



Execution Version

WestConnex M5 Project Deed Amendment Deed

Roads and Maritime Services

ABN 76 236 371 088

and

WCX M5 PT Pty Ltd

ACN 608 798 465 in its personal capacity and in its capacity as trustee of the WCX M5 Project Trust
(ABN 73 899 615 977)

and

WCX M5 AT Pty Ltd

ACN 608 798 081 in its personal capacity and in its capacity as trustee of the WCX M5 Asset Trust
(ABN 23 365 031 283)

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BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 of 20-44 Ennis Road, Milsons Point New South Wales, 2061 (**RMS**);
- (2) **WCX M5 PT Pty Ltd** ACN 608 798 465 of Level 33, 259 George Street, Sydney NSW 2000 (**Project Trustee**) in its personal capacity and as trustee of the WCX M5 Project Trust (ABN 73 899 615 977) (**Project Trust**); and
- (3) **WCX M5 AT Pty Ltd** ACN 608 798 081 of Level 33, 259 George Street, Sydney NSW 2000 (**Asset Trustee**) in its personal capacity and as trustee of the WCX M5 Asset Trust (ABN 23 365 031 283) (**Asset Trust**).

RECITALS:

- (A) RMS is a statutory body representing the Crown in the right of the State of New South Wales.
- (B) RMS, the Asset Trustee and the Project Trustee are parties to the Project Deed, under which:
 - (1) the Asset Trustee is responsible for the investigation, financing, funding, planning, design and construction, and commissioning of the M5 Motorway; and
 - (2) the Project Trustee is responsible for the operation, maintenance and repair of the M5 Motorway.
- (C) As contemplated by clause 36.1 of the Project Deed, the parties wish to amend certain provisions of the Project Deed in the manner set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed.

D&C Commitment Effective Date means the date on which the Conditions Precedent referred to in clause 5.2 of the M4-M5 Link Project Deed have been satisfied or waived in accordance with clause 5.2 of the M4-M5 Link Project Deed.

Effective Date has the meaning given in clause 4.1.

Longstop Date means [REDACTED], as may be extended by written agreement of all parties to this deed.

M4-M5 Link Project Deed means the deed titled "M4-M5 Link Project Deed" between RMS and the M4-M5 Link Trustees on or about the date of this deed.

M4-M5 Link Trustees means:

- (a) WCX M4-M5 Link AT Pty Limited (ACN 624 153 742); and
- (b) WCX M4-M5 Link PT Pty Limited (ACN 642 153 788).

O&M Deed Amendment Deed means the deed titled "WestConnex M5 O&M Deed Amendment Deed" between the Project Trustee and the Operator dated on or around the date of this deed to give effect to amendments required in the O&M Deed.

Project Deed means the deed titled "WestConnex M5 Project Deed" between RMS and the Project Trustee and the Asset Trustee dated 20 November 2015.

Trust means each of Project Trust and Asset Trust and **Trusts** means both of them.

Trust Deeds means the Asset Trust Deed and the Project Trust Deed.

1.2 **Definitions in the Project Deed**

Definitions in the Project Deed apply in this deed unless the term is otherwise defined in this deed or the context requires otherwise.

1.3 **Rules for interpreting this deed**

Headings are for convenience only and do not affect interpretation. The following rules apply in interpreting this deed, unless the context makes it clear that a rule is not intended to apply:

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or exhibit is a reference to a clause, schedule or exhibit of or to this deed.
- (f) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced from time to time, except to the extent prohibited by this deed or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.
- (k) A reference to a court or tribunal is to an Australian court or tribunal.
- (l) A reference to dollars and \$ is to Australian currency.

- (m) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward or drafted this deed or any part of it.

1.4 **Non Business Days**

If the day on or by which a person must do something under this deed is not a Business Day:

- (a) if the act involves a payment, other than a payment which is due on demand, the person must do it on the preceding Business Day; and
- (b) in all other cases, no later than the next Business Day.

1.5 **Multiple parties**

If a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

1.6 **Requirement on a person not a party to this deed**

If a provision of this deed requires a person that is not a party to this deed to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

2. **CONSIDERATION**

Each party acknowledges that it has received valuable consideration for entering into this deed.

3. **AMENDMENT**

- (a) RMS, the Project Trustee and the Asset Trustee agree that on and from the Effective Date:
 - (i) the Project Deed is amended as set out in Schedules 1, 2, 3, 4 and 5 to this deed; and
 - (ii) each of RMS, the Project Trustee and the Asset Trustee is bound by the Project Deed as amended by Schedules 1, 2, 3, 4 and 5 to this deed.
- (b) RMS, the Project Trustee and the Asset Trustee agree that, except as expressly amended by this deed:
 - (i) no changes to the Project Deed are to be inferred or implied;
 - (ii) the amendments to the Project Deed do not affect the validity or enforceability of the Project Deed;

- (iii) except as amended by this deed, all other terms of the Project Deed remain in full force and effect; and
 - (iv) amendments will be made to the O&M Deed in accordance with the O&M Deed Amendment Deed.
- (c) Nothing in this deed:
- (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Project Deed before the Effective Date; or
 - (ii) discharges, releases or otherwise affects any liability or obligation arising under the Project Deed before the Effective Date.

4. **EFFECTIVE DATE**

4.1 **Condition precedent**

Other than this clause 4 and clauses 1 (Interpretation), 5 (Representations and Warranties), and 6 (General) (which clauses are in force in effect as and from the date of this deed), this deed will have no force or effect until the earlier of:

- (a) the D&C Commitment Effective Date; and
- (b) the date RMS notifies the Trustees that the condition precedent in clause 4.1(a) has been unconditionally waived in accordance with clause 4.2(c),

such date being the **Effective Date** RMS must promptly notify the Asset Trustee and the Project Trustee that the D&C Commitment Effective Date has been achieved.

4.2 **Obligation to satisfy condition**

- (a) Each party must use all its reasonable endeavours to ensure that, by the Longstop Date, the condition precedent in clause 4.1(a) has been satisfied.
- (b) Each party must keep the other party informed of any circumstances which may result in the condition precedent in clause 4.1(a) not being satisfied in accordance with its terms.
- (c) The breach or non-fulfilment of the condition precedent in clause 4.1(a) may be unconditionally waived only by the written consent of all parties to this deed.

4.3 **Longstop Date**

- (a) Subject to clause 4.3(b), this deed automatically terminates if the Effective Date has not occurred on or before 11:59pm on the Longstop Date.
- (b) If this deed is terminated pursuant to this clause 4.3:
 - (i) all rights and obligations under this deed, other than:
 - (A) this clause 4 and clauses 1 (Interpretation), 5 (Representations and Warranties), and 6 (General);
 - (B) any clause which is expressed to survive termination of this deed; and
 - (C) rights that accrue before termination of this deed,

terminate and have no further effect; and

- (ii) no party will have any Claim against any other party under or in respect of this deed, including in respect of the reimbursement of costs or expenses in connection with this deed.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

- (a) The Project Trustee and Asset Trustee make the following representations and warranties to each other and to RMS:
 - (i) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the party;
 - (ii) it has full corporate power and lawful authority to execute and deliver this deed and to consummate and perform or cause to be performed its obligations under this deed;
 - (iii) this deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy; and
 - (iv) in respect of the Project Trustee and Asset Trustee, they own, or have the appropriate rights to, all rights, including Intellectual Property Rights necessary to enable them to comply with the Project Deed as amended and restated with effect from the date of this deed.
- (b) The Project Trustee and Asset Trustee, each in its capacity as trustee of the relevant Trust, make the following representations and warranties to RMS:
 - (i) it is empowered by the relevant Trust Deed:
 - (A) to enter into and perform this deed and to carry on the transactions contemplated by this deed; and
 - (B) to carry on its business as now conducted or contemplated and to own the Trust's assets,in each case in its capacity as trustee of the relevant Trust;
 - (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the relevant Trust Deed for it to enter into and perform this deed in its capacity as trustee of the relevant Trust;
 - (iii) it is the sole trustee of the relevant Trust; and
 - (iv) it has complied with its obligations and duties under the relevant Trust Deed and at law and no one has alleged that it has not complied.

5.2 Representations and warranties of RMS

RMS makes the following representations and warranties to the other parties:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);

- (b) it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed;
- (c) it is legally entitled and has all statutory power to enter into and perform its obligations under this deed, to carry out the transactions contemplated by those documents, and the entry into this deed is a proper exercise of power;
- (d) its obligations under this deed are valid and binding and are enforceable against it in accordance with the terms of this deed subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and
- (e) the execution, delivery and performance of this deed and the transactions under this deed does not violate any law to which RMS is subject.

6. GENERAL

6.1 Governing Law and jurisdiction

- (a) This deed is governed by and must be construed according to the Law applying in New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 6.1(b)(i).

6.2 Liability for expenses

- (a) Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed.
- (b) All stamp duties (including fines, penalties and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by the relevant party who incurred the stamp duty.

6.3 Requirement on a person not party to this deed

If a provision of this deed requires a person that is not a party to this deed to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

6.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law.

6.5 **Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this deed is excluded to the full extent permitted by Law.

6.6 **Amendment**

This deed can only be amended or replaced by another document executed by the parties.

6.7 **Entire agreement**

To the extent permitted by Law, this deed and the other Project Documents:

(a) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and

(b) supersede any prior written or other agreement of the parties,

in relation to the subject matter of this deed.

6.8 **Severance**

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

(a) that will not affect or impair:

(i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

(ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and

(b) the provision will be construed in a manner which:

(i) avoids the provision being void, illegal, invalid or unenforceable; and

(ii) subject to clause 6.8(b)(i) preserves to the maximum possible extent:

(A) the enforceability of the provision and the provisions of this deed; and

(B) the original effect and intent of this deed.

6.9 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

Executed as a deed.

THE SEAL of ROADS AND MARITIME SERVICES ABN 76 236 371 088, was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the *Transport Administration Act 1988 (NSW)*:

Name

Signature

EXECUTED by **WCX M5 PT PTY LTD**
(ACN 608 798 465) in its personal
capacity and in its capacity as trustee of
the **WCX M5 PROJECT TRUST** (ABN
73 899 615 977) in accordance with
section 127(1) of the *Corporations Act*
2001 (Cth) by:

Signature of director

Name

Signature of director/secretary

Name

EXECUTED by **WCX M5 AT PTY LTD**
(ACN 608 798 081) in its personal
capacity and in its capacity as trustee of
the **WCX M5 ASSET TRUST** (ABN 23
365 031 283) in accordance with
section 127(1) of the *Corporations Act
2001 (Cth)* by:

Signature of director

Name

Signature of director/secretary

Name

SCHEDULE 1

Toll Calculation Schedule Amendments

Replace Schedule 44A (Toll Calculation Schedule) of the Project Deed in its entirety with the following:

SCHEDULE 44A

Toll Calculation Schedule

(Clause 21.1)

Part A – Introduction

1. Introduction

This Schedule 44A sets out the method of calculating the Tolls for the Motorway for the purposes of clause 21.1. This Schedule provides for:

- (a) tolls on the New M5 Motorway and the M5 East Motorway (or part of it) on and from the Date of Opening Completion of the New M5 Motorway;
- (b) the arrangements for the allocation of tolls between the New M5 Motorway and the M5 East Motorway and other stages of the WestConnex scheme in accordance with the tolling policy for the WestConnex schemes, from the commencement of tolling of WestConnex Stage 3; and
- (c) the Tolls for the M5 West Motorway from 11 December 2026, which are separate to the tolling policy for the WestConnex scheme and are not adjusted or impacted by the tolls on any of the stages of WestConnex scheme.

Part B – Definitions

2. Definitions

The following terms where used in this Schedule 44A will have the meanings given below:

Administration Charge means a fee for administering the use of the Motorway by Casual Users, as determined in accordance with paragraph 15 of this Schedule 44A.

Base Toll Cap means the toll cap specified in paragraph 4.3 of this Schedule 44A as adjusted in accordance with paragraphs 5.3 and 8.3 of this Schedule 44A.

Base Toll Flag Fall means the toll specified in paragraph 4.1 of this Schedule 44A as adjusted in accordance with paragraphs 5.1 and 8.1 of this Schedule 44A.

Base Toll Rate means the rate specified in paragraph 4.2 of this Schedule 44A as adjusted in accordance with paragraphs 5.2 and 8.2 of this Schedule 44A.

Casual User means a user of the Motorway who does not pay for that use with a Tag at the time of their trip.

Casual User System means the system and equipment used to manage, process and administer revenue collection from Casual Users including office premises and fit out, hardware, software and office systems.

Charge Toll means, for a Vehicle Class and year, the toll calculated in accordance with paragraph 8 of this Schedule 44A.

Charge Toll Reduction Amount means the amount calculated in accordance with paragraph 9.6 of this Schedule 44A.

Equalisation Factor means, for a Tollable Section, the number set out in paragraph 7.1 of this Schedule 44A.

ETC System means the electronic toll collection system used on the WestConnex Motorway.

Flag Fall Toll means the flag fall toll calculated in accordance with paragraph 8.1 of this Schedule 44A.

Flag Fall Toll Reduction Amount means the amount calculated in accordance with paragraph 9.5 of this Schedule 44A.

GST Rate Change has the meaning given to that term in paragraph 6(a) of this Schedule 44A.

Heavy Vehicle means a Vehicle which is not a Passenger Vehicle.

Home Trip Percentage means the percentage calculated under **paragraph** 9.3 of this Schedule 44A.

M4 Motorway has the meaning given to the term "Motorway" in the deed titled "WestConnex M4 Project Deed" between RMS and WCX M4 Pty Limited (ABN 92 602 963 806) dated on or about 4 December 2014, as novated and amended on or about 23 November 2016 which following novation is between RMS, the M4 Asset Trustee in its personal capacity and in its capacity as trustee of the WCX M4 Asset Trust (ABN 31 878 147 068) and the M4 Project Trustee in its personal capacity and in its capacity as trustee of the WCX M4 Project Trust (ABN 30 792 117 496).

M4-M5 Link Motorway means the motorway described by the WestConnex Program of Works as 'Stage 3' or 'M4-M5 Link'.

M5W Base Toll means, for a Tollable Section, the toll specified in the table set out in paragraph 12 of this Schedule 44A as adjusted in accordance with paragraph 14 of this Schedule 44A.

M5W Charge Toll means, for a Tollable Section and Vehicle Class and Quarter, the toll calculated in accordance with paragraph 14 of this Schedule 44A.

M5W Theoretical Toll means, for a M5W Tollable Section and Quarter, the theoretical toll calculated in accordance with paragraph 12 of this Schedule 44A.

M5W Tollable Section means:

- (a) Tollable Section A; or
- (b) Tollable Section B,

each being a part of the M5 West Motorway as described in the table set out in paragraph 11 of this Schedule 44A.

Passenger Vehicle means any Vehicle (including any trailer or caravan) which is:

- (a) 2.8 meters or less in height; and
- (b) 12.5 meters or less in length.

Tag means an electronic device which enables the user to pay tolls on tollroads (including the Motorway) by means of an electronic toll collection system.

Theoretical Toll means the theoretical toll calculated in accordance with paragraph 5 of this Schedule 44A.

Theoretical Toll Cap means the theoretical cap calculated in accordance with paragraph 5.3 of this Schedule 44A.

Theoretical Toll Flag Fall means the theoretical toll flag fall calculated in accordance with paragraph 5.1 of this Schedule 44A.

Theoretical Toll Rate means the theoretical rate calculated in accordance with paragraph 5.2 of this Schedule.

Toll Cap means the toll cap calculated in accordance with paragraph 8.3 of this Schedule 44A.

Tollable Section means:

- (a) in the case of the Motorway, the sections of the Motorway set out in paragraph 7.1 of this Schedule 44A; and
- (b) in the case of either the M4 Motorway or the M4-M5 Link Motorway, the relevant sections notified by RMS in accordance with paragraph 9.2 of this Schedule 44A.

Trip means journey by a Vehicle on the New M5 Motorway or the M5 East Motorway which commences when the Vehicle enters the New M5 Motorway or the M5 East Motorway and ends when the Vehicle leaves the New M5 Motorway or the M5 East Motorway. If after leaving either the New M5 Motorway or the M5 East Motorway the Vehicle re-enters either the New M5 Motorway or the M5 East Motorway then it commences a new Trip.

Vehicle means a vehicle which is used or intended to be used on a road which has its own motive power (other than human or animal power) including buses, cars, taxis, motor cycles and trucks.

Vehicle Class means each category of Vehicle referred to in the table in paragraph 8 of this Schedule 44A.

WestConnex Flag Fall Toll means the flag fall toll for a WestConnex Trip calculated in accordance with paragraph 8.1 of this Schedule 44A.

WestConnex Toll Cap means the toll cap for a WestConnex Trip calculated in accordance with paragraph 8.3 of this Schedule 44A.

WestConnex Trip means a journey by a Vehicle on any WestConnex Motorway. If after leaving a WestConnex Motorway (other than by moving onto another WestConnex Motorway) the Vehicle re-enters any WestConnex Motorway then it commences a new WestConnex Trip.

WestConnex Motorway means each and any of:

- (a) the M4 Motorway,
- (b) the New M5 Motorway;
- (c) the M5 East Motorway; and

- (d) the M4-M5 Link Motorway.

Part C – New M5 Motorway and M5 East Motorway Tolls

3. Toll

Subject to paragraphs 8.5(a), 8.5(b) and 17 and Part D of this Schedule 44A, the Project Trustee may levy a toll for use of the New M5 Motorway and the M5 East Motorway (or part of it) for the passage of a Vehicle in a Tollable Section during the Term which does not exceed the Charge Toll for a Vehicle of that Vehicle Class for that Tollable Section for the relevant year.

4. Base Toll Flag Fall, Base Toll Rate and Base Toll Cap

4.1 Base Toll Flag Fall

The Base Toll Flag Fall is set at 2012 dollars and is \$1.00, including GST.

4.2 Base Toll Rate

The Base Toll Rate is set at 2012 dollars and is \$0.37 per kilometre, including GST.

4.3 Base Toll Cap

The Base Toll Cap is set at 2012 dollars and is \$7.07, including GST.

4.4 GST on Base Toll Flag Fall, Base Toll Rate and Base Toll Cap

Each of the Base Toll Flag Fall, the Base Toll Rate and the Base Toll Cap includes GST at a rate of 10%.

5. Theoretical Toll Flag Fall, Theoretical Toll Rate and Theoretical Toll Cap

5.1 Theoretical Toll Flag Fall

- (a) The Project Trustee must review and re-calculate the Theoretical Toll Flag Fall for use of the New M5 Motorway and the M5 East Motorway once each year in accordance with this paragraph 5.1 of this Schedule 44A such to take effect on and from 1 January following year.
- (b) The Theoretical Toll Flag Fall for use of the Motorway for a year must be calculated to 4 decimal places (rounding upwards amounts ending in 0.00005) in accordance with the following formula:

$$\text{Theoretical Toll Flag Fall}_n = \text{Theoretical Toll Flag Fall}_{n-1} \times \text{Growth Factor}_n$$

provided that Theoretical Toll Flag Fall_n cannot be less than Theoretical Toll Flag Fall_{n-1}

Where:

Theoretical Toll Flag Fall_n = the Theoretical Toll Flag Fall for use of the New M5 Motorway and the M5 East Motorway for the year in which the recalculated Theoretical Toll Flag Fall will take effect;

Theoretical Toll Flag Fall_{n-1} = the Theoretical Toll Flag Fall for use of the New M5 Motorway and the M5 East Motorway for the immediately preceding year (or the Base Toll Flag Fall for the first calculation for 2013);

Growth Factor $_n$ = the greater of:

CPI_{n-1}/CPI_{n-2} ; and

at any time prior to 31 December 2040, 1.04 and thereafter 1.00;

CPI_{n-1} = at any date, the CPI for the Quarter ending 30 June in the prior calendar year; and

CPI_{n-2} = at any date, the CPI for the Quarter ending 30 June in the calendar year before the calendar year referred to in CPI_{n-1} .

5.2 Theoretical Toll Rate

- (a) The Project Trustee must review and re-calculate the Theoretical Toll Rate for use of the New M5 Motorway and the M5 East Motorway once each year in accordance with this paragraph 5.2 of this Schedule 44A such to take effect on and from 1 January the following year.
- (b) The Theoretical Toll Rate for a year must be calculated to 4 decimal places (rounding upward amounts ending in 0.00005) in accordance with the following formula:

Theoretical Toll Rate $_n$ = Theoretical Toll Rate $_{n-1}$ x Growth Factor $_n$

provided that Theoretical Toll Rate $_n$ cannot be less than Theoretical Toll Rate $_{n-1}$

Where:

Theoretical Toll Rate $_n$ = the Theoretical Toll Rate for the year in which the recalculated Theoretical Toll Rate will take effect;

Theoretical Toll Rate $_{n-1}$ = the Theoretical Toll Rate for the immediately preceding year (or the Base Toll Rate for the first calculation for 2013);

Growth Factor $_n$ = the greater of:

CPI_{n-1}/CPI_{n-2} ; and

at any time prior to 31 December 2040, 1.04 and thereafter 1.00;

CPI_{n-1} = at any date, the CPI for the Quarter ending 30 June in the prior calendar year; and

CPI_{n-2} = at any date, the CPI for the Quarter ending 30 June in the calendar year before the calendar year referred to in CPI_{n-1} .

5.3 Theoretical Toll Cap

- (a) The Project Trustee must review and re-calculate the Theoretical Toll Cap for use of the New M5 Motorway and the M5 East Motorway once each year in accordance with this paragraph 5.3 of this Schedule 44A such to take effect on and from 1 January the following year.
- (b) The Theoretical Toll Cap for use of the New M5 Motorway and the M5 East Motorway for a year must be calculated to 4 decimal places (rounding upwards amounts ending in 0.00005) in accordance with the following formula:

Theoretical Toll Cap $_n$ = Theoretical Toll Cap $_{n-1}$ x Growth Factor $_n$

provided that Theoretical Toll Cap_n cannot be less than Theoretical Toll Cap_{n-1}

Where:

Theoretical Toll Cap_n = the Theoretical Toll Cap for use of the New M5 Motorway and the M5 East Motorway for the year in which the recalculated Theoretical Toll Cap will take effect;

Theoretical Toll Cap_{n-1} = the Theoretical Toll Cap for use of the New M5 Motorway and the M5 East Motorway for the immediately preceding year (or the Base Toll Cap for the first calculation for 2013);

Growth Factor_n = the greater of:

CPI_{n-1}/CPI_{n-2}; and

at any time prior to 31 December 2040, 1.04 and thereafter 1.00;

CPI_{n-1} = at any date, the CPI for the Quarter ending 30 June in the prior calendar year; and

CPI_{n-2} = at any date, the CPI for the Quarter ending 30 June in the calendar year before the calendar year referred to in CPI_{n-1}.

6. GST Rate Changes

- (a) If, at any time during the period between the date of this deed and the end of the Term, the rate of applicable GST under GST law changes from the GST applicable at the date of this deed (**GST Rate Change**), the Theoretical Toll Rate, Theoretical Toll Flag Fall and the Theoretical Toll Cap which will apply for the purposes of paragraph 4 of this Schedule 44A after the date on which the GST Rate Change becomes effective will be adjusted in accordance with the following formula:

(i)
$$\text{Theoretical Toll Rate} = Y \times [1 + X] / [1 + Z]$$

Where:

the Theoretical Toll Rate amount is rounded to 4 decimal places (rounding upward amounts ending in 0.00005);

X = the rate of GST (expressed as a decimal) under GST law applicable after the GST Rate Change;

Z = the rate of GST (expressed as a decimal) under GST law applicable immediately before the GST Rate Change; and

Y = the Theoretical Toll Rate immediately before the GST Rate Change;

(ii)
$$\text{Theoretical Toll Flag Fall} = Y \times [1 + X] / [1 + Z]$$

Where:

the Theoretical Toll Flag Fall amount is rounded to 4 decimal places (rounding upward amounts ending in 0.00005)

X = the rate of GST (expressed as a decimal) under GST law applicable after the GST Rate Change;

Z = the rate of GST (expressed as a decimal) under GST law applicable immediately before the GST Rate Change; and

Y = the Theoretical Toll Flag Fall immediately before the GST Rate Change; and

(iii) $\text{Theoretical Toll Cap} = Y \times [1 + X] / [1 + Z]$

Where:

the Theoretical Toll Flag Fall amount is rounded to 4 decimal places (rounding upward amounts ending in 0.00005)

X = the rate of GST (expressed as a decimal) under GST law applicable after the GST Rate Change;

Z = the rate of GST (expressed as a decimal) under GST law applicable immediately before the GST Rate Change; and

Y = the Theoretical Toll Flag Fall immediately before the GST Rate Change.

7. Lengths of Tollable Sections

7.1 Lengths of Tollable Sections

For the purposes of this Schedule 44A, the length of each Tollable Section and the Equalisation Factor of each Tollable Section will be taken to be as set out in the following table:

WCX STAGE 2 TOLL EQUALISATION FACTORS

Eastbound Trips

Tollable Section	Length (km)	Equalisation Factor
King Georges Road to Bexley Road	3.30	1.00
King Georges Road to Princes Highway	6.91	1.25
King Georges Road to Marsh Street	7.21	1.24
King Georges Road to GHD	9.33	11.03÷9.33
King Georges Road to Campbell Road	11.03	1.00
Kingsgrove Road to Princes Highway	4.68	1.36
Kingsgrove Road to Marsh Street	4.98	1.34
Kingsgrove Road to GHD	7.10	1.24

WCX STAGE 2 TOLL EQUALISATION FACTORS

Westbound Trips

Tollable Section	Length Equalisation	
	(km)	Factor
Campbell Road to King Georges Road	11.03	1.00
GHD to King Georges Road	9.33	11.03÷9.33
GHD to Kingsgrove Road	7.10	1.24
Marsh Street to Kingsgrove Road	4.98	1.34
Marsh Street to King Georges Road	7.21	1.24
Bexley Road to King Georges Road	3.30	1.00

7.2 Length of new Tollable Sections created by additional connections to the Motorway

- (a) RMS and the Project Trustee acknowledge that:
- (i) a Tollable Section set out in paragraph 7.1 of this Schedule 44A may be divided into two or more new Tollable Sections if a road is connected to the New M5 Motorway or the M5 East Motorway at a location other than those locations identified in paragraph 7.1 of this Schedule 44A as the limits of a Tollable Section; and
 - (ii) the modification or addition of a connection at the limit of a Tollable Section identified in paragraph 7.1 of this Schedule 44A does not entitle a party to seek to change the length of that Tollable Section.
- (b) RMS and the Project Trustee agree that (so far as is practicable) to determine the lengths of new Tollable Sections, the lengths of new Tollable Sections will be determined by reference to the location at which the centreline of the connecting road crosses the centreline running between the New M5 Motorway and the M5 East Motorway carriageways.
- (c) If RMS or the Project Trustee (the "Requesting Party") wishes to create new Tollable Sections from those set out in paragraph 7.1 of this Schedule 44A to reflect the connection of a road to the New M5 Motorway or the M5 East Motorway then the Requesting Party may give written notice to the other Party (the "Responding Party") specifying the lengths of the proposed new Tollable Sections.
- (d) The Responding Party must advise the Requesting Party within 30 days of receiving a notice under paragraph 7.2(c) of this Schedule 44A:
- (i) that it accepts the lengths of the new Tollable Sections proposed by the Requesting Party; or
 - (ii) that it rejects the lengths of the new Tollable Sections proposed by the Requesting Party.

- (e) If the Responding Party fails to respond for any reason within the 30 day period referred to in paragraph 7.2(d) of this Schedule 44A, it will be taken to have accepted the lengths of the new Tollable Sections proposed by the Requesting Party.
- (f) If the Requesting Party rejects the lengths of the new Tollable Sections proposed by the Requesting Party then the Requesting Party may refer the matter for dispute resolution in accordance with clause 32.

7.3 **Single ended recorded Trip**

If a Vehicle:

- (a) is recorded by the ETC System as having entered the New M5 Motorway or the M5 East Motorway but not recorded by the ETC System as having left the WestConnex Motorway, that Vehicle will be deemed to have:
 - (i) left the New M5 Motorway or the M5 East Motorway (as relevant) at the exit point immediately after the entry point at which that Vehicle entered the WestConnex Motorway; and
 - (ii) only travelled through the Tollable Section located between those entry and exit points; or
- (b) is recorded by the ETC System as having left the New M5 Motorway or the M5 East Motorway but not recorded by the ETC System as having entered the WestConnex Motorway, that Vehicle will be deemed to have:
 - (i) entered the WestConnex Motorway at the entry point immediately preceding the exit point at which that Vehicle exited the WestConnex Motorway; and
 - (ii) only travelled through the Tollable Section located between those entry and exit points.

8. **Charge Toll**

8.1 **Flag Fall Toll**

The Flag Fall Toll for a Trip on the New M5 Motorway or the M5 East Motorway will be calculated in accordance with the following formula:

$$\text{Flag Fall Toll} = A \times B$$

Where:

A = the Theoretical Toll Flag Fall for the year during which the Trip occurs; and

B = the Charge Toll Multiplier being the factor specified as the "Charge Toll Multiplier" for that Vehicle Class in the following table:

Vehicle Class	Charge Toll Multiplier
Passenger Vehicle	1.0
Heavy Vehicle	3.0

8.2 Toll Rate

The Toll Rate for a Trip will be calculated in accordance with the following formula:

$$\text{Toll Rate} = A \times B \times C \times D$$

Where:

A = the sum in km to 2 decimal places of the lengths of the Tollable Sections through which the Vehicle passes during the Trip on the New M5 Motorway and/or the M5 East;

B = the Equalisation Factor for that Tollable Section;

C = the Theoretical Toll Rate for the year during which the Trip on the New M5 Motorway and/or the M5 East occurs; and

D = the Charge Toll Multiplier being the factor specified as the "Charge Toll Multiplier" for that Vehicle Class in the following table:

Vehicle Class	Charge Toll Multiplier
Passenger Vehicle	1.0
Heavy Vehicle	3.0

8.3 Toll Cap

The Toll Cap for a Trip will be calculated in accordance with the following formula:

$$\text{Toll Cap} = A \times B$$

Where:

A = Theoretical Toll Cap; and

B = the Charge Toll Multiplier being the factor specified as the "Charge Toll Multiplier" for that Vehicle Class in the following table:

Vehicle Class	Charge Toll Multiplier
Passenger Vehicle	1.0
Heavy Vehicle	3.0

8.4 Charge Toll

Subject to paragraphs 8.1 and 8.2 and Part D of this Schedule 44A, the Project Trustee may levy a toll for each Trip by a Vehicle on the New M5 Motorway or the M5 East Motorway which is an amount determined by the following formula:

$$\text{Charge Toll} = A - B$$

Where

A = the lesser of:

- (a) the sum of:
 - (i) the Flag Fall Toll for that Trip on the New M5 Motorway or the M5 East Motorway for that Vehicle, rounded to 2 decimal places (rounding upwards amounts ending in 0.005); and
 - (ii) the Toll Rate for that Trip on the New M5 Motorway or M5 East Motorway for that Vehicle, rounded to 2 decimal places (rounding upwards amounts ending in 0.005); and
- (b) the Toll Cap for that Vehicle, rounded to 2 decimal places (rounding upwards amounts ending in 0.005); and

B = the amount determined under either paragraphs 9.5 or 9.6 of Part D of this Schedule 44A for allocation to other WestConnex Motorways, if any.

8.5 **Increases to Charge Toll**

- (a) If the Project Trustee wishes to increase the Charge Toll for a Trip by reason of the calculations in this Schedule 44A, the Project Trustee must provide RMS with written notice of:
 - (i) the Charge Toll for that Trip for the next year; and
 - (ii) the date on which the Project Trustee proposes to commence levying that Charge Toll which must not be earlier than the next yearly date,at least 20 Business Days prior to such date.
- (b) The Project Trustee may levy the increased Charge Toll from the time which is no earlier than 12.00 am on the date referred to in paragraph 8.5(a)(ii) of this Schedule 44A.
- (c) If a new State or Commonwealth tax is imposed, or an existing State or Commonwealth tax is increased, on the tolls levied by the Project Trustee in connection with the Project, the Project Trustee will be entitled to increase the tolls charged above the rate that would otherwise be permitted by this Schedule 44A (which may include an increase in the Base Flag Fall Toll and/or the Base Toll Rate and/or the Base Toll Cap) for each year that the tax applies.

The increase will not exceed the lesser of:

- (i) the maximum increase permitted by the applicable law (if any); or
- (ii) an amount sufficient to ensure that the net position of the Project Trustee is no worse than immediately prior to the tax being imposed or increased,

but reduced to the extent of any reduction of tax, cost saving or other benefit which accrues to the Project Trustee as part of the change.

Part D – WestConnex scheme toll allocation

9. WestConnex Trips

9.1 Introduction

The parties acknowledge that the intention of the WestConnex scheme tolling is that for each continuous WestConnex Trip by a Vehicle on more than one WestConnex Motorway, both the Flag Fall Toll and, if applicable, the Toll Cap will be applied so that:

- (a) a consistent Toll Rate, Flag Fall Toll and Toll Cap is applied for the WestConnex Motorways or any other variable in calculating tolls in a WestConnex Motorway concession agreement;
- (b) that Vehicle only pays a Flag Fall Toll once for that WestConnex Trip;
- (c) the entire WestConnex Trip is subject to the Toll Cap; and
- (d) Flag Fall Toll will be allocated and, if applicable, the Toll Cap will be applied between each WestConnex Motorway on the basis of a pro rata allocation based on the distance travelled by the Vehicle on each WestConnex Motorway during that WestConnex Trip.

9.2 WestConnex Trips distances

- (a) RMS must provide to the Project Trustee notice of the lengths of each Tollable Section of the M4 Motorway and the M4-M5 Link Motorway within 14 days of the date of this deed and provide further notice of the relevant Tollable Sections within 14 days of agreeing to any change to any Tollable Section of the M4 Motorway or the M4-M5 Link Motorway.
- (b) For the purposes of this Schedule 44A, the distance of each WestConnex Trip will be calculated as the total of all lengths of each Tollable Section (adjusted for any applicable Equalisation Factor) in respect of each WestConnex Motorway through which that Vehicle travels.

9.3 Home Trip Percentage

For a Trip on either the New M5 Motorway or the M5 East Motorway that also becomes a WestConnex Trip on either or both of M4 Motorway or the M4/-M5 Link Motorway, the Home Trip Percentage will be calculated in accordance with the following formula:

$$A = B / C$$

Where:

A = Home Trip Percentage, rounded up to 2 decimal places (rounding upwards amounts ending in 0.005;

B = the sum of the lengths of the Tollable Sections on either the New M5 Motorway or the M5 East Motorway of that Trip; and

C = the sum of the lengths of the Tollable Sections on all WestConnex Motorways of that WestConnex Trip.

9.4 WestConnex Flag Fall Toll and WestConnex Toll Cap

- (a) The WestConnex Flag Fall Toll for a WestConnex Trip will be the Flag Fall Toll.
- (b) The WestConnex Toll Cap for a WestConnex Trip will be the Toll Cap.

9.5 Allocation of WestConnex Flag Fall Tolls

For WestConnex Trips that do not reach the Toll Cap, the Charge Toll for a Trip on either the New M5 Motorway or the M5 East Motorway that also becomes a WestConnex Trip on either or both of the M4 Motorway or the M4/-M5 Link Motorway will be reduced by the **Flag Fall Toll Reduction Amount** in accordance with the following formula:

$$A = B \times (1 - C)$$

Where:

A = Flag Fall Toll Reduction Amount;

B = the WestConnex Flag Fall Toll for that Trip, rounded to 2 decimal places (rounding upwards amounts ending in 0.005); and

C = Home Trip Percentage.

To the extent rounding of calculations of allocation of a Charge Toll:

- (a) leaves an amount unallocated, that amount shall be allocated to the WestConnex Motorway where the WestConnex Trip began; or
- (b) results in an excess allocated, the Charge Toll on the WestConnex Motorway where the WestConnex Trip began will be reduced by the amount of that excess.

9.6 Allocation of WestConnex Toll Cap

For WestConnex Trips that reach the Toll Cap, the Charge Toll will be reduced by the **Charge Toll Reduction Amount** in accordance with the following formula:

$$A = B \times (1 - C)$$

Where:

A = Charge Toll Reduction Amount;

B = Toll Cap, rounded to the nearest 2 decimal places (rounding upwards amounts ending in 0.005); and

C = Home Trip Percentage.

To the extent rounding of calculations of allocation of a Charge Toll, in accordance with the formula in this paragraph 9.6:

- (a) leaves an amount unallocated, that amount shall be allocated to the WestConnex Motorway where the WestConnex Trip began; or
- (b) results in an excess allocated, the Charge Toll on the WestConnex Motorway where the WestConnex Trip began will be reduced by the amount of that excess.

Part E – M5 West Tolls

10. Toll

From the M5W Transfer Date, the Project Trustee may levy a toll for use of the M5 West Motorway (or part of it) for the passage of a Vehicle in a M5W Tollable Section during the Term which does not exceed the M5W Charge Toll for a Vehicle of that Vehicle Class for that M5W Tollable Section for the relevant Quarter.

11. M5W Base Toll

The M5W Base Toll for a M5W Tollable Section is set at the date of 1 July 2015 and is the amount specified in the table below in relation to the relevant M5W Tollable Section.

M5W Tollable Section	Description	Base Toll per Vehicle (GST inclusive)
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Tollable Section A	Eastbound journey	\$4.44
Tollable Section B	Westbound journey	\$4.44

12. M5W Theoretical Toll

- (a) The Project Trustee must review and re-calculate the M5W Theoretical Toll for each M5W Tollable Section once each Quarter in accordance with this paragraph 12 of this Schedule 44A.
- (b) The M5W Theoretical Toll for a M5W Tollable Section and a Quarter must be calculated to 4 decimal places (rounding upwards amounts ending in 0.00005) in accordance with the following formula:

$$\text{M5W Theoretical Toll}_n = \text{M5W Theoretical Toll}_{n-1} \times \text{Growth Factor}_n$$

provided that M5W Theoretical Toll_n cannot be less than M5W Theoretical Toll_{n-1}

Where:

M5W Theoretical Toll_n = the M5W Theoretical Toll for the M5W Tollable Section for the Quarter in which the recalculated M5W Theoretical Toll will take effect;

M5W Theoretical Toll_{n-1} = the M5W Theoretical Toll for the M5W Tollable Section for the immediately preceding Quarter (or the M5W Base Toll for the Tollable Section for the first calculation after 30 September 2015);

$$\text{Growth Factor}_n = \text{CPI}_{n-2} / \text{CPI}_{n-3}$$

CPI_{n-2} = at any date, the CPI for the Quarter which is 2 Quarters prior to the Quarter in which the recalculated M5W Theoretical Toll will take effect; and

CPI_{n-3} = at any date, the CPI for the Quarter which is 3 Quarters prior to the Quarter in which the recalculated M5W Theoretical Toll will take effect.

13. GST Rate Changes

- (a) If, at any time during the period between the date of this deed and the end of the Term, a GST Rate Change occurs, the M5W Theoretical Toll which will apply for the purposes of paragraph 12 of this Schedule 44A after the date on which the GST Rate Change becomes effective will be adjusted in accordance with the following formula:

$$\text{M5W Theoretical Toll} = Y \times [1 + X] / [1 + Z]$$

Where:

the M5W Base Toll amount is rounded to 4 decimal places (rounding upward amounts ending in 0.00005).

X = the rate of GST (expressed as a decimal) under GST law applicable after the GST Rate Change;

Z = the rate of GST (expressed as a decimal) under GST law applicable immediately before the GST Rate Change; and

Y = the M5W Theoretical Toll immediately before the GST Rate Change.

14. Calculating the M5W Charge Toll

- (a) The M5W Charge Toll for a M5W Tollable Section and Vehicle Class in a Quarter must be calculated in accordance with the following formula:

$$\text{M5W Charge Toll} = \text{M5W Theoretical Toll} \times \text{Charge Toll Multiplier}$$

Where:

the M5W Charge Toll amount is rounded to 2 decimal places (rounding upwards amounts ending in 0.005);

M5W Theoretical Toll = the M5W Theoretical Toll for that Tollable Section and Quarter, calculated in accordance with paragraph 12(b) of this Schedule 44A; and

Charge Toll Multiplier = the factor specified as the "Charge Toll Multiplier" for that Vehicle Class in the following table:

Vehicle Class	Charge Toll Multiplier
Passenger Vehicle	1.0
Heavy Vehicle	3.0

- (b) If the Project Trustee wishes to change the toll for the passage of a Vehicle in a Tollable Section, the Project Trustee must provide RMS with written notice of:
- (i) the new toll for that M5W Tollable Section and Vehicle Class for the next Quarter; and
 - (ii) the date on which the Project Trustee proposes to commence levying the new toll, which must not be earlier than the next Quarterly Date,
- at least 20 Business Days prior to such date.
- (c) The Project Trustee may levy the new toll from the time which is no earlier than 12.00 am on the date referred to in paragraph 14(b)(ii) of this Schedule 44A.

Part F – Other

15. Administration Charges for Casual Users

- (a) The Project Trustee must give Casual Users an opportunity or opportunities to pay the toll as a deferred toll consistent with the procedures adopted by other private tollway operators from time to time.
- (b) RMS consents to the Project Trustee levying an Administration Charge for providing a temporary tag or allowing a Casual User to pay the toll as a deferred toll.
- (c) An Administration Charge for any Quarter (including the initial Administration Charge) will be as reasonably determined by the Project Trustee in consultation with RMS having regard to:
- (i) different Casual User products that the Project Trustee may wish to implement from time to time;
 - (ii) the actual and anticipated number of Casual Users; and

- (iii) the anticipated recovery rate of tolls and Administration Charges payable by Casual Users in comparison to tolls and Administration Charges actually received from Casual Users,

and so as to enable the recovery of the actual direct and indirect costs of operating and maintaining the Casual User System and processing, administrating and collecting revenue from Casual Users.

- (d) The Project Trustee must give Casual Users prior notice of the amount of an Administration Charge.
- (e) The Project Trustee may review an Administration Charge once each Quarter. If the Project Trustee wishes to change an Administration Charge, the Project Trustee must provide RMS with written notice of:
 - (i) the new Administration Charge for the next Quarter and provide in reasonable detail supporting information for the basis of calculating the new Administration Charge having regard to the principles outlined in paragraph 15(c) of this Schedule 44A; and
 - (ii) the date on which the Project Trustee proposes to commence charging the new Administration Charge, which must not be earlier than the next Quarterly Date,at least 20 Business Days prior to such date.
- (f) The new Administration Charge may be charged from the time which is no earlier than 12.00am on the date referred to in paragraph 15(e)(ii) of this Schedule 44A.

16. Exempt Vehicles

Notwithstanding anything else in this deed, the Project Trustee must not levy any toll, fee or charge for or in connection with the use of the Motorway by:

- (a) any bus being used to provide a public passenger service conducted according to regular routes and timetables, but not including a tourist service or a long-distance service; or
- (b) any other vehicle which is exempt under the Roads Act or its Regulations as at the date of this deed.

17. Tolling Policy Changes

- (a) RMS may notify the Project Trustee of any proposed amendments to the toll charges in this Schedule 44A.
- (b) If RMS notifies the Project Trustee, the parties will promptly enter into good faith discussions on RMS's proposal, including:
 - (i) the precise changes suggested;
 - (ii) the rationale for the changes;
 - (iii) the Project Trustee's view on whether the changes will promote the policy objectives that RMS seeks to achieve;
 - (iv) the merits of the proposal;

- (v) any further investigations the parties consider would be necessary to assess the proposal;
 - (vi) any consents that the Project Trustee would require to implement the proposal; and
 - (vii) the appropriate compensation or other measures that would need to be implemented to ensure that the Project Trustee is not adversely affected by the proposal.
- (c) If RMS and the Project Trustee agree to the matters referred to in paragraphs 17(b)(i)-(vii) above, they shall promptly enter into such amendments to this deed as are necessary to implement their agreement.

18. Change Order

For the avoidance of doubt, RMS may not issue any Change Order in respect of any matter the subject of this Schedule 44A.

19. Change in Law

- (a) If a new State or Commonwealth tax is imposed, or an existing State or Commonwealth tax is increased, on the tolls levied by the Project Trustee in connection with the Project, the Project Trustee will be entitled to increase the tolls charged above the rate that would otherwise be permitted by this Schedule 44A (which may include an increase in the M5W Theoretical Toll) for each Quarter that the tax applies.
- (b) The increase will not exceed the lesser of:
- (i) the maximum increase permitted by the applicable law (if any); or
 - (ii) an amount sufficient to ensure that the net position of the Project Trustee is no worse than immediately prior to the tax being imposed or increased,
- but reduced to the extent of any reduction of tax, cost saving or other benefit which accrues to the Project Trustee as part of the change.

SCHEDULE 2

Payments for Lane Closures Amendments

Replace Schedule 45A (Payments for Lane Closures) of the Project Deed in its entirety with the following:

SCHEDULE 45A

Payments for Lane Closures

1. DEFINITIONS

In this Schedule 45A:

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

Peak Period means 5.00 am to 9.00 pm on any day (including weekends and public holidays).

Period is a span of time either during weekdays or weekends. Periods shall be calculated separately for weekdays and weekends.

Traffic Adjustment means a change to the traffic capacity of the Motorway which is made for the purposes of facilitating a Permitted RMS Activity or any New Network Project. It includes an adjustment to:

- (a) the alignment of traffic lanes;
- (b) the number of traffic lanes; or
- (c) the posted speed limit.

Vehicle Class has the meaning given to it in the Toll Calculation Schedule.

2. TRAFFIC ADJUSTMENTS DURING PEAK PERIODS

If any type of Traffic Adjustment occurs on the Motorway during a Peak Period as a direct result of a Permitted RMS Activity or carrying out a New Network Project then RMS will pay to the Project Trustee an amount in respect of that Traffic Adjustment calculated in accordance with paragraph 4 of this Schedule 45A.

3. TRAFFIC ADJUSTMENTS DURING OFF-PEAK PERIODS

3.1 Compensable Traffic Adjustments

If a Traffic Adjustment of a type described below occurs on the Motorway during an Off-Peak Period as a direct result of a Permitted RMS Activity or carrying out a New Network Project, then RMS will pay to the Project Trustee an amount in respect of that Traffic Adjustment calculated in accordance with paragraph 4 of this Schedule 45A:

- (a) the complete closure of a carriageway for more than 10 minutes in any one hour period; and
- (b) both lanes of the carriageway are available but the posted speed limit is reduced by more than 20 km/h below the level applying immediately prior to the Traffic Adjustment.

3.2 **Non-compensable Traffic Adjustments**

RMS will not be liable to pay any amount to the Project Trustee in respect of:

- (a) the following types of Traffic Adjustments, if they occur during an Off-Peak Period:
 - (i) the posted speed limit of a carriageway is reduced by not more than 20 km/h below the level applying immediately prior to the Traffic Adjustment, but both lanes of the carriageway are still available;
 - (ii) one or more lanes of a carriageway are closed, but at least one lane remains available; or
 - (iii) complete closure of a carriageway for 10 minutes or less in any one hour period; or
- (b) Traffic Adjustments occurring at any time as a result of RMS:
 - (i) undertaking a Permitted RMS Activity on parts of the Motorway being maintained by the O&M Contractor during any period the Motorway or a traffic lane of the Motorway is closed in accordance with clause 19.2(a)(i) of the Project Deed;
 - (ii) undertaking a Permitted RMS Activity on terms agreed between RMS and the Project Trustee; or
 - (iii) taking action under clause 8.6(a) following the events referred to in clause 8.6(a)(i) or (as a result of a wrongful act or omission of the Trustees) clause 8.6(a)(ii).

4. **FORMULA FOR CALCULATION OF COMPENSATION**

The amount which RMS must pay the Project Trustee in respect of a Traffic Adjustment referred to in paragraph 2 or 3.1 of this Schedule 45A will be calculated in accordance with the following formula (notwithstanding traffic anomalies due to concurrent events):

[REDACTED]

Where:

Distance Based Component means the Distance Delta x Toll Rate.

Distance Delta means the aggregate Section Delta for the Tollable Section.

Flag Fall Component means the Trip Delta x Flag Fall Toll.

Flag Fall Toll has the same meaning as in the Toll Calculation Schedule.

M5 East Payment is the amount payable by RMS in respect of the Traffic Adjustment associated with the impact on the M5 East Motorway and the New M5 Motorway.

M5 West Payment is the amount payable by RMS in respect of the Traffic Adjustment associated with the impact on the M5 West Motorway.

Motorway Opening Date means:

- (a) in respect of the New M5 Motorway, the Date of Opening Completion;

- (b) in respect of the M5 East Motorway, the M5E Transfer Date; and
- (c) in respect of the M5 West Motorway, the M5W Transfer Date.

Passenger Vehicle and Heavy Vehicle have the same meanings as in the Toll Calculation Schedule.

Period is a span of time either during weekdays or weekends. Periods shall be calculated separately for weekdays and weekends.

Section Delta means for each section of the Motorway comprising the Tollable Section, VCLY less VC multiplied by the relevant distance is section 7.1 of the Toll Calculation Schedule.

Tollable Section has the same meaning as in the Toll Calculation Schedule.

Toll Rate has the same meaning as in the Toll Calculation Schedule.

Trip Delta means for all sections of the Motorway comprising the Tollable Section, VCLY less VC.

VC is the vehicle count for the relevant section of the Motorway (as relevantly defined in section 7.1 or section 11 of the Toll Calculation Schedule) in which the Traffic Adjustment occurs at or adjacent to the relevant toll gantries over the Period of the Traffic Adjustment, with Passenger Vehicles and Heavy Vehicles counted separately.

VCLY is:

- (a) subject to paragraphs (b) and (c), the average vehicle count at or adjacent to the toll gantry for the relevant section of the Motorway (as relevantly defined in section 7.1 or section 11 of the Toll Calculation Schedule) in which the Traffic Adjustment occurs over the 12 months prior to the date of the Traffic Adjustment for the equivalent Period;
- (b) for any Traffic Adjustment within 30 days after the Motorway Opening Date, the vehicle count at or adjacent to the toll gantry for the relevant section of the Motorway (as relevantly defined in section 7.1 or section 11 of the Toll Calculation Schedule) in which the Traffic Adjustment occurs for the most recent equivalent Period (not itself subject to any Traffic Adjustment) prior to the date of the Traffic Adjustment; or
- (c) subject to paragraph (b), for any Traffic Adjustment within 2 years after the Motorway Opening Date, the average vehicle count at or adjacent to the toll gantry for the relevant section of the Motorway (as relevantly defined in section 7.1 or section 11 of the Toll Calculation Schedule) in which the Traffic Adjustment occurs over the previous 30 days prior to the date of the Traffic Adjustment for the equivalent Period.

5. **VEHICLE CLASSES**

The amounts in paragraph 4 of this Schedule 45A will be calculated separately for each Vehicle Class.

6. **COMPENSATION PRINCIPLE**

Notwithstanding anything in this Schedule 45A, the Project Trustee is not entitled to an amount under this Schedule 45A in respect of passages by Vehicles on the Motorway which have not or may not have occurred due to a Traffic Adjustment which is greater

than the amount which the Project Trustee would have been entitled to charge under the Toll Calculation Schedule in respect of those passages if they had occurred.

SCHEDULE 3

Schedule 17 (Approvals) Amendments

Replace Schedule 17 (Approvals) of the Project Deed in its entirety with the following:

SCHEDULE 17

Approvals

(Clause 6)

Part A: Approvals to be obtained by RMS

The Planning Approval.

The EPBC Act Approval.

Part B: Planning Approval Conditions to be undertaken by RMS, the Asset Trustee or the Project Trustee

The Asset Trustee and the Project Trustee must fulfil all the Planning Approval Conditions except where the table below allocates responsibilities to RMS.

RMS will fulfil the Planning Approval Conditions allocated to it in the table below.

Planning Approval Condition	Extent of RMS's responsibility for the Planning Approval Condition specified
A2	RMS must comply with condition A2 to the extent that it must implement the Revised Environmental Management Measures included in Volume 1B, Chapter 8 of the New M5 Submissions and Preferred Infrastructure Report in accordance with Part C of this Schedule 17.
A4	RMS must comply with condition A4 to the extent it relates to reports, plans or correspondence which RMS has prepared or the implementation of any actions or measures contained in those reports, plans or correspondence, which RMS is required to implement.
A6	RMS must comply with condition A6 to the extent it relates to reports, plans or correspondence prepared by RMS and measures required to be implemented by RMS in relation to the conditions of Planning Approval.
A10	RMS must fulfil the requirements of this condition A10 to the extent that RMS may elect to stage the project and must submit the Staging Report prepared by the relevant Trustee to the Secretary.
A13	In relation to condition A13, RMS may elect to refer a matter to the Secretary for resolution if request by the Trustees.
A14	RMS must comply with condition A14 to the extent it will provide input to the Trustees regarding any obligations in the Compliance Tracking Program which it is responsible for fulfilling.
B9	RMS must comply with condition B9 with respect to representation at the AQCCC.
B12	The Trustees must comply with this condition B12 to the extent they must prepare

Planning Approval Condition	Extent of RMS's responsibility for the Planning Approval Condition specified
	<p>the relevant report.</p> <p>RMS must otherwise comply with this condition B12, including submitting the report to the Secretary for approval.</p>
B14	<p>RMS will comply with this obligation to the extent of implementing measures outlined in the Green and Golden Bell Frog Plan of Management from the later of the Date of Opening Completion and the Date for Opening Completion.</p> <p>If the Green and Golden Bell Frog Plan of Management is not approved as part of the EPBC Act Approval, RMS will obtain approval of the plan by the later of 17 June 2016 and the date that the EPBC Act Approval is granted.</p>
B15	<p>The Trustees must comply with this condition B15 to the extent they must:</p> <ul style="list-style-type: none"> (a) prepare the Habitat Creation and Captive Breeding Plan in consultation with RMS and; and (b) implement the Habitat Creation and Captive Breeding Plan to the extent it relates to the design and construction of the Green and Golden Bell Habitat. <p>RMS must otherwise comply with condition B15, including submit the plan to the Secretary for approval.</p>
B16	<ul style="list-style-type: none"> (a) Subject to paragraph (b), RMS must fulfil the requirements of this condition B16, and the Trustees must provide all information and assistance reasonably requested by RMS to enable RMS to comply with this condition B16. (b) If prior to the Date of Opening Completion the implemented mitigation measures are ineffective or the Asset Trustee's Activities cause or contribute to an adverse change in the frog population, the Trustees must update the Green and Golden Bell Frog Plan of Management and re-submit that Plan to RMS for review and approval.
B17	<p>RMS must fulfil the requirements of this condition B17 with input where requested from the Trustees.</p>
B18	<p>RMS must fulfil the requirements of this condition B18 with input where requested from the Trustees.</p>
B19	<p>RMS must fulfil the requirements of this condition B19 with input where requested from the Trustees.</p>
B23	<p>The Trustees must comply with this condition B23 other than that RMS will comply with condition B23 after the Date of Opening Completion to the extent any works referred to in condition B23 are required to be carried out on areas outside the Maintenance Site.</p>
B25	<p>RMS must comply with this condition B25 to the extent that it will provide assistance and information as required by the Trustees to prepare the report.</p>
B43	<p>RMS must comply with this condition B43.</p> <p>RMS's obligation to comply with this condition B43 does not otherwise limit the Asset Trustee's obligation to design the Project Works in accordance with this deed.</p>

Planning Approval Condition	Extent of RMS's responsibility for the Planning Approval Condition specified
B44	RMS must fulfil the requirements of this condition B44. RMS's obligation to comply with this condition B44 does not otherwise limit the Asset Trustee's obligation to design the Project Works in accordance with this deed.
B47	RMS must comply with this condition B47.
B50	RMS must comply with this condition B50.
B51	RMS must comply with this condition B51.
B60	RMS must fulfil the requirements of this condition B60 only to the extent that RMS will appoint representatives as required in item B60 (a) (i) to the Urban Design Review Panel including a representative from the Asset Trustee as one of its representatives.
B61	RMS must comply with condition B61 to the extent that it will provide input into the Urban Design and Landscape Plan and implement any measures required by the Urban Design and Landscape Plan after the Date of Opening Completion in respect of areas outside the Maintenance Site.
B62	RMS must comply with paragraphs (a), (b) and (d) of condition B62.
B67	RMS must fulfil the requirements of this condition B67.
B68	RMS must comply with this condition B68.
B69	RMS must fulfil the requirements of this condition B69.
B70	RMS must comply with this condition B70.
C2	RMS must comply with this condition C2.
D5	RMS must fulfil the requirements of this condition D5 only to the extent that RMS will notify DPI (Water) of any groundwater bores removed or damaged during construction and operation once it has been informed of the event by the relevant Trustee. The relevant Trustee must inform RMS of these events immediately.
D40	RMS must fulfil the requirements of this condition D40 only to the extent that RMS will notify the Secretary of any encounter of an archaeological relic triggering this condition or the outcome of consultation with the NSW Heritage Council, once it has been informed of the incident (or the outcome of consultation as the case may be) by the Asset Trustee, including providing such incident details as prepared by the Asset Trustee.
E17	RMS must fulfil the requirements of this condition E17 only to the extent RMS will submit the Report on Above-Goal Reading (which must be prepared by the Project Trustee in sufficient time to allow its submission within the period set out in condition E17) to the Secretary.
E21	RMS must fulfil the requirements of this condition E21 to the extent that RMS will provide the Secretary with the detailed report (which must be prepared by the Project Trustee, and reviewed in accordance with condition E21 in sufficient time to

Planning Approval Condition	Extent of RMS's responsibility for the Planning Approval Condition specified
	allow its submission within the period set out in condition E21).
E30	RMS must fulfil the requirements of this condition E30 and the Trustees provide all information and assistance reasonably requested by RMS to enable RMS to comply with condition E30.
E34	RMS must fulfil the requirements of this condition E34 only to the extent condition E34 requires the Proponent to implement noise and vibration control measures in accordance with the Operational Noise Management Plan on surrounding roads located outside the Maintenance Site which experience significantly increased traffic volumes.
E38	RMS must fulfil the requirements of condition E38 only to the extent condition E38(f) requires the Proponent to implement further feasible and reasonable noise and vibration mitigation measures in respect of areas outside the Maintenance Area.
E40	RMS will comply with this condition E40 and the Asset Trustee will, in respect of the Project, provide to RMS all information reasonably required by RMS to enable RMS to comply with condition E40.
E41	RMS must fulfil the requirements of this condition E41 and the Trustees will, in respect of the Project, provide to RMS all information and assistance reasonably required by RMS to enable RMS to comply with condition E41.
E42	RMS must comply with condition E42 to the extent that it will: <ul style="list-style-type: none"> (a) provide input to the Project Trustee regarding the development of the Strategy; and (b) implement the Strategy after the Date of Opening Completion to the extent it relates to areas outside the Maintenance Site (including prepare and provide reports of monitoring results to the Secretary and relevant councils as per paragraph (h) of this condition E42).
E43	RMS will comply with this condition after the Date of Opening Completion in respect of areas outside the Maintenance Site.

Part C: Revised Environmental Management Measures to be undertaken by RMS, the Asset Trustee or the Project Trustee

The Asset Trustee and the Project Trustee must fulfil all the Revised Environmental Management Measures (REMMs) identified in Volume 1B, Chapter 8 of the New M5 Submissions and Preferred Infrastructure Report except where the table below allocates responsibilities to RMS.

RMS will fulfil the REMMs allocated to it in the table below.

REMM No.	Extent of RMS's responsibility for the REMM specified
OpTTO2	RMS must comply with this REMM OpTTO2 and the Asset Trustee must, in respect of the Project, provide to RMS all information reasonably required by RMS to enable RMS to comply with REMM OpTTO2.
OpTTO3	RMS must comply with this REMM OpTTO3.

REMM No.	Extent of RMS's responsibility for the REMM specified
HH1	RMS must comply with this REMM HH1.
OpNVO2	RMS will comply with this REMM OpNVO2 to the extent that if required, it will undertake consideration of additional feasible and reasonable mitigation measures in areas outside the Maintenance Area.
LP01	RMS must comply with this REMM LP01.
OpLP01	RMS must comply with this REMM OpLP01.
SEO2	RMS must comply with this REMM SEO2.
B10	RMS must comply with this REMM B10 to the extent of implementing measures outlined in the Green and Golden Bell Frog Plan of Management from the later of the Date of Opening Completion and the Date for Opening Completion.
OpB01	RMS must comply with this REMM OpB01 to the extent of implementing the management plan in areas outside the Maintenance Area and the responsibility of RMS.
CIO1	RMS must comply with this REMM CI01.
CIO2	RMS must comply with this REMM CI02.

Part D: EPBC Act Approval Conditions to be undertaken by RMS, the Asset Trustee or the Project Trustee

The Asset Trustee and the Project Trustee must fulfil all the EPBC Act Approval Conditions except where the table below allocates responsibilities to RMS.

RMS will fulfil the EPBC Act Approval Conditions allocated to it in the table below.

EPBC Act Approval Condition	Extent of RMS's responsibility for the EPBC Act Approval Condition Specified
1	<p>RMS must comply with:</p> <ul style="list-style-type: none"> (a) the Planning Approval conditions listed in item (a) of this condition 1 to the extent that RMS is required, by Part B of this Schedule 17, to comply with any of those Planning Approval conditions; (b) item (b) of this condition 1; and (c) item (c) of this condition 1. <p>The Trustees are required to comply with the Planning Approval conditions listed in item (a) of this condition 1 to the extent that the Trustees are required, by Part B of this Schedule 17, to comply with any of those Planning Approval conditions.</p>
2	RMS must comply with this condition 2 and the Asset Trustee must provide all information required by RMS to enable RMS to comply with this condition 2.
3	RMS must comply with this condition 3 to the extent that it will provide input to the Trustees regarding any obligations in the Compliance Tracking Program (contemplated in Planning Approval condition A14) which it is responsible for

EPBC Act Approval Condition	Extent of RMS's responsibility for the EPBC Act Approval Condition Specified
	fulfilling.
4	<p>The Trustees must comply with this condition 4 to the extent they must submit the written report to RMS of any potential or actual contravention of the Conditions of this approval.</p> <p>RMS will comply with this condition 4 by reporting to the Department.</p>
5	RMS must comply with this condition 5.

SCHEDULE 4

New Network Projects

The Project Deed is amended as follows:

1. **Insert the following new definitions in clause 1.1 of the Project Deed:**

Agreed MAE Compensation Amount means the amount of NNP MAE Compensation agreed between the parties pursuant to clause 22A.10(e) or determined in accordance with clause 22A.10(f).

Expedited Arbitration Notice means a notice to refer a matter under clause 22A.7(c) to dispute resolution in accordance with clause 22B.

IOMCS means the Integrated Operations Management Control System referred to in the M4-M5 Link Project Deed.

New Network Project means a project undertaken by RMS, or its nominee, after Completion to connect any new road or other means of motor vehicle access to the Motorway, including the motorways described by the WestConnex Program of Works as 'Gateway' and 'Southern Connector' but excluding the motorway described by the WestConnex Program of Works known as 'Stage 3' or 'M4-M5 link'.

NNP Dispute has the meaning given to that term in clause 22A.7.

NNP MAE Cap Negotiation Notice has the meaning given in clause 22A.7(a).

NNP MAE Cap Negotiation Period has the meaning given in clause 22A.7(a).

NNP MAE Compensation has the meaning given to that term in clause 22A.4.

NNP MAE Compensation Cap means a monetary cap on the amount of the NNP MAE Compensation payable by RMS to the Trustees in respect of the carrying out of the New Network Project as agreed in accordance with clause 22A.7(b) or determined in accordance with clauses 22A.7(c) and 22B.

NNP MAE Event has the meaning given to that term in clause 22A.4(a).

NNP MAE Occurrence Dispute has the meaning given to that term in clause 22A.10(c).

Non-Cap Notice has the meaning given to that term in clause 22A.8.

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

Trustee NNP Notice has the meaning given in clause 22A.5(b).

Trustee NNP Notice Period means the period from the date of the RMS NNP Notice until the date that is 3 months after the date of the RMS NNP Notice.

2. **Amend the definition of "New Connection Project" as follows:**

New Connection Project means any ~~new road which, after the date of this deed, connects to~~ of the motorways;

~~(a) the New M5 Motorway, the M5 East Motorway or the M5 West Motorway (and includes Stage 3, the Gateway and Southern Connector as described in the WestConnex Program of Works as at the date of this deed); or~~

~~on and from the date of opening of Stage 3, Stage 3 (as described in the WestConnex Program of Works as at the date of this deed) as:~~

- (a) 'Stage 3' or 'M4-M5 Link';
- (b) 'Gateway'; or
- (c) 'Southern Connector' or 'F6 Extension'.

3. **Amend the definition of "Qualifying Adverse Effect" in clause 1.1 of the Project Deed as follows:**

"**Qualifying Adverse Effect** means an adverse effect on the cashflows projected to be generated from the Project from the date of the occurrence of the relevant event, omission or circumstance until the end of the Term, the net present value of which exceeds the Qualifying Adverse Effect Threshold. In calculating the net present value for the purposes of this definition:

- (a) the nominal adverse effect on the Project cashflows will be calculated by comparing:
 - (i) the cashflows projected by the Base Case Financial Model (at Financial Close) to be generated from the Project from the date of the occurrence of the relevant event, omission or circumstance until the end of the Term as if the relevant event, omission or circumstance had not occurred, with:
 - (ii) the cashflows projected to be generated from the Project from the date of the occurrence of the relevant event, omission or circumstance until the end of the Term taking into account the impact of the relevant event, omission or circumstance; and
- (b) a discount rate equal to the Project IRR will be applied; and
- (c) in respect of any New Connection Project, the net present value of any adverse effect on the cashflows projected to be generated from the Project as a result of any other New Connection Project that has been undertaken and opened to the public for the safe, efficient and continuous passage of vehicles prior to the date of the occurrence of the relevant event will be included."

4. **Amend clause 22.3(a) of the Project Deed as follows:**

"(a) The Trustees acknowledge and agree that, notwithstanding the terms of the M5 Leases but subject to this clause 22.3, RMS and its nominees may do any one or more of the following activities (each a **Permitted RMS Activity**):

- (i) connect any ~~road or other means of vehicle~~, public transport, pedestrian or bicycle access to the Motorway;
- (ii) construct, operate and maintain any road or other means of vehicle, public transport, pedestrian or bicycle access above or below the Motorway;
- (iii) construct, operate and maintain Utility Services (in whole or in part) in the Motorway Stratum or the New M5 Main Works Site;

(iv) construct, operate and maintain any other infrastructure or improvement (in whole or in part) in the Motorway Stratum or the New M5 Main Works Site; and

(v) connect any such Utility Services or other infrastructure or improvements to the Motorway or to any other structures located within the Motorway Stratum or the New M5 Main Works Site; ~~and~~

~~(vi) undertake a New Connection Project."~~

5. **Insert the following new clause 22.3(aa) in the Project Deed, immediately following clause 22.3(a) of the Project Deed:**

"(aa) This clause 22.3 does not apply to the extent an RMS Permitted Activity is a New Network Project."

6. **Amend clause 22.3(b)(i) of the Project Deed as follows:**

"(i) in respect of the New M5 Motorway or the Construction Site prior to the Date of Opening Completion, without the consent of the Trustees ~~or, in respect of a New Connection Project, directing a Change pursuant to clause 14.1;~~ or"

7. **Delete clause 22.4 of the Project Deed in its entirety.**

8. **Insert the following new clauses 22A and 22B in the Project Deed, immediately following clause 22 of the Project Deed:**

"22A. **NEW NETWORK PROJECTS**

22A.1 **RMS's right to carry out New Network Projects**

- (a) The parties each acknowledge and agree that the State, whether by RMS or its nominee or otherwise (for the purposes of this clause 22A referred to as "RMS" or "RMS or its nominee"), acting in its sole discretion and subject only to clause 22A.1(b), may carry out a New Network Project at any time after Completion without the Trustees' consent.
- (b) RMS must not carry out a New Network Project in a way that would permanently prevent the Trustees from performing their obligations under clause 19.2(a) and exercising their rights under clauses 21.1 and 21.2.

22A.2 **RMS will direct a Change**

If:

- (a) RMS or its nominee propose to carry out a New Network Project which connects to the Motorway, RMS may issue a Change Proposal; or
- (b) RMS or its nominee carries out a New Network Project which connects to the Motorway, then RMS will be deemed to have issued a Change Proposal,

in respect of the Trustees' obligations under clauses 22A.13 and 22A.14(a) (if any) and then sections 1.2 to 1.9 (inclusive) of the Change Procedure will apply.

22A.3 **Trustees' entitlement for impact of New Network Project**

The parties each acknowledge and agree that, subject to clause 22A.11, and without limiting clauses 22A.4 and 22A.16, if RMS or its nominee carries out a New Network Project, the Trustees will be entitled to:

- (a) if applicable, make a Claim for the entitlements provided for under the Change Procedure in respect of any Change directed by RMS pursuant to clause 22A.2;
- (b) be reimbursed the aggregate amount calculated in accordance with Schedule 45A (Payments for Lane Closures and Relocations);
- (c) other than in respect of a New Network Project to which clause 23A.2(a)(iii) applies:
 - (i) be reimbursed the reasonable incremental costs incurred by the Trustees to augment the Toll Calculation System to avoid the untolled use of the Motorway, to the extent those costs are incurred by the Trustees in complying with clause 22A.15; and
 - (ii) without limiting clause 22A.13, be reimbursed to the extent that there is any untolled use of the Motorway during the carrying out of a New Network Project other than as a consequence of a failure the Trustees to comply with clause 22A.15, the toll revenue that the Project Trustee can demonstrate to RMS's satisfaction (acting reasonably) that the Project Trustee expected to earn from the aggregate tolls levied on the Motorway during the period of the untolled use of the Motorway (**Untolled Period**), which must exclude:
 - (A) any toll revenue earned by the Project Trustee from the tolls levied on the Motorway during the Untolled Period; and
 - (B) the Project Trustee's expected operation and maintenance costs and the Asset Trustee's expected Asset Renewal costs for the Untolled Period (calculated in accordance with the Base Case Financial Model), to the extent these have not been incurred during the Untolled Period.

22A.4 **NNP MAE Compensation**

The parties agree that, subject to clause 22A.11 and without limiting clauses 22A.3 and 22A.16, if, following completion of a New Network Project other than a New Network Project to which clause 23A.2(a)(iii) applies, that New Network Project has, has started to have or will have:

- (a) a material adverse effect on the ability of:
 - (i) the Borrower, the Project Trustee or the Asset Trustee to pay the Debt Financiers the interest, amortisation and any net interest rate management agreement payments that are or would have been owing under, and substantially in accordance with, the Debt Financing Documents on the dates that they are (or would have been) owing under the Debt Financing Documents, were it not for the carrying out of the New Network Project; or
 - (ii) the Group to give the Equity Investors the Projected Equity Return,
(collectively, a **NNP MAE Event**),

then subject to clauses 22A.9 and 22A.10, the Trustees are entitled to be compensated by the payment of an amount sufficient to put the Trustees in the same position to enable:

- (b) the Borrower, the Project Trustee or the Asset Trustee to repay the Debt Financiers the interest, amortisation and any net interest rate management agreement payments that are or would have been owing under the Debt Financing Documents were it not for the NNP MAE Event on the dates on which such amounts are or would have been due to be repaid thereunder (but not more than the amortisation payments contained in the Base Case Financial Model); and
- (c) the Group to give the Equity Investors the lower of:
 - (i) the Equity Return they would have received if the NNP MAE Event had not occurred; or
 - (ii) the Projected Equity Return,

as they would have been were it not for the occurrence of the NNP MAE Event, (**NNP MAE Compensation**).

22A.5 Notice of New Network Projects

- (a) If RMS (or if RMS is aware that its nominee) intends to carry out a New Network Project RMS may give notice to the Trustees setting out details of the proposed New Network Project and of the manner in which the proposed New Network Project will be carried out, sufficient to allow the Trustees to provide a notice meeting the requirements of clause 22A.5(b) (**RMS NNP Notice**).
- (b) The Trustees must, acting in good faith, as soon as reasonably practicable (but in any event no later than the expiry of the Trustee NNP Notice Period) provide RMS with a notice setting out:
 - (i) subject to clause 22A.6, the Trustees' reasonable estimate of the monetary amount of the NNP MAE Compensation that will be payable by RMS;
 - (ii) not used;
 - (iii) the manner in which the Trustees propose that the OMCS and IOMCS will interface with the operations management and control system of the proposed New Network Project, including the manner in which the Trustees propose to satisfy the interface requirements of the SWTC (if applicable);
 - (iv) if the New Network Project includes a tunnel that will connect to the Motorway:
 - (A) the manner in which the Trustees propose that the ventilation system of the Motorway will interface with the ventilation system of the proposed New Network Project;
 - (B) the tunnel safety features and systems that the Trustees propose will be shared by the Motorway and the New Network Project;
 - (C) the effect (if any) of the New Network Project on the performance of the Motorway systems, including any effects arising from the interface between, or connection of, those systems to the corresponding systems of the New Network Project; and
 - (D) any variations to the Project Plans proposed by the Trustees to reflect the interface between, or connection of, the Motorway systems to the corresponding systems of the New Network Project (including to ensure that a consistent approach is taken to incident management on the Motorway and the New Network Project);

- (v) the effects (if any) of the proposed New Network Project on, without limitation:
 - (A) the workmanship, durability or functional integrity of any element of the Motorway or the WestConnex Program of Works;
 - (B) the Trustees' obligations under clause 19.2(a) and rights under clauses 21.1 and 21.2;
 - (C) traffic flow on, onto and off the Motorway during the Term;
 - (D) the Trustees' Activities;
 - (E) the ability to achieve Final Handover;
 - (F) the performance of any other of the Trustees' obligations under the Project Documents;
 - (G) any relevant information related to carrying out the proposed New Network Project;
 - (H) a description of any potential new Liability (or increase in any existing potential Liability) for which the Trustees will be at risk due to the New Network Project;
 - (I) any matter that the Trustees believe should be considered by RMS in determining whether to carry out the New Network Project, including any matter that may give rise to an entitlement to compensation under clause 22A.3 or clause 22A.4; and
 - (J) any other information required by RMS (acting reasonably), which may include any information which RMS is entitled to access or be provided with under this deed (including the information referred to in clause 20),

(Trustee NNP Notice).

- (c) Throughout the Trustee NNP Notice Period RMS will, upon the written request of the Trustees, provide such further details of the New Network Project as are reasonably necessary to enable the Trustees to provide the Trustee NNP Notice.
- (d) For the avoidance of doubt, irrespective of any request by the Trustees for further details of the New Network Project, the Trustee NNP Notice must be provided to RMS no later than the expiry of the Trustee NNP Notice Period.
- (e) Notwithstanding any other provision of this clause 22A, if RMS does not receive the Trustee NNP Notice prior to the expiry of the Trustee NNP Notice Period, unless otherwise agreed as between the parties, the NNP MAE Compensation payable by RMS under clause 22A.4 and clause 22A.10 will be deemed to be zero.

22A.6 Notice requirements

Any notice given by a party under this clause 22A must be prepared on an Open Book Basis.

22A.7 NNP MAE Compensation Cap

- (a) Following the receipt of the Trustee NNP Notice RMS may give the Trustees written notice requiring the Trustees to enter into negotiations with RMS to agree the NNP MAE Compensation Cap (**NNP MAE Cap Negotiation Notice**).
- (b) The parties must as soon as reasonably practicable (but in any event no later than 3 months after the date of the NNP MAE Cap Negotiation Notice (**NNP MAE Cap Negotiation Period**)) negotiate in good faith to agree the NNP MAE Compensation Cap.
- (c) If the parties do not reach agreement on the NNP MAE Compensation Cap within the NNP MAE Cap Negotiation Period (**NNP Dispute**), then RMS may refer the NNP Dispute for determination by arbitration by issuing an Expedited Arbitration Notice.

22A.8 **Notice if no RMS NNP MAE Cap Negotiation Notice**

If RMS decides to carry out a New Network Project but:

- (a) a NNP MAE Compensation Cap has not been agreed or determined in accordance with clause 22A.7; or
- (b) RMS has not issued a NNP MAE Cap Negotiation Notice to the Trustees,

then RMS must give written notice to the Trustees setting out details of the proposed New Network Project (other than any details that have been provided by RMS to the Trustees in any RMS NNP Notice) (the **Non-Cap Notice**) at least 3 months prior to commencing any work relating to the New Network Project.

22A.9 **Notice of completion of the New Network Project**

RMS must, within 20 Business Days after completion of that New Network Project notify the Trustees of the completion of that New Network Project.

22A.10 **NNP MAE Compensation**

- (a) If following the completion of a New Network Project other than a New Network Project to which clause 23A.2(a)(iii) applies, a Trustee believes that a NNP MAE Event has occurred, the Trustees must give RMS notice of that NNP MAE Event within 3 months after the occurrence of that NNP MAE Event.
- (b) If the Trustees give RMS a notice under clause 22A.10(a), then as soon as possible but no later than 20 Business Days after RMS has received that notice, the parties must negotiate in good faith and endeavour to agree on whether or not a NNP MAE Event has occurred.
- (c) If the parties do not reach agreement on whether a NNP MAE Event has occurred within 20 Business Days after commencing negotiations, then any party may refer the matter for dispute resolution under the Dispute Resolution Procedure (**NNP MAE Occurrence Dispute**).
- (d) If a NNP MAE Occurrence Dispute arises under clause 22A.10(c), and that NNP MAE Occurrence Dispute is not referred to dispute resolution under the Dispute Resolution Procedure within 18 months after the end of the 20 Business Day period referred to in clause 23A.10(c), the Trustees will be deemed to have accepted that a NNP MAE Event has not occurred.
- (e) If it is agreed or determined in accordance with this clause 22A.10 that a NNP MAE Event has occurred then, as soon as reasonably practicable but no later than 20 Business Days after that agreement or determination, the parties must enter into

negotiations and thereafter negotiate in good faith in an endeavour to agree upon the NNP MAE Compensation payable to the Trustees.

- (f) If the parties do not reach agreement on the amount of the NNP MAE Compensation payable to the Trustees within 90 Business Days after commencement of the negotiations referred to in clause 22A.10(e), any party may refer the matter to dispute resolution in accordance with the Dispute Resolution Procedure.
- (g) The Trustees must ensure that the Agreed MAE Compensation Amount (if any) is efficiently applied and structured (including so as not to create or increase any Liability for Taxes or Liability which need not be incurred or need only be incurred to a limited extent).
- (h) No NNP MAE Compensation will be payable before a NNP MAE Event has been agreed to have occurred, unless RMS agrees otherwise.
- (i) If the parties have agreed a NNP MAE Compensation Cap pursuant to clause 22A.7(b), or a NNP MAE Compensation Cap was determined in accordance with clauses 22A.7(c) and 22B, and:
 - (i) the Agreed MAE Compensation Amount (as agreed or determined) is greater than the NNP MAE Compensation Cap, RMS will pay the Trustees the NNP MAE Compensation Cap; or
 - (ii) the Agreed MAE Compensation Amount (as agreed or determined) is less than the NNP MAE Compensation Cap, RMS will pay the Trustees the Agreed MAE Compensation Amount,by no later than 20 Business Days after the Agreed MAE Compensation Amount is agreed or determined.
- (j) If RMS gave the Trustees a Non-Cap Notice, RMS will pay the Trustees the Agreed MAE Compensation Amount by no later than 20 Business Days after the Agreed MAE Compensation Amount is agreed or determined.
- (k) Nothing in this clause 22A.10 will constitute a waiver of, prejudice or otherwise limit or affect any rights, powers or defences of RMS under this deed, the Project Documents or otherwise according to Law.

22A.11 Trustees' acknowledgments

Each Trustee acknowledges and agrees that:

- (a) neither of RMS or its nominee will have any Liability for any Claim, Compensation Event or any other compensation in connection with a New Network Project, other than as provided for in this clause 22A or clause 23A.2(a)(iii);
- (b) without limiting 22A.10, the Trustees' sole entitlement to compensation in connection with any New Network Project is to:
 - (i) amounts payable to the Trustees in accordance with clause 22A.3 or clause 23A.2(a)(iii);
 - (ii) the Agreed MAE Compensation Amount; and
 - (iii) reimbursement of the reasonable costs incurred by the Trustees in repairing the Motorway or reinstating the Motorway in accordance with clause 22A.16;

- (c) RMS will not be obliged under any circumstances to provide any form of compensation to the Trustees for the carrying out of a New Network Project to the Motorway to the extent that:
 - (i) compensation will exceed amounts that are necessary to compensate the Trustees in accordance with clauses 22A.3, 22A.4 and 22A.16;
 - (ii) the Loss, damage or Liability in respect of which the Trustees have claimed that compensation was caused or contributed to by a breach of a Project Document by the Trustees or their Related Parties or was otherwise within the control of the Trustees or their Related Parties to avoid; or
 - (iii) any other payment, compensation or redress has been made by RMS to the Trustees or their Related Parties in respect of such Loss, damage or Liability; and
- (d) without limiting clause 22A.1(a), RMS:
 - (i) will not have any obligation to carry out a New Network Project, and may at any time, acting in its sole discretion, notify the Trustees that it does not intend to carry out a New Network Project to the Motorway; and
 - (ii) gives no representations or warranties in relation to carrying out of any New Network Projects during the Term; and
 - (iii) subject to clause 19.2(a)(ii)(E), nothing in this deed, including RMS carrying out a New Network Project, will relieve the Trustees from any of their obligations or liabilities under this deed or limit any of the risks the Trustees accept under this deed.

22A.12 RMS obligations

- (a) If RMS or its nominee carries out a New Network Project, then RMS must:
 - (i) coordinate all activities associated with the New Network Project;
 - (ii) minimise any interference or disruption with the construction, operation and use of the Motorway or the Trustees' Activities; and
 - (iii) ensure that its Related Parties comply with the requirements of this clause 22A.12.
- (b) RMS acknowledges that, if RMS takes any action pursuant to clause 8.6(a)(ii) in relation to any activity associated with the New Network Project (other than as a result of a wrongful act or omission of the Trustees), RMS will not be entitled to recover any Loss suffered or incurred by RMS in taking that action from the Trustees pursuant to clause 8.6(b).

22A.13 Duty to Cooperate

If RMS or its nominee carries out a New Network Project, then the Trustees must:

- (a) cooperate with RMS or its nominee to enable each (or any number of them) to carry out the New Network Project, including by:
 - (i) giving RMS or its nominee and their nominees sufficient access to, without limitation, the Construction Site and the Maintenance Site to enable RMS or its nominee to plan, design, investigate and undertake the New Network Project; and

- (ii) cooperating with RMS or its nominee and their nominees to allow implementation of the New Network Project, including, without limitation, allowing the management of traffic on, entering or leaving the Motorway to facilitate RMS or its nominee and their nominees managing traffic on or in the vicinity of the New Network Project;
- (b) take all reasonable steps to Mitigate any Loss suffered by it or adverse impact on, or adverse cost or revenue consequences for, the Project as a result of the New Network Project including (without limitation) by:
 - (i) mitigating the effect of any temporary lane closure which is required;
 - (ii) complying with its obligations under clause 22A.16 as soon as practicable;
 - (iii) installing such equipment as is necessary to prevent untolled use of the Motorway; and
 - (iv) opening the shoulder of the carriageway to traffic where a temporary lane closure is required;
- (c) cooperate with and assist RMS to integrate the operation of the New Network Project with the operation of the Motorway (including by integrating the OMCS and the IOMCS with the operations management and control system of the New Network Project, if required);
- (d) otherwise comply with all reasonable directions of RMS or its nominee in respect of the New Network Project; and
- (e) ensure that its Related Parties comply with this clause 22A.13.

22A.14 Maintenance Responsibility

If any part of a New Network Project is, or is expected to be, located on, above or under the Motorway Stratum, RMS may give written notice to the Trustees that, upon completion of the New Network Project:

- (a) the Project Trustee's operation, maintenance and repair obligations under this deed will apply to that part of the New Network Project as if that part of the New Network Project formed part of the Motorway in accordance with the Change Order issued by RMS pursuant to clause 22A.2;
- (b) RMS will create Easements burdening the Motorway Stratum upon such terms as RMS thinks fit for the purposes of providing the owner or operator of the New Network Project with access to or egress from the Motorway Stratum to operate and maintain that part of the New Network Project; or
- (c) the Motorway Stratum will be adjusted to exclude the land on which that part of the New Network Project is located.

22A.15 Tolling responsibility

Without limiting clause 22A.13, the Trustees are responsible for temporarily or permanently augmenting the Toll Collection System so as to avoid any untolled use of the Motorway during the carrying out of any New Network Project or following the completion of any New Network Project.

22A.16 Damage to the Motorway

If any damage to the Project Works, the Temporary Works or the Motorway occurs which arises out of the carrying out of the New Network Project (other than damage to the Project Works, the Temporary Works or the Motorway that is:

- (a) a necessary and unavoidable consequence of the carrying out of the New Network Project; and
- (b) which is rectified by RMS or its nominee or their contractors in the course of carrying out the New Network Project),

the Trustees may give a written claim to RMS for the reasonable cost of repairing that damage or reinstating the Project Works, the Temporary Works or the Motorway (as applicable) to the condition it was in immediately prior to the carrying out of the New Network Project, which:

- (c) gives detailed particulars of the damage to the Project Works, the Temporary Works or the Motorway (as applicable);
- (d) states the reasonable costs incurred by the Trustees in repairing that damage or reinstating the Project Works, the Temporary Works or the Motorway (as applicable) to the condition it was in immediately prior to the carrying out of the New Network Project; and
- (e) attaches copies of all documentation upon which the Trustees rely to substantiate their claim,

and RMS must reimburse the Trustees for the reasonable costs incurred by the Trustees in repairing that damage or reinstating the Project Works, the Temporary Works or the Motorway (as applicable) to the condition it was in immediately prior to the carrying out of the New Network Project.

22B NNP MAE COMPENSATION DISPUTES

- (a) The parties agree that if an Expedited Arbitration Notice is issued the NNP Dispute will be determined in accordance with this clause 22B.
- (b) If a NNP Dispute is referred to arbitration:
 - (i) the seat of the arbitration shall be Sydney, Australia;
 - (ii) the arbitration shall be conducted in accordance with the Australian Centre for International Commercial Arbitration (**ACICA**) Expedited Arbitration Rules 2016 (**ACICA Expedited Rules**), as modified by clause 22B(c);
 - (iii) the number of arbitrators shall be one;
 - (iv) the language of arbitration shall be English; and
 - (v) the arbitration shall be administered by ACICA.
- (c) The parties agree that an appeal may be made in accordance with section 34A of the *Commercial Arbitration Act 2010* (NSW) on a question of law arising out of any award issued pursuant to this clause.
- (d) The parties agree that:
 - (i) section 8 of Schedule 4 shall apply to an NNP Dispute, and
 - (ii) this clause 22B is governed by the laws of New South Wales, Australia."

9. **Amend Schedule 26B of the Project Deed as follows:**

SCHEDULE 26B

New Connection Project Events

(Clause 1.1 and 23A)

1. **New Connection Project Event 1** means [in respect of paragraph \(a\) of the definition of "New Connection Project"](#), the M4-M5 Link from the Haberfield stub tunnel (Stage 1B) to the St Peters stub tunnel (Stage 2), open to traffic after 1 January 2024.
2. **New Connection Project Event 2** means [in respect of paragraph \(b\) of the definition of "New Connection Project"](#), a surface road connection from St Peters Interchange to Qantas Drive.
3. **New Connection Project Event 3** means [in respect of paragraph \(c\) of the definition of "New Connection Project"](#), a tunnel and surface road connection from the Southern Connector stub tunnel (Stage 2) to surface road connection(s) in the vicinity of Kogarah/Monterey.

SCHEDULE 5

Other amendments to the Project Deed

The Project Deed is amended as follows:

1. **RMS' RELATED PARTIES**

1.1 **Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:**

M4 Asset Trustee means WCX M4 AT Pty Ltd (ABN 61 614 741 445).

M4 Project Trustee means WCX M4 PT Pty Ltd (ABN 61 614 741 436).

M4 WestConnex Concessionaires means the M4 Asset Trustee and the M4 Project Trustee.

M4-M5 Link Asset Trustee means WCX M4-M5 Link AT Pty Limited (ACN 624 153 742).

M4-M5 Link Project Trustee means WCX M4-M5 Link PT Pty Limited (ACN 624 153 788).

M4-M5 Link WestConnex Concessionaires means the M4-M5 Link Asset Trustee and the M4-M5 Link Project Trustee.

Other WestConnex Concessionaires means either:

- (a) the M4 WestConnex Concessionaires; or
- (b) the M4-M5 Link WestConnex Concessionaires,

or both if the context so requires.

1.2 **Amend the definition of "Related Parties" in clause 1.1 of the Project Deed as follows:**

"Related Parties means:

- (a) in respect of RMS (and subject to clause 1.10), RMS's Representative and any of the respective employees, agents, contractors or officers of RMS and RMS's Representative but excludes:

- (i) the Independent Certifier;
- (ii) the Environmental Representative;
- (iii) the Trustees and their Subcontractors; ~~and~~
- (iv) the Other WestConnex Concessionaires; and

(v)~~(iv)~~ employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to ~~(iii)~~(iv) of this definition; and

- (b) in respect of each Trustee (and subject to clause 1.10), each Trustee's Representative and any of the respective employees, agents, contractors (in their capacity as contractors for the Project) or officers of the Trustees and the relevant Trustee's Representative but excludes:

- (i) the Independent Certifier;
- (ii) the D&C Independent Certifiers;
- (iii) the Environmental Representatives;
- (iv) employees, agents, consultants, contractors (of any tier) and officers of the persons listed in paragraphs (b)(i) to (viii) of this definition;"

2. **STAGE 3 ACCESS**

2.1 **Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:**

Amending Deed means the deed entitled "WestConnex M4 Project Deed Amending Deed" between RMS, the Asset Trustee and the Project Trustee dated on or about 7 June 2018.

M4-M5 Link Maintained Assets has the meaning given in the Road Operators Coordination Agreement.

M4-M5 Link Opening Completion has the meaning given to the term "Opening Completion" in the M4-M5 Link Project Deed.

M4-M5 Link Project Deed means the deed entitled "WestConnex M4-M5 Link Project Deed" between RMS, the M4-M5 Link Project Trustee in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Project Trust, ABN 67 667 191 375, and the M4-M5 Link Asset Trustee in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Asset Trust, ABN 18 934 919 866, dated on or about the date of the Amending Deed.

M4-M5 Link Project Works has the meaning given to the term "Project Works" in the M4-M5 Link Project Deed.

M4-M5 Link State Works Contractor has the meaning given to the term "State Works Contractor" in the M4-M5 Link Project Deed.

M4-M5 Link Trustees means the M4-M5 Link Asset Trustee and the M4-M5 Link Project Trustee and **M4-M5 Link Trustee** means either one of them.

2.2 **Amend the definition of "Motorway" in clause 1.1 of the Project Deed as follows:**

Insert the words: "but excludes the M4-M5 Link Maintained Assets," before the words: "and to be called **"WestConnex M5"** or such other name as may be determined by RMS."

2.3 **Amend clause 19.2(a)(ii) of the Project Deed as follows:**

"(ii) it is necessary to close the Motorway or a traffic lane of the Motorway as a result of:

- (A) the requirements of any Law or relevant Authority which have the effect of Law and which necessitate the closing of the Motorway or a traffic lane of the Motorway;
- (B) the occurrence of a Force Majeure event which prevents the safe passage of vehicles;
- (C) a material threat to the health or safety of the public;

- (D) maintenance of and/or repairs to the Motorway carried out in accordance with this deed, including the SWTC;
- (E) access by RMS or any person authorised by RMS in accordance with clause 19.15 or 22.3;
- (F) traffic management measures required to respond to congestion or Incidents in the road network surrounding the Motorway in accordance with protocols agreed in writing by the Project Trustee and RMS; ~~or~~
- (G) the Trustees are conducting any work the subject of a Change directed under clause 4A.3(i)(ii) or 4B.2(i)(ii); ~~or~~
- (H) an M4-M5 Link Trustee or the M4-M5 Link State Works Contractor undertaking M4-M5 Link Project Works on the Motorway up to and including the date on which M4-M5 Link Opening Completion occurs, to the extent that such M4-M5 Link Project Works are carried out in accordance with the M4-M5 Link Project Deed."

3. PLANNING APPROVALS

3.1 **Delete clause 6.10 of the Project Deed in its entirety and replace with the words "Not used".**

3.2 **Amend clause 7.2(b) of the Project Deed as follows:**

"(b) Each Trustee must:

- (i) expeditiously apply for and obtain from each relevant Authority all Approvals required to perform the Asset Trustee's Activities or the Project Trustee's Activities (other than the Planning Approval, the EPBC Act Approval and the Approvals specified in Part A of Schedule 17);
- (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 RMS is expressed under the terms of the Approval to be required to comply with, carry out and fulfil) to the extent relevant to the Asset Trustee's Activities or the Project Trustee's Activities, subject to the terms of Part B of Schedule 17 (which sets out the conditions and requirements of the Baseline Conditions that will be complied with and fulfilled by the parties if the Baseline Conditions form a part of the Planning Approval and the EPBC Act Approval, as applicable);
- (iv) in respect of any Approval relating to the Asset Trustee's Activities or the Project Trustee's Activities, pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority; ~~and~~
- (v) without limiting RMS's obligation to satisfy or fulfil the conditions and requirements of the Planning Approval allocated to RMS under Schedule 17, provide RMS with such assistance as may be reasonably required by RMS to enable RMS to obtain, or satisfy or fulfil the conditions and requirements of, any Approvals which are:

(A) obtained by RMS after the date of this deed; or

(B) as between RMS and the Trustees, required to be satisfied or fulfilled by RMS pursuant to Schedule 17,

provided that:

(C) RMS must reimburse the Trustees for the reasonable costs incurred by the Trustees in providing such assistance to RMS; and

(D) each Trustee's obligations under this clause 7.2(b)(v) will be limited by reference to the rights available to that Trustee under the Project Documents and, without limiting the foregoing, no Trustee will be required to seek any amendment to, or obtain any waiver or consent under, any Project Document in order to comply.

(vi)~~(v)~~ otherwise comply with clause 7.1."

4. CASH MANAGEMENT

4.1 Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:

Cash Management Deed means the deed entitled "WestConnex Cash Management Deed" entered into between, amongst others, the Project Trustee, the M4 Project Trustee and the Paying Agent dated 30 June 2017.

Cash Management Priority Deed means the deed entitled "WestConnex Cash Management Priority Deed" entered into between, amongst others, RMS, the Project Trustee, the M4 Project Trustee and the Security Trustee dated 30 June 2017.

Paying Agent means National Australia Bank Limited ABN 12 004 044 937.

4.2 Delete the definition of "Cash Manager" in clause 1.1 of the Project Deed in its entirety and replace all references to "Cash Manager" in the Project Deed with the words "Paying Agent".

4.3 Delete the definition of "Manager Shareholders' Agreement" in clause 1.1 of the Project deed in its entirety and replace all references to "Manager Shareholders' Agreement" in the Project Deed with the words "Cash Management Deed".

4.4 Amend the definition of "Project Documents" in clause 1.1 of the Project Deed as follows:

"**Project Documents** means:

- (a) this deed;
- (b) the New M5 Main Works D&C Deed;
- (c) the D&C Guarantees;
- (d) the Contractor's Side Deed;
- (e) from the date of execution of the O&M Deed, the Operator's Side Deed;
- (f) the RMS Security;
- (g) from the date of execution of the O&M Deed, the O&M Deed;
- (h) from the execution of the O&M Deed, the O&M Guarantee;

- (i) the Equity Documents;
- (j) the Debt Financing Documents;
- (k) the Tolling Services Agreement;
- (l) the Independent Certifier Deed;
- (m) the D&C Independent Certifier Deed;
- (n) the Interlink Interface Agreement;
- (o) from the execution of the Deed of Appointment of Environmental Representative, the Deed of Appointment of Environmental Representative;
- (p) the PAFA Act Guarantee;
- (q) from the date of execution of each M5 Lease, that M5 Lease;
- (r) from the date of execution of each M5 Sublease, that M5 Sublease;
- (s) the Principal Contractor Deed;
- (t) the Landfill Closure Works Deed Poll;
- (u) ~~from the date of execution of the Manager Shareholder's Agreement, the Manager Shareholders' Agreement~~[the Cash Management Deed](#);
- (v) ~~the~~ Road Operators Coordination Agreement;
- (w) the Management Services Agreement;
- (x) from the execution any deed entered into by RMS and the Asset Trustee pursuant to clause 19.12(b)(v)(B), any deed entered into by RMS and the Asset Trustee pursuant to clause 19.12(b)(v)(B); ~~and~~
- (y) [the Cash Management Priority Deed; and](#)
- (z)~~(y)~~ any other document the parties agree is a Project Document."

4.5 **Amend clause 37.1(a) of the Project Deed as follows:**

- "(a) Subject to the terms of the Financiers Tripartite Deed, neither of the Trustees may sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber their interest in:
- (i) the Motorway;
 - ~~(ii) the Cash Manager; or~~
 - ~~(ii)~~~~(iii)~~ [\(ii\)](#) any of the Project Documents,
- without the prior written consent of RMS."

4.6 **Delete clause 37.1(d) of the Project Deed in its entirety.**

5. **INTELLECTUAL PROPERTY**

5.1 **Amend clause 29.1(b) of the Project Deed as follows:**

"(b) The Asset Trustee grants to RMS a perpetual, non-exclusive, fully assignable, irrevocable and royalty-free licence to:

(i) use and reproduce (within the meaning of the *Copyright Act 1968* (Cth)) the Licensed Software; and

(ii) upon termination or expiry of this deed for any reason, use, reproduce (within the meaning of the *Copyright Act 1968* (Cth)), modify, vary and amend the Licensed Software; ~~and~~

for any reason in connection with the Project Works, the operation of the Motorway or the WestConnex Program of Works."

6. **CONFIDENTIAL INFORMATION**

6.1 **Amend paragraph 20 of Schedule 3 as follows:**

20. Information identified as Commercially Sensitive Information in Schedule 3 of the New M5 Main Works D&C Deed and the O&M Deed.

7. **CHANGE SAVINGS**

7.1 **Amend clause 14.3(b) of the Project Deed as follows:**

(b) If a Change directed by RMS under clause 14.1(a), clause 14.2(e) or section 1 of the Change Procedure results in Change Savings (or in the case of a Change directed by RMS under section 2 of the Change Procedure, is expected to result in Change Savings, as advised by a Trustee under section 2.2(a)(iii) of the Change Procedure), RMS and the Trustees agree that:

(i) in the case of a Change directed by RMS under clause 14.1(a), clause 14.2(e) or section 1 of the Change Procedure, RMS is entitled to receive 100% of the Change Savings; and

(i) in the case of a Change directed by RMS under section 2.3 of the Change Procedure, RMS is entitled to receive 25~~50~~% of the greater of:

(A) the actual Change Savings; and

(B) the estimated Change Savings (as advised by the a Trustee under section 2.2(a)(iii) of the Change Procedure).

8. **NOT USED**

9. **NOTICE DETAILS**

9.1 **Replace clause 42.5 of the Project Deed in its entirety with the following:**

"42.5 **Address for notices**

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

RMS

Address: 20-44 Ennis Road
Milsons Point NSW 2061

Email address: [REDACTED]

Attention: General Manager, Motorway Projects

Fax number: 02 8588 4171

The Asset Trustee

Address: Level 33, 259 George Street
Sydney NSW 2000

Email address: [REDACTED]

Attention: Project Director M5 Corridor

Fax number: 02 8588 4182

The Project Trustee

Address: Level 33, 259 George Street
Sydney NSW 2000

Email address: [REDACTED]

Attention: Project Director M5 Corridor

Fax number: 02 8588 4182"

10. WESTCONNEX INTEGRATION

10.1 Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:

Actionable IO Event of Default means any IO Event of Default in respect of which, an expert appointed under section 1.4 of Schedule 2 (*Integrated Operation and Fault Attribution*) of the Road Operators Coordination Agreement has issued a notice under section 1.4(c)(vi) (*Fault attribution*) of Schedule 2 (*Integrated Operation and Fault Attribution*) of the Road Operators Coordination Agreement confirming that the IO Event of Default was caused by a Fault Event (as that term is defined in the Road Operators Coordination Agreement) attributable to either or both Trustees.

Integrated Operations Activities means all things or tasks which WCX OpCo is, or may be, required to do under the Integrated Operations Deed.

Integrated Operations Deed means the deed titled "WestConnex Integrated Operations Deed" dated on or about the date of this deed between the M4-M5 Link Project Trustee, the M4 Project Trustee, the Project Trustee and WCX OpCo.

IO Enquiry Notice has the meaning given to that term in clause 31.2A(b).

IO Event of Default means an Event of Default which is caused by the Integrated Operations Activities.

IO Services Provider means Fulton Hogan Egis O&M Pty Limited (ACN 609 764 730) or such other entity appointed by the Project Trustee, M4 Project Trustee and M4-M5 Link Project Trustee as the entity that performs the Integrated Operations Activities pursuant to the IO Services Provider Deed.

IO Services Provider Deed means the deed titled "WestConnex Integrated Operations Services Provider Deed" to be entered into on or about the date of this deed between

WCX OpCo and the IO Services Provider pursuant to which the IO Services Provider will perform the Integrated Operations Activities.

Relevant Event of Default has the meaning given to that term in clause 31.2A(a).

Termination Step has the meaning given to that term in clause 31.2A(a).

Unauthorised Closure Default has the meaning given to that term in clause 31.1(c).

WCX OpCo has the meaning given to it under the Road Operators Coordination Agreement.

10.2 **Delete the definition of "Road Operators Coordination Agreement" in clause 1.1 of the Project Deed and replace it with the following:**

"**Road Operators Coordination Agreement** means the deed titled "WestConnex Road Operators Coordination Agreement" entered into between the Project Trustee, the Asset Trustee, the M4 Project Trustee, the M4 Asset Trustee, the M4-M5 Link Project Trustee, the M4-M5 Link Asset Trustee, WCX OpCo and RMS on or about the date of the M4-M5 Link Project Deed."

10.3 **Delete clauses 19.17(a)-(d) and insert new clauses 19.17(a) and 19.17(b) of the Project Deed as follows:**

"(a) The parties acknowledge that the M4-M5 Link Project Trustee, the M4 Project Trustee and the Project Trustee have or will engage WCX OpCo to perform the Integrated Operations Activities in accordance with the Integrated Operations Deed.

(b) The parties acknowledge that WCX OpCo has engaged or will engage the IO Services Provider to perform the Integrated Operations Activities in accordance with the IO Services Provider Deed."

10.4 **Amend clause 31.2(a) of the Project Deed as follows:**

"(a) Subject to clause 31.2(aa), upon the occurrence of an Event of Default, RMS may, by notice to both Trustees, require a Trustee to Remedy the Event of Default within such period (subject to clause 31.2(b)) specified in the notice as is in the opinion of RMS (acting reasonably) required to Remedy the Event of Default (the **Remedy Period**)."

10.5 **Insert the following new clause 31.2(aa) immediately following clause 31.2(a) of the Project Deed:**

"(aa) RMS agrees that its rights to issue a notice under clause 31.2(a) are subject to the terms of clause 31.2A."

10.6 **Insert the following new clauses 31.2A and 31.2B immediately following clause 31.2 of the Project Deed:**

"31.2A **RMS entitlement to issue notice of default**

(a) Notwithstanding that an Event of Default may have occurred under any of clauses 31.1(c), 31.1(d) or 31.1(e) (for the purposes of this clause 31.2A, a **Relevant Event of Default**), if an Unauthorised Closure Default is subsisting, RMS may not take any step towards the termination of this deed for a Relevant Event of Default which is caused by the events, facts or circumstances which gave rise to that subsisting Unauthorised Closure Default (including, without limitation, the service

of any notice under clause 31.2(a)) (each being, for the purposes of this clause 31.2A, a **Termination Step**) unless RMS:

- (i) has served a notice under clause 31.2A(b); and
 - (ii) is subsequently entitled to take Termination Steps pursuant to clause 31.2A(e).
- (b) At any time while a Relevant Event of Default is subsisting (and provided that an Unauthorised Closure Default is also subsisting), RMS may issue a notice (an **IO Enquiry Notice**) to the Project Trustee which:
- (i) describes the Relevant Event of Default; and
 - (ii) requires the Project Trustee to confirm whether or not the Relevant Event of Default is an IO Event of Default.
- (c) The Project Trustee must, as soon as reasonably practicable, and by no later than the date falling 2 Business Days after the date on which it receives an IO Enquiry Notice, provide written notice to RMS:
- (i) confirming whether (acting reasonably and in good faith) it is of the view that the Relevant Event of Default is an IO Event of Default; and
 - (ii) providing details which are reasonable in the circumstances (taking into account the timeframe in which such information is required to be provided under this clause) of the steps taken, and information relied upon, by the Project Trustee in forming that view, including copies of any notices provided or received by the Project Trustee under section 1.3 of Schedule 2 of the Road Operators Coordination Agreement.
- (d) If the Project Trustee confirms in a notice to RMS issued under clause 31.2A(c) that it is of the view that a Relevant Event of Default is an IO Event of Default then RMS must not take any Termination Step for that Relevant Event of Default (on the basis of an Event of Default subsisting under clause 31.1(c), clause 31.1(d) or clause 31.1(e)) unless and until:
- (i) it is established in accordance with the terms of the Road Operators Coordination Agreement that the relevant IO Event of Default is an Actionable IO Event of Default;
 - (ii) a further Event of Default subsequently arises as a result of non-compliance by either Trustee with the requirements of clause 31.2B and such Termination Steps are available under this deed with respect to that Event of Default; or
 - (iii) the Trustees fail to comply with their obligations under clause 8.2(a) and Schedule 2 of the Road Operators Coordination Agreement with respect to that IO Event of Default.
- (e) If RMS issues an IO Enquiry Notice and:
- (i) the Project Trustee confirms to RMS in accordance with clause 31.2A(c) that the Relevant Event of Default referred to in the relevant IO Enquiry Notice is not an IO Event of Default;
 - (ii) the Project Trustee fails to respond to an IO Enquiry Notice within the period referred to in clause 31.2A(c) confirming whether or not the Relevant Event

of Default referred to in the relevant IO Enquiry Notice is an IO Event of Default; or

- (iii) it is entitled to do so under clause 31.2A(d),

then, provided the relevant Unauthorised Closure Default is still subsisting, RMS will be entitled to take Termination Steps in respect of the Relevant Event of Default in accordance with this deed.

31.2B Duty to mitigate effects of and remedy an IO Event of Default

Upon the occurrence of any IO Event of Default (and while it is subsisting), the Project Trustee must:

- (a) immediately take such steps as are reasonable in the circumstances to Mitigate the effects of; and
- (b) to the extent reasonably practicable, promptly remedy,

that IO Event of Default."

11. PRINCIPAL CONTRACTOR

11.1 Amend the definition of "WHS Legislation" in clause 1.1 of the Project Deed as follows:

"WHS Legislation means:

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

11.2 Amend clause 9.7(a) of the Project Deed as follows:

"(a) In this clause 9.7 and clauses 9.7A, 9.7B, 9.8 and 9.8A, the terms "relevant entity", "principal contractor", "workplace", "construction project" and "construction work" have the same meaning as assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed, the Project Works and the Temporary Works are taken to be part of the same "construction project".

11.3 Delete clause 9.7A of the Project Deed in its entirety and replace with the following:

"9.7A **Principal contractor (O&M Work)**

- (a) For the purposes of the WHS Legislation and this deed:
- (i) the construction work comprising the O&M Work is taken to be part of the same "construction project"; and
- (ii) the Asset Renewal does not form part of the "construction project" referred to in clause 9.7A(a)(i).
- (b) The parties acknowledge and agree that the Project Trustee is commissioning the construction project that comprises the O&M Work for the purposes of clause 293 of the *Work Health and Safety Regulation 2017* (NSW).

- (c) The Project Trustee acknowledges that, if the Project Trustee does not engage another person as principal contractor for the O&M Work and authorise that person to have management and control of the workplace under clause 293(2) of the *Work Health and Safety Regulation 2017* (NSW) (or any such purported engagement is ineffective for any reason), the Project Trustee will be the principal contractor for the O&M Work and must discharge the duties of a principal contractor in relation to the O&M Work.
- (d) The Project Trustee must, within 10 Business Days after engaging another person as principal contractor for the O&M Work, notify RMS of the person appointed as principal contractor and, if requested by RMS, the terms of that appointment.
- (e) The parties acknowledge that, at the date of the Amending Deed, the Project Trustee has engaged the Operator as principal contractor for the O&M Work in accordance with clause 9.7 of the O&M Deed.

11.4 Insert the following new clause 9.7B immediately after clause 9.7A of the Project Deed:

"9.7B Principal contractor (Asset Renewal)

- (a) For the purposes of the WHS Legislation and this deed:
 - (i) the construction work comprising the Asset Renewal is taken to be part of the same "construction project"; and
 - (ii) the O&M Work does not form part of the "construction project" referred to in clause 9.7B(a)(i).
- (b) The parties acknowledge and agree that the Asset Trustee is commissioning the construction project that comprises the Asset Renewal for the purposes of clause 293 of the *Work Health and Safety Regulation 2017* (NSW).
- (c) The Asset Trustee acknowledges that, if the Asset Trustee does not engage another person as principal contractor for the Asset Renewal and authorise that person to have management and control of the workplace under clause 293(2) of the *Work Health and Safety Regulation 2017* (NSW) (or any such purported engagement is ineffective for any reason), the Asset Trustee will be the principal contractor for the Asset Renewal and must discharge the duties of a principal contractor in relation to the Asset Renewal.
- (d) The Asset Trustee must, within 10 Business Days after engaging another person as principal contractor for the Asset Renewal, notify RMS of the person appointed as principal contractor and, if requested by RMS, the terms of that appointment."

12. COMMUNICATIONS

12.1 Delete sections 4.1(d) of Schedule 66 and replace with the following:

(d) Communication packages relating to key project milestones or major impact construction work involving traffic switches, ramp closures, 24 hour high-impact work or other works involving significant impact to the traffic network and nearby community must be submitted to RMS's Representative at least 10 Business Days before the commencement of work. Unless specified otherwise by RMS's Representative, these communication packages must include:

- (i) [a work/event specific communication plan including a description of the work/event, the key impacts and issues, key messages, key stakeholder and community audiences and the communication activities and material that will be used to communicate with these audiences.](#)
- (ii) [final drafts of all communication material prepared for the work/event including flyers, advertising artwork and scripts, stakeholder letters, VMS scripts and signage.](#)

[\(e\) Unless stated otherwise, all material proposed to be used for community information must be submitted to RMS's Representative for approval a minimum of 10 Business Days prior to the proposed print date in the case of printed media, and a minimum of 10 Business Days prior to the proposed distribution date for other types of media. Proposed distribution dates and background information must be provided on covering information accompanying each approval submission.](#)

13. **DEFAULT AND TERMINATION**

13.1 **Amend clause 31.1(e) of the Project Deed as follows:**

"(e) any member of the Group defaults in a material respect in the due observance and performance of any of its other obligations under this deed or any other RMS Project Document, excluding any failure by the Trustees to comply with any obligation under the Road Operators Coordination Agreement, [other than an obligation under:](#)

[\(i\) clause 3 \(Cooperation and Coordination\) of the Road Operators Coordination Agreement to the extent that obligation is owed to RMS;](#)

[\(ii\) clause 15\(c\)\(ii\) \(Future WestConnex Concessionaires\) of the Road Operators Coordination Agreement; and](#)

[\(iii\) clause 16.9 \(Further Assurances\) of the Road Operators Coordination Agreement;"](#)

14. **NOTIFICATION OF CLAIMS**

14.1 **Amend clause 39.1(a) of the Project Deed as follows:**

"(a) If a Trustee believes that any Direction of RMS's Representative [\(including the issuing of a Change Order \(as that term is defined under each of the M4 Project Deed and the M4-M5 Link Project Deed\) under the M4 Project Deed or the M4-M5 Link Project Deed\)](#), other than issuing of a Change Order [under this deed](#), constitutes or involves a Change it must, if it wishes to make a Claim against RMS arising out of, or in any way in connection with, the Direction."