), in performing the Contractor's Activities the Contractor must:
 - (i) act in a timely and expeditious manner; and
 - (ii) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and the Temporary Works in accordance with this deed.

- (b) **(Workmanship and Materials)**: Without limiting clause 14.1 (*Construction*), the Contractor warrants that it will perform the Contractor's Activities using the workmanship and Materials required by this deed and which are fit for their intended purposes:
- (c) **(Resources)**: The Contractor must, at all times, ensure the resources (including personnel and financial resources) committed to the Contractor's Activities are adequate and suitable for the performance of the Contractor's Activities in accordance with this deed.

14.3 Training management

- (a) **(Plan and manage)**: The Contractor must demonstrate its commitment and capacity to plan and manage training in accordance with the NSW Government Procurement Guideline Skills and Training in Construction Industry, including by:
 - (i) providing the levels of skills and training development identified in the Contractor Documentation Schedule;
 - (ii) cooperating with and assisting the Principal with any reviews undertaken by the Principal of the Contractor's compliance with this clause 14.3;
 - (iii) maintaining records evidencing the Contractor's compliance with this clause 14.3; and
 - (iv) making available all records maintained in accordance with clause 14.3(a)(iii) to the Principal.
- (b) **(Skills and employment outputs)**: Without limiting clause 14.3(a), the Contractor must also achieve the skills and employment outputs set out in the Contractor Documentation Schedule.
- (c) **(Reporting)**: The Contractor must report to the Principal, at least every 3 months, on the details of:
 - (i) the apprentices and trainees engaged in carrying out the Project Works; and
 - (ii) how the Contractor is meeting (or will meet at Opening Completion) its training commitments.

14.4 Cleaning up

In carrying out the Contractor's Activities, the Contractor must:

- (a) **(Clean and tidy)**: keep the Construction Site, the Additional Property Works Areas, Extra Land, Maintenance Site, the Project Works and the Temporary Works clean and tidy;
- (b) **(Remove rubbish)**: regularly remove from the Construction Site, the Additional Property Works Areas, Extra Land, Maintenance Site, Project Works and Temporary Works, any waste rubbish, litter, graffiti and surplus material;
- (c) **(Remove prior to vacating)**: prior to vacating any area of the Construction Site, the Additional Property Works Areas, Extra Land or Maintenance Site, remove all rubbish, litter, graffiti, surplus materials, Construction Plant and Temporary Works; and

- (d) **(Condition precedent to Opening Completion)**: as a condition precedent to Opening Completion, remove all rubbish, litter, graffiti, surplus materials, Construction Plant and Temporary Works from the relevant parts of the Construction 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 the Principal.

14.5 Signage

- (a) **(Advertising signage)**: Subject to clause 14.5(b), the Contractor must 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, the Construction Site or the Maintenance Site (or permit any third party to do so) at any time.
- (b) **(Permitted signage)**: Subject to clause 14.5(c) the Contractor may only (with the prior written approval of the Principal) erect the following signage on or near the Construction Site or Maintenance Site (as applicable):
- (i) temporary directional signage to assist businesses in the vicinity of the Construction Site or Maintenance Site, access to which has been, or is likely to be, adversely affected by the Contractor's 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 and branding approved by the Principal;
 - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the Contractor's 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 Construction Site or Maintenance Site.
- (c) **(Required signage)**: The Contractor must, as requested by the Principal, erect signage on or near the Construction Site or Maintenance Site provided the erection of such signage complies with Law.

14.6 Work methods

Whether or not this deed or the SWTC prescribes a particular work method or a work method is otherwise part of this deed or reviewed or approved (expressly or impliedly) by the Principal the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal uses another work method will:

- (a) **(No entitlement to Claim)**: not entitle the Contractor to make any Claim against the Principal 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) **(No frustration)**: not cause this deed to be frustrated.

14.7 As constructed documentation and reports

The Contractor must prepare and submit to the Principal and the Independent Certifier as constructed documentation and reports as required by and in accordance with the

requirements of the Contractor Documentation Schedule or as otherwise reasonably requested by the Principal.

14.8 Spare Parts

- (a) **(Spare Parts List)**: The parties acknowledge that:
- (i) the spares list is a list of Spare Parts (including quantities) that the Contractor must supply (as a minimum) to the Principal by the Date of Opening Completion as part of the Project Works (**Spares List**);
 - (ii) Schedule 30 (*Spares List*) sets out the initial Spares List as at the date of this deed, together with a unit price for each Spare Part; and
 - (iii) the D&C Deed Sum includes an allowance for the purchase of Spare Parts (**Spares Allowance**), based on the initial Spares List set out in Schedule 30 (*Spares List*).
- (b) **(Review)**: The Principal and the Contractor will review the initial Spares List to determine if any changes are warranted when:
- (i) the Contractor's Design Documentation has reached the stage where it can be used for construction purposes in accordance with clause 12.1(b) (*Design Documentation*); and
 - (ii) the RAM Activity under Appendix B.14 has been completed,
- As part of this review:
- (iii) the Contractor must recommend any updates to the Spares List that it considers appropriate as a result of the design development and RAM Activity; and
 - (iv) the Principal must advise the Contractor of any changes that it requires to the Spares List.
- (c) **(Further Changes)**: The Principal may, by notice to the Contractor, require further changes to the Spares List at any time up until the date that is 6 months before the Date for Opening Completion (**Spares Finalisation Date**). The changes may increase or decrease the quantity of any Spare Part.
- (d) **(Finalisation)**: At the Spares Finalisation Date, the Spares List will be finalised, being the initial Spares List set out in Schedule 30 (*Spares List*) incorporating the changes required by the Principal under clauses 14.8(b)(iv) and 14.8(c), subject to any further changes requested by the Principal under clause 14.8(e).
- (e) **(Late changes)**: After the Spares Finalisation Date, the Principal may request further changes to the Spares List, but the Contractor will only be required to accept that request if, acting reasonably, it considers that it has sufficient time to procure the Spare Parts before Opening Completion.
- (f) **(Recalculating Spares Allowance)**: When the Spares List is finalised under clause 14.8(d) (and also if it is subsequently changed under clause 14.8(e)), the Spares Allowance will be recalculated:
- (i) using the unit prices in Schedule 30 (*Spares List*); and

- (ii) to the extent there is no unit price in Schedule 30 (*Spares List*) for the Spare Parts, on the same basis that Change Costs are determined under clause 13.9.
- (g) **(Delivery)**: The Contractor must:
- (i) deliver the quantity of Spare Parts in the Spares List (as updated under this clause 14.8) to the Principal as a condition of Opening Completion;
 - (ii) deliver the Spare Parts to a location in Sydney nominated by the Principal;
 - (iii) be responsible for storing and maintaining the Spare Parts until the Principal advises that it is ready to accept delivery, or Opening Completion (if earlier); and
 - (iv) provide the Principal with the details of the suppliers of the Spare Parts (including terms and conditions of supply and warranty terms), to assist the Principal to purchase additional Spare Parts following Opening Completion, and must use reasonable endeavours to ensure that the suppliers offer the Principal equivalent pricing and terms as offered to the Contractor.
- (h) **(Replacing)**: The Contractor must replace any Spare Parts used prior to Opening Completion and ensure, as a condition of Opening Completion, there is a full set of the Spare Parts in the Spares List (as updated under this clause 14.8).
- (i) **(Payment claim)**: The Contractor may claim payment of the Spares Allowance (or part thereof) if:
- (i) the Spare Parts have been delivered in accordance with clause 14.8(g);
 - (ii) the Contractor has provided the Independent Certifier with evidence (satisfactory to the Independent Certifier) that title to the Spare Parts will vest in the Principal upon payment; and
 - (iii) the Spare Parts are located at the Motorway and the Date of Opening Completion has occurred, or are in the Principal's possession,
- or as unfixed Materials in accordance with clause 22.14 (*Unfixed or offsite Materials*).

14.9 Warranties by others

The Contractor must, as a condition precedent to Opening Completion, procure, and provide to the Principal (or, if directed by the Principal, to the Principal and the O&M Contractor nominated by the Principal), the benefit of all third party warranties relevant to the Asset Items and the Spare Parts in a form approved by the Principal (acting reasonably).

14.10 Preferred suppliers and products

- (a) **(Acknowledgement)**: The parties acknowledge that:
- (i) Schedule 33 (*Preferred Suppliers and Products*) sets out the Principal's Preferred Products and Preferred Suppliers in respect of certain Asset Items;
 - (ii) the Principal makes no representation to the Contractor as to the adequacy, quality, suitability or creditworthiness of any Preferred Product or Preferred

Supplier and the Contractor must make its own enquiries and satisfy itself as to these matters; and

- (iii) the Contractor must comply with its obligations under the D&C Documents , despite the inclusion of any Preferred Product or Preferred Supplier.
- (b) **(Preferred Products and Suppliers):** The Principal's preference is that the Contractor uses the Preferred Products and Suppliers.
- (c) **(Alternative product or supplier):** If the Contractor intends to use an alternative supplier or product for an Asset Item listed in Schedule 33 (*Preferred Suppliers and Products*), which is not a Preferred Supplier or Preferred Product, the Contractor must notify the Principal in writing of:
 - (i) the details of the alternative supplier or product;
 - (ii) the reasons why the Contractor intends not to use the Preferred Supplier or Preferred Product for that Asset Item; and
 - (iii) the benefits of using the alternative supplier or product to the Preferred Supplier or Preferred Product (respectively), including any potential price or delivery timeframe benefits,

and request the Principal's approval to use the alternative supplier or product. The Contractor must not use the alternative supplier or product without the Principal's prior written approval (which must not be unreasonably delayed or withheld).

14.11 Principal's right to remedy non-compliances

- (a) **(Urgent action):** If:
 - (i) the Contractor:
 - (A) fails to perform an obligation under this deed, including the rectification of Defects; and
 - (B) has not within a reasonable time after the date of receipt of a notice from the Principal requiring such failure to be remedied or a direction from the Principal under clause 18.2(a) (*Principal's Direction*), taken steps to remedy the failure, or having taken or procured such steps, fails to remedy or procure the remedy of the failure within the period of time prescribed by this deed, or if no period of time has been prescribed, a reasonable time; or
 - (ii) the Principal considers that urgent action is reasonably necessary to minimise the risk of harm to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any property; or
 - (D) the safe operation of any road,

then the Principal may take such action as it considers necessary either to remedy the failure by the Contractor (including requiring the Project Works or the

Construction Site or part of either to be closed) or to take that urgent action to minimise that risk of harm and the Principal may for this purpose enter and remain on the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site and any other land upon which the Contractor's Activities are being carried out.

- (b) **(Recovery)**: Any Loss suffered or incurred by the Principal in taking action referred to in clause 14.11(a) following the events referred to in clause 14.11(a)(i) or (where such events have arisen as a result of a breach or a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties) clause 14.11(a)(ii) will be a debt due and payable from the Contractor to the Principal.
- (c) **(No relief)**: Clause 14.11(a) does not relieve the Contractor from any of its obligations under this deed.

15. Time and Progress

15.1 Start and progress

The Contractor must:

- (a) **(Commence)**: commence the Contractor's Activities, the Project Works and the Temporary Works from D&C Close; and
- (b) **(Progress)**: regularly and diligently progress the Contractor's Activities in accordance with this deed.

15.2 Date for Opening Completion and Date for Completion

The Contractor must:

- (a) **(Opening Completion)**: achieve Opening Completion by the Date for Opening Completion; and
- (b) **(Completion)**: achieve Completion by the Date for Completion.

15.3 Contractor's programming obligations

- (a) **(Initial program)**: Prior to the date of this deed the Contractor prepared and submitted an initial version of the Overall D&C Program and the supporting information and those documents are set out in Exhibit E.
- (b) **(Updates to program)**: The Contractor must review and update the Overall D&C Program and the supporting information in accordance with the detailed requirements set out in the Contractor Documentation Schedule at each of the following times:
 - (i) [REDACTED]
 - (ii) on a monthly basis;
 - (iii) when requested by the Principal;
 - (iv) where there is a significant change in the progress of the Contractor's Activities;

- (v) where any extension of time is granted under clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*); and
- (vi) when the Contractor is otherwise required to review and update the Overall D&C Program under this deed,

to take into account changes to the Contractor's program for the Contractor's Activities and delays which may have occurred, including any for which the Contractor is granted an extension of time; and
- (c) **(Submission)**: The Contractor must give the updated Overall D&C Program and the supporting information to the Independent Certifier and the Principal with the reports required by the Contractor Documentation Schedule in both hard copy form and in native file format or other electronic form approved by the Principal.
- (d) **(Review)**: The Principal and the Independent Certifier may review any updates to the Overall D&C Program or the supporting information to ascertain whether the updated Overall D&C Program is compliant with this deed.
- (e) **(Non-compliances)**: If, following the review referred to in clause 15.3(d), the Principal or the Independent Certifier considers that the updated Overall D&C Program is not compliant with this deed, either the Principal or the Independent Certifier may direct the Contractor to address the non-compliances, and the Contractor must do so and re-submit the updated Overall D&C Program and supporting information within 10 Business Days of that Direction.
- (f) **(No relief)**: No submission of or Direction relating to, or review of or comment upon, a program (including the Overall D&C Program) prepared by the Contractor, by the Principal or the Independent Certifier, nor the inclusion of the Overall D&C Program as an exhibit to this deed, will:
 - (i) relieve the Contractor from or alter its Liabilities or obligations under the D&C Documents, including the obligations of the Contractor under clause 15.2 (*Date for Opening Completion and Date for Completion*);
 - (ii) evidence or constitute notification of a delay or the claiming or the granting of, an extension of time to the Date for Opening Completion or Date for Completion, or a Direction by the Principal to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
 - (iii) affect the time for performance of the Principal obligations under the D&C Documents, including obliging the Principal to do anything earlier than is necessary to enable the Contractor to achieve Opening Completion by the Date for Opening Completion or achieve Completion by the Date for Completion.

15.4 Acceleration

- (a) **(Change Proposal)**: The Principal may issue a Change Proposal under clause 13.1 (*Principal Change Proposal*) which proposes a Change to accelerate the Contractor's Activities (**Acceleration Request**).
- (b) **(Contractor Change Notice)**: In addition to the other details the Contractor is required to include in a Contractor Change Notice in response to an Acceleration Request in accordance with clause 13.3 (*Contractor Change Notice*), the Contractor Change Notice must:

- (i) set out the Contractor's opinion (acting reasonably) of whether the acceleration is reasonably achievable in the circumstances;
 - (ii) if, in the Contractor's reasonable opinion, the acceleration is not reasonably achievable, set out an alternative acceleration proposal setting out the Contractor's assessment (acting reasonably) of the maximum acceleration that it considers is reasonably achievable; and
 - (iii) include a revised Overall D&C Program which sets out in sufficient detail the method by which the Contractor proposes to achieve the required acceleration.
- (c) **(Change Order):**
- (i) The Principal may give to the Contractor a Change Order under clause 13.6(a) (*Change Orders at the Principal's Election*) directing the acceleration that is reasonably achievable.
 - (ii) The Principal must not direct any acceleration that is not reasonably achievable.
- (d) **(Implementation):** If the Principal gives the Contractor a Change Order to accelerate the Contractor's Activities under clause 15.4(c), clause 13.6(d) (*Change Orders at the Principal's Election*) will apply.
- (e) **(Contractor acceleration):** If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress other than as directed by a Change Order contemplated by clause 15.4(c):
- (i) the Principal will not be obliged to take any action to assist or enable the Contractor to achieve Opening Completion before the Date for Opening Completion or achieve Completion before the Date for Completion; and
 - (ii) the time for the carrying out of the Principal obligations will not be affected.

15.5 Suspension

- (a) **(Direction):** The Principal may, at any time and for any reason, direct the Contractor to suspend and subsequently to recommence performance of all or any of the Contractor's Activities.
- (b) **(Entitlements):** If a suspension by the Principal under clause 15.5(a) arises as a result of:
- (i) the Contractor's failure to carry out its obligations under the D&C Documents, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to carry out its obligations under the D&C Documents:
 - (A) a direction to suspend under this clause 15.5 will be a Compensation Event and also entitle the Contractor to be paid by the Principal the Direct Costs incurred by the Contractor as a result of the suspension; and

- (B) the Contractor must take all steps reasonably practicable to Mitigate the Direct Costs incurred by it as a result of the suspension.
- (c) **(No other claim)**: The Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, a suspension under clause 15.5(a) other than under this clause 15.5 and clause 16 (*Delay During Construction*).

15.6 Re-sequencing

- (a) **(Direction)**: The Principal may, by written direction expressly stated to be pursuant to this clause 15.6, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed (**Re-sequencing Direction**) (and the parties agree that no direction by the Principal will constitute a Re-sequencing Direction unless it is in writing and expressly states that it is a direction under this clause 15.6).
- (b) **(Response)**: If the Contractor:
 - (i) can reasonably comply with a Re-sequencing Direction, the Contractor must do so; and
 - (ii) cannot reasonably comply with a Re-sequencing Direction, the Contractor must give the Principal written notice of the reasons within 5 Business Days of the direction.
- (c) **(Deemed Change)**: Subject to clause 15.6(d), if compliance with a Re-sequencing Direction causes the Contractor to incur more or less cost than otherwise would have been incurred or take more or less time to achieve Completion or Opening Completion, it will be a Deemed Change Event and the Contractor will be entitled to make a claim under clause 41.2 (*Notice of Deemed Change Events*).
- (d) **(No entitlement)**: The Contractor will not be entitled to an extension of time to the Date for Opening Completion or Date for Completion, or an increase to the D&C Deed Sum, in respect of the Deemed Change Event described in clause 15.2(a) (*Date for Opening Completion and Date for Completion*) where the Re-sequencing Direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under the D&C Documents.
- (e) **(No other claim)**: Other than as set out in this clause 15.6, the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim arising out of or in any way in connection with a Re-sequencing Direction.

16. Delay During Construction

16.1 Risk of delay

Except as expressly provided for in this clause 16, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities (including the Non-Contestable Utilities Work) and performance of its obligations under the D&C Documents both before and after the Date for Opening Completion and the Date for Completion.

16.2 Notice of delay

If the Contractor becomes aware of, or is notified by the Principal of, any matter which will, or is likely to, give rise to a delay to the Contractor's Activities, including a delay in achieving Opening Completion or Completion, the Contractor must give the Principal:

- (a) **(Notice)**: within 6 Business Days, a notice setting out detailed particulars of the delay or likely delay, including details of the cause of delay;
- (b) **(Corrective action plan)**: where the event causing the delay is not an Excusable Cause of Delay but is likely to give rise to the delay in achieving Opening Completion or Completion, a detailed corrective action plan in accordance with clause 16.4 (*Corrective action plan*) which the Contractor proposes to implement to Mitigate the effects of the delay within 10 Business Days following the notice under clause 16.2(a); and
- (c) **(Claim)**: where the event causing the delay is an Excusable Cause of Delay and the Contractor wishes to make a claim with respect to the event, the claims required under clause 16.5 (*Claim for extension of time*) within the time required by that clause.

16.3 Look forward notice

- (a) **(Independent Certifier notice)**: Subject to clause 16.3(b), if on or after the date which is 18 months after D&C Close, the Independent Certifier reasonably believes that the Contractor will not achieve Opening Completion by the Sunset Date and gives the Contractor a notice to that effect, then the Contractor must provide the Principal with a detailed corrective action plan in accordance with clause 16.4 (*Corrective action plan*) within 10 Business Days. A decision of the Independent Certifier under this clause is capable of Dispute under clause 34 (*Dispute Resolution*).
- (b) **(Frequency)**: The Independent Certifier may give multiple notices under clause 16.3(a) but no more frequently than once every 3 months.
- (c) **(Principal may request)**: On or after the date which is 18 months after D&C Close, the Principal may request that the Independent Certifier undertake a review of the Contractor's Activities to determine whether or not to issue a notice under clause 16.3(a).

16.4 Corrective action plan

- (a) **(Corrective action plan requirements)**: A corrective action plan required under clause 16.2(b) (*Notice of delay*) or 16.3(a) (*Look forward notice*) must demonstrate in reasonable detail what steps the Contractor proposes to take in order to Mitigate the delay and to ensure that the Contractor achieves Opening Completion by the Date for Opening Completion and Completion by the Date for Completion (or if the Date for Opening Completion or Date for Completion (as applicable) have passed or it is not reasonably possible to meet those dates, to ensure Opening Completion and Completion are achieved as soon as possible).
- (b) **(Review of corrective action plan)**: The Principal may (acting reasonably) within 7 Business Days of receipt of a corrective action plan:
 - (i) under clause 16.2(b) (*Notice of delay*), give a notice to the Contractor that it does not believe that implementation of the corrective action plan will enable the Contractor to Mitigate the effects of the delay; or

- (ii) under clause 16.3(a) (*Look forward notice*), give a notice to the Contractor that it does not believe that implementation of the corrective action plan will enable the Contractor to achieve Opening Completion by the Sunset Date, including comments.
- (c) (**Resubmit**): If the Principal gives the Contractor a notice under clause 16.4(b) the Contractor must promptly (and in any event within 5 Business Days) amend and resubmit the corrective action plan to the Principal, after which this clause 16.4 will continue to apply until the Principal does not issue a notice under clause 16.4 within the time required by that clause.
- (d) (**Diligently pursue**): The Contractor must diligently pursue a corrective action plan for which the Principal does not issue a notice under clause 16.4(b) within the time required by that clause.
- (e) (**No relief**): The Contractor will not be relieved of any Liability or responsibility under the D&C Documents or otherwise at Law arising out of or in connection with (nor will the Principal's rights be affected by):
 - (i) any notice given by the Principal under clause 16.2 (*Notice of delay*) or the Independent Certifier under clause 16.3 (*Look forward notice*) or this clause 16.4; or
 - (ii) implementation of any corrective action plan in respect of which the Principal has or has not issued a notice under this clause.

16.5 Claim for extension of time

- (a) (**Entitlement**): Subject to clause 16.6 (*Conditions precedent to extension of time*) and clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*), if the Contractor is or will be delayed in achieving Opening Completion or Completion by an Excusable Cause of Delay, the Contractor may claim:
 - (i) if Opening Completion has not occurred, an extension of time to both the Date for Opening Completion and the Date for Completion of an equivalent number of days; and
 - (ii) if Opening Completion has occurred, an extension of time to the Date for Completion only,

in accordance with the requirements of this clause 16.5.
- (b) (**Site Access Schedule**): If the Contractor claims an extension of time under this clause 16.5, it may also claim an extension to any expiration date for access in the Site Access Schedule.
- (c) (**Claim requirements**): To claim an extension of time to the Date for Opening Completion or the Date for Completion (or both), the Contractor must within 10 Business Days after first becoming aware (or when it ought reasonably to have first become aware) of an Excusable Cause of Delay which is causing or will cause the delay, submit a written claim to the Principal which:
 - (i) gives detailed particulars of:

- (A) the delay and the occurrence causing the delay, including whether the Contractor considers that the Excusable Cause of Delay is a Compensation Event; and
 - (B) the elements of the Contractor's Activities that have been delayed;
 - (ii) where the Contractor considers that the Excusable Cause of Delay is a Compensation Event, details of the Contractor's Delay Costs and how those costs have been calculated in accordance with clause 16.8 (*Compensation Events*);
 - (iii) states the number of days for which the extension of time is claimed together with the basis of calculating that period;
 - (iv) gives details of the steps that the Contractor has taken, or is proposing to take, to Mitigate the delay; and
 - (v) provides evidence that the conditions precedent to any extension of time in clause 16.6 (*Conditions precedent to extension of time*) have been satisfied.
- (d) **(Continuing event)**: If the effects of the delay continue beyond the 10 Business Day period referred to in clause 16.5(c) and the Contractor wishes to claim an extension of time in respect of the further delay, the Contractor must submit a further written claim to the Principal:
- (i) every 10 Business Days after the first written claim until 10 Business Days after the end of the effects of the delay; and
 - (ii) containing the information required by clause 16.5(c),
- provided that the Contractor is not required to submit a further written claim in respect of the further delay if it does not wish to amend a written claim previously submitted to the Principal and notifies the Principal in writing to this effect.
- (e) **(Further information)**: The Principal may by written notice to the Contractor, within 15 Business Days after receiving the Contractor's claim or further claim for an extension of time, by written notice to the Contractor, request additional information in relation to the claim or further claim.
- (f) **(Provision)**: The Contractor must, within 10 Business Days of receiving a request under clause 16.5(e), provide the Principal with the information requested.
- (g) **(Changes)**: Despite any other provision of this deed, the parties agree that:
- (i) the Contractor is not required to submit a claim under this clause 16.5 or clause 16.8 (*Compensation Events*) in respect of a Change; and
 - (ii) the Contractor's entitlement to, any extension of time and Contractor's Delay Costs arising out of a Change will be agreed or determined in accordance with clause 13 (*Changes*).

16.6 Conditions precedent to extension of time

- (a) **(Conditions precedent)**: It is a condition precedent to the Contractor's entitlement to an extension to the Date for Opening Completion or the Date for Completion (or both) that:

- (i) the Contractor has given the notices and claims required by clause 16.5 (*Claim for extension of time*) (other than clause 16.5(f));
 - (ii) the cause of the delay was beyond the reasonable control of the Contractor and its Related Parties;
 - (iii) the Contractor is actually, or will be, delayed in achieving Opening Completion or Completion (or both, as applicable) by the relevant Excusable Cause of Delay; and
 - (iv) the Excusable Cause of Delay impacts an activity which is on the critical path for achieving Opening Completion or Completion (or both, as applicable).
- (b) **(Overall D&C Program)**: In assessing whether the conditions precedent in clause 16.6(a) have been satisfied in relation to a delay, the Principal may have regard to the Overall D&C Program and any progress report received from the Contractor, but is not obliged to do so, and may consider any other relevant factors.
- (c) **(Bar to claim)**: If the conditions precedent in clause 16.6(a) are not satisfied:
- (i) the Principal will not be liable upon any Claim for an extension of time or a Compensation Event by the Contractor; and
 - (ii) the Contractor will be absolutely barred from making any Claim for an extension of time or a Compensation Event against the Principal,
- arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

16.7 Extension of Date for Opening Completion and Date for Completion

- (a) **(Determination)**: Subject to clause 16.7(e), if the conditions precedent in clause 16.6(a) (*Conditions precedent to extension of time*) have been satisfied, the Principal must extend the Date for Opening Completion or the Date for Completion (or both, as applicable) by the period of delay, as determined by the Principal acting reasonably having regard to the available working days permitted by the Planning Approval.
- (b) **(Site Access Schedule)**: If the Date for Opening Completion or the Date for Completion (or both) are extended under clause 16.7(a), and the Contractor has claimed an extension to any expiration dates for access in the Site Access Schedule in accordance with clause 16.5(b) (*Claim for extension of time*), those expiration dates will be extended by such periods as are reasonable having regard to the extension granted under clause 16.7(a).
- (c) **(Notice)**: The Principal must notify the Contractor of its determination under clause 16.7(a) within 20 Business Days after the latest of:
- (i) the Contractor's last claim under clause 16.5(c) or 16.5(d) (if applicable) (*Claim for extension of time*); or
 - (ii) the provision by the Contractor of any additional information requested by the Principal under clause 16.5(e) (*Claim for extension of time*).
- (d) **(Time not at large)**: The failure of the Principal to grant any extension of time, or to grant an extension of time within the time prescribed by this clause 16.7, will

not cause the Date for Opening Completion or the Date for Completion (as applicable) to be set at large or prevent the Principal from subsequently exercising its discretion under section 16.7(f) (*Extension of Date for Opening Completion and Date for Completion*).

- (e) **(Reduction)**: The Contractor's entitlement to any extension of time will be reduced to the extent to which the Contractor or any of its Related Parties:
- (i) could have lessened or avoided the delay if they had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to Mitigate the cause of the delay or re-schedule within the Overall D&C Program the Contractor's Activities affected by the delay; or
 - (ii) other than in respect of an Excusable Cause of Delay described in paragraph (d) of the definition of Excusable Cause of Delay, caused or contributed to the Excusable Cause of Delay.
- (f) **(Unilateral extension)**: The Principal may in its absolute discretion for any reason and at any time, by notice in writing to the Contractor, unilaterally extend the Date for Opening Completion or the Date for Completion (or both), by any period specified in a notice to the Contractor.
- (g) **(Discretion to extend)**: The power to extend the Date for Opening Completion or the Date for Completion under clause 16.7(f):
- (i) may be exercised whether or not the Contractor has made, or is entitled to make, a claim for an extension of time or is entitled to be, or has been, granted an extension of time under this clause 16;
 - (ii) is not required to be exercised for the benefit of the Contractor; and
 - (iii) is not a Direction which can be the subject of a Dispute pursuant to the Dispute Resolution Procedure or in any way opened up or reviewed by any other person (including any expert, dispute avoidance board, arbitrator or court).
- (h) **(Concurrent delay)**: Where there are several causes of delay to Opening Completion or Completion and at least one of those causes is not an Excusable Cause of Delay, then, to the extent the delays resulting from those causes are concurrent, the Contractor will not be entitled to an extension of the Date for Completion or the Date for Opening Completion under this clause 16.7.
- (i) **(Unknown Site Conditions)**: Clause 10.5 (*Unknown Site Conditions*) will apply to restrict the Contractor's entitlements to an extension of time in relation to any Change directed by the Principal pursuant to a Change Order in respect of an Unknown Site Condition.

16.8 Compensation Events

- (a) **(Entitlement)**: If the Date for Opening Completion or the Date for Completion (or both) is extended pursuant to clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*) due to a Compensation Event, the Contractor is entitled to claim compensation from the Principal in accordance with this clause 16.8 as part of its claim for an extension of time under clause 16.5 (*Claim for extension of time*).

- (b) **(Mitigation)**: If a Compensation Event occurs, the Contractor must:
- (i) take all reasonable steps to Mitigate the consequences of the Compensation Event;
 - (ii) otherwise comply with all reasonable directions of the Principal concerning the Compensation Event and the consequences thereof; and
 - (iii) ensure that its Related Parties comply with the requirements of this clause 16.8(b),
- and the Principal's liability to pay Contractor's Delay Costs under this clause 16.8, will be reduced to the extent the Contractor fails to comply with these obligations.
- (c) **(Contractor's Delay Costs)**: Subject to clause 16.8(b) and 16.8(d), the Principal must pay the Contractor the Contractor's Delay Costs for each day by which the Date for Opening Completion or the Date for Completion (or both, as applicable) is extended under clause 16.7 (*Extension of Date for Opening Completion and Date for Completion*) for a Compensation Event (without double counting) (excluding, in respect of a Change or Deemed Change Event, any amount forming part of the amounts "CDC" calculated in accordance with clause 13.9(a) (*Payment for Changes*)).
- (d) **(Cap on costs)**: The Contractor's entitlement to the Contractor's Delay Costs under clause 16.8(c) or as part of any Change Costs will not exceed the amount per day specified in Item 22 of the Contract Particulars for the relevant phase of the Contractor's Activities in which the Excusable Cause of Delay occurs, in respect of each day of delay.
- (e) **(Sole remedy)**: Subject to the Contractor's express rights to claim delay and disruption costs under clause 13 (*Changes*) in respect of a Change, the costs payable to the Contractor under clause 16.8(a) will be the Contractor's sole remedy for the recovery of any Loss which the Contractor or its Related Parties suffers or incurs arising out of or in any way in connection with any delay and disruption that:
- (i) the Contractor encounters in carrying out the Contractor's Activities, the Project Works or the Temporary Works; or
 - (ii) arises out of, or in any way in connection with, a Compensation Event (including a breach of this deed by the Principal).
- (f) **(Liability limited)**: Except as expressly set out in clauses 10.5(g)(iii) (*Unknown Site Conditions*) and 13.9 (*Payment for Changes*):
- (i) this clause 16.8 is a limitation upon the Principal's liability to the Contractor and its Related Parties for any Losses suffered or incurred by the Contractor or its Related Parties arising out of or in any way in connection with the delay or disruption referred to in clause 16.8(e);
 - (ii) the Contractor waives, and must ensure that its Related Parties waive, all rights at Law to make any Claim against the Principal in respect of such delay or disruption; and
 - (iii) the Principal will not be liable to the Contractor or its Related Parties in these circumstances for such delay or disruption other than in respect of the matters for which the Principal may be liable under this clause 16.8.

(g) **(Unknown Site Conditions)**: Clause 10.5 (*Unknown Site Conditions*) will apply to restrict the Contractor's entitlements to the Contractor's Delay Costs in relation to any Change directed by the Principal pursuant to a Change Order in respect of an Unknown Site Condition.

(h) 

16.9 Continue to perform

Despite the occurrence of an Excusable Cause of Delay (including a Compensation Event), the Contractor must continue to perform all of its obligations under the D&C Documents to the extent that the Contractor is not prevented from performing those obligations by that Excusable Cause of Delay.

16.10 Liquidated Damages

(a) **(Liability)**: Subject to clauses 16.10(b), 16.10(ba) and 16.10(h), if the Contractor fails to reach:

- (i) Opening Completion by the Date for Opening Completion; or
- (ii) Completion by the Date for Completion,

the Contractor will be indebted to the Principal for liquidated damages at the relevant rate set out in Item 21 of the Contract Particulars (*Liquidated Damages*) for every day after the Date for Opening Completion or Date for Completion (as applicable) to and including:

- (iii) the Date of Opening Completion or the Date of Completion (as applicable); or
 - (iv) the date that this deed is terminated,
- whichever first occurs.

(b) **(Higher rate only)**: In circumstances where the Contractor has not achieved both:

- (i) Opening Completion by the Date for Completion; and
- (ii) Completion by the Date for Completion,

then for any day on which the Contractor is liable to pay liquidated damages in respect of failure to achieve both Opening Completion and Completion, the Contractor's liability to pay Liquidated Damages on each such day will be limited to the applicable daily amount for Opening Completion only.

(ba) **(Rectification of Defects for Completion)**: To the extent:

- (i) the Contractor has not rectified one or more Defects in the Motorway Works by the Date for Completion;
- (ii) the Contractor has not achieved the requirement for Completion set out in section 5 of Part B in Schedule 16 (*Conditions precedent to Opening Completion and Completion*) as a result;

- (iii) the Contractor has given the Principal an access request for those Defects in accordance with clause 17.3(b) (*Defects or omissions*), including within the time required by that clause; and
- (iv) the Contractor has satisfied all requirements for Completion other than the requirement set out in section 5 of Part B in Schedule 16 (*Conditions precedent to Opening Completion and Completion*),

the Contractor is not liable for, and the Principal is not entitled to payment of, Liquidated Damages under clause 16.10(a) for a failure to reach Completion by the Date for Completion in respect of the period (if any):

- (v) starting on the date the Contractor first gave an access request for any one of those Defects in accordance with clause 17.3(b) (*Defects or omissions*); and
 - (vi) ending on the date the time for rectification of any one of those Defects under clause 17.3(d) (*Defects or omissions*) first expires without the Defect being rectified.
- (c) **(Basis for liquidated damages):** For the purposes of this deed, the parties agree that:
- (i) the amount of Liquidated Damages referred to in clause 16.10(a) constitutes a reasonable and good faith pre-estimate of the anticipated or actual Loss that will be incurred by the Principal as a result of Opening Completion not occurring on or before the Date for Opening Completion or Completion not occurring on or before the Date for Completion (as applicable);
 - (ii) the Principal's policy objectives on behalf of the NSW Government are to complete the Project Works so as to enable the Project Works to be opened to the public;
 - (iii) a failure to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion (as applicable) will lead to the Principal and the NSW Government suffering direct and indirect losses and lead to the failure of achieving its policy objectives to the detriment of the Principal and those for whose benefit the policy objectives are pursued (including by delaying other projects), and the parties desire to avoid the difficulties of proving damages in connection with such failures; and
 - (iv) the Liquidated Damages payable by the Contractor in accordance with clause 16.10(a) are reasonable and do not constitute nor are they intended to be a penalty.
- (d) **(Debt due):** The amount of Liquidated Damages payable by the Contractor under clause 16.10(a) will be recoverable from the Contractor as a debt due and payable to the Principal, and may be calculated and claimed by the Principal once per month after the Date for Opening Completion or Date for Completion (as applicable).
- (e) **(Obligation to pay not affected):** The Contractor agrees that its obligation to pay Liquidated Damages will not be affected by any circumstance, including:
- (i) any set-off, counter-claim or other right which the Contractor may have against the Principal; or

- (ii) any other circumstance, happening or event whatsoever, whether or not unforeseen or similar to the foregoing.
- (f) **(Other obligations not affected)**: The Contractor's liability for, or payment of, Liquidated Damages does not limit or otherwise reduce its obligation to:
- (i) achieve Opening Completion or Completion; or
 - (ii) rectify any Defect or pay rectification costs.
- (g) **(General damages)**: Without in any way limiting this clause 16.10, if clause 16.10(a) or any part thereof is found to be void, invalid or inoperative so as to disentitle the Principal from recovering any Liquidated Damages, the Principal remains entitled to recover damages in connection with any failure by the Contractor to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion (as applicable) provided that such damages will be limited to the amount of Liquidated Damages the Principal would otherwise have been entitled to recover from the Contractor.
- (h) **(Liquidated Damages Cap)**: The Contractor's aggregate liability for:
- (i) damages payable by the Contractor for breach of clause 14.2 (*Performance of Contractor's Activities*) or 15.1(b) (*Start and progress*) to the extent that those damages flow from a delay to Opening Completion;
 - (ii) damages payable by the Contractor for breach of clause 15.2 (*Date for Opening Completion and Date for Completion*);
 - (iii) Liquidated Damages payable by the Contractor under clause 16.10(a);
 - (iv) general damages for delay as contemplated in clause 16.10(g);
 - (v) any loss of Revenue payable by the Contractor under clause 32.11(a)(iii) (*Termination payments*); and
 - (vi) any Revenue payable by the Contractor on any basis, other than a liability described in clause 28.3(b)(i), 28.3(b)(iii), 28.3(b)(v), 28.3(b)(vi), 28.3(b)(vii), 28.3(b)(viii), 28.3(b)(ix), 28.3(b)(xi) or 28.3(b)(xii) (*Consequential Loss*),
- will be limited to the Liquidated Damages Cap.
- (i) **(Sole monetary remedy)**: Subject to clause 16.10(g) and without limiting the Principal's right to terminate this deed or any of the other D&C Documents, or the Contractor's liability to make any payment under clause 32 (*Default and Termination*), this clause 16.10 is the Principal's sole monetary remedy against the Contractor for delay in achieving Opening Completion by the Date for Opening Completion and Completion by the Date for Completion.

17. Opening Completion and Completion

17.1 Process for Opening Completion and Completion

- (a) **(Advance notice)**: The Contractor must give the Principal and the Independent Certifier:
- (i) 6 months';

- (ii) 3 months’;
- (iii) 1 month’s; and
- (iv) 10 Business Days’,

prior written notice of the estimated Date of Opening Completion and the estimated Date of Completion. The Contractor must give a copy of each notice to each O&M Contractor at the same time.

- (b) **(Joint inspection)**: Subject to clause 17.1(g), the Principal, the Contractor and the Independent Certifier must, within 3 Business Days after receipt of each notice given under clause 17.1(a)(iv), jointly inspect the Project Works and the Contractor's Activities at a mutually convenient time.
- (c) **(Independent Certifier notice)**: Within 3 Business Days of the joint inspection referred to in clause 17.1(b), the Independent Certifier must give the Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before Opening Completion or Completion (as the case may be) is achieved; or
 - (ii) stating that it believes that Opening Completion or Completion (as the case may be) is so far from being achieved that it is not practicable to issue a list as contemplated in clause 17.1(c)(i).

The Independent Certifier will give a copy of the notice to each O&M Contractor at the same time.

- (d) **(Contractor notice)**: When the Contractor considers Opening Completion or Completion (as the case may be) has been achieved:
 - (i) the Contractor must notify the Principal and the Independent Certifier in writing and must confirm that any items listed in any Independent Certifier's notice under clause 17.1(c)(i) have been addressed;
 - (ii) the Contractor must give the Principal and the Independent Certifier an executed certificate in the form of Part N of Schedule 14 (*Form of Certificates*); and
 - (iii) thereafter, and subject to clause 17.1(g), the Principal, the Contractor and the Independent Certifier must as soon as reasonably practicable jointly inspect the Project Works and the Contractor's Activities at a mutually convenient time.

The Contractor must give a copy of the notice under clause 17.1(d)(i) to each O&M Contractor at the same time.

- (e) **(Certificate)**: Following the joint inspection under clause 17.1(d)(iii), and in any event within 2 Business Days of a notice under clause 17.1(d) or 17.1(f), the Independent Certifier must:
 - (i) if Opening Completion or Completion (as the case may be) has been achieved, provide to the Principal and the Contractor a document signed by the Independent Certifier in the form set out in Part O of Schedule 14 (*Form of Certificates*); or

- (ii) if Opening Completion or Completion (as the case may be) has not been achieved, issue a notice to the Contractor and the Principal which states:
 - (A) the items which remain to be completed before Opening Completion or Completion (as the case may be) is achieved; or
 - (B) that Opening Completion or Completion (as the case may be) is so far from being achieved that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.1(e)(ii)(A).

The Independent Certifier will give a copy of the certificate or notice to each O&M Contractor at the same time.

- (f) **(Continue with Contractor's Activities):** If the Independent Certifier issues a notice under clause 17.1(e)(ii), the Contractor must proceed with the Contractor's Activities and thereafter when it considers Opening Completion or Completion (as the case may be) has been achieved it must give the Principal and the Independent Certifier written notice to that effect after which clauses 17.1(d) and 17.1(e) will reapply. The Contractor must give a copy of the notice to each O&M Contractor at the same time.
- (g) **(Attendance at joint inspection):** The Contractor acknowledges and agrees that:
 - (i) the Principal may invite any other person to attend any joint inspection provided for by this clause 17, including one or more O&M Contractors; and
 - (ii) the Principal may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with the D&C Documents, including comments made by an O&M Contractor.
- (h) **(Acknowledgements):** The Contractor and the Principal acknowledge and agree that:
 - (i) without limiting the other requirements for Completion, Completion cannot occur until Opening Completion has occurred; and
 - (ii) once Opening Completion has occurred the Contractor is not obliged to re-satisfy the requirements of Opening Completion in order to achieve Completion.

17.2 Effect of a Notice of Opening Completion and Notice of Completion

- (a) **(Effect of notices):** Neither a Notice of Opening Completion nor a Notice of Completion will:
 - (i) constitute approval by the Principal of the Contractor's performance of its obligations under the D&C Documents;
 - (ii) be taken as an admission or evidence that the Project Works or D&C Phase Maintenance comply with the D&C Documents; or
 - (iii) prejudice any rights or powers of the Principal.
- (b) **(Final and binding):** Without limiting clause 17.2(a) in the absence of manifest error by the Independent Certifier, the Independent Certifier's certification as set

out in a Notice of Opening Completion and a Notice of Completion is final and binding on the parties for the purposes only of establishing that Opening Completion or Completion (as the case may be) has occurred.

17.3 Defects or omissions

- (a) Despite that Opening Completion may have occurred, the Contractor must as soon as practicable after Opening Completion (and in any event as a condition precedent to Completion) correct any Defects which existed at the time of the issue of the Notice of Opening Completion as identified in the Independent Certifier's Certificate provided under clause 17.1(e)(i) (*Process for Opening Completion and Completion*).
- (b) If, after Opening Completion and before Completion, the Contractor is aware of a Defect which exists in the Motorway Works, the Contractor must give the Principal a written access request to rectify the Defect within 10 Business Days after:
 - (i) in the case of a Defect which the Contractor is aware of at Opening Completion (including for the Defects identified in the Independent Certifier's Certificate provided under clause 17.1(e)(i) (*Process for Opening Completion and Completion*)), the Date of Opening Completion; and
 - (ii) otherwise, the Contractor becomes aware of the Defect.
- (c) Each notice under clause 17.3(b) must set out reasonable details of the Defect and the access requested by the Contractor to rectify the Defect, including the areas to which access is required, the expected duration of access and any shutdown or outage expected to be required.
- (d) Within 10 Business Days after the Principal receives an access request under clause 17.3(b) in relation to a Defect, the parties must agree, or if the parties fail to agree the Principal must specify, a reasonable time within which the Contractor must rectify the Defect starting on the date that access is made available by the Principal.

17.4 Early completion of part of Project Works

- (a) **(Creation of new Portion)**: If the Principal considers that a part of the Project Works has reached a stage equivalent to that of Opening Completion (to the extent applicable to that part) and is capable of being handed over and used, but the balance of the Project Works has not reached such a stage, the Principal may direct a Portion in accordance with clause 19 (*Portions*).
- (b) **(Occupation of new Portion)**: Following a direction by the Principal of a Portion as contemplated by clause 17.4(a), the Principal or its nominees may use and occupy any Portion that has reached a stage equivalent to Opening Completion or any part of such Portion.
- (c) **(Occupation not to hinder)**: In using or occupying any Portion that has reached a stage equivalent to Opening Completion or any part of such Portion, the Principal must not, and must procure that its nominees do not, unduly hinder the Contractor in the performance of the balance of the Contractor's Activities.
- (d) **(No deemed completion)**: The use or occupation by the Principal of a Portion or a part of any Portion will not be deemed to constitute Opening Completion of the whole of the Project Works.

17.5 Early completion of Bayside Council Works

- (a) **(Application)**: This clause 17.5 only applies if the Contractor wishes to achieve Bayside Council Works Completion of Bayside Council Works before Opening Completion.
- (b) **(Advance notice)**: The Contractor must give the Principal and the Independent Certifier:
- (i) 3 months’;
 - (ii) 1 month’s; and
 - (iii) 10 Business Days’,
- prior written notice of the estimated Date of Bayside Council Works Completion.
- (c) **(Joint inspection)**: Subject to clause 17.5(h), the Principal, the Contractor and the Independent Certifier must, within 3 Business Days after receipt of each notice given under clause 17.5(b)(iii), jointly inspect the relevant Bayside Council Works at a mutually convenient time.
- (d) **(Independent Certifier notice)**: Within 3 Business Days of the joint inspection referred to in clause 17.5(c), the Independent Certifier must give the Contractor and the Principal a notice either:
- (i) containing a list of items which it believes must be completed before Bayside Council Works Completion of the relevant Bayside Council Works is achieved; or
 - (ii) stating that it believes that Bayside Council Works Completion of the relevant Bayside Council Works is so far from being achieved that it is not practicable to issue a list as contemplated in clause 17.5(d)(i).
- (e) **(Contractor notice)**: When the Contractor considers Bayside Council Works Completion of the relevant Bayside Council Works has been achieved:
- (i) the Contractor must notify the Principal and the Independent Certifier in writing and provide them with an executed certificate in the form of Part U of Schedule 14 (*Form of Certificates*), and must confirm that any items listed in any Independent Certifier's notice under clause 17.5(d)(i) have been addressed; and
 - (ii) thereafter, and subject to clause 17.5(h), the Principal, the Contractor and the Independent Certifier must as soon as reasonably practicable jointly inspect the Project Works and the Contractor's Activities at a mutually convenient time.
- (f) **(Certificate)**: Following the joint inspection under clause 17.5(e)(ii), and in any event within 2 Business Days of a notice under clause 17.5(e) or 17.5(g), the Independent Certifier must:
- (i) if Bayside Council Works Completion of the relevant Bayside Council Works has been achieved, provide to the Principal and the Contractor a Notice of Bayside Council Works Completion; or

- (ii) if Bayside Council Works Completion of the relevant Bayside Council Works has not been achieved, issue a notice to the Contractor and the Principal which states:
 - (A) the items which remain to be completed before Bayside Council Works Completion of the relevant Bayside Council Works is achieved; or
 - (B) that Bayside Council Works Completion of the relevant Bayside Council Works is so far from being achieved that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.5(f)(ii)(A).
- (g) **(Continue with works)**: If the Independent Certifier issues a notice under clause 17.5(f)(ii), the Contractor must proceed with the relevant Bayside Council Works and thereafter when it considers Bayside Council Works Completion has been achieved it must give the Principal and the Independent Certifier written notice to that effect after which clauses 17.5(e) and 17.5(f) will reapply.
- (h) **(Attendance at joint inspection)**: The Contractor acknowledges and agrees that:
 - (i) the Principal may invite any other person to attend any joint inspection provided for by this clause 17.5, including Bayside Council; and
 - (ii) the Principal may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Bayside Council Works with the D&C Documents.
- (i) **(Acknowledgements)**: The Contractor and the Principal acknowledge and agree that once Bayside Council Works Completion of Bayside Council Works has occurred, the Contractor is not obliged to re-satisfy the requirements of Bayside Council Works Completion of the Bayside Council Works to achieve Opening Completion.

17.6 O&M Completion Obligations

- (a) **(Dependency on O&M)**: The parties acknowledge and agree that, subject to clause 17.6(f), the O&M Completion Obligations will need to be performed by the O&M Contractors to enable Opening Completion and Completion to be achieved.
- (b) **(Primary responsibility)**: Despite clause 17.6(a), the Contractor has primary responsibility for achieving the Opening Completion and Completion, including the satisfaction of the Operational Readiness Evaluation, and must use all reasonable endeavours to ensure the O&M Contractors perform the O&M Completion Obligations in accordance with the Overall D&C Program.
- (c) **(Notice of non-performance)**: If an O&M Contractor fails to perform its O&M Completion Obligations by the time required by the Overall D&C Program despite the Contractor using all reasonable endeavours to ensure the O&M Contractor does so, the Contractor may give notice to the Principal requiring the O&M Contractor to carry out such O&M Completion Obligations within a reasonable period of time.
- (d) **(Take over at Principal's direction)**: The Principal may, by written notice to the Contractor, require the Contractor to take over performance of an O&M Completion Obligation if:

- (i) the Principal reasonably believes that the O&M Contractor will not, or the O&M Contractor does not, perform the O&M Completion Obligation by the time required by the Overall D&C Program; and
 - (ii) it is reasonably practicable for the Contractor to take over performance of the O&M Interface Obligation.
- (e) **(Take over at Contractor's request)**: If an O&M Contractor fails to perform an O&M Completion Obligation by the time set out in a notice given by the Contractor under clause 17.6(c), the Contractor may, by written notice to the Principal, take over performance of the O&M Completion Obligation.
- (f) **(Contractor to take over)**: If the Principal gives notice under clause 17.6(d) or the Contractor gives notice under clause 17.6(e):
- (i) the Contractor must take over performance of the relevant O&M Completion Obligation as part of the Contractor's Activities; and
 - (ii) the Principal must pay the Contractor the reasonable additional direct costs incurred by the Contractor in performing the relevant O&M Completion Obligation.
- (g) **(Changes to program)**: The Contractor must not amend the details in the Overall D&C Program relating to the O&M Completion Obligations (including dates, durations and sequencing) without the prior written consent of the Principal. The Principal must promptly give its consent if:
- (i) the proposed amendment will not have a material adverse impact on an O&M Contractor's ability to perform its O&M Completion Obligations in accordance with the amended Overall D&C Program; and
 - (ii) the Contractor agrees to pay the reasonable additional direct costs incurred by the O&M Contractors as a result of the proposed amendment.

Where the Contractor agrees to pay the costs described in clause 17.6(g)(ii), the Contractor must pay such costs to the Principal progressively as they are incurred by the O&M Contractors.

18. Defects Correction Periods

18.1 Correction of Defects

The Contractor must correct:

- (a) **(Defects Correction Period)**: all Defects in the Motorway Works, Local Area Works, Utility Service Works, Property Works and D&C Phase Maintenance prior to the expiry of the relevant Defects Correction Period; and
- (b) **(Landscaping Maintenance Period)**: all Defects in the Landscaping Maintenance prior to the expiry of the Landscaping Maintenance Period,

whether or not the Principal, an O&M Contractor or the Independent Certifier notifies the Contractor of the Defect.

18.2 Principal's Direction

- (a) **(Correction or acceptance):** Without limiting clause 18.1 (*Correction of Defects*), if:
- (i) prior to and during a Defects Correction Period, the Principal discovers or believes there is a Defect in the Motorway Works, Local Area Works, Utility Service Works, Property Works or D&C Phase Maintenance; or
 - (ii) prior to and during a Landscaping Maintenance Period, the Principal discovers or believes there is a Defect in the Landscaping Maintenance,
- the Principal may, without prejudice to any other rights which the Principal may have under the D&C Documents or otherwise at Law, give the Contractor a written direction specifying the Defect and doing one or more of the following (at the Principal's absolute discretion):
- (iii) requiring the Contractor to correct the Defect (or a part of it) and specifying a reasonable time within which this must occur;
 - (iv) subject to clause 18.4(b) (*Acceptance of Defect*), advising the Contractor that the Principal will accept the work or a part of it despite the Defect and reduce the D&C Deed Sum;
 - (v) subject to clause 18.5(b) (*Rectification by others*), advising the Contractor that the Principal will have the Defect or any part of it corrected (including by an O&M Contractor or a Future M6 Stage Contractor); or
 - (vi) where an O&M Contractor is required to carry out a repair or temporary fix in accordance with clause 6.4.2 of Appendix G.2 of the SWTC:
 - (A) advising the Contractor that the O&M Contractor has carried or will carry out the repair or temporary fix; and
 - (B) if relevant, requiring the Contractor to complete the correction of the Defect (or part of it) and specifying a reasonable time within which this must occur.
- (b) **(Notice of disagreement):** If the Contractor disagrees with any direction given by the Principal under clause 18.2(a), it must, within 5 Business Days after receipt of such a notice, give notice of its disagreement to the Principal. Any such disagreement will not prevent the Principal correcting or having a Defect corrected in accordance with clause 18.5(a) (*Rectification by others*), or an O&M Contractor carrying out a repair or temporary fix in accordance with clause 6.4.2 of Appendix G.2 of the SWTC, but the determination of the disagreement may affect whether the Contractor is liable for costs under clause 18.5 (*Rectification by others*).
- (c) **(Referral to Independent Certifier):** If the Contractor gives the Principal a notice under clause 18.2(b), the Principal and the Contractor 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 Contractor's Notice, either the Principal or the Contractor may, by notice to the other parties and the Independent Certifier, refer the matter for determination by the Independent Certifier, who must within 10 Business Days (or any longer period agreed to by the Principal and the Contractor) after receipt of the referral make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.

18.3 Correction by Contractor

- (a) **(Contractor to correct)**: If a direction is given under clause 18.2(a)(iii) or 18.2(a)(vi) (*Principal's Direction*):
- (i) in the case of a Defect in the Motorway Works, Local Area Works, Utility Service Works, Property Works or D&C Phase Maintenance, at any time prior to the expiration of the relevant Defects Correction Period (whether before or after Opening Completion or Completion); or
 - (ii) in the case of a Defect in the Landscaping Maintenance, at any time prior to the expiration of the Landscaping Maintenance Period,
- and the Contractor does not give a notice under clause 18.2(b) (*Principal's Direction*) or, if it does, the Independent Certifier determines that a Defect exists, the Contractor must correct the Defect (or the part of it):
- (iii) within the time specified in the Principal's direction, which may be immediately where urgent action is required to protect people, property or the Environment;
 - (iv) at times agreed with the Principal and in accordance with the requirements of any other relevant Authority or WestConnex Concessionaire (if applicable);
 - (v) so as to minimise the impact on the use of the relevant part of the Project Works;
 - (vi) so as to minimise the inconvenience to possible users of the Motorway, the WestConnex Motorways, any Local Area, a Utility Service, the Property Works or any access and the adjacent community;
 - (vii) in accordance with the requirements of any relevant Authority; and
 - (viii) in a manner which causes as little inconvenience as possible to the carrying out of the O&M Activities and WestConnex Activities.
- (b) **(Notice when corrected)**: The Contractor must give notice to the Principal and the Independent Certifier that a Defect has been corrected promptly after the correction of the Defect.
- (c) **(Failure to correct)**: If the Contractor does not comply with clause 18.3(a), the Principal may, without prejudice to any other rights the Principal may have against the Contractor with respect to Defects under this deed or otherwise at Law, give the Contractor a direction under clause 18.2(a)(iv) (*Principal's Direction*) or 18.2(a)(v) (*Principal's Direction*).

18.4 Acceptance of Defect

- (a) **(Reduction to D&C Deed Sum)**: Subject to clause 18.5(b), if a direction is given under clauses 18.2(a)(iv) (*Principal's Direction*) prior to the expiration of:
- (i) the Defects Correction Period applicable to the relevant part of the Project Works; or
 - (ii) the Landscaping Maintenance Period in the case of a Defect in the Landscaping Maintenance,

the D&C Deed Sum will be reduced by an amount equivalent to the costs of correcting the Defect (or the part of it) (determined on the basis that reasonable steps will be taken to mitigate those costs).

- (b) **(Opportunity to correct)**: The Principal may only give a direction under clause 18.2(a)(iv) (*Principal's Direction*) if:
- (i) the Principal has first given a direction under clause 18.2(a)(iii) (*Principal's Direction*); and
 - (ii) the Contractor has failed to comply with its obligations under clause 18.3(a) (*Correction by Contractor*),

provided that, for Defects in the IOMCS and OMCS Works or the Tolling Equipment Works, and for the purposes of this clause 18.4(b)(ii) only, the Principal will allow a single reasonable additional period if the Contractor has taken all reasonable steps to comply but is prevented from doing so within the time required by clause 18.3(a) due to circumstances beyond the reasonable control of the Contractor and its Related Parties.

18.5 Rectification by others

- (a) **(Rectification and recovery)**: Subject to clause 18.5(b), if a direction is given under clause 18.2(a)(v) (*Principal's Direction*) prior to the expiration of:
- (i) the Defects Correction Period applicable to the relevant part of the Project Works; or
 - (ii) the expiration of the Landscaping Maintenance Period in the case of a Defect in the Landscaping Maintenance,

the Principal may correct or have the Defect (or the part of it) corrected and the costs incurred by the Principal in doing so will be a debt due and payable from the Contractor to the Principal. The Principal must take reasonable steps to mitigate such costs.

- (b) **(Opportunity to correct)**: The Principal may only give a direction under clause 18.2(a)(v) (*Principal's Direction*) if:
- (i) the Principal has first given a direction under clause 18.2(a)(iii) (*Principal's Direction*); and
 - (ii) the Contractor has failed to comply with its obligations under clause 18.3(a) (*Correction by Contractor*).
- (c) **(Temporary fix)**: If an O&M Contractor carries out a repair or temporary fix in accordance with clause 6.4.2 of Appendix G.2 of the SWTC, the costs incurred by the Principal in having the O&M Contractor do so will be a debt due and payable from the Contractor to the Principal. The Principal must take reasonable steps to mitigate such costs.

18.6 Motorway Works

The Motorway Works have:

- (a) **(Defects Correction Period)**: a Defects Correction Period which begins on the Date of Opening Completion and expires after the period specified in Item 32 of the Contract Particulars after the Date of Opening Completion; and
- (b) **(Further Defects Correction Period)**: a further Defects Correction Period of the period specified in Item 32 of the Contract Particulars in respect of any work the subject of a direction under clause 18.2(a) (*Principal's Direction*) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 18.6 will not exceed the period specified in Item 32 of the Contract Particulars after the Date of Opening Completion.

18.7 Local Area Works

Each discrete part of the Local Area Works has:

- (a) **(Defects Correction Period)** a Defects Correction Period which begins:
 - (i) in respect of Bayside Council Works, the earlier of:
 - (A) the Date of Bayside Council Works Completion in respect of the relevant Bayside Council Works; and
 - (B) the Date of Opening Completion; and
 - (ii) in respect of all other Local Area Works, when either:
 - (A) the relevant Authority which has jurisdiction in respect of the discrete part of the Local Area Works gives written notice to the Contractor that the Authority is satisfied that the discrete part is complete; or
 - (B) if the Contractor is unable to obtain the notice referred to in clause 18.7(a)(ii)(A) despite:
 - (aa) promptly seeking that notice upon completion of the discrete part of the Local Area Works;
 - (bb) giving the relevant Authority not less than 20 Business Days to provide the notice requested; and
 - (cc) otherwise using its best endeavours to obtain that notice,

and the Principal and the Independent Certifier have been provided with a copy of the relevant notice,

and which expires the period specified in Item 33 of the Contract Particulars after the Date of Opening Completion; and

- (b) **(Further Defects Correction Period)**: a further Defects Correction Period of the period specified in Item 33 of the Contract Particulars in respect of any work the subject of a direction under clause 18.2(a) (*Principal's Direction*) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 18.7 will not exceed an the period specified in Item 33 of the Contract Particulars after the Date of Opening Completion.

18.8 Utility Service Works

Each discrete part of the Utility Service Works (except in respect of those Utility Services that form part of the Motorway Works) has:

- (a) **(Defects Correction Period)**: a Defects Correction Period which begins when:
- (i) either:
- (A) the relevant Authority which has jurisdiction in respect of the Utility Service gives written notice to the Contractor that the Authority is satisfied that the discrete part of the Utility Service Works is complete; or
- (B) if the Contractor is unable to obtain the notice referred to in clause 18.8(a)(i)(A) despite:
- (aa) promptly seeking that notice upon completion of the discrete part of the Utility Service Works;
- (bb) giving the relevant Authority not less than 20 Business Days to provide the notice requested; and
- (cc) otherwise using its best endeavours to obtain that notice,
- the Utility Service Works have reached a stage equivalent to that of Opening Completion (to the extent applicable to that part) and the Contractor gives the Principal notice that it has been unable to obtain that notice and that in its view, the relevant Utility Service Works are complete; and
- (ii) the Principal and the Independent Certifier have been provided with a copy of the relevant notice,

and which expires the period specified in Item 34 of the Contract Particulars after the Date of Opening Completion; and

- (b) **(Further Defects Correction Period)**: a further Defects Correction Period of the period specified in Item 34 of the Contract Particulars in respect of any work the subject of a direction under clause 18.2(a) (*Principal's Direction*) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 18.8 will not exceed the period specified in Item 34 of the Contract Particulars after the Date of Opening Completion.

18.9 Property Works

Each discrete part of the Property Works has:

- (a) **(Defects Correction Period)**: a Defects Correction Period which begins upon the later of:
- (i) the completion of that discrete part of the Property Works; and
 - (ii) the submission by the Contractor to the Principal and the Independent Certifier of a certificate or signed statement (as the case may be) under clause 9.3 (*Property Works*),

and which expires the period specified in Item 35 of the Contract Particulars after the Date of Opening Completion; and

- (b) **(Further Defects Correction Period)**: a further Defects Correction Period of the period specified in Item 35 of the Contract Particulars in respect of any work the subject of a direction under clause 18.2(a) (*Principal's Direction*) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or part of it),

provided that the Defects Correction Period under this clause 18.9 will not exceed the period specified in Item 35 of the Contract Particulars after the Date of Opening Completion.

18.10 Defects in D&C Phase Maintenance

The D&C Phase Maintenance has:

- (a) **(Defects Correction Period)**: a Defects Correction Period which begins when the relevant D&C Phase Maintenance is performed and which expires the period specified in Item 36 of the Contract Particulars after the Date of Opening Completion; and
- (b) **(Further Defects Correction Period)**: a further Defects Correction Period of the period specified in Item 36 of the Contract Particulars in respect of any work the subject of a direction under clause 18.2(a) (*Principal's Direction*) (relating to the discrete part of the D&C Phase Maintenance) during the Defects Correction Period, which begins on the date of correction of the Defect (or part of it),

provided that the Defects Correction Period under this clause 18.10 will not exceed the period specified in Item 36 of the Contract Particulars after the Date of Opening Completion.

18.11 Failure by the Contractor to comply with direction

If the Contractor fails to comply with a direction given under clause 18.2(a) (*Principal's Direction*), the Principal may (without limiting any other rights it may have, including under clause 14.11 (*Principal's right to remedy non-compliances*)) apply for a court order for specific performance.

18.12 Rights not affected

Neither the Principal's rights, nor the Contractor's liability, whether under the D&C Documents or otherwise according to Law in respect of Defects, whether before or after

the expiration of any relevant Defects Correction Period or the D&C Documents , will be in any way affected or limited by:

- (a) **(Conferral of rights)**: the rights conferred upon the Principal or the Independent Certifier by this clause 18 or any other provision of this deed or any other D&C Document;
- (b) **(Exercise of rights)**: the exercise of, or the failure by the Principal or the Independent Certifier to exercise, any such rights; or
- (c) **(Direction)**: any direction of the Principal under this clause 18.

18.13 Access for defects

- (a) **(Defects Correction Period)**: After the Date of Opening Completion, but subject to:
 - (i) any constraints on and qualifications to access imposed on the Contractor under this deed, including clause 8 (*Security*); and
 - (ii) the Contractor's compliance with the O&M Contractors' reasonable protection and security measures in place with respect to the O&M Activities and the Motorway, the WestConnex Concessionaires' or their nominees' reasonable protection and security measures in place with respect to the WestConnex Motorways, the Project Plans and other reasonable access and management requirements of the Principal, the O&M Contractors or the WestConnex Concessionaires, including the Contractor:
 - (A) complying with its obligations under clause 7.6 (*Control of traffic*), and clauses 9.1(b) (*Construction Site*) and 9.10(e) (*Access to WestConnex Assets and Systems*);
 - (B) submitting Project Works Traffic Management Plans and complying with the Approved Project Works Traffic Management Plans;
 - (C) complying with its obligations under this deed in respect of a road occupancy, including obtaining a ROL from the Transport Management Centre in accordance with the requirements of Appendix C.4 of the SWTC and submitting an application for a work permit in respect of the Motorway from the O&M Contractors; and
 - (D) complying with any applicable Interface Protocols agreed with the O&M Contractors and the WestConnex Concessionaires; and
 - (iii) the Contractor agreeing to pay the relevant Lane Occupancy Fees calculated in accordance with Schedule 18 (*Lane Occupancy Fees*),

the Principal must give the Contractor and its Related Parties, or procure that the Contractor and its Related Parties are given, such access to:

- (iv) the Motorway Stratum; and
- (v) any other relevant area where there is a Defect in the Third Party Works,

during the permitted times stated in the ROLs and the Approved Project Works Traffic Management Plan or on reasonable notice as is necessary for the Contractor

to comply with its obligations under this clause 18 during the Defects Correction Period.

- (b) **(Principal may re-open)**: Despite any ROL issued for any lane or shoulder closure, the Principal may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder.

18.14 Technical support during Defects Correction Period

- (a) Without limiting clause 18.1(a) (*Correction of Defects*), the Subcontractor must provide the following technical support whilst a Defects Correction Period applies to the IOMCS and OMCS Works:
- (i) reasonable, next business day investigation of reported faults;
 - (ii) the provision of a written report containing initial findings to be provided within 2 Business Days after the date of the investigation of a fault under clause 18.14(a)(i);
 - (iii) management of any third party supplier warranties in respect of the IOMCS and OMCS Works; and
 - (iv) development and provision of any software release and test documentation required to support the correction of Defects.
- (b) If the Principal requests the Contractor to investigate a potential fault under clause 18.14(a) and it is subsequently agreed by the parties or determined in accordance with the Dispute Resolution Procedure that the potential fault is not a Defect, the Principal must pay the Contractor the reasonable costs incurred by the Contractor in performing the investigation.

19. Portions

19.1 Principal may direct Portions

- (a) **(Direction)**: The Principal may (in its absolute discretion), at any time, by written notice to the Contractor direct Portions, or additional or alternative Portions, under this clause 19.
- (b) **(Notice requirements)**: Any notice by given the Principal under clause 19.1(a) must, for each new Portion, include details of:
- (i) the Project Works and any Temporary Works which will become the new Portion;
 - (ii) the Date for Opening Completion and Date for Completion for the new Portion; and
 - (iii) amount of liquidated damages for the new Portion,
- all as determined by the Principal (acting reasonably).
- (c) **(Deemed Change Event)**: If the Principal gives a notice under clause 19.1(a), clause 13 (*Changes*) will apply as if such notice were a Change Order given under clause 13.6(a) (*Change Orders at the Principal's Election*).

19.2 Interpretation of Portions

The interpretations of:

- (a) Contractor's Activities;
- (b) Project Works;
- (c) Temporary Works;
- (d) Third Party Works;
- (e) Local Area Works;
- (f) Service Works;
- (g) Property Works;
- (h) D&C Phase Maintenance;
- (i) Landscaping Maintenance;
- (j) Construction Site;
- (k) Opening Completion;
- (l) Date for Opening Completion;
- (m) Date of Opening Completion;
- (n) Completion;
- (o) Date for Completion;
- (p) Date of Completion;
- (q) Defects Correction Period;
- (r) Works Site;
- (s) Maintenance Site;
- (t) the Additional Property Works Areas;
- (u) Local Areas; and
- (v) Temporary Areas,

and clauses 9 (*Access*), 15 (*Time and Progress*), 16 (*Delay During Construction*) 17 (*Opening Completion and Completion*), 18 (*Defects Correction Periods*), 16 (*Delay During Construction*) 27.1 (*Risk of loss or damage*) and the SWTC (including its appendices) will apply separately to each Portion (including any Portion determined under clause 19.1(a) (*Principal may direct Portions*)) and references therein to any of the terms in clauses 19.2(a) to 19.2(v) will mean so much as is comprised in, or associated with, the relevant Portion.

20. Operation, Maintenance and Repair

20.1 Maintenance during construction

- (a) **(Construction Site):** The Contractor must carry out all maintenance work specified in the SWTC (including all related documentation, asset condition assessment and reporting) on all roads within the Construction Site and all relevant completed parts of the Project Works, commencing from the date that the Contractor is granted access to the relevant part of the Construction Site in accordance with the Site Access Schedule until the Date of Opening Completion of the Motorway Works. The Contractor acknowledges that other entities will maintain roads prior to this date and the Contractor will cooperate and coordinate with such entities and will, subject to clause 7.7 (*Principal contractor*), allow them to perform such work.
- (b) **(Other activities):** Various types of maintenance activities, measures, intervention levels and response times are described in the SWTC. In addition to this information which describes the most common and minimum work to be carried out, the Contractor must undertake other maintenance activities:
 - (i) reasonably expected to provide for safe and uninterrupted passage of road users; and
 - (ii) required due to the Project Works and as a consequence of the Contractor's Activities.
- (c) **(Outside Construction Site):** The Contractor must carry out any maintenance work that is required on roads and paths outside the Construction Site which results from the Project Works, the Temporary Works or the Contractor's Activities.
- (d) **(Management procedures):** The Contractor must provide its maintenance management procedures to the Principal within 60 days of the date that it is given access to the roads within the Construction Site pursuant to the Site Access Schedule.
- (e) **(Records):** The Contractor must keep detailed and accurate records of all maintenance work and activities it carries out as part of the Contractor's Activities and provide them to the Principal as a condition precedent to Opening Completion.

20.2 O&M Manuals

- (a) **(Opening Completion):** As a condition precedent to Opening Completion, the Contractor must develop the O&M Manuals in accordance with the requirements of this deed and the Contractor Documentation Schedule and in consultation with the Principal.
- (b) **(Drafts):** The Contractor must provide the Principal with drafts of the O&M Manuals. The Contractor acknowledges and agrees that the Principal may provide a copy of any draft of the O&M Manuals to the O&M Contractors.
- (c) **(Contents):** The O&M Manuals must:
 - (i) incorporate all Project Plans to the extent they are relevant to operation, maintenance, repair and reinstatement of the Motorway or the maintenance and repair of the Third Party Works; and
 - (ii) contain the contents required by the SWTC.

- (d) **(No duty to review)**: The Principal owes no duty to the Contractor to review the O&M Manuals or any draft submitted by the Contractor for errors, omissions or compliance with this deed.
- (e) **(Acknowledgement)**: The Contractor acknowledges and agrees that:
- (i) the receipt or review of, or any consultation or comments regarding, any O&M Manuals by a Reviewer is solely for the purpose of monitoring the progress of the O&M Manuals;
 - (ii) no Reviewer assumes a duty or owes a duty to the Contractor to review the O&M Manuals for errors, omissions or compliance with the requirements of the SWTC, or to consult with the Contractor, or make any comments regarding any O&M Manual; and
 - (iii) no review of, comments upon, or notice given in respect of the O&M Manuals or any draft or any other act or omission of a Reviewer in respect of the O&M Manuals or any draft will lessen or otherwise affect:
 - (A) the Contractor's Liabilities or responsibilities under the D&C Documents or otherwise according to Law; or
 - (B) a Reviewer's rights against the Contractor, whether under the D&C Documents or otherwise according to Law.
- (f) **(Fit for intended purpose)**: The Contractor warrants that on the Date of Opening Completion, the O&M Manuals will be fit for their intended purposes as ascertainable from the SWTC.

20.3 O&M Contractors

The Contractor acknowledges and agrees that:

- (a) **(No claim)**: irrespective of the identity of the O&M Contractors, except as expressly set out in this deed, after the Date of Opening Completion, the Contractor will not have any right to bring any Claim against the Principal arising out of or in connection with the impact of the O&M Activities on the Contractor's Activities;
- (b) **(Responsibility for O&M)**: except as expressly set out in this deed, after the Date of Opening Completion, the O&M Contractors will carry out and be responsible for O&M Activities; and
- (c) **(Completion obligation unaffected)**: nothing in this clause 20.3 limits or otherwise affects the Contractor's obligation to achieve Opening Completion by the Date for Opening Completion and Completion by the Date for Completion in accordance with this deed.

20.4 Landscaping Maintenance

- (a) **(Performance of maintenance)**: The Contractor must perform the Landscaping Maintenance during the Landscaping Maintenance Period, including so that the Project Works the subject of the Landscaping Maintenance remain fit for their intended purposes.
- (b) **(Replacement of plants and trees)**: If, in the performance of the Landscaping Maintenance, the Contractor is required to replace any dead, diseased or damaged

plants or trees, the replacements must be of at least the quality required by this deed and fit for their intended purposes.

- (c) **(Final joint inspection):** As soon as reasonably practicable after the end of the Landscaping Maintenance Period, the Principal, the Contractor, the Independent Certifier and any other person responsible for the maintenance of the relevant Project Works must jointly inspect the Landscaping Maintenance at a mutually convenient time.
- (d) **(Independent Certifier certificate):** Within 5 Business Days of the joint inspection referred to in clause 20.4(c), the Independent Certifier must give the Contractor and the Principal a certificate signed by the Independent Certifier in the form set out in Part Q of Schedule 14 (*Form of Certificates*) containing a list of all Defects in the Landscaping Maintenance.
- (e) **(Rectification of Defects):** Clauses 18.1 (*Correction of Defects*) will apply to the Defects listed in the Independent Certifier's certificate under clause 20.4(d), and the Principal may give a direction under clause 18.2 (*Principal's Direction*) in relation to those Defects.
- (f) **(Removal of temporary protection):** After the Landscaping Maintenance Period has ended, except to the extent directed by the Principal, the Contractor must promptly remove all Temporary Works installed in connection with the Landscaping Maintenance.
- (g) **(Effect of inspection and notice):** Neither the inspection under clause 20.4(c) nor the Independent Certifier's certificate under clause 20.4(d) will:
 - (i) constitute approval of the Contractor's performance of its obligations under this deed in relation to the Landscaping Maintenance;
 - (ii) be taken as an admission or evidence that the Landscaping Maintenance comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal.

21. Reporting and Notices

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

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21.4 Accounting and financial reporting

- (a) **(Records)**: The Contractor must keep proper books of account and all other records relating to the Contractor's Activities.
- (b) **(Audit)**: The Contractor must have its accounts relating to the Contractor's Activities audited annually.
- (c) **(Documents and information)**: The Contractor must give to the Principal:
 - (i) copies of all documents or information given to or received by it from the Australian Securities and Investments Commission or ASX Limited (if applicable) which relate to Contractor's Activities promptly after the information is first given or received; and
 - (ii) such other information relating to the Contractor's Activities as the Principal may reasonably require from time to time.

21.5 Copies of notices

Each party must provide to the other party as soon as practicable certified copies of all material notices received by it under the D&C Documents from any of its co-contracting parties in order that the other party is kept informed at all times of any material developments which could have a serious effect upon a party's rights pursuant to any of the D&C Documents.

21.6 Advice regarding rights

Each party undertakes to advise the other party as soon as practicable after an event has occurred which to a party's actual knowledge could in any way materially prejudice the other party's rights under the D&C Documents by reason of the legitimate exercise of significant rights available to third parties arising from the D&C Documents.

22. Payment

22.1 General

- (a) **(Principal to pay)**: Subject to the terms of this deed, in consideration of delivery of the Project Works Temporary Works, D&C Phase Maintenance and Landscaping Maintenance that comply with this deed, the Principal must pay the Contractor:
 - (i) the D&C Deed Sum in accordance with clause 22.3 (*Payment Claims*) to clause 22.12 (*Correction of Payment Statements*) and the D&C Payment Schedule; and
 - (ii) any other amounts which are payable by the Principal to the Contractor under this deed.
- (b) **(D&C Deed Sum fixed)**: The Contractor acknowledges and agrees that, subject to the terms of this deed, the D&C Deed Sum is:
 - (i) a fixed lump sum that includes the Contractor's profits and overheads and all costs and expenses that the Contractor may incur in carrying out and completing the Project Works and the Temporary Works and performing its other obligations under the D&C Documents; and
 - (ii) not subject to adjustment or rise and fall.

22.2 Initial Payment

- (a) **(Entitlement)**: The Contractor is entitled to be paid a single advance payment on account of the D&C Deed Sum (**Initial Payment**), subject to the satisfaction of the conditions set out in clause 22.2(b).
- (b) **(Conditions)**: The Contractor may, no later than the date it submits its first Payment Claim in accordance with clause 22.3 (*Payment Claims*), give the Principal a valid tax invoice (as defined in the GST law) for the Initial Payment, provided all of the following requirements have been satisfied:
- (i) the Initial Payment is no more than [REDACTED] of the D&C Deed Sum at execution of this deed;
 - (ii) no more than [REDACTED] of the Initial Payment will be retained by the Contractor and the balance of the Initial Payment has become payable by the Contractor to its Subcontractors;
 - (iii) the Contractor has given the Principal written details of the portions of the Initial Payment which have become payable to its Subcontractors and the due dates for payment;
 - (iv) the Contractor has established to the Principal's reasonable satisfaction that the Initial Payment will be used for the purposes of performing the Contractor's Activities;
 - (v) D&C Close has been achieved; and
 - (vi) to the extent any Conditions Precedent (D&C Close) were waived to achieve D&C Close, those Conditions Precedent (D&C Close) have been satisfied.
- (c) **(Payment)**: If the conditions set out in clause 22.2(b) are satisfied, the Principal must pay the Contractor the amount of the Initial Payment within 15 Business Days after provision of the tax invoice.
- (d) **(Deductions)**: Despite any other provision of this deed, any Initial Payment paid to the Contractor will be progressively deducted from the instalment amounts which would otherwise be payable to the Contractor under this deed in respect of the D&C Deed Sum. Each instalment amount will be reduced by an amount equal to [REDACTED] of the Initial Payment, until the Initial Payment paid has been fully deducted.
- (e) **(Repayment on termination)**: If this deed is terminated for any reason, the Contractor must repay to the Principal any portion of the Initial Payment paid to the Contractor which, at the date of termination, has not been deducted from instalment amounts in accordance with clause 22.2(d). Such portion of the Initial Payment will be a debt due and payable to the Principal 10 Business Days after written demand by the Principal.

22.3 Payment Claims

- (a) **(Entitlement)**: Subject to [REDACTED] and the Contractor complying with this clause 22.3, the Contractor may make a Payment Claim on the last Business day of each month after D&C Close for an instalment amount in respect of the D&C Deed Sum calculated in accordance with the D&C Payment Schedule and any other amounts the Contractor is entitled to under this deed.

- (b) **(Calculation)**: The Contractor agrees that the amount of a Payment Claim (for the purposes of section 9 of the Security of Payment Act and this clause 22.3) will be calculated in accordance with the terms of this deed (including the D&C Payment Schedule) and by reference to the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance which have been:
- (i) certified by the Contractor in the form of Schedule 25 (*Certificate of value for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*);
 - (ii) completed up to and including the date on which the Contractor's Statement and Supporting Statement were executed; and
 - (iii) for Key Plant and Equipment and unfixed or offsite Materials, in accordance with clauses 22.13 (*Payment for Key Plant and Equipment*) and 22.14 (*Unfixed or offsite Materials*) respectively.
- (c) **(Early Payment Claim)**: If the Contractor submits a Payment Claim before the date it is entitled to do so under clause 22.3(a):
- (i) that Payment Claim will be deemed to have been submitted on the date permitted under clause 22.3(a);
 - (ii) the Independent Certifier will not be obliged to give the Contractor, on behalf of the Principal, a Payment Statement earlier than if the Payment Claim had been submitted on the date permitted under clause 22.3(a); and
 - (iii) the Principal will not be liable to pay any amount set out in the Payment Claim earlier than if the Payment Claim had been submitted on the date permitted under clause 22.3(a).
- (d) **(Requirements)**: Each Payment Claim made by the Contractor under this clause 22 must:
- (i) be submitted to the Independent Certifier (with a copy to the Principal); and
 - (ii) be in the form required by Schedule 24 (*Payment Claims for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*), and include particulars of the payment claimed by the Contractor in respect of the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance or otherwise claimed pursuant to this deed, and set out or provide sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (A) to enable the Independent Certifier to determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this deed; and
 - (B) including any such documentation or information as the Independent Certifier may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific Payment Claim or all Payment Claims generally.
- (e) **(Further Payment Claims)**: The Contractor must not submit any further Payment Claims after the full amount of the D&C Deed Sum has been paid except in respect of other amounts which may be payable to the Contractor under the terms of this deed.

- (f) **(Evidence)**: If requested by the Principal, the Contractor must promptly give the Principal evidence substantiating the calculation of the estimated costs of rectifying a Defect certified by the Contractor in the Attachment to Schedule 25 (*Certificate of value for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*).
- (g) **(Review)**: At least 4 Business Days prior to issuing a Payment Statement in accordance with clause 22.5(a) (*Payment Statements*), the Independent Certifier must give the Principal and Contractor a draft Payment Statement for review and comment by the Principal and the Contractor. The draft Payment Statement issued by the Independent Certifier under this clause 22.3(g) is not a 'payment schedule' for the purposes of the Security of Payment Act.

[REDACTED]

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

22.4 Non-Contestable Utilities Work

- (a) **(Estimate or quote)**: The Contractor must promptly give the Principal a copy of any estimate or quote received by it from the owner, operator or controller of a Utility Service for Non-Contestable Utilities Work.
- (b) **(Costs)**: The actual costs incurred by the Contractor and payable to the owner, operator or controller of a Utility Service for Non-Contestable Utilities Work will be payable by the Principal to the Contractor. The Contractor must take all reasonable steps to Mitigate such costs.
- (c) **(Evidence of costs)**: The Contractor must provide evidence of any costs payable under clause 22.4(b) to the reasonable satisfaction of the Independent Certifier with any Payment Claim which includes them.
- (d) **(Adjustment of D&C Deed Sum)**: The D&C Deed Sum and the D&C Payment Schedule will be adjusted to reflect the difference between:

- (i) the applicable amount allowed for an item of Non-Contestable Utilities Work in the D&C Payment Schedule; and
 - (ii) the costs payable to the Contractor under clause 22.4(b).
- (e) **(No margin)**: The Contractor is not entitled to any margin on costs payable to it under clause 22.4(b) and no margin will be taken into account when adjusting the D&C Deed Sum and D&C Payment Schedule under clause 22.4(d).

[REDACTED]

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22.4B Permanent Power Supply Work

- (a) **(Allowance)**: The D&C Deed Sum includes an allowance for the Permanent Power Supply Tendered Work based on the Permanent Power Supply Target Price. The Contractor is not entitled to claim payment for the Permanent Power Supply Tendered Work unless and until the Permanent Power Supply Tendered Price has been determined and the D&C Deed Sum adjusted in accordance with clause 22.4B(n).
- (b) **(Tender process)**: After the Contractor has completed Design Documentation for the Permanent Power Supply Work that it is permitted to use for construction purposes, the Contractor must prepare tender documentation for, tender and engage Subcontractors to perform the Permanent Power Supply Tendered Work in accordance with this clause 22.4B.
- (c) **(Target price)**: The Contractor must, in designing and tendering the Permanent Power Supply Tendered Work, use its reasonable endeavours to achieve a Permanent Power Supply Tendered Cost which is no greater than the Permanent Power Supply Target Cost.
- (d) **(Tender plan)**: The Contractor must prepare and give the Principal a tender plan detailing the Contractor's tender strategy for the Permanent Power Supply Tendered Work. The tender plan must include details of:
- (i) whether the Contractor proposes to tender the Permanent Power Tendered Supply Work as a single package or multiple packages;
 - (ii) the proposed breakdown of the Permanent Power Supply Tendered Work into packages (if any);
 - (iii) the proposed tender list for each Permanent Power Supply Tendered Work package, which must include at least 3 tenderers for each package; and
 - (iv) the proposed evaluation criteria for each Permanent Power Supply Tendered Work package.
- (e) **(Review of plan)**: The Principal may review the tender plan provided under clause 22.4B(d) and must either provide comments to the Contractor or advise the Contractor that it makes no comments. If the Principal provides comments, the Contractor must:
- (i) give due consideration to those comments;
 - (ii) make any changes to the proposed Permanent Power Supply Tendered Work packages reasonably requested by the Principal;
 - (iii) make any changes to the proposed tender list for a Permanent Power Supply Tendered Work package requested by the Principal;
 - (iv) make any changes required to ensure the tender plan complies with this deed; and
 - (v) give the Principal a revised tender plan which incorporates the changes required by clauses 22.4B(e)(i) to 22.4B(e)(iv).
- (f) **(Compliance with plan)**: The Contractor must comply with the tender plan provided under clause 22.4B(d) or, where the Contractor is required to provide a

revised tender plan under clause 22.4B(e)(v), the revised tender plan required by that clause, and only change the tender plan with the Principal's prior written approval.

- (g) **(Tender documents)**: The Contractor must prepare and give the Principal tender documents for each Permanent Power Supply Tendered Work package. The tender documents for each package must include:
- (i) a request for tender document and any tender conditions;
 - (ii) the scope and requirements for the package, which must be consistent with this deed and only include the relevant Permanent Power Supply Tendered Work package;
 - (iii) the pricing required to be submitted for the package, which must be a fixed lump sum price for the package and a schedule of rates for valuing any Changes;
 - (iv) the proposed Subcontract, which must comply with the applicable requirements under this deed; and
 - (v) the requirements for a tender, including the tender form.
- (h) **(Review of tender documents)**: The Principal may review the tender documents for a Permanent Power Supply Tendered Work package provided under clause 22.4B(g) and must provide comments to the Contractor or advise the Contractor that it makes no comments. If the Principal provides comments, the Contractor must:
- (i) give due consideration to those comments;
 - (ii) make any changes required to ensure the tender documents comply with this deed; and
 - (iii) give the Principal revised tender documents which incorporate the changes required by clauses 22.4B(h)(i) and 22.4B(h)(ii).
- (i) **(Changes to tender documents)**: The Contractor must not make any changes to the tender documents or issue additional tender documents which do not comply with this deed. The Contractor must promptly give the Principal copies of any changes to the tender documents or additional tender documents for a Permanent Power Supply Tendered Work package issued to tenderers (including by addendum).
- (j) **(Tender evaluation)**: After receiving tenders for a Permanent Power Supply Tendered Work package, the Contractor must promptly give the Principal a report which includes:
- (i) a summary of the tenders received and tenderers that submitted a tender;
 - (ii) an evaluation and comparison of each tender received;
 - (iii) the tender recommended by the Contractor and the reasons for the recommendation;
 - (iv) the price tendered in the recommended tender and whether that was the lowest tendered price; and

- (v) a copy of each tender received.

The Contractor must give the Principal a revised tender report which complies with this clause 22.4B(j) promptly after receiving any revised tenders or tender clarifications.

- (k) **(Tender selection)**: After receiving the tender report for a Permanent Power Supply Tendered Work package under clause 22.4B(j), the Principal may provide the Contractor with comments in relation to the tenders received. The Contractor must select a successful tender after giving due consideration to the Principal's comments. The Contractor must not select a tender which does not have the lowest tendered price without the prior written approval of the Principal (which approval will not be unreasonably withheld).
- (l) **(Subcontract award)**: Promptly after selecting the successful tender for a Permanent Power Supply Tendered Work package in accordance with clause 22.4B(n), the Contractor must engage the successful tenderer to perform the package. The successful tenderer must be engaged for the tendered price and the Subcontract must include the tendered schedule of rates for valuing any Changes.
- (m) **(Permanent Power Supply Tendered Cost)**: The Permanent Power Supply Tendered Cost will be the total of the tendered prices for the Permanent Power Supply Tendered Work in the successful tenders selected in accordance with clause 22.4B(k). The Permanent Power Supply Tendered Cost will not itself be payable to the Contractor, but will be used to determine the Permanent Power Supply Tendered Price and adjust the D&C Deed Sum in accordance with clause 22.4B(n).
- (n) **(Adjustment to D&C Deed Sum)**: The Permanent Power Supply Tendered Price will be the total of:
 - (i) the Permanent Power Supply Tendered Cost;
 - (ii) the Permanent Power Supply Margin applied to the lesser of the Permanent Power Supply Tendered Cost and the Permanent Power Supply Target Cost;
 - (iii) if the Permanent Power Supply Tendered Cost is less than the Permanent Power Supply Target Cost, the savings multiplied by the Permanent Power Supply Savings Percentage, which represents the portion of the savings to which the Contractor is entitled; and
 - (iv) if the Permanent Power Supply Tendered Cost is greater than the Permanent Power Supply Target Cost, the Permanent Power Supply Overrun Margin applied to the overrun, which represents a reduced Permanent Power Supply Margin applied to the overrun,

and the D&C Deed Sum will be adjusted to reflect the difference between the Permanent Power Supply Target Price and the Permanent Power Supply Tendered Price.

- (o) **(Adjustments after award)**: Once the successful tender for a Permanent Power Supply Tendered Work package has been selected in accordance with clause 22.4B(k):
 - (i) the tendered price in the successful tender will be used to determine the Permanent Power Supply Tendered Cost in accordance with clause 22.4B(m), even if the amount payable by the Contractor for the Permanent

Power Supply Tendered Work package or Permanent Power Supply Construction Management Work for that package changes after that; and

- (ii) the D&C Deed Sum in respect of the Permanent Power Supply Tendered Work package and Permanent Power Supply Construction Management Work for that package will be subject to adjustment in accordance with the other provisions of this deed for events and circumstance occurring after that.
- (p) **(Adjustments before award)**: Except as set out in clause 13.13 (*Adjustment to Permanent Power Supply Target Price*), unless and until the successful tender for a Permanent Power Supply Tendered Work package has been selected in accordance with clause 22.4B(k), there will be no adjustment to the D&C Deed Sum or Permanent Power Supply Target Cost as a result of any changes to the cost of performing the Permanent Power Supply Tendered Work package or Permanent Power Supply Construction Management Work for that package.
- (q) **(Competition and transparency)**: The Contractor must:
- (i) in conducting the tender process for the Permanent Power Supply Tendered Work, use its best endeavours to maximise competition between tenderers and value for the Principal;
 - (ii) keep the Principal informed regarding the tender process for the Permanent Power Supply Tendered Work, including any post-submission discussions and issues which arise; and
 - (iii) consult with the Principal in relation to, and enable the Principal to be involved and provide input into, the tender process for the Permanent Power Supply Tendered Work.
- (r) **(Commencement of work)**: The Contractor must not commence performance of the Permanent Power Supply Tendered Work unless and until the successful tenders for the Permanent Power Supply Tendered Work have been selected in accordance with clause 22.4B(k) and the successful tenderers engaged in accordance with clause 22.4B(l).
- (s) **(Conflicts of interest)**: Where the Contractor or one of its Related Bodies Corporate has an interest in a tenderer or will receive a benefit from a tenderer if it is selected, the Contractor must not allow the tenderer to participate in the tender process for the Permanent Power Supply Tendered Work without the prior written approval of the Principal after full disclosure of the interest or benefit.
- (t) **(No duplicated work)**: The Contractor must ensure that:
- (i) the Permanent Power Supply Tendered Work tendered under this clause 22.4B does not include any works, goods, tasks, personnel, equipment or other things which form part of or are required for Contractor's Activities which are not Permanent Power Supply Tendered Work;
 - (ii) the tendered prices for the Permanent Power Supply Tendered Work in the successful tenders selected in accordance with clause 22.4B(k) do not include any costs associated with such works, goods, tasks, personnel, equipment or other things; and
 - (iii) there is no overlap or duplication of works, goods, tasks, personnel, equipment or other things which form part of or are required for the

Permanent Power Supply Tendered Work between the packages of Permanent Power Supply Tendered Work.

22.5 Payment Statements

- (a) **(Independent Certifier to issue)**: Within 10 Business Days after receiving a Payment Claim that is submitted in accordance with clause 22.3 (*Payment Claims*), the Independent Certifier will give the Contractor (with a copy to the Principal) a Payment Statement certifying:
- (i) the Payment Claim to which it relates;
 - (ii) the value of work completed in accordance with this deed by the Contractor in respect of the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance calculated in accordance with the D&C Payment Schedule and this clause 22 (*Payment*). The Payment Claim must clearly identify and differentiate between the value of work claimed for:
 - (A) the Project Works;
 - (B) the Temporary Works;
 - (C) the D&C Phase Maintenance; and
 - (D) the Landscaping Maintenance;
 - (iii) all amounts previously paid to the Contractor by the Principal under this deed in respect of the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance;
 - (iv) any amounts which the Principal proposes to, at the time, retain, deduct, withhold or set-off (in accordance with any right to retain, deduct, withhold or set-off which the Principal may have pursuant to clause 22.7 (*Provision of documentation and other requirements*) or 22.17 (*Set-off and retention*) or otherwise at Law in relation to the Contractor's Activities against any moneys otherwise due to the Contractor;
 - (v) the aggregate of all amounts (if any) of the payment proposed to be made to the Contractor; and
 - (vi) if the amount in clause 22.5(a)(v) is less than the instalment payment amount claimed in the Payment Claim:
 - (A) the reason why the amount in clause 22.5(a)(v) is less than the amount claimed in the Payment Claim; and
 - (B) if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) **(No waiver)**: Any failure by the Independent Certifier to include in a Payment Statement an amount payable by one party to the other party will not constitute a waiver of, or otherwise limit or affect, the receiving party's right to recover that amount from the paying party.
- (c) **(Limit on amount)**: The amount in a Payment Statement in respect of a Payment Claim will not exceed the sum of:

- (i) the cumulative amount ascertained in accordance with the D&C Payment Schedule for all Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance completed in accordance with this deed; and
 - (ii) the value of the work performed (nor be greater than the amount ascertained in accordance with the D&C Payment Schedule ignoring amounts referred to in clause 22.1(a)(ii) (*General*)), as assessed by the Independent Certifier, of any partially completed Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance.
- (d) (**Defective work**): Where there are Defects in Project Works, Temporary Works, D&C Phase Maintenance or Landscaping Maintenance completed or partially completed, until the Defects are rectified or the D&C Deed Sum is reduced under clause 18.4(a) (*Acceptance of Defect*), when determining the amount payable for the Project Works, Temporary Works, D&C Phase Maintenance or Landscaping Maintenance, the estimated cost of rectifying the Defect will be deducted from the amount which would otherwise have been payable under this deed.

22.6 Tax invoice

Within 1 Business Day after receipt of a Payment Statement issued under clause 22.5 (*Payment Statements*), the Contractor must provide to the Principal a valid tax invoice (as defined in the GST law) for the Payment Amount for the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance (except in relation to a supply for which the Principal will issue a recipient created tax invoice (**RCTI**) to the Contractor in accordance with clause 25.2(h) (*GST*)).

22.7 Provision of documentation and other requirements

- (a) (**Amount for compliance**): The parties agree that a portion of the D&C Deed Sum equal to the amount set out in Item 6 of the Contract Particulars is consideration for the Contractor's performance of the following obligations in respect of a month:
 - (i) effecting and maintaining all Project Insurances that the Contractor is required to effect and maintain under clause 27.5 (*Project Insurances*) and Schedule 19 (*Project Insurances*);
 - (ii) complying with clause 8.1 (*Provision of Security Bonds*) and clause 8.7 (*D&C Guarantee*);
 - (iii) providing:
 - (A) a certificate in the form set out in Schedule 25 (*Certificate of value for Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance*) verifying the extent to which the works described in the Payment Claim have been carried out and that all activities carried out in respect of the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance have been carried out in accordance with this deed and the other D&C Documents;
 - (B) a Contractor's Statement; and
 - (C) a Supporting Statement,

which have each been duly executed by a representative of the Contractor who is in a position to know the facts declared on the date that the relevant Payment Claim was issued;

- (iv) providing an up to date Overall D&C Program and supporting information in compliance with clause 15.3 (*Contractor's programming obligations*) and the Contractor Documentation Schedule; and
- (v) to the extent the Contractor is required to provide a corrective action plan under clause 16.2(b) (*Notice of delay*) or clause 16.3(a) (*Look forward notice*), providing a corrective action plan which meets the requirements of clause 16.4 (*Corrective action plan*) and in respect of which the Principal has issued a notice under clause 16.4(b)(i) (*Corrective action plan*).

(b) **(Amount not payable)**: If, in respect of a month:

- (i) the Contractor has not performed an obligation referred to in clause 22.7(a)(i) - (iii) and (v); or
- (ii) after failing to provide an up to date Overall D&C Program and supporting information in compliance with clause 15.3 (*Contractor's programming obligations*) and the Contractor Documentation Schedule in respect of the previous month, the Contractor has not provided an Overall D&C Program and supporting information that remedies the previous non-compliances and is up to date in compliance with clause 15.3 (*Contractor's programming obligations*) and the Contractor Documentation Schedule,

the amount set out in Item 6 of the Contract Particulars will not be payable to the Contractor for that month, and the Independent Certifier must take this into account when assessing the Payment Claim.

(c) **(When amount payable)**: An amount that is not payable under clause 22.7(b) will become payable when the Contractor has performed the relevant obligations. Where the Contractor has not performed an obligation referred to in clause 22.7(a) in respect of more than one consecutive month, the total amount not payable does not exceed the amount set out in Item 6 of the Contract Particulars.

22.8 Payment of the instalment Payment Amount

██ the Principal must pay the instalment Payment Amount for the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance to the Contractor within 15 Business Days after the day on which the Contractor made the Payment Claim to which the instalment Payment Amount relates.

22.9 Final Payment

- (a) **(Final Payment Claim)**: Within 20 Business Days of the last of the Defects Correction Periods to expire, the Contractor must lodge with the Independent Certifier a final Payment Claim titled 'final payment claim'. The final Payment Claim must include the details of all sums due to the Contractor and where not capable of precise calculation the basis and a reasonable estimate of any claims and such requirements of a progress claim under clause 22.3 (*Payment Claims*) as are appropriate.
- (b) **(Release)**: From 20 Business Days after expiry of the last of the Defects Correction Periods, other than in respect of the final Payment Claim, the Contractor

will have no Claim, and must not make any Claim, against the Principal or the Independent Certifier, on any basis whatsoever (whether under contract, statute or in negligence or otherwise) arising out of, or in connection with the Project Works, Temporary Works, D&C Phase Maintenance or Landscaping Maintenance. However, this release will not operate to prevent the Contractor from defending any Claim made by the Principal or the Independent Certifier against the Contractor.

- (c) **(Final Payment Statement)**: On the occurrence of either:
- (i) the expiration of 10 Business Days after receipt of the Contractor's final Payment Claim; or
 - (ii) if the Contractor does not give the Independent Certifier a final Payment Claim within 20 Business Days after expiry of the last of the Defects Correction Periods, when the Contractor has fulfilled all its other obligations under this deed to the satisfaction of the Independent Certifier,

the Independent Certifier must issue to the Contractor, on behalf of the Principal, a certificate titled Final Payment Statement, which sets out all of the details referred to in clause 22.5 (*Payment Statements*) and states the amount (if any) which is finally due from the Principal to the Contractor under this deed. The Independent Certifier must provide the Principal with a copy of the Final Payment Statement when it is issued.

- (d) **(Final tax invoice)**: Within 1 Business Day after receipt of the Final Payment Statement, the Contractor must provide the Principal a valid tax invoice (as defined in the GST law) for the amount for the Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance included in the Final Payment Statement (except in relation to a supply for which the Principal will issue a RCTI to the Contractor in accordance with clause 25.2(h) (*GST*)).
- (e) **(Final payment)**: Within 15 Business Days after receipt of the Contractor's final Payment Claim the Principal must pay the Contractor the amount for the D&C Deed Sum stated in the Final Payment Statement.

22.10 Net amount due from the Contractor to the Principal

Where a Payment Statement states that a net amount is due from the Contractor to the Principal, the Contractor must (at the Principal's election):

- (a) **(Pay on request)**: pay that amount to the Principal within 15 Business Days of being requested by the Principal to do so; or
- (b) **(Set-off)**: otherwise carry forward the amount and set it off against the next Payment Claim.

22.11 Payment is not acceptance

Any Payment Statement issued under clause 22.5 (*Payment Statements*) or payment made under clause 22.8 (*Payment of the instalment Payment Amount*) or 22.9(e) (*Final Payment*) is not:

- (a) **(Not evidence)**: evidence of the value of work or evidence that the work has been satisfactorily carried out in accordance with the D&C Documents;

- (b) **(Not acceptance or approval)**: acceptance or approval by the Principal or the Independent Certifier of the Contractor's performance or compliance with the D&C Documents; or
- (c) **(Not an admission)**: an admission of liability by the Principal,
and is made on account only.

22.12 Correction of Payment Statements

The Independent Certifier may in any Payment Statement correct any previous Payment Statement issued by the Independent Certifier.

22.13 Payment for Key Plant and Equipment

- (a) **(Entitlement to Claim)**: The Contractor is not entitled to claim payment for Key Plant and Equipment, or for any other Construction Plant separate to the Contractor's entitlement to make a Payment Claim under clause 22.3(a), except as permitted under this clause 22.13.
- (b) **(Requirements for Claim)**: The Contractor is entitled to claim payment for Key Plant and Equipment once the following conditions precedent have been satisfied:
 - (i) subject to clause 22.13(c), the Contractor has provided an unconditional undertaking for an amount equal to the value of the relevant item of Key Plant and Equipment that complies with the requirements of clause 8 (*Security*); and
 - (ii) the Contractor has paid, or is legally obliged to pay, for the relevant items of Key Plant and Equipment.
- (c) **(Security Interest)**: The Contractor is not required to provide an unconditional undertaking under clause 22.13(b)(i) in relation to Key Plant and Equipment, and the Principal must return any such unconditional undertaking previously provided promptly upon the Contractor's written request, if the following conditions precedent are satisfied:
 - (i) the Contractor has title in and possession of the relevant Key Plant and Equipment;
 - (ii) the Contractor has granted a first ranking Security Interest over the relevant Key Plant and Equipment in favour of the Principal on terms reasonably required by the Principal;
 - (iii) the Contractor has demonstrated (to the Principal reasonable satisfaction) that it has complied with clauses 22.13(c)(i) and 22.13(c)(ii); and
 - (iv) the Contractor has done everything required by the Principal under clause 22.13(g).
- (d) **(Purpose of security)**: The Contractor acknowledges and agrees that each Security Interest or unconditional undertaking to be provided under clauses 22.13(b)(i) or 22.13(c)(ii) will secure the Contractor's obligations under this deed in respect of the relevant item of Key Plant and Equipment, including to perform the Contractor's Activities for which the Key Plant and Equipment are required.
- (e) **(Release or return)**: Promptly after:

- (i) title in an item of Key Plant and Equipment is transferred to the Principal, the Contractor has delivered possession of the item of Key Plant and Equipment to the Principal (or its nominee) and the Contractor has demonstrated (to the Principal's reasonable satisfaction) that it has complied with this clause 22.13(e)(i); or
- (ii) an item of Key Plant and Equipment is no longer required and will not further be used by the Contractor in carrying out the Contractor's Activities and the Contractor has demonstrated this (to the Principal's reasonable satisfaction),

the Principal must:

- (iii) release any Security Interest granted under clause 22.13(c)(ii), or return any unconditional undertaking provided under clause 22.13(b)(i), in relation to that item of Key Plant and Equipment; and
 - (iv) take all steps required to remove from the PPS Register any registrations by the Principal of any Security Interests granted under clause 22.13(c)(ii) in relation to that item of Key Plant and Equipment.
- (f) **(No Security Interests):** Where the Contractor grants a Security Interest over Key Plant and Equipment under clause 22.13(c)(ii), the Contractor warrants that:
- (i) the Contractor has title in and possession of the relevant Key Plant and Equipment, and will not give such title or possession to any other person;
 - (ii) there are no Security Interests over the relevant Key Plant and Equipment with a priority equal to or higher than the Principal's Security Interest; and
 - (iii) it will not create, purport to or attempt to create, or permit to exist any Security Interests over the relevant Key Plant and Equipment with a priority equal to or higher than the Principal's Security Interest.

These warranties are given by the Contractor at the time that the Contractor grants a Security Interest over each item of Key Plant and Equipment in accordance with clause 22.13(c)(ii) and will be repeated each day thereafter until the Security Interests are released in accordance with clause 22.13(e)(iii).

- (g) **(Perfection of Security Interests):** Where the Contractor grants a Security Interest over Key Plant and Equipment under clause 22.13(c)(ii), the Contractor must do all things the Principal considers necessary to ensure that the Security Interest is enforceable, perfected, effective and takes priority over all other Security Interests over the relevant Key Plant and Equipment, which will include the following:
- (i) the Contractor must provide the identifying numbers required under the PPS Act for any Key Plant and Equipment which are motor vehicles (as defined in the PPS Act);
 - (ii) if there is any 'AIIPAAP' or 'AIIPAAP Except' Security Interests registered on the PPS Register in relation to the Contractor with a priority higher or equal to the Principal's Security Interest, the Contractor must:
 - (A) give the Principal a certified copy of the security agreement creating the Security Interest and demonstrate (to the Principal reasonable

- satisfaction) that the security agreement does not apply to the relevant Key Plant and Equipment; or
- (B) comply with clause 22.13(g)(iii) in relation to the Security Interest; and
- (iii) if there is any Security Interest over the relevant Key Plant and Equipment registered on the PPS Register in relation to the Contractor with a priority higher or equal to the Principal's Security Interest, the Contractor must:
- (A) ensure the Security Interest is discharged and the registration is removed from the PPS Register;
- (B) procure the relevant secured party to execute a deed of priority in favour of the Principal under which the secured party agrees to give the Principal's Security Interest priority, and provide an original executed copy to the Principal; or
- (C) procure the relevant secured party to execute a deed of release in favour of the Contractor under which the secured party agrees the security agreement creating the Security Interest will not apply to the relevant Key Plant and Equipment, and provide a certified copy to the Principal.
- (h) **(Evidence of security)**: For the purposes of clause 22.13(c)(iii), the Contractor must satisfy the following requirements to demonstrate it has complied with clause 22.13(c)(ii):
- (i) the Contractor must provide a current search of the PPS Register for Security Interests registered in relation to it;
- (ii) the search must demonstrate there are no 'AllPAAP' or 'AllPAAP Except' Security Interests registered on the PPS Register in relation to the Contractor, other than:
- (A) Security Interests with a priority lower than the Principal's Security Interest; or
- (B) Security Interests in respect of which the Contractor has complied with clause 22.13(g)(ii); and
- (iii) the search must demonstrate there are no Security Interests over the relevant Key Plant and Equipment, other than:
- (A) Security Interests with a priority lower than the Principal's Security Interest; or
- (B) Security Interests in respect of which the Contractor has complied with clause 22.13(g)(iii).

22.14 Unfixed or offsite Materials

- (a) **(Entitlement to Claim)**: The Contractor is not entitled to claim payment for any unfixed or offsite Materials except as permitted under this clause 22.14.
- (b) **(Requirements for Claim)**: The Contractor is entitled to claim payment for unfixed or offsite Materials listed in Schedule 23 (*Unfixed or Offsite Materials*)

(even though such Materials have not been incorporated into the Project Works) once the following conditions precedent have been satisfied:

- (i) the Contractor has provided to the Principal an unconditional undertaking for an amount equal to the payment claimed for the relevant unfixed or offsite Materials that complies with the requirements of clause 8 (*Security*);
 - (ii) the Contractor has done all things the Principal considers necessary to ensure that the Principal's Security Interest over the relevant unfixed or offsite Materials is enforceable, perfected, effective and has the best priority available;
 - (iii) the Contractor has provided the Independent Certifier with evidence (satisfactory to the Independent Certifier) that:
 - (A) title to the relevant unfixed or offsite Materials will vest in the Principal upon payment; and
 - (B) the Contractor has done everything required by the Principal under clause 22.14(b)(ii);
 - (iv) the Contractor has established to the satisfaction of the Independent Certifier that the relevant unfixed or offsite Materials are:
 - (A) properly stored at a location agreed to by the Principal;
 - (B) labelled the property of the Principal; and
 - (C) adequately protected from damage or loss; and
 - (v) the Contractor has paid, or is legally obliged to pay, for the relevant unfixed or offsite Materials.
- (c) **(Purpose of security):** The Contractor acknowledges and agrees that each unconditional undertaking provided under clause 22.14(b)(i) will secure the Contractor's obligations under this deed in respect of the relevant unfixed or offsite Materials, including to supply them to the Principal and incorporate them into the Project Works.
- (d) **(Release):** The Principal must release any unconditional undertaking provided by the Contractor under this clause 22.14 within 5 Business Days of the relevant unfixed or offsite Materials:
- (i) being incorporated into the Project Works; and
 - (ii) complying with the requirements of this deed.

22.15 Payment of subcontractors

- (a) **(Unpaid subcontractors):** If any moneys owing to subcontractors or workers for Contractor's Activities performed by them are shown as unpaid in the relevant certificates provided by the Contractor for the purpose of a Payment Claim, an equivalent amount does not become payable to the Contractor under this deed until the Contractor provides evidence to the satisfaction of the Principal that the moneys have been paid.

- (b) **(Court order)**: If a worker or a subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, Materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (c) **(Insolvency)**: After:
- (i) the Contractor is placed under administration; or
 - (ii) the making of a winding up order in respect of the Contractor,
- the Principal will not make any payment to a worker or subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

22.16 Security of Payment Act

- (a) **(Relationship with Security of Payment Act)**: The Principal and the Contractor agree that:
- (i) unless otherwise notified to the Contractor by the Principal in writing, the Independent Certifier is to receive all payment claims made under the Security of Payment Act and will give payment statements and carry out all other functions of the Principal under the Security of Payment Act as the agent of the Principal;
 - (ii) each Payment Statement and Final Payment Statement is a "payment schedule" for the purposes of the Security of Payment Act;
 - (iii) the amount set out in the Payment Statement and Final Payment Statement in accordance with clauses 22.5(a)(v) (*Payment Statements*) and 22.9(c) (*Final Payment*), to the extent permitted by and for the purposes of the Relevant Security of Payment Legislation, is the amount of the "progress payment" calculated in accordance with the terms of this deed, to which the Contractor is entitled in respect of this deed; and
 - (iv) if the Contractor submits a payment claim under the Security of Payment Act and the Contractor has not satisfied its obligations under this clause 22 then the Independent Certifier will be entitled to value and certify the value of the work performed by the Contractor as zero until the Contractor complies with these obligations.
- (b) **(Payment withholding request)**: Without limiting clause 22.17 (*Set-off and retention*), where the Principal receives a payment withholding request from a Subcontractor under the Security of Payment Act, the Principal may withhold:
- (i) from any payment under this deed the amount of the Subcontractor's payment claim set out in the payment withholding request; or
 - (ii) the amount then owed by the Principal to the Contractor under this deed where such amount is less than the amount of the Subcontractor's payment claim set out in the payment withholding request.

- (c) **(No liability)**: The Principal will not be liable in respect of any Claim by the Contractor arising out of or in connection with the Principal withholding payment under clause 22.16(b), including any claim under clause 45.22 (*Interest*) for interest on such amounts.
- (d) **(Definitions)**: All terms used in this clause 22.16 (*Security of Payment Act*) which have a defined meaning in the Security of Payment Act have the same meaning when used in this clause 22.16 (*Security of Payment Act*).

22.17 Set-off and retention

- (a) **(By Principal)**: The Principal may withhold, set-off or deduct from any moneys which would otherwise be certified as payable to the Contractor or which would otherwise be due to the Contractor under the D&C Documents:
 - (i) any debt or other moneys due from the Contractor to the Principal;
 - (ii) any bona fide claim to any money which the Principal may have against the Contractor, whether for damages or otherwise; and
 - (iii) any amount that the Principal is entitled to withhold under the D&C Documents,

whether under the D&C Documents or otherwise at Law in relation to the Contractor's Activities.
- (b) **(By Contractor)**: The Contractor must make all payments due to the Principal under the D&C Documents without set-off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) **(Rights unaffected)**: Nothing in this clause 22.17 affects the Principal's right to recover from the Contractor the whole of the debt or any balance that remains owing after any set-off.

22.18 Suspension for non-payment

- (a) **(Suspension)**: If the Principal fails to comply with its payment obligations under clause 22.8 (*Payment of the instalment Payment Amount*) and the failure is not remedied within 10 Business Days of a written demand from the Contractor then the Contractor may suspend all or part of the Contractor's Activities until such time as that payment has been made by the Principal.
- (b) **(No limits on other rights)**: Nothing in this clause 22.18 limits the Contractor's rights to suspend under the Security of Payment Act or limits the Contractor's other rights under this deed.
- (c) **(Resumption)**: After the Principal has paid the amount notified under clause 22.18(a), the Contractor must resume the carrying out of the Contractor's Activities.

22.19 Passing of title

- (a) **(When title passes)**: All rights, title and ownership in each part of the Project Works, the Temporary Works, the D&C Phase Maintenance and the Landscaping Maintenance passes to the Principal upon the earlier of:

- (i) installation of the relevant Project Works, the Temporary Works, the D&C Phase Maintenance and the Landscaping Maintenance on the Construction Site; or
- (ii) payment by the Principal in relation to the Project Works, the Temporary Works, the D&C Phase Maintenance and the Landscaping Maintenance (including Materials), regardless of whether the relevant works or Materials are unfixed or whether they are located on or off the Construction Site,

provided that title to the Temporary Works will only pass to the Principal if the Temporary Works form part of the Project Works.

- (b) **(Warranty)**: The Contractor warrants to the Principal that the Principal will receive good title in, and ownership of, Project Works, Temporary Works, D&C Phase Maintenance and Landscaping Maintenance pursuant to clause 22.19(a), free and clear from all Security Interests.
- (c) **(Right to reject not limited)**: Nothing in this clause 22.19 will derogate from or limit any right of the Principal (whether such right arises at Law or under the D&C Documents) including any right to reject any Materials or works which do not comply with any requirements of the D&C Documents.

23. Transport Network Management

23.1 No restrictions on the Principal

The Contractor acknowledges that nothing in the D&C Documents will in any way limit or restrict the ability or power of the Principal or the NSW Government, directly or through any Authority, to:

- (a) **(Roads and tunnels)**: develop, construct, operate or maintain directly, by subcontractors or otherwise, other tollways, tunnels, freeways and other roads in New South Wales;
- (b) **(Traffic or transport system)**: maintain, manage, develop, change or extend the Sydney road and transport network or any traffic or transport system;
- (c) **(Existing roads and tunnels)**: extend, alter, close or upgrade existing tollways, tunnels, freeways and other roads;
- (d) **(Existing public transport routes or services)**: extend, alter or upgrade existing public transport routes or services;
- (e) **(New public transport routes or services)**: construct new public transport routes or establish new transport services;
- (f) **(Public transport routes or services generally)**: develop the transport and public transport network generally;
- (g) **(Policies)**: implement NSW Government Policies; or
- (h) **(Other things)**: contract with any person for any of these things or to otherwise do anything which they are empowered to do by Law.

24. Interfaces

24.1 Interface Protocols

- (a) **(Interface Protocols)**: In addition to the Contractor's obligations in respect of Key Interfaces as set out in Appendix B.34 of the SWTC, the Contractor must:
- (i) develop Interface Protocols with:
 - (A) each person specified in Item 31 of the Contract Particulars; and
 - (B) as and when requested by Principal, other key contractors engaged by the Principal for the delivery of the Project, or by the State of New South Wales for the delivery of any works that interface with the Project,

in relation to any interface between the Contractor and those entities;
 - (ii) negotiate each Interface Protocol in good faith;
 - (iii) enter into each Interface Protocol once it is agreed;
 - (iv) at all times comply with the terms of all Interface Protocols; and
 - (v) not terminate any Interface Protocol without the prior written consent of the Principal.

Each Interface Protocol must be consistent with the Contractor's obligations under this deed.

- (b) **(Indemnity)**: Subject to clause 16.10(h) (*Liquidated Damages*), clause 6(e) of Schedule 18 (*Lane Occupancy Fees*) and clause 28.3(e) (*Consequential Loss*), the Contractor indemnifies the Principal from and against any Claim or Loss (other than Consequential Loss except to the extent it is an Insured Liability) the Principal suffers or incurs arising out of or in connection with the impact of the Contractor's Activities on the WestConnex Activities to the extent such Claim or Loss was caused or contributed to by:
- (i) any breach of the D&C Documents by the Contractor; or
 - (ii) any negligent or otherwise wrongful act or omission of the Contractor or its Related Parties.

24.2 Co-operation between parties

- (a) **(Co-operate)**: Each party must, without limiting any other obligations under this deed:
- (i) do all it reasonably can to co-operate with the other party in all matters relating to this deed;
 - (ii) when requested, do all reasonable things necessary to avoid hindering the other party in the performance of that other party's obligations under this deed; and
 - (iii) promptly inform the other party of any fact, information or circumstance which comes to its attention and is reasonably likely to adversely affect:

- (A) the Date of Opening Completion or the Date of Completion;
 - (B) the cost of carrying out the Contractor's Activities; or
 - (C) the quality of the Project Works, the Temporary Works or any other works or services required to be performed under this deed.
- (b) **(Rights and obligations unaffected)**: Nothing in clause 24.2(a) changes or in any way affects the rights or obligations of either party under this deed, unless the parties agree in writing to change them.

24.3 Interface with O&M Activities

- (a) **(Interface protocol)**: The Interface Protocol with each O&M Contractor required by clause 24.1 (*Interface Protocols*) must, at a minimum, address the following:
- (i) key roles, contact details and responsibilities;
 - (ii) communications including in respect of work, health and safety, the environment and community consultation;
 - (iii) the transition of responsibility for the relevant Project Works;
 - (iv) the process for accessing the relevant parts of the Construction Site and Maintenance Site, including required inductions and permits; and
 - (v) the coordination, management and scheduling of Defect rectification work.
- (b) **(Coordination)**: The Contractor must do all reasonable things necessary to co-operate and coordinate with, enable and avoid delay or disruption to, the O&M Activities.
- (c) **(Information)**: The Contractor must promptly provide any documents or information relating to the Contractor's Activities in the Contractor's possession or control which is reasonably requested by the Principal or an O&M Contractor for the purposes of the O&M Activities.
- (d) **(Assistance)**: The Contractor must promptly provide any assistance relating to the Contractor's Activities which is reasonably requested by the Principal or an O&M Contractor for the purposes of the O&M Activities.

24.4 IOMCS and OMCS Subcontract

- (a) **(Execution)**: The Contractor must, without limiting clause 4 (*Conditions Precedent*), within 10 Business Days of the date of this deed:
- (i) enter into the IOMCS and OMCS Subcontract with the IOMCS and OMCS Subcontractor for the performance of the IOMCS and OMCS Works;
 - (ii) satisfy all conditions precedent to the IOMCS and OMCS Subcontract (except to the extent their satisfaction depends on D&C Close occurring); and
 - (iii) provide, in a form that is satisfactory to the Principal a legal opinion which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that execution of the IOMCS and OMCS Subcontract by each of the Contractor and the IOMCS and OMCS Subcontractor is valid under the laws of each respective entity's place of

incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.

- (b) **(Provision of escrow)**: The Contractor must within 3 months after D&C Close and, in any event, as a condition to achieving Opening Completion:
- (i) enter into the Escrow Agreement with the IOMCS and OMCS Subcontractor;
 - (ii) satisfy all conditions precedent to the Escrow Agreement with the IOMCS and OMCS Subcontractor; and
 - (iii) provide a legal opinion in a form that is satisfactory to the Principal, which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that the execution of the Escrow Agreement with the IOMCS and OMCS Subcontractor by each of the Contractor and the IOMCS and OMCS Subcontractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.
- (c) **(No termination)**: The Contractor must not terminate the IOMCS and OMCS Subcontract or engage any other person to perform IOMCS and OMCS Works without the prior written consent of Principal, which is not to be unreasonably withheld, taking into account (among other things) the role of the IOMCS and OMCS Subcontractor across the WestConnex Motorways.

24.5 Tolling Equipment Subcontract

The Contractor must:

- (a) **(Execution)**: The Contractor must, without limiting clause 4 (*Conditions Precedent*), within 10 Business Days of the date of this deed:
- (i) enter into the Tolling Equipment Subcontract with the Tolling Equipment Subcontractor for the performance of the Tolling Equipment Works;
 - (ii) satisfy all conditions precedent to the Tolling Equipment Subcontract (except to the extent their satisfaction depends on D&C Close occurring); and
 - (iii) provide a legal opinion in a form that is satisfactory to the Principal, which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that the execution of the Tolling Equipment Subcontract by each of the Contractor and the Tolling Equipment Subcontractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.
- (b) **(Provision of escrow)**: The Contractor must within 3 months after D&C Close and, in any event, as a condition to achieving Opening Completion:
- (i) enter into the Escrow Agreement with the Tolling Equipment Subcontractor;
 - (ii) satisfy all conditions precedent to the Escrow Agreement with the Tolling Equipment Subcontractor; and
 - (iii) provide a legal opinion in a form that is satisfactory to the Principal, which the Principal is entitled to rely on and given by a qualified legal practitioner

satisfactory to the Principal confirming that the execution of the Escrow Agreement with the Tolling Equipment Subcontractor by each of the Contractor and the Tolling Equipment Subcontractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.

- (c) **(No termination)**: The Contractor must not terminate the Tolling Equipment Subcontract or engage any other person to perform Tolling Equipment Works without the prior written consent of the Principal, which is not to be unreasonably withheld, taking into account (among other things) the role of the Tolling Equipment Subcontractor across the WestConnex Motorways.

24.6 Interface with Future M6 Stages

- (a) **(Coordination)**: The Contractor must, if requested by the Principal, do all reasonable things necessary to co-operate and coordinate with, enable and avoid delay or disruption to, the development, design and construction of Future M6 Stages and the Principal must procure that the Future M6 Stage Contractor does likewise.
- (b) **(Information)**: The Contractor must promptly provide any documents or information relating to the Contractor's Activities in the Contractor's possession or control which is reasonably requested by the Principal for the purposes of the development, design and construction of Future M6 Stages.
- (c) **(Assistance)**: The Contractor must promptly provide any assistance relating to the Contractor's Activities which is reasonably requested by the Principal for the purposes of the development, design and construction of Future M6 Stages.

25. Rates, Taxes and GST

25.1 Rates and Taxes

Subject to clauses 25.2 (*GST*) and 26 (*Changes in Law*), the Contractor will be liable for all Taxes levied in respect of the performance of the Contractor's obligations under this deed or the execution of this deed, and other D&C Documents or otherwise. The Contractor will not be liable for rates or land tax levied in respect of the Construction Site.

25.2 GST

- (a) **(Reduction for input tax credits)**: Despite any other provision of this deed, any amount payable for a supply made under this deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b) **(GST payable on supply)**: Subject to clause 25.2(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
 - (i) any amount payable or consideration to be provided under any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (the **Recipient**), equal to the amount of GST payable on that supply (**GST Amount**) as calculated by the Supplier in accordance with the

GST law and payable at the same time and in the same manner as for the Agreed Amount; and

- (iii) except in relation to a supply for which the Principal will issue a RCTI:
 - (A) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this deed; and
 - (B) the Recipient need not make a payment of a GST Amount in respect of that supply unless the Supplier has given the Recipient a tax invoice in accordance with clause 25.2(b)(iii)(A).
- (c) **(Refund or credit)**: Subject to clause 25.2(e), if for any reason, the GST payable by the Supplier in respect of a supply it makes under this deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 25.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) **(Referral to expert)**: If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the Chair of Resolution Institute for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert. However, this clause 25.2(d) will not apply to any supply dealt with under clause 25.2(e).
- (e) **(Non-monetary consideration)**: The parties acknowledge that this clause 25.2(e) (Non-monetary consideration) applies to the extent each party is making supplies to the other party for consideration and is the Recipient of all supplies from the other party. Where two parties (or entities on whose behalf those parties are acting) in accordance with this deed exchange non-monetary consideration:
 - (i) despite clause 25.2(b), the additional amount payable on any supply by the Recipient to the Supplier will be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; unless
 - (ii) it is determined, whether by agreement between the parties or by demand, assessment or private ruling issued by the Commissioner of Taxation that there is a disparity between:
 - (A) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Recipient to the Supplier; and
 - (B) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any)

being provided by the Supplier and having their nexus with the non-monetary consideration and monetary consideration being provided by the Recipient and referred to in clause 25.2(e)(ii)(A) (*Non-monetary consideration*).

- (f) **(Additional amounts)**: Where clause 25.2(e)(ii) applies, the Supplier and the Recipient will use best endeavours to determine a mutually acceptable means of calculating additional amounts to be provided between the parties to ensure, as far as possible that neither the Supplier nor the Recipient suffers a net cost or loss. If within 30 Business Days of the determination under clause 25.2(e)(ii), the parties are unable to agree on a means of calculating the additional amounts payable, clause 25.2(b) will apply without any limitation imposed by clause 25.2(e), however:
- (i) the Supplier (or if clause 25.2(h) applies, the Recipient) must only issue a tax invoice or an adjustment note to reflect the application of this clause 25.2(f) after the parties have either reached an agreement under this clause 25.2(f) or have determined that they are unable to reach such an agreement; and
 - (ii) the additional amount payable pursuant to this clause 25.2(f) will only be payable 5 Business Days after the receipt by the Recipient of the tax invoice or adjustment note issued by the Supplier or the Recipient (as applicable) in accordance with clause 25.2(f)(i).
- (g) **(Private ruling)**: Where any party to this deed receives a demand, assessment or private ruling regarding the matters addressed in clause 25.2, it must notify the other parties to this deed of that fact and provide them with a copy of the demand, assessment or private ruling within 10 Business Days of receiving it. Before any party to this deed applies for a private ruling regarding the matters addressed in clause 25.2(e), it must provide the other parties to this deed with a copy of the private ruling request it intends to lodge with the Commissioner of Taxation no less than 20 Business Days prior to its lodgement of same.
- (h) **(RCTIs)**: The parties agree that, unless otherwise agreed in writing, the following will apply to all supplies made by the Contractor to the Principal under or in connection with this deed:
- (i) the Principal will issue to the Contractor a RCTI for each taxable supply made by the Contractor to the Principal under this deed;
 - (ii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal;
 - (iii) each party acknowledges and warrants that at the time of entering into this deed, it is registered for GST and will notify the other party if it ceases to be registered; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices for the purposes of clauses 22.6 (*Tax invoice*), 22.9(d) (*Final Payment*) and 25.2(b)(iii) (as applicable).

26. Changes in Law

26.1 No Claim unless Change in Law

Subject to this clause 26, the Contractor will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, any changes in Law.

26.2 Change in Law

If a Change in Law occurs, the Change in Law will be a Deemed Change Event, and the Contractor is entitled to make a claim under clause 41.2 (*Notice of Deemed Change Events*).

26.3 [Redacted]

- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
- [Redacted]
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- [Redacted]
- [Redacted]

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

27. Loss or Damage and Insurance

27.1 Risk of loss or damage

- (a) **(Precautions)**: The Contractor must, in carrying out the Contractor's Activities, take all reasonable precautions to avoid destruction and damage to any property (including any property of the Principal, any O&M Contractor or any WestConnex Concessionaire).
- (b) **(Risk of damage)**: Subject to the terms of this deed, the Contractor accepts the risk of loss or damage to:
 - (i) the Project Works and the Temporary Works from D&C Close until the Date of Opening Completion; and
 - (ii) the Local Area Works, the Utility Service Works and the Property Works from D&C Close until the commencement of the relevant Defects Correction Period.
- (c) **(Make good)**: The Contractor must in accordance with clause 27.9 (*Reinstatement*), promptly make good any loss or damage to the Project Works (including the Temporary Works (as applicable)) which occurs during the period that the Contractor accepts the risk of loss or damage.
- (d) **(After Opening Completion)**: From the Date of Opening Completion, the Contractor accepts the risk of loss or damage to the Motorway to the extent caused by the Contractor or its Related Parties performing the Contractor's Activities on the Construction Site and the Contractor must promptly make good any such loss or damage.

27.2 Certain third party claims

Despite any other provision to the contrary, the Contractor will have no liability to the Principal and its Related Parties, nor will the Principal or its Related Parties be entitled to

make any Claim against the Contractor, in respect of any Liability of the Principal or its Related Parties to a third party for Pure Economic Loss arising directly as a result of:

- (a) **(Project)**: the decision by the Principal to proceed with the Project; or
- (b) **(Motorway Works)**: the existence or location of the Motorway Works in accordance with this deed.

27.3 Insured Liability

- (a) **(No exclusion or limit)**: Nothing in the D&C Documents operates to exclude or limit the Contractor's liability to the Principal, the WestConnex Concessionaries or their Related Parties for any Loss to the extent such Loss is an Insured Liability.

- (b) **(Definition)**: For the purposes of this deed, "Insured Liability" means:

- (i) where the Contractor or any of its Related Parties or the Principal or any of its Related Parties has an entitlement to recover or be indemnified in respect of such Loss under a Project Insurance:

- (A) the amount or amounts actually recovered by the Contractor or its Related Parties or the Principal or any of its Related Parties (as applicable) from; and

- (B) the amount or amounts for which the Contractor or its Related Parties or the Principal or any of its Related Parties is otherwise actually indemnified by,

the insurer or insurers of such Project Insurance, up to the amount required to be insured under the relevant Project Insurance in accordance with this deed; and

- (ii) where, but for:

- (A) the failure of the Contractor to comply with its obligations under this clause 27 in relation to such Project Insurance;

- (B) in relation to the Contractor's Project Insurances only, the insolvency of the insurer or insurers of such Project Insurance; or

- (C) any act or omission by the Contractor or its Related Parties (including, without limitation, any misrepresentation, non-disclosure, breach of a duty to the insurer, breach of the terms and conditions of any Project Insurance or failure to comply with those terms or conditions) not caused or contributed to by any act or omission of the Principal or any of its Related Parties which has resulted in a loss of or reduction of the recovery or indemnity under such Project Insurance,

the Contractor or its Related Parties or the Principal or any of its Related Parties 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 the Contractor or its Related Parties or the Principal or any of its Related Parties (as applicable) would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Project Insurance.

27.4 Damage to third party property

- (a) **(Repair and compensate)**: Without limiting clause 28.1 (*Indemnities from the Contractor*) and subject to clause 27.4A (*Damage to WestConnex Motorways*), where any damage to or loss or destruction of real or personal property of a third party (other than the Project Works or the Temporary Works) occurs which arises out of a breach by the Contractor of the D&C Documents or an act or omission of the Contractor, the Contractor must do one of the following (at the option of the relevant third party):
- (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party, provided that, if doing so would prejudice the Contractor's ability to claim under any of the Project Insurances, the Contractor will notify the Principal of the same and the Principal will direct the Contractor whether or not it should proceed.
- (b) **(Principal's right to reinstate)**: Without limiting clause 14.11(a)(i)(B) (*Principal's right to remedy non-compliances*), if the Contractor fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation required under clause 27.4(a) within a reasonable time, the Principal may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by the Principal will be a debt due and payable from the Contractor to the Principal.

27.4A Damage to WestConnex Motorways

Without limiting clause 28.1 (*Indemnities from the Contractor*), the Contractor must comply with its obligations in respect of the WestConnex Interface Agreement under Schedule 12 (*Requirements of Interface Agreements*) in relation to any damage to a WestConnex Motorway to the extent caused by, arising out of, or in any way in connection with:

- (a) the Contractor's Activities, including the Project Works and the Temporary Works; or
- (b) the use or occupation of the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site, the Project Works, the Temporary Works, or a WestConnex Motorway by the Contractor or its Related Parties.

27.5 Project Insurances

- (a) **(Effect and maintain)**: Each party must effect and maintain its Project Insurances (or cause its Project Insurances to be effected and maintained) in accordance with Schedule 19 (*Project Insurances*).
- (b) **(Not lapse)**: Each party must:
- (i) reinstate (or cause to be reinstated) any of its Project Insurance if it lapses; and
 - (ii) not allow any of its Project Insurance to be cancelled or varied or to lapse without the prior consent of the other party (such consent not to be unreasonably withheld or delayed).
- (c) **(Not prejudice)**: The Contractor 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) as soon as reasonably practicable, notify the Principal of any fact or circumstance or change in circumstances which could be reasonably expected to prejudice a Project Insurance;
 - (iv) 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;
 - (v) as soon as reasonably practicable notify the Principal when it receives or gives a notice in connection with the cancellation of any Project Insurance;
 - (vi) do all things reasonably required by the Principal or any other person in whose name a Project Insurance is effected to enable the Principal or that other person to claim, collect or recover moneys due under any Project Insurance;
 - (vii) comply at all times with the terms of each Project Insurance; and
 - (viii) ensure that, to the extent permitted by Law, all of its Project Insurances which cover against liabilities which it is required by this deed to effect or maintain do not reduce or exclude the insurance cover in respect of liabilities assumed under this clause 27 and clauses 28 (*Indemnity from the Contractor*) and 29 (*Cap on Liability*).
- (d) **(Risk and Loss)**: The Contractor is responsible for, must pay (where relevant) and accepts all risks and any Loss it suffers or incurs associated with any deductibles or excess in respect of any claim on a Project Insurance policy, except to the extent to which such loss or damage which is the subject of a covered claim to which the deductible or excess relates is caused by the Principal or its Related Parties.

27.6 Premiums

- (a) **(Payment)**: The Contractor must punctually pay all premiums in respect of all of its Project Insurances and give the Principal evidence of payment of premiums if and when requested by the Principal.
- (b) **(Costs incurred by Principal)**: If the Contractor fails to effect or maintain any of its Project Insurances or to pay a premium or other amount payable to the insurer in respect of such insurance, the Principal may effect such insurance or pay such premium or other amount and any costs so incurred by the Principal will be a debt due and payable by the Contractor to the Principal.

27.7 Dealing with claims

In addition to the obligations to notify the insurer under any Project Insurance, the Contractor must:

- (a) **(Notice)**: subject to the terms of the Project Insurances, notify the Principal of any occurrence or circumstance of which it is aware, or should reasonably have been aware, that could reasonably be expected to give rise to a claim under any Project Insurance (**Notifiable Claim**);

- (b) **(Keep informed)**: keep the Principal fully informed of subsequent developments concerning the Notifiable Claim;
- (c) **(Consent to settle)**: not compromise, settle, or enforce a Notifiable Claim without the prior written consent of the Principal (which must not be unreasonably withheld or delayed); and
- (d) **(Pursue)**: diligently pursue any Notifiable Claim.

27.8 Insurance proceeds

- (a) **(Special purpose account)**: The parties agree that the proceeds of each claim (if any) made under any Project Insurance, to the extent such proceeds are received in respect of reinstatement of physical loss or damage to the Project Works or the Temporary Works, must be deposited into a special purpose account in the name of the Principal with a financial institution notified to the Contractor in writing by the Principal, until such time as the proceeds are applied to reinstate the physical loss or damage.
- (b) **(Release of proceeds)**: The parties agree that the Principal must, to the extent permitted under the relevant insurance policies, procure the release to the Contractor of the insurance proceeds contemplated in clause 27.8(a) 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 such proceeds must be applied for the repair, reinstatement or replacement of the Project Works or the Temporary Works or both (as applicable).

27.9 Reinstatement

- (a) **(Contractor responsible)**: Subject to clause 27.13 (*Uninsurable Risks*), if any physical loss or damage occurs to any part of the Project Works or the Temporary Works during the period that the Contractor accepts the risk of Loss or damage as specified in clause 27.1(b) (*Risk of loss or damage*), the Contractor must (without limiting its other obligations under this deed):
 - (i) subject to allowing reasonable time for inspection by insurers and to the terms of any relevant Project Insurance policy, take immediate steps to clear any debris and begin initial repair work;
 - (ii) promptly consult with the Principal and carry out such steps as are necessary to ensure:
 - (A) the prompt repair or replacement of the physical loss or damage so that:
 - (aa) the Project Works and Temporary Works comply with the SWTC; and
 - (bb) there is minimal disruption to the Project Works and the Temporary Works; and
 - (B) that, to the greatest extent possible, the Principal continues to comply with its obligations under the D&C Documents;
 - (iii) manage all repair and replacement activities so as to minimise, to the extent reasonably practicable having regard to the repair and reinstatement

activities to be undertaken, the impact on the Project Works and the Temporary Works;

- (iv) keep the Principal fully informed of the progress of the repair and replacement activities; and
 - (v) apply all relevant insurance proceeds in the repair or reinstatement of the Project Works or the Temporary Works or both (as applicable).
- (b) **(Contractor not responsible)**: To the extent that the loss, damage or destruction arises from any of the following events:
- (i) an Uninsurable Force Majeure Event;
 - (ii) a breach of any D&C Document by the Principal;
 - (iii) any fraudulent, negligent or other wrongful act or omission or Wilful Misconduct of the Principal or any of its Related Parties,

then the Contractor will not be responsible for the carrying out of the reinstatement or repair work (except to the extent that the Contractor is entitled to be indemnified for that event under any policy of Project Insurance or would have been entitled to be indemnified for that event but for any act or omission of the Contractor or its Related Parties), unless the Principal instructs the reinstatement or repair as a Change.

27.10 Direction by the Principal to reinstate to different specifications

- (a) **(Different specifications)**: The Principal may require the Contractor to reinstate or repair the Project Works or Temporary Works on the basis of different specifications by directing a Change pursuant to clause 13 (*Changes*).
- (b) **(Reinstatement as Change)**: The reinstatement or repair work will only constitute a Change to the extent that it differs from what would have otherwise been required under this deed.
- (c) **(Change Costs)**: The available insurance proceeds will be taken into account in calculating the Change Costs of the Change.

27.11 Procedure for Third Party Claims

- (a) **(Management of Claims)**: If a Claim is made against the Principal or its Related Parties by a third party in respect of which the Contractor is liable to indemnify the Principal under this deed (**Third Party Claim**), then the Principal agrees (and must procure from its Related Parties) to:
 - (i) notify the Contractor about the Third Party Claim promptly;
 - (ii) keep the Contractor informed of the progress of the Third Party Claim;
 - (iii) regularly consult with the Contractor in relation to the manner in which proceedings relating to the Third Party Claim are conducted and implement reasonable instructions of the Contractor as to the manner in which such proceedings should be conducted; and
 - (iv) not settle or pay the Third Party Claim, other than a Third party Claim which:

- (A) the Principal is obliged by Law to pay; or
- (B) is settled for an amount which is less than or equal to the amount the Principal would otherwise have been liable to pay to the relevant third party,

without the prior written consent of the Contractor (which cannot be unreasonably withheld or delayed).

- (b) **(No liability to indemnify)**: If a Third Party Claim is settled or paid without the Contractor's prior written consent (other than a Third Party Claim referred to in clause 27.11(a)(iv)(A) or 27.11(a)(iv)(B)), the Contractor will not be liable to indemnify the Principal or its Related Parties in respect of such Third Party Claim to the extent that the liability is greater than it would otherwise have been but for such settlement or payment.
- (c) **(Limitation period)**: Despite anything to the contrary in this deed, the Principal will have no right (including as trustee for its Related Parties) to make a demand on any indemnity in this deed, or otherwise bring a Claim that arises from or in connection with this deed, after 12 years after the last day of the last of the Defects Correction Periods to expire.
- (d) **(Pursuing Losses)**: The Contractor agrees to diligently pursue the recovery of Losses of the type described in clause 29.2(d) (*Exclusions to the General Cap*), including by commencing proceedings against a third party, unless:
 - (i) those proceedings do not have reasonable prospects of success or reasonable prospects of yielding compensation in respect of the relevant Loss;
 - (ii) the Contractor has otherwise recovered the Loss including by exercising a right of set-off or deduction or calling on security; or
 - (iii) it has determined in good faith and consistently with Good Industry Practice that it is not prudent to commence proceedings.

27.12 Force Majeure Event

- (a) **(Deemed Change Event)**: Where a Force Majeure Event or its physical consequences subsists for a continuous period of more than 12 months and the Principal fails to exercise its rights under clause 27.13(d) (*Uninsurable Risks*) or clause 32.7 (*Termination for Uninsurable Force Majeure Event*), it will be a Deemed Change Event and the Contractor will be entitled to make a claim under clause 41.2 (*Notice of Deemed Change Events*).
- (b) **(Change Costs)**: With respect to any Change directed under clause 41.2 (*Notice of Deemed Change Events*) in respect of the circumstances set out in clause 27.12(a), despite any other provision of this deed, the Change Costs will be limited to:
 - (i) prolongation costs for so long as the Force Majeure Event or its physical consequences continue to subsist following the expiry of the 12 month period (provided that any prolongation costs accruing prior to the expiry of such 12 month period will be disregarded); and
 - (ii) escalation costs arising from deferment of the Project Works and Temporary Works beyond the initial 12 month period (provided that any escalation

costs accruing prior to the expiry of such 12 month period will be disregarded),

after deducting Direct Savings arising from the Change.

27.13 Uninsurable Risks

- (a) **(Risk becomes Uninsurable)**: If the Contractor believes that any risk that it is required to insure under this deed is or becomes Uninsurable, then:
- (i) it must notify the Principal within 3 Business Days after it believes that the risk is or has become Uninsurable; and
 - (ii) clauses 27.13(b) to 27.13(f) (inclusive) will apply if the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable.
- (b) **(No obligation to insure)**: Neither party is obliged to effect or maintain insurance for a particular risk under any of its Project Insurances to the extent that, and only for so long as that risk is Uninsurable (and did not become Uninsurable as a result of an act or omission of the Contractor or a Related Party of the Contractor).
- (c) **(Approaching insurance market)**: If a risk is Uninsurable in respect of one of a party's Project Insurance, that party must approach the insurance market on a regular basis (satisfactory to the Principal and the Contractor, both acting reasonably) to establish whether that risk remains Uninsurable and must advise the other party accordingly.
- (d) **(Direction)**: If any Loss or damage occurs to any part of the Project Works or the Temporary Works as a result of an Uninsurable Force Majeure Event:
- (i) the Principal may, within 13 months of the occurrence of that Uninsurable Force Majeure Event:
 - (A) direct reinstatement of such Loss or damage as a Change;
 - (B) direct a Change to omit the affected part of the Project Works or the Temporary Works from the Project Works or the Temporary Works; or
 - (C) exercise its rights under clause 32.7 (*Termination for Uninsurable Force Majeure Event*); and
 - (ii) the Contractor is not obliged to comply with its obligations under clause 27.9 (*Reinstatement*) unless directed to do so by the Principal as a Change.
- (e) **(Notice)**: If a party (acting reasonably) believes a risk which is required to be insured against under a Project Insurance is no longer Uninsurable, it must notify the other party.
- (f) **(No longer Uninsurable)**: If a party gives notice pursuant to clause 27.13(e) and the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that a risk which is required to be insured against under one of a party's Project Insurance is no longer Uninsurable, that party must promptly effect or cause to be effected the relevant Project Insurance.

28. Indemnity and Liability Exclusions

28.1 Indemnities from the Contractor

- (a) **(General indemnity)**: The Contractor indemnifies the Principal and its Related Parties (each an **Indemnified Party**) from and against any Loss suffered or incurred by an Indemnified Party and any Claim against an Indemnified Party, in respect of:
- (i) any injury to, or disease or death of, persons;
 - (ii) the loss of, or destruction of or damage to, any real or personal property; or
 - (iii) without limiting clause 28.1(a)(ii) and to the extent an Insured Liability, loss of use or access to any real or personal property (whether total or partial),
to the extent caused by, arising out of, or in any way in connection with:
 - (iv) the Contractor's Activities, including the Project Works and the Temporary Works; or
 - (v) the use or occupation of the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site, the Project Works, the Temporary Works, or a WestConnex Motorway by the Contractor or its Related Parties.
- (b) **(Indemnity for breach)**: The Contractor indemnifies the Indemnified Parties from and against:
- (i) any Liability to or claim by any other person; and
 - (ii) any Loss suffered or incurred by the Principal,
to the extent caused by, arising out of, or in any way in connection with, the Contractor's breach of a term of any D&C Document.
- (c) **(Other obligations unaffected)**: Clauses 28.1(a) and 28.1(b) do not lessen or otherwise affect the Contractor's other obligations under this deed.
- (d) **(Responsibilities to third parties)**: The Contractor acknowledges and agrees that, subject to the express terms of this deed, it has the same responsibilities to third parties in respect of persons, property and all other aspects of the Construction Site (to the extent relevant to the Contractor's Activities) which it would have if it held the freehold title to the Construction Site other than in respect of:
- (i) Rates and land taxes; and
 - (ii) liabilities of the Principal as land owner to the extent this deed allocates responsibility for those liabilities to the Principal or expressly excludes the Contractor's responsibility for those liabilities.

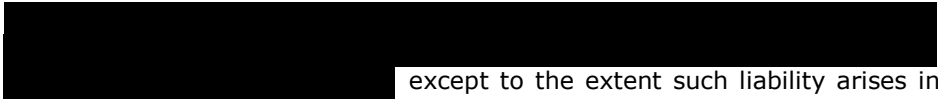

28.2 Exclusions from indemnity

- (a) **(Contributed to loss)**: Where under the terms of this deed:

- (i) the Contractor indemnifies an Indemnified Party from and against any Liability, Claim or Loss, the Contractor's liability to indemnify the Indemnified Party will be reduced to the extent that any breach of this deed or the other D&C Documents or other act or omission (including any negligence) of the Principal, its Related Parties or that Indemnified Party contributed to the Liability, Claim or Loss;
 - (ii) the Principal indemnifies the Contractor from and against any Liability, Claim or Loss, the Principal's liability to indemnify the Contractor will be reduced to the extent that any breach of this deed or the other D&C Documents or other act or omission (including any negligence) of the Contractor, including an act or omission (including any negligence) of the Contractor's Related Parties contributed to the Liability, Claim or Loss; and
 - (iii) a party is obliged to pay an amount in respect of any Loss suffered or incurred by the other party, it excludes Loss as a result of the negligence or wilful default of the payee party, its employees or agents.
- (b) **(Vicarious liability):** Clauses 28.2(a)(i) and 28.2(a)(iii) will not apply to reduce the Contractor's liability to indemnify or pay the Principal to the extent that the Principal is held to be vicariously liable at Law for any acts or omissions of the Contractor or its employees, agents or contractors.
- (c) **(Exercise of rights or powers):** Clause 28.2(a)(i) will not apply to reduce the Contractor's liability to indemnify the Principal to the extent that the act or omission of the Principal is an act or omission in the exercise of its rights or powers under this deed.

28.3 Consequential Loss

- (a) **(No liability of Contractor):** Subject to clause 28.3(b), and despite any other clause to the contrary, the Contractor has no liability to an Indemnified Party, nor will any Indemnified Party be entitled to make any Claim in respect of any Consequential Loss (including any Consequential Loss for which the Indemnified Parties are liable to third parties) incurred or sustained by that Indemnified Party:
- (i) as a result of any act or omission of the Contractor or its Related Parties (whether negligent or otherwise);
 - (ii) under any indemnity; or
 - (iii) as a result of a breach by the Contractor of any D&C Document.
- (b) **(Exclusions to Contractor's limit on liability):** Clause 28.3(a) does not operate to exclude or limit any liability incurred or Claim made by an Indemnified Party to the extent that any Loss suffered by the Indemnified Party as a result of such liability or Claim is:
- (i) a Loss which is an Insured Liability;
 - (ii) a Loss which is included in any Liquidated Damages (or general damages claim) under clause 16.10 (*Liquidated Damages*);
 - (iii) a Loss which is included in any Lane Occupancy Fees (or general damages claim under Schedule 18 (*Lane Occupancy Fees*));

- (iv) the Contractor's obligation to pay amounts to the Principal under clause 32.11(a)(ii) (*Termination payments*) and, subject to clause 16.10(h)(v) (*Liquidated Damages*), clause 32.11(a)(iii) (*Termination payments*);
 - (v) subject to clause 28.3(e), the cost of correcting a Defect or a Loss (which is itself not Consequential Loss) caused by a Defect;
 - (vi) a Loss arising from death or personal injury;
 - (vii) a Loss in respect of any criminal acts, fraud or Wilful Misconduct on the part of the Contractor or its Related Parties;
 - (viii) a Loss which is the subject of indemnities in clauses 30.3 (*Warranty and indemnity – Moral Rights*) or 30.4 (*Warranty and indemnity – Intellectual Property Rights*);
 - (ix) a Loss which is the subject of the indemnities in clauses 2.3(c) (*Information Documents*), 7.8(d) (*Work health and safety*), 9.3(e) (*Property Works*), 9.5(a)(v) (*Extra Land*), 10.4 (*Contamination*) or 24.1(b) (*Interface Protocols*) except to the extent such liability arises in contract or is for breach of contract and would not have arisen in the absence of such contract;
 - (x) subject to clauses 16.10 (*Liquidated Damages*), 27.2 (*Certain third party claims*) and 27.4 (*Damage to third party property*), a Loss in respect of any Liability of the Principal or its Related Parties for Loss suffered or incurred by a third party (including another Indemnified Party but excluding any  except to the extent such liability arises in contract or is for breach of contract and would not have arisen in the absence of such contract;
 - (xa) 
 - (xi) a Loss or a Liability to the extent that the Contractor or any of its Related Parties has recovered an amount from a third party (including any subcontractor and whether by way of indemnity or otherwise); and
 - (xii) a Loss or a Liability which, by Law, the parties cannot limit or contract out of.
- (c) **(No liability of Principal):** Subject to clause 28.3(d), and despite any other clause to the contrary, the Principal has no liability to the Contractor, nor will the Contractor be entitled to make any Claim in respect of any Consequential Loss incurred or sustained by the Contractor:
- (i) as a result of any act or omission of the Principal (whether negligent or otherwise);
 - (ii) under any indemnity; or
 - (iii) as a result of a breach by the Principal of a D&C Document.

- (d) **(Exclusions to Principal's limit on liability)**: Clause 28.3(c) does not operate to exclude or limit any liability incurred or Claim made by the Contractor or its Related Parties to the extent that any Loss suffered by the Contractor as a result of such liability or Claim is:
- (i) a Loss which is an Insured Liability;
 - (ii) a Loss arising from death or personal injury;
 - (iii) a Loss arising from any criminal acts, fraud or Wilful Misconduct on the part of the Principal or its Related Parties;
 - (iv) a Liability which, by Law, the parties cannot limit or contract out of;
 - (v) a Loss in respect of an amount payable under clauses 13 (*Changes*), 15 (*Time and Progress*), 22 (*Payment*), 32.6 (*Termination by the Contractor*), 32.10 (*Suspension of termination notice*) or 32.11 (*Termination payments*); or
 - (vi) a Loss in respect of any sum payable in respect of any Change, Change in Law, Change in Codes and Standards or Compensation Event.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

28.4 No circularity

None of the provisions in clauses 28.2 (*Exclusions from indemnity*), 28.3 (*Consequential Loss*) or 29.1 (*General Cap*) operate to release the Contractor from any liability to the Principal to the extent that an insurer of any policy of insurance required under this deed seeks to rely on clauses 28.2 (*Exclusions from indemnity*), 28.3 (*Consequential Loss*) or 29.1 (*General Cap*) to deny liability which it otherwise has to indemnify an insured under the relevant policy.

28.5 Mitigation

Where under the terms of this deed, a party:

- (a) **(Payment)**: is obliged to pay an amount in respect of any Loss suffered or incurred by the other party; or
- (b) **(Indemnity)**: indemnifies the other party against any Liability, Claim or Loss,

that other party must (despite such obligation or indemnity) in each case take all reasonable steps to mitigate that Loss, Liability or Claim and the cost of taking those steps will be recoverable from the paying or indemnifying party (as applicable).

29. Cap on Liability

29.1 General Cap

- (a) **(General Cap)**: Subject to this clause 29, but otherwise despite any provision in any D&C Document to the contrary the Contractor's maximum aggregate liability to the Principal, its Related Parties, the Independent Certifier, the Environmental Representative and the Acoustics Adviser which arises:

- (i) under this deed and any other D&C Document;
- (ii) in tort (including negligence or otherwise);
- (iii) under any statute (to the extent that it is possible to exclude such liability); or
- (iv) otherwise at Law or in equity,

arising out of or in connection with the performance of the Contractor's Activities and any other obligation under any D&C Document is limited to an amount equal to the General Cap.

- (b) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

29.2 Exclusions to the General Cap

Clause 29.1 (*General Cap*) does not operate to exclude or limit the Contractor's liability in respect of:

- (a) **(Insured Liability)**: Insured Liability;

- (b) **(Persons or Property)**: Loss in respect of:
 - (i) death or personal injury; or
 - (ii) destruction of or damage to real and personal property;
- (c) **(Crime, fraud and wilful fraud or misconduct)**: Loss arising from any criminal acts, fraud or Wilful Default or Wilful Misconduct on the part of the Contractor or its Related Parties;
- (d) **(Third party Loss)**: Loss to the extent that the Contractor has recovered from a third party (including an O&M Contractor) in respect of the same loss;
- (e) **(Indemnified Loss)**: Loss which is the subject of the indemnities in clauses 2.3(c) (*Information Documents*), 7.8(d) (*Work health and safety*), 9.3(e) (*Property Works*), 9.5(a)(v) (*Extra Land*), 10.4 (*Contamination*), 30.3 (*Warranty and indemnity – Moral Rights*) or 30.4 (*Warranty and indemnity – Intellectual Property Rights*).
- (f) **(Third party Liability of the Principal)**: any Liability of the Principal, its Related Parties [REDACTED] to a third party (excluding the Principal, its Related Parties [REDACTED]) except to the extent:
 - (i) the Liability is for Consequential Loss, or arises in contract or is for breach of contract and would not have arisen in the absence of such contract; and
 - (ii) that third party could not have recovered the Loss from the Contractor by pursuing the Contractor directly;
- (g) **(Liability at law)**: Liability which, by law, the parties cannot limit or contract out of;
- (h) **(Liquidated Damages Cap)**: any Liability referred to in clause 16.10(h) (*Liquidated Damages*), which is limited to the Liquidated Damages Cap; or
- (i) [REDACTED]

and such liability will not be counted for the purposes of clause 29.1 (*General Cap*).

30. Intellectual Property

30.1 Transferred Contractor IP

- (a) **(Transfer to Principal)**: All Intellectual Property Rights in the Transferred Contractor IP vest in the Principal at the time of creation, and at each and every stage of its development as Transferred Contractor IP, and the Contractor irrevocably assigns to the Principal all right, title and interest (including Intellectual Property Rights) in all Transferred Contractor IP with effect from the time of creation, development or production of that Transferred Contractor IP.
- (b) **(Licence back to Contractor)**: The Principal grants to the Contractor a non-exclusive, royalty-free, non-transferable licence to use, possess, modify, vary or amend the Transferred Contractor IP for:

- (i) the purposes of carrying out the Contractor's Activities; and
- (ii) any other purpose with the Principal's prior written consent (not to be unreasonably withheld),

provided that no Confidential Information and no Personal Information is disclosed in breach of this deed.

- (c) **(Right to sub-license)**: The licence granted to the Contractor under clause 30.1(b) includes the right for the Contractor to grant a sub-licence to each of its Related Parties performing Contractor's Activities.
- (d) **(Registration of patents)**: The Contractor may procure the registration or patent of any registrable or patentable Transferred Contractor IP, but in doing so, must not conflict with or derogate from the vesting of the Transferred Contractor IP in accordance with clause 30.1(a).

30.2 Licensed Contractor IP

- (a) **(General licence)**: Subject to clauses 30.2(b), 30.2(d), 30.2(e) and 30.2(f), the Contractor grants to the Principal an irrevocable, non-exclusive, royalty free, perpetual and fully assignable licence to use, possess, modify, vary or amend (and to sub-licence others to use, possess, modify, vary or amend) all Intellectual Property Rights in the Licensed Contractor IP for:
 - (i) the purposes of completing the design, construction, commissioning and testing of, using, operating, extending, maintaining, repairing, upgrading, altering or otherwise dealing with the whole or any part of the Contractor's Activities, the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance;
 - (ii) any purpose associated with further development of the Construction Site, the Additional Property Works Areas, any Extra Land or the WestConnex Motorways; and
 - (iii) the purposes of enabling, integrating or connecting a Related Road Project.
- (b) **(Qualifications for Tolling Equipment Software)**: To the extent that the licence granted under clause 30.2(a) applies to the Tolling Equipment Software, the licence will be limited to only the use and reproduction of the Tolling Equipment Software for the purposes set out in clause 30.2(a). The limitation in this clause 30.2(b) will not apply:
 - (i) on and from the date this deed is terminated or Opening Completion is achieved; or
 - (ii) in respect of the exercise of any express right of the Principal under this deed to have a failure of the Contractor to comply with this deed rectified or the Contractor's obligations under this deed performed (which includes the Principal's rights under clauses 18.5 (*Rectification by others*) and 32.3 (*Step-in by the Principal*)).
- (c) **(Qualifications for off-the-shelf software)**: To the extent that the licence granted under clauses 30.2(a) and 30.2(b) applies to commercially available off-the-shelf Third Party Software, excluding Included Open Source Software, the Contractor's obligations are limited to the following:

- (i) the Contractor must use its best endeavours to procure a licence in respect of that Third Party Software in accordance with clauses 30.2(a) and 30.2(b); and
 - (ii) to the extent the Contractor is unable to procure such a licence despite the use of its best endeavours, the Contractor must license that Third Party Software to the Principal to the fullest extent to which the Contractor is permitted to do so pursuant to the terms of the licence granted to the Contractor by the third party licensor and on the terms of that licence.
- (d) **(Limits on best endeavours):** For the purposes of clause 30.2(c):
- (i) the Contractor must promptly notify the Principal if it is only able to obtain the agreement of a third party to grant the licence required by clauses 30.2(a) and 30.2(b) by making an additional payment or incurring an additional cost to the third party; and
 - (ii) unless the Principal agrees to reimburse the Contractor for such additional payment or cost, the Contractor's obligations to use its best endeavours does not include an obligation to make the additional payment or incur the additional cost.
- (e) **(Limitations on new installation and source code):** The licence granted under clauses 30.2(a) and 30.2(b) does not include the right to:
- (i) install or use the Software other than as part of the Project Works, including in any Related Road Project; or
 - (ii) without limiting the Escrow Agreements, obtain any Source Code in respect of the Software.
- (f) **(Included Open Source Software):** To the extent that the licence granted under clauses 30.2(a) and 30.2(b) apply to Included Open Source Software, the Contractor's obligations are limited to granting or procuring the grant to the Principal of a licence of the Included Open Source Software on generally available licence terms.
- (g) **(Licence fees included):** Subject to clause 30.2(d), the Contractor agrees that the D&C Deed Sum is inclusive of all applicable licence fees for Software licenced under clauses 30.2(a) and 30.2(b) and the Contractor must ensure that all licence fees for the use of Third Party Software are paid to the relevant third party supplier.

30.3 Warranty and indemnity – Moral Rights

- (a) **(Warranty):** Subject to clause 30.3(d), the Contractor warrants that:
- (i) no author's Moral Rights will be infringed in the performance of the Contractor's Activities;
 - (ii) the use of the Transferred Contractor IP by the Authorised Users will not infringe any author's Moral Rights; and
 - (iii) the use of the Licensed Contractor IP by the Authorised Users in accordance with the relevant licences granted under clause 30.2 (*Licensed Contractor IP*) and sub-licences permitted by those licences will not infringe any author's Moral Rights.

- (b) **(Indemnity)**: Subject to clause 30.3(d), the Contractor indemnifies the Principal to the extent any Claims, or costs, expenses, Losses or damages are suffered or incurred by the Authorised Users arising out of, or in any way in connection with:
- (i) any actual or alleged infringement of any author's Moral Rights in the performance of the Contractor's Activities;
 - (ii) any actual or alleged infringement of any author's Moral Rights in connection with the use of the Transferred Contractor IP by the Authorised Users; or
 - (iii) any actual or alleged infringement of any author's Moral Rights in connection with the use of the Licensed Contractor IP by the Authorised Users in accordance with the relevant licences granted under clause 30.2 (*Licensed Contractor IP*) and sub-licences permitted by those licences.
- (c) **(Meaning of "use")**: For the purposes of clauses 30.3(a) and 30.3(b), the use of the Transferred Contractor IP and Licensed Contractor IP includes the right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change any part of the Transferred Contractor IP and Licensed Contractor IP or any part of the Project Works, the Temporary Works, the D&C Phase Maintenance or the Landscaping Maintenance to which the Transferred Contractor IP, Licensed Contractor IP relates:
- (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.
- (d) **(IOMCS and OMCS Software)**: To the extent that the warranty and indemnity provided under clauses 30.3(a) and 30.3(b) apply to IOMCS and OMCS Software which is commercially available off-the-shelf Third Party Software or Included Open Source Software, the Contractor's obligations are limited to the following:
- (i) the Contractor must use its best endeavours to ensure the IOMCS and OMCS Software does not infringe the Moral Rights of any author;
 - (ii) the Contractor must use its best endeavours to obtain a warranty and indemnity in respect of the IOMCS and OMCS Software from the person providing the IOMCS and OMCS Software to the Contractor on terms no less onerous than clauses 30.3(a) and 30.3(b); and
 - (iii) to the extent the Contractor is unable to obtain such a warranty or indemnity despite the use of its best endeavours, the warranty or indemnity provided by the Contractor under clause 30.3(a) and 30.3(b) (as applicable) is limited to the same terms as the warranty or indemnity (as applicable) obtained by the Contractor.

30.4 Warranty and indemnity – Intellectual Property Rights

- (a) **(Warranty)**: The Contractor warrants that:
- (i) subject to clause 30.4(c), no Intellectual Property Rights of any person will be infringed in the performance of the Contractor's Activities;

- (ii) the use of the Intellectual Property Rights in the Transferred Contractor IP by the Authorised Users does not and will not infringe the Intellectual Property Rights of any person;
 - (iii) subject to clause 30.4(c), the use of the Intellectual Property Rights in the Licensed Contractor IP licensed under clause 30.2 (*Licensed Contractor IP*) pursuant to the terms of the applicable licence does not and will not infringe the Intellectual Property Rights of any person;
 - (iv) the Contractor is able to vest and assign, and where necessary will secure the right to vest and assign, the Intellectual Property Rights in the Transferred Contractor IP as required by clause 30.1(a) (*Transferred Contractor IP*); and
 - (v) the Contractor is able to grant, and where necessary will secure the right to grant, licences to the Intellectual Property Rights in the Licensed Contractor IP as required by clause 30.2 (*Licensed Contractor IP*).
- (b) **(Indemnity)**: The Contractor indemnifies the Principal from and against any Claims against, or Loss suffered or incurred by, the Authorised Users arising out of or in any way in connection with:
- (i) a breach by the Contractor of this clause 30;
 - (ii) subject to clause 30.4(c), any actual or alleged infringement of an Intellectual Property Right in the performance of the Contractor's Activities;
 - (iii) any actual or alleged infringement of an Intellectual Property Right in connection with the use of the Transferred Contractor IP by the Authorised Users; or
 - (iv) subject to clause 30.4(c), any actual or alleged infringement of an Intellectual Property Right in connection with the use of the Licensed Contractor IP by the Authorised Users in accordance with the licences granted under clause 30.2 (*Licensed Contractor IP*) and sub-licences permitted by those licences.
- (c) **(IOMCS and OMCS Software)**: To the extent that the warranty and indemnity provided under clauses 30.4(a)(i), 30.4(a)(iii), 30.4(b)(ii) and 30.4(b)(iv) apply to IOMCS and OMCS Software which is commercially available off-the-shelf Third Party Software or Included Open Source Software, the Contractor's obligations are limited to the following:
- (i) the Contractor must use its best endeavours to ensure the IOMCS and OMCS Software does not infringe the Intellectual Property Rights of any person;
 - (ii) the Contractor must use its best endeavours to obtain a warranty and indemnity in respect of the IOMCS and OMCS Software from the person providing the IOMCS and OMCS Software to the Contractor on terms no less onerous than clauses 30.4(a)(i), 30.4(a)(iii), 30.4(b)(ii) and 30.4(b)(iv); and
 - (iii) to the extent the Contractor is unable to obtain such a warranty or indemnity despite the use of its best endeavours, the warranty or indemnity provided by the Contractor under clauses 30.4(a)(i), 30.4(a)(iii), 30.4(b)(ii)

and 30.4(b)(iv) (as applicable) is limited to the same terms as the warranty or indemnity (as applicable) obtained by the Contractor.

30.5 Remedial action

- (a) **(Assistance)**: The Contractor agrees to, and agrees to procure the cooperation of any third parties to:
- (i) execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Authorised Users as reasonably requested by the Principal to give full effect to the provisions of this clause 30, including the vesting, assignment and licence of Intellectual Property Rights in accordance with this clause 30); and
 - (ii) allow or assist the Authorised Users to obtain, perfect, assert, enforce or defend its or their interest in, rights and consents to the vested, assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the vested, 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) **(Appointment as attorney)**: The Contractor irrevocably appoints the Principal 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 30.5 if the Contractor fails to execute the document or do the relevant act or thing within 3 Business Days of a written request by the Principal.
- (c) **(Remedial action)**: Without limiting clause 30.4 (*Warranty and indemnity – Intellectual Property Rights*), if any action or Claim for infringement or alleged infringement of any Intellectual Property Rights or Moral Rights results in:
- (i) the use or enjoyment of the Transferred Contractor IP by the Authorised Users being materially disrupted, impaired or adversely affected;
 - (ii) the use or enjoyment of the Licensed Contractor IP by the Authorised Users permitted by the licences granted under clause 30.2 (*Licensed Contractor IP*) and sub-licences permitted by those licences being materially disrupted, impaired or adversely affected; or
 - (iii) any action or Claim for infringement or alleged infringement of any Intellectual Property Rights or Moral Rights in respect of commercially available off-the-shelf Third Party Software or Included Open Source Software for which the Contractor failed to procure a licence in accordance with clause 30.2(a) (*Licensed Contractor IP*) results in the use or enjoyment of the Licensed Contractor IP which would have been permitted by that licence and sub-licences permitted by it being materially disrupted, impaired or adversely affected,
- the Contractor must at its own expense and at the Principal's option:
- (iv) in the case of the Transferred Contractor IP, procure for the benefit of the Authorised Users the right to continue to use and exploit the Intellectual Property Rights in the Transferred Contractor IP;

- (v) in the case of the Licensed Contractor IP, procure for the benefit of the Authorised Users, the right to continue to use and exploit the Intellectual Property Rights in the Licensed Contractor IP in accordance with the licences granted under clause 30.2 (*Licensed Contractor IP*), or the licence which would have been granted under clause 30.2(a) (*Licensed Contractor IP*), and sub-licences permitted by those licences; or
- (vi) modify or replace the Transferred Contractor IP or Licensed Contractor IP so that no such infringement will occur and so that the modified or replaced Transferred Contractor IP or Licensed Contractor IP will:
 - (A) comply with the requirements of this deed; and
 - (B) not limit or otherwise affect the Principal's rights, or the Contractor's ability to comply with its obligations, under the D&C Documents or otherwise according to Law.

30.6 Moral rights

- (a) **(Contractor not to sue)**: The Contractor to the extent permitted by Law, must not, and must take reasonable steps to ensure that its 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 Contractor Documentation and Deliverable against the Principal, the Principal's Related Parties or any person nominated or authorised by the Principal (including sub-licensees of Licensed Contractor IP permitted by the licences granted under clause 30.2 (*Licensed Contractor IP*)).
- (b) **(Contractor to obtain consents)**: Subject to clause 30.6(e), the Contractor must take reasonable steps to procure (without coercion) that all individuals who are, or are to be, or may be, authors in respect of any Contractor Documentation and Deliverable, sign, date and return to the Contractor a Moral Rights Consent prior to those individuals commencing work on the creation of any Intellectual Property Rights, or as soon as practicable thereafter.
- (c) **(Contractor to provide consents)**: The Contractor must within 3 Business Days after a request by the Principal, provide to the Principal any Moral Rights Consent which is obtained pursuant to clause 30.6(b) as requested by the Principal.
- (d) **(Record of authors)**: The Contractor must:
 - (i) maintain an up-to-date record of the names and contact details of each person who is an author of any Contractor Documentation and Deliverables and the Contractor Documentation and Deliverables of which such person is an author; and
 - (ii) provide a copy of any updated records to the Principal upon request.

In complying with this clause 30.6(d), the Contractor is only required to take reasonable steps to identify the authors of Third Party Software to the extent that Third Party Software is not created by or on behalf of the Contractor or its Related Parties in carrying out the Contractor's Activities.

- (e) **(Tolling Equipment Software)**: Clause 30.6(b) does not apply in respect of Tolling Equipment Software which is commercially available off-the-shelf Third Party Software and Included Open Source Software.

30.7 Escrow Agreement

The Contractor must:

- (a) **(IOMCS and OMCS and Tolling Equipment Subcontractors)**: enter into and maintain, and procure the IOMCS and OMCS Subcontractor and Tolling Equipment Subcontractor to enter into and maintain, during the Escrow Term, Escrow Agreements in accordance with clauses 24.4(b) (*IOMCS and OMCS Subcontract*) and 24.5(b) (*Tolling Equipment Subcontract*) for the Escrow Materials; and
- (b) **(Other Subcontractors)**: within 3 months after the relevant Subcontractor is engaged and, in any event, as a condition to achieving Opening Completion, enter into and maintain, and procure that the relevant other Subcontractors providing Escrow Materials enter into and maintain, during the Escrow Term, Escrow Agreements with the Principal and an Escrow Agent for the Escrow Materials.

30.8 Open Source Software

The Contractor warrants to the Principal that:

- (a) **(List)**: the Software listed in Item 46 of the Contract Particulars is Included Open Source Software;
- (b) **(Restriction)**: the Contractor will not incorporate any Open Source Software into any Deliverable other than the Included Open Source Software listed in Item 46 of the Contract Particulars;
- (c) **(Version)**: the Open Source Software supplied to the Principal is identical to the version of that software made available by the maintainer of that software at the time it is supplied, unless specified otherwise in the SWTC, and the Contractor has verified files against any checksums made available by the maintainer; and
- (d) **(Principal's rights)**: the Contractor's use or supply of any Open Source Software will not cause any Intellectual Property Rights owned by the Principal or its Related Parties to become subject to any Open Source Licence, unless otherwise agreed by the Principal in writing.

31. Confidentiality, Publicity and Privacy

31.1 General restriction

Subject to clauses 31.2 (*Disclosure by either party*) and clause 31.5 (*Disclosure by the Principal*), no party will, at any time, without the written consent of the other party, divulge the Confidential Information, or permit its Related Parties to divulge the Confidential Information to any person.

31.2 Disclosure by either party

Subject to clause 31.3 (*Third party recipients*), the restrictions imposed by clause 31.1 (*General restriction*) will not apply to the disclosure of any Confidential Information:

- (a) **(Public domain)**: which is now or after the date of this deed comes into the public domain (other than by breach of this clause 31);
- (b) **(Third parties)**: which is obtainable with no more than reasonable diligence from sources other than the parties in circumstances that do not impose a duty of confidence;

- (c) **(Law or ASX listing rules)**: which is required to be disclosed by law or the listing rules of ASX Limited or other recognised stock exchange (if applicable);
- (d) **(NSW Government purposes)**: by the Principal as required for any legitimate NSW Government purpose or process, including for any purpose in relation to a Related Road Project;
- (e) **(Contract summary)**: pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007 or the NSW Public Private Partnership Guidelines 2017 (TPP17-07) published by NSW Treasury;
- (f) **(Judicial and non-judicial processes)**: to the Dispute Avoidance Board or to an expert, court, arbitrator, adjudicator or administrative tribunal in the course of a process before them to which the disclosing party is a party;
- (g) **(Reasonably required)**: other than in relation to Third Party Confidential Information, which, in the reasonable opinion of the Contractor or the Principal, is required to be disclosed to:
 - (i) any actual or prospective equity investor, purchaser or financier in relation to the Motorway (or agent, trustee, assignee or novatee of such a financier);
 - (ii) any officers, employees, professional advisers, auditors or consultants of any actual or prospective equity investor, purchaser or financier in relation to the Motorway (or agent, trustee, assignee or novatee of such a financier) to enable them properly to carry out their duties;
 - (iii) any insurer or insurance broker in respect of the Project;
 - (iv) any of the Contractor's or the Principal's Related Parties, professional advisers, auditors or consultants for the purpose of carrying out, in the case of the Contractor, the Contractor's Activities or, in the case of the Principal, the Project or a Related Road Project; or
 - (v) any person to whom disclosure is reasonably necessary to enable that person to comply with, or exercise its rights under, the D&C Documents to which it is a party; or
- (h) **(Not Commercially Sensitive Information)**: by the Principal that is not Commercially Sensitive Information.

31.3 Third party recipients

- (a) **(Responsibility for recipients)**: Each party must ensure that any person that it discloses Confidential Information to under clause 31.2 (*Disclosure by either party*) complies with confidentiality obligations which are no less onerous than the party's obligations under this clause 31.3.
- (b) **(Confidentiality Deed)**: Before disclosing any Confidential Information to a person under clause 31.2 (*Disclosure by either party*), the Contractor must ensure that the person enters into a confidentiality deed with the Principal in the form required by the Principal, unless the Principal notifies the Contractor in writing that a confidentiality deed is not required, provided the Contractor is only required to use its best endeavours to ensure an Exempt Subcontractor enters into the confidentiality deed.

31.4 Media and events

- (a) **(Restrictions on publication):** The Contractor must not issue any information, publication, document or article for publication concerning the Project or the Contractor's Activities in any media (or permit any third party to do so) without the prior written approval of the Principal (acting reasonably) and only in a manner approved by the Principal (acting reasonably).
- (b) **(Requests):** If the Contractor or any of its Subcontractors receives a direct request from the media for comment in respect of any aspect of the Project or the Contractor's Activities, the Contractor must promptly provide details of such request to the Principal.
- (c) **(Restriction on events):** The Contractor must not announce, promote or hold any event, function or party on the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site or the WestConnex Motorways (or permit any of its Related Parties to do so) without the prior written approval of the Principal (acting reasonably).

31.5 Disclosure by the Principal

- (a) **(Disclosure for government purposes):** Despite the other provisions of this clause 31 but subject to clause 31.5(b), the parties acknowledge and agree that:
 - (i) certain D&C Documents will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (ii) information concerning certain D&C Documents will be tabled in the Parliament of the State of New South Wales by or on behalf of the Principal and will be published in accordance with applicable government policies and guidelines;
 - (iii) certain D&C Documents and information concerning them will be published on the Principal's contracts register in accordance with the GIPA Act; and
 - (iv) the Principal may make certain D&C Documents or any of them available to any person as required by any applicable Law, to the minister (or office of the minister) with responsibility for the Principal, or for any other legitimate government purpose or process.
- (b) **(Consultation):** The parties acknowledge that:
 - (i) the Principal has consulted with the Contractor in relation to the disclosure of those parts of the D&C Documents that are not Commercially Sensitive Information;
 - (ii) the Principal will notify the Contractor of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
 - (iii) following notification by the Principal in accordance with clause 31.5(b)(ii), the Principal will take reasonable steps to consult with the Contractor before the Principal discloses the information referred to in clause 31.5(b)(ii), including under the GIPA Act; and
 - (iv) if, following:

- (A) notification by the Principal in accordance with clause 31.5(b)(ii); or
- (B) consultation between the Principal and the Contractor in accordance with clause 31.5(b)(iii),

the Contractor objects to disclosure of some or all of the information referred to in clause 31.5(b)(ii) on the basis that it is Commercially Sensitive Information, the Contractor must provide details of any such objection within 3 Business Days of the date the Contractor received notification from the Principal or the date on which the consultation process concluded (as relevant).

- (c) **(Objections)**: The Principal may take into account such objection received from the Contractor pursuant to clause 31.5(b)(iv) in determining whether the information identified by the Contractor as Commercially Sensitive Information should be disclosed.
- (d) **(GIPA Act compliance)**: Nothing in this clause 31 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

31.6 Privacy

- (a) **(Compliance)**: Without limiting clause 5.1 (*Compliance with Law*), the Contractor must comply with the Privacy Laws in carrying out the Contractor's Activities.
- (b) **(Collection and disclosure)**: Where the Contractor will be collecting, using or disclosing Personal Information from an individual in connection with the Contractor's Activities, it must either:
 - (i) ensure that the collection, use and disclosure of the Personal Information by the Contractor for the purposes of the Contractor's Activities or the Principal for the purposes of the Project is permitted under the Privacy Laws; or
 - (ii) procure the consent of the individual to whom that Personal Information relates sufficient to enable the collection, use and disclosure of the Personal Information by the Contractor for the purposes of the Contractor's Activities or the Principal for the purposes of the Project.
- (c) **(Additional requirements)**: The Contractor must take reasonable steps to:
 - (i) ensure that the Personal Information disclosed by it in connection with the Contractor's Activities is accurate, complete and up-to-date; and
 - (ii) when collecting, using or disclosing Personal Information in connection with the Contractor's Activities, inform that individual of any matters required by the Privacy Laws.

32. Default and Termination

32.1 Events of Default

Each of the following events is an Event of Default:

- (a) **(Failure to perform)**: the Contractor fails to commence, or to expeditiously and diligently progress, the Contractor's Activities as required by clause 15.1 (*Start and progress*) or the Contractor displays an intention to permanently abandon the Contractor's Activities;

- (b) **(Late completion)**: the Contractor fails to achieve:
- (i) Opening Completion of the Project Works by the Date for Opening Completion; or
 - (ii) Completion of the Project Works by the Date for Completion;
- (c) **(Closure of lane)**: the Contractor closes or permits or causes the closure of one or more traffic lanes of the Motorway after the Date of Opening Completion or a WestConnex Motorway, except to the extent it has been authorised to close the Motorway, WestConnex Motorway or a traffic lane of the Motorway or WestConnex Motorway under a ROL, or the Principal otherwise consents in writing (an **Unauthorised Closure Default**);
- (d) **(Representation or warranty)**: the Contractor breaches in a material respect a representation or warranty given by it under the D&C Documents, or any other undertaking given by the Contractor in the D&C Documents;
- (e) **(Fraud or dishonest conduct)**: the Principal is the victim of any fraud or dishonest conduct by the Contractor in connection with the Contractor's Activities, or the Independent Commission Against Corruption, being the corporation of that name as constituted by the *Independent Commission Against Corruption Act 1988* (NSW) or similar public body determines that the Contractor, in performing the Contractor's Activities, has engaged in corrupt conduct, collusive pricing or other similar activity;
- (f) **(Corrective action plan)**: the Contractor fails to provide a corrective action plan in accordance with clause 16.3 (*Look forward notice*) or fails to diligently pursue such a corrective action plan;
- (g) **(Security Bond)**: the Contractor fails to provide or replace any Security Bond in accordance with clauses 8 (*Security*), 22.13 (*Payment for Key Plant and Equipment*) or 22.14 (*Unfixed or offsite Materials*);
- (h) **(D&C Guarantees)**: the Contractor fails to provide the D&C Guarantees in accordance with clause 8.7 (*D&C Guarantee*);
- (i) **(Law)**: the Contractor fails to comply with a Law or a change in Law in a material respect;
- (j) **(Direction)**: the Contractor does not comply with any Direction of the Principal made in accordance with the D&C Documents;
- (k) **(Breach)**: the Contractor is in breach of its obligations under clauses 22.13 (*Payment for Key Plant and Equipment*) or 27.5 (*Project Insurances*);
- (l) **(Payment)**: the Contractor fails to pay a sum of money due and owing to the Principal in accordance with the D&C Documents and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment; or
- (m) **(Material default)**: the Contractor defaults in a material respect in the due observance and performance of any of its other obligations under this deed or any other D&C Document.

32.2 Notice of Event of Default

- (a) **(Notice to remedy)**: Subject to clause 32.2(b), upon the occurrence of an Event of Default, the Principal may, by notice to the Contractor, require the Contractor to Remedy the Event of Default within such period specified in the notice to the Contractor as is in the opinion of the Principal (acting reasonably) required to Remedy the Event of Default (**Remedy Period**).
- (b) **(Remedy Period)**: The parties agree that if an Event of Default is:
- (i) a failure to pay money, the Remedy Period to be specified by the Principal is 16 Business Days; or
 - (ii) an Unauthorised Closure Default, the Remedy Period to be specified by the Principal is 3 days.
- (c) **(Remedy)**: If the Principal gives the Contractor a notice referred to in clause 32.2(a) (**Remedy Notice**):
- (i) the Contractor must comply with the Remedy Notice; and
 - (ii) unless urgent action is necessary or the relevant Event of Default is a failure to pay money:
 - (A) the Contractor must give the Principal a program and plan (**Remedy Plan**) to Remedy the Event of Default in accordance with the terms of the Remedy Notice;
 - (B) the Principal must consult with the Contractor in good faith to develop and settle that Remedy Plan; and
 - (C) the Contractor must thereafter comply with that Remedy Plan.
- (d) **(Remedy Period not reasonable)**: If, at any time (even if the Contractor has previously given the Principal a notice under clause 32.2(d)(i)), the Contractor considers, in good faith, that a Remedy Period is not reasonable:
- (i) the Contractor must immediately give the Principal a notice of that fact, including details of its reasons and extension to the Remedy Period which it believes (acting reasonably) is required to Remedy the Event of Default; and
 - (ii) subject to clause 32.2(e), the Principal must, as soon as practicable after receiving a notice under clause 32.2(d)(i), review the Remedy Period.
- (e) **(Extension of Remedy Period)**: If the Contractor has given a notice to the Principal under clause 32.2(d)(i) and:
- (i) the Contractor is diligently pursuing the Remedy of the Event of Default, including by implementing a Remedy Plan; and
 - (ii) if the Event of Default the subject of the Remedy Notice occurred after the Date of Opening Completion, the Motorway Works are open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with this deed),

the relevant Remedy Period will be extended by such period as is, in the opinion of the Principal (acting reasonably), required to Remedy the Event of Default as notified by the Principal to the Contractor.

- (f) **(Referral for resolution)**: If the Contractor considers in good faith that a Remedy Period extended by the Principal pursuant to clause 32.2(e) is not reasonable, it may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

32.3 Step-in by the Principal

- (a) **(Principal may step-in)**: The Contractor acknowledges and agrees that :
- (i) at any time after the occurrence of an Event of Default, provided that the Contractor is not complying with clause 32.2(c) (*Notice of Event of Default*) for that Event of Default;
 - (ii) at any time after the occurrence of a Remediable Termination Event; or
 - (iii) at any time after the occurrence of an Immediate Termination Event,
- the Principal may elect to:
- (iv) temporarily assume total or partial management and control of the Project Works and Temporary Works;
 - (v) access those parts of the Construction Site, the Additional Property Works Areas, any Extra Land or the Maintenance Site occupied by the Contractor; and
 - (vi) take such other reasonable steps (including suspension of the Project Works in whole or in part) as in the reasonable opinion of the Principal are necessary or desirable to, at its option, continue the implementation of the Project Works and to minimise the effects of the Event of Default, Remediable Termination Event or Immediate Termination Event.
- (b) **(Notice)**: The Principal will give prior notice to the Contractor of its election to exercise its rights under clause 32.3(a), except in the case of an event as described in clause 14.11(a)(ii) (*Principal's right to remedy non-compliances*).
- (c) **(Suspension)**: During the exercise of the Principal's rights under this clause 32.3, the Contractor's rights and obligations under the D&C Documents are suspended to the extent necessary to exercise the Principal's rights under this clause 32.3.
- (d) **(Principal's rights)**: Pursuant to clause 32.3(a), the Principal may do:
- (i) all things which the Contractor is obliged to do under or in connection with the D&C Documents to which it is a party or any Law, and things which the Principal is authorised or empowered to do with respect to the Contractor under any D&C Document or any Law; and
 - (ii) all things necessary for executing the Project Works in accordance with the D&C Documents.
- (e) **(Appointment of attorney)**:

- (i) The Contractor irrevocably appoints the Principal, and the Principal's nominees from time to time, jointly and severally as the Contractor's attorney with full power and authority to exercise the Principal's rights under clause 32.3(a), provided that the Principal properly considers that in each instance the power or authority which it or its nominee proposes to exercise as attorney is reasonable and necessary for the carrying out of the Project Works or to minimise the effects, or overcome the consequences of, the Event of Default, Remediable Termination Event or Immediate Termination Event (as applicable).
 - (ii) The Contractor agrees to ratify and confirm whatever action is taken by the attorney appointed by the Contractor.
- (f) **(Reasonable assistance)**: The Contractor will use its best endeavours to assist the Principal wherever and however reasonably possible in the exercise of the Principal's rights under this clause 32.3 (including facilitating ongoing access to any support or other services provided by employees, Subcontractors or third parties).
 - (g) **(Rights unaffected)**: The exercise by the Principal of its rights under this clause 32.3 (or the cessation of such exercise) will not affect any other power of the Principal or any other right of the Principal under any D&C Document to which the Principal is a party.
 - (h) **(Notice to cease)**: The Principal may, on 3 Business Days' notice to the Contractor, cease to exercise its rights under this clause 32.3.
 - (i) **(Loss as a debt)**: Any Loss suffered or incurred by the Principal in taking action referred to in this clause 32.3 will be a debt due and payable from the Contractor to the Principal.

32.4 Termination by the Principal

- (a) **(Remediable Termination Event)**: If:
 - (i) an Event of Default (other than an Event of Default as described in clause 32.1(b) or 32.1(f) (*Events of Default*)) is not Remedied within the Remedy Period as extended if at all in accordance with clause 32.2(e) or clause 32.2(f) (*Notice of Event of Default*);
 - (ii) without limiting the Principal's rights under clause 32.4(c)(i), an Event of Default under clause 32.1(b) (*Events of Default*) is not Remedied by the Sunset Date;
 - (iii) an Event of Default under clause 32.1(f) (*Events of Default*) is not Remedied within the Remedy Period as extended if at all in accordance with clause 32.2(e) or clause 32.2(f) (*Notice of Event of Default*) and:
 - (A) the Principal has provided notice to the Independent Certifier and the Contractor of that fact under this clause 32.4(a)(iii)(A); and
 - (B) the Independent Certifier determines (having regard to all relevant information provided to it by the Contractor and the Principal) that there is no reasonable likelihood of the Contractor achieving Opening Completion by the Sunset Date; or
 - (iv) at any time during the relevant Remedy Period (as extended if at all in accordance with clause 32.2(e) or clause 32.2(f) (*Notice of Event of*

Default)) in which an Event of Default is subsisting and has not been Remedied:

- (A) the Contractor is not diligently pursuing a Remedy of the Event of Default, including by complying with the Remedy Plan; or
- (B) if the Event of Default is after the Date of Opening Completion, the Motorway Works are not open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with this deed),

(each a **Remediable Termination Event**), the Principal may give the Contractor 15 Business Days' prior notice of its intention to terminate this deed. During this 15 Business Day period the Contractor will have a right to Remedy, or procure the Remedy of, the Remediable Termination Event.

- (b) **(Termination)**: If at the expiration of the 15 Business Day period following the notice of a Remediable Termination Event, the Remediable Termination Event has not been Remedied by the Contractor, the Principal may thereafter terminate this deed by, and with effect from, written notice to the Contractor.
- (c) **(Immediate Termination Event)**: If:
 - (i) the Contractor fails to achieve Opening Completion of the Project Works by the Sunset Date;
 - (ii) except to the extent prevented by the Corporations Act, an Insolvency Event occurs in relation to the Contractor, an entity comprising the Contractor or the Contractor Guarantor (in each case whether or not the Contractor is then in breach of this deed) and the Contractor or the Contractor Guarantor is not able to satisfy the Principal (acting in its absolute discretion) within 5 Business Days (or any longer period agreed to by the Principal acting in its absolute discretion) of the Insolvency Event occurring that this deed should not be terminated, including by:
 - (A) a replacement entity of appropriate creditworthiness assuming the obligations and liabilities of the insolvent entity to the Principal on terms satisfactory to the Principal; or
 - (B) the Contractor providing additional unconditional undertakings for amounts and in a form satisfactory to the Principal;
 - (iii) the aggregate liability of the Contractor to the Principal under or in connection with the D&C Documents ██████████ of the General Cap, and the Principal and the Contractor have not agreed in writing to increase either the General Cap or the threshold under this clause to a higher percentage of the General Cap (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 32.4(c)(iii) where the new threshold is subsequently reached or exceeded);
 - (iv) the aggregate liability of the Contractor to the Principal for all Liability referred to in clause 16.10 (*Liquidated Damages*) ██████████ the Liquidated Damages Cap, and the Contractor has not agreed in writing to increase the Liquidated Damages Cap (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 32.4(c)(iv) where the Liquidated Damages Cap is subsequently reached);

- (v) a D&C Guarantee is or becomes void, voidable or unenforceable (in part or in full) and the D&C Guarantee is not replaced with a D&C Guarantee that is not void, voidable or unenforceable within 5 Business Days of the Principal notifying the Contractor of the need for a replacement D&C Guarantee;
- (vi) the Contractor fails to procure any action required by the Principal under clause 8.7(b) (*D&C Guarantee*) and that failure is not rectified within 30 Business Days of notice from the Principal requiring the Contractor do so;
- (vii) a Security Bond is or becomes void, voidable or unenforceable (in part or in full) and is not replaced with a Security Bond that is not void, voidable or unenforceable and that meets the requirements of clause 8.4(a) (*Replacement of Security Bonds*) within 5 Business Days of the Principal notifying the Contractor of the need for a replacement Security Bond;
- (viii) the Contractor abandons the Project Works; or
- (ix) the Contractor is in breach of its obligations under clause 39 (*Assignment and Change in Control*) and the Contractor fails to remedy the breach within 10 Business Days,

(each an **Immediate Termination Event**), the Principal may immediately terminate this deed by giving notice to the Contractor.

- (d) (**No liability**): Upon termination of this deed other than under clauses 32.5 (*Termination for Final Determination*), 32.6 (*Termination by the Contractor*), 32.7 (*Termination for Uninsurable Force Majeure Event*), 32.8 (*Termination for convenience*) or 32.10(c)(i) (*Suspension of termination notice*), the Principal will not be liable to pay any compensation or other moneys (including any money the subject of a progress claim or payment schedule under clause 22 (*Payment*)) to the Contractor by reason of that termination (including, where the Principal does not exercise the right to require novation of a Subcontract, any amounts payable by the Contractor to the relevant Subcontractor following termination of that Subcontract) other than any entitlements which have accrued before this deed was terminated.
- (e) (**Transition**): Upon termination of this deed by the Principal:
 - (i) the Principal may:
 - (A) require a novation to the Principal or its nominee of the Significant Subcontracts;
 - (B) have recourse to any Security Bonds held under clause 8.1 (*Provision of Security Bonds*); and
 - (ii) the Contractor must:
 - (A) execute all documentation required to effect a transfer to the Principal of the Contractor's interests in the Project Works and Temporary Works;
 - (B) hand over books of account and all other records relating to the Contractor's Activities;
 - (C) hand over all Contractor Documentation and Deliverables;

- (D) procure the assignment of the Contractor's rights under the insurance policies maintained by the Contractor under clause 27 (*Loss or Damage and Insurance*) (other than any professional indemnity insurance policy);
 - (E) hand over any other documentation relating to the Contractor's Activities within the custody or control of the Contractor and its Subcontractors;
 - (F) do all other acts and things to enable the Principal or any person engaged by the Principal to complete the construction of the Project Works and the Temporary Works, and to undertake the D&C Phase Maintenance and the Landscaping Maintenance; and
 - (G) peaceably surrender and yield up to the Principal, the Construction Site, the Additional Property Works Areas, any Extra Land, the Maintenance Site and any other land upon which the Contractor Activities are being carried out (including any right, title or interest in them).
- (f) **(Significant Subcontract novation)**: The Contractor acknowledges that nothing in this clause 32.4 obliges the Principal to require or consent to the novation of any Significant Subcontract to the Principal.

32.5 Termination for Final Determination

- (a) **(Court's Final Determination not overcome)**: Despite any other provision of this deed, if a court makes a Final Determination and the Principal fails to procure that the effect of the Final Determination is overcome within 20 months of either party giving written notification to the other of the Final Determination, the Principal may in its absolute discretion terminate this deed at any time after that 20 month period by giving notice to that effect to the Contractor. Where such termination occurs, clause 32.11(b) (*Termination payments*) will apply except to the extent that the Final Determination is a result of:
- (i) the Contractor's failure to comply with its obligations under a D&C Document;
 - (ii) a breach by the Contractor of its warranties under a D&C Document;
 - (iii) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or
 - (iv) a failure by the Contractor or any of its Related Parties to comply with any Law.
- (b) **(No breach or liability)**: The Principal acknowledges and agrees that the Contractor will not:
- (i) be in breach of this deed, to the extent the Contractor is prevented from undertaking the Contractor's Activities in accordance with this deed; and
 - (ii) be liable for Liquidated Damages to the extent that the Contractor is delayed in achieving Opening Completion or Completion,
- due to a Final Determination except to the extent that it is a result of:

- (iii) the Contractor's failure to comply with its obligations under a D&C Document;
- (iv) a breach by the Contractor of its warranties under a D&C Document;
- (v) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or
- (vi) a failure by the Contractor or any of its Related Parties to comply with any Law.

32.6 Termination by the Contractor

Subject to clause 32.10 (*Suspension of termination notice*), the Contractor may terminate this deed by giving the Principal:

- (a) **(Access breach)**: 35 Business Days' prior notice if the Principal breaches clause 9.1 (*Construction Site*) and such breach:
 - (i) prevents the Contractor from undertaking the Contractor's Activities substantially in accordance with the D&C Documents; and
 - (ii) is not remedied (or its effects overcome) within 12 months after notice from the Contractor to the Principal specifying the breach; or
- (b) **(Payment breach)**: 25 Business Days' prior notice if the Principal fails to pay to the Contractor an undisputed amount greater than [REDACTED] certified by the Independent Certifier as being due and payable (in a Payment Statement or otherwise) within 20 Business Days of the amount becoming due and payable and such non-payment is not remedied by the end of the 25 Business Days' period referred to in this clause 32.6(b).

32.7 Termination for Uninsurable Force Majeure Event

Despite any other provision of this deed, if, an Uninsurable Force Majeure Event exists, or the consequences of the Uninsurable Force Majeure Event exist, for a continuous period of more than 12 months, the Principal may in its absolute discretion terminate this deed at any time after that 12 month period by giving notice to that effect to the Contractor, after which this deed will be terminated and clause 32.11(b) (*Termination payments*) will apply.

32.8 Termination for convenience

- (a) **(Notice of termination)**: Without prejudice to any of the Principal's other rights or entitlements or powers under this deed, the Principal may:
 - (i) by written notice to the Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and
 - (ii) thereafter either itself or by a third party complete the uncompleted part of the Project Works.
- (b) **(Basis for termination)**: The Principal may terminate this deed under this clause 32.8 at any time, for its sole convenience, for any reason and regardless of whether a party is in breach of this deed.

32.9 Termination in connection with a Force Majeure Event

- (a) **(No right to terminate):** The Principal acknowledges and agrees that it will not be entitled to terminate this deed as a result of:
- (i) a Remediable Termination Event that arises in connection with an Event of Default described in clause 32.1(a), clause 32.1(b) or clause 32.1(f) (*Events of Default*); or
 - (ii) an Immediate Termination Event under clause 32.4(c) (*Termination by the Principal*),
- to the extent the Contractor is prevented from undertaking the Contractor's Activities in accordance with this deed as a consequence of a Force Majeure Event, provided that the Contractor has:
- (iii) strictly complied with its obligations in clauses 27.7 (*Dealing with claims*) and 35 (*Force Majeure*); and
 - (iv) applied the insurance proceeds recovered in connection with the Force Majeure Event to any reinstatement of the Project Works in accordance with clause 27.9 (*Reinstatement*).
- (b) **(Rights unaffected):** This clause 32.9 does not affect any rights the Principal may have arising out of an Immediate Termination Event under clause 32.4(c)(ii) (*Termination by the Principal*), 32.4(c)(iii) (*Termination by the Principal*), 32.4(c)(iv) (*Termination by the Principal*) or clause 32.7 (*Termination for Uninsurable Force Majeure Event*).

32.10 Suspension of termination notice

- (a) **(Suspension):** If the Contractor issues a notice of termination under clause 32.6 (*Termination by the Contractor*) (other than for an event under clause 32.6(b) (*Termination by the Contractor*), the Principal may suspend that right to terminate, by giving the Contractor notice within 40 Business Days after receipt of the Contractor's notice.
- (b) **(Expiry):** The Principal's suspension of that right to terminate expires:
- (i) upon notice to that effect from the Principal;
 - (ii) 12 months after the date of the Contractor's notice under clause 32.6 (*Termination by the Contractor*); or
 - (iii) when the relevant event is remedied by the Principal or no longer exists, whichever is earlier.
- (c) **(Effect of expiry):** If the Principal's suspension of that right to terminate expires:
- (i) under clause 32.10(b)(i) or 32.10(b)(ii), this deed automatically terminates under clause 32.6 (*Termination by the Contractor*) on the date the Principal's suspension of the Contractor's right to terminate expires; or
 - (ii) under clause 32.10(b)(iii), this deed continues in force.

- (d) **(Obligations continue)**: Subject to clause 22.18, the Contractor must continue to perform its obligations under the D&C Documents while its right to terminate is suspended if:
- (i) it is lawfully able to do so; and
 - (ii) it is practicable to do so.
- (e) **(Suspension costs)**: If the Principal suspends the Contractor's right to terminate under clause 32.10(a), to the extent the Contractor is unable to continue to perform its obligations under the D&C Documents, the Principal must pay the Contractor in respect of the period of suspension monthly in arrears any additional amounts (including costs, Losses or expenses) that the Contractor reasonably and properly incurs as a result of such suspension.

32.11 Termination payments

- (a) **(Payments to Principal)**: Upon termination of this deed arising out of or in connection with an Immediate Termination Event or a Remediable Termination Event, the Contractor will receive no compensation and despite any provision in this deed to the contrary (except clauses 16.10(i) (*Liquidated Damages*), 16.10(h) (*Liquidated Damages*) and 29.1 (*General Cap*), and, in relation to clause 32.11(a)(i) only, clause 28.3 (*Consequential Loss*)), the Contractor must pay to the Principal as a debt due and payable the aggregate (without double counting and as its sole financial remedy) of:
- (i) any Loss incurred by the Principal in connection with the termination of this deed including in connection with the novation of Subcontracts to the Principal;
 - (ii) the Principal's reasonable costs associated with the appointment of a replacement contractor, including the cost of constructing the remaining Project Works (to the extent such costs exceed the unpaid portion of the D&C Deed Sum); and
 - (iii) any loss of Revenue as a consequence of the delay to Opening Completion or Completion caused by the termination of this deed or the replacement of the Contractor.
- (b) **(Payments to Contractor)**: If this deed is terminated under clause 32.5 (*Termination for Final Determination*), 32.6 (*Termination by the Contractor*), 32.7 (*Termination for Uninsurable Force Majeure Event*), 32.8 (*Termination for convenience*) or 32.10(c)(i) (*Suspension of termination notice*) then the Contractor is entitled to:
- (i) the value of any Contractor's Activities performed by the Contractor up to the date of termination for which payment has not been received by the Contractor as at the date of termination;
 - (ii) the reasonable demobilisation costs incurred by the Contractor as a direct consequence of termination of this deed;
 - (iii) the cost of Materials or other items reasonably ordered by the Contractor for the Contractor's Activities and for which it is legally bound to pay provided that:

- (A) the value of the materials and other items have not been previously paid or included in the amount payable under clause 22 (*Payment*); and
 - (B) title in the materials and other items will vest in the Principal upon payment;
- (iv) the reasonable cost of making the Construction Site safe and removing from the Construction Site all Construction Plant, Materials and Temporary Works and other things used in the performance of the Contractor's Activities;
 - (v) the reasonable costs incurred by the Contractor as a result of terminating Subcontracts, excluding any amounts payable by the Contractor to a Related Body Corporate of the Contractor, to the extent that the Related Body Corporate is not engaged on an arm's length basis and on commercial terms;
 - (vi) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal, excluding any amounts payable by the Contractor to a Related Body Corporate of the Contractor, to the extent that the Related Body Corporate is not engaged by the Contractor on an arm's length basis and on commercial terms; and
 - (vii) in the case of a termination pursuant to clause 32.8 (*Termination for convenience*) prior to the Date of Opening Completion, ■■■ of the unpaid balance of the D&C Deed Sum, as that balance stands after payment of the amounts payable under clauses 32.11(b)(i) to 32.11(b)(vi), on account of profit foregone,
- provided that such amounts are properly substantiated by the Contractor to the reasonable satisfaction of the Principal and the Contractor has taken all reasonable steps to Mitigate such amounts, less:
- (viii) any amounts owing by the Contractor to the Principal under the D&C Documents as at the date of termination; and
 - (ix) any amounts paid by the Principal to the Contractor in respect of any Contractor's Activities yet to be completed as certified by the Independent Certifier.
- (c) **(General Gap):** Despite anything to the contrary in any D&C Document, all amounts paid or payable by the Contractor to the Principal under clause 32.11(a) will count towards the General Cap and will not fall within any of the exclusions to the General Cap set out in clause 29.2 (*Exclusions to the General Cap*).
 - (d) **(Mitigation):** The Principal must take all reasonable steps to mitigate any Loss the Principal might suffer or incur, arising out of or in connection with the termination of this deed.
 - (e) **(Maximum monetary compensation):** The amount to which the Contractor is entitled under clause 32.11(b) will be the maximum monetary compensation the Contractor is entitled to arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the Contractor for any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under clause 32.11(b).

32.12 Power of Attorney

- (a) **(Appointment)**: Subject to clause 32.12(b), the Contractor, for the sole purpose of executing any document or doing any other thing reasonably required for the sole purpose of or to give effect to clause 32.4(e) (*Termination by the Principal*), irrevocably appoints the Principal as its attorney as from the date of termination with full power and authority to execute any such document and do any such other thing on behalf of the Contractor.
- (b) **(Limitations)**: The Principal may only exercise a power of attorney granted pursuant to clause 32.12(a) if the Contractor fails to execute the required document or do the required thing within 5 Business Days of being requested in writing to do so by the Principal, provided that the execution of that document or doing of that thing is necessary to enable the Principal to exercise its rights or discharge its obligations under clause 32.4(e) (*Termination by the Principal*).

33. Dispute Avoidance

33.1 Dispute Avoidance Board Formation

- (a) **(Formation)**: The Dispute Avoidance Board is formed by each of the three initial members of the Dispute Avoidance Board, the Principal and the Contractor entering into the DAB Agreement.
- (b) **(DAB Agreement)**: It is intended that the DAB Agreement will be signed by the parties on, or as soon as is reasonably practicable following, the date of this deed.
- (c) **(Nomination)**: The Principal will:
 - (i) decide which of the two persons nominated in the Contractor's Tender as candidates for appointment as Dispute Avoidance Board members will be appointed to the Dispute Avoidance Board; and
 - (ii) nominate a second member in accordance with the criteria set out in Schedule 4 (*Dispute Avoidance Board Agreement*).
- (d) **(Nomination of third member)**: The parties must request the selected nominees to confer to nominate the third member of the Dispute Avoidance Board in accordance with the criteria set out in Schedule 4 (*Dispute Avoidance Board Agreement*), which third member is subject to the approval of the Principal and the Contractor.
- (e) **(Resolution Institute)**: If, within 21 days of the parties' request for the selected nominees to nominate the third member of the Dispute Avoidance Board, the third member has not been nominated and approved in accordance with clause 33.1(d) either party may request the Resolution Institute to select the third member in accordance with the criteria set out in Schedule 4 (*Dispute Avoidance Board Agreement*). This selection will be final and binding.
- (f) **(Functions)**: The role of the Dispute Avoidance Board will be to perform the functions and activities identified in the DAB Agreement (including Attachment 1).
- (g) **(Honest and impartial)**: The parties acknowledge and agree that the Dispute Avoidance Board must act honestly, impartially, without bias and independently of the Contractor and the Principal.

- (h) **(No Claim)**: Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against the Principal.

33.2 Replacement of DAB Member

- (a) **(Nominate)**: If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Principal will nominate a replacement member, who must be approved by the Contractor.
- (b) **(Selection)**: If, within 30 Business Days after a member declines to act or is unable to act on the Dispute Avoidance Board as contemplated by clause 33.2(a), a member has not been replaced by a person selected in accordance with clause 33.2(a), either party may request the Resolution Institute to select a replacement member. This selection will be final and conclusive.
- (c) **(Criteria)**: Any selection made under clause 33.2(a) or 33.2(b) must be made in accordance with the criteria set out in Attachment 3 to Schedule 4 (*Dispute Avoidance Board Agreement*) and the Dispute Avoidance Board re-formed by the continuing and replacement members of the Dispute Avoidance Board, the Principal and the Contractor signing a replacement DAB Agreement in accordance with clause 14.3 (*Replacement*) of the DAB Agreement.

33.3 Termination of DAB

- (a) **(By agreement)**: The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone.
- (b) **(Final completion)**: Subject to clause 33.3(c), unless otherwise agreed by both parties, the appointment of the Dispute Avoidance Board will terminate 1 month after the final payment is made under clause 22.9(e) (*Final Payment*).
- (c) **(Termination of D&C Deed)**: If this deed is terminated, the appointment of the Dispute Avoidance Board will terminate on the same date.

34. Dispute Resolution

34.1 General

Any dispute, difference or Claim arising out of, relating to, or in connection with this deed or the conduct of the parties in relation to this deed (including conduct before the date of this deed), or its subject matter (including any question regarding the existence, validity or termination of this deed) (**Dispute**), must be resolved in accordance with the Dispute Resolution Procedure which is set out in this clause 34.

34.2 Notice of Dispute

Where a Dispute arises, either party may serve a notice in writing on the other party specifying:

- (a) **(Notice)**: that it is a notice of Dispute under this clause 34;
- (b) **(Dispute)**: the Dispute;
- (c) **(Particulars)**: particulars of the Dispute; and

(d) **(Position)**: the position which the party believes is correct,

(Notice of Dispute).

34.3 Senior Negotiation

- (a) **(Meeting)**: If a Notice of Dispute is served, the persons holding the position of senior representative of the Principal (on the one hand) and senior representative of the Contractor (on the other hand) or their nominees (the Representatives) must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (the Negotiation).
- (b) **(Without prejudice)**: Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under the Dispute Resolution Procedure or in any other legal proceeding.
- (c) **(Agreement)**: Any agreement reached at the Negotiation must be in writing and signed by both parties.
- (d) **(Referral)**: If the Dispute is not fully resolved within 20 Business Days after a Notice of Dispute is given under clause 34.2 (*Notice of Dispute*), either party may, by giving notice in writing to the other party and the Dispute Avoidance Board (if applicable) refer the Dispute to arbitration under clause 34.4 (*Arbitration*).

34.4 Arbitration

- (a) **(Procedure)**: If any Dispute is referred to arbitration:
- (i) the seat of the arbitration shall be Sydney, Australia;
 - (ii) the arbitration shall be conducted in accordance with the ACICA Arbitration Rules, as modified by 34.10 (*Modification of the ACICA Arbitration Rules*);
 - (iii) the number of arbitrators shall be agreed or determined in accordance with the ACICA Arbitration Rules;
 - (iv) the language of arbitration shall be English; and
 - (v) the arbitration shall be administered by ACICA.
- (b) **(Appeal)**: The parties agree that an appeal may be made in accordance with section 34A of the *Commercial Arbitration Act 2010* (NSW) on a question of law arising out of any award issued pursuant to this clause 34.4.
- (c) **(Governing law)**: Subject to clause 34.7 (*Limitation periods*), this clause 34.4 is governed by the laws of New South Wales, Australia.

34.5 Exclusion of proportionate liability from determination or award

In respect of any arbitrator appointed in relation to a Dispute, the parties agree that, to the extent permitted by law:

- (a) **(Powers not conferred)**: the powers conferred and restrictions imposed on a court (as that term is defined in the *Civil Liability Act 2002* (NSW)) by the *Civil Liability Act 2002* (NSW) are not conferred or imposed on him or her; and

- (b) **(No power)**: the arbitrator has no power to make any determination or award by applying or considering the provisions of the *Civil Liability Act 2002* (NSW).

34.6 Urgent relief

Nothing in this clause 34 will prejudice any right a party may have to seek urgent interlocutory relief from a court in respect of a Dispute.

34.7 Limitation periods

If a limitation period applicable to a cause of action relating to a Dispute expires during any of the processes set out in clauses 34.2 (*Notice of Dispute*) to 34.6 (*Urgent relief*) (inclusive) each party agrees that:

- (a) **(Extension)**: the limitation period will be deemed to be extended by a period equal to the number of days between the date the Notice of Dispute was served and the date the Negotiation process concludes; and
- (b) **(No reliance)**: it will not rely, in any proceeding, on the expiry of a limitation period other than as calculated in accordance with this clause 34.

34.8 Severance

If at any time any provision of this clause 34 is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) **(Other provisions)**: the legality, validity or enforceability in that jurisdiction of any other provision of this clause 34; or
- (b) **(Other jurisdictions)**: the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this clause 34.

34.9 Continuation of contractual obligations

Despite the existence of a Dispute between the parties to this deed, the parties must continue to comply with and perform their obligations under the D&C Documents.

34.10 Modification of the ACICA Arbitration Rules

Pursuant to sub-Rule 2.1 of the rules of arbitration of the Australian Centre for International Commercial Arbitration (2016 edition), the parties agree to delete Rule 36 in its entirety. All other Rules not referred to remain unchanged.

35. Force Majeure

35.1 Force Majeure Event notice

- (a) **(Prompt notice)**: Without limiting clause 16.5 (*Claim for extension of time*), if either party alleges or wishes to claim that Force Majeure Event has occurred (the **Affected Party**), the Affected Party must promptly give the other party a notice of the Force Majeure Event once it becomes aware of the same and the obligations affected.
- (b) **(Notice details)**: Where the Contractor is the Affected Party, the notice given pursuant to clause 35.1(a) must set out full particulars of all relevant matters including:

- (i) details of the Force Majeure Event;
 - (ii) details of the obligations affected;
 - (iii) details of the action that the Contractor has taken, or action that the Contractor proposes to take, to remedy the situation;
 - (iv) an estimate of the time during which the Contractor will be unable to carry out its obligations due to the Force Majeure Event;
 - (v) an estimate of the costs that the Contractor will incur to remedy the situation; and
 - (vi) details of all insurance moneys upon which the Contractor will be able to rely in making good damage caused by the Force Majeure Event.
- (c) **(Provision of information)**: After giving a notice under clause 35.1(a), the Contractor must continue to provide to the Principal all relevant information pertaining to the Force Majeure Event.

35.2 Meeting

The parties must meet within 3 Business Days of service of a notice of a Force Majeure Event to determine the estimated length of time for which the Force Majeure Event will continue.

35.3 Suspension of obligations

- (a) **(Affected obligations)**: If a Force Majeure Event occurs the obligations of the Affected Party under this deed (other than its obligations and rights under clauses 15.2 (*Date for Opening Completion and Date for Completion*), 16.5 (*Claim for extension of time*) and 16.10 (*Liquidated Damages*) and this clause 35.3 (including its obligations to pay Liquidated Damages) which are affected by the Force Majeure Event will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure Event.
- (b) **(No default)**: If a Force Majeure Event occurs and a notice under clause 35.1(a) (*Force Majeure Event notice*) is issued, no party will be in default of its obligations under this deed in so far as the failure or delay in the observance or performance of those obligations by that party is caused by the Force Majeure Event specified in the notice under clause 35.1(a) (*Force Majeure Event notice*).
- (c) **(Notice)**: The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event.
- (d) **(End of suspension)**: Upon the Affected Party becoming able to recommence performing its obligations which were suspended under clause 35.3(a), the Affected Party must recommence the performance of those obligations.
- (e) **(Alternative arrangements)**: Where the Contractor is the Affected Party, during the period of suspension the Principal:
 - (i) may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the Contractor); and
 - (ii) will not be obliged to provide any financial relief to the Contractor.

- (f) **(Rights and obligations unaffected):** The operation of this clause 35 does not affect any right or obligation on the Contractor to claim and be granted an extension of time in respect of an Excusable Cause of Delay (including a Force Majeure Event) in order to be relieved of its obligation to achieve:
- (i) Opening Completion by the Date for Opening Completion;
 - (ii) Completion by the Date for Completion; and
 - (iii) if Opening Completion is not achieved by the Date for Opening Completion, Opening Completion by no later than the Sunset Date.

35.4 Duty to remedy Force Majeure Event

The Affected Party must remedy and Mitigate the effects of a Force Majeure Event promptly in accordance with clause 27.9 (*Reinstatement*).

36. Expiration

36.1 Design Life

- (a) **(Waiver of rights):** The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act in respect of the design lives of the asset components referred to in section 5.9 of the SWTC where those design lives are for periods longer than those provided for in those Acts.
- (b) **(Indemnity):** If the waiver referred to in clause 36.1(a) is held to be without effect or otherwise unenforceable, or if it is severed from this deed, the Contractor indemnifies the Principal, and agrees to keep the Principal indemnified, at all times from and against all Loss that the Principal may suffer or incur arising out of or in connection with the Principal's loss of the benefit of the waiver.
- (c) **(Term of indemnity):** Subject to clause 27.11(c) (*Procedure for Third Party Claims*), the indemnity in clause 36.1(b) is to continue and remain in full force and effect until the earlier of:
 - (i) the expiration of the relevant design life referred to in section 5.9 of the SWTC; and
 - (ii) 12 years after the last day of the last of the Defects Correction Periods to expire.
- (d) **(Action on indemnity):** The parties agree that any action by the Principal on the indemnity in clause 36.1(b) is not a "civil action for loss or damage arising out of or in connection with defective building work" for the purposes of section 6.20(1) of the EP&A Act.
- (e) **(Other indemnity unaffected):** Nothing in this clause 36.1 limits the operation of any other indemnity in this deed.
- (f) **(No waiver):** Other than as provided for in clause 36.1(a), the Contractor does not waive any rights it may have under the *Limitation Act 1969* (NSW) or section 6.20 of the EP&A Act.
- (g) **(Qualification):** The provisions of this clause 36 (Expiration) are subject to clause 27.11(c) (*Procedure for Third Party Claims*).

37. Representations, Warranties and Covenants

37.1 Representations and warranties by the Contractor

The Contractor makes the following continuing representations and warranties in respect of itself for the benefit of the Principal:

- (a) **(Authorisations)**: it has in full force and effect all authorisations necessary to enter into and perform its obligations under each D&C Document to which it is expressed to be a party;
- (b) **(Power to perform)**: it has power to enter into and perform its obligations under each D&C Document to which it is expressed to be a party, to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;
- (c) **(Valid and enforceable)**: its obligations under each D&C Document to which it is expressed to be a party are valid and binding and are enforceable against it and in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights;
- (d) **(Constitution)**: it subsists and is properly constituted;
- (e) **(No trust)**: it is not a trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(Default)**: it is not in default of its material obligations under any D&C Document;
- (g) **(No violation)**: the execution, delivery and performance of each D&C Document to which it is expressed to be a party and the transactions under each of them do not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (h) **(No immunity)**: it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (i) **(No proceedings)**: no litigation (which has not been disclosed to the Principal in writing prior to the date of this deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any D&C Document to which it is expressed to be a party.

37.2 Representations and warranties by the Principal

The Principal makes the following continuing representations and warranties in respect of itself for the benefit of the Contractor:

- (a) **(Statutory body)**: it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) **(Authorisations)**: it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each D&C Document to which it is expressed to be a party;
- (c) **(Power to perform)**: it is legally entitled and has all statutory power to enter into and perform its obligations under each D&C Document to which it is expressed to be a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of power;
- (d) **(Valid and enforceable)**: its obligations under each D&C Document to which it is expressed to be a party are valid and binding and are enforceable against it in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and
- (e) **(No violation)**: the execution, delivery and performance of each D&C Document to which it is expressed to be a party and the transactions under each of them does not violate any law to which it is subject.

38. Amendments to this Deed

38.1 Permitted amendments

Except in respect of any Change carried out in accordance with clause 13 (*Changes*) or agreed amendments to the SWTC made in accordance with clause 38.2 (*Qualifications to SWTC*), this deed may only be varied by a deed executed by or on behalf of the Principal and the Contractor.

38.2 Qualifications to SWTC

- (a) **(SWTC departures)**: Appendix B.1 of the SWTC set outs agreed variations, departures, exceptions, qualifications, additions and omissions to and from the requirements of the SWTC (**SWTC Departure**).
- (b) **(Update SWTC)**: To the extent a further SWTC Departure is agreed by the parties (including any SWTC Departure which is implemented by a Change Order):
 - (i) the parties must update a copy of Appendix B.1 of the SWTC to document the SWTC Departure; and
 - (ii) the SWTC Departure will take effect on the date that the updated copy of Appendix B.1 of the SWTC is signed by both parties.

39. Assignment and Change in Control

39.1 Entitlement to assign

- (a) **(Contractor's rights)**: Except as expressly permitted by this deed, the Contractor must not sell, transfer, assign, mortgage, charge or otherwise dispose of, deal

with, or encumber its interest in the Motorway Works, the Construction Site, the Project Works or in any of the D&C Documents other than:

- (i) with the prior written consent of the Principal; or
 - (ii) pursuant to a general security arrangement entered into by the Contractor with a financier in the ordinary course of the Contractor's business.
- (b) **(Principal's rights)**: The Principal may sell, transfer, assign, novate or otherwise dispose of its interest in:
- (i) this deed; or
 - (ii) any of its interests, rights and obligations under or in connection with the D&C Documents, the Security Bonds provided under clause 8.1(a) or clause 8.1(b) (*Provision of Security Bonds*), or the Project Works,
- and may do so in its absolute discretion and without consent from the Contractor:
- (iii) to an entity described in paragraph (a) of the definition of Authority; or
 - (iv) to any corporation which is a wholly-owned subsidiary (as that term is defined in section 9 of the Corporations Act) of, or an entity that is wholly owned or controlled by, an entity described in (a) of the definition of Authority (for the purposes of this clause 39.1(b)(iv), if two or more entities described in paragraph (a) of the definition of "Authority" between them wholly-own that corporation, either directly or indirectly, the corporation will be treated as a wholly-owned subsidiary).
- (c) **(Novation deed)**: In the case of a novation, the Contractor must, if requested by the Principal, execute a deed of novation in the form of Schedule 7 (*Form of Deed of Novation*) and do any other thing necessary to give effect to the novation.
- (d) **(Assignment deed)**: In the case of an assignment, the Contractor must, if requested by the Principal, execute a deed of assignment and do any other thing necessary to give full effect to the assignment.
- (e) **(Benefits to novatee or assignee)**: In the case of novation or assignment, the Contractor must do all things necessary to ensure that the novatee or assignee has the benefit of:
- (i) the Project Insurances;
 - (ii) the unconditional undertakings referred to in clause 8.1 (*Provision of Security Bonds*);
 - (iii) the D&C Guarantees; and
 - (iv) the assignment of Intellectual Property Rights at clause 30.1 (*Transferred Contractor IP*) and licence of Intellectual Property Rights at clause 30.2 (*Licensed Contractor IP*).

39.2 Change in Control of the Contractor

- (a) **(Consent required)**: Subject to the terms of this clause 39.2, the Contractor must ensure that there is no Change in Control of the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).

- (b) **(Notice and details):** The Contractor must notify the Principal in writing of any Change in Control of the Contractor, and provide:
- (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 39.2(a), in relation to the Change in Control of the Contractor.
- (c) **(Exceptions to consent):** The Principal's approval is not required for a Change in Control arising from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior notice of the transfer.
- (d) **(Reasonable grounds):** The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Contractor where the Principal is of the reasonable opinion that:
- (i) the person or entity which will exercise Control of the Contractor:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Contractor's Activities; or
 - (ii) as a result of the Change in Control, the Contractor will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the Contractor under the D&C Documents.
- (e) **(Termination):** If a Change in Control of the Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 39.2(c), the Contractor acknowledges that the Principal may terminate this deed by giving a notice to the Contractor.
- (f) **(Obligations unaffected):** The Principal's approval of a Change in Control of the Contractor will not relieve the Contractor of any of its obligations under this deed.

39.3 Change in Control of the Contractor Guarantor

- (a) **(Consent required):** Subject to the terms of this clause 39.3, the Contractor must ensure that there is no Change in Control of the Contractor Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).

- (b) **(Notice and details):** The Contractor must notify the Principal in writing of any Change in Control of the Contractor Guarantor, and provide:
- (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 39.3(a), in relation to the Change in Control of the Contractor Guarantor.
- (c) **(Exceptions to consent):** The Principal's approval is not required for a Change in Control arising from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior notice of the transfer.
- (d) **(Reasonable grounds):** The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Contractor Guarantor where the Principal is of the reasonable opinion that:
- (i) the person or entity which will exercise Control of the Contractor Guarantor:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Contractor's Activities; or
 - (ii) as a result of the Change in Control, the Contractor Guarantor will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the Contractor Guarantor under the relevant D&C Documents.
- (e) **(Termination):** If a Change in Control of the Contractor Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 39.3(c)), the Contractor acknowledges that the Principal may terminate this deed by giving a notice to the Contractor.
- (f) **(Obligations unaffected):** The Principal's approval of a Change in Control of the Contractor Guarantor will not relieve the Contractor of any of its obligations under this deed.

40. Expenses and Stamp Duties

40.1 Expenses

Each party must bear its own costs, including professional costs and disbursements, associated with the preparation and execution of this deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto.

40.2 Stamp duties

The Contractor must pay:

- (a) **(Stamp duty)**: all stamp, registration and similar taxes that are payable, required to be paid or determined to be payable to any relevant NSW Government Authority or determined to be payable **(Stamp Duty)**; and
- (b) **(Interest, fines and penalties)**: interest, fines and penalties payable to, or required to be paid by, or determined to be payable to any appropriate NSW Government Authority in connection with Stamp Duty (except to the extent arising from a breach of Law by the Principal),

assessed in connection with the execution, delivery, performance or enforcement of this deed or any D&C Document.

41. Notification of Claims

41.1 Notice of Change

- (a) **(Notice requirements)**: If the Contractor believes that any Direction of the Principal, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:
 - (i) within 5 Business Days after receiving notice of the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to the Principal 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 25 Business Days after giving the notice under clause 41.1(a)(i) or such longer period as the Principal may direct, submit a written Claim to the Principal which includes detailed particulars of:
 - (A) why the Contractor believes the Direction constitutes or involves a Change;
 - (B) the details specified in clause 13.3(a) (*Contractor Change Notice*);
 - (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 the D&C Documents or other legal basis upon which the Claim is based; and
 - (E) the amount claimed and how it has been calculated, including detailed information supporting the calculation,
- failing which the Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Direction.
- (b) **(Contractor's Activities to continue)**: Despite the fact that the Contractor considers that a Direction by the Principal constitutes or involves a Change, the Contractor must continue to carry out the Contractor's Activities in accordance with the D&C Documents including any work connected with the Direction of the Principal in respect of which notice has been given under clause 41.1(a)(i).
 - (c) **(Effect of notice)**: If the Contractor issues a notice under clause 41.1(a)(i) or a Claim under clause 41.1(a)(ii) the Principal may:
 - (i) confirm that the Direction constitutes or involves a Change, or entitles the Contractor to make a Claim, by the giving of a notice under this clause 41.1(c)(i), in which case the Contractor must comply with the Direction;
 - (ii) deny that the Direction constitutes or involves a Change, or entitles the Contractor to make a Claim, by the giving of a notice under this clause 41.1(c)(ii), in which case the Contractor:
 - (A) may within 8 Business Days after the receipt of the notice issue a notice of dispute under the Dispute Resolution Procedure; and
 - (B) unless otherwise directed by the Principal, 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 41.1(c)(iii).
 - (d) **(No action)**: If within 15 Business Days after first receipt of the Claim under clause 41.1(a)(ii), the Principal has not taken any action under clause 41.1(c), the Principal will be deemed to have given a notice under clause 41.1(c)(ii).

41.2 Notice of Deemed Change Events

- (a) **(Notice and Claim)**: If a Deemed Change Event has occurred, and either the Contractor wishes to make a Claim against the Principal in respect of the Deemed Change Event or the Principal requires the Contractor to make a Claim in respect of the Deemed Change Event, the Contractor must:
 - (i) within 5 Business Days of becoming aware of the Deemed Change Event, submit a written notice to the Principal setting out:
 - (A) that it considers a Deemed Change Event has occurred; and
 - (B) detailed particulars of the Deemed Change Event; and
 - (ii) within 25 Business Days after giving the notice under clause 41.2(a) or such longer period as the Principal may direct, submit a written Claim to the Principal which includes:

- (A) detailed particulars of the Deemed Change Event;
 - (B) detailed particulars of the Change which the Contractor believes is necessary to address the impact of the Deemed Change Event;
 - (C) the information required by clause 13.3(a) (*Contractor Change Notice*) in respect of the proposed Change which must comply with clause 13.3(b) (*Contractor Change Notice*) (but the Claim under this clause 41.2(a) is not a Contractor Change Notice); and
 - (D) any other details reasonably required by the Principal.
- (b) **(Response):** The Principal must, within 15 Business Days of receiving a notice under clause 41.2(a):
- (i) notify the Contractor that it requires further information with respect to the Contractor's notice under clause 41.2(a), in which case the Contractor must provide such further information within 10 Business Days of receiving the Principal's notice and this clause 41.2(b) will re-apply from the date the Principal receives the further information;
 - (ii) confirm that there has been a Deemed Change Event, in which case the Principal must direct a Change by issuing a Change Order under clause 13.6(a) (*Change Orders at the Principal's Election*) to address the impact of the Deemed Change Event;
 - (iii) notify the Contractor that it wishes to negotiate any element of the Contractor's notice under clause 41.2(a), in which case:
 - (A) the parties must meet within 5 Business Days to commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters which are not agreed; and
 - (B) if the parties are unable to agree within 15 Business Days of the Contractor's notice under clause 41.2(a), either party may issue a Notice of Dispute under clause 34.2 (*Notice of Dispute*); or
 - (iv) notify the Contractor that it believes that the event the subject of the Contractor's notice is not a Deemed Change Event, in which case the Contractor may within 8 Business Days after receiving the Principal's notice issue a Notice of Dispute under clause 34.2 (*Notice of Dispute*).
- (c) **(No response):** If the Principal does not give a notice under clause 41.2(b) within the time required by that clause, the Principal will be deemed to have given a notice under clause 41.2(b)(ii).
- (d) **(Change mitigation and directions):** The Contractor must:
- (i) take all reasonable steps to Mitigate the costs, delay, and other adverse impacts resulting from a Deemed Change Event;
 - (ii) for this purpose, comply with all reasonable directions of the Principal concerning the Deemed Change Event, and its consequences; and
 - (iii) ensure that its Subcontractors comply with this clause 41.2(d),

and the Principal's liability in respect of the Deemed Change Event will be reduced to the extent that the Contractor fails to comply with this clause 41.2(d).

41.3 Notice of other Claims

If the Contractor wishes to make a Claim against the Principal in respect of any Direction of the Principal or other event, circumstance, act, omission, fact, matter or thing (including a breach of the D&C Documents by the Principal) under, arising out of, or in any way in connection with, the D&C Documents or the Contractor's Activities, including anything in respect of which:

- (a) **(Express entitlement)**: the Contractor is otherwise given an express entitlement under the D&C Documents; or
- (b) **(Express payment)**: the D&C Documents expressly provide that an amount is to be paid to the Contractor,

the Contractor must give the Principal the notice required by clause 41.4(a) (*Prescribed notices*) and a Claim in accordance with clause 41.4(b) (*Prescribed notices*).

41.4 Prescribed notices

- (a) **(Notice requirements)**: Subject to clause 41.4(c), any notice referred to in clause 41.3 (*Notice of other Claims*) must:
 - (i) be provided not later than 10 Business Days after the later of:
 - (A) the first occurrence of; or
 - (B) when the Contractor 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 the Contractor 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) **(Claim requirements)**: Subject to clause 41.4(c), any written Claim referred to in clause 41.3 (*Notice of other Claims*) must:
 - (i) subject to clause 41.4(d), be provided not later than 15 Business Days after giving the notice under clause 41.4(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 the D&C Documents or otherwise, and if based on a term of the D&C Documents, 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, including detailed information supporting the calculation.
- (c) **(Notice or Claim requirements)**: Where this deed:
- (i) expressly requires the 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 Contractor; and
 - (iii) expressly states what the notice or Claim must include,
- for the purposes of clause 41.3 (*Notice of other Claims*), the Contractor must give the notice or Claim in accordance with those requirements.
- (d) **(Extension of time)**: The Principal may at its sole discretion extend the period in which the Contractor must provide its written Claim under clause 41.4(b).

41.5 Continuing events

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim referred to in clause 41.3 (*Notice of other Claims*) is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the Contractor must continue to give the information required by clause 41.4(b) (*Prescribed notices*) every 30 Business Days after the written Claim under clause 41.4(b) (*Prescribed notices*) 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.

41.6 Bar

If the Contractor fails to comply with clauses 12.3 (*Change in Codes and Standards*), 13 (*Changes*), 16.5 (*Claim for extension of time*), 16.8 (*Compensation Events*), 26.2 (*Change in Law*), 32.6 (*Termination by the Contractor*), 35.1 (*Force Majeure Event notice*) or this clause 41 (*Notification of Claims*):

- (a) **(No liability)**: the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor; and
- (b) **(Bar on Claim)**: the Contractor will be barred from making any Claim against the Principal,

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.

41.7 Other provisions unaffected

Nothing in clauses 41.1 (*Notice of Change*) to 41.6 (*Bar*) will limit the operation or effect of any other provision of this deed or any other D&C Document which requires the Contractor to give notice to the Principal in order to preserve an entitlement to make a Claim against the Principal.

42. NSW Code of Practice

42.1 NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 42 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.

42.2 Primary obligations

- (a) **(Industrial relations)**: The Contractor must, in carrying out the Contractor's Activities:
 - (i) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
 - (ii) keep the Principal fully and properly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
 - (iii) comply with the Construction Management Plan.
- (b) **(Compliance)**: The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (c) **(Non-compliance)**: The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 20 hours of becoming aware of the possible non-compliance.
- (d) **(Subcontractor obligations)**: Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 42, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (e) **(Other party sanctions)**: The Contractor must not appoint or engage another party in relation to the Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

42.3 Access and information

- (a) **(Compliance records)**: The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) **(Allow compliance monitoring and investigation)**: The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including the Construction 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 Contractor's Activities;
- (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 the Contractor, its Subcontractors and related entities.

- (c) **(Document production)**: The Contractor 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.

42.4 Sanctions

- (a) **(Warranty)**: The Contractor 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) **(Imposing sanctions)**: If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) **(Effect of sanction)**: 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 the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

42.5 Compliance

- (a) **(Costs and liability)**: The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make, and neither the Principal nor the State of NSW will be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the Contractor's compliance with the NSW Code and the NSW Guidelines.
- (b) **(No relief from liability)**: Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities or any other obligation under the D&C Documents, 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) **(Notice)**: Where a change to this 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, the Contractor must immediately notify the Principal (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 the Contractor proposes to take to Mitigate any adverse impact of the change (including any amendments it proposes to the Workplace Relations Management Plan or a "Work Health and Safety Management Plan").

The Principal will direct the Contractor as to the course it must adopt within 15 Business Days of receiving a notice.

42.6 Workplace Relations Management Plan

The Contractor must:

- (a) **(Preparation)**: prepare a workplace relations management plan which addresses the requirements of this deed, including the matters set out in section 6 of the NSW Guidelines; and
- (b) **(Compliance)**: comply with the Workplace Relations Management Plan.

43. Principal's Requirements

43.1 Principal business ethics

The parties must comply with the 'RMS Statement of Business Ethics' available at <http://www.rms.nsw.gov.au>.

43.2 National Construction Code

Where any part of the Contractor's Activities meets one or more of the classifications of buildings described in the National Construction Code, the Contractor must comply with the National Construction Code performance requirements in relation to materials whilst carrying out the Contractor's Activities to which the National Construction Code applies.

44. Notices

44.1 How to give a notice

A notice or consent required, permitted or given under a provision of this deed (**Notice**):

- (a) **(Requirements)**: given before the date referred to in clause 44.2(a)(ii) (*PDCS*) is only effective if it is:
 - (i) in writing;
 - (ii) addressed to the person to whom it is to be given; and

- (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (B) subject to clause 44.1(c), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address;
- (b) **(Effectiveness)**: given on and from the date referred to in clause 44.2(a)(ii) (PDCS) is only effective if it is:
 - (i) subject to clause 44.1(c), sent through the PDCS in accordance with the requirements set out in clause 44.7 (*Communications by the PDCS*);
 - (ii) in writing;
 - (iii) addressed to the person to whom it is to be given; and
 - (iv) in circumstances where the PDCS is temporarily disabled or not operating, issued in accordance with clause 44.1(c); and
- (c) **(Address)**: in the case of Notices which have been sent in accordance with clauses 44.1(a)(iii)(B) or 44.1(b) (*How to give a notice*) under clauses, 4 (*Conditions Precedent*), 5.6 (*Environmental assessment*), 8.4 (*Replacement of Security Bonds*), 10.2 (*Artefacts*), 10.3 (*Native Title Claim*), 12.3 (*Change in Codes and Standards*), 13 (*Changes*), 16.3 (*Look forward notice*) 16.5 (*Claim for extension of time*), 16.8 (*Compensation Events*), 26.1 (*No Claim unless Change in Law*), 26.2 (*Change in Law*), 27 (*Loss or Damage and Insurance*), 32 (*Default and Termination*), 33 (*Dispute Avoidance*), 34 (*Dispute Resolution*), 35 (*Force Majeure*), 38 (*Amendments to this Deed*), 39.2 (*Change in Control of the Contractor*) or 39.3 (*Change in Control of the Contractor Guarantor*), in addition to the Notice sent pursuant to clauses 44.1(a)(iii)(B) or 44.1(b), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 44.1(a)(iii)(A) or clause 44.1(a)(iii)(B).

44.2 PDCS

- (a) **(Notice)**: At any time and from time to time the Principal may notify the Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Contractor to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (b) **(Requirements)**: The Contractor must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;

- (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by the Principal;
 - (iv) advise the Principal of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 44.1(b)(iv) (*How to give a notice*) to the Principal through the PDCS.
- (c) **(No liability)**: The Principal has no liability for any losses the Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Contractor's access to or use of the PDCS or any failure of the PDCS.

44.3 Effectiveness of notices

- (a) **(Delivery)**: A Notice referred to in clause 44.1 (*How to give a notice*) will not be effective unless it is delivered in accordance with clause 44.1(a)(iii)(A) or clause 44.1(a)(iii)(B) (*How to give a notice*).
- (b) **(Identical Notices)**: A Notice issued pursuant to clause 44.1(a)(iii)(A) (*How to give a notice*) and a Notice issued pursuant to clause 44.1(a)(iii)(B) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

44.4 When a notice is given

A Notice that complies with this clause 44 is regarded as given and received:

- (a) **(Delivery)**: if it is delivered:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) **(Mail)**: if it is sent by mail:
 - (i) within Australia – 2 Business Days after posting; or
 - (ii) to or from a place outside Australia – 5 Business Days after posting;
- (c) **(Email)**: subject to clause 44.4(e), if it is sent by email on the first to occur of:

- (i) receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;
- (ii) the time that the communication enters an information system which is under the control of the addressee; or
- (iii) the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made on a day that is not a Business Day, or after 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent, in which case that communication is taken to be received at 9:00am on the following Business Day.

- (d) (**PDCS**): subject to clause 44.4(e), if it is sent through the PDCS, at the time recorded on the PDCS as being the time at which the Notice was sent, unless that delivery is made on a non-Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
- (e) (**Deemed receipt**): where clause 44.4(c) applies, the relevant Notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 44.4(c); and
 - (ii) the date determined in accordance with clause 44.4(a) or 44.4(b) (as the case may be).

44.5 Address for notices

A person's address and email address are those set out in Item 51 or 52 of the Contract Particulars, or as the person notifies the sender.

44.6 Communications by email

With respect to communications sent by email:

- (a) (**Text**): only the letter in .pdf format attached to the email and, subject to clause 44.6(b), and any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 44. Any text in the body of the email or the subject line will not form part of the communication;
- (b) (**Attachment format**): an attachment to an email referred to in clause 44.6(a) will only form part of a communication under this clause 44 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) (**System setup**): the parties agree, with respect to any communications under or in connection with this deed:
 - (i) to ensure that their respective firewall or mail server or both (as applicable):
 - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received; and

- (B) automatically sends a receipt notification to the sender upon receipt of a message; and
- (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

44.7 Communications by the PDCS

With respect to Notices sent through the PDCS:

- (a) **(Text)**: only the text in any Notice or, subject to clause 44.7(b), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
- (b) **(Attachment format)**: an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (i) .pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

45. General

45.1 Governing Law and jurisdiction

- (a) **(New South Wales)**: This deed is governed by and must be construed according to the Law applying in New South Wales.
- (b) **(Submits and waives)**: Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 45.1(b)(i).

45.2 Cost

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

45.3 Taxes

Subject to clauses 25.1 (*Rates and Taxes*) and 40.2 (*Stamp duties*) and without limiting clause 5.1 (*Compliance with Law*), the Contractor must pay all Taxes which may be payable in respect of the Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

45.4 Indemnities

Subject to clause 27.11(c) (*Procedure for Third Party Claims*):

- (a) **(Continuing obligation)**: 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) **(Costs)**: it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed;
- (c) **(Pay on demand)**: a party must pay on demand any amount it must pay under an indemnity in this deed; and
- (d) **(Mitigation)**: each party must take reasonable steps to mitigate any Loss suffered by it which is the subject of an indemnity given in its favour.

45.5 Indemnities held on trust

The Principal holds on trust for each of its Related Parties each right in any D&C Document to the extent that such right is expressly stated to be for the benefit of its Related Parties.

45.6 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

45.7 Non reliance

Without limiting clauses 2.3 (*Information Documents*) and 10.1 (*Physical conditions*), the Contractor:

- (a) **(No reliance)**: warrants that it did not in any way rely upon any information, representation, statement or documentation (other than this deed) made by or provided to the Contractor by the Principal, or anyone on behalf of the Principal for the purposes of entering into this deed;
- (b) **(Entry into this deed)**: warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) **(Principal's reliance on warranties)**: acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 45.7(a) and 45.7(b).

45.8 Entire agreement

To the extent permitted by Law, this deed and the other D&C Documents:

- (a) **(Entire terms)**: embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and
- (b) **(Supersedes prior agreements)**: supersede any prior written or other agreement of the parties,

in relation to the subject matter of this deed and the other D&C Documents.

45.9 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

45.10 Unlimited discretion

- (a) **(No limitation)**: Except as expressly otherwise provided in this deed (including in clause 45.10(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal may exercise any discretion, power or entitlement conferred by this deed.
- (b) **(Details of discretions)**: Without limiting clause 45.10(a):
- (i) except as expressly provided in this deed (including in clause 45.10(c)) the Principal will not be:
 - (A) constrained in the manner in which it exercises; or
 - (B) under any obligation to exercise,

any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;
 - (ii) any approval, waiver or consent referred to in, or required under, this deed from the Principal may be given or withheld, or may be given subject to any conditions, as the Principal (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;
 - (iii) a Direction (including an absolute or sole discretion) or power of the Principal is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal whether it is exercised or made:
 - (A) independently;
 - (B) after consultation with the Principal and its advisers; or
 - (C) as directed by the Principal;
 - (iv) any control or influence exercised by the Principal over the Principal's Representative does not:
 - (A) affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or
 - (B) entitle the Contractor to make any Claim against the Principal's Representative, the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and
 - (v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal "may" do or not do something is not

to be construed as imposing an obligation on the Principal to do or not do that thing.

- (c) **(Implied terms)**: Nothing in this clause 45.10 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

45.11 Joint and several liability

- (a) **(Obligations of Contractor)**: The obligations of the Contractor, if more than one person, 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 and the Principal may proceed against any one or all of them.
- (b) **(Rights of Contractor)**: The rights of the Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the Contractor (and not severally or jointly and severally).
- (c) **(Payment by Principal)**: Any payment by the Principal under this deed to any account nominated in writing by the Contractor, or failing such nomination, to any one or more persons constituting the Contractor, will be deemed to be payment to all persons constituting the Contractor.
- (d) **(Rights to be exercised concurrently)**: The Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the Contractor.

45.12 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed or any other D&C Document to which the Principal or the Contractor are expressed to be parties will be construed or interpreted as:

- (a) (Conferral): conferring a right in favour of either the Principal or the Contractor to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or
- (b) (Creation): creating a partnership, joint venture or fiduciary relationship between the Principal and the Contractor.

45.13 Waiver

- (a) **(Failure or delay)**: Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by any party to this deed will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.
- (b) **(Effectiveness)**: Any waiver or consent given by a party under this deed will only be effective and binding on the other party if it is given or confirmed in writing by that party.
- (c) **(Other breaches unaffected)**: No waiver by a party of:

- (i) a breach of any term of this deed; or
- (ii) any other failure by the other party to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim,

will operate as a waiver of:

- (iii) another breach of that term or of a breach of any other term of this deed; or
- (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

45.14 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party or parties to give effect to this deed.

45.15 Provisions limiting or excluding liability

Any provision of this deed which seeks to limit or exclude a liability of the Principal or the Contractor, is to be construed as doing so only to the extent permitted by Law.

45.16 Survival of certain provisions

Without limiting clause 45.4(a) (*Indemnities*):

- (a) **(Provisions)**: any provisions of this deed which are expressed to or by implication from its nature is intended to survive termination including clauses 16.10 (*Liquidated Damages*), 22.2(e) (*Initial Payment*), 27.2 (*Certain third party claims*), 27.11 (*Procedure for Third Party Claims*), 28.3 (*Consequential Loss*), 29 (*Cap on Liability*), 30.1 (*Transferred Contractor IP*), 30.2 (*Licensed Contractor IP*), 30.3 (*Warranty and indemnity – Moral Rights*), 30.4 (*Warranty and indemnity – Intellectual Property Rights*), 31 (*Confidentiality, Publicity and Privacy*), 32.11 (*Termination payments*), 33 (*Dispute Avoidance*), 34 (*Dispute Resolution*) and 45.4 (*Indemnities*) (together the **Surviving Clauses**) will survive rescission, novation, termination or expiration of this deed;
- (b) **(Liability)**: if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this deed occurring before such rescission or termination;
- (c) **(Merger and survival)**: no right or obligation of any party will merge on completion of any transaction under this deed, and all rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed; and
- (d) **(Other provisions unaffected)**: no provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

45.17 PPS Act

The Contractor acknowledges and agrees that:

- (a) **(Perfect and secure)**: if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with the D&C Documents or any transaction contemplated by the D&C Documents, the Principal may at the Contractor's expense take all steps that the Principal considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest ("relevant personal property"); and
 - (ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;
- (b) **(Assistance)**: it will do all things reasonably necessary to assist the Principal to take the steps described in clause 45.17(a);
- (c) **(Waiver)**: it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;
- (d) **(Excluded provisions from PPS Act)**: if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the Contractor and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) **(No disclosure)**: subject to section 275(7) of the PPS Act, it will not disclose the contents of the D&C Documents, the amount or performance obligation secured by the Principal's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
- (f) **(Immediate notice)**: it must immediately notify the Principal if the Contractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and
- (g) **(Registrations affecting priority)**: it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property which is granted in favour of, or is granted or permitted by, the Contractor or its Related Parties.

For the purposes of this clause 45.17, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPS Act.

45.18 Exclusion of proportionate liability scheme

To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or Liabilities of any party under this deed whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and Liabilities of the parties under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

45.19 Contractor not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) **(Restrictions)**: the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
- (b) **(Indemnity)**: if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor indemnifies the Principal against any Loss which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

45.20 Proportionate liability scheme - Subcontracts

Without limiting clause 7.2(f) (*Subcontracts*), the Contractor must:

- (a) **(Subcontract exclusions)**: in each Subcontract into which it enters for the carrying out of the Contractor's Activities, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each Subcontract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise;
- (b) **(Further Subcontracts)**: require each Subcontractor:
 - (i) to include, in any further contract that it enters into with a third party for the carrying out of design activities in connection with the Contractor's Activities; and
 - (ii) to use reasonable endeavours to include, in any further contract (other than those referred to in clause 45.20(b)(i)) that it enters into with a third party for the carrying out of the Contractor's Activities,

a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise.

45.21 Moratorium legislation

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

45.22 Interest

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

- (a) **(Obligation)**: payable from the due date until payment is made by the first mentioned party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged;
- (b) **(Calculation)**: calculated on daily balances at the rate set out in Item 15 of the Contract Particulars; and
- (c) **(Capitalisation)**: capitalised monthly.

45.23 Approvals not to affect obligations

The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature hereunder by the Principal will not, except where this deed expressly provides to the contrary, relieve the Contractor from its obligations under this deed.

Executed as a deed

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

Signature of witness

Signature of delegate]

Full name of witness

Name of delegate

Signed, sealed and delivered for **CPB Contractors Pty Limited (ABN 98 000 893 667)** under Power of Attorney dated

Attorney

Attorney

Name of attorney

Name of attorney

in the presence of

Witness

Witness

Name of witness

Name of witness

Signed, sealed and delivered by
Ghella Pty Ltd (ABN 85 142 392 461)
in accordance with section 127 of the
Corporations Act 2001 (Cth)

Director

Director/Secretary

Name of director

Name of director/secretary

Signed, sealed and delivered by **UGL Engineering Pty Limited (ABN 96 096 365 972)** in accordance with section 127 of the Corporations Act 2001 (Cth)

Director

Director/Secretary

Name of director

Name of director/secretary



M6 Stage 1 Design and Construction Deed Schedules

PART A
GENERAL

Item	Reference	Detail
Date		
3	D&C Deed Sum	cl 1.1 \$2,520,000,000 (excluding GST).
4	Permanent Power Supply Target Cost	cl 1.1 [REDACTED] (excluding GST).
5	Minimum Aboriginal Participation Spend	cl 1.1 1.5% of the D&C Deed Sum, less allowable exclusions, in line with the NSW Government Policy on Aboriginal Participation in Construction goals. Allowable exclusions are costs incurred by the Contractor over which it has little or no control, for example: <ol style="list-style-type: none"> 1. specialised capital equipment (e.g. tunnel exhaust fans, tunnel boring machines, batch plants); or 2. imported materials, <p>where no suitable Australian supplier exists in the market, and</p> <ol style="list-style-type: none"> 3. value of existing and new non-Project specific assets apportioned to the Project, where they are used in the Contractor's Activities; 4. property i.e. acquisitions, indirect leasing costs, extra land, adjustments; and 5. non-construction related services; <p>in each case, as determined by the Principal (acting reasonably) in consultation with the Contractor.</p>
6	Amount payable for compliance	cl 22.7 [REDACTED] (excluding GST).
7	D&C Margin	cl 1.1 Where the calculation of payment for a Change under clause 13.9 (<i>Payment for Changes</i>) results in a net Direct Cost: [REDACTED] Where the calculation of payment for a Change under clause 13.9 (<i>Payment for Changes</i>) results in a net Direct Saving: [REDACTED]
8	Permanent Power Supply Margin	cl 1.1 [REDACTED]
9	Permanent Power Supply Overrun Margin	cl 1.1 [REDACTED]

Item	Reference	Detail	
10	Permanent Power Supply Savings Percentage	cl 1.1	[REDACTED]
11	[REDACTED]	cl 1.1	[REDACTED] [REDACTED]
12	[REDACTED]	cl 1.1	[REDACTED]
13	Not used		
14	[REDACTED]	[REDACTED]	[REDACTED]
15	Default interest rates	cl 45.22	BBSY + 2% per annum.
16	Warranty Life	cl 1.1	35 years.
17	Not used		
18	[REDACTED]	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]	[REDACTED]
20	[REDACTED]	[REDACTED]	[REDACTED]
21	Liquidated Damages rate	cl 16.10	For late Opening Completion: [REDACTED] per day. For late Completion: [REDACTED] per day.
22	Delay cost caps	cl 16.8(d)	Phase: Enabling phase Start: D&C Close Finish: CEMP approval Contractor's Delay Cost Cap (upper limit): [REDACTED] per day Phase: Construction phase Start: CEMP approval Finish: Commencement of integrated commissioning work

Item	Reference	Detail																
		<p>Contractor's Delay Cost Cap (upper limit): [REDACTED] per day</p> <p>Phase: Commissioning and complete phase Start: Commencement of integrated commissioning work Finish: Opening Completion Contractor's Delay Cost Cap (upper limit): [REDACTED] per day</p> <p>Phase: Post Opening Completion Phase Start: Opening Completion Finish: Completion Contractor's Delay Cost Cap (upper limit): [REDACTED] per day</p>																
23	Principal Contractor	cl 1.1 CPB Contractors Pty Limited (ABN 98 000 893 667)..																
24	Independent Certifier	cl 1.1 SMEC Australia Pty Limited (ABN 47 065 475 149).																
25	Environmental Representative	cl 1.1 Wolfpeak Pty Ltd (ABN 52 152 940 586).																
26	Acoustics Adviser	cl 1.1 Resonate Consultants Pty Ltd (ABN 86 152 097 955).																
27	Quality Manager	cl 1.1 [REDACTED]																
28	Significant Subcontracts	<p>cl 1.1 The IOMCS and OMCS Subcontract.</p> <p>The Tolling Equipment Subcontract.</p> <p>Any Subcontract which has a contract value of greater than [REDACTED] (excluding GST).</p>																
29	Key Personnel	cl 1.1, 7.18																
		<table border="1"> <thead> <tr> <th>Position</th> <th>Name</th> </tr> </thead> <tbody> <tr> <td>Contractor's Representative and Project Director</td> <td>[REDACTED]</td> </tr> <tr> <td>Commercial Director</td> <td>[REDACTED]</td> </tr> <tr> <td>Design Director/ Engineering Director/ Technical Director</td> <td>[REDACTED]</td> </tr> <tr> <td>Design Manager</td> <td>[REDACTED]</td> </tr> <tr> <td>Mechanical and Electrical Systems Design Manager</td> <td>[REDACTED]</td> </tr> <tr> <td>Surface Construction Manager</td> <td>[REDACTED]</td> </tr> <tr> <td>Tunnelling Construction Manager</td> <td>[REDACTED]</td> </tr> </tbody> </table>	Position	Name	Contractor's Representative and Project Director	[REDACTED]	Commercial Director	[REDACTED]	Design Director/ Engineering Director/ Technical Director	[REDACTED]	Design Manager	[REDACTED]	Mechanical and Electrical Systems Design Manager	[REDACTED]	Surface Construction Manager	[REDACTED]	Tunnelling Construction Manager	[REDACTED]
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Environmental Manager	[REDACTED]																			
Quality Manager	[REDACTED]																			
30	Existing Operators	cl 1.1																		
		<ol style="list-style-type: none"> 1. Sydney Trains (ABN 38 284 779 682). 2. Ausgrid (ABN 67 505 337 385). 3. Telstra Corporation Limited (ABN 33 051 775 556). 4. Sydney Water Corporation (ABN 49 776 225 038). 5. Jemena Gas Networks (NSW) Ltd (ABN 87 003 004 322). 6. TransGrid (ABN 19 622 755 774). 7. Transport Asset Holding Entity of NSW (ABN 59 325 778 353). 8. APA Group (ABN 99 091 344 704). 9. Without limiting paragraph 3, any owner, operator or controller of any telecommunication infrastructure on or in the vicinity of the Construction Site which includes: <ol style="list-style-type: none"> (a) Vocus Group (ABN 96 084 115 499); (b) TPG Telecom (ABN 76 096 304 620); (c) AARNet ABN (54 084 540 518); (d) Optus Networks (ABN 92 008 570 330); and 																		

Item	Reference	Detail
		(e) NBN Co (ABN 86 136 533 741).
		10. Any owner or operator of any business premises on or in the vicinity of the Construction Site, and any local government council impacted by the Construction Site, which includes:
		(a) Bayside Council (ABN 80 690 785 443);
		(b) Canterbury-Bankstown Council (ABN 45 985 891 846);
		(c) Office of Environment and Heritage (ABN 30 841 387 271);
		(d) Department of Planning Industry and Environment (ABN 20 770 707 468);
		(e) TAFE NSW (ABN 89 755 348 137);
		(f) Department of Education (ABN 69 769 481 770);
		(g) St George Public Hospital (ABN 47 858 633 786);
		(h) St George Private Hospital (ABN 36 529 022 683);
		(i) Kogarah Golf Course (ABN 30 000 020 468);
		(j) Bardwell Valley Golf Course (ABN 67 002 559 266);
		(k) the occupier of the land known as 'Kirby Estate'; and
		(l) Kogarah Army Barracks – Department of Defence (ABN 78 137 255 334).
31	Interfaces requiring Interface Protocol	cl 24.1 The O&M Contractors. The WestConnex Concessionaires. The WestConnex D&C Contractors. The WestConnex O&M Contractors. Any Future M6 Stage Contractor.
32	Defects Correction Period for Motorway	cl 18.6 Initial Defects Correction Period: 24 months. Further Defects Correction Period: 12 months.

Item	Reference	Detail
		Works Aggregate Defects Correction Period: 36 months.
33	Defects Correction Period for Local Area Works cl 18.7	Initial Defects Correction Period: 12 months. Further Defects Correction Period: 12 months. Aggregate Defects Correction Period: 24 months.
34	Defects Correction Period for Utility Service Works cl 18.8	Initial Defects Correction Period: 12 months. Further Defects Correction Period: 12 months. Aggregate Defects Correction Period: 24 months.
35	Defects Correction Period for Property Works cl 18.9	Initial Defects Correction Period: 12 months. Further Defects Correction Period: 12 months. Aggregate Defects Correction Period: 24 months.
36	Defects Correction Period for D&C Phase Maintenance cl 18.10	Initial Defects Correction Period: 12 months. Further Defects Correction Period: 12 months. Aggregate Defects Correction Period: 24 months.
37	Landscaping Maintenance Period cl 1.1	12 months.
38	General Cap cl 1.1	██████ of the D&C Deed Sum.
39	Liquidated Damages Cap cl 1.1	██████ of the D&C Deed Sum.
40	Security Bond cl 1.1	Security Bond 1: An unconditional undertaking for ██████ Security Bond 2: An unconditional undertaking for ██████ Security Bond 3: An unconditional undertaking for \$ ██████ Security Bond 4: An unconditional undertaking for ██████ or an amount as replaced in accordance with clause 8.6 (<i>Replacement on expiry of initial Defects Correction Period</i>).
41	Release of Security Bonds cl 8.2	Security Bond 1: Within 25 Business Days after the Date of Opening Completion Security Bond 2: Within 25 Business Days after the Date of Completion. Security Bond 3: On or before the later of: 1. 25 Business Days after the expiry of the initial Defects Correction Period in respect of the

Item	Reference	Detail	
		<p>Motorway Works; and</p> <p>2. if the Contractor is required to provide a replacement Security Bond 4 under clause 8.6 (<i>Replacement on expiry of initial Defects Correction Period</i>), receipt by the Principal of the replacement Security Bond 4.</p> <p>Security Bond 4: Within 25 Business Days after the later of:</p> <p>1. the date on which the last Defect or Defects the subject of a direction by the Principal under clause 18.2(a) (<i>Principal's Direction</i>) have been rectified in accordance with this deed;</p> <p>2. the date on which the last of the Disputes in respect of a Defect or Defects the subject of a direction by the Principal under clause 18.2(a) (<i>Principal's Direction</i>) is resolved by agreement between the parties or determined in accordance with the Dispute Resolution Procedure; and</p> <p>3. the date on which all further Defects Correction Periods (including further Defects Correction Periods) under clause 18 (<i>Defects Correction Periods</i>) have expired.</p>	
42	Contractor Guarantors	cl 1.1	<p>CIMIC Group Limited (ABN 57 004 482 982).</p> <p>Ghella S.p.A a company Incorporated as a "società per azioni" with its registered office in Via Pietro Borsieri, 2/A, 00195, Rome Italy under registration number 00462220583.</p>
43	Legal opinions	cl 4.4	<p>Legal opinions:</p> <p>1. in a form satisfactory to the Principal;</p> <p>2. on which the Principal is entitled to rely; and</p> <p>3. given by a qualified legal practitioner satisfactory to the Principal,</p> <p>confirming that the execution by each of:</p> <p>4. CPB Contractors Pty Limited (ABN 98 000 893 667);</p> <p>5. Ghella Pty Ltd (ABN 85 142 392 461);</p> <p>6. UGL Engineering Pty Limited (ABN 96 096 365 972);</p> <p>7. CIMIC Group Limited (ABN 57 004 482 982); and</p> <p>8. Ghella S.p.A (registration number 00462220583), Via Pietro Borsieri, 2/A, 00195, Rome, Italy,</p>

Item	Reference	Detail
		of each D&C Document (other than the Significant Subcontracts (excluding the IOMCS and OMCS Subcontract and the Tolling Equipment Subcontract), the Moral Rights Consent and the Escrow Agreement) to which they are a party, is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.
44	Escrow Term	cl 1.1
		The date which is 10 years after the Date of Opening Completion.
45	Escrow Materials	cl 1.1
		In relation to IOMCS and OMCS Subcontractor, the Software and supporting material listed in Attachment 1, to the extent it forms part of or is required to operate the OMCS.
		In relation to Tolling Equipment Subcontractor, the Kapsch MLFF G3 Baseline 1.36.4.0 (or later as finally deployed in the Project Works).
		Any other Software which forms part of the Motorway and is required to operate or maintain the Motorway, excluding the Included Open Source Software.
46	Included Open Source Software	cl 30.8
		As listed in Attachment 2.
47	Tender	cl 1.1
		Technical submission dated 23 September 2020 and commercial submission dated 21 October 2020, in each case as updated or clarified in further submissions during the procurement process.
48	Request for Tender	cl 1.1
		Request for Tender (Main Body) dated May 2020, including:
		<ol style="list-style-type: none"> <li data-bbox="687 1426 1382 1482">1. Attachment A (Interactive Tendering Process Guidance); <li data-bbox="687 1500 1382 1534">2. Attachment B (Returnable Schedules); <li data-bbox="687 1552 1382 1816">3. Attachment C (D&C Deed), including: <ol style="list-style-type: none"> <li data-bbox="783 1601 1382 1657">(a) Attachment C.1 (D&C Deed General Conditions); <li data-bbox="783 1675 1382 1731">(b) Attachment C.2 (D&C Deed Schedules); and <li data-bbox="783 1749 1382 1816">(c) Attachment C.3 (D&C Deed Exhibits); and
		4. Attachment D (Interim Submissions), and any other documents made available to the Contractor on 20 May 2020 as updated by:

Item	Reference	Detail
		5. Addendum 1 dated 5 June 2020;
		6. Addendum 2 dated 19 June 2020;
		7. Addendum 3 dated 6 July 2020;
		8. Addendum 4 dated 17 July 2020;
		9. Addendum 5 dated 31 July 2020;
		10. Addendum 6 dated 14 August 2020;
		11. Addendum 7 dated 31 August 2020;
		12. Addendum 8 dated 17 September 2020;
		13. Addendum 9 dated 8 October 2020;
		14. Addendum 10 dated 16 November 2020; and
		15. Addendum 11 dated 4 December 2020.
49	Contractor's Representative cl 1.1	[REDACTED]
50	Principal's Representative cl 1.1	[REDACTED]
51	Contractor's address for notices cl 44.5	Name: CPB Contractors Ghella UGL Joint Venture Address: Level 18, 177 Pacific Highway, North Sydney, NSW 2060 Email address: [REDACTED] Attention: [REDACTED]
52	Principal's address for notices cl 44.5	Name: Transport for NSW Address: 20-44 Ennis Road, Milsons Point, New South Wales, 2061 Email address: [REDACTED] Attention: Executive Director Commercial Services

ATTACHMENT 2

Included Open Source Software

