

Annexure A

Design, Construction, Completion and Commissioning of the M2 Upgrade



Annexure A: Design, construction and commissioning of the M2 Upgrade

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1. Definitions and interpretation

1.1 Definitions

In this Annexure A:

2009 RTA Charge means the deed entitled "Deed of Charge" dated 1 May 2009 between the Company, the Trustee and the RTA as amended by the Deed of Amendment (RTA Charge) and as otherwise amended from time to time.

Advance Contribution has the meaning given in the Equity Subscription Deed.

Amended and Restated TPFD has the same meaning as in the M2 Motorway Project Deed.

Approval means any licence, permit, consent, approval (including the Project 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 Hills Motorway's Work; or
- (b) in connection with the Project Site and any Extra Land.

Artefacts means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or things otherwise of value.

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) any other person having jurisdiction over, or ownership of, the Service Works.

Business Day means any day on which banks are generally open for business in Sydney (other than Saturdays, Sundays and public holidays).

Certificate of Construction Completion means a certificate substantially in the form of Schedule 2 certifying that Construction Completion of a Stage has occurred.

Certification Schedule means Appendix 25 to the Scope of Works and Technical Criteria.

Change means any variation or change to the Project Works and includes any addition, increase, decrease, omission, deletion, demolition or removal to or from the Project Works.

Change Costs means:

- (a) where a Change increases the scope or the cost of Hills Motorway's Work or the operating and maintenance costs under the M2 Motorway Project Deed, the reasonable costs incurred by Hills Motorway arising out of or in connection with the Change (including any increased construction costs, operating costs, maintenance costs or financing costs, whether in relation to the M2 Motorway or the Project Works);
- (b) delay costs incurred by Hills Motorway in carrying out the Change, if it prevents Hills Motorway from achieving Final Completion by the Date for Final

Completion, except to the extent that Hills Motorway and its Subcontractors have not taken all reasonable steps to mitigate the delay; and

- (c) if clause 4.2(b) applies and the Change prevents Hills Motorway from achieving Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3, delay costs incurred by Hills Motorway, and loss, and delay of receipt of revenue suffered by Hills Motorway, in carrying out the Change.

A reasonable amount on account of the overheads and profit margins of the Operator and 27% on account of the overheads and profit margins of the Contractor will also be included.

Change in Law means:

- (a) an increase in the cost of performance of Hills Motorway's obligations under the M2 Upgrade Project Deed beyond that reasonably anticipated at the time of entering into the M2 Upgrade Project Deed due to:
- (i) a change in:
 - A. New South Wales or local government legislation including regulations or by-laws;
 - B. New South Wales Authority requirements; or
 - C. New South Wales government, local government or State Authority guidelines with which Hills Motorway is legally required to comply;
 - (ii) a change in the application of the existing lawful requirements of a New South Wales Authority; or
 - (iii) a court handing down a Final Determination which changes the judicial interpretation of existing New South Wales legislation; or
- (b) an increase in the cost of performance of Hills Motorway's obligations under the M2 Upgrade Project Deed beyond that reasonably anticipated at the time of entering into the M2 Upgrade Project Deed due to:
- (i) a change in:
 - A. Commonwealth government legislation including regulations or by-laws;
 - B. Commonwealth Authority requirements; or
 - C. Commonwealth government or Commonwealth Authority guidelines with which Hills Motorway is legally required to comply;
 - (ii) a change in the application of the existing lawful requirements of a Commonwealth Authority; or
 - (iii) a court handing down a Final Determination which changes the judicial interpretation of existing Commonwealth legislation,
- except in respect of income taxation.

Change Savings means, where the Change decreases the scope or the cost of Hills Motorway's Work, the savings arising out of or in connection with the Change (including any savings in relation to construction costs, operating costs, maintenance costs, financing costs and acceleration savings, whether in relation to the M2 Motorway or the Project Works). For the purposes of valuing Change Savings applicable to the construction costs, the amount shall be equal to the reasonable costs of the construction work plus an amount of 10%, being the total margin for overhead and profit applicable to the reasonable cost of the construction work.

Claim includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, the M2 Upgrade Project Deed;
- (b) arising out of, or in any way in connection with, the Project Works or either Party's conduct prior to the date of the M2 Upgrade Project Deed; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Community Involvement Plan means the Project Plan of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 40 to the Scope of Works and Technical Criteria.

Community Relations Manager means the person appointed to that position under clause 5.3(b) as at the date of the M2 Upgrade Project Deed or any person appointed as a replacement under clause 5.3(b).

Company Documentation Schedule means Appendix 24 to the Scope of Works and Technical Criteria.

Concept Design means the concept design prepared by Hills Motorway and included in Appendix 30 to the Scope of Work and Technical Criteria.

Construction Completion means, in respect of a Stage, when:

- (a) the Project Works comprised in the Stage have been completed in accordance with the M2 Upgrade Project Deed except for minor Defects which:
 - (i) do not prevent the Stage or the M2 Motorway from being reasonably capable of being used for the safe, efficient and continuous passage of motor vehicles;
 - (ii) the Independent Verifier determines that Hills Motorway has reasonable grounds for not promptly rectifying; and
 - (iii) can be rectified without prejudicing the safe, efficient and continuous passage of vehicles on the Stage and the M2 Motorway; and
- (b) Hills Motorway has done everything which the M2 Upgrade Project Deed requires Hills Motorway to do as a condition precedent to Construction Completion of the Stage, including those things set out in Schedule 3.

Construction Manager means the person appointed to that position under clause 5.3(b) as at the date of the M2 Upgrade Project Deed or any person appointed as a replacement under clause 5.3(b).

Construction Plan means the Project Plan of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 38 to the Scope of Works and Technical Criteria.

Contamination:

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

Contractor means Leighton Contractors Pty Limited ABN 98 000 893 667.

Contractor Guarantor means Leighton Holdings Limited ABN 57 004 482 982.

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

Date for Construction Completion means:

- (a) in respect of Stage 1, the date which is 16 months after the Satisfaction Date;
- (b) in respect of Stage 2, the date which is 21 months after the Satisfaction Date;
- (c) in the case of Stage 3, the date which is 26 months after the Satisfaction Date; and
- (d) in the case of Stage 4, the date which is 30 months after the Satisfaction Date.

Date for Final Completion means the date which is the Date for Construction Completion of Stage 4.

Date of Construction Completion means, in respect of a Stage, the date of Construction Completion of the relevant Stage certified in the Certificate of Construction Completion in accordance with clause 10.2.

Date of Final Completion means the date on which Stage 4 reaches Construction Completion.

Debt Documentation has the meaning given to that term in the M2 Motorway Project Deed.

Deed of Appointment of Environmental Representative means the deed so entitled to be entered into between Hills Motorway, RTA and the Environmental Representative on or after the date of the M2 Upgrade Project Deed.

Deed of Appointment of Independent Verifier means the deed so entitled entered into between Hills Motorway, RTA and the Independent Verifier dated 28 May 2010 as amended from time to time (including pursuant to the Deed of Amendment and Restatement (Independent Verifier Deed)).

Deed of Amendment and Restatement (Independent Verifier Deed) means the deed so entitled entered into between Hills Motorway, RTA and the Independent Verifier on or about the date of the M2 Upgrade Project Deed.

Deed of Amendment (RTA Charge) means the deed entitled "Deed of Amendment (RTA Charge) entered into between RTA and Hills Motorway on or about the date of the M2 Upgrade Project Deed.

Defect means any:

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

which is not in accordance with the requirements of the M2 Upgrade Project Deed.

Defects Correction Period means a period referred to in clauses 11.4, 11.5, 11.6 or 11.7.

Design Documentation means all design documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations and drawings) in computer readable and written forms, or stored by other means, which Hills Motorway or any other person creates in performing Hills Motorway's Work (including the design of the Temporary Works).

Design Manager means the person appointed to that position under clause 5.3(b) as at the date of the M2 Upgrade Project Deed or any person appointed as a replacement under clause 5.3(b).

Design Plan means the Project Plan of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria.

Dispute has the meaning given to that term in clause 11.1(a) of the M2 Upgrade Project Deed.

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

Environmental Documents means the Project Approval.

Environmental Management Plans means the Project Plans of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 36 to the Scope of Works and Technical Criteria.

Environmental Representative or **ER** means the person appointed as the Environmental Representative by RTA and Hills Motorway under the Deed of Appointment of ER or such other persons as may be engaged by RTA and Hills Motorway in accordance with the Deed of Appointment of ER.

Environmental Manager means the person appointed to that position under clause 5.3(b) as at the date of the M2 Upgrade Project Deed or any person appointed as a replacement under clause 5.3(b).

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

Equity Subscription Deed has the meaning given to that term in the M2 Motorway Project Deed.

Excluded Proprietary Documentation means any software or source code excluded from the definition of Proprietary Documentation.

Extra Land means the land referred to in clause 2.4(a)(i).

Final Completion means Stage 4 achieving Construction Completion.

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.

Force Majeure means:

- (a) an earthquake, cyclone, fire, explosion, flood, malicious damage, sabotage, act of a public enemy, terrorism or civil unrest;
- (b) war, invasion, act of a foreign enemy, hostilities between nations (whether war be declared or not), civil insurrection or militarily usurped power;
- (c) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; or
- (d) confiscation, nationalisation, requisition or damage to property by or under the order of any government,

which is beyond the reasonable control of Hills Motorway, the Contractor and any of their Subcontractors and which causes Hills Motorway to be unable to perform its obligations under the M2 Upgrade Project Deed, where that cause could not have been prevented or avoided by Hills Motorway, the Contractor or any of their Subcontractors taking those steps which a prudent, experienced and competent concessionaire, designer or constructor would have taken.

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

Heritage Consultant means Susan Lampard of AECOM Australia Pty Ltd (ABN 20 093 846 925) or such other person as may be agreed by the Parties.

Heritage Report means, in respect of a particular location of the Project Site, the heritage report prepared by the Heritage Consultant prior to the date of the M2 Upgrade Project Deed.

Hills Motorway's Representative means Garret O'Connor or any other persons appointed from time to time by Hills Motorway under clause 5.2.

Hills Motorway's Work means all things and tasks which each of the Company and the Trustee is, or may be, required to carry out or do, to comply with its obligation under the M2 Upgrade Project Deed to design and construct the Project Works and the Temporary Works.

Independent Verifier means Sinclair Knight Merz Pty Limited, ABN 37 001 024 095 or such other person as may be agreed by RTA and Hills Motorway.

Intellectual Property Right means any copyright, patent, registered and unregistered design, circuit layouts, trademarks or name or other protected right.

Investor has the meaning given to that term in the M2 Motorway Project Deed.

ITS Works means those parts of the Project Works specified in Appendix 47 to the Scope of Works and Technical Criteria.

Land Required for Local Road Works means the land and airspace described in Part 1(b) of the Site Access Schedule.

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) common law; and
- (c) binding requirements and Approvals (including any condition or requirement under them).

Leases means the Company Lease, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Company Leases, the M2 Upgrade Trust Leases and the M2 Upgrade Trust Concurrent Leases (each as defined in the M2 Motorway Project Deed).

Local Road means any road or road reserve other than the M2 Motorway which:

- (a) crosses;
- (b) is adjacent to; or
- (c) is in any way affected by,

the Project Works or the Temporary Works.

Local Road Works means the modification, reinstatement and improvement of a Local Road which Hills Motorway must design and construct and hand over to RTA or the relevant Authority in accordance with the M2 Upgrade Project Deed and as specified in sections 2.3.1(c) and 6.2 of the Scope of Works and Technical Criteria.

Loss includes:

- (a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

Maintenance Manual means the maintenance manual prepared in accordance with the requirements of the M2 Motorway Project Deed and further developed to incorporate the Maintenance Work associated with the M2 Upgrade.

Maintenance Work means the work which Hills Motorway is or may be required to carry out under the M2 Motorway Project Deed in order to operate, maintain and repair the M2 Upgrade.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of the Borrower to pay the Financiers the amounts due under, and substantially in accordance with, the M2 Upgrade Debt Financing Documents; or
- (b) M2 Upgrade Equity Return.

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

M2 Motorway means the permanent works designed and constructed in accordance with the M2 Motorway Project Deed and, following Construction Completion of a Stage, includes that Stage.

M2 Motorway Project Deed means the deed titled "M2 Motorway Project Deed" between the Roads and Traffic Authority of New South Wales, the Honourable Bruce Baird MP, the Hills Motorway Limited and Perpetual Trustees Australia Limited, dated on or about 26 August 1994, as amended from time to time (including pursuant to the M2 Upgrade Project Deed).

M2 Upgrade means the road, tunnel and other physical works, facilities, systems and Services described in section 2.3.1 of the Scope of Works and Technical Criteria including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Project Site but which excludes the M2 Motorway (as existing immediately prior to the Satisfaction Date) and any Plant (as defined in the M2 Motorway Project Deed where that Plant existed immediately prior to the Satisfaction Date).

M2 Upgrade Base Case Equity Return is, at any time, a real after tax internal rate of return for a Notional Initial M2 Upgrade Equity Investor on its investment in the Company and the Trust, of 9.2 percent per annum.

M2 Upgrade Base Case Financial Model means the financial model and assumptions prepared by Hills Motorway and agreed and audited in accordance with clause 3.1(c) of the M2 Upgrade Project Deed and initialled by the Parties for identification.

M2 Upgrade Base Case Model means the M2 Upgrade Base Case Financial Model to the extent to which that financial model:

- (a) includes projections and calculations with respect to the repayment of the M2 Upgrade Project Debt and the payment to the M2 Upgrade Equity Investors of the M2 Upgrade Base Case Equity Return; and
- (b) in the control sheet reflects the net present value with incremental traffic, term extension and toll uplift agreed between the parties in the M2 Upgrade Project Deed.

M2 Upgrade Debt Financing Documents has the same meaning given to "Capex Finance Documents" in the Amended and Restated TPFDD.

M2 Upgrade Equity Investor means a person who holds M2 Upgrade Project Securities.

M2 Upgrade Equity Return is, at any time, the expected real after tax internal rate of return which a Notional Initial M2 Upgrade Equity Investor is projected to receive over the Term on its investment in the M2 Upgrade Project Securities, having regard to past, present and projected circumstances.

M2 Upgrade Project Debt means:

- (a) any actual or contingent indebtedness under the M2 Upgrade Debt Financing Documents;
- (b) any refinancing of the facilities referred to in paragraph (a) with RTA's consent in accordance with clause 9.3 of the RTA Consent Deed; and
- (c) any moneys payable on the termination of any interest rate risk management agreement entered into by the Trustee to limit or otherwise manage its exposure to interest rate fluctuations in respect of the facilities referred to in paragraphs (a) or (b) provided that the method of calculating the termination amount and the actual calculation of the termination amount is furnished to the RTA.

M2 Upgrade Project Deed means the deed to which this Annexure A is attached and forms part.

M2 Upgrade Project Securities means those shares in the Company and units in the Trust issued in accordance with the Equity Subscription Deed.

Native Title Application means any claim or application under any Law or future Law relating to native title, including any application under section 61 of the *Native Title Act* 1993 (Cth), except for any such claim or application which is in any way materially based or reliant upon the existence of Artefacts on, under, near or around the Project Site or the Temporary Areas.

Notional Initial M2 Upgrade Equity Investor is a notional corporate taxpayer who:

- (a) is issued with the M2 Upgrade Project Securities pursuant to the Equity Subscription Deed in the ratio 155:185, on the basis that one share in the Company is Stapled to one unit in the Trust and that, in relation to the M2 Upgrade Project Securities, the aggregate cost of the investment in M2 Upgrade Project Securities cannot exceed \$275 million less the Advance Contribution; and
- (b) holds those shares and units from the date they are issued until the end of the Term.

Occupational Health, Safety and Rehabilitation Management Plan means the Project Plan of that name prepared by Hills Motorway referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 41 to the Scope of Works and Technical Criteria.

Overall D&C Program means the overall program for design and construction activities which is Exhibit C to the M2 Upgrade Project Deed and updated in accordance with clause 5.11.

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

Party means each of RTA, the Minister, the Trustee and the Company and **Parties** means all of them.

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.

Project means the design, construction and commissioning of the Project Works and the Temporary Works in accordance with the M2 Upgrade Project Deed.

Project Approval means the approval dated 21 October 2010 issued by the Minister for Planning pursuant to Part 3A of the EP&A Act in respect of the Project Works and the Temporary Works and all conditions to it, all of which appears as Exhibit B to the M2 Upgrade Project Deed and includes all documents incorporated by reference.

Project Control Group means the group referred to in clause 5.6.

Project Review Group means the group referred to in clause 5.7.

Project Documents means:

- (a) the M2 Upgrade Project Deed (including for the avoidance of doubt this Annexure A);
- (b) the Deed of Appointment of Independent Verifier;
- (c) the Deed of Appointment of Environmental Representative;
- (d) the 2009 RTA Charge;
- (e) the RTA Consent Deed;
- (f) the RTA Upgrade Consent Deed;
- (g) the Side Deed; and
- (h) any other document the Parties agree is a Project Document for the purposes of the M2 Upgrade Project Deed or the Project.

Project Industrial Relations Plan means the plan of that name to be prepared by Hills Motorway in accordance with clause 5.24.

Project Management Plan means the Project Plan of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 35 to the Scope of Works and Technical Criteria.

Project Manager means the person appointed to that position under clause 5.3(b) as at the date of the M2 Upgrade Project Deed or any person appointed as a replacement under clause 5.3(b).

Project Plan means each of the:

- (a) Quality Plan;

- (b) Project Management Plan;
- (c) Design Plan;
- (d) Construction Plan;
- (e) Community Involvement Plan;
- (f) Traffic Management and Safety Plan;
- (g) Occupational Health, Safety and Rehabilitation Management Plan;
- (h) Project Training Plan; and
- (i) Environmental Management Plans,

as each such plan may be updated, amended and developed under clause 5.12.

Project Site means the land and airspace described in Part 1 of the Site Access Schedule (including the Land Required for Local Road Works).

Project Training Plan means the Project Plan of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 44 to the Scope of Works and Technical Criteria.

Project Works means the physical works which Hills Motorway must design, construct and complete under the M2 Upgrade Project Deed including:

- (a) the M2 Upgrade;
- (b) the Service Works;
- (c) the Local Road Works; and
- (d) the Property Works,

but excluding the Temporary Works.

Property Works means:

- (a) those works described in section 2.3.1(b) and 6.1 of the Scope of Works and Technical Criteria; and
- (b) all other works necessary to ensure that:
 - (i) the amenity of;
 - (ii) access to and egress from; or
 - (iii) the functionality of,

any property (including any structure thereon), including such property located outside of the Project Site, which is affected by Hills Motorway's Work is maintained to at least the standard that it was in immediately prior to the date of the M2 Upgrade Project Deed including:

- (i) fences to separate the property located outside of the Project Site from property located within the Project Site;

- (ii) access routes;
- (iii) drainage structures; and
- (iv) landscaping and reinstatement works.

Proprietary Documentation means:

(a) anything (including software and source code) which Hills Motorway uses in undertaking Hills Motorway's Work (whether in documentary form or not), which is the subject of any Intellectual Property Right; and

(b) the Design Documentation,

and includes intellectual property rights embodied in or attaching to the Project Works or the Temporary Works (excluding the ITS Works) to which the Proprietary Documentation relates, but excludes software or source code:

(c) for the ITS Works that is related to the electronic tolling of vehicles using the M2 Motorway; or

(d) that is "commercial off the shelf" software.

Quality Manager means the person appointed to that position under clause 5.3(b) as at the date of the M2 Upgrade Project Deed or any person appointed as a replacement under clause 5.3(b).

Quality Plan means the Project Plan of that name developed in accordance with section 3.1 of the Scope of Works and Technical Criteria.

Recognised Insurance Market means the Australian and London Insurance Markets.

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

Related Entity has the same meaning as in the Corporations Act.

Relevant Insurer means an insurer with a claims paying ability rating of at least "A" by AM Bet or another recognised insurance rating agency.

Replacement Security Bond has the meaning given to that term in clause 12.5(b).

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

Road Occupancy Licence is a licence issued by the RTA that authorises the occupation of a section of the road network that would normally be available for traffic.

RTA Consent Deed means the deed titled "RTA Deed of Consent" between the Roads and Traffic Authority of New South Wales, the Honourable Bruce Baird MP, the Hills Motorway Limited, Perpetual Trustees Australia Limited, Hills Construction Company Pty Ltd, Westpac Securities Administration Limited and Westpac Banking Corporation dated on or about 26 August 1994, as amended from time to time (including pursuant to the RTA Upgrade Consent Deed).

RTA's Representative means:

(a) the person appointed by RTA under clause 5.1(a)(i); or

(b) any other person appointed from time to time by RTA under clause 5.1(a)(ii).

RTA Upgrade Consent Deed means the deed entitled "2010 Consent Deed" to be entered into on or after the date of the M2 Upgrade Project Deed between RTA, the Minister, Hills Motorway, Hills Motorway Construction Company Pty Ltd and National Australia Bank Limited (as Agent and Security Trustee).

S&P means Standard & Poor's (Australia) Pty Limited, ACN 007 324 852 and its successors and assigns.

Scope of Works and Technical Criteria means the document and drawings set out in Exhibit A to the M2 Upgrade Project Deed.

Security Bond means the unconditional and irrevocable bank undertaking referred to in clause 12.1 and includes any Replacement Security Bond (as the case may be).

Service means any service or item of infrastructure, including water, electricity, gas, fuel, telephone, existing drainage, sewerage, railway and electronic communications services (except those communication systems provided as part of the ITS Works).

Service Works means the construction, modification or relocation of Services, all of which are to be designed and constructed by Hills Motorway and handed over to RTA, an Authority or another person in accordance with the M2 Upgrade Project Deed.

Side Deed means the deed entitled "Side Deed" entered into between RTA, the Company, the Trustee, the Contractor and the Contractor Guarantor on or about the date of this Deed.

Significant Subcontract means any Subcontract identified in Schedule 8.

Site Access Schedule means Exhibit E to the M2 Upgrade Project Deed.

Stage 1 means, without limiting the Scope of Works and Technical Criteria:

- (a) Hills Motorway's Work to be carried out by Hills Motorway to the west of the eastern kerb line of Windsor Road, including any work that is necessary to ensure the safe, efficient and continuous operation of the new west facing ramps to be constructed at Windsor Road;
- (b) the Property Works to be carried out by Hills Motorway in connection with the properties located at 256-260, 262, 264 and 266 Windsor Road to maintain access to and egress from those properties to Windsor Road;
- (c) the ITS Works to be carried out by Hills Motorway to ensure the safe operation and tolling of the new west facing ramps at Windsor Road;
- (d) the directional and regulatory signage to be erected by Hills Motorway on or adjacent to the M2 Motorway and the Local Roads to ensure the safe operation and tolling of the new west facing ramps at Windsor Road; and
- (e) the modifications to the traffic signals located at the intersection of the M2 Motorway and Windsor Road to be implemented by Hills Motorway,

and any other Project Works and Temporary Works required to be completed in Stage 1 in accordance with the Scope of Works and Technical Criteria.

Stage 2 means, without limiting the Scope of Works and Technical Criteria:

- (a) Hills Motorway's Work to be carried out by Hills Motorway in connection with the new east facing ramps to be constructed at Christie Road and Herring Road;

- (b) Hills Motorway's Work to be carried out by Hills Motorway in connection with the mainline carriageway located between CH 16200 and CH 16900;
- (c) Hills Motorway's Work to be carried out by Hills Motorway in connection with the widening of Talavera Road and Christie Road to ensure the safe, efficient and continuous operation of Talavera Road and Christie Road;
- (d) the Property Works to be carried out by Hills Motorway in connection with the property located at 84 Talavera Road to maintain access to and egress from the property to Talavera Road;
- (e) the Property Works to be carried out by Hills Motorway in connection with the property located at 112 Talavera Road to maintain access to and egress from the property to Talavera Road and Christie Road;
- (f) the ITS Works to be carried out by Hills Motorway to ensure the safe operation and tolling of the east facing ramps to be constructed at Christie Road and Herring Road;
- (g) the directional and regulatory signage to be erected by Hills Motorway on or adjacent to the M2 Motorway and the Local Roads to ensure the safe operation and tolling of the east facing ramps to be constructed at Christie Road and Herring Road;
- (h) the modifications to the traffic signals located at the intersection of Talavera Road and Herring Road, and Talavera Road and Christie Road, to be implemented by Hills Motorway; and
- (i) the installation of traffic signals at the intersection of Christie Road and the M2 Motorway,

and any other Project Works and Temporary Works required to be completed in Stage 2 in accordance with the Scope of Works and Technical Criteria.

Stage 3 means, without limiting the Scope of Works and Technical Criteria, the balance of Hills Motorway's Work not completed as part of Stage 1, Stage 2 or Stage 4 but does not include the RTA TMC integration works required by section 47.3 of Appendix 47 to the Scope of Works and Technical Criteria.

Stage 4 means:

- (a) provision to RTA (in a form satisfactory to RTA, acting reasonably):
 - (i) a summary prepared by the Quality Manager pursuant to clause 3.3(b)(ii) on all quality issues;
 - (ii) all documents relating to all non-conformances pursuant to clause 3.5(c);
 - (iii) copies of all site investigation reports and property conditions surveys pursuant to section 4.1(b) of the Scope of Works and Technical Criteria;
 - (iv) a contamination report in respect of each Temporary Area;
 - (v) details of the location of Services pursuant to section 6.3(a) of the Scope of Works and Technical Criteria;

- (vi) a certificate or statement (as the case may be) of the kind referred to in clause 8.9(a)(ii) relating to the Property Works in respect of each Parcel;
 - (vii) a written notice of the kind referred to in clause 11.5(a)(i)A from the relevant Authority for each discrete part of the Local Road Works;
 - (viii) a written notice of the kind referred to in clause 11.6(a)(i) from the relevant Authority for each discrete part of the Service Works which is necessary or required to be completed so that the M2 Upgrade may be opened to the public for the safe, efficient and continuous passage of motor vehicles; and
 - (ix) copies of "As Constructed Drawings" of the Project Works and other documentation required by the Company Documentation Schedule;
 - (x) the written releases or statements required pursuant to clause 2.4(a)(ii) in respect of any Extra Land;
 - (xi) the bridge and slope inventory details required in accordance with Appendix 12 to the Scope of Works and Technical Criteria; and
 - (xii) the Security Bond required under clause 12;
- (b) the vacation and reinstatement of any land affected by or used for the purposes of the Temporary Works; and
 - (c) the reinstatement and clean-up of the Project Site required by the Environmental Documents and the Scope of Works and Technical Criteria;
 - (d) provided that RTA has carried out the work referred to in section 47.3.1.e of Appendix 47 to the Scope of Works and Technical Criteria, the RTA TMC integration works required by section 47.3 of Appendix 47 to the Scope of Works and Technical Criteria; and
 - (e) approval by RTA of the revised Maintenance Manual required under clause 13 of this Annexure A.

Stapled has the meaning given to that term in the M2 Motorway Project Deed.

Subcontract includes an agreement for supply of goods or services (including plant hire) or a consultant (including a designer) or any of them.

Subcontractor includes a supplier of goods or services (including plant hire) or a consultant (including a designer) or any of them, including the Contractor.

Subsidiary D&C Programs means the subsidiary programs referred to in clause 5.11(a).

Taxes means all income tax, stamp duty, and other taxes, levies, imposts, duties, deductions, charges and withholdings plus any interest, penalties, charges, fees or other amounts payable in respect thereof.

Temporary Areas means the land and airspace described in Part 2 of the Site Access Schedule.

Temporary Works means any temporary physical works performed for the purpose of carrying out Hills Motorway's Work, but which do not form part of the Project Works.

Term means:

- (a) in respect of the definitions of M2 Upgrade Equity Return and Notional Initial M2 Upgrade Equity Investor, and clause 17.2, and only in respect of the period from the Satisfaction Date until the Date of Final Completion, the period which begins on the M2 Motorway Commencement Date and ends on the day 49 years after that date; and otherwise
- (b) the period which begins on the M2 Motorway Commencement Date and ends on the day the Term ends under the Leases.

Traffic Management and Safety Plan means the Project Plan of that name referred to in Appendix 14 to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix 43 to the Scope of Works and Technical Criteria.

Traffic Management Plan means the plan or plans of that name referred to in Appendix 18 to the Scope of Works and Technical Criteria.

Uninsurable means, in respect of a risk:

- (a) no insurance is available for that risk from a Relevant Insurer in Recognised Insurance Markets;
- (b) insurance is available for that risk, but the terms and conditions (including as to premiums and deductibles) on which the insurance is generally available from a Relevant Insurer in Recognised Insurance Markets are such that an independent insurance broker acceptable to the Parties certifies that in its reasonable opinion, the risk is not generally being insured against with Relevant Insurers by prudent, competent and experienced concessionaires, designers, contractors and operators of toll roads in Recognised Insurance Markets and is not insured by the Company and the Trustee; or
- (c) the loss suffered by the Company or the Trustee as a result of the occurrence of the risk exceeds the recoverable amount (after deductibles) under any insurance policy effected by the Company.

Uninsurable Event means at any time prior to the expiry of the last Defects Correction Period:

- (a) **(specific events)** the occurrence of an event referred to in paragraph (b), (c) or (d) of the definition of Force Majeure; or
- (b) **(unanticipated events)** the occurrence of an unanticipated physical event which:
 - (i) is beyond the reasonable control of the Company or the Trustee and their contractors and which could not have been prevented or avoided by the Company or the Trustee or their contractors taking steps which a prudent, experienced and competent concessionaire, designer or constructor of tollroads would have taken, including by the exercise of reasonable care;
 - (ii) is not in the exercise by RTA of any of its functions and powers pursuant to any legislation; and
 - (iii) directly results in a loss arising out of or in connection with physical loss of or damage to the Project Works,

in respect of which:

- (iv) **(no insurance available)** no insurance is available for that event from a Relevant Insurer in Recognised Insurance Markets at that time;
- (v) **(insurance available but terms out of market)** insurance is available for that event at that time, but the terms and conditions (including as to premiums and deductibles) on which the insurance is generally available from a Relevant Insurer in Recognised Insurance Markets are such that an independent insurance broker acceptable to the Parties certifies that in its reasonable opinion the event is not generally being insured against with Relevant Insurers by prudent, competent and experienced concessionaires, designers and contractors of toll roads in Recognised Insurance Markets and is not insured by the Company or the Trustee at that time; or
- (vi) **(loss exceeds insurance (if any) taken out)** the loss suffered by the Company or the Trustee as a result of the occurrence of the event exceeds the recoverable amount (after deductibles) under any insurance policy effected by the Company,

provided that no Uninsurable Event will arise under this paragraph (b) to the extent that:

- (vii) **(acts or omissions)** the insurance (if any) effected by the Company or the Trustee did not respond to the event due to an act or omission of the Company or the Trustee or their contractors, including a breach of the policy by, or the negligence of, the Company or the Trustee or its contractors;
- (viii) **(insurer insolvent)** the amount that should have been paid under the insurance (if any) effected by the Company or the Trustee in respect of the event was not paid because the insurer was insolvent;
- (ix) **(breach)** the event resulted from a breach of the M2 Upgrade Project Deed or any other contract by the Company or the Trustee or its contractors, or any negligence of the Company or the Trustee or its contractors, agents or employees; or
- (x) **(under-insurance)** the recoverable amount (after deductibles) under the insurance (if any) effected by the Company or the Trustee in respect of the event was less than the recoverable amount (after deductibles) under the insurance (if any) for that event generally available from Relevant Insurers and being purchased in Recognised Insurance Markets by prudent, competent and experienced concessionaires, designers and contractors of tollroads from Relevant Insurers at that time (notwithstanding that the Company or the Trustee effected insurance for the limits of liability specified in clause 15.4).

1.2 Definitions in the M2 Upgrade Project Deed

Except as otherwise defined in clause 1.1, terms used in this Annexure A that are defined in the M2 Upgrade Project Deed have the same meaning where used in this Annexure A.

1.3 Interpretation

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

- (a) a reference to a clause or Schedule is a reference to a clause or Schedule of or to this Annexure A; and
- (b) a reference to this Annexure A includes all schedules to this Annexure A.

2. Location of the Project Works

2.1 Access

Subject to clauses 2.2, 2.5, 2.6, 2.7 and 2.8 of this Annexure A, for the period from the Satisfaction Date up to the date of correction of all Defects in the Project Works in accordance with clause 11 of this Annexure A, RTA must ensure that Hills Motorway and its contractors, sub-contractors, servants, agents and workmen and each of their employees and invitees and any other person authorised by Hills Motorway are entitled to have access to, possession and use of the Project Site and the Temporary Areas at all times in accordance with the Site Access Schedule at no cost to Hills Motorway together with all necessary vehicles, equipment, materials and appliances for the purpose of Hills Motorway achieving Final Completion and correction of all Defects in accordance with clause 11.

2.2 Use of Project Site by Hills Motorway

Subject to clause 2.6 and such other third party rights in respect of any public roads forming the Project Site or the Temporary Areas as may be in existence at the Satisfaction Date, prior to the Date of Construction Completion of the relevant Stage, neither Hills Motorway nor RTA will use or permit any person to use the Project Site or the Temporary Areas (after Hills Motorway has been given access in accordance with the Site Access Schedule) for any purpose other than:

- (a) the operation and maintenance of the M2 Motorway;
- (b) the planning, design, construction and commissioning of any of the Project Works or the Temporary Works; or
- (c) any other purpose contemplated in the M2 Motorway Project Deed or the M2 Upgrade Project Deed.

2.3 Hills Motorway accepts risk

Except as otherwise expressly provided in the M2 Upgrade Project Deed, Hills Motorway agrees that Hills Motorway's use and occupation of the Project Site and the Temporary Areas from the date on which Hills Motorway is granted access by RTA in accordance with this clause 2 up to and including the date of correction of all Defects in the Project Works in accordance with clause 11 will at all times be at the risk of Hills Motorway.

2.4 Extra Land

- (a) Hills Motorway must:
 - (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land in addition to the Project Site and the Temporary Areas which is necessary or which it may deem requisite or necessary for

Hills Motorway's Work including land required for the Local Road Works, the Property Works and the Service Works; and

- (ii) without limiting Hills Motorway's obligations under clause 15.2(a), provide to RTA:
 - A. a properly executed release, which Hills Motorway must use its best endeavours to obtain, on terms satisfactory to RTA from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such land; or
 - B. a statement signed by Hills Motorway to the effect that, despite the best endeavours of Hills Motorway, such owner or occupier has failed or refused to sign such a release.

(b) Hills Motorway acknowledges that:

- (i) integration of the requirements for access to Extra Land is at the sole risk of Hills Motorway; and
- (ii) RTA will not be liable upon any Claim (insofar as is permitted by Law) by Hills Motorway arising out of or in any way in connection with:
 - A. identifying and obtaining access to Extra Land; or
 - B. any delay, additional costs or other effects on Hills Motorway's Work related to the ability of Hills Motorway or the Contractor to obtain access to Extra Land.

(c) Hills Motorway must ensure that:

- (i) the use; and
- (ii) the rehabilitation,

of Extra Land is to the satisfaction of the owner of the land, any lessee of the land, RTA and all relevant Authorities, provided that (as between RTA and Hills Motorway) Hills Motorway is not required to rehabilitate the land to a standard which is better than the standard the land was in on the date Hills Motorway was granted access to that land.

- (d) If in Hills Motorway's reasonable opinion it is unable to perform Hills Motorway's Work unless it has access to Extra Land and has demonstrated to RTA's reasonable satisfaction that it has used its reasonable endeavours to obtain the necessary access to such Extra Land, RTA will consider in good faith any written notice from Hills Motorway to RTA requesting RTA to provide Hills Motorway with access to such Extra Land.

2.5 Access by RTA

Up to and including the Date of Final Completion, RTA's Representative and any person authorised by RTA will:

- (a) subject to normal safety and security constraints, have the right of access during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) to:

- (i) the Project Site and the Temporary Areas; and
 - (ii) all other areas relevant to Hills Motorway's Work; and
- (b) be entitled to exercise this right of access for the purposes of:
- (i) observing progress in Hills Motorway's Work and monitoring compliance by Hills Motorway of its obligations under the M2 Upgrade Project Deed; and
 - (ii) exercising any right or performing any obligation which RTA has under any Project Document.

2.6 Site Access Schedule

Hills Motorway's rights in accordance with this clause 2 are subject to any restriction upon the access, possession and use of the Project Site or the Temporary Areas by Hills Motorway specified or referred to in the Site Access Schedule.

2.7 Access protocol

Hills Motorway's rights under this clause 2 in respect of any part or parts of the Project Site or the Temporary Areas commence upon the later of:

- (a) the date specified as the "Earliest Access Date" in the Site Access Schedule; and
- (b) the date which is 10 Business Days after the receipt by RTA of written notice from Hills Motorway that Hills Motorway is exercising its rights under this clause 2 in respect of such parts of the Project Site or the Temporary Areas (as applicable).

2.8 Termination of access

Without limiting the M2 Motorway Project Deed and the Leases, on the date of correction of all Defects in the Project Works in accordance with clause 11, the rights of Hills Motorway and its contractors, sub-contractors, servants, agents and workmen to have access to the Project Site and the Temporary Areas (or any relevant part or parts thereof) pursuant to clause 2 will terminate.

2.9 Physical conditions and Information Documents

- (a) Each of the entities constituting Hills Motorway warrants to RTA that prior to the date of the M2 Upgrade Project Deed it:
 - (i) examined the M2 Upgrade Project Deed, the Project Site and the Temporary Areas and their surroundings and any other information that was made available in writing by RTA, or any other person on RTA's behalf, to Hills Motorway for the purpose of submitting a proposal for the Project;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its proposal for the Project and its obligations under the M2 Upgrade Project Deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its proposal and that it has made adequate allowance for the costs of complying with all the obligations under the M2 Upgrade Project Deed and of all matters

and things necessary for the due and proper performance and completion of Hills Motorway's Work;

- (iv) informed itself of all matters relevant to the employment of labour at the Project Site and the Temporary Areas and all industrial matters relevant to the Project Site, the Temporary Areas and Hills Motorway's Work; and
 - (v) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations for design purposes and otherwise and for this purpose was given access to such parts of the Project Site and the Temporary Areas as it required.
- (b) Except as otherwise expressly provided in the M2 Upgrade Project Deed, each of the entities constituting Hills Motorway is responsible for and assumes the risk of all Loss or delay it suffers or incurs arising out of or in connection with the physical conditions and characteristics of the Project Site, the Temporary Areas, any Extra Land, the Environment or their surroundings including:
- (i) the existence of any Contamination;
 - (ii) the suitability or otherwise of any material on the Project Site and the Temporary Areas for use in Hills Motorway's Work; and
 - (iii) water, atmospheric and sub-surface conditions or characteristics,

provided that nothing in this clause 2.9(b) will be taken to impose additional obligations or liabilities on, or risks assumed by, Hills Motorway under the M2 Motorway Project Deed in connection with the physical conditions and characteristics of the M2 Motorway.

2.10 Condition of Project Site, Temporary Areas, Extra Land and existing structures

- (a) RTA makes no representations and gives no warranty to Hills Motorway in respect of:
- (i) the condition of:
 - A. the Project Site, the Temporary Areas or any Extra Land; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Project Site, the Temporary Areas or any Extra Land; or
 - (ii) the existence, location, condition or availability of Services in respect of the Project Site, the Temporary Areas or any Extra Land.
- (b) Except as otherwise expressly provided in the M2 Upgrade Project Deed, Hills Motorway must accept:
- (i) the Project Site, the Temporary Areas and any Extra Land; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Project Site, the Temporary Areas and any Extra Land,

in their present condition and subject to all defects, including all sub-surface conditions.

- (c) If, as a result of a latent defect in the condition of a structure on, above or adjacent to, or under the surface of, the Project Site, the Temporary Areas or any Extra Land:
- (i) Hills Motorway proposes a Change in accordance with clause 7.2(a) in relation to alternative design solutions for achieving the functionality, durability and quality requirements of the Scope of Works and Technical Criteria requested by RTA (**Alternative Design Solutions**); and
 - (ii) in RTA's reasonable opinion, it is not feasible for Hills Motorway to carry out the Project Works in accordance with the Scope of Works and Technical Criteria (taking into account any additional capital and operating costs to be borne by Hills Motorway as a consequence of the latent defect),

RTA will:

- (iii) consider the Change proposed by Hills Motorway, including Hills Motorway's proposed Alternative Design Solutions;
 - (iv) consider any information and supporting documentation in relation to the Alternative Design Solutions;
 - (v) cooperate with Hills Motorway in assessing the Alternative Design Solutions (taking into account total capital and operating costs); and
 - (vi) consider the proposed Change in good faith pursuant to clause 7.2(c)(i).
- (d) Hills Motorway accepts all responsibility for:
- (i) the feasibility and fitness for purpose of the Concept Design; and
 - (ii) the constructability of the Concept Design,
- having regard to the physical conditions and characteristics of the Project Site and any Extra Land.

2.11 Artefacts

- (a) All Artefacts discovered on or under the surface of the Project Site and the Temporary Areas will (as between RTA and Hills Motorway) be the absolute property of RTA.
- (b) Hills Motorway must:
 - (i) at all times permit and allow RTA or any person authorised by RTA to watch or examine any excavations on the Project Site and the Temporary Areas;
 - (ii) at its expense, take every precaution to prevent Artefacts being removed or damaged; and
 - (iii) immediately upon discovery of any Artefact notify RTA of such discovery and comply at its expense with any directions or orders

imposed by any relevant Authority upon Hills Motorway or RTA in respect of such Artefact.

- (c) Before Hills Motorway starts to perform Hills Motorway's Work at a particular location of the Project Site or the Temporary Areas, Hills Motorway will give RTA a copy of the detailed heritage report prepared by the Heritage Consultant, which describes:
- (i) the work done to identify Artefacts at that location;
 - (ii) the Artefacts identified at that location; and
 - (iii) the Heritage Consultant's recommendation as to how any design, construction or operation issues arising from the existence of those Artefacts should be dealt with.
- (d) Without limiting its obligations under clause 2.11(b), Hills Motorway must:
- (i) carry out Hills Motorway's Work in substantial compliance with the Heritage Report; and
 - (ii) notify RTA within 30 Business Days after receipt of the Heritage Report whether any Artefacts identified in the Heritage Report will give rise to a change in the design or construction of the Project Works, or the operation of the M2 Motorway, giving reasonable particulars of:
 - A. the change;
 - B. an estimate of the cost of the change;
 - C. an estimate of any construction delay which will arise; and
 - D. the actions which Hills Motorway proposes to mitigate those costs and delays.
- (e) If any Artefact is discovered on or under the surface of the Project Site or the Temporary Areas, or any part thereof, Hills Motorway must continue to perform Hills Motorway's Work, unless otherwise:
- (i) directed by RTA;
 - (ii) ordered by a court or tribunal; or
 - (iii) required by Law.
- (f) For the purposes of clause 2.11(e)(i), RTA may by written notice direct Hills Motorway to suspend any or all of Hills Motorway's Work until such time as RTA gives Hills Motorway further written notice.

- (g) If Hills Motorway (or the Contractor) is directed, ordered or required to cease to perform Hills Motorway's Work as referred to in clause 2.11(e), then:
- (i) subject to clause 2.11(h), RTA will pay Hills Motorway the reasonable costs and expenses directly incurred by:
 - A. the Contractor (excluding any amounts payable by the Contractor to Hills Motorway, a Related Entity of either of the Company or the Trustee or a Related Entity of the Contractor, to the extent that Hills Motorway or the Related Entity is not engaged by the Contractor on an arm's length basis and on commercial terms); and
 - B. Hills Motorway (without double counting) (excluding any amounts payable by Hills Motorway to the Contractor or a Related Entity of the Contractor),

arising directly as a result of such direction, order or requirement (including delay costs, to the extent only that such direction, order or requirement prevents Hills Motorway from achieving Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3); and
 - (ii) Hills Motorway must:
 - A. take all reasonable steps to mitigate such costs and expenses;
 - B. for this purpose, comply with all reasonable directions of RTA concerning the Artefacts and the consequences thereof; and
 - C. ensure that the Contractor complies with the requirements of this clause 2.11(g)(ii).

For the purposes of clause 2.11(g)(i), reasonable costs and expenses includes any reasonable interest, fees and other amounts payable under the M2 Upgrade Debt Financing Documents during the period of the delay.
- (h) Clause 2.11(g)(i) does not apply in respect of any costs or expenses incurred by Hills Motorway or the Contractor to the extent that such costs or expenses result from a failure by Hills Motorway to comply with its obligations under clauses 2.11(c), 2.11(d) or 2.11(g)(ii).
- (i) If Hills Motorway is prevented from carrying out Hills Motorway's Work for a period exceeding 6 months as a result of a direction, order or requirement as referred to in clause 2.11(e) then RTA may in its absolute discretion terminate the M2 Upgrade Project Deed by giving a notice to that effect to Hills Motorway after which the M2 Upgrade Project Deed will be terminated and clause 9.13 of the M2 Upgrade Project Deed will apply.

2.12 Native Title Application

- (a) If there is a Native Title Application with respect to the Project Site or the Temporary Areas, or any part thereof, Hills Motorway must continue to perform Hills Motorway's Work, unless otherwise:

- (i) directed by RTA;
 - (ii) ordered by a court or tribunal; or
 - (iii) required by Law.
- (b) For the purposes of clause 2.12(a)(i), RTA may by written notice direct Hills Motorway to suspend any or all of Hills Motorway's Work until such time as RTA gives Hills Motorway further written notice.
- (c) If Hills Motorway (or the Contractor) is directed, ordered or required to cease to perform Hills Motorway's Work as referred to in clause 2.12(a) then:
- (i) subject to clause 2.12(d), RTA will pay Hills Motorway the reasonable costs and expenses directly incurred by:
 - A. the Contractor (excluding any amounts payable by the Contractor to Hills Motorway, a Related Entity of either of the Company or the Trustee or a Related Entity of the Contractor, to the extent that Hills Motorway or the Related Entity is not engaged by the Contractor on an arm's length basis and on commercial terms); and
 - B. Hills Motorway (without double counting) (excluding any amounts payable by Hills Motorway to the Contractor or a Related Entity of the Contractor),

arising directly as a result of such direction, order or requirement (including delay costs, to the extent only that such direction, order or requirement prevents Hills Motorway from achieving Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3); and
 - (ii) Hills Motorway must:
 - A. take all reasonable steps to mitigate such costs and expenses;
 - B. for this purpose, comply with all reasonable directions of RTA concerning the Native Title Application and the consequences thereof; and
 - C. ensure that the Contractor complies with the requirements of this clause 2.12(c)(ii).

For the purposes of clause 2.12(c)(i), reasonable costs and expenses includes any reasonable interest, fees and other amounts payable under the M2 Upgrade Debt Financing Documents during the period of the delay.
- (d) clause 2.12(c)(i) does not apply in respect of any costs or expenses incurred by Hills Motorway or the Contractor to the extent that such costs or expenses result from a failure by Hills Motorway to comply with its obligations under clause 2.11(c)(ii).
- (e) If Hills Motorway is prevented from carrying out Hills Motorway's Work for a period exceeding 6 months as a result of a direction, order or requirement as referred to in clause 2.12(a) then RTA may in its absolute discretion terminate the M2 Upgrade Project Deed by giving a written notice to that effect to Hills

Motorway after which the M2 Upgrade Project Deed will be terminated and clause 9.13 of the M2 Upgrade Project Deed will apply.

2.13 Contamination

In addition to the requirements of the Environmental Documents and without limiting clauses 2.9 and 2.10, Hills Motorway bears the risk of all Contamination in, under or around the Project Site, the Temporary Areas or any Extra Land which:

- (a) exists at the date of the M2 Upgrade Project Deed; or
 - (b) otherwise occurs or arises after the date of the M2 Upgrade Project Deed,
- and:
- (c) Hills Motorway must dispose of, or otherwise deal with, such Contamination in accordance with Law and the Environmental Documents;
 - (d) Hills Motorway must, to the extent required by Law, remediate the Project Site, the Temporary Areas and any Extra Land, to the extent it is in any way degraded by such Contamination (provided that (as between RTA and Hills Motorway) Hills Motorway is not required to rehabilitate any Extra Land or (without limiting Hills Motorway's obligation to carry out remediation or rehabilitation required by Law) the Temporary Areas to a standard which is better than the standard the land was in on the date Hills Motorway was granted access to that land or the standard required to achieve Construction Completion of the relevant Stage); and
 - (e) each of the Company and the Trustee must indemnify RTA from and against any Claim or Loss (including in respect of third party claims against RTA or its Subcontractors) suffered or incurred by RTA arising out of or in any way in connection with Contamination referred to in clause 2.13(a) or clause 2.13(b) to the extent that such Contamination:
 - (i) is disturbed by the carrying out of its share of Hills Motorway's Work; or
 - (ii) otherwise occurs or arises out of or in connection with its share of Hills Motorway's Work, any act or omission of Hills Motorway or the M2 Upgrade.

3. Quality

3.1 Quality system

- (a) Hills Motorway must implement a quality system for the management of all aspects of Hills Motorway's obligations under the M2 Upgrade Project Deed and in accordance with the requirements of the Scope of Works and Technical Criteria and the Quality Plan.
- (b) Hills Motorway must develop and implement a Quality Plan in accordance with the Scope of Works and Technical Criteria.
- (c) Hills Motorway must provide to RTA and, where applicable, the Independent Verifier, the certificates required by the Certification Schedule.

3.2 Independent Verifier

- (a) The Independent Verifier is to be engaged at Hills Motorway's cost by the Parties on the terms of the Deed of Appointment of Independent Verifier. The Independent Verifier's role is to:
- (i) independently verify in accordance with the Deed of Appointment of Independent Verifier that the Project Works and the Temporary Works comply with the requirements of the M2 Upgrade Project Deed; and
 - (ii) make determinations on matters that the M2 Upgrade Project Deed expressly requires be determined by the Independent Verifier.
- (b) The Independent Verifier is obliged to act independently of Hills Motorway, RTA, the Contractor and any Subcontractors.
- (c) Any determination by the Independent Verifier in respect of a matter required by the M2 Upgrade Project Deed to be determined by the Independent Verifier will be final and binding upon the Parties except in the case of manifest error.
- (d) Hills Motorway must provide the Independent Verifier with all information and documents and allow the Independent Verifier:
- (i) to attend design meetings; and
 - (ii) access to such premises,
- all as may be necessary or reasonably required by the Independent Verifier to allow the Independent Verifier to perform its obligations under the Deed of Appointment of Independent Verifier.
- (e) Where contemplated in any certificate which the Independent Verifier is required to provide pursuant to the Certification Schedule, the Independent Verifier must in that certificate address any matters required by RTA.

3.3 Quality management and certification

- (a) RTA and Hills Motorway acknowledge that the finance, design and construct project delivery method chosen for the M2 Upgrade:
- (i) requires Hills Motorway to assume responsibility for all aspects of the quality of Hills Motorway's Work and for the durability of the Project Works;
 - (ii) allows the Independent Verifier to observe, monitor, audit and test all aspects of the quality of Hills Motorway's Work and the durability of the Project Works to ensure compliance with the requirements of the M2 Upgrade Project Deed;
 - (iii) requires the Independent Verifier by reviewing and assessing the quality of Hills Motorway's Work and the durability of the Project Works, to verify Hills Motorway's compliance with the requirements of the M2 Upgrade Project Deed; and
 - (iv) allows RTA to monitor compliance of Hills Motorway's Work with the requirements of the M2 Upgrade Project Deed.

- (b) Hills Motorway must ensure that a Quality Manager is engaged who must:
 - (i) independently certify the effectiveness and integrity of Hills Motorway's quality system in achieving conformance with the requirements of the M2 Upgrade Project Deed; and
 - (ii) report to RTA's Representative and the Independent Verifier on quality issues in accordance with the requirements of the M2 Upgrade Project Deed; and
 - (iii) have the requisite experience and ability described for the Quality Manager in the Project Management Plan.

3.4 Project quality non-conformance

- (a) Hills Motorway must comply with the procedure for non-conformances set out in the Scope of Works and Technical Criteria and the Quality Plan.
- (b) Corrective actions implemented under Hills Motorway's quality system must comply with the requirements of the M2 Upgrade Project Deed including the Scope of Works and Technical Criteria.
- (c) Hills Motorway must promptly issue all documents relating to quality non-conformances to the Independent Verifier and RTA's Representative.

3.5 Monitoring and audits

Hills Motorway must:

- (a) have its compliance with the Quality Plan, Environmental Management Plans and Occupational Health, Safety and Rehabilitation Management Plan audited at intervals not exceeding 6 months during Hills Motorway's Work at its cost by an independent auditor who is acceptable to RTA's Representative;
- (b) permit representatives of RTA and the Independent Verifier to be present during such audits; and
- (c) deliver 2 copies of each audit report to RTA's Representative and the Independent Verifier within 5 Business Days of its completion.

3.6 No relief from obligations

Hills Motorway will not be relieved from any of its liabilities or responsibilities under the M2 Upgrade Project Deed (including under clause 11 of this Annexure A) or otherwise according to law nor will the rights of RTA whether under the M2 Upgrade Project Deed or otherwise according to law be limited or otherwise affected by:

- (a) the implementation and compliance with any quality system or the Quality Plan; or
- (b) any failure by RTA, RTA's Representative, the Independent Verifier or any person acting on behalf of RTA or engaged by RTA to detect any Defect including where such failure is the result of a negligent act or omission.

4. Project consents

4.1 Consents and Approvals

- (a) Hills Motorway must:
- (i) expeditiously apply for and obtain from each relevant Authority all Approvals (other than the Project Approval);
 - (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 RTA is expressed under the terms of the Approval to be required to comply with, carry out and fulfil), other than those conditions and requirements of the Project Approval which are specified in Part B of Schedule 5 (**RTA Conditions**) (which, subject to clause 4.1(b), RTA must comply with);
 - (iv) subject to clause 4.1(a)(iii), pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority in respect of any Approval; and
 - (v) otherwise comply with the Law.
- (b) The Parties acknowledge and agree that nothing in the M2 Upgrade Project Deed will limit RTA's right to comply with the RTA Conditions in a varied or changed manner which is consistent with the Project Approval and such that no approval is required to the modification under the EP&A Act (**Consistency Change**) except to the extent that the effect of such a Consistency Change will prevent Hills Motorway from achieving Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3. For the avoidance of doubt, this clause does not limit the operation of clause 4.2(b).
- (c) RTA agrees to notify Hills Motorway of any variation or change referred to in clause 4.1(b) and the details of the relevant Consistency Change as soon as reasonably practicable after RTA's variation or change.

4.2 Project Approval

- (a) Notwithstanding any review of any aspect of the design or construction of the Project Works or the Temporary Works by RTA or any other Authority, each of the Company and the Trustee warrants to RTA that the Concept Design and the Scope of Works and Technical Criteria comply with the Project Approval.
- (b) Without limiting clause 4.2(c), clause 7.1 will apply as if RTA's Representative had given a Change Order (and, if after receiving any payments under clause 7, a Material Adverse Effect nevertheless has occurred, clause 17 will apply) if:
- (i) the Project Approval is modified under the EP&A Act;
 - (ii) the Minister for Planning issues a new Approval in respect of the Project Works in substitution for or replacement of the Project Approval; or
 - (iii) any such new Approval is modified under the EP&A Act,

(other than as a result of a breach of the Project Approval by Hills Motorway or the Contractor or an application for modification or a new Approval by Hills Motorway or the Contractor) and such modification or new Approval requires a Change to the Project Works or a change to the M2 Upgrade (but excluding any effect which such modification or new Approval has upon the Temporary Works or the process required to design and construct the Project Works).

- (c) Hills Motorway must:
- (i) take all reasonable steps to mitigate the cost of the change;
 - (ii) for this purpose, comply with all reasonable directions of RTA's Representative concerning the change, and its consequences; and
 - (iii) ensure that the Contractor and its Subcontractors comply with this clause 4.2(c),

and RTA's liability under clause 4.2(b) will be reduced to the extent that Hills Motorway fails to comply with these obligations.

4.3 Environmental assessment

- (a) If there is a legal challenge brought about by way of commencement of court proceedings in relation to the environmental assessment or determination in respect of the Project Works or the M2 Upgrade under the EP&A Act (including a legal challenge to the Project Approval), Hills Motorway must continue to perform its obligations under the M2 Upgrade Project Deed unless, as a result of that legal challenge, it is otherwise ordered by a court.
- (b) If Hills Motorway or the Contractor is ordered by a court to cease to perform its obligations under the M2 Upgrade Project Deed (or to change the way it does so) as referred to in clause 4.3(a), then:
- (i) subject to clause 4.3(c), RTA must pay Hills Motorway the reasonable costs and expenses directly incurred by:
 - A. the Contractor (excluding any amounts payable by the Contractor to Hills Motorway, a Related Entity of either of the Company or the Trustee or a Related Entity of the Contractor, to the extent that either of the Company or the Trustee or the Related Entity is not engaged by the Contractor on an arm's length basis and on commercial terms); and
 - B. Hills Motorway (without double-counting) (excluding any amounts payable by Hills Motorway to the Contractor, a Related Entity of Hills Motorway or a Related Entity of the Contractor),

arising directly as a result of a court order referred to in clause 4.3(a) (including delay costs, to the extent only that such court order prevents Hills Motorway from achieving Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3); and

- (ii) Hills Motorway must:
 - A. take all reasonable steps to mitigate such costs and expenses;
 - B. for this purpose, comply with all reasonable directions of RTA concerning the legal challenge and consequences thereof; and
 - C. ensure that the Contractor complies with the requirements of this clause 4.3(b)(ii).

For the purposes of clause 4.3(b)(i), reasonable costs and expenses includes any reasonable interest, fees or other amounts payable under the M2 Upgrade Debt Financing Documents during the period of the delay.

- (c) Clause 4.3(b) does not apply:
 - (i) in respect of any costs or expenses incurred by Hills Motorway (without double counting) or the Contractor to the extent that such costs or expenses result from a failure by Hills Motorway to comply with its obligations under clause 4.3(b)(ii); or
 - (ii) to the extent that the legal challenge is initiated or upheld, or the court order is made, due to Hills Motorway's non-compliance with its obligations under the M2 Upgrade Project Deed.

5. Administration

5.1 RTA's representatives

- (a) RTA:
 - (i) may appoint a person to be RTA's Representative for any purpose under the M2 Upgrade Project Deed;
 - (ii) may at any time replace RTA's Representative, in which event RTA may appoint another person as RTA's Representative; and
 - (iii) must give written notice of all appointments under clauses 5.1(a)(i) and 5.1(a)(ii) to Hills Motorway.
- (b) RTA may not appoint more than 1 person to discharge the same function or functions under the M2 Upgrade Project Deed.
- (c) RTA and Hills Motorway acknowledge and agree that any person appointed by RTA as RTA's Representative acts at all times as the agent of RTA and is subject to the directions of RTA.
- (d) Unless expressly provided otherwise in the M2 Upgrade Project Deed, RTA's Representative is not obliged to review, or comment upon, any documentation or information which Hills Motorway gives to RTA in respect of the Project.

5.2 Hills Motorway's representatives

- (a) Hills Motorway must within 5 Business Days of the Satisfaction Date give notice in writing to RTA's Representative in which it nominates the persons that will act as a representative of and be authorised to act on behalf of it in discharging its functions under the M2 Upgrade Project Deed.
- (b) Hills Motorway may nominate more than one such person, and if so, it must in its written notice specify the functions which each person is authorised to discharge. Hills Motorway may not nominate more than one person to discharge the same function or functions under the M2 Upgrade Project Deed.
- (c) Hills Motorway may by written notice to RTA's Representative substitute a person appointed under this clause with another person.

5.3 Hills Motorway's personnel

- (a) Hills Motorway must provide experienced and skilled personnel to perform its obligations under this the M2 Upgrade Project Deed.
- (b) Hills Motorway must:
 - (i) employ those personnel specified in Schedule 7 in the positions specified in Schedule 7;
 - (ii) subject to clause 5.3(b)(iii), not replace the personnel referred to in clause 5.3(b)(i) without RTA's Representative's prior written approval (acting reasonably); and
 - (iii) if any of the personnel referred to in clause 5.3(b)(i):
 - A. die;
 - B. become seriously ill; or
 - C. resign from the employment of Hills Motorway (other than to accept other employment with Hills Motorway or any Related Body Corporate of either of the Company or the Trustee),replace them with personnel of at least equivalent experience, ability and expertise (including the experience, ability and expertise required by Schedule 7) approved by RTA's Representative (acting reasonably).

5.4 Design development meetings

- (a) Hills Motorway must hold regular meetings of its design team including its designers and the Independent Verifier (and in any event at the stage when concept designs or design solutions and detailed design documentation of discrete design elements are complete).
- (b) Hills Motorway must give reasonable notice to RTA's Representative of those meetings and of any other meetings at which design issues are to be discussed to enable RTA's Representative or its delegate to attend. RTA may request Hills Motorway to ensure the presence at the meeting of any relevant persons from any of Hills Motorway's Subcontractors involved in the design of any part of the Project Works.

- (c) Hills Motorway must give RTA's Representative:
 - (i) an agenda prepared in consultation with or as directed by RTA's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
 - (ii) minutes of each design meeting within 72 hours after each meeting.

5.5 Project Site meetings

- (a) Hills Motorway must convene meetings on the Project Site at fortnightly intervals prior to the Date of Final Completion.
- (b) The meetings referred to in clause 5.5(a) will be attended by:
 - (i) RTA's Representative (or his or her delegate);
 - (ii) Hills Motorway's Representative (or his or her delegate); and
 - (iii) any other person (including the Contractor or any of its Subcontractors) required by RTA's Representative.
- (c) Hills Motorway must provide RTA's Representative with an agenda prepared in consultation with RTA's Representative for each meeting under clause 5.5(a) no less than 48 hours prior to each meeting.
- (d) The role of chairperson for meetings under clause 5.5(a) will be held by RTA's Representative (or its delegate).
- (e) The chairperson of a meeting under clause 5.5(a) must give RTA's Representative and all other persons who attended the meeting (and any other person nominated by RTA's Representative) minutes of the meeting within 48 hours after the meeting.
- (f) The purpose of the meetings under clause 5.5(a) includes the review of (at least) the matters set out in the reports referred to in clause 5.10.

5.6 Project Control Group

- (a) A Project Control Group must be established consisting of:
 - (i) a person appointed under:
 - A. clause 5.1 as the representative of RTA; and
 - B. clause 5.2 as the representative of Hills Motorway;
 - (ii) 2 persons from each Party holding positions more senior to the persons referred to in clause 5.6(a)(i); and
 - (iii) such other members as the Parties may from time to time agree.

The persons referred to in clauses 5.6(a)(i) and 5.6(a)(ii) may appoint delegates to attend Project Control Group meetings in their absence and to otherwise discharge their responsibilities under this clause 5.6.

- (b) The objectives of the Project Control Group will be to monitor and review the progress of the Project, including to:
 - (i) assist in the resolution of any special matters referred to the Project Control Group by a Party;
 - (ii) monitor the progress of Hills Motorway's Work; and
 - (iii) review all progress reports in accordance with the Company Documentation Schedule.
- (c) The Project Control Group will meet monthly prior to the Date of Final Completion or at such other regular interval as RTA and Hills Motorway agree in writing.
- (d) RTA will convene and chair meetings of the Project Control Group and will take the minutes of all meetings and distribute the minutes to members of the Project Control Group.
- (e) RTA:
 - (i) has the right to have representatives of any Authority attend any meeting of the Project Control Group as observers; and
 - (ii) may request Hills Motorway to procure the attendance of representatives of the Contractor, the Operator, or any subcontractor, supplier or consultant of them at any meeting of the Project Control Group and Hills Motorway must comply with any such request.
- (f) Hills Motorway has the right to have a representative of the Contractor and the Operator attend any meeting of the Project Control Group as an observer.
- (g) The Parties may agree to establish additional project management groups.

5.7 Project Review Group

The Project Review Group comprises:

- (a) RTA's Representative;
- (b) Hills Motorway's Representative;
- (c) the Project Manager;
- (d) the Design Manager;
- (e) the Construction Manager;
- (f) the Quality Manager;
- (g) the Environmental Manager;
- (h) the Community Relations Manager;
- (i) the Company's occupational health, safety and rehabilitation management representative; and
- (j) any other person RTA's Representative reasonably requires from time to time.

5.8 Project Review Group functions

Project Review Group functions include reviewing:

- (a) the progress of the Project Works and the Temporary Works in relation to the Overall D&C Program and the Subsidiary D&C Programs and the performance of the Contractor and its Subcontractors prior to the Date of Final Completion;
- (b) issues arising out of the quality of the Project Works or the Temporary Works;
- (c) matters arising from the Design Documentation, including any proposed design changes;
- (d) environmental issues; and
- (e) safety issues.

5.9 Project Review Group meetings

- (a) The Project Review Group must meet:
 - (i) on a regular monthly basis prior to the Date of Final Completion or such other regular period as RTA and Hills Motorway agree in writing; and
 - (ii) at other times which RTA's Representative or Hills Motorway's Representative reasonably require.
- (b) Hills Motorway must provide RTA's Representative with an agenda prepared in consultation with RTA's Representative for each meeting of the Project Review Group no less than 48 hours prior to each meeting.
- (c) The role of chairperson for meetings of the Project Review Group will alternate between Hills Motorway's Representative and RTA's Representative with RTA's Representative to chair the first such meeting.
- (d) The chairperson of a meeting of the Project Review Group must give all members of the Project Review Group (and any other person nominated by RTA's Representative) minutes of the meeting within 48 hours after the meeting.

5.10 Hills Motorway's reporting obligations

Hills Motorway must provide reports to RTA and RTA's Representative as required by the Company Documentation Schedule.

5.11 Programming and Stages

- (a) Within 28 days of the Satisfaction Date, Hills Motorway must prepare and submit to the Independent Verifier and RTA's Representative subsidiary programs for all design and construction activities (including procurement of goods and materials) (**Subsidiary D&C Programs**).
- (b) The Subsidiary D&C Programs must:
 - (i) be based upon the Overall D&C Program;
 - (ii) contain the details required by section 24.2 of the Company Documentation Schedule; and

- (iii) contain the details which RTA's Representative reasonably requires.
- (c) The Overall D&C Program and all Subsidiary D&C Programs must be:
 - (i) reviewed and updated on a monthly basis to take into account changes to Hills Motorway's program for Hills Motorway's Work and delays which may have occurred; and
 - (ii) given to the Independent Verifier and RTA's Representative with the reports required by section 24.1.1 of the Company Documentation Schedule in both hard copy form and electronic form approved by RTA.
- (d) Any review of or comments upon a program (including the Subsidiary D&C Programs) by RTA will not:
 - (i) relieve Hills Motorway from or alter its liabilities or obligations under the M2 Upgrade Project Deed;
 - (ii) evidence or constitute an extension of time or a direction by RTA's Representative to accelerate, disrupt, prolong or vary any, or all, of Hills Motorway's Work; and
 - (iii) affect the time for performance of RTA's obligations under the M2 Upgrade Project Deed, including obliging RTA to do anything earlier than is necessary to enable Hills Motorway to achieve Construction Completion of any Stage by the Date for Construction Completion of that Stage or Final Completion by the Date for Final Completion.
- (e) If Hills Motorway chooses to compress Hills Motorway's Work or otherwise accelerate progress:
 - (i) RTA will not be obliged to take any action to assist or enable Hills Motorway to achieve Construction Completion of any Stage before the Date for Construction Completion of that Stage or Final Completion before the Date for Final Completion; and
 - (ii) the time for the carrying out of RTA's obligations will not be affected.

5.12 Project Plans

- (a) Hills Motorway must prepare the Project Plans specified in Appendix 14 to the Scope of Works and Technical Criteria.
- (b) Each Project Plan must:
 - (i) where an initial plan exists for the relevant Project Plan and is contained in Appendices 35, 36, 38, 40, 41, 43 and 44 of the Scope of Works and Technical Criteria, be based upon that initial plan; and
 - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 5.12 and section 2.12 of the Scope of Works and Technical Criteria.
- (c) Each Project Plan must be initially submitted to the Independent Verifier and RTA's Representative within the time period specified in Appendix 14 to the Scope of Works and Technical Criteria, containing the contents specified in Appendix 14 of the Scope of Works and Technical Criteria for the initial submission.

- (d) Hills Motorway acknowledges and agrees that:
- (i) an intended purpose of each Project Plan is for Hills Motorway to provide a detailed description of how Hills Motorway intends to carry out Hills Motorway's Work in accordance with the requirements of the M2 Upgrade Project Deed with respect to the subject matter of each Project Plan; and
 - (ii) the Project Plans will require ongoing development, amendment and updating throughout the duration of Hills Motorway's Work to take into account:
 - A. Changes;
 - B. changes in Law;
 - C. the commencement of new phases or stages of design and construction as shown in the Overall D&C Program and the Subsidiary D&C Programs;
 - D. those events or circumstances:
 - 1) expressly identified in Appendix 14 to the Scope of Works and Technical Criteria for each Project Plan; or
 - 2) specified in the Scope of Works and Technical Criteria; and
 - E. any other events or circumstances which occur or come into existence and which have, or may have, any effect on the manner in which Hills Motorway carries out Hills Motorway's Work.
- (e) RTA's Representative may:
- (i) review any Project Plan submitted under this clause 5.12; and
 - (ii) if the Project Plan submitted does not comply with the M2 Upgrade Project Deed, notify Hills Motorway of that within 15 Business Days of the submission of the Project Plan.
- (f) If Hills Motorway receives a notice under clause 5.12(e)(ii), Hills Motorway must promptly submit an amended Project Plan to the Independent Verifier and RTA's Representative.
- (g) RTA's Representative owes no duty to Hills Motorway to review any Project Plan submitted by Hills Motorway for errors, omissions or compliance with the M2 Upgrade Project Deed.
- (h) No review of, comments upon, or notice in respect of, any Project Plan or any other act or omission of RTA's Representative (including a request made under clause 5.12(j)) about any Project Plan will lessen or otherwise affect:
- (i) Hills Motorway's liabilities or responsibilities under the M2 Upgrade Project Deed or otherwise according to law; or

- (ii) RTA's rights against Hills Motorway, whether under the M2 Upgrade Project Deed or otherwise according to law.
- (i) Each of the Company and the Trustee:
- (i) warrants to RTA that each Project Plan will be fit for its intended purposes as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling the Company and the Trustee to design, construct, operate, maintain and repair the M2 Upgrade and perform their other obligations under the M2 Motorway Project Deed); and
 - (ii) must continue to develop and promptly amend or update the Project Plans:
 - A. to take into account:
 - 1) the circumstances and events referred to in clause 5.12(d)(ii) as those circumstances and events occur or come into existence; and
 - 2) any breach or potential breach of the warranty referred to in clause 5.12(i)(i); and
 - B. as otherwise specified in the Scope of Works and Technical Criteria, including Appendix 14 to the Scope of Works and Technical Criteria,and promptly submit each further Project Plan to the Independent Verifier and RTA's Representative as it is further developed, amended or updated.
- (j) If RTA's Representative believes that:
 - (i) any Project Plan does not comply with the requirements of the M2 Upgrade Project Deed; or
 - (ii) Hills Motorway has not further developed, updated or amended any Project Plan in accordance with the requirements of clause 5.12(i),RTA's Representative may by written notice request that Hills Motorway further develop, update or amend the Project Plan specifying:
 - (iii) the reasons why such development, updating or amending is required; and
 - (iv) the time within which such development, updating or amending must occur (which must be reasonable, having regard to the amount of work required),and Hills Motorway must:
 - (v) further develop, update or amend the Project Plan as requested by RTA's Representative; and

- (vi) submit the further developed, updated or amended Project Plan to the Independent Verifier and RTA's Representative within the time specified under clause 5.12(j)(iv).
- (k) Hills Motorway:
 - (i) must comply with each Project Plan which has been submitted to RTA's Representative under this clause 5.12 and in respect of which RTA's Representative has not given a notice under clause 5.12(e); and
 - (ii) agrees that compliance by it with any Project Plan will not in any way lessen or otherwise affect:
 - A. its liabilities or responsibilities under the M2 Upgrade Project Deed or otherwise according to law; or
 - B. RTA's rights against it, whether under the M2 Upgrade Project Deed or otherwise according to law.
- (l) Hills Motorway must comply with the restrictions upon the carrying out of Hills Motorway's Work specified in Appendix 14 to the Scope of Works and Technical Criteria.
- (m) To the extent they are relevant to operation, maintenance, repair and reinstatement of the M2 Upgrade during the Term, all Project Plans must be incorporated into the Maintenance Manual.

5.13 Services and supplies

- (a) Hills Motorway:
 - (i) must obtain and pay for any Services and all connections for all Services it needs to perform its obligations under the Project Documents;
 - (ii) must investigate, protect, relocate, modify and provide for all Services necessary for it to comply with its obligations under the Project Documents;
 - (iii) assumes the risk of the existence, location, condition and availability of Services;
 - (iv) must procure the connection to the stormwater discharge points; and
 - (v) must contract for, acquire or otherwise procure or provide the provision of all fuel and other materials required for the performance of its obligations under the M2 Upgrade Project Deed.
- (b) Each of the Company and the Trustee indemnifies RTA from and against any Claim or Loss RTA suffers or incurs arising out of or in connection with:
 - (i) any disruption to any Service resulting from its share of Hills Motorway's Work; or
 - (ii) a failure by the Company or the Trustee (as applicable) to comply with any obligation under the M2 Upgrade Project Deed with respect to Services or the Service Works including its share of Hills Motorway's

obligations under section 6.3 of the Scope of Works and Technical Criteria.

- (c) RTA will not be liable under the M2 Upgrade Project Deed or otherwise in relation to any Services required for the M2 Upgrade.

5.14 Environmental management

- (a) Without limiting Hills Motorway's other obligations under the M2 Upgrade Project Deed, Hills Motorway must carry out Hills Motorway's Work:
 - (i) in an environmentally responsible manner so as to protect the Environment; and
 - (ii) in accordance with the Environmental Documents, the Environmental Management Plans and all relevant Law.
- (b) Each of the Company and the Trustee must indemnify RTA from and against any Claim or Loss RTA suffers or incurs arising out of or in any way in connection with a failure by the Company or the Trustee (as applicable) to comply with any obligation under this clause 5.14.
- (c) Hills Motorway must immediately notify RTA in writing of any breach or potential breach of or non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents or any Law regarding the Environment in the carrying out of Hills Motorway's Work.

5.15 Environmental Representative

- (a) The Environmental Representative is to be engaged at Hills Motorway's cost on the terms of the Deed of Appointment of Environmental Representative.
- (b) The Environmental Representative's role is to perform and fulfil the function of the Environmental Representative or ER as contemplated by the Project Approval and in accordance with the Deed of Appointment of Environmental Representative.
- (c) The Environmental Representative is obliged to act independently of Hills Motorway, RTA, the Contractor and any of their Subcontractors.
- (d) Hills Motorway must provide the Environmental Representative with all information and documents and allow the Environmental Representative:
 - (i) to attend meetings; and
 - (ii) access to such premises,all as may be:
 - (iii) necessary or reasonably required by the Environmental Representative or RTA's Representative to allow the Environmental Representative to perform its obligations under the Deed of Appointment of Environmental Representative; or
 - (iv) requested by the Environmental Representative or directed by RTA's Representative.
- (e) Nothing that the Environmental Representative does or fails to do pursuant to the

purported exercise of its functions under the Deed of Appointment of Environmental Representative will entitle Hills Motorway to make any Claim against RTA.

5.16 Minimise disruption and complaints

- (a) Hills Motorway must in carrying out Hills Motorway's Work:
- (i) take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles;
 - (iii) without limiting Hills Motorway's obligation to comply with all Law in all respects:
 - A. prevent nuisance except to the extent that nuisance is the inevitable consequence of performing Hills Motorway's Work in accordance with the requirements of the M2 Upgrade Project Deed including under clause 5.16(a)(iv); and
 - B. minimise noise and disturbance to those affected by Hills Motorway's Work; and
 - (iv) ensure that in designing and constructing the Project Works it takes all steps that a prudent and reasonable owner of infrastructure would at that time have taken to prevent nuisance in accordance with clause 5.16(a)(iii).
- (b) Subject to clause 5.16(a), Hills Motorway is responsible for the method and manner of carrying out Hills Motorway's Work and for all acts or omissions of Hills Motorway, the Contractor, or any of their Subcontractors or anyone for which they are responsible in the course of carrying out Hills Motorway's Work.
- (c) Hills Motorway must immediately notify RTA's Representative in writing if any:
- (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,
- by anyone (including any Authority other than RTA) or any landowner, lessee or licensee near the Project Site, the Temporary Areas or any Extra Land against Hills Motorway, the Contractor or their respective employees or Subcontractors that could materially impact on the carrying out of Hills Motorway's Work, including:
- (iv) Contamination arising out of, or in any way in connection with, Hills Motorway's Work;
 - (v) Hills Motorway's non-compliance with any Environmental Document (or condition or requirement thereunder) or any Law regarding the Environment;
 - (vi) Hills Motorway's use or occupation of the Project Site, the Temporary Areas or any Extra Land; or
 - (vii) loss or damage relating to real or personal property.

- (d) Hills Motorway must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 5.16(c);
 - (ii) take all measures to resolve those matters as soon as possible; and
 - (iii) keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 5.16(c), which:
 - A. contains full details of:
 - 1) each complaint, proceedings, letter of demand, order and direction; and
 - 2) the action taken by Hills Motorway with respect to each complaint, proceedings, letter of demand, order and direction;
 - B. is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - C. may be inspected by RTA's Representative whenever RTA's Representative reasonably requires.

5.17 Security

Hills Motorway must provide such security measures as are necessary for the protection and security of the Project Works (excluding any Stages which have achieved Construction Completion), the Temporary Works and the M2 Upgrade (excluding any Stages which have achieved Construction Completion) against theft, vandalism, unauthorised entry into the Project Site, the Temporary Areas and any other unlawful acts.

5.18 Occupational health, safety and rehabilitation

- (a) RTA appoints the Company as the principal contractor for the Project Works and authorises the Company to exercise such authority as is necessary to enable the Company to discharge its responsibilities, as a principal contractor, imposed by and in conformity with Chapter 8 of the Occupational Health & Safety Regulation 2000. Without limiting the Company's obligations as the principal contractor, Hills Motorway must:
- (i) have a Corporate OHS&R Management System which is in accordance with the New South Wales Government Occupational Health, Safety and Rehabilitation Management Systems Guidelines, third edition, dated November 1998;
 - (ii) at all times comply with its Occupational Health, Safety and Rehabilitation Management Plan;
 - (iii) carry out Hills Motorway's Work in a safe manner and so that no damage is caused to any person or property; and
 - (iv) identify any land or improvements which may be affected by Hills Motorway's Work.

- (b) Where RTA is not able to validly appoint the Company as principal contractor under clause 210 of the Occupational Health & Safety Regulation 2000 in respect of Hills Motorway's Work carried out by or on behalf of Hills Motorway on any part of the Project Site, the Temporary Areas or any Extra Land, the Company must exercise and fulfil the functions and obligations of the principal contractor under the Occupational Health & Safety Regulation 2000 in respect of Hills Motorway's Work, as if the Company had been validly appointed as the principal contractor in respect of Hills Motorway's Work, so as to ensure that the responsibilities imposed on a principal contractor under clause 210 of the Occupational Health & Safety Regulation 2000 are discharged.

5.19 Australian goods, services and materials

Hills Motorway must comply with section 2.9 of the Scope of Works and Technical Criteria.

5.20 Training

Hills Motorway must procure that the Contractor complies with the NSW Government Training Management Guidelines and the requirements of section 2.11 of the Scope of Works and Technical Criteria.

5.21 Employee relations

Hills Motorway must:

- (a) assume sole responsibility for and manage all aspects of industrial relations in relation to the M2 Upgrade;
- (b) comply with the NSW Government Industrial Relations Management Guidelines dated December 1999;
- (c) comply with the Construction Plan, the National Code of Practice for the Construction Industry and the Industry Guidelines for the Workplace Relations and Occupational Health and Safety Components of the Code in respect of industrial relations;
- (d) keep RTA's Representative fully and promptly informed of any industrial relations problems or issues which affect or are likely to affect the carrying out of Hills Motorway's Work; and
- (e) develop and implement the Project Industrial Relations Plan in accordance with clause 5.24.

5.22 Community liaison

Hills Motorway:

- (a) acknowledges that the areas where the Project Works and the Temporary Works are to be carried out are of great importance to many people, including, the local residents and businesses; and
- (b) must manage and participate in all community relations programs and activities as:
 - (i) required by the Scope of Works and Technical Criteria;
 - (ii) contained in the Community Involvement Plan; and

- (iii) reasonably requested by RTA from time to time.

5.23 M7 Motorway and Lane Cove Tunnel Motorway interface

- (a) Hills Motorway must, in carrying out Hills Motorway's Work, ensure that none of the following connections of the M2 Motorway to either of the Lane Cove Tunnel Motorway or the M7 Motorway are closed or materially reduced at any time:
 - (i) the eastbound carriageway of the M2 Motorway/Epping Road to the eastbound carriageway of the Lane Cove Tunnel Motorway;
 - (ii) the westbound carriageway of the Lane Cove Tunnel Motorway to the westbound carriageway of the M2 Motorway/Epping Road;
 - (iii) the westbound carriageway of the M2 Motorway to the westbound carriageway of the M7 Motorway; or
 - (iv) the eastbound carriageway of the M7 Motorway to the eastbound carriageway of the M2 Motorway.
- (b) Without otherwise limiting RTA's rights or remedies under the M2 Upgrade Project Deed in any way, the Parties agree that clause 15.2(a) sets out the exclusive remedy of RTA for damages for breach of this clause 5.23.

5.24 Project Industrial Relations Plan

- (a) Prior to commencing any Project Works or Temporary Works on the Project Site or the Temporary Areas, Hills Motorway must submit to RTA's Representative a Project Industrial Relations Plan.
- (b) The Project Industrial Relations Plan must:
 - (i) meet the requirements of the Scope of Works and Technical Criteria;
 - (ii) contain a signed declaration on Hills Motorway's letterhead verifying compliance in the preceding 12 months with all relevant employment and legal obligations, including those relating to:
 - A. payment of remuneration to employees;
 - B. annual leave;
 - C. Long Service Payment Scheme registration;
 - D. worker's compensation insurance;
 - E. superannuation fund membership and contributions; and
 - F. over-award payment;
 - (iii) identify the location of time and wage records or other documents required to verify compliance with the obligations referred to in clause 5.24(b)(ii); and
 - (iv) identify the Federal or State awards that are likely to cover the Contractor and its Subcontractors in the carrying out of Hills Motorway's Work.

5.25 Project Industrial Relations Plan implementation review

- (a) Hills Motorway must each month submit the Project Industrial Relations Plan to RTA's Representative for review.
- (b) RTA's Representative must inform Hills Motorway of the outcome of each review conducted under this clause 5.25 and any corrective action which RTA considers necessary.
- (c) For the purposes of a review under this clause 5.25 Hills Motorway must:
 - (i) make available to RTA's Representative, upon request, all industrial relations management records held or obtainable by Hills Motorway which are relevant to the review, including those relevant to the Contractor and its Subcontractors; and
 - (ii) provide all assistance necessary to RTA's Representative during the review process, including:
 - A. attending reviews; and
 - B. promptly implementing any corrective action deemed necessary by RTA's Representative.

5.26 Notices of Claims

- (a) Subject to clauses 5.26(c) and 7.3, RTA will not be liable upon any Claim by Hills Motorway arising out of or in any way in connection with any act or omission of RTA or any other fact, matter or thing under, arising out of or in any way in connection with the Project, Hills Motorway's Work, the Project Works, the Temporary Works, the M2 Upgrade or the M2 Upgrade Project Deed (including this Annexure A) unless Hills Motorway gives RTA's Representative the following notices:
 - (i) a written notice within the earlier of:
 - A. 15 Business Days of when Hills Motorway first became aware of the act, omission or other fact, matter or thing upon which the Claim is based; or
 - B. 2 months of the first occurrence of the act, omission or other fact, matter or thing upon which the Claim is based, provided that, if Hills Motorway reasonably demonstrates that the relevant act, omission, fact, matter or thing is not something of which Hills Motorway ought reasonably to have been aware within that 2 months, the period for submission of the notice will be extended to 15 Business Days after Hills Motorway first became aware of, or ought reasonably to have become aware of, that act, omission, fact, matter or thing, expressly specifying:
 - C. that Hills Motorway proposes to make a Claim; and
 - D. the act, omission, fact, matter or thing upon which the Claim will be based; and

- (ii) a written Claim within 20 Business Days of giving the written notice under clause 5.26(a)(i), which must include:
 - A. detailed particulars concerning the 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 M2 Upgrade Project Deed or otherwise, and if based on a term of the M2 Upgrade Project Deed, clearly identifying the specific term;
 - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - D. details of the amount claimed and how it has been calculated.
- (b) If the act, omission, fact, matter or thing upon which the Claim is based is, or the consequences of the act, omission, fact, matter or thing are, continuing, Hills Motorway must continue to give the information required by clause 5.26(a)(ii) every 20 Business Days after the written Claim under clause 5.26(a)(ii) was submitted or given to RTA, until after the act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.
- (c) This clause 5.26 will not apply to:
 - (i) any claim under clause 10 of the M2 Upgrade Project Deed;
 - (ii) any Claim where the procedures for notifying or making that Claim are dealt with expressly in another provision of the M2 Upgrade Project Deed; or
 - (iii) any claim, action, demand or proceeding in connection with the M2 Motorway Project Deed which is not also a Claim arising out of or in any way in connection with:
 - A. the Project;
 - B. Hills Motorway's Work;
 - C. the Project Works (except to the extent to which the event or circumstance giving rise to such a Claim in connection with a Stage that has achieved Construction Completion arises on or after the Date of Construction Completion of that Stage); or
 - D. the Temporary Works.

6. Design and Design Documentation

6.1 Hills Motorway's design obligations

- (a) Each of the Company and the Trustee warrants to RTA that:
- (i) it has checked and carefully considered the Scope of Works and Technical Criteria and Environmental Documents and that:
 - A. the Concept Design has been prepared by Hills Motorway and will be fit for its intended purpose as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling Hills Motorway to design, construct, operate, maintain and repair the M2 Upgrade and perform its other obligations under the M2 Motorway Project Deed);
 - B. it has satisfied itself that there are no ambiguities or inconsistencies in or between the Concept Design, the Scope of Works and Technical Criteria and the Environmental Documents;
 - C. it has satisfied itself that the Scope of Works and Technical Criteria is proper, adequate and fit for its intended purpose as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling Hills Motorway to design and construct and the Company to operate, maintain and repair the M2 Upgrade and perform its other obligations under the M2 Motorway Project Deed and for the purpose of enabling Hills Motorway to carry out Hills Motorway's Work in accordance with the M2 Upgrade Project Deed including so as to satisfy the other requirements of this clause 6.1); and
 - D. it has taken into consideration and made due allowance for the risks and costs associated with carrying out Hills Motorway's Work and with assuming the obligations and potential liabilities imposed on it under the M2 Upgrade Project Deed;
 - (ii) the Design Documentation will:
 - A. satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the M2 Upgrade Project Deed; and
 - B. be fit for its intended purposes as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling Hills Motorway to design and construct and the Company to operate, maintain and repair the M2 Upgrade and perform its other obligations under the M2 Motorway Project Deed); and
 - C. be completed in accordance with the requirements of the M2 Upgrade Project Deed;

- (iii) construction in accordance with the Design Documentation which Hills Motorway is entitled to use for construction purposes in accordance with clause 6.2(d) will satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the M2 Upgrade Project Deed; and
- (iv) the Project Works will:
 - A. be completed in accordance with, and satisfy the requirements of, the M2 Upgrade Project Deed; and
 - B. upon Final Completion, be fit for their intended purposes as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling Hills Motorway to design and construct and the Company to operate, maintain and repair the M2 Upgrade and perform its other obligations under the M2 Motorway Project Deed).
- (b) Hills Motorway agrees that its obligations under, and the warranties given in, this clause 6.1 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Project Works and the Temporary Works notwithstanding:
 - (i) any design work carried out by others prior to the date of the M2 Upgrade Project Deed and incorporated in the M2 Upgrade Project Deed; or
 - (ii) any Change the subject of a direction by RTA's Representative.

6.2 Preparation of Design Documentation

- (a) Hills Motorway must give the Independent Verifier and RTA's Representative, throughout the preparation of the Design Documentation, the opportunity to comment on and monitor the development of the design by Hills Motorway in accordance with this clause 6.2.
- (b) Hills Motorway must develop and complete all Design Documentation in accordance with the M2 Upgrade Project Deed including the Company Documentation Schedule.
- (c) The Design Documentation for each discrete design element of the Project Works and the Temporary Works must be certified by Hills Motorway and verified by the Independent Verifier as:
 - (i) being appropriate for construction; and
 - (ii) complying with the M2 Upgrade Project Deed including the Scope of Works and Technical Criteria and, in particular, the durability requirements in section 2.14 and the design life requirements of section 5.2 of the Scope of Works and Technical Criteria,

in accordance with the Company Documentation Schedule.

(d) Unless otherwise agreed in writing by RTA's Representative, Hills Motorway must construct the Project Works and the Temporary Works using Design Documentation which has been:

- (i) certified by Hills Motorway;
- (ii) submitted to RTA's Representative for the opportunity to make comments; and
- (iii) verified by the Independent Verifier, with any comments by RTA's Representative provided in the period contemplated by the Company Documentation Schedule addressed by the Independent Verifier as part of the verification,

in accordance with the Company Documentation Schedule.

(e) Without limiting clause 2.3 of the M2 Upgrade Project Deed, RTA and Hills Motorway acknowledge and agree that:

- (i) the receipt or review of, or any consultation or comments regarding, any Design Documentation by RTA's Representative is solely for the purpose of monitoring the performance of Hills Motorway;
- (ii) RTA owes no duty to Hills Motorway to review the Design Documentation for errors, omissions or compliance with the requirements of the M2 Upgrade Project Deed or to consult with Hills Motorway or make any comments regarding any Design Documentation; and
- (iii) neither any review, consultation or comments by RTA's Representative, nor any failure to review, consult or comment by RTA, regarding any Design Documentation or any other act or omission by RTA's Representative in respect of any Design Documentation will lessen or otherwise affect:
 - A. Hills Motorway's warranties under clause 6.1 or any of its other liabilities or responsibilities under the M2 Upgrade Project Deed or otherwise according to law; or
 - B. RTA's rights against Hills Motorway whether under the M2 Upgrade Project Deed or otherwise according to law.

6.3 Concept Design

(a) Hills Motorway acknowledges that prior to the date of the M2 Upgrade Project Deed it prepared the Concept Design. Hills Motorway agrees that it bears absolutely all risks (except as otherwise expressly provided in the M2 Upgrade Project Deed) howsoever they may arise as a result of the use by Hills Motorway of, or the reliance by Hills Motorway upon, the Concept Design in performing Hills Motorway's Work and that such use and reliance will not affect any of its obligations under the M2 Upgrade Project Deed.

- (b) Without in any way limiting this clause 6, and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Company or the Trustee may have made in relation to any of the matters set out in clauses 6.3(a) and 6.3(b), except as otherwise expressly provided in the M2 Upgrade Project Deed, Hills Motorway is responsible for and assume the risk of all increased costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with:
- (i) the design and construction of the Project Works and the Temporary Works generally in accordance with the Concept Design costing more or taking longer than anticipated; and
 - (ii) any differences between the Project Works or the Temporary Works which Hills Motorway is required to design or construct (ignoring for this purpose any differences which are the subject of a Change Order issued under clause 7.1) and the Concept Design including:
 - A. differences necessitated by the physical conditions (including sub-surface conditions) or characteristics of the Project Site, the Temporary Areas, any Extra Land, the Environment or their surroundings; and
 - B. differences required to ensure that the Project Works and the Temporary Works will be fit for their intended purposes as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling Hills Motorway to design, construct, operate, maintain and repair the M2 Upgrade and perform its other obligations under the M2 Motorway Project Deed) and satisfy the requirements of the M2 Upgrade Project Deed.
- (c) Each of the Company and the Trustee warrant to RTA that the Concept Design has been prepared by Hills Motorway and that:
- (i) it remains responsible for ensuring that its share of the Project Works and the Temporary Works will satisfy the requirements of the M2 Upgrade Project Deed despite the Concept Design;
 - (ii) if its share of the Project Works and the Temporary Works are designed and constructed in accordance with the Concept Design, its share of the Project Works and the Temporary Works will satisfy the requirements of the M2 Upgrade Project Deed but nothing in this clause 6.3(c)(ii) affects or limits clause 6.3(a), which will prevail to the extent of any inconsistency; and
 - (iii) Hills Motorway will carry out and complete Hills Motorway's Work in accordance with the Concept Design but nothing in this clause 6.3(c)(iii) affects or limits clause 6.3(a), which will prevail to the extent of any inconsistency.

- (d) The Parties agree that, except to the extent required by the Scope of Works and Technical Criteria, nothing in the M2 Upgrade Project Deed will require the rectification of any defect in the M2 Motorway.

7. Changes

7.1 Changes proposed by RTA

- (a) Subject to clause 7.1(b), RTA may require Hills Motorway to carry out a Change in accordance with the following procedure:
- (i) RTA's Representative may require Hills Motorway to carry out a Change by issuing a document entitled "Change Order" which sets out details of the proposed Change;
 - (ii) within 15 Business Days of receipt of a "Change Order" from RTA under clause 7.1(a)(i), Hills Motorway must provide RTA with a written notice containing:
 - A. its estimate of the Change Costs or Change Savings involved in the Change, substantiated (to the extent possible) by detailed particulars;
 - B. details of the functional integrity of any of the elements of the Project Works and the performance standards required by the M2 Upgrade Project Deed which will be adversely altered by the proposed Change;
 - C. details of the quality standards, warranties and other obligations (including the Date for Construction Completion of any Stage and the Date for Final Completion) required under the M2 Upgrade Project Deed which will be adversely affected by the proposed Change;
 - D. details of any adverse affect of the proposed Change on Existing Operations; and
 - E. any other information requested by the "Change Order" (if applicable);
 - (iii) within 15 Business Days of receipt of the notice given under clause 7.1(a)(ii), RTA's Representative must:
 - A. give a written notice to Hills Motorway that it withdraws the relevant "Change Order", in which case Hills Motorway is not obliged to carry out the "Change Order";
 - B. give a written notice to Hills Motorway that it agrees with the matters referred to in Hills Motorway's notice, in which case Hills Motorway must proceed to carry out the "Change Order" and Hills Motorway's obligations under the M2 Upgrade Project Deed and the other matters referred to in clause 7.1(a)(ii) will be varied to the extent set out in the notice given under clause 7.1(a)(ii); or

- C. give a written notice to Hills Motorway that it disagrees with the matters referred to in Hills Motorway's notice and requires the Dispute to be referred for determination under clause 11 of the M2 Upgrade Project Deed in which case, subject to clause 7.1(a)(iv), Hills Motorway is not obliged to carry out the "Change Order" until the Dispute has been determined under clause 11 of the M2 Upgrade Project Deed and Hills Motorway's obligations under the M2 Upgrade Project Deed and the other matters referred to in clause 7.1(a)(ii) will be varied to the extent set out in the notice given under clause 7.1(a)(ii) and agreed by RTA or, to the extent that agreement is not reached, as determined in accordance with clause 11 of the M2 Upgrade Project Deed; and
- (iv) RTA's Representative may direct Hills Motorway to comply with a "Change Order" whether or not the matters referred to in clause 7.1(a)(ii) have been agreed between RTA's Representative and Hills Motorway or determined in accordance with clause 11 of the M2 Upgrade Project Deed. In that case, Hills Motorway must proceed to carry out the Change and the Change Costs or Change Savings will, until RTA's Representative and Hills Motorway otherwise agree or a determination is made in accordance with clause 11 of the M2 Upgrade Project Deed, be deemed to be the amount set out in Hills Motorway's notice under clause 7.1(a)(ii) and payment will be made on that basis.
- (b) Unless otherwise agreed by the Parties, Hills Motorway will not be obliged to carry out any Change proposed by RTA if the proposed Change will:
- (i) adversely affect the use, patronage or capacity of the M2 Motorway or the M2 Upgrade or Hills Motorway's ability to levy or collect tolls; or
- (ii) prevent Hills Motorway from achieving Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3.

7.2 Changes proposed by Hills Motorway

- (a) Hills Motorway may propose a Change to RTA's Representative by giving a written notice with details of:
- (i) the proposed Change;
- (ii) the reason for the proposed Change;
- (iii) the effect of the proposed Change on other elements of the Project Works;
- (iv) the effect of the proposed Change on the M2 Motorway including the operation, maintenance and repair of the M2 Motorway, both during the period of carrying out of Hills Motorway's Work and after Final Completion;
- (v) the effect of the proposed Change on the Overall D&C Program and Subsidiary D&C Programs; and
- (vi) the estimated Change Costs or Change Savings arising from the proposed Change.

- (b) If Hills Motorway proposes a Change under clause 7.2(a) Hills Motorway must, if required by RTA's Representative, give to RTA's Representative:
- (i) a written statement stating that the proposed Change:
 - A. will not adversely affect the functional integrity of any of the elements of the Project Works and the performance standards required by the M2 Upgrade Project Deed;
 - B. will not adversely affect the quality standards, warranties and other obligations required under the M2 Upgrade Project Deed; and
 - C. will not adversely affect the functional integrity of any of the elements of the M2 Motorway and the performance standards required by the M2 Motorway Project Deed;
 - D. will not adversely affect the quality standards, warranties and other obligations (including those in relation to operation, maintenance and repair of both the M2 Motorway and the Project Works) under the M2 Motorway Project Deed; and
 - (ii) any other information and supporting documentation RTA's Representative requires.
- (c) Subject to clause 2.10(c), the RTA Representative:
- (i) in its absolute discretion, may approve or reject any Change Hills Motorway proposes; and
 - (ii) will be under no obligation or duty to approve any such Change for the convenience of or to assist Hills Motorway.
- (d) If RTA's Representative approves a Change proposed by Hills Motorway:
- (i) it will issue a written direction entitled "Change Order"; and
 - (ii) Hills Motorway must thereafter carry out the Change.
- (e) Unless otherwise agreed in writing by RTA's Representative, Hills Motorway must bear all costs:
- (i) associated with proposing a Change and providing the details under clause 7.2(b) and complying with clause 7.2(b);
 - (ii) reasonably incurred by RTA in assessing a Change proposed by Hills Motorway; and
 - (iii) associated with carrying out a Change proposed by Hills Motorway.

7.3 Payment for Changes

- (a) If a Change directed by RTA's Representative in accordance with clause 7.1(a) results in Change Costs, RTA must pay Hills Motorway the Change Costs (as agreed under clause 7.1(a) or determined in accordance with clause 11 of the M2 Upgrade Project Deed) in accordance with this clause 7.3. Unless otherwise agreed, RTA must pay Hills Motorway these Change Costs progressively within 10 Business Days after each month in which the relevant work was undertaken.
- (b) If a Change directed by RTA's Representative under clause 7.1(a) or clause 7.2(d) results in Change Savings (or in the case of a Change directed by RTA's Representative under clause 7.2(d), is expected to result in Change Savings, as advised by Hills Motorway under clause 7.2(a)), RTA and Hills Motorway agree that:
 - (i) in the case of a Change directed by RTA's Representative under clause 7.1(a), RTA is entitled to receive 100% of the Change Savings; and
 - (ii) in the case of a Change directed by RTA's Representative under clause 7.2(d), RTA is entitled to receive 50% of the greater of:
 - A. the actual Change Savings; and
 - B. the estimated Change Savings (as advised by Hills Motorway under clause 7.2(a)).
- (c) Where an amount is payable to RTA pursuant to clause 7.3(b):
 - (i) to the extent that it relates to Hills Motorway's Work, this may be set off against Change Costs in respect of Hills Motorway's Work payable by RTA to Hills Motorway under clause 7.3(a) or, where this is not set-off, it must be paid by Hills Motorway to RTA progressively within 10 Business Days after each month in which the relevant work which has been deleted or omitted would have been undertaken but for the Change; or
 - (ii) to the extent that it relates to the operation, maintenance and repair of the M2 Motorway or the Project Works, Hills Motorway must pay this to RTA in the manner and at the time as agreed between RTA and Hills Motorway or, to the extent that they fail to agree, as determined by an expert who must in making the determination ensure that the timing of the payment will not have an adverse impact upon the ability which, prior to the change:
 - A. the Borrower had to repay the interest and amortisation payments owing under the M2 Upgrade Debt Financing Documents and the Debt Documentation on the dates on which such amounts are due to be repaid thereunder; and
 - B. the Company and the Trustee had to give the Investors (treated as if all those Investors are all Notional Initial M2 Upgrade Equity Investors) the lower of:
 - 1) the M2 Upgrade Equity Return they would have received if the Change had not been made; and
 - 2) the M2 Upgrade Base Case Equity Return.]

- (d) Except where Hills Motorway is directed to carry out a Change pursuant to a "Change Order" issued by RTA's Representative under clause 7.1(a)(i), RTA will not be liable to Hills Motorway for any Loss or otherwise upon any Claim arising out of or in any way in connection with any Change.

8. Construction

8.1 Construction

- (a) Each of the Company and the Trustee warrant to RTA that its share of the Project Works and the Temporary Works will be constructed:
- (i) in accordance with the requirements of the M2 Upgrade Project Deed including:
- A. the Scope of Works and Technical Criteria;
- B. any relevant Design Documentation which has been:
- 1) certified by Hills Motorway;
- 2) submitted to RTA's Representative for the opportunity to make comments; and
- 3) verified by the Independent Verifier, and which verification addresses any comments made by RTA's Representative,
- in accordance with clause 6.2(d); and
- C. any Change directed by RTA's Representative in accordance with clause 7.1(a)(i) or 7.1(a)(iv) or 7.2(d); and
- (ii) with good workmanship and materials which are:
- A. new (or, with RTA's prior written consent, reused) and free of Defects or other imperfections; and
- B. of the quality specified in the Scope of Works and Technical Criteria; and
- (iii) so that they are fit for their intended purposes as specified in, or ascertainable from the Project Documents and the Environmental Documents (including for the purposes of enabling Hills Motorway to design and construct and the Company to operate, maintain and repair the M2 Upgrade and perform its other obligations under the M2 Motorway Project Deed).
- (b) If there is any ambiguity, discrepancy or inconsistency between the M2 Upgrade Project Deed and any Design Documentation, then unless otherwise directed by RTA's Representative, the requirements of the M2 Upgrade Project Deed will prevail.

8.2 RTA's right to inspect

- (a) RTA and RTA's Representative may at any time inspect the Project Works and the Temporary Works or the progress of Hills Motorway's Work.

- (b) Neither RTA nor RTA's Representative owes any duty to Hills Motorway to:
 - (i) inspect the Project Works or the Temporary Works; or
 - (ii) review any construction for errors, omissions or compliance with the requirements of the M2 Upgrade Project Deed if it does so inspect.
- (c) No inspection of the Project Works or the Temporary Works or review of any part of Hills Motorway's Work by RTA, RTA's Representative or the Independent Verifier will in any way lessen or otherwise affect:
 - (i) Hills Motorway's obligations under the M2 Upgrade Project Deed (including its warranties under clause 8.1(a) of this Annexure A) or otherwise according to law; or
 - (ii) RTA's rights against Hills Motorway whether under the M2 Upgrade Project Deed or otherwise according to law.
- (d) This clause 8.2 does not apply to the inspection of a Stage which has achieved Construction Completion.

8.3 Review of construction

- (a) RTA's Representative may (but is not obliged to) monitor Hills Motorway's Work in order to form an opinion as to whether the construction obligations of Hills Motorway are being complied with and, in particular, whether the Project Works or the Temporary Works are being constructed in accordance with the requirements of the M2 Upgrade Project Deed.
- (b) If RTA's Representative believes that the Project Works or the Temporary Works are not being constructed in accordance with the requirements of the M2 Upgrade Project Deed, RTA's Representative may give written notice to Hills Motorway specifying the Defect.
- (c) If Hills Motorway disagrees with any notice given by RTA's Representative pursuant to clause 8.3(b), it must within 5 Business Days of receipt of such a notice give written notice of its disagreement to RTA's Representative. RTA's Representative and Hills Motorway must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 5 Business Days of receipt of the notice of disagreement, either Party may by written notice to the other and the Independent Verifier refer the matter for determination by the Independent Verifier, who must within 5 Business Days make a determination as to the matter and notify the Parties in writing of its determination.
- (d) If RTA's Representative gives a notice under clause 8.3(b) and Hills Motorway does not give a notice under clause 8.3(c) (or if Hills Motorway does give a notice under clause 8.3(c) and the Independent Verifier determines that the Project Works or the Temporary Works are not being constructed in accordance with the requirements of the M2 Upgrade Project Deed), Hills Motorway must correct the Defect the subject of the notice under clause 8.3(b).

8.4 Traffic Management and Temporary Road Closures

- (a) Hills Motorway must not undertake any Hills Motorway's Work which has the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any Local Road:

- (i) without a Road Occupancy Licence issued by RTA in accordance with the requirements of Appendix 23 to the Scope of Works and Technical Requirements;
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of the Road Occupancy Licence.
- (b) Without limiting clause 8.4(a), Hills Motorway:
- (i) is responsible for the control, direction and protection of all traffic in any way affected by Hills Motorway's Work;
 - (ii) as agent of RTA must during Hills Motorway's Work manage all such traffic to ensure:
 - A. its continuous, safe and efficient movement;
 - B. the traffic carrying capacity of roads affected by Hills Motorway's Work are maintained in accordance with the Traffic Management Plan and the requirements of the Scope of Work and Technical Criteria in respect of traffic management and safety; and
 - C. that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum;
 - (iii) must at all times comply with the Traffic Management and Safety Plan, each Traffic Management Plan, each Road Occupancy Licence and the requirements of the Scope of Works and Technical Criteria in respect of traffic management and safety; and
 - (iv) must comply with the directions of any relevant Authority and RTA's Representative with respect to such management.

8.5 Appointment of sub-agent

RTA acknowledges that Hills Motorway may appoint the Contractor as its sub-agent for the purposes of clause 8.4.

8.6 Traffic Instructions from RTA's Representative and Authorities

Notwithstanding any Road Occupancy Licence issued by RTA during the period of the carrying out of Hills Motorway's Work, for any lane or shoulder closure, RTA's Representative or any relevant Authority (including RTA) may at any time direct Hills Motorway to temporarily cease any Hills Motorway's Work and to re-open the lane or shoulder (which, other than in an emergency, will be given with reasonable notice having regard to the circumstances).

8.7 Notice of accidents

Where Hills Motorway becomes aware before the Date for Final Completion of any accidents involving damage to persons or property occurring upon or in the vicinity of the Project Site, the Temporary Areas or any Extra Land, Hills Motorway must:

- (a) promptly give RTA's Representative a detailed written report of the accident as

required by section 8.18 of the Scope of Works and Technical Criteria; and

- (b) otherwise comply with Law and the Occupational Health, Safety and Rehabilitation Management Plan.

8.8 Subcontracting

- (a) The engagement by Hills Motorway of the Contractor to perform some or all of the obligations of Hills Motorway under the M2 Upgrade Project Deed will not limit or otherwise affect Hills Motorway's obligations or liabilities under the M2 Upgrade Project Deed.
- (b) Hills Motorway will be liable to RTA for the acts and omissions of the Contractor, its Subcontractors and their respective employees and agents as if such acts or omissions were the acts or omissions of Hills Motorway.
- (c) Subject to clause 8.8(d), Hills Motorway must notify RTA's Representative of and, if RTA's Representative requires, give RTA's Representative:
 - (i) access to any proposed or executed contract in respect of Hills Motorway's Work with a contract sum of more than \$500,000 (including all plans, specifications and drawings relating to that contract); and
 - (ii) a copy of any proposed or executed contract in respect of Hills Motorway's Work with a contract sum of more than \$20,000,000 (including all plans, specifications and drawings related to that contract).
- (d) Prior to providing the RTA's Representative with access to, or a copy of, any proposed or executed contract in respect of Hills Motorway's Work in accordance with clause 8.8(c), Hills Motorway may remove any commercially sensitive information from those contracts.
- (e) Hills Motorway must ensure that the Contractor does not enter into any Subcontract in respect of the categories of work set out in Schedule 4 (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under RTA's pre-qualification and registration procedures.
- (f) Hills Motorway must ensure that the Contractor includes a clause in each Significant Subcontract entered into by the Contractor with any Subcontractor which provides that if the M2 Upgrade Project Deed is terminated under clauses 2.11(i) or 2.12(e) or clause 9.8 of the M2 Upgrade Project Deed:
 - (i) if required by RTA to do so, the Subcontractor must consent to a novation of the Significant Subcontract to RTA; or
 - (ii) if RTA does not elect to novate the relevant Significant Subcontract, the Contractor may terminate the Significant Subcontract and the Contractor will pay to the Subcontractor an early termination amount equal to the amount determined by the Independent Verifier as being:
 - A. the aggregate of:
 - 1) the contract value of the work properly executed in accordance with the contract;

- 2) reasonable costs and expenses properly incurred in expectation of completing the work under the contract;
- 3) liabilities to third parties (excluding any Related Entity or Related Body Corporate) for early termination; and
- 4) 2% of the unpaid balance of the contract sum on account of profit foregone, less

B. the total amounts paid on account of the contract sum.

8.9 Property Works

(a) Hills Motorway must:

(i) carry out the Property Works with respect to each Parcel:

A. in accordance with the Scope of Works and Technical Criteria; and

B. so that they are fit for their intended purpose;

(ii) after completion of the Property Works with respect to a Parcel, including the work described in clause 8.9(e), provide to RTA's Representative:

A. a certificate in the form of Schedule 10 to the Certification Schedule, duly executed by the owner or owners of any part of the Parcel not acquired by RTA; or

B. a statement signed by Hills Motorway to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule 10 to the Certification Schedule within 15 Business Days of it being provided by Hills Motorway to the owner or owners following completion of the Property Works in accordance with the requirements of the M2 Upgrade Project Deed including the work described in clause 8.9(e).

(b) The acceptance of a certificate or statement provided by Hills Motorway under clause 8.9(a)(ii) to RTA is not approval by RTA of Hills Motorway's performance of its obligations under this clause 8.9.

(c) Where any Property Works are required to be carried out on a Parcel Hills Motorway must give a written notice to the owner or owners of the property (with a copy to RTA's Representative) which:

(i) describes the Property Works to be carried out;

(ii) specifies the intended date for commencement of the Property Works; and

(iii) requests access for the purpose of carrying out the Property Works,

not less than 15 Business Days prior to the day upon which Hills Motorway intends to commence the Property Works.

- (d) Upon being given access to any property for the purpose of carrying out any Property Works, Hills Motorway must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (e) Hills Motorway must:
 - (i) rehabilitate each Parcel not owned by RTA at least to the state it was in immediately prior to Hills Motorway obtaining access; and
 - (ii) otherwise repair any damage or degradation to each such Parcel arising out of or in any way in connection with the performance of its obligations under this clause 8.9.
- (f) The:
 - (i) completion of all Property Works under this clause 8.9 including all work under clause 8.9(e) but excluding the rehabilitation of site compounds is a condition precedent to Construction Completion of Stage 3; and
 - (ii) provision of all certificates or statements (as the case may be) to RTA's Representative under clause 8.9(a)(ii) is a condition precedent to Final Completion.
- (g) Section 2.3.1(b) of the Scope of Works and Technical Criteria:
 - (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of Property Works in clause 1.1; and
 - (ii) does not limit or otherwise affect Hills Motorway's obligations under the M2 Upgrade Project Deed in relation to the Property Works.

8.10 Signage

- (a) Subject to clause 8.10(b) and clause 8.6 of the M2 Motorway Project Deed, Hills Motorway 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 Areas or the Project Site (or permit any third party to do so) which comprise a Stage at any time prior to the Date of Construction Completion of that Stage.
- (b) Prior to the Date of Construction Completion of a Stage, Hills Motorway may only (with the prior written approval of RTA's Representative (acting reasonably)) erect the following signage on or near the Project Site, the Temporary Areas or Local Roads (as applicable) comprising that Stage:
 - (i) temporary directional signage to assist businesses in the vicinity of the Project Site or the Temporary Areas, access to which has been, or is likely to be, adversely affected by Hills Motorway's Work;
 - (ii) signage required by Law or reasonably required for the safety and security of the Project Works and the Temporary Works;

- (iii) project identification signage approved by RTA's Representative (acting reasonably);
- (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of Hills Motorway's Work; and
- (v) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the Project Site or the Temporary Areas.

For the avoidance of doubt, Hills Motorway may not erect, install, paint or display any such signage under this clause 8.10(b) on or near any part of the M2 Motorway that does not form part of the Project Site without RTA's prior written approval (acting reasonably).

- (c) All signs erected in accordance with this clause 8.10 must be removed, and any damage caused must be made good, by Hills Motorway as a condition precedent to Construction Completion of Stage 3.
- (d) Any signage already existing at the date of the M2 Upgrade Project Deed to the extent that that signage has been properly approved pursuant to the provisions of the M2 Motorway Project Deed, and any signage which is subsequently approved pursuant to the provisions of the M2 Motorway Project Deed, and erected in accordance with that approval will be deemed to be approved under this clause 8.10.
- (e) Should Hills Motorway wish to move (either temporarily or permanently) any signage which has been approved by RTA under the M2 Motorway Project Deed or under clause 8.10(b), Hills Motorway must obtain the RTA's prior written approval (acting reasonably) to the new location and the provisions of clause 8.6 of the M2 Motorway Project Deed shall apply. The RTA's approval shall not relieve Hills Motorway of its other obligations under the M2 Upgrade Project Deed including the obligation to comply with the Law.

8.11 As constructed documentation and reports

Hills Motorway must prepare and submit to RTA's Representative and the Independent Verifier as constructed documentation, Construction Completion reports and pavement reports as required by and in accordance with the requirements of the Company Documentation Schedule.

9. Time

9.1 Commencement and progress

Hills Motorway must:

- (a) promptly start to perform Hills Motorway's Work from the Satisfaction Date; and
- (b) consistent with its obligations under clause 9.2, expeditiously and diligently progress Hills Motorway's Work.

9.2 Completion

Hills Motorway must use its best endeavours to achieve:

- (a) Construction Completion of Stage 3 by the Date for Construction Completion of Stage 3; and
- (b) Final Completion by the Date for Final Completion.

9.3 Delay

If:

- (a) Hills Motorway becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Construction Completion of any Stage by the Date for Construction Completion of that Stage or in achieving Final Completion by the Date for Final Completion; or
- (b) RTA's Representative reasonably believes that Hills Motorway will not achieve Construction Completion of any Stage by the Date for Construction Completion of that Stage or Final Completion by the Date for Final Completion and gives Hills Motorway a written notice to that effect,

Hills Motorway must:

- (c) in the case of clause 9.3(a), immediately give RTA's Representative a written notice setting out detailed particulars of the delay together with a detailed corrective action plan which Hills Motorway proposes to implement to mitigate the effects of the delay; and
- (d) in the case of clause 9.3(b), provide RTA's Representative with a detailed corrective action plan showing how it proposes to mitigate the effects of the delay.

9.4 Mitigation

Hills Motorway must take all reasonable steps to mitigate any delay caused by, or any other effect of, a failure by RTA to give, or ensure that Hills Motorway has, access to the Project Site or the Temporary Areas in accordance with clause 2, including making any changes to the sequencing or timing of, or the construction methodologies used in, Hills Motorway's Work and changing the Subsidiary D&C Programs to reflect this.

9.5 Corrective action plan

- (a) RTA's Representative may within 5 Business Days of receipt of a corrective action plan under clause 9.3 give written notice to Hills Motorway that it does not believe that implementation of the corrective action plan will enable Hills Motorway to mitigate the effects of the delay.
- (b) If RTA's Representative gives Hills Motorway a notice under this clause 9.5 Hills Motorway must amend and resubmit the corrective action plan to RTA's Representative after which this clause 9.5 will continue to apply until RTA's Representative does not issue a notice under this clause 9.5.
- (c) Hills Motorway must thereafter comply with a corrective action plan for which RTA does not issue a notice under this clause 9.5.

- (d) Hills Motorway will not be relieved of any liability or responsibility under the M2 Upgrade Project Deed or otherwise at Law arising out of or in connection with:
 - (i) any notice given by RTA's Representative under clause 9.3(b) or this clause 9.5; or
 - (ii) implementation of any corrective action plan in respect of which RTA's Representative has or has not issued a notice under this clause 9.5.

10. Completion

10.1 Completion process

- (a) Hills Motorway must give RTA's Representative and the Independent Verifier both:
 - (i) 3 months'; and
 - (ii) 1 month's,prior written notice of the estimated Date of Construction Completion of any Stage and the estimated Date of Final Completion.
- (b) RTA's Representative, Hills Motorway's Representative and the Independent Verifier must within 7 days of receipt of the notice referred to in clause 10.1(a)(ii), undertake a joint inspection of Hills Motorway's Work included in that Stage or in Final Completion at a mutually convenient time.
- (c) When Hills Motorway considers it has achieved Construction Completion of a Stage or Final Completion, Hills Motorway must issue a certificate in the form of Schedule 9 to the Certification Schedule, duly executed by Hills Motorway to RTA's Representative and the Independent Verifier stating the date on which Hills Motorway considers Construction Completion of the Stage or Final Completion as the case may be was achieved.
- (d) The Parties acknowledge that within 15 Business Days of receipt of the certificate under clause 10.1(c), the Independent Verifier is required to either:
 - (i) determine whether Construction Completion of the relevant Stage or Final Completion as the case may be has occurred and either issue:
 - A. if Construction Completion or Final Completion as the case may be has occurred, a Certificate of Construction Completion for that Stage or a Certificate of Final Completion as the case may be under clause 10.2; or
 - B. if Construction Completion or Final Completion as the case may be has not occurred, a written notice to Hills Motorway and RTA's Representative of the list of work remaining to be performed to achieve Construction Completion of that Stage or a Certificate of Final Completion as the case may be; or
 - (ii) issue a written notice to Hills Motorway and RTA's Representative stating that the Project Works and Temporary Works for that Stage or Final Completion as the case may be are so far from Construction Completion or Final Completion as the case may be that it is not

practicable to form an opinion under clause 10.1(d)(i)B after which Hills Motorway must continue to diligently pursue Construction Completion of that Stage or Final Completion as the case may be.

- (e) Immediately upon receipt of a notice of a kind referred to in clause 10.1(d)(i)B, Hills Motorway must perform or procure the performance of the work specified in that notice as soon as practicable.
- (f) Hills Motorway must give notice to RTA's Representative and the Independent Verifier when the work specified in the Independent Verifier's notice under clause 10.1(d)(i)B has been completed.
- (g) Clauses 10.1(d) and 10.1(e) will apply in respect of Hills Motorway's notice under clause 10.1(f) in the same way as if it were the original notice given under clause 10.1(c). Hills Motorway acknowledges that the Independent Verifier, in making its determination as to whether Construction Completion of the relevant Stage or Final Completion as the case may be has occurred:
 - (i) will not be restricted by the list which it previously provided to Hills Motorway under clause 10.1(d)(i)B; and
 - (ii) will be entitled to raise any other items of work (other than the Defects referred to in paragraph (a) of the definition of Construction Completion) as a ground for determining that Construction Completion of that Stage or Final Completion as the case may be has not occurred.

10.2 Certificate of Construction Completion

Subject to clause 10.3, where the Independent Verifier determines Construction Completion of a Stage or Final Completion as the case may be has occurred it must issue to Hills Motorway and RTA's Representative a Certificate of Construction Completion or Final Completion as the case may be within the time required by clause 10.1(c) certifying that Construction Completion of that Stage or Final Completion (as the case may be) has taken place and the date this occurred.

10.3 Effect of Certificate of Construction Completion

The Parties acknowledge that:

- (a) the Date of Construction Completion set out in the Certificate of Construction Completion for a Stage or the Date of Final Completion as set out in the Certificate of Final Completion (as the case may be) will be final and binding for all purposes and not capable of challenge on any basis other than manifest error; and
- (b) subject to clause 10.3(a), the issue of a Certificate of Construction Completion or Final Completion (as the case may be) will not:
 - (i) constitute an approval by RTA of Hills Motorway's performance of its obligations under the M2 Upgrade Project Deed or evidence that Hills Motorway's Work included in that Stage or Final Completion as the case may be is in accordance with the M2 Upgrade Project Deed; or
 - (ii) prejudice any rights or powers of RTA.

11. Defects Correction Periods

11.1 Defects or omissions

Notwithstanding that Construction Completion of a Stage or Final Completion (as the case may be) may have occurred, Hills Motorway must, as soon as practicable after Construction Completion or Final Completion (as the case may be) correct any Defects which existed at the time of the issue of the Certificate of Construction Completion or at Final Completion (as the case may be).

11.2 RTA direction

- (a) Hills Motorway must correct all Defects in the Project Works during the relevant Defects Correction Period.
- (b) Without limiting clause 11.2(a), if during a Defects Correction Period RTA's Representative discovers or believes there is a Defect in the Project Works, RTA's Representative may, without prejudice to any other rights which RTA may have under the M2 Upgrade Project Deed or otherwise at law, give Hills Motorway a written direction specifying the Defect and requiring Hills Motorway to correct the Defect or a part of it and specifying a reasonable time within which this must occur.
- (c) If Hills Motorway disagrees with any direction given by RTA's Representative pursuant to clause 11.2(b) (including any time period in which Hills Motorway is required to rectify the Defect), it must within 10 Business Days of receipt of such a notice give written notice of its disagreement to RTA's Representative. RTA's Representative and Hills Motorway must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 10 Business Days thereafter, either Party may by written notice to the other and the Independent Verifier refer the matter for determination by the Independent Verifier, who must within 10 Business Days make a determination as to the matter and notify the Parties in writing of its determination.

11.3 Correction of Defect

If a direction is given under clause 11.2(b) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works and Hills Motorway does not give a written notice under clause 11.2(c) or, if it does, the Independent Verifier determines that a Defect exists, Hills Motorway must correct the Defect (or the part of it):

- (a) within the time specified in RTA's Representative's direction (as varied if at all by the determination of the Independent Verifier);
- (b) at times agreed with RTA's Representative and in accordance with the requirements of any relevant Authority;
- (c) so as to minimise the impact on the use of the relevant part of the M2 Motorway, Local Road Works, Service Works or Property Works; and
- (d) in a manner which causes as little inconvenience as possible to users of the M2 Motorway, any Local Road, a Service, the Property Works or any access and the adjacent community.

11.4 M2 Upgrade

Subject to clauses 11.5, 11.6 and 11.7, each Stage of the Project Works has:

- (a) a Defects Correction Period which begins on the Date of Construction Completion of that Stage and ends at the expiry of 12 months after the Date of Final Completion; and
- (b) a further Defects Correction Period in respect of any work the subject of a direction under clause 11.2(b) during the Defects Correction Period for that Stage which begins on the date of the correction of the Defect (or the part of it) and ends on the date which is 12 months after the date of the correction of the Defect (or the part of it).

11.5 Local Road Works

(a) Each discrete part of the Local Road Works has:

(i) a Defects Correction Period which begins when:

- A. the relevant Authority which has jurisdiction in respect of the discrete part of the Local Road Works gives written notice to Hills Motorway that the work is complete; and
- B. RTA's Representative and the Independent Verifier have been provided with a copy of this notice,

and ends on the date which is 2 years after the Date of Construction Completion of the Stage comprising the relevant discrete part of the Local Road Works; and

(ii) a further Defects Correction Period in respect of any work the subject of a direction under clause 11.2(b) (relating to the discrete part of the Local Road Works) during the Defects Correction Period, which begins on the date of the correction of the Defect and ends on the date which is 2 years thereafter.

11.6 Service Works

Each discrete part of the Service Works has:

(a) a Defects Correction Period which begins when:

- (i) the relevant Authority which has jurisdiction in respect of the Service gives written notice to Hills Motorway that the work is complete; and
- (ii) RTA's Representative and the Independent Verifier have been provided with a copy of that notice,

and which expires 12 months after the Date of Construction Completion of the Stage comprising the relevant discrete part of the Service Works; and

(b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 11.2(b) (relating to the discrete part of the Service Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it).

11.7 Property Works

Each discrete part of the Property Works has:

- (a) 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 Hills Motorway to RTA's Representative and the Independent Verifier of a certificate or signed statement (as the case may be) under clause 8.9(a)(ii),and which expires 12 months after the Date of Final Completion; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 11.2(b) (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 the part of it).

11.8 Failure by Hills Motorway to comply with direction

- (a) Without limiting clause 2.6 of the M2 Upgrade Project Deed, if Hills Motorway does not comply with a direction given under clause 11.2(b), RTA may employ others to carry out that direction.
- (b) The Loss suffered or incurred by RTA in taking the action contemplated in clause 11.3(a) or as a result of Hills Motorway's failure to comply with clause 11.3 will be a debt due and payable from Hills Motorway to RTA.

11.9 Rights not affected

Neither RTA's rights, nor Hills Motorway's liability, whether under the M2 Upgrade Project Deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period, will be in any way affected or limited by:

- (a) the rights conferred upon RTA's Representative or the Independent Verifier by this clause 11 or any other provision of the M2 Upgrade Project Deed;
- (b) the exercise of, or the failure by RTA's Representative or the Independent Verifier to exercise, any such rights; or
- (c) any direction of RTA's Representative under this clause 11.

11.10 Inspection

- (a) RTA and RTA's Representative may, at any time prior to expiry of the last Defects Correction Period to expire, enter upon any Stage that has achieved Construction Completion during business hours or on reasonable notice (except in the case of an emergency, where the right of access will be immediate) to inspect and observe the progress of the carrying out of Hills Motorway's obligations under this clause 11.
- (b) Neither RTA nor RTA's Representative owes any duty to Hills Motorway to:
 - (i) inspect Hills Motorway's Work under clause 11.10(a); or
 - (ii) review any construction for errors, omissions or compliance with the requirements of the M2 Upgrade Project Deed if it does so inspect.

12. Security Bond

12.1 Provision of Security Bond

As a condition precedent to Final Completion, Hills Motorway must give RTA an unconditional undertaking for \$2 million in aggregate which must be:

- (a) in the form of Schedule 1;
- (b) in favour of RTA; and
- (c) where required, duly stamped and given by a bank licensed in Australia satisfactory to RTA with a credit rating of no less than A - (S&P) with an address for service in Sydney.

12.2 Release of Security Bond

Subject to its rights to have recourse to the unconditional undertaking, RTA must within 20 Business Days after the later of:

- (a) the date of expiry of the final Defects Correction Period; and
 - (b) receipt by RTA of each release or statement required pursuant to clause 2.4(a)(ii),
- release the unconditional undertaking provided by Hills Motorway under clause 12.1.

12.3 Interest

RTA:

- (a) is not obliged to pay Hills Motorway interest on:
 - (i) any unconditional undertaking; or
 - (ii) the proceeds of any unconditional undertaking if it is converted into cash; and
- (b) does not hold the proceeds referred to in clause 12.3(a)(ii) on trust for Hills Motorway.

12.4 Hills Motorway not to injunct

Hills Motorway must not take any steps to injunct or otherwise restrain:

- (a) any issuer of the unconditional undertaking provided under this clause 12 from paying RTA pursuant to the unconditional undertaking;
- (b) RTA from taking any steps for the purposes of making a demand under the unconditional undertaking provided under this clause 12 or receiving payment under any such unconditional undertaking; or
- (c) RTA using the money received under the unconditional undertaking provided under this clause 12.

12.5 Replacement Security Bond

- (a) If RTA has recourse to any Security Bond (or part thereof) provided under this clause 12 and RTA does not use all of the proceeds of the Security Bond (or part thereof), then RTA will refund the unused portion of the Security Bond (or part thereof) upon receipt by RTA of an unconditional undertaking which satisfies the requirements of clauses 12.1(a), 12.1(b) and 12.1(c) for the amount to be refunded.
- (b) At any time following provision of a Security Bond to RTA under this clause 12, Hills Motorway may provide RTA with a replacement unconditional undertaking which satisfies the requirements of clauses 12.1(a), 12.1(b) and 12.1(c) for the amount of the previously provided Security Bond (**Replacement Security Bond**). Upon receipt by RTA of any Replacement Security Bond, RTA will return the relevant Security Bond to Hills Motorway.

13. Maintenance Manual

- (a) As a condition precedent to Final Completion, the Company must update, develop and amend the Maintenance Manual to incorporate the Maintenance Work associated with the M2 Upgrade and identify the methods, systems and procedures (which must comply with the Scope of Works and Technical Criteria) whereby Hills Motorway will operate, maintain and repair the M2 Upgrade in accordance with the requirements of the M2 Motorway Project Deed.
- (b) The Maintenance Manual must be developed with consideration of the durability assessment reports that are required to be prepared by section 24.1.3 of the Company Documentation Schedule.
- (c) A draft of the Maintenance Manual showing the Company's proposed updates of, developments of and amendments to the Maintenance Manual must be submitted to RTA's Representative and the Independent Verifier with the notice issued by Hills Motorway under clause 10.1(a)(i).
- (d) RTA's Representative may:
 - (i) review any Maintenance Manual submitted under this clause 13; and
 - (ii) if the Maintenance Manual submitted does not comply with the M2 Upgrade Project Deed, notify the Company of that within 15 Business Days of the submission of the Maintenance Manual.
- (e) If the Company receives a notice under clause 13(d)(ii), the Company must promptly submit an amended Maintenance Manual to the Independent Verifier and RTA's Representative.
- (f) RTA's Representative owes no duty to the Company to review the Maintenance Manual or any draft submitted by the Company for errors, omissions or compliance with the M2 Upgrade Project Deed.
- (g) No review of, comments upon, notice given in respect of the Maintenance Manual or any draft or any other act or omission of RTA's Representative in respect of the Maintenance Manual or any draft will lessen or otherwise affect:
 - (i) Hills Motorway's liabilities or responsibilities under the M2 Upgrade Project Deed or otherwise according to Law; or

- (ii) RTA's rights against Hills Motorway, whether under the M2 Upgrade Project Deed or otherwise according to Law.
- (h) the Company:
 - (i) warrants to RTA that the updates to, developments of and amendments to the Maintenance Manual undertaken in accordance with clause 13(a) will be fit for their intended purposes; and
 - (ii) agrees that compliance by it with the Maintenance Manual will not in any way lessen or otherwise affect:
 - A. its liabilities or responsibilities under the M2 Upgrade Project Deed or otherwise according to Law; or
 - B. RTA's rights against it, whether under the M2 Upgrade Project Deed or otherwise according to Law.

14. Change in Law

- (a) Subject to clause 14(b) and the M2 Motorway Project Deed, Hills Motorway will be liable for the consequences of, and will have no Claim against RTA arising out of or in any way in connection with, any changes in law.
- (b) Clause 17.1 will apply if a Change in Law occurs.

15. Loss or damage and insurance

15.1 Risk of loss or damage

- (a) Subject to clause 15.1(c), each of the Company and the Trustee bears the risk of loss or damage to its share of the Project Works and the Temporary Works at all times.
- (b) Subject to clause 15.1(c), each of the Company and the Trustee must in accordance with clause 15.7, promptly make good any loss or damage to its share of the Project Works, the Temporary Works, the M2 Upgrade (excluding any Stages which have achieved Construction Completion) or a Stage (as applicable).
- (c) The obligations of each of the Company and the Trustee under:
 - (i) clauses 15.1(b) and 15.2(a) will not apply to the extent that the loss, damage, injury, disease, death, destruction or economic loss (as the case may be) occurs as a result of an Uninsurable Event; and
 - (ii) clause 15.1(b) apply to the Project Works comprised in a Stage which has achieved Construction Completion only to the extent that its share of Hills Motorway's Work is being carried out on or in connection with that Stage on or after the Date of Construction Completion of that Stage.

15.2 Liability and indemnity

- (a) Each of the Company and the Trustee must indemnify RTA from and against any Claim or Loss suffered or incurred by RTA, in respect of:
 - (i) any injury to, or disease or death of, persons;

- (ii) the loss of, or destruction or damage to, any real or personal property;
- (iii) any economic loss caused by or arising out of:
 - A. loss, destruction, damage, injury, disease or death referred to in clause 15.2(a)(i) or clause 15.2(a)(ii); and
 - B. the loss of use of any real or personal property (whether total or partial) caused by or arising out of any loss, destruction, damage, injury, disease or death referred to in clause 15.2(a)(i) or clause 15.2(a)(ii); or
- (iv) subject to clauses 15.2(d), pure economic loss suffered or incurred by a third party including pure economic loss caused by or arising out of any loss of use of any real or personal property (whether total or partial) of that third party (other than to the extent to which such loss of use of real or personal property is referred to in clause 15.2(a)(iii)B),
caused by, arising out of, or in any way in connection with:
 - (v) its share of Hills Motorway's Work; or
 - (vi) subject to clause 15.2(e), its share of the Project Works;
 - (vii) subject to clause 15.2(e), RTA's ownership of its share of the Project Site or the Temporary Areas; or
 - (viii) any failure by it to comply with its obligations under the M2 Upgrade Project Deed.
- (b) Clause 15.2(a) does not lessen or otherwise affect Hills Motorway's other obligations under the M2 Upgrade Project Deed.
- (c) Each of the Company and the Trustee has the same responsibilities to third parties in respect of persons, property and all other aspects of the Project which it would have if it held the freehold title to its share of the Project Site and the Temporary Areas.
- (d) Without limiting clause 5.16 and subject to clause 15.2(f), clause 15.2(a)(iv) does not apply in respect of any pure economic loss suffered or incurred by a third party to the extent that:
 - (i) such Claims or Loss arise as a result of:
 - A. the decision by the Government or RTA to proceed with the Project;
 - B. the existence or location of the M2 Upgrade; or
 - C. the existence or location of local area traffic management measures in accordance with the Environmental Documents; or
 - (ii) any such Claim or Loss in aggregate together with all other such Claims or Losses exceeds \$5 million.

- (e) Clause 15.2(a)(vi) and (vii) will apply to the Project Works, or part of the Project Site, comprised in a Stage which has achieved Construction Completion only to the extent Hills Motorway's Work is being carried out on or in connection with that Stage on or after the Date of Construction Completion of that Stage.
- (f) Clause 15.2(d) does not apply in respect of, or limit Hills Motorway's liability to RTA for, a breach of clause 5.23.

15.3 Damage to third party property

- (a) Subject to clause 15.3(b) and without limiting clause 15.2, where any loss of or damage to real or personal property (other than the Project Works, the Temporary Works, the M2 Upgrade or the M2 Motorway) occurs which arises out of, or in any way in connection with, Hills Motorway's Work, the Project Works or any failure by Hills Motorway to comply with its obligations under the M2 Upgrade Project Deed, Hills Motorway must, at its cost, promptly repair any such loss or damage or, if the affected person agrees, reasonably compensate the affected person for that loss or damage (where Hills Motorway has a legal liability to do so).
- (b) Clause 15.3(a) will apply to the Project Works comprised in a Stage which has achieved Construction Completion only to the extent Hills Motorway's Work is being carried out on or in connection with that Stage on or after the Date of Construction Completion of that Stage.
- (c) Without limiting clause 2.6(b) of the M2 Upgrade Project Deed, if Hills Motorway fails to carry out any repair work or to pay reasonable compensation under clause 15.3(a), RTA may, after giving reasonable prior notice to Hills Motorway, carry out such work or pay any such reasonable compensation and any Loss suffered or incurred by RTA will be a debt due and payable from Hills Motorway to RTA.

15.4 Insurances during Hills Motorway's Work

- (a) Before Hills Motorway commences Hills Motorway's Work, the Company must effect and maintain (or cause to be effected and maintained) the following:
 - (i) a contract works or construction risks policy of insurance:
 - A. in respect of the Project Works, the Temporary Works, the existing improvements on the Project Site or the Temporary Areas and all things brought on to the Project Site or the Temporary Areas by it, the Contractor or any of their Subcontractors for the purpose of its share of Hills Motorway's Work;
 - B. against such risks as are reasonably required by RTA and on the basis set out in Exhibit D to the M2 Upgrade Project Deed; and
 - C. for a sum insured of \$435 million plus an additional amount to cover the cost of demolition and removal of debris, fees for the project managers and other consultants, and an amount to cover additional costs and expenses to expedite the commencement or completion or repair;
 - (ii) transit insurance (including wet marine insurance) in respect of relevant items intended to be employed about or used in Hills Motorway's Work;

- (iii) third party liability insurance covering claims in respect of:
 - A. loss of, loss of use of, destruction or damage to, real or personal property; and
 - B. injury to, or disease or death of, persons,arising out of or in connection with Hills Motorway's Work for a minimum of \$200 million for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance;
 - (iv) project specific professional indemnity insurance for any breach of a duty owed in a professional capacity by the Contractor, the Subcontractors and any of their sub-consultants and any of Hills Motorway's sub-consultants engaged in professional activities to perform Hills Motorway's Work for a minimum of \$50 million for any one claim;
 - (v) workers' compensation insurance;
 - (vi) motor vehicle insurance covering third party property damage for all plant, equipment and motor vehicles used in connection with the Project Works for a minimum of \$20 million for any one occurrence and unlimited in the aggregate as to the number of occurrences;
 - (vii) advance business interruption insurance for a 24 month indemnity period covering all standing charges (including Hills Motorway's debt service obligations) and loss of anticipated net revenue; and
 - (viii) directors and officers liability insurance for a minimum amount of \$10 million per occurrence and in the aggregate annually.
- (b) The Company must maintain (or cause to be maintained) the insurances referred to in clause 15.4(a) until:
- (i) in the case of the directors and officers liability insurance, the Date of Final Completion;
 - (ii) in the case of the professional indemnity insurance, 6 years after the expiry of the last Defects Correction Period;
 - (iii) in the case of the third party liability insurance policy, the expiration of the last Defects Correction Period; and
 - (iv) in the case of the other insurances, the Date of Final Completion.

15.5 General requirements

- (a) All insurances which the Company is required to effect under this clause 15:
 - (i) must be effected with insurers approved by RTA (which approval will not be unreasonably withheld or delayed);
 - (ii) must be on the terms required by this clause 15 and Exhibit D to the M2 Upgrade Project Deed and otherwise as approved by RTA (which approval will not be unreasonably withheld or delayed);

- (iii) must not contain any exclusion, endorsement or alteration, unless it is first approved in writing by RTA (which approval will not be unreasonably withheld or delayed);
 - (iv) in the case of the insurances specified in clauses 15.4(a)(i), (ii), (iii), (vi) and (vii) must be in the joint names of Hills Motorway and RTA and such others as have an insurable interest under the Project Documents for their respective rights, interests and liabilities and in which the insurer waives all rights of subrogation which it may have or acquire against all or any of the persons comprising the insured;
 - (v) in the case of the insurance specified in clause 15.4(a)(iv), must include a principal's indemnity endorsement in favour of Hills Motorway and RTA in a form approved by RTA;
 - (vi) must contain a term which requires the insurer to give RTA 20 Business Days written notice prior to:
 - A. the insurer giving Hills Motorway a notice of cancellation;
 - B. the insurer cancelling the policy on the request of Hills Motorway;
 - C. Hills Motorway allowing the policy to expire; or
 - D. the insurer giving Hills Motorway any other notice in respect of the policy;
 - (vii) the insurances specified in clauses 15.4(a)(iii) must contain a cross liability clause:
 - A. in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - B. for the purposes of which the insurer accepts the term insured as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - (viii) except in the case of the insurances specified in clauses 15.4(a)(iv), (v), (vi) and (viii), must be endorsed to note and allow Hills Motorway's obligations under clause 15.7, to the effect that compliance by Hills Motorway with the provisions of that clause will not prejudice Hills Motorway's or any other insured parties' rights to indemnity under the insurances.
- (b) Hills Motorway must:
- (i) give RTA certified copies of all:
 - A. policies;
 - B. renewal certificates; and
 - C. endorsement slips,

as soon as it receives them from the insurer; and

- (ii) have each policy under which there is more than one insured party endorsed to the effect that the insurer agrees that any act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty by any individual insured party shall not prejudice or invalidate the rights of the other parties comprising the insured who are themselves not guilty of such act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty.

15.6 Premiums

- (a) Hills Motorway must punctually pay all premiums in respect of all insurance policies and give RTA copies of receipts for payment of premiums if and when requested by RTA.
- (b) If Hills Motorway fails to effect or maintain any insurance policy referred to in this clause 15 or to pay a premium or other amount payable to the insurer in respect of such insurance, RTA may effect such insurance or pay such premium or other amount and any costs so incurred by RTA will be a debt due and payable to RTA by Hills Motorway.

15.7 Reinstatement

- (a) Subject to clause 15.7(b), if any loss or damage occurs to any part of the Project Works, the Temporary Works or a Stage, Hills Motorway must (without limiting its other obligations under this clause 15):
 - (i) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
 - (ii) promptly consult with RTA and carry out such steps as are necessary to ensure:
 - A. the prompt repair or replacement of the loss or damage so that:
 - 1) it complies with the Scope of Works and Technical Criteria; and
 - 2) there is minimal disruption to the Project Works, the Temporary Works and the Stage; and
 - B. that, to the greatest extent possible, Hills Motorway continues to comply with its obligations under the Project Documents;
 - (iii) manage all repair and replacement activities so as to minimise the impact on the Project Works, the Temporary Works or the Stage;
 - (iv) keep RTA fully informed of the progress of the repair and replacement activities; and
 - (v) subject to the RTA Consent Deed, apply all insurance proceeds in the repair or reinstatement of the Project Works, the Temporary Works or the Stage.

- (b) Clause 15.7(a) will apply to the Project Works comprised in a Stage which has achieved Construction Completion only to the extent Hills Motorway's Work is being carried out on or in connection with that Stage on or after the Date of Construction Completion of that Stage.

15.8 Uninsurable risks

Nothing in this Annexure A will require Hills Motorway to insure against a risk that is Uninsurable.

16. Intellectual property

16.1 Proprietary Documentation

- (a) Each of the Company and the Trustee warrants to RTA that:
- (i) it has title to and copyright in (or sufficient rights to use, including a right to sub-license on the terms of clause 16.1(d)), all Proprietary Documentation relating to its share of Hills Motorway's Work; and
 - (ii) use of the Proprietary Documentation relating to its share of Hills Motorway's Work will not infringe any Intellectual Property Rights of third parties in or in respect of such Proprietary Documentation.
- (b) The warranty in clause 16.1(a) will be repeated by reference to the circumstances then subsisting at the date any licence or rights are granted under clause 16.1(d) and, in relation to clause 16.1(a)(ii), on the date on which RTA grants any licence or sub-licence which it is empowered to grant under clause 16.1(d) or otherwise.
- (c) Subject to clause 16.1(d)(i), as between RTA and Hills Motorway, title to and copyright in all Design Documentation:
- (i) which is in existence as at the Satisfaction Date will be assigned to RTA on the Satisfaction Date; or
 - (ii) which comes into existence after the Satisfaction Date will belong to and vest in RTA as and when it comes into existence.
- (d) Hills Motorway grants to RTA:
- (i) a perpetual, irrevocable, royalty-free and exclusive licence to use (including a right to sub-license) the Design Documentation (to the extent that title to, and copyright in, any Design Documentation does not vest in Hills Motorway because Hills Motorway does not own the Design Documentation); and
 - (ii) subject to clause 16.1(g), a perpetual, irrevocable, royalty-free and non-exclusive licence to use (including a right to sub-licence) all Proprietary Documentation (other than the Design Documentation),
- in each case:
- (iii) as and when it comes into existence; and
 - (iv) for all purposes associated with the Project Works or the M2 Motorway and other purposes connected with the performance by RTA of its statutory functions in relation to the M2 Motorway.

- (e) The licences granted by Hills Motorway under clause 16.1(d) will survive the termination of the M2 Upgrade Project Deed on any basis.
- (f) Despite clauses 16.1(c) and 16.1(d), Hills Motorway may continue to use the Proprietary Documentation for the purposes of the M2 Motorway until the end of the Term.
- (g) Hills Motorway must use reasonable endeavours to obtain:
 - (i) title to and copyright in all Design Documentation; or
 - (ii) where, despite the use of reasonable endeavours, title to and copyright in any Design Documentation is not obtainable, a right to use (including a right to sub-licence on the terms of clause 16.1(d)(i)) such Design Documentation on the best possible terms; and
 - (iii) a right to use (including a right to sub-licence on the terms of clause 16.1(d)(ii)) all Proprietary Documentation (other than the Design Documentation) on the best possible terms.

16.2 Moral rights

Hills Motorway must ensure that it:

- (a) does not infringe any moral right of any author of an artistic work in undertaking Hills Motorway's Work; and
- (b) uses its best endeavours to obtain irrevocable written consent, for the benefit of the RTA and Hills Motorway, from the author of any artistic work to be incorporated into the Project Works or the Temporary Works, or otherwise used during the undertaking of Hills Motorway's Work, including any necessary consents from any employees or consultants engaged by it or its contractors, to:
 - (i) any non-attribution or false attribution of the artistic work; and
 - (ii) any repairs to, maintenance and servicing of, additions, refurbishments or alterations to, changes, relocation, destruction or replacement of the artistic work or the Project Works or the Temporary Works.

The terms "artistic work" and "attribution" have the meaning given to them in the *Copyright Act 1968* (Cth).

17. Material Adverse Effect

17.1 Hills Motorway to notify RTA

If:

- (a) an event or a circumstance referred to in clause 4.2(b) or 4.3(b) occurs;
- (b) an Uninsurable Event occurs;
- (c) a Change in Law occurs: or
- (d) a court makes (or makes in respect of a matter) a Final Determination which prevents Hills Motorway from undertaking the Upgrade Project substantially in accordance with the M2 Upgrade Project Deed (except where the Final

Determination is issued as a result of a default by Hills Motorway or its contractors under the Project Documents or some other wrongful act or omission by Hills Motorway or its contractors),

and this has had or has started to have a Material Adverse Effect, Hills Motorway:

- (e) may provide RTA with a notice of that fact, including full details of the effect of the event or circumstance on the Project; and
- (f) must use all reasonable endeavours to:
 - (i) mitigate the adverse consequences of the event or circumstance; and
 - (ii) ensure that redress afforded under this clause 17 is efficiently applied and structured (so as, for example, not to create or increase any liability for Taxes, the liability for which need not be incurred or need only be incurred to a limited extent).

17.2 Good Faith Negotiations

- (a) As soon as practicable, but no later than 20 Business Days after RTA receives a notice under clause 17.1(e), the Parties must enter into negotiations and thereafter negotiate in good faith to enable:
 - (i) the Borrower to repay the interest and amortisation payments (and net interest rate management agreement payments, if any) that are or would have been owing under the M2 Upgrade Debt Financing Documents were it not for the relevant event, omission or circumstance, on the dates on which such amounts are or would be due to be repaid thereunder (but not more than the amortisation payments contained in the M2 Upgrade Base Case Model); and
 - (ii) the Company and the Trustee to give the M2 Upgrade Equity Investors (treated as if those M2 Upgrade Equity Investors are all Notional Initial M2 Upgrade Equity Investors) the lower of:
 - A. the M2 Upgrade Equity Return they would have received if the event or circumstance had not occurred; and
 - B. the M2 Upgrade Base Case Equity Return,

provided that if:

- (iii) the Borrower was not able to repay the interest and amortisation payments (and net interest rate management agreement payments, if any) that are or would have been owing under the M2 Upgrade Debt Financing Documents were it not for the relevant event, omission or circumstance, on the dates on which such amounts are or would have been due to be repaid thereunder; and
- (iv) the Company and the Trustee was not able to give the M2 Upgrade Equity Investors (treated as if those M2 Upgrade Equity Investors were all Notional Initial M2 Upgrade Equity Investors) the M2 Upgrade Base Case Equity Return,

prior to the occurrence of the relevant event or circumstance, then the Parties will negotiate in good faith with a view to enabling the Company and the Trustee to

have a similar ability to do so as they had prior to the occurrence of the relevant event or circumstance.

- (b) Subject to clause 17.2(c), the Parties acknowledge that in any negotiations they will take a flexible approach, including giving consideration to:
- (i) amending the Project Documents;
 - (ii) varying the Term;
 - (iii) varying the financial or other contributions of the Parties;
 - (iv) adjusting the Toll Calculation Schedule; and/or
 - (v) taking such other action as may be appropriate,
- having regard to any payments made by RTA under the M2 Upgrade Project Deed, whether under an indemnity, in respect of any delay costs, or otherwise.
- (c) In any negotiations arising from the occurrence of an Uninsurable Event, a variation to the financial contribution of RTA will not be considered, unless the other approaches being negotiated by the Parties will not achieve the objectives referred to in clause 17.2(a).

**Schedule 1
Form of Unconditional Undertaking**

(clause 1.1 and 12.1)

This Deed Poll (Undertaking) made the _____ day of _____ 20_____

In favour of: **Roads and Traffic Authority of New South Wales ("RTA")**

Given by: **("Bank")**

Recitals

- A. By a deed dated [_____] (**M2 Upgrade Project Deed**) between the Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in the right of the State of New South Wales (**Minister**), The Hills Motorway Limited (**Company**) and Hills Motorway Management Limited (**Trustee**)(together **Hills Motorway**) and RTA, Hills Motorway agreed to carry out certain works.
- B. Under the provisions of the M2 Upgrade Project Deed, Hills Motorway is required to provide this Undertaking to RTA.

Operative

1. The Bank unconditionally undertakes and covenants to pay to RTA on demand without reference to Hills Motorway and notwithstanding any notice given by Hills Motorway to the Bank not to do so, any sum or sums which may from time to time be demanded in writing by RTA to a maximum aggregate sum of # (\$#).
2. The Bank's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or RTA notifies the Bank that this Undertaking is no longer required.
3. The liability of the Bank under this Undertaking will not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Bank) in any of the stipulations or provisions of the M2 Upgrade Project Deed or acts or things to be executed, performed and done under the M2 Upgrade Project Deed or by reason of any breach or breaches of the M2 Upgrade Project Deed by Hills Motorway or RTA.
4. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Signed as a deed poll.

Signed sealed and delivered for and on behalf of [_____] by [_____] its Attorney under a Power of Attorney dated _____ and registered Book _____ No. _____ and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature

Signature of Witness



Name of Witness in full



**Schedule 2
Form of Certificate of Construction Completion**

(clauses 1.1 and 10)

Given pursuant to clause 10 of Annexure A to the M2 Upgrade Project Deed (**M2 Upgrade Project Deed**) dated [] between the Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in the right of the State of New South Wales (**Minister**), Roads and Traffic Authority of New South Wales (**RTA**) and The Hills Motorway Limited (**Company**) and Hills Motorway Management Limited (**Trustee**).

TO: Hills Motorway

1. Pursuant to and for the purposes of the Deed the Independent Verifier hereby certifies to Hills Motorway and to the Roads and Traffic Authority of New South Wales that all of the conditions precedent to Construction Completion of Stage **[insert Stage number]** have been achieved and that Construction Completion occurred on [].
2. This certificate is copied to the following:
 - (a) the Contractor; and
 - (b) the Financiers.
3. Capitalised terms defined in the M2 Upgrade Project Deed have the same meaning where used in this certificate.
4. This certificate may only be relied on by the Parties to the M2 Upgrade Project Deed and the financiers.
5. This certificate is issued on [].

Signed for and on behalf of [Independent Verifier] by
in the presence of:

Signature

Signature of Witness

Name of Witness in full

Schedule 3 Construction Completion Pre-conditions

(clause 1.1)

1. In respect of Stage 1, Stage 2 and Stage 3, the Project Works and the Temporary Works included in each Stage must be completed in accordance with the M2 Upgrade Project Deed except for minor Defects that:
 - (a) do not prevent the M2 Motorway from being reasonably capable of being used for the safe, efficient and continuous passage of motor vehicles;
 - (b) the Independent Verifier determines that Hills Motorway has reasonable grounds for not promptly rectifying; and
 - (c) can be rectified without prejudicing the safe, efficient and continuous passage of vehicles on the M2 Motorway.

2. In respect of the Stage 1, Stage 2 and Stage 3, RTA has been provided with:
 - (a) all certificates required by the Certification Schedule (other than the certificates or statements (as the case may be) required in respect of Property Works under clause 8.9(a)(ii));
 - (b) a copy of all the independent road safety audits required by section 7.17 of the Scope of Works and Technical Criteria;
 - (c) copies of Approvals from Authorities for the drainage design pursuant to section 7.12.1(c) of the Scope of Works and Technical Criteria;
 - (d) copies of all Approvals required to open, use and operate the Stage;
 - (e) evidence of the insurance policies required by clause 15.4 being effected in accordance with the M2 Upgrade Project Deed; and
 - (f) a notice in accordance with clause 5.3 of the M2 Upgrade Project Deed.

3. In addition to the requirements set out in paragraph 1 and 2, in respect of Stage 3, the structure and materials of the Norfolk Road twin tunnels and the tunnel fire protection system are to the satisfaction of the New South Wales Fire Brigade.

Schedule 4 RTA Subcontractor Prequalification

(clause 8.8(d))

Subcontractors for the following categories of work must be pre-qualified or registered in accordance with RTA procedures including to the appropriate level for the contract sum of the Subcontract:

1. Pre-qualified categories of work:

- (a) roadworks;
- (b) asphalt paving;
- (c) protective treatment;
- (d) bridgeworks;
- (e) pretensioned concrete;
- (f) concrete paving; and
- (g) steel fabrication.

2. Registered categories of work:

- (a) earthworks;
- (b) drainage;
- (c) bridge formwork erection;
- (d) traffic control;
- (e) demolition of properties;
- (f) construction industry laboratories; and
- (g) urban design consultancies.

Schedule 5 Approvals

(clause 4.1)

Part A: Approvals to be obtained by RTA

Project Approval.

Part B: Conditions of Project Approval to be undertaken by RTA

Hills Motorway must fulfil all the conditions and requirements of the Project Approval except to the extent that responsibilities are expressly allocated to RTA in the table below.

Notwithstanding the other requirements of this Schedule 5, Hills Motorway must not do anything to prevent RTA from complying with this Schedule 5 and must provide all assistance sought by RTA (or agreed between Hills Motorway and RTA) to enable RTA to comply with this Schedule 5.

Project Approval condition number	Extent of RTA's responsibility for the Project Approval condition specified
2.5	RTA is responsible for provision of any necessary access located outside the Project Site to cycleway network facilities.
2.6	RTA is responsible under this Deed for complying with condition of approval 2.6.
2.15	To the extent that the Biodiversity Offset Package approved by the Director-General requires the acquisition of compensatory habitat land outside the M2 Motorway lease area, RTA will be responsible under this Deed for the land acquisition and for carrying out associated works on the land acquired by RTA.
2.28	RTA is responsible under this Deed for complying with the requirements of condition of approval 2.28.
6.6(c)(iii)	RTA is responsible under this Deed for complying with condition of approval 6.6(c)(iii) to the extent to which the Operational Environment Management Plan prepared in accordance with this Deed requires long term monitoring of traffic to be undertaken (but only to the extent such traffic does not use the M2 Motorway). RTA's responsibility under this Schedule commences on the day following the day which is one year after Final Completion.
6.6(d)(i)	RTA is responsible under this Deed for complying with condition of approval 6.6(d)(i) to the extent to which the Operational Environment Management Plan prepared in accordance with this Deed requires measures to monitor and manage ecological factors, including effectiveness and maintenance of fauna mitigation and rehabilitation measures with reference to Condition 2.14 (but to the extent such measures apply with respect to areas outside the M2 Motorway leased area). RTA's responsibility under this Schedule commences on the day following the day which is one year after Final Completion.
6.6(d)(ii)	RTA is responsible under this Deed for complying with condition of approval 6.6(d)(ii) to the extent to which the Operational Environmental Management Plan prepared in accordance with this Deed requires measures to monitor and manage noise impacts with reference to Condition 2.26. RTA's responsibility under this Schedule commences on the day following the day which is one year after Final

	Completion.
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Schedule 6
Not used



Schedule 7 Company's Personnel

(clause 5.3)

Project Manager

- (a) The Project Manager must possess a recognised qualification relevant to the position and Hills Motorway's Work and be experienced in the design, construction and project management of large projects similar to the Project Works.
- (b) At the date of the M2 Upgrade Project Deed, the Project Director is _____.

Design Manager

- (a) The Design Manager must possess a recognised qualification relevant to the position and Hills Motorway's Work and be experienced in the management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works.
- (b) The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of the M2 Upgrade Project Deed including the Overall D&C Program and the Subsidiary D&C Programs).
- (b) At the date of the M2 Upgrade Project Deed, the Design Manager is _____.

Construction Manager

- (a) The Construction Manager must possess a recognised engineering degree relevant to the position and Hills Motorway's Work and have at least eight years experience in the overall management of construction on large projects similar to the Project Works.
- (b) The Construction Manager must be full-time on the Project Site during the construction phase.
- (c) At the date of the M2 Upgrade Project Deed, the Construction Manager is _____.

Quality Manager

- (a) The Quality Manager must:
 - (i) possess a recognised qualification relevant to the position, Hills Motorway's Work and verified relevant experience in quality management systems within the construction industry;
 - (ii) be full time during the execution of Hills Motorway's Work with responsibilities limited to quality management of Hills Motorway's Work unless RTA's Representative otherwise consents in writing (not to be unreasonably withheld or delayed);
 - (iii) have experience on projects similar to the Project Works;
 - (iv) be available as RTA's primary contact with Hills Motorway on matters of quality;
 - (v) give RTA's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels; and
 - (vi) be given authority by Hills Motorway to act freely and independently and to stop the progress of the relevant part of Hills Motorway's Work when any non-

conformance with the quality requirements of the M2 Upgrade Project Deed is identified and at specified Hold Points.

(b) At the date of the M2 Upgrade Project Deed, the Quality Manager is

Environmental Manager

(a) The Environmental Manager must:

- (i) possess a recognised qualification and have recent relevant experience to the position in environmental management of similar projects;
- (ii) facilitate an induction and training programme for all persons involved in construction activities;
- (iii) be given authority by Hills Motorway to act freely and independently, to require all reasonable steps to be taken to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works when any non-conformance with the environmental requirements of the M2 Upgrade Project Deed is identified; and
- (iv) be engaged full time during the execution of Hills Motorway's Work until the Date of Construction Completion with responsibility to develop and implement the Environmental Management Plans.

(b) At the date of the M2 Upgrade Project Deed, the Environmental Manager is

Community Relations Manager

(a) The Community Relations Manager must:

- (i) possess a recognised qualification relevant to the position and Hills Motorway's Work and have experience in community involvement on projects similar to the Project Works and an understanding of the community attitudes and needs in relation to the Project Works; and
- (ii) be available at all times:
 - A. to take a proactive role in the community relations processes relating to Hills Motorway's Work as set out in the M2 Upgrade Project Deed; and
 - B. for contact by local residents and other community representatives to answer questions and deal with complaints relating to Hills Motorway's Work.

(b) At the date of the M2 Upgrade Project Deed, the Community Relations Manager is

Schedule 8 Significant Subcontracts

(clause 8.8)

Each of the following Subcontracts shall be a Significant Subcontract for the purposes of this Deed:

- (a) all Subcontracts with:
 - (i) subcontractors with a design responsibility;
 - (b) suppliers of pre-cast concrete sections;
 - (c) suppliers of bridge bearings;
 - (d) suppliers of expansion joints;
 - (e) suppliers of tunnel M&E equipment;
 - (f) suppliers of waterproof membrane; and
 - (g) suppliers of lighting components; and
- (b) without limiting paragraph (a) above, all Subcontracts which has a contract sum exceeding or expected to exceed \$2.5 million.