



Transport
Roads & Maritime
Services

EXECUTION VERSION

WestConnex M4 Widening Project Deed Schedules

PART A
GENERAL

SCHEDULE 1

Conditions precedent

(Clause 5)

1. All of the Project Documents (other than the Motorway Stratum Lease and any mortgage of that lease, the Operator's Side Deed, the O&M Deed, the O&M Guarantee and the Tolling Contract (Back Office)) have been executed by all parties to them in a form satisfactory to RMS and all conditions precedent to those Project Documents have been satisfied (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this deed).
2. The insurance policies required by section 1 of Schedule 43 have been effected on terms satisfactory to RMS.
3. Not used.
4. RMS has received:
 - (a) the Base Case Financial Model in a form satisfactory to RMS; and
 - (b) a letter from the Project Company confirming that the Base Case Financial Model is identical to the model previously provided to RMS except as set out in the letter, such letter to be in a form satisfactory to RMS.
5. The Equity Documents have been executed by all parties to them in a form satisfactory to RMS and all conditions precedent to those Equity Documents have been satisfied (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this deed).
6. The Minister has made a declaration under section 52 of the Roads Act that such part of the Motorway as is shown on the plan which is Schedule 26C is a tollway.
- 6A. The Minister has directed under section 63 of the Roads Act that all the functions of a roads authority in respect of that part of the Motorway as is shown on the plan which is Schedule 26C are the responsibility of RMS.
7. All other necessary Ministerial consents and approvals (other than the Planning Approval), including the approval of the Treasurer of New South Wales under section 20(1) of the PAFA Act to the entry by RMS into the joint financing arrangement embodied in this deed have been obtained.
8. The PAFA Act Guarantee has been executed by the NSW Government.

SCHEDULE 2

Not Used

SCHEDULE 3

Commercially Sensitive Information

(Clause 30)

Commercially Sensitive Information is limited to:

1. The Equity Return.
2. The Base Case Financial Model, the Model Outputs Schedule, the amount of the Equity Contributions, the amount of the Qualifying Adverse Effect and the terms and level of bonding under this deed.
3. The base case traffic and revenue forecasts.
4. the monetary thresholds in clause 25.2(c).
5. The margins and rates under the D&C Deed (including the D&C Margin), the terms and level of bonding under the D&C Deed and the total amount payable to the Contractors pursuant to the D&C Deed.
6. The personnel and salaries of the Contractor.
7. The fees, margins and rates payable to the Operator under the O&M Deed (including the O&M Margin).
8. All costs associated with running the back-of-house arrangements, including tolling, casual users and clearing house.
9. The terms and level of bonding under the O&M Deed.
10. The personnel and salaries of the Operator.
11. The fees, margins and rates payable to the Tolling Equipment Works Contractor under the Tolling Equipment Works Deed.
12. The terms and level of bonding under the Tolling Equipment Works Deed.
13. The personnel and salaries of the Tolling Equipment Works Contractor.
14. The fees, margins and rates payable to the Tolling Contractor (Back Office) under the Tolling Contract (Back Office).
15. The terms and level of bonding under the Tolling Contract (Back Office).
16. The personnel and salaries of the Tolling Contractor (Back Office).
17. The structure, commercial terms, pricing, amounts, margin and fees payable pursuant to the Equity Documents, any voting requirements and restrictions, any condition precedent to any funding, and restrictions and all information relating to or arising otherwise from or in connection with the rights, powers or remedies of the parties in connection with any default, potential event of default or any rights to remedy a default under any Equity Document.

SCHEDULE 4

Dispute Resolution Procedure

(Clause 32)

1. **DISPUTES**

Unless otherwise expressly provided in this deed, all Disputes between RMS and the Project Company must be resolved in accordance with this Dispute Resolution Procedure.

2. **NOTICE OF DISPUTE**

Where a Dispute arises, either party may serve a notice in writing on the other party specifying:

- (a) that it is a Notice of Dispute under section 2 of this Schedule 4;
- (b) the Dispute;
- (c) particulars of the Dispute; and
- (d) the position which the party believes is correct,

(Notice of Dispute).

3. **NEGOTIATION**

- (a) If a Notice of Dispute is served, the persons holding the position of chief executive officer of RMS (on the one hand) and chief executive officer of the Project Company (on the other hand) or their nominees (the **Representatives**) must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (the **Negotiation**).
- (b) Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under the Dispute Resolution Procedure or in any other legal proceeding.
- (c) Any agreement reached at the Negotiation must be in writing and signed by both parties.

4. **REFERRAL TO EXPERT DETERMINATION**

If the Dispute has not been resolved within 20 Business Days after the date on which the Notice of Dispute was given (or such longer period of time as the Representatives or the parties may have agreed in writing), then, whether or not a meeting under section 3 has occurred, the Dispute must be and is referred to expert determination in accordance with this Schedule 4.

5. **EXPERT DETERMINATION**

- (a) The parties agree that any dispute which is referred to expert determination will be determined in accordance with this clause and the Institute of Arbitrators and Mediators Australia (**IAMA**) Expert Determination Rules (2010 Edition), as modified by Appendix A to this Schedule 4.

- (b) The expert's determination:
 - (i) will be final and binding, unless a party serves a notice of dissatisfaction on the other party within 7 days of the expert's determination; and
 - (ii) must be complied with unless and until it is overturned, reversed, varied or otherwise changed by an arbitral award.

6. REFERRAL TO ARBITRATION AFTER EXPERT DETERMINATION

- (a) If a notice of dissatisfaction is served under section 5(b)(i), the Dispute must be referred to arbitration under section 7.
- (b) If a party fails or refuses to comply with the expert's determination, then the other party may, without prejudice to any other rights it may have, refer any such non-compliance as a Dispute, to arbitration under section 7. Sections 2 to 6 will not apply to this type of Dispute.

7. ARBITRATION

- (a) If any Dispute is referred to arbitration:
 - (i) the seat of the arbitration shall be Sydney, Australia;
 - (ii) the arbitration shall be conducted in accordance with the Australian Centre for International Commercial Arbitration (**ACICA**) Arbitration Rules 2011, as modified by Appendix B to this Schedule 4;
 - (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.
- (b) 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 section 7 of Schedule 4.
- (c) Subject to section 8, this section 7 is governed by the laws of New South Wales, Australia.

8. EXCLUSION OF PROPORTIONATE LIABILITY FROM DETERMINATION OR AWARD

In respect of any expert or arbitrator appointed in relation to a Dispute, the parties agree that, to the extent permitted by law:

- (a) the powers conferred and restrictions imposed on a court (as that term is defined in the *Civil Liability Act 2002* (NSW)) by any Relevant Proportionate Liability Legislation are not conferred or imposed on him or her; and
- (b) the expert or arbitrator (as the case may be) has no power to make any determination or award by applying or considering the provisions of any Relevant Proportionate Liability Legislation.

9. URGENT RELIEF

Nothing in this Schedule 4 will prejudice any right a party may have to seek urgent interlocutory relief from a court in respect of a Dispute.

10. **LIMITATION PERIODS**

If a limitation period applicable to a cause of action relating to a Dispute expires during any of the processes set out in sections 2 to 7, each party agrees that:

- (a) the limitation period will be deemed to be extended by a period equal to the number of days between the date the Notice of Dispute was served and the later of the date the negotiation process concludes and the date the expert determination process concludes; and
- (b) it will not rely, in any proceeding, on the expiry of a limitation period other than as calculated in accordance with this section 10 of Schedule 4.

11. **SURVIVE TERMINATION**

This Dispute Resolution Procedure will survive termination of this deed.

12. **SEVERANCE**

If at any time any provision of this Schedule 4 is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Schedule 4; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Schedule 4.

13. **CONTINUATION OF CONTRACTUAL OBLIGATIONS**

Despite the existence of a Dispute between the parties to this deed, the parties must continue to comply with and perform their obligations under this deed.

Appendix A – Modification to the IAMA Expert Determination Rules

Pursuant to sub-Rule 4(2)(b) of the Institute of Arbitrators and Mediators Australia (IAMA) Expert Determination Rules (2010 Edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

1. RULE 1 Definitions

Insert the following new definitions after the definition of the "Process":

Relevant Proportionate Liability Legislation means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (QLD);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (TAS); and
- (i) any Regulations enacted pursuant to the Acts listed in paragraphs (a) to (h) above.

Relevant Security of Payment Legislation means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (VIC);
- (c) the *Building and Construction Industry Payments Act 2004* (QLD);
- (d) the *Construction Contracts Act 2004* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (h) the *Building and Construction Industry Security of Payment Act 2009* (TAS); and
- (i) any Regulations enacted pursuant to the Acts listed in paragraphs (a) to (h) above.

2. RULE 5 Role of the Expert

Insert the wording "*the Contract, the requirements of procedural fairness,*" in sub-Rule 1. as follows:

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, *the Contract, the requirements of procedural fairness,* and according to law.

Sub-Rule 4. shall be renumbered sub-Rule 4.(a) and insert after sub-Rule 4(a) additional sub-Rules 4.(b), (c) and (d) as follows:

4. (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must notify the parties immediately in writing.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c) above, unless the parties agree otherwise.

3. RULE 9 Conduct of the Process

Insert additional sub-Rule 2A, after sub-Rule 2, as follows:

2A. The rules of evidence do not apply to the Process.

4. RULE 10 The Expert's Determination

Replace sub-Rule 3. with the following:

3. Unless otherwise agreed by the parties, the Expert's determination:

(a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

(b) must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;

(c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

(d) to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

5. RULE 12 Waiver of Right to Object

Delete Rule 12 in its entirety.

6. RULE 14 Extension of Limitation Period

Delete Rule 14 in its entirety.

Appendix B - Modification of the ACICA Arbitration Rules

Pursuant to sub-Rule 2.1 of the rules of arbitration of the Australian Centre for International Commercial Arbitration (2011 edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

1. RULE 17 General Provisions

Delete sub-Rule 17.1 and replace it as follows:

17.1 Subject to these rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that it is conducted with a view to providing the parties with an arbitration that is quick, cost effective and fair, considering especially the amounts in dispute and the complexity of issues or facts involved.

2. RULE 31 Waiver of Rules

Delete Rule 31 in its entirety.

SCHEDULE 5

Moral Rights Consent

(Clause 29.4)

MORAL RIGHTS CONSENT

THIS DEED POLL is made on the _____ day of _____.

BY: [Name of individual] of [address], [occupation] (**Author**)

IN FAVOUR OF **Roads and Maritime Services (RMS)**

and

WestConnex Delivery Authority (WDA)

and

WCX M4 Pty Limited (the **Project Company**)

(together, the **Beneficiaries**)

WHEREAS:

- (A) RMS proposes to contract out the design, construction, commissioning and operation of the Motorway (the **Project**).
- (B) The Project Company and RMS have entered into the deed dated [insert date] in relation to the carrying out of the Project (**Project Deed**).
- (C) WDA is statutory corporation constituted as a public subsidiary corporation of RMS formed for the purpose of delivering the WestConnex programme of works.
- (D) The Project Company has engaged [insert Contractor's details] (**Construction Contractor**) under the deed dated [insert date] (**D&C Deed**) to carry out the Contractor's Activities (as defined in the D&C Deed) for which the Project Company is responsible under the Project Deed.
- (E) The Author may create or have created one or more literary works, artistic works or other copyright material (whether created before or after the date of this Moral Rights Consent) for the purposes of or otherwise for use in connection with the Project (**Copyright Material**).

THE AUTHOR COVENANTS as follows:

The Author in consideration of RMS, WDA or the Project Company paying the Author one dollar (\$1) (receipt of which is hereby acknowledged):

1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's "moral rights" under the *Copyright Act 1968* (Cth) (as amended), (whether before or after the date of this Moral Rights Consent) by:
 - (a) any or all of the Beneficiaries;
 - (b) any contractor which any or all of the Beneficiaries engages;
 - (c) any third party to whom any or all of the Beneficiaries sub-licenses (whether express or implied), or grants any other right to use, possess, modify, vary or amend any of the Copyright Material; or
 - (d) any third party to whom any or all of the Beneficiaries assigns rights it has in, or in relation to any of the Copyright Material,(together, **the Beneficiaries and Associated Persons**) in relation to any of the Copyright Material;
2. without limiting section 1 above, consents to any of the Beneficiaries and Associated Persons:
 - (a) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;
 - (b) falsely attributing authorship of any of the Copyright Material;
 - (c) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:
 - (i) results in a material distortion, destruction or mutilation of any of the Copyright Material; or
 - (ii) is prejudicial to the honour or reputation of the Author; and
3. without limiting sections 1 or 2, consents to any of the Beneficiaries and Associated Persons:
 - (a) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;
 - (b) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and
 - (c) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.
4. Beneficiaries
 - 4.1 The Project Company may at any time give notice to the Author that another entity is to become an additional Beneficiary under this Deed. The Project Company may give multiple notices under this clause. The Author agrees that on and from the date of the Project Company's notice, the entity identified by the Project Company will be a Beneficiary under this Deed.
 - 4.2 If for any reason a Beneficiary is unable to enforce against the Author its promises under this Deed, the Author agrees that the Project Company may do so on behalf of any and all Beneficiaries.

4.3 Nothing in this Deed amounts to an obligation on the Beneficiaries to comply, or a warranty by the Beneficiaries that it will comply, with the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.

In this Deed Poll:

EXECUTED as a deed poll.

SIGNED, SEALED and **DELIVERED** by
[NAME OF PARTY] in the presence of:

Signature of party

Signature of witness

Name

Name

Address of witness

SCHEDULE 6

Not Used

SCHEDULE 7

Not Used

SCHEDULE 8

Not Used

SCHEDULE 9

Not Used

SCHEDULE 10

Contractor's Side Deed Poll

(Clause 1.1)

THIS DEED POLL is made on the _____ day of _____.

BY: [Name of Contractor] (ABN [insert Contractor's ABN]) of [address],
(Contractor),

IN FAVOUR OF Roads and Maritime Services (ABN 76 236 371 088) of 101 Miller Street,
North Sydney, NSW 2059 (**RMS**)

and

WestConnex Delivery Authority (ABN [insert WDA's ABN]) of 101 Miller
Street, North Sydney NSW 2059 (**WDA**)

and

[insert name of Principal] (ABN [insert Principal's ABN]) of [insert
Principal's address] (the **Principal**)

(together, the **Beneficiaries**)

Recitals

- A. RMS is responsible for the road network in Sydney.
- B. WDA is a public subsidiary corporation constituted by Part 4A of the *Transport Administration (General) Regulation 2013 (NSW)*. WDA is authorised to exercise the functions of RMS under the *Roads Act 1993 (NSW)* and the *Transport Administration Act 1988 (NSW)* for the purposes of delivering the WestConnex Motorway Project.
- C. The Principal has entered into a deed (**D&C Deed**) with the Contractor to design and construct Stage 1A of WestConnex, comprising the widening of the M4 Motorway (the **Works**).
- D. The Beneficiaries are relying on the Principal to procure the Contractor to execute and complete the Works in accordance with the D&C Deed.
- E. The Beneficiaries will suffer loss if the Principal does not procure the Contractor to execute and complete the Works in accordance with the D&C Deed.
- F. Not used.
- G. It is a condition of the D&C Deed that the Contractor executes this Deed Poll.

This Deed witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:

1. It will comply with its obligations under the D&C Deed, including with respect to achieving Construction Completion of each Separable Portion and the Works by the relevant Date for Construction Completion. This Deed Poll gives the Beneficiaries rights against the Contractor as if they were parties to the D&C Deed. Apart from the creation of such rights and the

potential liability to a larger number of parties, the Contractor's obligations under this Deed Poll are no greater than, and do not vary in any circumstance, the Contractor's obligations under the D&C Deed.

2. Upon Construction Completion of the Works, the Works will satisfy the requirements of the D&C Deed.
3. The aggregate of the Contractor's liability to the Beneficiaries under this Deed Poll and the Contractor's liability to the Principal under the D&C Deed:
 - (a) will not exceed the liability which the Contractor would have had under the D&C Deed if the D&C Deed had named, as Principal, the Beneficiaries and the Principal jointly and severally;
 - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the D&C Deed (including that liquidated damages will be the sole monetary remedy of any Beneficiary for the failure of the Contractor to achieve Construction Completion by the Date for Construction Completion).
4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
5. **Beneficiaries**
 - (a) The Principal may at any time give notice to the Contractor that another entity is to become an additional Beneficiary under this Deed Poll. The Principal may give multiple notices under this clause. The Contractor agrees that:
 - (i) if the entity identified by the Principal is:
 - (A) an entity described by paragraph (a) of the definition of Authority;
 - (B) any corporation which is a wholly-owned subsidiary (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of an entity described in paragraph (a) of the definition of Authority;
 - (C) an existing or potential Financier (or its agent or security trustee);
 - (D) an existing or potential Equity Investor;
 - (E) an entity to whom the D&C Deed has or will be assigned or novated; or
 - (F) any counterparty to a transaction document where that transaction is contemplated by clause 4.4 or 22.5 of the D&C Deed,

on and from the date of the Principal's notice, that entity will be a Beneficiary under this Deed Poll; or
 - (ii) if the entity identified by the Principal is not an entity described in clause 5(a)(i) of this Deed Poll, that entity will become a Beneficiary under this Deed Poll with the written consent of the Contractor (such consent not to be unreasonably withheld).
 - (b) If for any reason a Beneficiary is unable to enforce against the Contractor its promises under this Deed Poll, the Contractor agrees that the Principal may do so on behalf of any and all Beneficiaries.

- 6. The Beneficiaries may assign or charge the benefits and rights accrued under this Deed Poll.
- 7. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 8. The Contractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 9. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiaries.
- 10. To the extent that the Contractor has the same liability or obligation (Common Obligation) under both the D&C Deed and this Deed Poll (each a Contract), the Contractor's discharge of the Common Obligation under one Contract in favour of the Principal or one or more Beneficiary (as relevant) shall (subject to clause 11) be deemed to be a discharge of the Common Obligation under both Contracts and the Principal or other Beneficiaries (as relevant) shall not be entitled to make a Claim against the Contractor in respect of the discharged Common Obligation.
- 11. Where different Beneficiaries suffer different or additional loss or damage to one another, that is not a Common Obligation for the purposes of clause 10.
- 12. Where terms used in this Deed Poll are defined in the D&C Deed, those terms have the meaning given to them in the D&C Deed.

EXECUTED as a Deed Poll.

EXECUTED by [*insert Contractor's name*] ABN [*insert Contractor's ABN*]
 by): in the presence of:

 Signature of Director Signature of Secretary / other
 Director

 Name

SCHEDULE 11

Not Used

SCHEDULE 11A

Not Used

SCHEDULE 12

Not Used

SCHEDULE 13

Deed of Engagement of Principal Contractor

(Clause 9.7)

Date

Parties **Roads and Maritime Services** ABN 76 236 371 088 (*RMS*)
WCX M4 Pty Ltd ACN 602 963 806 (*Project Company*)
Leighton Contractors Pty Limited ABN 98 000 893 667 (the *Contractor*)

Recitals

- A. RMS and the Project Company have entered into the Project Deed under which the Project Company is responsible for, amongst other things, carrying out the financing, funding, planning, design and construction, commissioning and maintenance of the M4 west widening works.
- B. In order to carry out certain obligations under the Project Deed, the Project Company has entered into the Contract with the Contractor pursuant to which the Contractor will, among other things, design, construct and, during construction, maintain the M4 west widening works.
- C. RMS has agreed to engage the Contractor as the principal contractor under clause 293 of the WHS Regulation for the Construction Project(s) the subject of the M4 West Widening (D&C Phase) Contracts.
- D. The Contractor has agreed to carry out the obligations of a principal contractor under the WHS Regulation for all Construction Project(s) the subject of the M4 West Widening (D&C Phase) Contracts.
- E. The parties have agreed to enter into this deed to give effect to the engagement of the Contractor as the principal contractor as set out in this deed.

Operative Provisions

1. DEFINITIONS

In this deed:

Construction Project has the same meaning as in the WHS Regulation.

Construction Work has the same meaning as in the WHS Regulation.

Contract means the contract between the Project Company and the Contractor titled "Design and Construct Deed" dated on or about the date of this deed.

Independent Certifier has the meaning given to that term in the Project Deed.

M4 West Widening (D&C Phase) Contracts means:

- (a) the Contract;
- (b) the Tolling Contract (Roadside); and
- (c) the Tolling Contract (Back Office).

Project Deed means the contract titled "WestConnex M4 Widening Project Deed" between RMS and the Project Company dated on or about the date of this deed.

Third Party Works has the meaning given to that term in the Project Deed.

WHS Regulation means the Work Health and Safety Regulation 2011 (NSW).

Workplace has the same meaning as in the Work Health and Safety Act 2011 (NSW).

Capitalised terms not otherwise defined in this deed have the same meaning as those terms in the Contract.

2. **PRINCIPAL CONTRACTOR ENGAGEMENT**

2.1 **Engagement of principal contractor under WHS Regulation**

- (a) For the purposes of Chapter 6 of the WHS Regulation RMS:
 - (i) engages the Contractor as the principal contractor under clause 293 of the WHS Regulation for the Construction Project(s) to be carried out under the M4 West Widening (D&C Phase) Contracts, and the Contractor accepts such engagement; and
 - (ii) authorises the Contractor to have management and control of each Workplace at which the Construction Work the subject of the M4 West Widening (D&C Phase) Contracts is to be carried out, and to discharge the duties of a principal contractor under Chapter 6 of the WHS Regulation.
- (b) The Contractor must carry out, and ensure compliance with, its obligations as principal contractor under the WHS Regulation in respect of the engagement referred to in clause 2.1(a). If the Contractor fails to comply with any of its obligations in clause 2.1(a), RMS may have the Contractor's principal contractor obligations carried out by RMS, the Project Company or by others and the cost incurred by RMS having those obligations carried out will be a debt due from the Contractor to RMS.
- (c) If the engagement of the Contractor as principal contractor under this clause 2.1(a) is not effective for any reason:
 - (i) RMS appoints the Project Company as principal contractor in accordance with clause 9.7 of the Project Deed; and
 - (ii) the Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under Chapter 6 of the WHS Regulation as if it had been validly engaged and authorised as principal contractor under clause 2.1(a) so as to ensure that the responsibilities imposed on a principal contractor under Chapter 6 of the WHS Regulation are discharged.
- (d) The Contractor's engagement and authorisation as principal contractor will continue:
 - (i) subject to clause 2.1(d)(ii), until the earlier of:
 - (A) the termination of this deed or the Contract;
 - (B) the Date of Completion under the Project Deed (such date to be notified by the Project Company to the Contractor in writing);
 - (C) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been determined by the Independent Certifier to have been completed in accordance with clauses 17.3, 17.4 or 17.5 (as applicable) of the Project

Deed (such points in time to be notified by the Project Company to the Contractor in writing); and

- (D) in respect of the areas specified in the Site Access Schedule under the Project Deed, the termination or expiry of the rights referred to in clause 11.1(a) of the Project Deed (such termination or expiry to be notified by the Project Company to the Contractor in writing),

(unless sooner revoked by RMS); and

- (ii) in respect of any defect rectification work carried out under the M4 West Widening (D&C Phase) Contracts after the Date of Completion under the Project Deed that is Construction Work, during the period any such work is carried out.

2.2 RMS and Project Company not liable

The Contractor acknowledges and agrees that neither RMS nor the Project Company will be liable to the Contractor for any damage, expense, loss or liability suffered or incurred by the Contractor arising out of or in connection with the engagement of the Contractor as principal contractor, the performance by the Contractor of its obligations as principal contractor under the WHS Regulation or any breach thereof.

2.3 Indemnity

- (a) To the full extent permitted by law and without limiting clause 5.7(d)(vi) of the Contract, the Project Company and the Contractor jointly and severally indemnify RMS against any damage, expense, loss or liability suffered or incurred by RMS arising out of or in connection with a breach by the Contractor of clauses 2.1, 2.4 or 2.5.
- (b) Subject to clause 2.3(c), the indemnity in clause 2.3(a) survives termination, completion or expiration of this deed.
- (c) Notwithstanding anything to the contrary in this deed, the last date upon which RMS' cause of action in respect of the indemnity in clause 2.3(a) may accrue is [***insert date – this date will be the last day of the Term under the Project Deed***] for the purposes of sections 14 and 16 of the *Limitation Act 1969* (NSW) and RMS will have no right to make a demand on any indemnity in this deed 12 years after that date.

2.4 Manage risks

Without limiting the Contractor's obligations elsewhere under the Contract or this deed, the Contractor must, so far as is reasonably practicable:

- (a) manage risks associated with the carrying out of the Construction Project(s) the subject of the M4 West Widening (D&C Phase) Contracts; and
- (b) ensure that all Workplaces are secured from unauthorised access, and in doing so, have regard to all relevant matters including risks to health and safety arising from unauthorised access to the Workplace, the likelihood of unauthorised access occurring and to the extent that unauthorised access to the Workplace cannot be prevented, how to isolate hazards within the Workplace.

2.5 Reporting

Without limiting the Contractor's reporting or other obligations elsewhere under the Contract, upon request by either RMS or the Project Company from time to time, the Contractor must promptly provide that requesting party with a copy of:

- (a) the written WHS management plan for each Workplace, including any revisions that are made to the WHS management plan under clause 311 of the WHS Regulation;

- (b) the Contractor's records in relation to the steps the Contractor has taken to make persons carrying out work aware of the content of the WHS management plan in accordance with clause 310 of the WHS Regulation;
- (c) any safe work method statements which have been obtained under clause 312 of the WHS Regulation;
- (d) the Contractor's records in relation to the steps the Contractor has taken to comply with clause 314 of the WHS Regulation;
- (e) the Contractor's records in relation to the steps the Contractor has taken to comply with clause 315 of the WHS Regulation; and
- (f) any other registers, records and documents,

that the Contractor prepares, maintains, keeps or obtains in connection with its obligations as a principal contractor under the WHS Regulation.

3. **SUBSTITUTION OF PROJECT COMPANY AS PRINCIPAL CONTRACTOR**

If the Contract is terminated for any reason before all Construction Project(s) the subject of the M4 West Widening (D&C Phase) Contracts are complete:

- (a) the Contractor's engagement and authorisation as principal contractor is terminated; and
- (b) RMS engages the Project Company as principal contractor from the date of such termination in accordance with clause 9.7 of the Project Deed.

4. **GENERAL**

4.1 **Governing law and jurisdiction**

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

4.2 **Liability for expenses**

Each party must pay its own expenses incurred in negotiating and executing this deed.

4.3 **Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this deed.

4.4 **Goods and Services Tax**

- (a) A party must pay GST on a taxable supply made to it under this deed, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.
- (b) Terms used in this clause 4.4 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Executed as a deed.

Signed for Roads and Maritime Services)

ABN 76 236 371 088 by its duly authorised)

officer, in the presence of:)

Signature of officer

Signature of witness

Name

Name

Executed by [Project Company])

(ABN [*insert*]))

in accordance with Section 127 of)

the Corporations Act 2001 (Cth))

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by [the **Contractor**])
(ABN [*insert*]))
in accordance with Section 127 of)
the Corporations Act 2001 (Cth))

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

SCHEDULE 14
Deed of Disclaimer
(Clause 11.8)



This Deed Poll is made on

December 2014

To: Each of the Beneficiaries.

From:

1. **RIZZANI DE ECCHER AUSTRALIA PTY LTD** ABN 80 147 862 897

of Level 2, 139 Frome Street, Adelaide SA 5000

and

2. **LEIGHTON CONTRACTORS PTY LIMITED** ABN 98 000 893 667

of Level 4, Tower A, 799 Pacific Highway, Chatswood NSW 2067

(collectively, the **Contractor** and each a **Contractor Entity**).

Recitals

- A In November 2013 WDA invited expressions of interest in relation to the investigation, design and construction of the Project.
- B In April 2014 WDA issued a Request for Tenders in relation to the investigation, design and construction of the Project.
- C The Contractor has lodged a Tender in response to the Request for Tenders and has otherwise been involved in the Processes contemplated by the Invitation and Request for Tenders.
- D Each of the Contractor Entities has executed an EOI Process Deed Poll and an RFT Process Deed Poll.
- E The Principal and the Contractor will enter into the D&C Deed on or about the date of this Deed Poll.
- F This Deed Poll sets out certain warranties, acknowledgments and indemnities applicable to the Invitation, the Request for Tender and the Information Documents.

1 Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Beneficiaries means the beneficiaries of the Contractor's promises under this Deed Poll, being WDA, the Principal, the State of New South Wales and RMS, and any entity notified under clause

8.9, and **Beneficiary** means any of them.

Claim includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in connection with the Processes;
- (b) arising out of, or in connection with, any task, thing or relationship connected with the Project; or
- (c) otherwise at law or in equity including:
 - (i) by or for breach of statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

The term "Claim" does not include a claim made against any Beneficiary by any third party, other than a third party to whom the Contractor disclosed the Information Documents, arising from a breach by such Beneficiary of an obligation which the Beneficiary owes to that third party in relation to the Information Documents.

Contractor means, collectively, the Contractor Entities.

Contractor Entities means each of the signatories to this Deed Poll.

Data Room means the electronic data room containing documents, data and other information regarding the Project created and maintained by WDA for the purposes the Processes, whether titled the WestConnex Data Room, the M4 West Data Room or otherwise.

D&C Deed means the design and construct contract to be executed by the Principal and the Contractor with respect to the Project on or about the date of this Deed Poll.

Document means any type of document, including:

- (a) paper or other material on which there is writing, printing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any material from which sounds, images, writing or messages can be reproduced.

EOI Process Deed Poll means the process deed poll executed by each Contractor Entity for the benefit of the Beneficiaries at the time of its response to the Invitation.

EOI Processes means the processes relating to procuring tenderers for the design and construction of the Project beginning with the issuance of the Invitation and including evaluation of expressions of interest.

Information Document means:

- (a) each "Information Document" (as defined in the D&C Deed); and
- (b) to the extent not covered by paragraph (a) above, any information, opinion, data, materials, models or Document which is or has been:
 - (i) made available to the Contractor through the Data Room;
 - (ii) issued or made available by, or on behalf of, any Beneficiary to the Contractor in connection with the Invitation, Request for Tenders, Processes, or the Project and which, at the time of issue (or being made available), was expressly classified or stated to be an "Information Document";
 - (iii) issued or made available by, or on behalf of, any Beneficiary to the Contractor in connection with the Invitation, EOI Processes, Request for Tenders, RFT Processes or Project, but which was not intended to form part of the Invitation or the Request for Tenders (regardless of whether or not it is expressly classified or

stated to be an "Information Document"), including any information, opinion, data, materials, models or document which is provided (including verbally or visually) by RMS or WDA at, or following from, any market sounding, briefing, EOI Processes, RFT Processes or either RMS's or WDA's participation in any early tenderer involvement workshops or any other interactive engagement process under the Invitation or the Request for Tenders; or

- (iv) referred to or incorporated by reference in any of the Information Documents listed in paragraphs (b)(i) to (b)(iii) above,

whether issued or made available:

- (v) before or after the date of this Deed Poll; or
- (vi) before or after the date of execution of the D&C Deed.

Invitation means the invitation to submit an expression of interest for the Project issued to prospective tenderers by WDA in November 2013.

Notice has the meaning given to it in clause 6.

Principal means WCX M4 Pty Limited (ACN 602 963 806) of 101 Miller Street, North Sydney NSW 2059.

Processes means the processes contemplated under the EOI Process Deed Poll and the RFT Process Deed Poll, including the EOI Processes and the RFT Processes.

Process Period means the period from the date of selection of tenderers by WDA and ending on the earlier of:

- (a) execution of the D&C Deed; and
- (b) WDA notifying the Contractor and each competing tenderer that WDA is terminating the procurement process for the D&C Deed for the Project.

Project means all activities associated with investigation, design and construction of the widening of the M4 motorway (as described in the Invitation and updated in the Request for Tenders).

Request for Tenders means the request for submission of tenders for the Project issued by WDA to the Contractor in April 2014, and includes all parts, appendices and attachments to it, as well as any addenda.

RFT Processes means the processes relating to procuring tenders for the design and construction of the Project beginning with the issue of the Request for Tenders and including evaluation of the Contractor's Tender.

RFT Process Deed Poll means:

- (a) the process deed poll dated 9 April 2014 and executed by Rizzani de Eccher Australia Pty Ltd ABN 80 147 862 897 for the benefit of the Beneficiaries; and
- (b) the process deed poll dated 18 March 2014 and executed by Leighton Contractors Pty Limited ABN 98 000 893 667 for the benefit of the Beneficiaries.

RMS means Roads and Maritime Services.

Tender means the documents, including the Contractor's offer, which were submitted by the Contractor to WDA in response to and in accordance with the Request for Tenders.

WDA means WestConnex Delivery Authority.

1.2 Priority in interpretation

For the purposes of this Deed Poll, to the extent of any inconsistency between this Deed Poll, the RFT Process Deed Poll and the EOI Process Deed Poll, the order of priority of interpretation will be:

- (a) this Deed Poll;
- (b) the RFT Process Deed Poll; and
- (c) the EOI Process Deed Poll.

1.3 Interpretation

In this Deed Poll unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed Poll includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body;
- (e) a reference to this Deed Poll or to any other deed poll, deed, agreement, document or instrument is deemed to include a reference to this Deed Poll or such other deed poll, deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) a reference to:
 - (i) a party, clause or schedule is a reference to a party, clause or schedule of or to this Deed Poll; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

- (i) a reference to this Deed Poll includes all schedules;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) "day" means a calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed Poll or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 Headings

Headings do not affect the interpretation of this Deed Poll.

1.5 Unfettered Discretion

- (a) This Deed Poll will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Beneficiaries or any of them to exercise any of their respective functions and powers pursuant to any legislation.
- (b) Without limiting clause 1.5(a), anything the Beneficiaries or any of them do, fail to do or purport to do, pursuant to their respective functions and powers under any legislation, will be deemed not to be an act or omission under this Deed Poll.
- (c) The Contractor waives any Claims that it may have against the Beneficiaries as a result of the exercise by any Beneficiaries of its functions and powers under any legislation.

2 Contractor Warranties and Acknowledgements

The Contractor:

- (a) warrants that it has not relied upon the Invitation, the Request for Tenders or the Information Documents as being proper, adequate, suitable and/or complete for the purposes of enabling it to perform its obligations under the D&C Deed;
- (b) warrants that it has made its own independent evaluation of the Invitation, Request for Tenders and Information Documents' adequacy, accuracy, suitability and completeness for the purposes of enabling the Contractor to perform the obligations under the D&C Deed, and it has based its Tender (including its pricing and the Construction Contract Sum) upon its own independent evaluations;
- (c) acknowledges and agrees that:
 - (i) no representation or warranty (express or implied) has been or is made by the Beneficiaries or any of them (or by anyone on their behalf) to the Contractor that any technical specifications, data or drawings included in the Invitation, the Request for Tenders or the Information Documents will represent a completed or suitable design or that they will be suitable for design and construction purposes;
 - (ii) the rights, powers and discretions given to WDA in the Invitation and Request for Tender do not form part of any contract between WDA, the Beneficiaries and the Contractor but rather are rights, powers and discretions that the Principal has as part of the Processes;
 - (iii) it has been provided with the Information Documents;

- (iv) the Information Documents:
 - (A) are provided by the Beneficiaries for the information only of the Contractor; and
 - (B) do not form part of any contract with respect to the Project;
 - (v) none of the Beneficiaries owes any duty of care to the Contractor with respect to the Information Documents;
 - (vi) to the extent that a Beneficiary is not the author or source of any of the Information Documents it merely passes those documents on to the Contractor and does not adopt those documents;
 - (vii) the Beneficiaries:
 - (A) are not responsible for; and
 - (B) make no representation or warranty in respect of,
the contents of the Information Documents or any advice or information given by any Beneficiary with respect to the Project, the Information Documents, the Invitation or Request for Tenders, including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, reports or geotechnical investigations, opinions, recommendations, findings or other information contained in the Information Documents;
 - (viii) where any information or document is referred to and incorporated by reference in an Information Document, the Contractor has not relied upon any summary of the information or document which appears in that Information Document;
 - (ix) no representation or warranty (express or implied) has been made by any Beneficiary (or by anyone on behalf of a Beneficiary) to the Contractor that the Information Documents or any advice or information given by any Beneficiary with respect to the Project, the Invitation, Request for Tenders or the Information Documents, are accurate, adequate, suitable or complete for any purpose connected with the Project or the Contractor's preparation of its Tender and the performance of its obligations under the D&C Deed;
 - (x) no representation or warranty (express or implied) has been made by any Beneficiary (or by anyone on a Beneficiary) that the Information Documents have been independently verified for any purpose connected with the Project or the Contractor's preparation of its Tender; and
 - (xi) it has had the opportunity during the Process Period and subsequently to undertake for itself and to request others to make further enquiries and investigations and seek appropriate professional advice relating to the subject matter of the Information Documents and for this purpose has had regard to the acknowledgments, warranties and releases in this Deed Poll in undertaking its own enquiries and investigations and in requesting further enquiries and investigations;
- (d) warrants that:
- (i) it has prepared its Tender for the Project and will enter into the D&C Deed and any other contract with the Principal with respect to the Projects based on its own investigations, interpretations, deductions, information and determinations including (without limitation) its own independent evaluation of the accuracy,

adequacy, suitability and completeness of the Information Documents for the purposes of the Project or its entry into the D&C Deed; and

- (ii) it has not in any way relied upon:
 - (A) the Information Documents; or
 - (B) the accuracy, adequacy, suitability or completeness of the Information Documents,

for the purposes of entering into the D&C Deed with the Principal with respect to the Project;

(e) acknowledges and agrees that:

- (i) the Beneficiaries have provided the Information Documents to the Contractor in reliance upon the acknowledgements and warranties contained in this Deed Poll;
- (ii) WDA has accepted the Tender and the Principal will be entering into the D&C Deed with respect to the Project in reliance upon the acknowledgments and warranties contained in this Deed Poll;
- (iii) the Beneficiaries will not be liable to the Contractor upon any Claim (to the extent permitted by law) arising out of or any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of, the Information Documents by the Contractor or any other person associated with the Contractor to whom the Information Documents are disclosed by the Contractor; or
 - (B) a failure by a Beneficiary to provide any information to the Contractor;
- (iv) none of the Beneficiaries have any obligations or liabilities to the Contractor in respect of the Invitation, the Request for Tenders or the Processes, and to the maximum extent permitted by law, any such obligations which may otherwise be implied or imposed on any Beneficiary under contract, in tort including negligence, in equity, at law, by statute or otherwise are excluded; and
- (v) none of the Beneficiaries have any obligation to provide any additional information or to update the Invitation, Request for Tenders or Information Documents, or to correct or inform any person or entity of any inaccuracies in the Invitation, Request for Tenders or the Information Documents which may become apparent; and

(f) warrants that it has:

- (i) examined the Invitation, the Request for Tenders, the Information Documents, and any other information made available in writing by the Beneficiaries, or any other person on their behalf, to the Contractor for the purpose of entering into the D&C Deed;
- (ii) examined all other relevant information available on reasonable enquiry;
- (iii) obtained and considered all necessary information relevant to the risks, contingencies and other circumstances having an effect on its Tender;
- (iv) satisfied itself as to the correctness and sufficiency of the Tender having regard to those risks;
- (v) informed itself of all matters relevant to the employment of labour and all industrial materials relevant to the Project;

- (vi) examined the sites for the Project and their surroundings and informed itself completely as to the conditions of the sites for the Project; and
- (vii) taken such professional advice as is appropriate for projects of this type.

3 Release and Indemnity

The Contractor:

- (a) irrevocably releases and indemnifies the Beneficiaries (or any of them) (and any of their officers, employees, consultants or agents) from and against:
 - (i) any Claim against any Beneficiary (or any of them) by, or liability of any Beneficiary to, any person; or
 - (ii) (without being limited by clause 3(a)(i)) any liabilities, costs, losses or damages suffered or incurred by any Beneficiary (or any of them),

arising out of or in connection with:

- (A) the provision of, or the purported reliance upon, or use of, the Invitation, the Request for Tenders or the Information Documents by the Contractor or any other person to whom the Invitation, the Request for Tenders or the Information Documents are disclosed by the Contractor; or
- (B) the Invitation, Request for Tenders or the Information Documents:
 - (1) being relied upon; or
 - (2) otherwise being used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in the *Competition and Consumer Act 2010* (Cth), or any equivalent provisions of state or territory legislation),

by the Contractor or any other person to whom the Invitation, Request for Tenders or the Information Documents are disclosed by the Contractor; or

- (b) irrevocably releases and indemnifies the Beneficiaries (or any of them) from and against any Claim arising out of or in connection with any breach of this Deed Poll by the Contractor.

4 Enforcement and Liability

- (a) The Contractor acknowledges and agrees that this document operates as a Deed Poll and the obligations in this Deed Poll are for the benefit of the Beneficiaries jointly and severally, and that the Beneficiaries may enforce the obligations in this Deed Poll, either together or separately.
- (b) The liability of the Contractor under this Deed Poll is absolute and is not subject to the execution of this Deed Poll or any other instrument or document by any person other than the Contractor, and is not subject to the performance of any condition precedent or subsequent.

5 Expiry of Contractor's obligations

The obligations of the Contractor under clause 3 of this Deed Poll will expire 5 years after the date of this Deed Poll.

6 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Deed Poll:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to WDA at the address or fax number below or the address or fax number last notified by the intended Contractor to the sender after the date of this Deed Poll:

WDA

Attention: Chief Executive

Address: WestConnex Delivery Authority

c/- Level 9, 101 Miller Street
NORTH SYDNEY NSW 2060

Phone No: 1300 660 248

Fax No: 02 8588 4180

and will be conclusively taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

7 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of a right, power or remedy provided by law or under this Deed Poll by all or any of the Beneficiaries does not preclude, or operate as a waiver of, the exercise or enforcement or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed Poll.
- (b) No waiver by all or any of the Beneficiaries of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.
- (c) None of the provisions of this Deed Poll shall be taken either at law or in equity to have been varied, waived, discharged or released by the Beneficiaries unless by their express consent in writing.

8 Miscellaneous

8.1 Joint and Several Liability

If the Contractor is more than one person, each person making up the Contractor is jointly and severally bound by the terms of this Deed Poll.

8.2 Governing Law and Jurisdiction

This Deed Poll is governed by the laws of New South Wales. The Contractor and the Beneficiaries submit to the non exclusive jurisdiction of New South Wales.

8.3 Amendments

This Deed Poll may not be revoked without the prior written consent of the Beneficiaries. Any amendments must be agreed in writing between the Contractor and WDA.

8.4 Further acts

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Deed Poll.

8.5 Consents

A consent required under this Deed Poll from any Beneficiary may be given or withheld, or may be given subject to any conditions, as the relevant Beneficiary (in its absolute discretion) thinks fit, unless this Deed Poll expressly provides otherwise.

8.6 Entire agreement

To the extent permitted by law, in relation to its subject matter, this Deed Poll:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

8.7 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed Poll, except for representations or inducements expressly set out in this Deed Poll.
- (b) Each party acknowledges and confirms that it does not enter into this Deed Poll in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed Poll.

8.8 Severability of provisions

Any provision of this Deed Poll that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Deed Poll nor affect the validity or enforceability of that provision in any other jurisdiction.

8.9 Beneficiaries

- (a) WDA may at any time give notice to the Contractor that another entity is to become an additional Beneficiary under this Deed Poll. WDA may give multiple notices under this clause. The Contractor agrees that on and from the date of WDA's notice, the entity identified by WDA will be a Beneficiary under this Deed Poll.
- (b) If for any reason a Beneficiary is unable to enforce against the Contractor its promises under this Deed Poll, the Contractor agrees that WDA may do so on behalf of any and all Beneficiaries.

Executed and delivered as a Deed Poll

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered for RIZZANI DE ECCHER AUSTRALIA PTY LTD ABN 80 147 862 897 by its attorney under power of attorney dated 1 December 2014 in the presence of:

Witness Signature

Print Name

Attorney Signature

Print Name

Executed in accordance with section 127 of the *Corporations Act 2001* by **LEIGHTON CONTRACTORS PTY LIMITED ABN 98 000 893 667:**

Director Signature

Print Name

Director/Secretary Signature

Print Name

PART B
LAND AND PROPERTY

SCHEDULE 15

Approvals

(clause 6)

Part A: Approvals to be obtained by RMS

The Planning Approval.

The EPBC Act Approval.

Part B: Conditions of Planning Approval to be undertaken by RMS

The Project Company must fulfil all the conditions and requirements of the Planning Approval except where the following table allocates responsibilities to RMS.

RMS will fulfil those responsibilities which are allocated to it in the following table.

Baseline Condition number	Extent of RMS's responsibility for the Baseline Condition specified
A4	To the extent that Secretary requires: <ol style="list-style-type: none">the preparation or submission of any report, plan, assessment, communication or other document; orthe compulsory acquisition of land, RMS must satisfy this requirement, to the extent only that RMS is responsible for compliance with the Secretary's requirements in relation to reports, plans or correspondence, including the implementation of any actions or measures contained therein, for which the Project Company is responsible under the Planning Approval as indicated in this Part B.
A5	RMS must fulfil the requirements of this condition.
A6	RMS must fulfil the requirements of this condition, to the extent only that RMS is to obtain the existing and future Approvals specified in this Deed.
A7	RMS must fulfil the requirements of this condition up to Construction Completion.
A8	RMS must fulfil the requirements of this condition up to Construction Completion.
A11	RMS must fulfil the requirements of this condition up to Construction Completion.
A12	RMS must submit the Compliance Tracking Program to the Secretary for approval, submit information, data and details to the Secretary as a result of the Project Company implementing the Compliance Tracking Program and during the performance of the Project Company's Activities. The Project Company must prepare the Compliance Tracking Program and other documents and information requested by RMS to enable compliance with this

	condition.
B5	RMS must submit the Flood Mitigation Strategy to the Secretary and relevant councils. The Project Company must prepare the Flood Mitigation Strategy and submit it to RMS no later than 25 Business Days prior to commencing any construction work.
B7	RMS must submit the Water Quality and Monitoring Program to the Secretary. The Project Company must prepare the Water Quality and Monitoring Program and submit it to RMS no later than 25 Business Days prior to commencing any construction work.
B8	RMS must submit the Soil Contamination Report to the Secretary and relevant councils. The Project Company must prepare the Soil Contamination Report and submit it to RMS no later than 25 Business Days prior to commencing any construction work.
B15	RMS must fulfil the requirements of this condition.
B16	RMS must fulfil the requirements of this condition, except that the Project Company must provide RMS with any documents, information and assistance requested by RMS to enable compliance with this condition.
B17	RMS must fulfil the requirements of this condition, except that the Project Company must provide RMS with any documents, information and assistance requested by RMS to enable compliance with this condition.
B18	RMS must fulfil the requirements of this condition, except that the Project Company must provide RMS with any documents, information and assistance requested by RMS to enable compliance with this condition.
B25	RMS must fulfil the requirements of this condition, to the extent only that RMS must submit the Urban Design and Landscape Plan from the Project Company's Activities for the approval of the Secretary. The Project Company must provide RMS with all the documents from the Project Company's Activities that are required under the Planning Approval no later than 25 Business Days prior to the commencement of any construction.
B26(b)	RMS must fulfil the requirements of this condition.
B29	RMS must fulfil the requirements of this condition.
B30	RMS must fulfil the requirements of this condition.
B31	RMS must fulfil the requirements of this condition.
B32	RMS must fulfil the requirements of this condition.
B33	RMS must fulfil the requirements of this condition.
C1	RMS must submit the Community Communication Strategy for the approval of the Secretary. The Project Company must prepare the Community Communication Strategy and submit it to RMS no later than 25 Business Days prior to commencing any construction work.
C2	RMS must fulfil the requirements of this condition.
C3	RMS must fulfil the requirements of this condition, to the extent only that RMS will

	provide a proprietary compliance management software database system for use by the Project Company.
C4	RMS must fulfil the requirements of this condition, except that the Project Company must provide project information for inclusion in the website.
D1	RMS must fulfil the requirements of this condition, to the extent only that RMS is to nominate to and receive approval from the Director General to the Environmental Representative.
D24	RMS must fulfil the requirements of this condition, except that the Project Company must provide RMS with any documents, information and assistance requested by RMS to enable compliance with this condition.
D31	RMS must submit the Construction Environmental Management Plan for the approval of the Secretary. The Project Company must prepare the Construction Environmental Management Plan and submit it to RMS no later than 25 Business Days prior to commencing any construction work.
E1	RMS must fulfil the requirements of this condition.
E2	RMS must fulfil the requirements of this condition.
E3	RMS must fulfil the requirements of this condition.
E4	RMS must fulfil the requirements of this condition.
E5	RMS must fulfil the requirements of this condition.
E6	RMS must fulfil the requirements of this condition.
E7	RMS must fulfil the requirements of this condition.
E8	RMS must submit the Operation Environmental Management Plan for the approval of the Secretary. The Project Company must prepare the Operation Environment Management Plan and submit to RMS no later than 25 Business Days prior to commencing operation.
E9	RMS must submit the Independent Environmental Audit to the Secretary and relevant public authorities. The Project Company must commission and pay for the Independent Environmental Audit and submit a copy of the audit within 80 days of commissioning the audit.

SCHEDULE 16

Environmental Requirements

(Clause 9.12)

1. ENVIRONMENT PROTECTION LICENCE

The Project Company must:

- (a) obtain an Environment Protection Licence in respect of the Project Company's Activities from the date on which the Project Company is given access to the Construction Site (or any part thereof) pursuant to clause 11.1; and
- (b) hold an Environment Protection Licence in respect of the Project Company's Activities until the Date of Completion.

2. CROWN BUILDING WORK

- (a) The Project Company must, in relation to any part of the Project Works or the Temporary Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify (on behalf of RMS) as required by section 109R of the EP&A Act.
- (b) Any certification under section 2(a) of this Schedule 16 will not lessen or otherwise affect:
 - (i) the other Liabilities or responsibilities of the Project Company under this deed or otherwise according to Law; or
 - (ii) RMS's rights against the Project Company, whether under this deed or otherwise according to Law.

3. ENVIRONMENTAL REQUIREMENTS

- (a) The Project Company must not use the Construction Site, the Motorway Site or any Extra Land, or allow its Related Parties to use the Construction Site, the Motorway Site or any Extra Land, so that:
 - (i) any Hazardous Substance is abandoned or dumped on the Construction Site, the Motorway Site or any Extra Land;
 - (ii) any Hazardous Substance is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
 - (iii) any other substance is released from, deposited to, or emanates from, the Construction Site, the Motorway Site or any Extra Land such that a state of Contamination occurs.
- (b) The Project Company must at all times carry out, and ensure that its Related Parties carry out, the Project Company's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.

- (c) The Project Company must, without limiting clause 4.1:
 - (i) comply with, and ensure that its Related Parties in performing the Project Company's Activities comply with:
 - (A) all Laws relating to the Environment;
 - (B) all Environmental Notices; and
 - (C) the Project Plans; and
 - (ii) obtain and comply with all requirements of, and ensure that its Related Parties in performing the Project Company's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Construction Site, the Motorway Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
- (d) Unless otherwise specified in this Schedule 16 and without limiting the Project Company's other obligations under this deed, and insofar as they apply to the Project Works, the Temporary Works or the Project Company's Activities, the Project Company must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which RMS is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, the Temporary Works and the Project Company's Activities.
- (e) The Project Company must immediately notify RMS in writing as soon as the Project Company:
 - (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law, Approval or Environmental Document regarding the Environment in the performance of the Project Company's Activities;
 - (ii) becomes aware of any information, fact or circumstance where, if RMS were to be aware of such information, fact or circumstance, RMS would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the Project Company in relation to the information, fact or circumstance); or
 - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the Project Company must provide to RMS a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.
- (f) The Project Company must indemnify RMS from and against any Claims against RMS, or Loss suffered or incurred by RMS, arising out of or in any way in connection with a failure by the Project Company to comply with any obligation under this section 3.

4. **PROVISION OF EMISSIONS AND ENERGY DATA TO RMS**

- (a) The Project Company must provide the Project Company's Emissions and Energy Data to RMS's Representative:
 - (i) at such times as may be agreed by RMS and the Project Company, or, if no such agreement is reached, within 10 Business Days of receiving written notice

from RMS indicating that it requires the Project Company's Emissions and Energy Data to be provided; and

- (ii) on each occasion that the Project Company is required to provide the Project Company's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) The Project Company acknowledges and agrees that RMS may use the Project Company's Emissions and Energy Data for any purpose as it sees fit.

5. REPORTING EMISSIONS AND ENERGY DATA

- (a) This section 5 applies if, despite the operation of clause 9.13, RMS incurs a Liability under or in connection with the NGER Legislation as a result of or in connection with the Project Company's Activities, the Project Works or the Temporary Works.
- (b) If RMS notifies the Project Company in writing that the Project Company is required to provide the Project Company's Emissions and Energy Data to RMS, then the Project Company must:
 - (i) provide the Project Company's Emissions and Energy Data to RMS's Representative in the same manner, form and level of detail, based on the same methods and at the same times:
 - (A) as if the Project Company was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and RMS was that Authority;
 - (B) in accordance with the requirements or approvals of any Authority and any reasonable directions by RMS's Representative; and
 - (C) without limiting sections 5(b)(i)A and B, as may be required to enable RMS:
 - (aa) to discharge, as and when they fall due, any obligations that it may have to provide the Project Company's Emissions and Energy Data to any Authority; and
 - (bb) to provide to the Clean Energy Regulator, any Project Company's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) keep all such Project Company's Emissions and Energy Data as may be required to enable it to discharge its obligations under section 5(b)(i);
 - (iii) retain records of its activities that are the basis of its Project Company's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (iv) permit the Project Company's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by RMS or any Authority, and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under sections 5(b)(ii) and (iii) and answering questions.
- (c) Without limiting section 5(b), the Project Company must assist RMS to comply with the NGER Legislation in relation to any aspect of the Project Company's Activities.

- (d) The Project Company acknowledges and agrees that:
 - (i) the Project Company's Emissions and Energy Data is provided to RMS:
 - (A) to discharge any obligations that RMS may have to provide such Data to an Authority; and
 - (B) so that RMS may provide to the Clean Energy Regulator any Project Company's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) RMS may provide or otherwise disclose the Project Company's Emissions and Energy Data to any applicable Authority; and
 - (iii) nothing in this section 5 is to be taken as meaning that RMS has agreed to perform on behalf of the Project Company any obligation that the Project Company itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

6. SUSTAINABILITY

- (a) The Project Company must comply with the sustainability requirements set out in Appendix C04 of the SPR.
- (b) Without limiting section 6(a), the Project Company must achieve:
 - (i) a "Design" rating score of at least Excellent for the design of the Project Works and the Temporary Works; and
 - (ii) an "As Built" rating score of at least Excellent for the construction of the Project Works and the Temporary Works,from the Infrastructure Sustainability Council of Australia.
- (c) Without limiting section 6(b), in order to achieve the ratings referred to in section 6(b) the Project Company must:
 - (i) register with the Infrastructure Sustainability Council of Australia for the purposes of obtaining a rating;
 - (ii) cooperate and liaise with the Infrastructure Sustainability Council of Australia as required; and
 - (iii) provide any documentation required by the Infrastructure Sustainability Council of Australia.

7. WASTE DISPOSAL

- (a) The Project Company must:
 - (i) remove from the Construction Site and any Extra Land; and
 - (ii) dispose of,any Contamination or other waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.

- (b) The Project Company must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to RMS's Representative upon request.
- (c) The Project Company must ensure that its employees and agents are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.
- (d) The Project Company must indemnify RMS from and against any Claims against RMS, or Loss suffered or incurred by RMS, arising out of or in any way in connection with any failure by the Project Company to comply with any obligation under this section, provided that the Project Company's liability to indemnify RMS will be reduced proportionally to the extent that an act or omission of RMS contributed to the Claim or Loss.

SCHEDULE 17

Terms of Access

(Clause 11)

1. PROJECT COMPANY ACKNOWLEDGEMENTS

- (a) The Project Company acknowledges and agrees that:
 - (i) it may not be given exclusive access to the Construction Site; and
 - (ii) access to the Construction Site or any part thereof will be subject to the Project Company complying with clause 11.1, this Schedule 17 and the Site Access Schedule.
- (b) The Project Company acknowledges that:
 - (i) its rights under clause 11.1 and this Schedule 17 are subject to any restrictions upon the access, possession and use of the Construction Site, Motorway Site and the Motorway imposed by RMS or WDA; and
 - (ii) it must comply with all:
 - (A) access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule; and
 - (B) terms of any easement burdening the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW).
- (c) The Project Company acknowledges that it will have no entitlement to access the Construction Site under clause 11.1 and this Schedule 17 until the Project Company has submitted the Project WHS Management Plan to RMS's Representative and RMS's Representative has had 20 Business Days to review the Project WHS Management Plan and has not rejected the Project WHS Management Plan.

2. NO WARRANTY BY RMS

Subject to the express terms of this deed, RMS makes no express or implied warranty that the Construction Site or the Motorway Site are now or will remain suitable or adequate for all or any of the purposes contemplated in this deed and save as aforesaid all warranties (if any) implied by Law are, to the extent permitted by Law, hereby expressly negated.

SCHEDULE 18

Property Owner's Certificate

(Clause 11.4)

This Deed Poll is in favour of:

Roads and Maritime Services (RMS); and

WestConnex Delivery Authority (WDA)

PROPERTY ADDRESS:

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

[Insert description of property works]

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release RMS and WDA from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

SIGNED as a Deed Poll.

SIGNED, SEALED and DELIVERED by
[NAME OF PARTY] in the presence of:

Signature

Signature of witness

Name of witness in full

SCHEDULE 19

Easements

(Clause 18.2)

1. EASEMENTS RESERVED BY RMS OVER THE MOTORWAY STRATUM

RMS reserves the right at all times for the purposes set out in Appendix A to:

- (a) create any Easements benefiting or burdening the Motorway Stratum or any Additional Land with:
 - (i) any of the owners, lessees, tenants or occupiers of the land adjacent to or in the vicinity of the Motorway Stratum or any Additional Land; or
 - (ii) any public or other Authority,and to release, vary, modify or give waivers of such Easements; and
- (b) dedicate land of which it is the owner of the fee simple estate for road, rail and other purposes,

which may be effective no earlier than the Date of Completion, upon such terms and conditions as RMS thinks fit, provided that where any such Easement (or release, variation, modification or waiver of such Easement) or dedication could reasonably be expected to have:

- (c) a material adverse effect on the design, construction, maintenance, repair or operation of the Motorway or upon the ability of the Project Company to undertake the Project in accordance with the Project Documents; or
- (d) an adverse effect on the patronage or capacity or use of the Motorway or the ability of the Project Company or its subtenants to levy and collect tolls or as against RMS and the NSW Government to keep tolls,

RMS must obtain the prior written consent of the Project Company to the creation of any such Easement (or release, variation, modification or waiver in respect of such Easement) or dedication of land, which consent must not be unreasonably withheld.

2. EASEMENTS FOR THE PROJECT COMPANY'S BENEFIT

If, but only if, RMS is the owner of the estate in fee simple of, and there are no inconsistent interests in, the land which is to be benefited or burdened by such Easement, and without in any way limiting clause 11.5, upon request after the Date of Completion, RMS undertakes to the Project Company that it will, at the Project Company's cost, create Easements benefiting or burdening the Motorway Stratum or any Additional Land in favour of:

- (a) the Project Company or any other person who is at any time entitled to an estate or interest in possession in the benefited land and every person authorised by any of them; or
- (b) any relevant provider of services and utilities, or any relevant infrastructure owner, or any relevant third party as agreed by RMS,

where such Easements are proposed on reasonable terms and are reasonably required by any of those parties and at no cost to RMS for the purposes set out in Appendix B.

3. NOTICE OF LOCATION AND DIMENSIONS

- (a) Each of RMS and the Project Company must notify the other party of the exact location and dimensions of any Easement it requires under section 1 or 2 (as the case may be) as soon as practicable.
- (b) A notice under section 3(a) must be accompanied by a diagram showing:
 - (i) the location and dimensions of the three dimensional envelope which accommodates the site of the Easement; and
 - (ii) the location of the Easement relative to existing structures and public services.
- (c) Where RMS receives a notice under section 3(a) it will:
 - (i) approve the location and dimensions of the Easement; or
 - (ii) reject the location and dimensions of the Easement,and in each case must act reasonably and must communicate its approval or rejection to the Project Company as soon as practicable but in any event within 8 weeks of the date of receipt of the notice.
- (d) In the event that RMS rejects the location and dimensions of any easement under section 3(c):
 - (i) RMS may, at the time of such rejection, notify the Project Company of an alternate or amended location and dimensions of the Easement;
 - (ii) the Project Company may notify RMS of an alternative or amended location and dimensions of the Easement, in which case such notice will be treated as a notice under section 3(a); and
 - (iii) either of RMS or the Project Company may refer the matter to be resolved in accordance with the Dispute Resolution Procedure.

4. NO CLAIM

The Project Company may not make any Claim or requisition, rescind or terminate this deed, the Motorway Stratum Lease or any lease of Additional Land because it receives notice from RMS pursuant to section 3 or because any Easement is created.

5. REGISTRATION

The parties will use reasonable endeavours to execute and obtain the registration of any Easements which are granted by RMS in favour of the Project Company or any provider of services and utilities or any infrastructure owners or any third parties under this Schedule 19 as soon as practicable after the Date of Completion. In the event that any Easement which RMS has granted to the Project Company cannot be registered, the parties agree that such Easement will take effect as a binding deed between them until the termination of this deed. The parties will register any such Easement as soon as practicable if it becomes registrable at a later date.

**Appendix A - Easements which may be created by RMS benefiting or burdening the
Motorway Stratum**

Easements created for the purposes of:

- (a) providing public or private access to or egress from the Motorway Stratum, the Licensed Maintenance Areas, any Additional Land or other land adjacent to or in the vicinity of that land (**adjacent land**);
- (b) providing support of structures erected or to be erected on the Motorway Stratum or the Licensed Maintenance Areas or the adjacent land;
- (c) providing support for the structures of any railway infrastructure;
- (d) providing road or rail or other infrastructure or other services including, but not limited to, water, drainage, sewerage, gas and other fuels, electricity, telephone and electronic communications to, or to pass through, the Motorway Stratum or any Additional Land or to pass through the Licensed Maintenance Areas or the adjacent land;
- (e) providing any statutory easements; and
- (f) satisfying any requirements of the Project Deed or the SWTC.

Appendix B - Easements to be created benefiting or burdening the Motorway Stratum at the request of the Project Company

Easements created (and contemplated by section 2) which benefit or burden the Motorway Stratum for:

- (a) not used;
- (b) not used
 - (i) not used; and
 - (ii) not used;
- (c) not used;
- (d) providing support for structures and access for maintenance purposes to the Motorway; and
- (e) other than as referred to in this Appendix B, satisfying any requirements to be satisfied by the Project Company pursuant to this deed or the SWTC.

SCHEDULE 19A

Process for granting Motorway Stratum Lease

(clause 18.1)

1. DEFINITIONS

In this Schedule 19A:

Additional Land means any land acquired or obtained by the Project Company pursuant to clause 11.5.

Commencement Date means the earlier of:

- (a) the Date of Completion; or
- (b) the Motorway Opening Date.

LPI means Land and Property Information NSW.

Motorway Structure means:

- (a) the excavated areas for permanent works including those for the tunnels, walls, columns, footings, beams, retaining walls, ramps, cross passages, ventilation systems, plant room, sub-stations and emergency access tunnels which will form part of the Motorway; and
- (b) the rock anchors, columns, footings, beams, structural support and other structures installed for the purposes of protecting and/or supporting the permanent works referred to in paragraph (a).

Real Property Act means the *Real Property Act 1900* (NSW).

Registered Surveyor means the surveyor appointed by the Project Company (or its Subcontractor) for the purposes of paragraph 2 and who is:

- (a) registered under New South Wales law; and
- (b) appointed on terms and conditions reasonably acceptable to RMS (which terms must include an acknowledgement that the surveyor owes a duty of care to RMS).

RMS Surveyor means a surveyor appointed by RMS and notified in writing to the Project Company.

Termination Date means the earlier to occur of:

- (a) the Expiry Date; and
- (b) the date upon which this deed is terminated pursuant to clause 31.

2. "AS BUILT" ENGINEERING SURVEYS

- (a) The Project Company must, before the date which is 12 months after the Date of Completion:
- (i) carry out an "as built" engineering survey, in accordance with RMS Specifications G71 and G73, of:
 - (A) the works comprising the Motorway Structure;
 - (B) any areas of land required for Easements (if any); and
 - (C) any Additional Land on which the Project Company has constructed permanent works; and
 - (ii) as a consequence of carrying out the "as built" engineering survey in accordance with paragraph 2, prepare and deliver to each of RMS and the RMS Surveyor:
 - (A) one hard copy of the "work as executed" drawings and one electronic copy of them in .pdf format and in .dxf format (or such other format as may be agreed by the parties); and
 - (B) one three dimensional computer model in .dxf format (or such other format as may be agreed by the parties),
of the Motorway Structure;
 - (iii) ensure that the "work as executed" drawings and the computer model referred to in paragraph 2(a)(ii) specify:
 - (A) all stratum heights, widths and depths of the Motorway Structure referenced in the Map Grid of Australia (**MGA**) and the Australian Height Datum (**AHD**);
 - (B) the three dimensional co-ordinates referenced to MGA and AHD defining the location of the Motorway Structure;
 - (C) the three dimensional co-ordinates referenced to MGA and AHD defining the boundaries of the Licensed Maintenance Areas which will be the parcels of land and airspace agreed pursuant to paragraph 2(b);
 - (D) the three dimensional co-ordinates referenced to MGA and AHD of all Utility Service Works in accordance with Australian Standard AS5488 requirements:
 - (aa) to the extent the relevant Utility Service has been relocated during construction of the Motorway Structure; or
 - (bb) where the relevant Utility Service remains in its original position, to the extent the location of the relevant Utility Service is identified in undertaking the Project Company's Activities; and
 - (E) such other details as reasonable required by RMS;

- (iv) ensure that the "work as executed" drawings referred to in this paragraph 2:
 - (A) include cross-section plans at 20 metre chainage intervals including sectional changes and a long section plan for each carriageway of the Motorway and cross passages within the Motorway Structure; and
 - (B) are certified by a Registered Surveyor:
 - (aa) to be complete and accurate;
 - (bb) to have been prepared in accordance with and to meet the requirements of this paragraph 2; and
 - (cc) to be adequate for the determination by RMS of all boundaries of the Easements; and
 - (dd) to be adequate for the determination by RMS that the Motorway Structure has been constructed, or are situated, within the Motorway Site; and
 - (v) the obligations of the Project Company under this paragraph 2 do not include the preparation of cadastral drawings or surveys, the provision of information relating to titles or title surveys.
- (b) The parties acknowledge and agree that the Licensed Maintenance Areas will be agreed by the parties (both acting reasonably) prior to the commencement date.
- (c) Without limiting paragraph 2, the Project Company must commence the "as built" engineering survey and use its best endeavours to prepare the "work as executed" drawings and computer model referred to in paragraph 2 in relation to those parts of the Motorway Structure required for the Easements, if any..

3. **MOTORWAY STRATUM LEASE**

- (a) Subject to paragraph 3(e), on the Commencement Date, RMS must grant the Project Company, and the Project Company must accept from RMS:
 - (i) the Motorway Stratum Lease; and
 - (ii) a licence to access the Licensed Maintenance Areas, commencing on the Commencement Date upon and subject to the terms, covenants and conditions set out in the draft lease comprising Exhibit D.
- (b) The commencement of the Motorway Stratum Lease will not relieve or discharge either RMS or the Project Company from the performance of any of its obligations hereunder which remain to be performed at or after the Commencement Date.
- (c) RMS must either insert, or authorise the insertion of, the following in the Motorway Stratum Lease:
 - (i) the Commencement Date, the Termination Date and the Term;
 - (ii) the date of execution of the Motorway Stratum Lease;
 - (iii) the then current title reference for the Motorway Stratum to be demised by the Motorway Stratum Lease; and
 - (iv) such other necessary information and formal matters as may be reasonably required to give effect thereto.

- (d) RMS and the Project Company must execute the Motorway Stratum Lease in the following manner:
 - (i) RMS must give the Motorway Stratum Lease and a duplicate of it to the Project Company as soon as practicable after the completion of the documentation contemplated by paragraph 3;
 - (ii) the Project Company or its solicitors must return the Motorway Stratum Lease and the duplicate of it within 10 Business Days of receiving it;
 - (iii) RMS must, within 10 Business Days of receiving the Motorway Stratum Lease and the duplicate of it from the Project Company, execute and then return the Motorway Stratum Lease and the duplicate copies to the Project Company;
 - (iv) RMS must promptly produce certificates of title for the Motorway Stratum to the LPI when the Project Company requests it to allow the Project Company to register the Motorway Stratum Lease; and
 - (v) the Project Company must have the Motorway Stratum Lease and the duplicate of it stamped and registered (at the Project Company's cost) and must give to RMS the stamped duplicate of the Motorway Stratum Lease within 10 Business Days of it being stamped as well as a copy of the registered Motorway Stratum Lease certified as true and correct by the LPI within 10 Business Days of it being registered.
- (e) RMS reserves the right to make any necessary alterations to the Motorway Stratum Lease in form or layout to comply with any present or future requirements of the LPI or any other appropriate authority and the Project Company authorises RMS to make those alterations.

4. **ADDITIONAL LAND LEASE**

If Additional Land has been acquired, RMS must:

- (a) if that Additional Land has been acquired or obtained in the form of an easement, grant the benefit of that easement to the Project Company for the benefit of the Project Company and in favour of any other person who is at any time entitled to an estate or interest in possession in the benefited land and every person authorised by any of them, the rights and obligations under such easements being reasonably acceptable to the Project Company, and register that easement; or
- (b) otherwise, grant a lease of that Additional Land to the Project Company on substantially the same terms and conditions as the Motorway Stratum Lease, except that:
 - (i) the Term of the lease of such Additional Land will commence on the date of its grant and expire on the Termination Date of the Motorway Stratum Lease; and
 - (ii) paragraph 3 will apply in respect of any lease of such Additional Land as if:
 - (A) references to "Motorway Stratum Lease" in that clause were references to the lease contemplated under this paragraph 4;
 - (B) references to "Motorway Stratum" in that clause were references to the Additional Land;
 - (C) no references were made to "Licensed Maintenance Areas"; and

(D) references to "Date of Completion" were to the date on which the Additional Land was acquired.

SCHEDULE 20

Requirements of Third Party Agreements

(Clause 9.18)

1. NO LIMITATION ON DEED

Nothing in this Schedule limits RMS's rights or affects the Project Company's obligations under any clause of this deed.

2. THIRD PARTY AGREEMENTS

(a) The Project Company:

- (i) acknowledges that RMS may enter into one or more Third Party Agreements; and
- (ii) must, in performing the Project Company's Activities:
 - (A) comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of the Third Party Agreements as if it were named as RMS in the Third Party Agreements so as to ensure that RMS is able to fully meet its obligations under the Third Party Agreements or otherwise at law; and
 - (B) comply with and fulfil any conditions, obligations or requirements allocated to the Project Company in this Schedule that are additional to or more stringent or onerous than the conditions and requirements described in section 2(a)(ii)A of this Schedule; and
- (iii) must assist RMS in any way that RMS reasonably requires to enable RMS to perform the obligations identified for RMS to perform in the table below.

(b) The Project Company acknowledges that:

- (i) the Third Party Agreements may provide for a process for certain works to be designed and constructed;
- (ii) it is not obliged to design and construct those works unless this deed requires it to design and construct such works;
- (iii) if it does elect to design and construct any of those works, it must do so in accordance with the requirements of the relevant Third Party Agreement, this Schedule and this deed;
- (iv) if it proposes to design and construct any other works on the surface of a road (other than works referred to in clause 2(b)(i)):

- (A) it must obtain any necessary Approvals and liaise with the relevant Authority in relation to those works; and
- (B) RMS will not be liable upon any Claim (insofar as is permitted by law) by the Project Company arising out of or in any way in connection with:
 - (aa) identifying and obtaining access to any Extra Land required for such works; or
 - (bb) any delay, additional costs or other effects on the Project Company's Activities related to the ability of the Project Company or its Subcontractors to obtain access to such Extra Land or obtain any necessary Approvals.
- (c) Where a Third Party Agreement provides that:
 - (i) the Project Company must; or
 - (ii) RMS must ensure that the Project Company will,

do something or comply with an obligation, the Project Company must, in performing the Project Company's Activities, do that thing or comply with that obligation.
- (d) Where a Third Party Agreement provides for RMS to provide a document, notice or information to the relevant third party, the Project Company:
 - (i) must not provide any such document, notice or information directly to the relevant third party; and
 - (ii) must provide such document, notice or information to RMS within a reasonable time sufficient for RMS to review and comment on the document, notice or information and provide it to the relevant third party within the time period required by the relevant Third Party Agreement.
- (e) The Project Company must, in carrying out the Project Company's Activities:
 - (i) comply with any reasonable directions of RMS's Representative in relation to compliance with the conditions and requirements of any relevant Third Party Agreements or other requirements of any relevant third parties;
 - (ii) ensure that no act or omission of the Project Company constitutes, causes or contributes to any breach by RMS of its obligations to any relevant third party under any Third Party Agreements or otherwise at law; and
 - (iii) otherwise act consistently with the terms of any Third Party Agreements.
- (f) Whenever, pursuant to the terms of any Third Party Agreement, RMS makes an acknowledgment or gives a release or warranty, indemnity, or covenant to a relevant third party then, subject to what is provided in this Schedule and the other terms of this deed, the Project Company is deemed to make the same acknowledgement or give the same release or warranty, indemnity, or covenant to RMS on the same terms and conditions as the acknowledgement, release or warranty, indemnity, or covenant made or given by RMS under the relevant Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this deed.
- (g) The Project Company acknowledges that to the extent that any Third Party Agreement contains a provision pursuant to which a relevant third party is stated to make no representation as to a state of affairs, the Project Company agrees that RMS similarly

makes no representation to the Project Company in respect of that state of affairs in the same way as if the relevant terms of the relevant Third Party Agreement were set out fully in this deed.

- (h) Nothing in any Third Party Agreement or this Schedule limits RMS's rights or the Project Company's obligations in relation to Completion or the rectification of Defects under this deed.
- (i) The Project Company must indemnify RMS from and against any claim by any relevant third party against RMS or any liability of RMS to any relevant third party arising out of or in any way in connection with any Third Party Agreement to the extent that the liability or claim is caused by, or arises out of, or in any way in connection with, the Project Company's Activities:
 - (i) provided that the Project Company's responsibility to indemnify RMS will be reduced to the extent that a negligent act or omission of RMS or an agent of RMS contributed to the liability or claim; and
 - (ii) except to the extent it is limited in this Schedule (including section 2(j) of this Schedule).
- (j) The Project Company will only be liable to RMS for any liability arising out of a Third Party Agreement:
 - (i) to the extent that RMS incurs a liability to the relevant third party arising out of or in connection with a breach of contract by, a negligent act or omission of, or injury, death or damage caused by, the Project Company or its Related Parties; or
 - (ii) where the Project Company would otherwise be liable to RMS pursuant to a provision of this deed in respect of the matter.
- (k) The Project Company:
 - (i) bears the full risk of:
 - (A) it complying with the obligations under this Schedule; and
 - (B) any acts or omissions of each relevant third party or its employees, agents, contractors or officers; and
 - (ii) will not be entitled to make, and RMS will not be liable upon, any Claim arising out of or in any way in connection with:
 - (A) the risks referred to in section 2(k)(i) of this Schedule; or
 - (B) any acts or omissions of any relevant third party or its employees, agents, contractors or officers.

SCHEDULE 21

Not Used

SCHEDULE 22

Not used

SCHEDULE 23

Not used

SCHEDULE 24

Not used

SCHEDULE 25

Not used

SCHEDULE 26

Site Access Schedule

(Clause 11.1)

SCHEDULE 26A

Not Used

SCHEDULE 26B

Connections to the Motorway

(clause 22.2)

1. M4 West motorway west of Church Street
2. Church Street
3. James Ruse Drive
4. Silverwater Road
5. Hill Road
6. Homebush Bay Drive
7. Sydney Street
8. Concord Road
9. Parramatta Road

SCHEDULE 26C

Motorway Site

(clause 1.1)

SCHEDULE 27

Not Used

SCHEDULE 28

Not Used

SCHEDULE 29

Not Used

SCHEDULE 30

Not Used

SCHEDULE 31

Environmental Representative Side Deed Poll

(Clause 6.9)

This deed poll (*Deed Poll*) made the _____ day of _____ 20
By: **[insert name of Environmental Representative]** (ABN **[insert Environmental Representative's ABN]**) of **[insert Environmental Representative's address]** (*Environmental Representative*),

in favour of: **Roads and Maritime Services** (ABN 76 236 371 088) of 101 Miller Street, North Sydney, NSW 2059 (**RMS**);

WestConnex Delivery Authority (ABN **[insert WDA's ABN]**) of 101 Miller Street, North Sydney, North Sydney NSW 2059 (**WDA**);

[Principal]**[insert company details]** (the **Principal**);

[Tolling Contractor (Roadside)] **[insert company details]**;

[Tolling Contractor (Back Office)] **[insert company details]**;

[RailCorp] **[insert company details]**;

[Operations and Maintenance Contractor] **[insert company details]**; and

[Stage 1B Contractor] **[insert company details]**
(together **the Beneficiaries**).

Recitals

- A. RMS is responsible for the road network in Sydney.
- B. WDA is a public subsidiary corporation constituted by Part 4A of the *Transport Administration (General) Regulation 2013* (NSW). WDA is authorised to exercise the functions of RMS under the *Roads Act 1993* (NSW) and the *Transport Administration Act 1988* (NSW) for the purposes of delivering the WestConnex Motorway Project.
- C. The Principal and the Contractor have engaged the Environmental Representative to perform Services in relation to Stage 1A of WestConnex, comprising the widening of the M4 Motorway (the **Works**).
- D. On or about the date of this Deed, the Contractor entered into the D&C Deed with the Principal in respect of the Project.
- E. The Beneficiaries are relying on the Environmental Representative to perform Services in accordance with the Deed of Appointment of ER.
- F. The Beneficiaries will suffer loss if the Environmental Representative does not perform Services in accordance with the Deed of Appointment of ER.
- G. It is a condition of the Deed of Appointment of ER that the Environmental Representative executes this Deed Poll.

This Deed witnesses that the Environmental Representative hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:

1. It will comply with its obligations under the Deed of Appointment of ER.
2. The aggregate of the Environmental Representative's liability to the Beneficiaries under this Deed Poll and the Environmental Representative's liability to the Principal under the Deed of Appointment of ER:
 - (a) will not exceed the liability which the Environmental Representative would have had under the Deed of Appointment of ER if the Deed of Appointment of ER had named, as Principal, the Beneficiaries and the Principal jointly and severally; and
 - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Deed of Appointment of ER.
3. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Environmental Representative is to be construed as doing so only to the extent permitted by law.
4. Beneficiaries
 - (a) The Principal may at any time give notice to the Environmental Representative that another entity is to become an additional Beneficiary under this Deed Poll. The Principal may give multiple notices under this clause. The Environmental Representative agrees that:
 - (i) if the entity identified by the Principal is:
 - (A) an entity described in paragraph (a) of the definition of Authority;
 - (B) any corporation which is a wholly-owned subsidiary (as that term is defined in section 9 of the Corporations Act 2001 (Cth)) of an entity described in paragraph (a) of the definition of Authority;
 - (C) an existing or potential Financier;
 - (D) an existing or potential Equity Investor;
 - (E) an entity to whom the D&C Deed has been or will be assigned or novated; or
 - (F) any counterparty to a transaction document where that transaction is contemplated by clause 4.4 or 22.5 of the D&C Deed,on and from the date of the Principal's notice, that entity will be a Beneficiary under this Deed Poll; or
 - (ii) if the entity identified by the Principal is not an entity described in clause 5(a)(i) of this Deed Poll, that entity will become a Beneficiary under this Deed Poll with the written consent of the Environmental Representative (such consent not to be unreasonably withheld).
 - (b) If for any reason a Beneficiary is unable to enforce against the Environmental Representative its promises under this Deed Poll, the Environmental Representative agrees that the Principal may do so on behalf of any and all Beneficiaries.
5. The Beneficiaries may assign or charge the benefits and rights accrued under this Deed Poll.
6. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.

7. The Environmental Representative hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiaries.
9. Where terms used in this Deed Poll are defined in the D&C Deed, those terms have the meaning given to them in the D&C Deed.

EXECUTED AS A DEED POLL.

Executed by [*insert Environmental Representative's name*]

ABN [*insert Environmental Representative's ABN*]

By

in the presence of:

Signature of Director

Name of Director in Full

Signature of Secretary/other Director

Name of Secretary/other Director in full

SCHEDULE 31A

Senior Project Group

(clause 8.5)

1. CONSTITUTION

- (a) The Senior Project Group will consist of:
 - (i) prior to the Date of Completion:
 - (A) a person appointed under:
 - (aa) clause 8.1 as the representative of RMS; and
 - (bb) clause 8.3 as the representative of the Project Company;
 - (B) 2 persons from each party holding positions more senior to the persons referred to in paragraph 1(a)(i)A; and
 - (C) such other members as the parties may from time to time agree; and
 - (ii) after the Date of Completion:
 - (A) a person appointed under:
 - (aa) clause 8.1 as the representative of RMS; and
 - (bb) clause 8.3 as the representative of the Project Company; and
 - (B) such other members as the parties may from time to time agree.
- (b) The persons referred to in paragraph 1(a) may appoint delegates to attend Senior Project Group meetings in their absence and to otherwise discharge their responsibilities under clause 8.5 of this deed and this Schedule 31A.

2. OBJECTIVES

The objectives of the Senior Project Group will be to monitor and review the progress of the Project, including to:

- (a) assist in the resolution of any special matters referred to the Senior Project Group by a party, including issues arising in respect of the Third Party Agreements;
- (b) monitor the progress of the Project Company's Activities; and
- (c) review all progress reports provided in accordance with the Project Company Documentation Schedule.

3. MEETINGS

- (a) The Senior Project Group will meet:
 - (i) monthly prior to the Date of Completion; and

- (ii) at six monthly intervals between the Date of Completion and the second anniversary of the Date of Completion; and
 - (iii) at such other times as are agreed between the parties between the second anniversary of the Date of Completion and the Expiry Date.
- (b) RMS will convene and chair meetings of the Senior Project Group and will take the minutes of all meetings and distribute the minutes to members of the Senior Project Group.
- (c) RMS:
 - (i) has the right to have representatives of any Authority attend any meeting of the Senior Project Group as observers; and
 - (ii) may request the Project Company to procure the attendance of representatives of the Operator, Subcontractors or any subcontractor, supplier or consultant of them at any meeting of the Senior Project Group and the Project Company must comply with any such request.
- (d) The Project Company has the right to have a representative of the Subcontractors and the Operator attend any meeting of the Senior Project Group as an observer.

PART C
ADMINISTRATIVE

SCHEDULE 32

Project Plans

(Clause 9.5)

1. PROJECT PLANS

- (a) Each Project Plan must:
 - (i) where an initial plan exists for the relevant Project Plan and is contained in Appendices J04 to J12 of the SPR, be based upon that initial plan;
 - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this deed, including this Schedule 32; and
 - (iii) contain any relevant contents required under this deed, including as specified in Appendix J02 of the SPR.
- (b) Each Project Plan must be initially submitted to the Independent Certifier and RMS's Representative within any relevant time period specified in this deed (including as specified in Appendix J02 of the SPR).

2. REVIEW OF PROJECT PLANS

- (a) RMS's Representative may:
 - (i) review any Project Plan submitted under this Schedule 32; and
 - (ii) if the Project Plan submitted does not comply with this deed, notify the Project Company of that within 15 Business Days of the initial submission of the Project Plan.
- (b) If the Project Company receives a notice under section 2(a)(ii) of this Schedule 32, the Project Company must promptly submit an amended Project Plan, or relevant part or component of it, to the Independent Certifier and RMS's Representative.
- (c) RMS's Representative owes no duty to the Project Company to review any Project Plan submitted by the Project Company for errors, omissions or compliance with this deed.

3. PURPOSE OF PROJECT PLANS

The Project Company acknowledges and agrees that:

- (a) an intended purpose of each Project Plan is for the Project Company to provide a detailed description of how the Project Company intends to carry out the Project Company's Activities in accordance with the requirements of this deed with respect to the subject matter of each Project Plan; and
- (b) the Project Plans will require ongoing development, amendment and updating throughout the duration of the Project Company's Activities to take into account:
 - (i) Changes;
 - (ii) changes in Law;

- (iii) the commencement of new phases or stages of design and construction as shown in the Overall D&C Program and the Subsidiary D&C Programs;
- (iv) those events or circumstances expressly identified for each Project Plan including as specified in Appendix J02 of the SPR; and
- (v) any other events or circumstances which occur or come into existence and which have, or may reasonably be expected to have, a material effect on the manner in which the Project Company carries out the Project Company's Activities.

4. **WARRANTIES AND UNDERTAKINGS**

The Project Company:

- (a) warrants that each Project Plan will be fit for its intended purpose and that compliance by it with the Project Plans will enable it to fulfil its obligations under this deed;
- (b) must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of RMS's Representative (which must not be unreasonably withheld); and
- (c) must continue to develop and promptly amend or update the Project Plans:
 - (i) to take into account:
 - (A) the circumstances and events referred to in section 3(b) as those circumstances and events occur or come into existence; and
 - (B) any breach or potential breach of the warranties referred to in section 4(a); and
 - (ii) as otherwise specified in the SWTC, including Appendix J01 of the SPR,and promptly submit each further Project Plan to the Independent Certifier and RMS's Representative as it is further developed, amended or updated.

5. **RMS DIRECTION**

If RMS's Representative believes that:

- (a) any Project Plan does not comply with the requirements of this deed; or
- (b) the Project Company has not further developed, updated or amended any Project Plan in accordance with the requirements of section 3(b),

RMS's Representative may by written notice direct the Project Company to further develop, update or amend the Project Plan so that the Project Plan will comply with the requirements of this deed, specifying:

- (c) the reasons why such development, updating or amending is required; and
- (d) the time within which such development, updating or amending must occur,

and the Project Company must:

- (e) further develop, update or amend the Project Plan as directed by RMS's Representative and so that it complies with the requirements of this deed; and

- (f) submit the further developed, updated or amended Project Plan to the Independent Certifier and RMS's Representative within the time specified in section 5(d).

SCHEDULE 32A

Reporting Requirements

(Clause 20)

The Project Company must provide a Monthly Operational Management Report which:

- (a) is in a format;
 - (i) consistent with the monthly report provided by the Project Company to its board of directors; and
 - (ii) otherwise acceptable to RMS, acting reasonably; and
- (b) includes details of the Project Company's and its Related Parties':
 - (i) compliance with its obligations under WHS Legislation, the Project WHS Management Plan and clauses 9.7 to 9.9 (inclusive), including a summary of safety statistics meetings, work health and safety issues, safety processes, initiatives and training;
 - (ii) operations and traffic management, including traffic data and performance, significant incidents and operational issues and maintenance lane closures (other than information which is not publicly available);
 - (iii) maintenance activities, broken down into the key areas of work, including toll equipment, mechanical, electrical, IT systems, tunnel fire systems, civil and building, graffiti management and landscaping;
 - (iv) maintenance management activities, including details of any Subcontracts entered into in respect of maintenance activities, improvements, expansions, shutdown works and risk management;
 - (v) training activities;
 - (vi) quality, environment and community issues, including environmental monitoring, incidents of hazardous spills and queries or complaints from members of the community;
 - (vii) traffic volumes for the month to which the Monthly Operational Management Report relates, and historical traffic volumes for the 12 months preceding that month;
 - (viii) issues relating to the availability and reliability of the Motorway; and
 - (ix) any emerging issues, including technical and commercial issues.

SCHEDULE 33

Quality Management

(Clause 12.1)

1. QUALITY MANAGEMENT, VERIFICATION AND CERTIFICATION

- (a) RMS and the Project Company acknowledge that the design and construct project delivery method chosen for the Project Works and the Temporary Works:
 - (i) requires the Project Company to assume responsibility for all aspects of quality for the Project Company's Activities and for the durability of the Project Works and the Temporary Works;
 - (ii) allows the Independent Certifier to observe, monitor, audit and test all aspects of quality in the Project Company's Activities and the durability of the Project Works and the Temporary Works to certify compliance with the requirements of this deed;
 - (iii) requires the Independent Certifier by reviewing and assessing quality in the Project Company's Activities and the durability of the Project Works, the Temporary Works and the Motorway, to certify the Project Company's compliance with the requirements of this deed; and
 - (iv) allows RMS's Representative to monitor compliance of the Project Company's Activities with the requirements of this deed.
- (b) The Project Company must ensure a Quality Manager is engaged who must:
 - (i) independently certify the effectiveness and integrity of the Project Company's quality system in achieving conformance with the requirements of this deed;
 - (ii) report to RMS's Representative and the Independent Certifier on quality issues in accordance with the requirements of this deed; and
 - (iii) have the requisite experience and ability to carry out the functions described in sections 1(b)(i) and (ii).
- (c) The Project Company must provide to RMS's Representative a certificate executed by the Quality Manager:
 - (i) in the form of Appendix A, within 3 months after the date of this deed;
 - (ii) in the form of Appendix B, every 3 months from the date of this deed until the Date of Completion;
 - (iii) in the form of Appendix C, as a condition precedent to Completion; and
 - (iv) in the form of Appendix D, upon the expiry of the last Defects Correction Period.
- (d) The Project Company must provide to RMS's Representative a certificate executed by the Independent Certifier:
 - (i) in the form of Appendix E, within 3 months after the date of this deed;
 - (ii) in the form of Appendix F, every 3 months from the date of this deed until the Date of Completion; and

- (iii) in the form of Appendix G, upon the expiry of the last Defects Correction Period.
- (e) The Independent Certifier must audit and review each revision of the Quality Plan within 10 Business Days after submission of that plan to RMS's Representative.
- (f) The Project Company must provide to RMS's Representative a certificate executed by the Project Company's Environmental Manager in the form of Appendix H every 3 months from the date of this deed until the Date of Completion.

2. **HOLD POINTS**

The Project Company must comply with the Hold Point procedures required by this deed, including as inserted in Project Plans by the Independent Certifier pursuant to clause 12.3(d)(iii).

3. **PROJECT QUALITY NON-CONFORMANCE**

- (a) The Project Company must comply with the procedure for non-conformances set out in Appendix J01 of the SPR and the Quality Plan. Further to the provisions of clause 8.3(b) of AS/NZS ISO 9001-2008, the use, release or acceptance of nonconforming work can only be given by RMS's Representative, in its absolute discretion and without being under any obligation to do so.
- (b) Corrective actions implemented under the Project Company's quality system must comply with the requirements of this deed including the SWTC.
- (c) The Project Company must promptly issue all documents relating to quality non-conformances to RMS's Representative.

4. **MONITORING AND AUDITS**

The Project Company must:

- (a) have its compliance with the Project Plans audited at intervals not exceeding 6 months during the Project Works and its compliance with the Project Plans audited at intervals not exceeding 12 months during the Term at its cost by an independent auditor who is acceptable to RMS;
- (b) permit representatives of RMS and the Independent Certifier to be present during such audits; and
- (c) deliver 2 copies of each audit report to RMS and the Independent Certifier within 5 Business Days of its completion.

5. **TESTING**

The Project Company must carry out all tests required:

- (a) by this deed; or
- (b) otherwise directed by RMS's Representative.

The costs of a test which is directed by RMS's Representative and which is not otherwise required by this deed will be borne by RMS unless the test detects a Defect or is upon a Defect.

Appendix A

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [**Quality Manager**]

In accordance with the terms of section 1(c)(i) of Schedule 33 to the deed between RMS and [**insert name of Project Company**] (ABN []) (**Project Company**) with respect to the Project, I hereby certify that the Project Company's Quality Management System under clause 12.1 and Schedule 33 of the deed is in accordance with RMS's General Specification Q6 and AS/NZS ISO 9001 Quality management systems - Requirements.

.....

Signed by

[**Quality Manager**]

Appendix B

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [**Quality Manager**]

In accordance with the terms of section 1(c)(ii) of Schedule 33 of the deed between RMS and [**insert name of Project Company**] (ABN []) (**Project Company**) dated [] with respect to the Project, I hereby certify that between the following dates [**Insert dates of preceding 3 month period**]:

- (a) the Project Company's quality system under clause 12.1 and Schedule 33 of the deed was in accordance with AS/NZS ISO 9001 - 2008 Quality management systems - Requirements;
- (b) any Subcontractors' quality systems which form a part of the Project Company's quality system were in accordance with AS/NZS ISO 9001 - 2008;
- (c) the Project Company complied with and satisfied the requirements of RMS's General Specification Q6;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Project Company was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the RMS's Representative and the Independent Certifier in accordance with the deed.

.....

Signed by

[**Quality Manager**]

Appendix C

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [**Quality Manager**]

In accordance with the terms of section 1(c)(iii) of Schedule 33 of the deed between RMS and [**insert name of Project Company**] (ABN []) (**Project Company**) dated [] with respect to the Project, I hereby certify in relation to the Project Works that:

- (a) the Project Company has complied with and satisfied the requirements of RMS's General Specification Q6;
- (b) the Project Company has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 13.3 of the deed, subject to minor Defects as referred to in section 1 of Schedule 37;
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and RMS's Representative in accordance with the deed.

.....

Signed by

[**Quality Manager**]

Appendix D

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [**Quality Manager**]

In accordance with the terms of section 1(c)(iv) of Schedule 33 of the deed between RMS and [**insert name of Project Company**] (ABN []) (**Project Company**) dated [] with respect to the Project, I hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) all design, construction, inspection, repairs and monitoring by the Project Company has been undertaken in accordance with this deed; and
- (c) all documentation has been recorded and submitted to the Independent Certifier and RMS's Representative in accordance with the deed.

.....

Signed by

[**Quality Manager**]

Appendix E

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [*insert name of Independent Certifier*] (ABN [])

In accordance with the terms of section 1(d)(i) of Schedule 33 of the deed between RMS and [*insert name of Project Company*] (ABN []) (**Project Company**) dated [] with respect to the Project, we hereby certify that the Project Company's quality system under clause 12.1 and Schedule 33 of the deed is in accordance with RMS's General Specification Q6 and AS/NZS ISO 9001 Quality management systems - Requirements.

.....

Signed by and on behalf of

[*insert name of Independent Certifier*]

Appendix F

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [*insert name of Independent Certifier*] (ABN [])

In accordance with the terms of section 1(d)(ii) of Schedule 33 of the deed between RMS and [*insert name of Project Company*] (ABN []) (**Project Company**) dated [] with respect to the Project, we hereby certify that between the following dates [Insert dates of preceding 3 month period]:

- (a) the Project Company's quality system under clause 12.1 and Schedule 33 of the deed is in accordance with AS/NZS ISO 9001 Quality management systems - Requirements;
- (b) any Subcontractors' quality systems which form a part of the Project Company's quality system are in accordance with AS/NZS ISO 9001;
- (c) the Project Company has complied with and satisfied the requirements of RMS's General Specification Q6;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Project Company has been undertaken in accordance with the deed, including the SWTC; and
- (f) that documentation has been recorded and submitted to RMS's Representative in accordance with the deed.

.....

Signed by and on behalf of

[*insert name of Independent Certifier*] (ABN [])

Appendix G

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [*insert name of Independent Certifier*] (ABN [])

In accordance with the terms of section 1(d)(iii) of Schedule 33 of the deed between RMS and [*insert name of Project Company*] (ABN []) (**Project Company**) dated [] with respect to the Project, we hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) all design, construction, inspection, repairs and monitoring by the Project Company has been undertaken in accordance with this deed; and
- (c) all documentation has been recorded and submitted to RMS's Representative in accordance with the deed.

.....

Signed by and on behalf of

[*insert name of Independent Certifier*]

Appendix H

WestConnex M4 Widening Project (Project)

(Clause 12.1 and Schedule 33)

To: RMS's Representative

From: [**Environmental Manager**] (ABN [])

In accordance with the terms of section 1(f) of Schedule 33 of the deed between RMS and [**insert name of Project Company**] (ABN []) (**Project Company**) dated [] with respect to the Project, I hereby certify that between the following dates [**Insert dates of preceding 3 month period**]:

- (a) the Project Company's Environmental Management System under section 10.6 of the SPR was in accordance with AS/NZS ISO 14001;
- (b) any Subcontractors' Environmental Management Systems which form a part of the Project Company's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Project Company complied with and satisfied the requirements of RMS included in the SWTC and in the Environmental Documents;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Project Company was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Independent Certifier and the RMS's Representative in accordance with the deed.

.....

Signed by

[**Environmental Manager**]

SCHEDULE 34

Change Procedure

(Clause 14)

1. CHANGES PROPOSED BY RMS

1.1 Change Proposal

- (a) RMS may at any time issue to the Project Company a notice titled "Change Proposal" setting out the details of a proposed Change which RMS is considering, including RMS's proposed requirements for the implementation of the proposed Change.
- (b) The Project Company acknowledges that RMS may issue a Change Proposal that decreases, omits, deletes or removes work from the scope of the:
 - (i) Project Works; or
 - (ii) O&M Work,

(Excluded Works) and may carry out that Excluded Work itself or may engage another person to carry out the Excluded Work on its behalf.
- (c) Except as directed in a Change Order or in respect of a Change contemplated in clauses 7.4(a), 11.11(e), 13.4(a)(ii)B, 25.2, 26.12 or 39.1(c)(i) the Project Company will not be entitled to:
 - (i) make any Claim against RMS arising out of, or in any way in connection with, a Change proposed by RMS; or
 - (ii) vary or change the Project Works, the Temporary Works or the O&M Work.

1.2 Project Company Change Notice

As soon as practicable and in any event within 30 Business Days after receipt of a "Change Proposal" from RMS under section 1.1(a), the Project Company must provide RMS with a notice (**Project Company Change Notice**) setting out detailed particulars of:

- (a) estimated costs comprised of:
 - (i) not used; or
 - (ii) in the event of any Change other than a Change described in section 1.2(a)(i), the Project Company's estimate of the Change Costs it will incur, or the Change Savings it will derive, by carrying out the proposed Change, substantiated (to the full extent possible) with a detailed breakdown;
- (b) the basis (if any) on which the Project Company would be prepared to fund the whole or part of the Change and the cost difference if the Project Company, rather than RMS, funds the Change;
- (c) the effect (if any) the Project Company anticipates the Change will have on the Overall D&C Program, the Subsidiary D&C Programs and the Project Company achieving Completion by the Date for Completion;

- (d) if the proposed Change will delay the Project Company in achieving Completion, state the number of days for which a Qualifying Delay is claimed together with the basis of calculating that period;
- (e) if the Change is proposed to be carried out after the Date of Completion, the time within which the proposed Change will be implemented;
- (f) the effect the Project Company anticipates the Change will have on the performance of the Project Company's Activities, the Project Works, the Temporary Works and the O&M Work (including specific details of the work that will be affected and how and to what extent it will be affected);
- (g) the effect the Project Company anticipates the Change will have on the functionality or integrity of the elements of the Project Company's Activities, the Project Works, the Temporary Works and the O&M Work and the quality or performance standards required by this deed, including specific details of:
 - (i) the elements of the Project Company's Activities, the Project Works, the Temporary Works and the O&M Work that will be affected;
 - (ii) how and to what extent the functionality or integrity of those elements will be affected;
 - (iii) the quality or performance standards affected and how and to what extent they will be affected;
 - (iv) any adverse effect which the Change will have on the ability of the Project Company to satisfy its obligations under this deed (including any warranties the Project Company is required to give under this deed); and
 - (v) any adverse effect which the Change will have on the Project Company's ability to achieve Final Handover in accordance with the requirements of this deed;
- (h) any other information concerning the proposed Change which RMS's Representative reasonably requires, including:
 - (i) sufficient detail to allow RMS to reconsider the need for the Change; and
 - (ii) whether any land in addition to the Construction Site is required to implement the Change; and
- (i) the period within which the Project Company Change Notice remains valid for acceptance by RMS, which must be a reasonable period of not less than 20 Business Days after the date of the Project Company Change Notice (**Validity Period**).

RMS will not be obliged to proceed with any Change proposed in a "Change Proposal".

1.3 **Project Company Change Notice Requirements**

- (a) The Project Company must ensure that the Project Company Change Notice is prepared:
 - (i) so as to avoid, as far as practicable, the need for a new Approval or a Change to an existing Approval for the implementation of the Change;
 - (ii) on an open book basis with respect to:
 - (A) the Project Company's internal costs; and

- (B) the costs of the Contractor and Operator (and to this end the Project Company must allow RMS review and audit rights sufficient to verify that the Project Company Change Notice has been prepared in accordance with the requirements of this deed (including the definitions of "Change Costs" and "Change Savings"));
 - (iii) assuming the Project Company is a willing, efficient and competent provider of the Change in an efficient and competitive market;
 - (iv) in a manner which is consistent with the reasonable requirements of RMS for the implementation of the Change;
 - (v) having regard to minimising:
 - (A) the disruption to road users;
 - (B) delay in achieving Completion, to the extent that it has not yet been achieved; and
 - (C) any adverse safety impacts of the Change;
 - (vi) in a manner which ensures that all appropriate insurances relevant to the Change are taken out and maintained consistently with those that would have been required by RMS if the Change had been included in the Project Works or O&M Work as applicable, as at the date of this deed (unless RMS otherwise determines); and
 - (vii) in a manner so that there is no double counting.
- (b) If RMS issues a Change Proposal after the Date of Completion:
- (i) RMS may require the Project Company to conduct a tender process for all or part of the works which would be required to effect the Change;
 - (ii) the tender process must be conducted consistently with the NSW Government's procurement policies in their form as at the date of RMS's Change Proposal (subject to necessary changes agreed between RMS and the Project Company (acting reasonably) to reflect that the Project Company is a private company rather than an Authority); and
 - (iii) the Project Company must:
 - (A) have regard to the outcome of the tender process (including the tender costs) in the Project Company Change Notice; or
 - (B) if the Project Company has issued the Project Company Change Notice, amend the Project Company Change Notice to have regard to the outcome of the tender process (including the tender costs) and re-issue the Project Company Change Notice to RMS.

1.4 Election by RMS

Within the Validity Period, RMS must either:

- (a) advise the Project Company that RMS:
 - (i) requires further information and/or clarification with respect to the Project Company Change Notice; and/or

- (ii) has altered the scope of the Change Proposal;
- (b) accept the Project Company Change Notice and, if the Project Company Change Notice contains any options, nominate which option or options RMS accepts;
- (c) reject the Project Company Change Notice; or
- (d) except in the case of a Change contemplated in clauses 7.4(a), 13.4(a)(ii)B, 25.2, 26.12 or 39.1(c)(i), withdraw the proposed Change,

by notice in writing to the Project Company (which in the case of section 1.4(b) must be titled "Change Order").

1.5 Further information or altered scope

If RMS issues a notice in accordance with section 1.4(a), the Project Company must provide RMS with an updated Project Company Change Notice addressing the issues raised by RMS within 30 Business Days after receipt of RMS's notice.

1.6 Acceptance of the Project Company Change Notice

If RMS accepts the Project Company Change Notice in accordance with section 1.4(b):

- (a) the Project Company must proceed to implement (or procure the implementation of) the Change on the basis of the Project Company Change Notice (as accepted by RMS); and
- (b) the Project Company's obligations under this deed will be varied to the extent specified in the Project Company Change Notice (as accepted by RMS).

1.7 Rejection of the Project Company Change Notice

- (a) If RMS rejects the Project Company Change Notice in accordance with section 1.4(c), RMS may require that:
 - (i) within a period of 5 Business Days after the date of RMS's notice under section 1.4(c), the parties commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Project Company Change Notice which are in dispute; and/or
 - (ii) if the Date of Completion has occurred, the Project Company conduct a tender process (if it has not already done so) in accordance with paragraph 2.3(b).
- (b) If the parties reach agreement on the disputed matters in the Project Company Change Notice and RMS directs the Project Company to proceed with the Change (by notice titled "Change Order"):
 - (i) the Project Company must proceed to implement (or procure the implementation of) the Change on the basis of the Project Company Change Notice (as varied by the parties' agreement, as recorded in the "Change Order", on the matters in the Project Company Change Notice which were in dispute); and
 - (ii) the Project Company's obligations under this deed will be varied to the extent specified in the Project Company Change Notice (as varied by the parties' agreement, as recorded in the "Change Order", on the matters in the Project Company Change Notice which were in dispute).

(c) If the parties are unable to reach agreement under section 1.7(a) within 10 Business Days after the later of:

- (i) the commencement of the consultation; or
- (ii) the outcome of the tender process is advised to RMS (if applicable),

RMS may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure. In resolving the dispute under the Dispute Resolution Procedure, the parties will, and will direct the expert or arbitrator to:

- (iii) have regard to the principles set out in section 1.3, to the extent relevant;
- (iv) assume that funding for the Change will be provided by RMS, unless the parties otherwise agree; and
- (v) determine all matters required to enable the Change to be implemented.

(d) If RMS refers the matter for dispute resolution, RMS may also direct the Project Company to proceed to implement (or procure the implementation of) the Change by a notice titled "Change Order" whether or not the matters in dispute have been agreed or determined in accordance with the Dispute Resolution Procedure. If RMS gives such a notice:

- (i) the disputed matters will, until RMS and the Project Company otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure, be reasonably determined by RMS. In making its determination, RMS will:
 - (A) have regard to the principles set out in section 1.3, to the extent relevant;
 - (B) assume that funding for the Change will be provided by RMS, unless the parties otherwise agree; and
 - (C) determine all disputed matters required to enable the Change to be implemented, including the changes required to any Project Documents;
- (ii) the Project Company must proceed to implement (or procure the implementation of) the Change on the basis determined by RMS, notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure; and
- (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

(e) Following resolution of the dispute referred for dispute resolution under section 1.7(c), RMS may (unless it has already exercised its right under section 1.7(d)) elect to do either of the following:

- (i) require the Project Company to proceed to implement (or procure the implementation of) the Change in accordance with the Project Company Change Notice as varied by the resolution; or
- (ii) except in the case of a Change contemplated in clause 7.4(a), 13.4(a)(ii)B, 25.2, 26.12 or 39.1(c)(i), withdraw the proposed Change,

by notice to the Project Company (which in the case of section 1.7(e)(i) must be titled "Change Order").

- (f) If RMS gives the Project Company a Change Order pursuant to section 1.7(e)(i):
 - (i) the Project Company must proceed to implement (or procure the implementation of) the Change in accordance with the Project Company Change Notice (as varied by the resolution, once made); and
 - (ii) the Project Company's obligations under this deed will be varied to the extent specified in the Project Company Change Notice (as varied by the resolution, once made).

1.8 **Withdrawal of the proposed Change**

If RMS withdraws the Change Proposal in accordance with section 1.4(d) or section 1.7(e)(ii), the Project Company is not obliged or permitted to carry out the Change Proposal.

1.9 **RMS may instruct the Project Company to proceed**

- (a) Whether or not:
 - (i) RMS has issued a Change Proposal under section 1.1(a); or
 - (ii) the Project Company has issued a Project Company Change Notice in response to a Change Proposal under section 1.2,

RMS may at any time instruct the Project Company to implement a Change by issuing a notice titled "Change Order". In these circumstances the matters set out in sections 1.2(a) and 1.2(c) will, until RMS and the Project Company otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure, be reasonably determined by RMS.

- (b) In making its determination, RMS will:
 - (i) have regard to the principles set out in section 1.3, to the extent relevant;
 - (ii) assume that funding for the Change will be provided by RMS, unless the parties otherwise agree; and
 - (iii) determine all matters required to enable the Change to be implemented.
- (c) If the Project Company disagrees with a matter determined by RMS under this section 1.9:
 - (i) the Project Company may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure;
 - (ii) the Project Company must proceed to implement (or procure the implementation of) the Change on the basis determined by RMS notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure; and
 - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

2. **CHANGES PROPOSED BY THE PROJECT COMPANY**

2.1 **No Change without consent**

The Project Company must not, and must procure that its Related Parties do not, undertake any Change without RMS's prior consent.

2.2 Project Company proposal

- (a) The Project Company may propose a Change to RMS by giving RMS a written notice with details of:
 - (i) the proposed Change;
 - (ii) the reason for the proposed Change;
 - (iii) the Project Company's estimate of the Change Costs it will incur, or the Change Savings it will derive, by carrying out the proposed Change, substantiated (to the full extent possible) with a detailed breakdown;
 - (iv) the effect of the proposed Change on the Project Company's Activities;
 - (v) the time within which the proposed Change will be implemented and the manner in which the Project Company proposes to implement (or procure the implementation of) the Change;
 - (vi) the effect of the proposed Change on the Overall D&C Program, the Subsidiary D&C Programs and the Date for Completion; and
 - (vii) the effect the Project Company anticipates the Change will have on the functionality or integrity of the elements of the Project Company's Activities, the Project Works, the Temporary Works and the O&M Work and the quality or performance standards required by this deed, including specific details of:
 - (A) the elements of the Project Company's Activities, the Project Works, the Temporary Works and the O&M Work that will be affected;
 - (B) how and to what extent the functionality or integrity of those elements will be affected;
 - (C) the quality or performance standards affected and how and to what extent they will be affected;
 - (D) any adverse effect which the Change will have on the ability of the Project Company to satisfy its obligations under this deed (including any warranties the Project Company is required to give under this deed); and
 - (E) any adverse effect which the Change will have on the Project Company's ability to achieve Final Handover in accordance with the requirements of this deed.
- (b) If the Project Company proposes a Change under this section 2.2, the Project Company will, if required by RMS, give to RMS:
 - (i) a written statement from the Project Company stating that the proposed Change:
 - (A) will not adversely affect the functional integrity of any of the elements of the Project Company's Activities and the performance standards required by this deed; and
 - (B) will not adversely affect the quality standards, warranties and other obligations required under this deed;
 - (ii) a written statement confirming that the Project Company has appropriate financial and technical resources to undertake the proposed Change; and

- (iii) any other information and supporting documentation RMS's Representative reasonably requires.

2.3 **RMS may approve or reject**

- (a) Subject to section 2.3(b), RMS:
 - (i) (in its absolute discretion) may, by notice in writing, approve (with or without conditions) or reject any Change the Project Company proposes; and
 - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the Project Company.
- (b) If, prior to the Date of Completion:
 - (i) an event or circumstance occurs which prevents the Project Company from achieving Completion, other than an event or circumstance arising as a consequence of:
 - (A) the Project Company's failure to comply with its obligations under a Project Document;
 - (B) a breach by the Project Company of its warranties under a Project Document;
 - (C) a wrongful act or omission of the Project Company or its Related Parties; or
 - (D) a failure by the Project Company or any of its Related Parties to comply with any Law; and
 - (ii) the Project Company proposes a Change to the SWTC pursuant to section 2.2 to enable the Project Company to complete the Project Works at the Project Company's cost and risk,

then RMS must act reasonably in considering the proposed Change.
- (c) Prior to giving any notice under section 2.3(d), RMS's Representative may seek to negotiate with the Project Company over the amount of the Change Costs or Change Savings arising from the proposed Change. If the parties agree the amount of the Change Costs or Change Savings arising from the proposed Change, the Project Company's notice will be deemed to be amended by the inclusion of this different amount of Change Costs or Change Savings in place of the original Change Costs or Change Savings notified by the Project Company.
- (d) If RMS approves a Change proposed by the Project Company:
 - (i) RMS will issue a written notice entitled "Change Order";
 - (ii) the Project Company must thereafter implement (or procure the implementation of) the Change on the basis approved by RMS; and
 - (iii) the Project Company's obligations under this deed will be varied to the extent specified in the Project Company's notice issued under section 2.2(a) and approved by RMS.

2.4 **Project Company's risk**

Unless otherwise agreed in writing by RMS, the Project Company will:

- (a) bear all risk and costs:
 - (i) associated with proposing a Change and providing the details under section 2.2(a) and complying with section 2.2(b);
 - (ii) reasonably incurred by RMS (or RMS's Representative) in assessing the proposed Change (such costs to be a debt due and payable from the Project Company to RMS); and
 - (iii) associated with implementing (or procuring the implementation of) the proposed Change, including obtaining and maintaining any Approvals necessary to implement the Change; and
- (b) not be entitled to make any Claim against RMS arising out of or in connection with the Change proposed by the Project Company and approved by RMS under section 2.3.

3. **CHANGES AFTER THE DATE OF COMPLETION**

If the Project Company implements a Change under this Schedule 34 after the Date of Completion, the Project Company must:

- (a) in the case of a Change proposed by RMS, at RMS's cost; or
- (b) in the case of a Change proposed by the Project Company, at the Project Company's cost,

provide RMS with a certificate from an independent certifier satisfactory to RMS (acting reasonably) certifying that the Change has been carried out in accordance with the Change Order and this deed.

SCHEDULE 35

Pre-Agreed Changes

(Clause 14.2)

The following table sets out the Pre-Agreed Changes that may be directed by RMS's Representative pursuant to clause 14.2. RMS's Representative must direct the relevant Pre-Agreed Change by the "Exercise Date" identified in the table below.

The amounts in the column titled "Change Cost (excluding GST)" include all overheads and profit margins.

Item	Pre Agreed Change	Description of Pre Agreed Change	Change Cost	Exercise Date
1	Hill Road eastbound on ramp	As described in the SWTC.		At Financial Close.

SCHEDULE 36

Qualifying Delay

(Clause 16.10 and 16.11)

1. CLAIM FOR QUALIFYING DELAY

To claim a Qualifying Delay, the Project Company must:

- (a) within 15 Business Days of the earlier when the Project Company becomes aware or should reasonably have become aware of an Excusable Cause of Delay causing the delay, submit a written claim to RMS's Representative for a Qualifying Delay which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay, including whether the Project Company considers that the Excusable Cause of Delay is a Compensation Event;
 - (ii) where the Project Company considers that the Excusable Cause of Delay is a Compensation Event, details of the likely reasonable costs referred to in clause 16.11(c) and how those costs have been calculated; and
 - (iii) states the number of days for which the Qualifying Delay is claimed together with the basis of calculating that period, including evidence that:
 - (A) by reference to the most recent, updated Overall D&C Program provided to the Independent Certifier pursuant to clause 16.3(c) of this deed (which may further be updated to take into account changes to the program for the Project Company's Activities and delays which may have occurred since the provision of the last Overall D&C Program provided to the Independent Certifier), the delay involves an activity which is critical to the maintenance of progress in the execution of the Project Company's Activities and which will delay it in achieving Completion in the manner described in section 2(a)(iii); and
 - (B) the conditions precedent to any Qualifying Delay in section 2(a) have been satisfied;
- (b) if the effects of the delay continue beyond the 10 Business Day period referred to in section 1(a) and the Project Company wishes to claim a Qualifying Delay in respect of the further delay, submit a further written claim to RMS's Representative:
 - (i) every 12 Business Days after the first written claim until 3 Business Days after the end of the effects of the delay; and
 - (ii) containing the information required by section 1(a).

RMS's Representative may, within 10 Business Days after receiving the Project Company's claim or further claim for a Qualifying Delay, by written notice to the Project Company, request additional information in relation to the claim or further claim. The Project Company must, within 10 Business Days of receiving such request, provide RMS's Representative with the information requested.

2. CONDITION PRECEDENT TO QUALIFYING DELAY

- (a) It is a condition precedent to the Project Company's entitlement to a Qualifying Delay that:

- (i) the Project Company must give the notices and claims required by section 1 as required by that section;
 - (ii) the cause of the delay was beyond the reasonable control of the Project Company and its Related Parties; and
 - (iii) the Project Company is actually, or will be, delayed in achieving Completion by the Excusable Cause of Delay.
- (b) If the conditions precedent in section 2(a) are not satisfied:
- (i) RMS will not be liable upon any Claim by the Project Company or its Related Parties; and
 - (ii) the Project Company and its Related Parties will be absolutely barred from making any Claim against RMS,
- arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

3. GRANTING A QUALIFYING DELAY

- (a) Subject to section 3(b), if the conditions precedent in section 2(a) have been satisfied, RMS's Representative must grant a Qualifying Delay for:
- (i) if the cause of delay is a Change, any period stated by RMS's Representative in a Change Order; or
 - (ii) otherwise, a reasonable period, such period to be as stated by RMS's Representative and notified to RMS and the Project Company within 15 Business Days after the latest of the:
 - (A) Project Company's last claim under section 1(b); or
 - (B) provision by the Project Company of any additional information requested by RMS's Representative under section 1.
- (b) The failure of RMS to grant any Qualifying Delay, or to grant a Qualifying Delay within the time prescribed by this section 3, will not prevent RMS's Representative from subsequently exercising its discretion under section 3(d).
- (c) In respect of each claim for a Qualifying Delay under section 1, the Project Company's entitlement to a Qualifying Delay will be reduced to the extent to which the Project Company or any of its Related Parties:
- (i) could have lessened or avoided the delay if they had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to Mitigate the cause of the delay or re-schedule within the Overall D&C Program the Project Company's Activities affected by the delay; or
 - (ii) caused or contributed to the delay.
- (d) RMS's Representative may in its absolute discretion for any reason and at any time, from time to time, by notice in writing to the Project Company, unilaterally grant a Qualifying Delay by any period specified in a notice to the Project Company. The power to grant a Qualifying Delay under this section 3(d):

- (i) may be exercised whether or not the Project Company has made, or is entitled to make, a claim for a Qualifying Delay or is entitled to be, or has been, granted a Qualifying Delay under this Schedule 36;
 - (ii) subject to section 3(d)(iii), may only be exercised by RMS's Representative and RMS's Representative is not required to exercise its discretion under this section 3(d) for the benefit of the Project Company;
 - (iii) without limiting clause 8.1, may be exercised or not exercised (as the case may be) by RMS's Representative in accordance with the directions of RMS; and
 - (iv) is not a Direction which can be the subject of a Dispute pursuant to the Dispute Resolution Procedure or in any way opened up or reviewed by any other person (including any arbitrator or court).
- (e) Where there are several causes of delay and at least one of those causes is not an Excusable Cause of Delay, then, to the extent the delays resulting from those causes are concurrent, the Project Company will not be entitled to a Qualifying Delay under this section 3.
- (f) The Project Company acknowledges that, except to the extent a Qualifying Delay is a Compensation Event, the Project Company will not be entitled to make, and RMS will not be liable upon, any Claim in respect of a Qualifying Delay.

SCHEDULE 37

Conditions precedent to Completion

(Clause 16)

1. The Project Works are complete in accordance with this deed except for minor Defects which:
 - (a) do not prevent the Project Works from being reasonably capable of being used for their intended purposes;
 - (b) can be corrected without prejudicing the convenient or intended use of the Project Works; and
 - (c) the Project Company has reasonable grounds for not promptly rectifying.
2. The Project Company has:
 - (a) carried out and passed all tests which:
 - (i) are required under this deed to be carried out and passed before the Project Works reach Completion;
 - (ii) must necessarily be carried out and passed before the Project Works can be used for its intended purpose; and
 - (iii) must necessarily be carried out to verify that the Project Works are in the condition this deed requires them to be in at Completion;
 - (b) obtained all Approvals that it is required to obtain under this deed before Completion of the Project Works and provided such Approvals to RMS's Representative;
 - (c) given to RMS's Representative all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Project Works which:
 - (i) are required by this deed to be given to RMS's Representative before Completion; or
 - (ii) must necessarily be handed over before the Project Works can be used for their intended purpose,

including copies of all documentation in accordance with the requirements of Appendix J03 of the SPR;
 - (d) executed a certificate in the form of Schedule 38 and provided it to RMS's Representative and the Independent Certifier;
 - (e) removed all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works from the Construction Site and Extra Land except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by RMS's Representative; and
 - (f) removed all signs erected in accordance with clause 15.5 and made good any damage caused by the removal of those signs.
3. The Quality Manager has executed a certificate in the form of Appendix C to Schedule 33 and provided it to RMS's Representative.

4. The Project Company has, in respect of any Extra Land occupied or used in connection with the Project Works:
 - (a) rehabilitated the Extra Land in accordance with the requirements of all relevant Authorities, RMS, other relevant persons and this deed; and
 - (b) provided RMS's Representative with:
 - (i) properly executed releases on terms satisfactory to RMS's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having an interest in such land; or
 - (ii) if the Project Company is unable to obtain such a release despite using its best endeavours to do so, a statement from the Project Company to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by the Project Company to the owner, occupier or other person following completion of the work on the Extra Land.
5. The Project Company has reinstated the Temporary Areas and any other land affected by or used for the purposes of the Temporary Works to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area which this deed (including the SWTC) specifies need not be reinstated (including where the Project Company is required to demolish buildings on the Temporary Area).
6. RMS has been provided with:
 - (a) all certificates required by this deed;
 - (b) a copy of all signed independent road safety audits required by section 4.6 of the SPR;
 - (c) a summary prepared by the Quality Manager pursuant to section 1(b)(ii) of Schedule 33 on all quality issues;
 - (d) all documents relating to all non-conformances pursuant to section 3(c) of Schedule 33;
 - (e) copies of all site investigation reports and property conditions surveys pursuant to section 3.4 and Appendix E02 of the SPR;
 - (f) details of the location of Utility Services pursuant to section 2.3.4 of the SPR;
 - (g) copies of Approvals from Authorities for the drainage design in the SWTC; and
 - (h) all the 'as constructed' documentation and reports required by and in accordance with Appendix J03 of the SPR.
7. RMS has been provided with:
 - (a) a copy of the O&M Manuals and the revised O&M Plan, each as prepared in accordance with this deed;
 - (b) copies of all Approvals required to open, use and operate the Project Works;
 - (c) evidence of the insurance policies required by section 2 of Schedule 43 being effected in accordance with this deed;
 - (d) notices in accordance with clause 16.13(e)(i);

- (e) a written notice of the kind referred to in clause 17.3(a)(i) from the relevant Authority for each discrete part of the Local Area Works which is required to be completed;
 - (f) a written notice of the kind referred to in clause 17.4(a)(i) from the relevant Authority for of each discrete part of the Utility Service Works which is necessary or required to be completed so that the Project Works may be opened to the public for the safe, efficient and continuous passage of motor vehicles;
 - (g) the inventory details required in accordance with Appendix 26 of the Additional Project Deed Requirements;
 - (h) a copy of "as built" drawings of the Project Works pursuant to Appendix J05 of the SPR; and
 - (i) copies of all property and land survey information that is required to be prepared pursuant to Schedule 19A and any other information that is required by RMS to enable RMS to prepare and register plans of consolidation and subdivision in respect of the Motorway Stratum and for the Motorway Stratum Lease to be prepared, executed and registered.
8. RMS has approved the Project Company's Asset Management System as required under section 9.8 of the SPR.
9. RMS has received the durability assessment reports required by the SWTC.

SCHEDULE 38

Project Company's Certificate

(Clause 16.13(d))

To: RMS's Representative / the Independent Certifier

From: [] (ABN []) (**Project Company**)

In accordance with the terms of clause 15.13(d) of the deed between []
(ABN []) (**RMS**) and [*insert name of Contractor*]
(ABN []) (**Project Company**) dated [], we hereby certify that Completion of the
Project Works has been achieved by the Contractor on [] in accordance with the terms
and conditions of the deed between RMS and the Project Company dated [] with respect
to the Project.

.....

Signed for and on behalf of
[*insert name of the Project Company*]

SCHEDULE 40

Not Used

SCHEDULE 41

Not Used

PART D
FINANCIAL

SCHEDULE 41A

Toll Calculation Schedule

(clause 21.1)

1. DEFINITIONS

The following terms where used in this Schedule 41A 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 8 of this Schedule 41A.

Base Flag Fall Toll means the toll specified in the paragraph 3.1 of this Schedule 41A as adjusted in accordance with paragraphs 4.1 and 7.1 of this Schedule 41A.

Base Rate means the rate specified in paragraph 3.2 of this Schedule 41A as adjusted in accordance with paragraphs 4.2 and 7.2 of this Schedule 41A.

Base Toll Cap means the toll cap specified in paragraph 3.3 of this Schedule 41A as adjusted in accordance with paragraphs 4.3 and 7.3 of this Schedule 41A.

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 fitout, hardware, software and office systems.

Charge Toll means, for a Vehicle Class and Quarter, the toll calculated in accordance with paragraph 7.4 of this Schedule 41A.

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

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 Cap means the theoretical cap calculated in accordance with paragraph 4.3 of this Schedule 41A.

Theoretical Flag Fall means the theoretical flag fall calculated in accordance with paragraph 4.1 of this Schedule 41A.

Theoretical Rate means the theoretical rate calculated in accordance with paragraph 4.2 of this Schedule.

Theoretical Toll means the theoretical toll calculated in accordance with paragraph 4 of this Schedule 41A.

Tollable Section means the sections of the Motorway set out in paragraph 6.1 of this Schedule 41A.

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 7 of this Schedule 41A.

2. **TOLL**

Subject to paragraphs 7.5(a), 7.5(b) and 10 of this Schedule 41A, the Project Company may levy a toll for use of the 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 Quarter.

3. **M4 WEST BASE FLAG FALL TOLL, RATE AND TOLL CAP**

3.1 **Base Flag Fall Toll**

The Base Flag Fall Toll is set at 30 June 2012 and is \$1.00, including GST.

3.2 **Base Rate**

The Base Rate is set at 30 June 2012 and is \$0.37 per kilometre, including GST.

3.3 **Base Toll Cap**

The Base Toll Cap is set at 30 June 2012 and is \$7.07, including GST.

4. **M4 WEST THEORETICAL FLAG FALL TOLL, RATE AND TOLL CAP**

4.1 **M4 West Theoretical Flag Fall Toll**

(a) The Project Company must review and re-calculate the Theoretical Flag Fall Toll for use of the Motorway once each Quarter in accordance with this paragraph 4.1 of this Schedule 41A.

(b) The Theoretical Flag Fall Toll for use of the Motorway for a Quarter must be calculated in accordance with the following formula:

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

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

Where:

Theoretical Flag Fall Toll_n = the Theoretical Flag Fall Toll for use of the Motorway for the current Quarter;

Theoretical Flag Fall Toll_{n-1} = the Theoretical Flag Fall Toll for use of the Motorway for the immediately preceding Quarter (or the Base Rate for the first calculation after 30 June 2012);

Growth Factor_n = the greater of:

CPI_{n-2}/CPI_{n-3}; and

1.01;

CPI_{n-2} = at any date, the CPI for the Quarter which is 2 Quarters prior to the current Quarter; and

CPI_{n-3} = at any date, the CPI for the Quarter which is 3 Quarters prior to the current Quarter.

4.2 **M4 West Theoretical Rate**

- (a) The Project Company must review and re-calculate the Theoretical Rate once each Quarter in accordance with this paragraph 4.2 of this Schedule 41A.
- (b) The Theoretical Rate for a Quarter must be calculated in accordance with the following formula:

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

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

Where:

$\text{Theoretical Rate}_n$ = the Theoretical Rate for the current Quarter;

$\text{Theoretical Rate}_{n-1}$ = the Theoretical Rate for the immediately preceding Quarter (or the Base Rate for the first calculation after 30 June 2012);

Growth Factor_n = the greater of:

CPI_{n-2}/CPI_{n-3} ; and

1.01;

CPI_{n-2} = at any date, the CPI for the Quarter which is 2 Quarters prior to the current Quarter; and

CPI_{n-3} = at any date, the CPI for the Quarter which is 3 Quarters prior to the current Quarter.

4.3 **M4 West Theoretical Cap**

- (a) The Project Company must review and re-calculate the Theoretical Cap for use of the Motorway once each Quarter in accordance with this paragraph 4.3 of this Schedule 41A.
- (b) The Theoretical Cap for use of the Motorway for a Quarter must be calculated in accordance with the following formula:

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

provided that Theoretical Cap_n cannot be less than $\text{Theoretical Cap}_{n-1}$

Where:

Theoretical Cap_n = the Theoretical Cap for use of the Motorway for the current Quarter;

$\text{Theoretical Cap}_{n-1}$ = the Theoretical Cap for use of the Motorway for the immediately preceding Quarter (or the Base Cap for the first calculation after 30 June 2012);

Growth Factor n = the greater of:

CPI_{n-2}/CPI_{n-3} ; and

1.01;

CPI_{n-2} = at any date, the CPI for the Quarter which is 2 Quarters prior to the current Quarter; and

CPI_{n-3} = at any date, the CPI for the Quarter which is 3 Quarters prior to the current Quarter.

5. **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 Base Rate and Base Flag Fall which will apply for the purposes of paragraph 3.2 of this Schedule 41A after the date on which the GST Rate Change becomes effective will be the Base Rate adjusted in accordance with the following formula:

$$\text{Base Rate} = Y \times [1 + X]$$

Where:

the Base Rate amount is rounded to 4 decimal places (rounding upward amounts ending in 0.0005)

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

Y = \$0.3364.

- (b) If the GST Rate Change occurs:
- (i) prior to the first calculation after 30 June 2012 under paragraph 4 of this Schedule 41A, the revised Base Rate and Base Flag Fall calculated in accordance with paragraph 5(a) will be used for that first calculation after 30 June 2014; or
 - (ii) after the first calculation after 30 June 2012 under paragraph 4 of this Schedule 41A, that first calculation must be re-calculated using the revised Base Rate and Base Flag Fall calculated in accordance with paragraph 5(a) and the series of Quarterly calculations that has taken place under paragraphs 4.1 and 4.2 of this Schedule 41A after that first calculation after 30 June 2012 (if any) must also be re-calculated, by reference to the revised first calculation and the series of relevant Growth Factors that were used for the initial series of Quarterly calculations.
- (c) 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 Base Toll Cap which will apply for the purposes of paragraph 4.2 of this Schedule 41A after the date on which the GST Rate Change becomes effective will be the Base Toll Cap adjusted in accordance with the following formula:

$$\text{Base Toll Cap} = Y \times [1 + X]$$

Where:

the Base Toll Cap amount is rounded to 4 decimal places (rounding upward amounts ending in 0.0005)

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

Y = \$6.4273.

- (d) If the GST Rate Change occurs:
- (iii) prior to the first calculation after 30 June 2012 under paragraph 4 of this Schedule 41A, the revised Base Flag Fall Toll calculated in accordance with paragraph 5(a) will be used for that first calculation after 30 June 2012; or
 - (iv) after the first calculation after 30 June 2012 under paragraph 4 of this Schedule 41A, that first calculation must be re-calculated using the revised Base Flag Fall Toll calculated in accordance with paragraph 5(a) and the series of Quarterly calculations that has taken place under paragraph 4.3 of this Schedule 41A after that first calculation after 30 June 2012 (if any) must also be re-calculated, by reference to the revised first calculation and the series of relevant Growth Factors that were used for the initial series of Quarterly calculations.

6. LENGTHS OF TOLLABLE SECTIONS

6.1 Lengths of Tollable Sections

For the purposes of this Schedule 41A, the length of each Tollable Section will be taken to be as set out in the following table:

Tollable Section	Length (km)
Church Street – James Ruse Drive	1.87
James Ruse Drive – Silverwater Road	2.58
Silverwater Road – Hill Road	1.22
Hill Road – Homebush Bay Drive	1.75
James Ruse Drive - Church Street	1.87
Silverwater Road - James Ruse Drive	2.58
Hill Road - Silverwater Road	1.22
Homebush Bay Drive - Hill Road	1.75

6.2 Length of new Tollable Sections created by additional connections to Motorway

- (a) RMS and Project Company acknowledge that:
- (v) a Tollable Section set out in clause 6.1 of this Schedule 41A may be divided into two or more new Tollable Sections if a road is connected to the Motorway at a location other than those locations identified in clause 6.1 of this Schedule 41A as the limits of a Tollable Section; and

- (vi) the modification or addition of a connection at the limit of a Tollable Section identified in clause 6.1 of this Schedule 41A does not entitle a Party to seek to change the length of that Tollable Section.
- (b) RMS and Project Company agree that (so far as is practicable) to determine the lengths of new Tollable Sections:
 - (vii) 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 Motorway carriageways.
- (c) If RMS or Project Company (the "Requesting Party") wishes to create new Tollable Sections from those set out in clause 6.1 of this Schedule 41A to reflect the connection of a road to the 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 clause 6.2(c) of this Schedule 41A:
 - (viii) that it accepts the lengths of the new Tollable Sections proposed by the Requesting Party; or
 - (ix) 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 clause 5.2(d) of this Schedule 41A, 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. CHARGE TOLL

7.1 Flag Fall Toll

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

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

Where:

A = the Flag Fall Toll for the Quarter 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

7.2 Toll Rate

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

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

Where:

A = the sum of the lengths of the Tollable Sections through which the Vehicle passes during the Trip; and

B = the Theoretical Rate for the Quarter during which the Trip occurs; and

C = 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

7.3 Toll Cap

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

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

Where:

A = Theoretical 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

7.4 Charge Toll

Subject to clauses 7.1 and 7.2 of this Schedule 41A, Project Company may levy a toll for each Trip by a Vehicle on the Motorway which does not exceed either:

- (a) the sum of:
 - (i) the Flag Fall Toll for that Trip for that Vehicle, rounded to the nearest whole cent (rounding upwards amounts ending in 0.5¢); and
 - (ii) the Toll Rate for that Trip for that Vehicle, rounded to the nearest whole cent (rounding upwards amounts ending in 0.5¢); or
- (b) the Toll Cap for that Vehicle, rounded to the nearest whole cent (rounding upwards amounts ending in 0.5¢).

7.5 Increases to Charge Toll

- (a) If Project Company wishes to increase the Charge Toll for a Trip, the Project Company must provide RMS with written notice of:

- (i) the Charge Toll for that Trip for the next Quarter; and
- (ii) the date on which Project Company proposes to commence levying that Charge Toll which must not be earlier than the next Quarterly Date,

at least 20 Business Days prior to such date.

- (b) Project Company may levy the increased Charge Toll from the time which is no earlier than 12.00 am on the date referred to in clause 7.5(a)(ii) of this Schedule 41A.
- (c) If a new State or Commonwealth tax is imposed, or an existing State or Commonwealth tax is increased, on the tolls levied by Project Company in connection with the Project, Project Company will be entitled to increase the tolls charged above the rate that would otherwise be permitted by this Schedule 41A (which may include an increase in the Base Flag Fall Toll and/or the Base Rate and/or the Base Toll Cap) for each quarter 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 Project Company 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 Project Company as part of the change.

8. **ADMINISTRATION CHARGES FOR CASUAL USERS**

- (a) The Project Company 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 Company 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 Company in consultation with RMS having regard to:
 - (i) different Casual User products that the Project Company 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 Company must give Casual Users prior notice of the amount of an Administration Charge.
- (e) The Project Company may review an Administration Charge once each Quarter. If the Project Company wishes to change an Administration Charge, the Project Company 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 8(c) of this Schedule 41A; and
- (ii) the date on which the Project Company 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 8(e)(ii) of this Schedule 41A.

9. **EXEMPT VEHICLES**

Notwithstanding anything else in this deed, the Project Company must not levy any toll, fee or charge for or in connection with the use of the Motorway by 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 any other vehicle which is exempt under the Roads Act or its Regulations as at the date of this deed.

SCHEDULE 42

Consumer Price Index and Indexation

(clause 1.1)

Consumer Price Index or CPI means:

- (a) the "All Groups Consumer Price Index Weighted Average of Eight Capital Cities" published quarterly by the Australian Bureau of Statistics, as long as there is no change in the coverage, periodicity or reference base from those applying at the date of this deed. The base CPI for the purposes of this deed will be the "All Groups Consumer Price Index Weighted Average of Eight Capital Cities" published by the Australian Bureau of Statistics for the last full quarter ending immediately prior to the date of this deed;
- (b) if there is a change in the coverage of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities from that applying at the date of this deed and the new All Groups Consumer Price Index Weighted Average of Eight Capital Cities is linked to previous All Groups Consumer Price Indexes, CPI is the new All Groups Consumer Price Index Weighted Average of Eight Capital Cities;
- (c) if there is a change in the reference base of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities from that applying at the date of this deed and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised CPI figures for the purpose of this deed, in terms of the new reference base;
- (d) if there is a change in the reference base of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities from that applying at the date of this deed and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of The Institute of Actuaries Australia (or his nominee) to calculate revised CPIs for the purposes of this deed, and his determination is final and binds the parties;
- (e) if the All Groups Consumer Price Index Weighted Average of Eight Capital Cities is published and:
 - (i) there is a change in its coverage and it is not linked to previous All Groups Consumer Price Indexes; or
 - (ii) there is a change in its periodicity,the parties must request the President of the Institute of Actuaries Australia (or his nominee) to determine:
 - (iii) whether the new All Groups Consumer Price Index Weighted Average of Eight Capital Cities is appropriate as a general indicator of the rate of price change for consumer goods and services; or
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of this deed,and his determination is final and binds the parties;
- (f) if the All Groups Consumer Price Index Weighted Average of Eight Capital Cities is not published and the Australian Bureau of Statistics publishes another index which is:

- (i) a replacement of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities; and
- (ii) linked to the All Groups Consumer Price Index Weighted Average of Eight Capital Cities,

all CPIs relevant to this deed must be re-calculated to the same reference base as the replacement index;

- (g) if the All Groups Consumer Price Index Weighted Average of Eight Capital Cities is not published and the Australian Bureau of Statistics publishes another index which is not linked to the All Groups Consumer Price Index Weighted Average of Eight Capital Cities, the parties must request the President of the Institute of Actuaries Australia (or his nominee) to calculate revised CPIs for the purposes of this deed, and his calculation is final and binds the parties; or
- (h) if the All Groups Consumer Price Index Weighted Average of Eight Capital Cities is not published and the Australian Bureau of Statistics does not publish another index in replacement of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities, the parties must request the President of the Institute of Actuaries Australia (or his nominee) to determine an appropriate index which is a general indicator of the rate of price change for consumer goods and services, and his determination is final and binds the parties.

If paragraph (e), (g) or (h) applies, paragraphs (a) to (h) will apply to the index determined in accordance with paragraph (e), (g) or (h) (as the case may be) as if all references to the "All Groups Consumer Price Index Weighted Average of Eight Capital Cities" are references to that replacement index.

SCHEDULE 42A

Payments for Lane Closures and Relocations

(Clause 22.2(d)(ii)(D))

1. DEFINITIONS

In this Schedule 42A:

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).

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

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

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 then RMS will pay to the Project Company an amount in respect of that Traffic Adjustment calculated in accordance with paragraph 4 of this Schedule 42A.

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 then RMS will pay to the Project Company an amount in respect of that Traffic Adjustment calculated in accordance with paragraph 4 of this Schedule 42A:

- (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 Company in respect of the following types of Traffic Adjustments, if they occur during an Off-Peak Period:

- (a) 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;
- (b) one or more lanes of a carriageway are closed, but at least one lane remains available; or

(c) complete closure of a carriageway for 10 minutes or less in any one hour period.

4. **FORMULA FOR CALCULATION OF COMPENSATION**

The amount which RMS must pay the Project Company in respect of a Traffic Adjustment referred to in paragraph 2 or 3.1 of this Schedule 42A will be calculated in accordance with the following formula (notwithstanding traffic anomalies due to concurrent events):

$$\text{Payment} = (\text{VCLY} - \text{VC}) \times \text{Charge Toll}$$

Where:

Payment is the amount payable by RMS in respect of the Traffic Adjustment (exclusive of GST).

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

VC is the vehicle count for the Tollable Section 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.

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

Charge Toll is the Charge Toll (as defined in the Toll Calculation Schedule) per vehicle applying on the day of the Traffic Adjustment, as applied to Passenger Vehicles and Heavy Vehicles.

VCLY is:

- (a) subject to paragraphs (b) and (c), the average vehicle count at or adjacent to the toll gantry for the Tollable Section 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 Tollable Section 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 Tollable Section in which the Traffic Adjustment occurs over the previous 30 days prior to the date of the Traffic Adjustment for the equivalent Period.

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

SCHEDULE 43

Project Insurances

(clause 26.5)

1. INSURANCES DURING THE PROJECT WORKS

- (a) Before the Project Company commences any of the Project Works or the Temporary Works, the Project Company must effect and maintain (or cause to be effected and maintained) the following:
- (i) a contract works or construction risks policy of insurance:
- (A) in respect of the Project Works, the Temporary Works, Maintenance, the existing improvements on the Construction Site and all things brought on to the Construction Site by the Project Company or a Contractor for the purpose of the Project Works or the Temporary Works;
- (B) against such risks as are reasonably required by RMS; and
- (C) for a minimum of:
- (aa) [REDACTED] for the replacement or reinstatement (plus demolition and removal of debris, fees for the project managers and other consultants) of the works under this deed including testing and commissioning activities in connection with the Project, the rectification of Defects and an amount to cover additional costs and expenses to expedite the commencement or completion or repair; and
- (bb) [REDACTED] any one occurrence in respect of the Existing Motorway (plus demolition and removal of debris, fees for the project managers and other consultants) plus an amount to cover additional costs and expenses to expedite the commencement or completion or repair; and
- (D) with a maximum excess of \$1 million, other than in respect of the Existing Motorway where the maximum excess shall be \$250,000.
- (ii) public and products liability insurance covering claims in respect of:
- (A) loss of, loss of use of, destruction or damage to, real or personal property; and
- (B) injury to, or disease or death of, persons,
- arising out of or in connection with the Project Works and Temporary Works (including third party property damage for plant, equipment and motor vehicles that are not road registered) for a minimum of \$200 million for any single occurrence (other than products liability which is limited in the aggregate) for any one period of insurance and with a maximum excess of \$500,000;
- (iii) professional indemnity insurance for any breach of a duty owed in a professional capacity or for any act or omission in the rendering of or failure to render professional services (including design) by the Contractor, the Tolling Equipment Works Contractor and their professional consultants and the Project Company's professional consultants for a minimum of \$50 million for any one claim and in the aggregate with a maximum excess of \$1 million;

- (iv) workers' compensation insurance as required by Law under any statute relating to workers' or accident compensation;
 - (v) plant and equipment insurance covering all construction plant (whether owned, hired or leased by the Contractor) against physical loss or damage to such plant for an amount not less than market value of such plant and with a maximum excess of \$500,000;
 - (vi) motor vehicle insurance covering physical loss or damage to the Contractor's vehicles whether owned, hired or leased, which are brought onto the Construction Site for an amount not less than the market value of such vehicles and third party property damage for all road registered plant, equipment and motor vehicles used in connection with the Project Company's Activities for a minimum of \$20 million for any one occurrence and unlimited in aggregate as to the number of occurrences and with a maximum excess of \$10,000;
 - (vii) if any work for or in connection with this deed includes asbestos removal, decontamination or other works involving asbestos, asbestos liability insurance for a minimum of \$20 million for any one occurrence, and in the aggregate during the period of insurance and with a maximum excess of \$500,000; and
 - (viii) if any work for or in connection with the deed includes the use of waterborne craft of 8 or more meters in length, marine liability insurance and marine protection and indemnity insurance for a minimum of \$20 million for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences with a maximum excess of \$500,000.
- (b) The Project Company must maintain (or cause to be maintained) the insurances referred to in section 1(a) until:
- (i) in the case of the professional indemnity insurance, 6 years after the Date of Completion;
 - (ii) in the case of:
 - (A) contract works or construction risks insurance; and
 - (B) public and products liability insurance,
 the expiration of the last Defects Correction Period;
 - (iii) in the case of asbestos liability insurance, the expiration of the last Defects Correction Period;
 - (iv) in the case of marine liability and marine protection insurance, the whole of the period of use of waterborne craft of more than 8 or more meters in length on work for or in connection with this deed; and
 - (v) in the case of workers' compensation insurance, plant and equipment insurance and motor vehicle insurance, the expiration of the last Defects Correction Period.

2. **INSURANCES DURING THE TERM**

From the Date of Completion until the end of the Term, the Project Company must effect and maintain (or cause to be effected and maintained) in respect of the Motorway the following:

- (a) an industrial special risks policy of insurance covering the Motorway against physical loss or damage and such other risks as are reasonably required by RMS from time to

time (plus an additional amount to cover the cost of demolition and removal of debris, fees for the project managers and other consultants) of the works under this deed including testing and commissioning activities in connection with the Project, and an amount to cover additional costs and expenses to expedite the commencement or completion or repair, provided that the minimum limit of such coverage will be based on a maximum foreseeable loss analysis procured by the Project Company from an independent third party and approved by RMS (such approval not to be unreasonably withheld);

- (b) public and product liability insurance covering claims in respect of:
 - (i) loss of, loss of use of, destruction or damage to, real or personal property; and
 - (ii) injury to, or disease or death of, persons,arising out of or in connection with the operation, use, repair or maintenance of the Motorway or the repair or maintenance of the Third Party Works for at least \$100 million for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance;
- (c) workers' compensation insurance as required by Law under any statute relating to workers' or accident compensation;
- (d) vehicle insurance covering third party property damage for all plant, equipment and motor vehicles used in connection with the Project for at least \$50 million for any one occurrence and unlimited in the aggregate as to the number of occurrences; and
- (e) business interruption insurance for a 24 month indemnity period covering all standing charges (including debt service obligations) and loss of anticipated net revenue; and
- (f) any other insurances which RMS reasonably requires and which are commonly effected by land owners, lessees or contractors in the position of the Project Company provided those insurances can be obtained on payment of a reasonable premium.

3. GENERAL REQUIREMENTS

- (a) All insurances which the Project Company is required to effect or maintain (or cause to be effected and maintained) under this deed:
 - (i) must be effected with an Approved Insurer;
 - (ii) must be on the terms required by this Schedule 43 (and, in respect of the insurances referred to in section 1, otherwise as approved by RMS (which approval will not be unreasonably withheld or delayed));
 - (iii) must not contain any exclusion, endorsement or alteration, unless it is first approved by RMS;
 - (iv) in the case of the:
 - (A) insurances specified in sections 1(a)(i), 1(a)(ii), and 1(a)(vi); and
 - (B) insurances specified in sections 2(a), 2(b) and 2(d),

must be in the joint names of the Project Company, subcontractors of every tier, WDA and RMS and such others as have an insurable interest under the Project Documents for their respective rights, interests and liabilities and in which the insurer waives all rights of subrogation which it may have or acquire against all or any of the persons comprising the insured;

- (v) except in the case of the insurances referred to in sections 1(a)(iv) and 2(c), must contain a term which requires the insurer to give RMS and the Project Company 20 Business Days' notice in writing prior to:
 - (A) the insurer giving the party arranging the relevant insurance a notice of cancellation;
 - (B) the insurer cancelling the policy on the request of the party arranging the relevant insurance;
 - (C) the party arranging the relevant insurance allowing the policy to expire; or
 - (D) the insurer giving the party arranging the relevant insurance any other notice in respect of the policy;
 - (vi) in the case of the insurance specified in section 1(a)(i), must specify RMS, the Project Company and the Contractor as joint loss payees;
 - (vii) in the case of the insurances specified in sections 2(a) and 2(f) (as applicable), must specify RMS and the Project Company as joint loss payees;
 - (viii) in the case of the insurances which are in joint names, the insurances must contain:
 - (A) a waiver of subrogation clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and
 - (B) a cross liability clause for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
 - (ix) in the case of the insurance specified in section 2(a) must be endorsed to note and allow the Project Company's obligations under clause 26.9, to the effect that compliance by the Project Company with the provisions of that clause will not prejudice the Project Company's or any other insured parties' rights to indemnity under the insurances; and
 - (x) in the case of the insurance specified in section 1(a)(iii) must include a principal's indemnity endorsement in favour of the Project Company, WDA and RMS (to the extent that WDA, RMS or the Project Company has any liability as a principal), in a form approved by RMS (which approval will not be unreasonably withheld or delayed).
- (b) The Project Company must:
- (i) except in the case of the insurances referred to in sections 1(a)(iii), 1(a)(iv) and 2(c), give RMS (and any other person in whose name a Project Insurance is effected) certificates of currency when requested by RMS and certified copies of all:
 - (A) policies, including policy schedules;
 - (B) renewal certificates;
 - (C) endorsements ; and

(D) cover notes and slips,

as soon as it receives them from the insurer; and

- (ii) where a policy is in joint names or there are two or more insureds, have each such policy endorsed to the effect that the insurer agrees that any act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty by any one insured party shall not prejudice or invalidate the rights of the other parties comprising the insured who are themselves not guilty of such act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty.
- (c) The Project Company must ensure that all policies of insurance specified in section 1(a)(ii) (subject to the limitations in cover provided by the insurance market and policy terms, conditions and deductibles):
- (i) cover the Project Company for potential liability to RMS assumed by reason of the exclusion of Part 4 of the *Civil Liability Act 2002* (NSW); and
 - (ii) do not exclude any potential liability the Project Company may have had to RMS under or by reason of this deed.

4. **NOTES**

- (a) Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
- (b) A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit of the policy.

SCHEDULE 44

Not used

SCHEDULE 45

Not Used

SCHEDULE 46

Not Used

SCHEDULE 47

Not Used

SCHEDULE 48

Not Used

SCHEDULE 49

Not Used

SCHEDULE 50

Not Used

SCHEDULE 51

Not Used

SCHEDULE 52

Not Used

SCHEDULE 53

Not Used

SCHEDULE 54

Not Used

SCHEDULE 54A

Not Used

SCHEDULE 55

Not Used

SCHEDULE 55A

Additional Interim Compensation Events

1. ADDITIONAL INTERIM COMPENSATION EVENTS

The Additional Interim Compensation Events are described in the table below.



2. CLAIM FOR ADDITIONAL INTERIM COMPENSATION EVENT

(a) If an Additional Interim Compensation Event occurs, the Project Company must, within 10 Business Days after the commencement of the circumstances giving rise to the Additional Interim Compensation Event, submit a written claim to RMS's Representative under this section 2(a) of Schedule 55A which:

- (i) states that it is a notice given under this section 2(a) of Schedule 55A;
- (ii) gives detailed particulars of the Additional Interim Compensation Event, including its effects;
- (iii) details of the likely reasonable additional direct costs which will be incurred by the Project Company as a result of the Additional Interim Compensation Event and how those costs have been calculated; and
- (iv) if applicable, states whether, at the Project Company's election, the Project Company requires:

- (A) reimbursement of its additional direct costs incurred; or
- (B) an extension to the Expiry Date,

in order to overcome the effects of the Additional Interim Compensation Event.

(c) The Project Company must not, in any notice given under section 2(a) of Schedule 55A, require a reimbursement of its additional direct costs incurred unless the Project Company has demonstrated to RMS's satisfaction (acting reasonably) that, without such reimbursement, the Project Company would be at risk of being:

- (i) unable to meet its operating costs from toll revenue derived from the Project; or
- (ii) exposed to an Insolvency Event.

3. CONDITION PRECEDENT TO RELIEF FOR AN ADDITIONAL INTERIM COMPENSATION EVENT

(a) To obtain relief in respect of an Additional Interim Compensation Event (or its effects):

- (i) the Project Company must give the notices and claims set out in section 2 of this Schedule 55A;
- (ii) the Additional Interim Compensation Event must not have been caused by, and must have been beyond the reasonable control of, the Project Company and its Related Parties; and

- (iii) the Project Company must take all reasonable steps to reduce, mitigate, prevent or eliminate the effects of the relevant Additional Interim Compensation Event (or its effects).
- (b) If the conditions precedent in section 3(a) are not satisfied:
 - (i) RMS will not be liable upon any Claim by the Project Company or its Related Parties; and
 - (ii) the Project Company and its Related Parties will be absolutely barred from making any Claim against RMS,arising out of or in any way in connection with the event giving rise to the Additional Interim Compensation Event (or its effects).

4. **GRANTING RELIEF FOR AN ADDITIONAL INTERIM COMPENSATION EVENT**

- (a) If the conditions precedent in section 3(a) have been satisfied, RMS must, consistent with the election as to the nature of relief set out in the relevant notice given by the Project Company under section 2(a) of this Schedule 55A:
 - (i) reimburse the Project Company for its additional direct costs incurred in accordance with section 5 of this Schedule 55A; or
 - (ii) extend the Expiry Date in accordance with section 6 of this Schedule 55A.
- (b) The Project Company's relief under this Schedule 55A will be the Project Company's sole remedy for the recovery of any Loss which the Project Company suffers or incurs arising out of or in any way in connection with any Additional Interim Compensation Event.
- (c) Section 4(b) of this Schedule 55A is a limitation upon RMS's liability to the Project Company and its Related Parties for any Losses suffered or incurred by the Project Company or its Related Parties arising out of or in any way in connection with any such Additional Interim Compensation Event and the Project Company waives, and must ensure that its Related Parties waive, all rights at Law to make any Claim against RMS, and RMS will not be liable to the Project Company or its Related Parties in these circumstances other than in respect of the matters for which RMS may be liable under this Schedule 55A.
- (d) Notwithstanding the occurrence of an Additional Interim Compensation Event, the Project Company must continue to perform all of its obligations under the Project Documents to the extent that the Project Company is not prevented from performing those obligations by that Additional Interim Compensation Event.

5. **REIMBURSEMENT**

If the Project Company is entitled to a payment from RMS pursuant to this Schedule 55A, then RMS must pay to Project Company the amount determined pursuant to this Schedule 55A within 15 Business Days from the date on which the Project Company makes a claim for such payment.

6. **EXTENSION OF THE EXPIRY DATE**

Where RMS is required to extend the Expiry Date under section 4 of this Schedule 55A:

- (a) the Project Company must fund the relevant additional direct costs incurred, if any, resulting from the Additional Interim Compensation Event;

- (b) the Expiry Date will be extended only if, and to the extent that, a period of extension is required to maintain an Equity Return of no less than [REDACTED] based on the Project Company's calculation in the Base Case Financial Model at Financial Close, adjusted only for the additional direct costs incurred resulting from the relevant Additional Interim Compensation Event; and
- (c) the Project Company will not be entitled to be paid any amount from RMS, and RMS will have no obligation to pay any amount, for additional direct costs incurred resulting from the relevant Additional Interim Compensation Event.

PART E
TECHNICAL

SCHEDULE 56

Scope of Works and Technical Criteria

(Clause 1.1)

SCHEDULE 57

Information Documents

(Clause 11.8)

This schedule is provided as two Electronic Files, included within the disc forming Exhibit C to this deed, entitled "Schedule 45 – register of Information Documents.xlsx" and "Schedule 45 – Register of information documents – RLJV.xlsx".

SCHEDULE 58

Not Used

SCHEDULE 59

Not Used

SCHEDULE 60

BASELINE CONDITIONS

(Clause 6)

INFRASTRUCTURE APPROVAL

Section 115ZB of the Environmental Planning & Assessment Act 1979

I grant approval to the State significant infrastructure application referred to in schedule 1, subject to the conditions in schedules 2.

These conditions are required to:

- (a) prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- (b) set standards and performance measures for acceptable environmental performance;
- (c) require regular monitoring and reporting; and
- (d) provide for the ongoing environmental management of the SSI.

The Hon Pru Goward MP

Minister for Planning

Sydney

2014

SCHEDULE 1

1. **APPLICATION NO**

SSI-6148

2. **APPROVAL AUTHORITY**

Minister for Planning

3. **LAND:**

insert Critical SSI wording here when finalised

4. **STATE SIGNIFICANT INFRASTRUCTURE:**

4.1 Widening and upgrading the M4 Motorway generally between Pitt Street, Parramatta and Holroyd and Homebush Bay Drive, Homebush West, including:

- (a) Construction of a new two lane viaduct for westbound traffic, on the southern side of the existing viaduct structure between Church Street, Parramatta and Wentworth Street, Granville, and reconfiguration of the traffic lanes on the existing viaduct structure to four lanes eastbound and two lanes westbound; and a new bridge/viaduct over Duck River at Auburn;
- (b) Widening of the existing motorway to the south of the westbound carriageway between Wentworth Street, Granville and Duck River, Auburn; and within the existing motorway corridor between Junction Street, Auburn and Homebush Bay Drive, Homebush to provide four traffic lanes westbound and four traffic lanes eastbound;
- (c) Construction of a new westbound G-loop on-ramp to the M4 Motorway from Homebush Bay Drive, Homebush, and a new eastbound on-ramp to the M4 from Hill Road, Lidcombe;
- (d) Widening and/or lengthening of existing ramps at Church Street, James Ruse Drive, Silverwater Road, Hill Road and Homebush Bay Drive;
- (e) Provision of Intelligent Transport Systems infrastructure for motorway operations.
- (f) Provision of road infrastructure and complementary technology services to support the future implementation of smart motorway operations.
- (g) Provision of tolling infrastructure such as gantries and control systems; and
- (h) Provision of new and modified noise barriers and new asphalt wearing surface to the existing M4 Motorway.

DEFINITIONS

Act means the Environmental Planning and Assessment Act, 1979.

Ancillary facility means temporary facility for construction, including for example an office and amenities compound, construction compound, batch plant (concrete or bitumen), materials storage compound, maintenance workshop, testing laboratory or material stockpile area.

Proponent means Roads and Maritime Services (RMS).

Conditions of approval means The Minister's conditions of approval for the SSI.

Construction includes all work in respect of the SSI other than:

- (a) survey works including general alignment survey and survey controls (including installation of global positioning system (GPS), repeater stations, survey of existing and future utilities or building/road dilapidation surveys.
- (b) further investigations including investigative drilling, excavation or salvage; treatment of contaminated sites or work undertaken in accordance with a strategy or salvage operation required by the conditions of this approval.
- (c) minor clearing or translocation of native vegetation, as identified in the Environmental Impact Statement, Submissions Report, or in accordance with approved strategies, plans, programs and other documents required by the conditions of this approval;
- (d) establishing ancillary facilities/construction work sites (in locations meeting the criteria identified in the conditions of approval), or where criteria are not fully satisfied, those ancillary facility sites which have been assessed against criteria, and approved in accordance with Conditions D28 and D31. This includes the establishment of ancillary facilities access roads and the provision of services to the facility and installation of erosion and sedimentation controls.
- (e) installation of environmental impact mitigation measures (including erosion and sedimentation control, temporary exclusion fencing for sensitive areas, and at-house acoustic treatment) and measures identified in approved strategies, plans, programs and other documents required by the conditions of this approval.
- (f) property acquisition adjustment works including the installation of property fencing, demolition and removal of buildings, relocation of utilities to property (including water supply and electricity);
- (g) other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads, minor adjustments to services/ utilities, temporary relocation of pedestrian and cycle paths and property access, etc).

Note - work where heritage, threatened species, populations or endangered ecological communities would be affected that work is classified as construction, unless otherwise approved by the Secretary in consultation with the Office of Environment and Heritage.

Department, the means Department of Planning and Environment..

EEC means Endangered ecological communities.

EIS means Environmental Impact Statement.

EPA means Environment Protection Authority.

EPL means Environment Protection Licence under the *Protection of the Environment Operations Act 1997*.

Feasible and Reasonable means consideration of best practice taking into account the benefit of proposed measures and their technological and associated operational application in the NSW and Australian context. Feasible relates to engineering considerations and what is practical to build. Reasonable relates to the application of judgement in arriving at a decision, taking into account mitigation benefits and cost of mitigation versus benefits provided, community views and nature and extent of potential improvements.

Where requested by the Secretary, the Proponent shall provide evidence as to how feasible and reasonable measures were considered and taken into account.

Heritage encompasses both Aboriginal and non-Aboriginal heritage including sites that predate European settlement, and a shared history since European settlement such as a shared associations in pastoral landscapes as well as associations linked with the mission period.

Heritage Item means an item as defined under the Heritage Act 1977, and assessed as being of local, State and/or National heritage significance, and/or an Aboriginal Object or Aboriginal Place as defined under the National Parks and Wildlife Act 1974.

Minister means the Minister for Planning.

NSW Heritage Council means Heritage Council of NSW or its delegate.

NOW means NSW Office of Water

OEH means Office of the Environment and Heritage

Operation means the operation of the SSI, but does not include commissioning trials of equipment or temporary use of parts of the SSI during construction.

Publicly available means available for inspection by a member of the general public (for example available on an internet website).

Relevant council(s) means Holroyd City Council, Parramatta City Council, Auburn City Council, Strathfield Council

Secretary means the Secretary of the Department of Planning and Environment.

Sensitive receiver means Residence, education institution (e.g. school, university, TAFE college), health care facility (e.g. nursing home, hospital), religious facility (e.g. church) and children's day care facility.

Secretary's approval, agreement or satisfaction means a written approval from the Secretary (or delegate/nominee).

Where the Secretary's approval, agreement or satisfaction is required under a condition of this approval, the Secretary will endeavour to provide a response within one month of receiving an approval, agreement or satisfaction request. The Secretary may ask for additional information if the approval, agreement or satisfaction request is considered incomplete. When further information is requested, the time taken for the Proponent to respond in writing will be added to the one month period.

SSI means the State significant infrastructure approved under this approval and as generally described in Schedule 1 (SSI-6148).

SSI boundary means the boundary of the SSI as defined in the documents referred to in condition A2.

SSI footprint means that area within the SSI boundary physically impacted by construction activities.

Standard Construction Hours means The standard construction hours are:

- (a) 7.00am to 6.00pm Monday to Friday;
- (b) 8.00am to 1.00pm Saturdays; and
- (c) at no time on Sundays or public holidays.

SCHEDULE 2

PART A

ADMINISTRATIVE CONDITIONS

OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

A1. In addition to meeting the specific performance criteria established under this approval, the Proponent shall implement all feasible and reasonable measures to prevent and/or minimise any harm to the environment that may result from the construction or operation of the SSI.

TERMS OF APPROVAL

A2. The Proponent shall carry out the SSI generally in accordance with the:

- (a) State significant infrastructure application SSI-6148
- (b) WestConnex M4 Widening Environmental Impact Statement, prepared by SMEC Australia and dated 7 August 2014;
- (c) WestConnex M4 Widening Submissions Report, prepared by SMEC Australia and dated October 2014; and
- (d) conditions of this approval.

A3. In the event of an inconsistency between:

- (a) the conditions of this approval and any document listed from condition A2(a) to A2(c) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
- (b) any document listed from condition A2(a) to A2(c) inclusive, and any other document listed from condition A2(a) to A2(c) inclusive, the most recent document shall prevail to the extent of the inconsistency.

A4. The Proponent shall comply with any reasonable requirement(s) of the Secretary arising from the Department's assessment of:

- (a) any reports, plans or correspondence that are submitted in accordance with this approval; and
- (b) the implementation of any actions or measures contained within these reports, plans or correspondence.

LIMITS OF APPROVAL

A5. This approval shall lapse 10 years after the date on which it is granted, unless the works the subject of this SSI approval are physically commenced on or before that date.

STATUTORY REQUIREMENTS

A6. The Proponent shall ensure that all licences, permits and approvals are obtained as required by law and maintained as required throughout the life of the SSI. No condition of this approval removes the obligation for the Proponent to obtain, renew or comply with such licences, permits or approvals.

STAGING

A7. The Proponent may elect to construct and/ or operate the SSI in stages. Where staging is proposed, the Proponent shall submit a Staging Report to the Secretary prior to the commencement of the first proposed stage. The Staging Report shall provide details of:

- (a) how the SSI would be staged, including general details of work activities associated with each stage and the general timing of when each stage would commence; and
- (b) details of the relevant conditions of approval, which would apply to each stage and how these shall be complied with across and between the stages of the SSI.

Where staging of the SSI is proposed, these conditions of approval are only required to be complied with at the relevant time and to the extent that they are relevant to the specific stage(s).

SUBMISSION OF ANY STRATEGY, PLAN OR PROGRAM

A8. The Proponent shall ensure that all plans, sub-plans and other management documents required by the conditions of this approval and relevant to each stage (as identified in the Staging Report) are submitted to the Secretary no later than one month prior to the commencement of the relevant stages, unless otherwise agreed by the Secretary.

Notes:

- (a) While any strategy, plan or program may be submitted on a progressive basis, the Proponent will need to ensure that the existing operations on site are covered by suitable strategies, plans or programs at all times; and
- (b) If the submission of any strategy, plan or program is to be staged, then the relevant strategy, plan or program shall clearly describe the specific stage to which the strategy, plan or program applies, the relationship of this stage to any future stages, and the trigger for updating the strategy, plan or program.

COMPLIANCE

A9. The Proponent shall ensure that employees, contractors and sub-contractors are aware of, and comply with, the requirements of the conditions of this approval relevant to their respective activities.

A10. The Proponent shall be responsible for environmental impacts resulting from the actions of all persons that it invites onto the site, including contractors, sub-contractors and visitors.

A11. In the event of a dispute between the Proponent and a public authority, in relation to an applicable requirement in this approval or relevant matter relating to the activity, either party may refer the matter to the Secretary for resolution. The Secretary's determination of any such dispute shall be final and binding on the parties.

COMPLIANCE TRACKING PROGRAM

A12. The Proponent shall develop and implement a Compliance Tracking Program to track compliance with the requirements of this approval. The Program shall be submitted to the Secretary for approval prior to the commencement of construction and operate for a minimum of 18 months following commencement of operation, subject to the Secretary's review of the outcomes of the Independent Environmental Audit Report referred to in condition E10. The operation of the program may be extended if the Secretary determines that there has been unsatisfactory compliance.

The Program shall include, but not necessarily be limited to:

- (a) provisions for the notification of the Secretary prior to the commencement of construction and prior to the commencement of operation of the SSI (including prior to each stage, where works are being staged);
- (b) provisions for periodic review of the compliance status of the SSI against the requirements of this approval;
- (c) provisions for periodic reporting of compliance status to the Secretary, including but not limited to:
 - (i) a Pre-Construction Compliance Report prior to the commencement of construction;
 - (ii) quarterly Construction Compliance Reports, for the duration of construction; and
 - (iii) a Pre-Operation Compliance Report prior to the commencement of operation;
- (d) a program for independent environmental auditing in accordance with AS/NZS ISO 19011:2014 - Guidelines for Auditing Management Systems;
- (e) mechanisms for recording and environmental incidents during construction and actions taken in response to those incidents;
- (f) provisions for reporting environmental incidents to the Secretary during construction, in accordance with conditions A13 and A14;
- (g) procedures for rectifying any non-compliance identified during environmental auditing, review of compliance or incident management; and

- (h) provisions for ensuring all employees, contractors and sub-contractors are aware of, and comply with, the conditions of this approval relevant to their respective activities.

INCIDENT REPORTING

A13. The Proponent shall notify the EPA in relation to actual or potential breaches of the *Protection of the Environment (Operations) Act 1997* as required by that Act. The Proponent shall provide the Secretary with a record of any such notification.

A15. The Proponent shall notify the Secretary (using the contact name and phone number notified by the Department from time to time) of any incident (other than those relating to the *Protection of the Environment (Operations) Act 1997*) with actual or potential significant off-site impacts on people or the biophysical environment within 24 hours of becoming aware of the incident on weekdays, or the following business day on weekends. The Proponent shall provide full written details of the incident to the Secretary within seven days of the date on which the incident occurred.

A16. The Proponent shall meet the requirements of the Secretary or relevant public authority (as determined by the Secretary) to address the cause or impact of any incident, as it relates to this approval, reported in accordance with condition A14, within such period as the Secretary may require.

PART B

ENVIRONMENTAL PERFORMANCE

SOIL, WATER QUALITY AND HYDROLOGY

B1. Except as may be provided by an EPL, the SSI shall be constructed and operated to comply with section 120 of the Protection of the Environment Operations Act 1997, which prohibits the pollution of waters.

B2. Watercourse crossings, including temporary work platforms, waterway crossings and/or coffer dams, shall be designed and constructed in consultation with the DPI (Fisheries), EPA, and NOW, and where feasible and reasonable, be consistent with the Guidelines for Controlled Activities Watercourse Crossings (Department of Water and Energy, February 2008), Why do Fish Need to Cross the Road? Fish Passage Requirements for Waterway Crossings (Fairfull and Witheridge, 2003), Policy and Guidelines for Fish Friendly Waterway Crossings (NSW Fisheries, February 2004), and Policy and Guidelines for Fish Habitat Conservation and Management (DPI Fisheries, 2013). Where multiple cell culverts are proposed for crossings of fish habitat streams, at least one cell shall be provided for fish passage, with an invert or bed level that mimics watercourse flows.

B3. Drainage swales are to be constructed outside of areas of marine vegetation (i.e. mangrove and saltmarsh habitat).

B4. The bridge over the Duck River shall be designed to minimise, as far as is feasible and reasonable, the number of piers within the bed and banks of the river. Where feasible and reasonable, pier locations should be located alongside existing bridge piers.

FLOODING

B5. The SSI shall be designed, where feasible and reasonable, to not worsen existing flooding characteristics in the vicinity of the SSI beyond the following levels:

- (a) a maximum increase in inundation time of one hour in a 1 in 100 year ARI rainfall event;
- (b) a maximum increase of 10mm in inundation at properties where floor levels are currently exceeded in a 1 in 100 year ARI rainfall event; and
- (c) a maximum increase of 50mm in inundation at properties where floor levels would not be exceeded in a 1 in 100 year ARI rainfall event.

FLOOD MITIGATION STRATEGY

B6. A Flood Mitigation Strategy shall be prepared to ensure that the SSI, where feasible and reasonable, does not worsen existing flooding characteristics within the vicinity of the SSI, consistent with condition B5. The Strategy shall include but not be limited to:

- (a) the identification of flood risks to the SSI and adjoining areas, including remodelling and the consideration of local drainage catchment assessments, and climate change implications on rainfall, drainage and tidal characteristics. This must consider blockages of waterway structures from floating debris in its flood level modelling;

- (b) the identification of design and mitigation measures, including those for A'Becketts Creek that would be implemented to protect proposed operations and not worsen existing flooding characteristics within and in the vicinity of the project boundary, particularly within the A'Becketts Creek catchment during construction and operation, including soil erosion and scouring;
- (c) the identification of measures to be implemented to minimise scour and dissipate energy at locations where flood velocities are predicted to increase as a result of the SSI and cause localised soil erosion;
- (d) a dam failure assessment on the retarding basin at Reach E, including demonstration of sufficient drainage capacity in the event of an insufficient spillway;
- (e) identification of drainage system upgrades; and
- (f) identification of the timing and maintenance responsibility of any necessary works.

The strategy shall be prepared by a suitably qualified and experienced person in consultation with directly affected landowners, the Department of Primary Industries (Office of Water), the Office of Environment and Heritage and Relevant councils.

The Strategy shall be peer reviewed and confirmed as meeting the requirements of condition B5 and this condition by an independent and a suitably qualified hydrological engineer approved by the Secretary. The Strategy shall be submitted to the Secretary and Relevant councils prior to the commencement of construction, or as otherwise agreed by the Secretary.

B7. All relevant information shall be provided to the Relevant council and/ or NSW State Emergency Service, to assist in the preparation of any new or necessary update(s) to the relevant plans and documents in relation to flooding, to reflect changes in flooding levels, flows and characteristics as a result of the SSI.

WATER QUALITY PLAN AND MONITORING PROGRAM

B8. A Water Quality Plan and Monitoring Program shall be prepared and implemented to ensure that the project is designed and constructed to meet condition B1 and to monitor impacts on surface and groundwater quality and resources and wetlands, during construction and operation. The Plan and Program shall be developed in consultation with the EPA, DPI (Fishing and Aquaculture), NOW, SOPA, and councils and shall include but not necessarily be limited to:

- (a) identification of surface and groundwater quality monitoring locations (including watercourses, waterbodies and wetlands) which are representative of the potential extent of impacts from the SSI;
- (b) identification of works and activities during construction and operation of the SSI, including emergencies and spill events, that have the potential to impact on surface water quality of potentially affected waterways;
- (c) the presentation of water quality standards and parameters having regard to the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 (Australian and New Zealand Environment Conservation Council, 2000);
- (d) identification of environmental management measures relating to surface and groundwater during construction and operation, including sediment and stormwater management measures consistent with Water Sensitive Urban Design measures, where relevant;

- (e) representative background monitoring of surface and groundwater quality parameters prior to the commencement of construction, to establish baseline water conditions, unless otherwise agreed by the Secretary;
- (f) a minimum monitoring period of one year following the completion of construction. If impacts are identified after one year of monitoring, continue monitoring for a further two years or until the affected waterways and/ or groundwater resources are certified by an independent expert as being rehabilitated to an acceptable condition. The monitoring shall also confirm the establishment of operational water control measures (such as vegetation swales);
- (g) contingency and ameliorative measures in the event that adverse impacts to water quality are identified; and
- (h) reporting of the monitoring results to the Secretary, EPA, DPI and NoW.

The Plan and Program shall be submitted to the Secretary for approval prior to the commencement of construction of the SSI, or as otherwise agreed by the Secretary. A copy of the Plan and Program shall be submitted to the EPA, DPI (Fishing and Aquaculture), NOW and councils prior to its implementation.

LAND CONTAMINATION

B9. Prior to the commencement of site preparation and excavation activities, or as otherwise agreed by the Secretary, in areas identified in the Phase II Contamination and Acid Sulfate Soil Investigation and Assessment WestConnex – M4 Widening (GHD, 2013) as being potentially contaminated, a Soil Contamination Report shall be prepared by a suitably qualified person(s) in accordance with the requirements of the Contaminated Land Management Act 1997 and associated guidelines, detailing the outcomes of Phase 2 contamination investigations within these areas. The Report shall detail, where relevant, whether the soil is suitable (for the intended land use) or can be made suitable through remediation and/or outline the potential contamination risks from the project to human health and receiving waterways.

- (a) For land to be disturbed by the SSI, where the investigations identify that the site is suitable for the intended operations and that there is no need for a specific remediation strategy, measures to identify, handle and manage potential contaminated soils, materials and groundwater shall be identified in the Report and incorporated into the Construction Environmental Management Plan required under conditions D31 and D32. Should a remediation strategy be required, the Report shall include a remediation plan for addressing the disturbed area, and how the environmental and human health risks will be managed during the disturbance, remediation and/or removal of contaminated soil or groundwater.
- (b) If required, the Report shall be accompanied by a Site Audit Statement(s), prepared by an accredited Site Auditor under the Contaminated Land Management Act 1997, verifying that the disturbed area has been or can be remediated to a standard consistent with the intended land use. A final Site Audit Statement(s), if required, shall be prepared by an accredited Site Auditor, certifying that the contaminated disturbed areas have been remediated to a standard consistent with the intended land use and shall be submitted to the Secretary and Relevant council's prior to operation of the site.

HERITAGE

B10. The Proponent shall not destroy, modify or otherwise physically affect any heritage items outside the SSI footprint.

B11. The Proponent shall implement recommendations 1 to 5 of the WestConnex M4 Widening Project Pitt Street, Parramatta to Homebush Bay Drive, Homebush, Non-Indigenous Heritage Assessment and Statement of Heritage Impacts, Artefact Heritage, July 2014.

B12. Prior to conducting acoustic treatment at any heritage items in accordance with this approval, the Proponent shall obtain and implement the advice of an appropriately qualified and experienced built heritage expert to ensure any such work is carried out in a manner sympathetic to the heritage values of the item.

TRANSPORT AND ACCESS

B13. The SSI is to be designed with the objective of minimising adverse changes to existing access arrangements and services for other transport modes. This includes minimising impacts to public transport bus services (speed and reliability) and the implementation of bus priority measures, where feasible and reasonable in consultation with Transport for NSW.

B14. The SSI shall be designed to minimise impacts on future opportunities to improve pedestrian and cycle connectivity across and adjacent the project.

B15. In relation to new or modified local road, parking, pedestrian and cycle infrastructure, the SSI shall be designed:

- (a) in consultation with the relevant roads authority;
- (b) take into consideration existing and future demand, road safety and traffic network impacts;
- (c) to meet relevant design, engineering and safety guidelines, including Austroads Guide to Traffic Engineering Practice; and

be endorsed by an suitably qualified and experienced person that has considered the above matters.

B16. The Proponent shall ensure that the performance of the adjoining road network (as of the date of approval), to the greatest extent practicable, be improved or maintained. Within six months of the SSI approval, or as otherwise agreed by the Secretary, the Proponent shall prepare a Road Network Performance Report in consultation with relevant Councils that includes:

- (a) a description and justification of the scope of the adjoining road network and its consistency or otherwise with the affected network considered in the WestConnex M4 Widening, Traffic and transport working paper – working paper 4, August 2014, Jacobs AECOM. Notwithstanding, the Birnie Avenue / Parramatta Road intersection is to be considered as part of the adjoining road network;
- (b) a revised analysis, including modelling of traffic impacts to the adjoining road network, as a consequence of the SSI. This shall include a review of potential land use changes, including those associated with Auto Alley and the Carter Street and Wentworth Point Urban Activation Precincts;
- (c) a detailed investigation of potential mitigation measures to address identified traffic performance, including bus priority measures and management measures to minimise toll avoidance, particularly for heavy vehicles;

- (d) the potential traffic impacts of these measures, including any cumulative impacts;
- (e) justification of why the performance of the adjoining road network cannot be maintained (if necessary); and
- (f) the timing of potential mitigation measures (including bus priority measures to address condition B13).

The Proponent is responsible for the implementation of the identified measures. The Report shall be provided to the Secretary, Relevant Councils and be made publicly available.

Note:

Identified mitigation measures will need to be further assessed under the Environmental Planning and Assessment Act, 1979, meet relevant design standards and be subject to independent road safety audits.

B17. The Proponent shall liaise with Parramatta Council during detailed design in relation to improved integration with the local and regional road network, with the objective of identifying road network connections that would not be precluded by the development of the SSI. The outcomes of this consultation will be reported and incorporated in the Road Network Performance Report required by condition B17.

B18. Within 12 months of operation, the Proponent shall prepare a Hill Road Options Review for a westbound off ramp at the Hill Road interchange. This review shall be prepared in consultation with relevant stakeholders including, but not limited to the Department, Sydney Olympic Park Authority, the relevant Council, community groups, business associations and major landowners within the Sydney Olympic Park, Carter Street and Wentworth Point precincts, and include, but not necessarily be limited to:

- (a) consideration of land use changes in the vicinity of the interchange, including the Carter Street and Wentworth Point Urban Activation Precincts and associated traffic implications;
- (b) options for a westbound off ramp at Hill Road, or alternative works that provide access to or near Hill Road; and
- (c) potential delivery mechanisms and timing.

The Review shall be provided to the Secretary, stakeholders and be made publicly available.

B19. Within six (6) months of SSI approval, the Proponent shall, in consultation with the relevant Council assess necessary interchange / intersection works / treatments at the Hill Road and Silverwater Road off-ramps and associated intersections to prevent queuing back on to the main M4 carriageway. A report shall be submitted to the Secretary outlining options for improvements to the functioning of these interchanges. If the preferred option identifies required works, these works are to be completed prior to project opening.

Note:

Identified mitigation measures that are not consistent with the environmental impacts described in the documents listed in condition A2, will need to be further assessed under the Environmental Planning and Assessment Act, 1979. Works will need to meet relevant design standards and be subject to independent road safety audits.

BIODIVERSITY

B20. The clearing of native vegetation shall be minimised with the objective of reducing impacts to any threatened species or Endangered Ecological Communities to the greatest

extent practicable. Impacted vegetation shall be rehabilitated with endemic species to the greatest extent practicable.

WASTE MANAGEMENT

B21. Waste generated outside the site shall not be received at the site for storage, treatment, processing, reprocessing, or disposal on the site, except as expressly permitted by a licence or waste exemption under the Protection of the Environment Operations Act 1997, if such a licence is required in relation to that waste.

B22. The reuse and/or recycling of waste materials generated on site shall be maximised as far as practicable, to minimise the need for treatment or disposal of those materials off site.

B23. All liquid and/or non-liquid waste generated on the site shall be assessed and classified in accordance with Waste Classification Guidelines (Department of Environment, Climate Change and Water, 2009).

B24. All waste materials removed from the SSI site shall only be directed to a waste management facility or premises lawfully permitted to accept the materials.

UTILITIES AND SERVICES

B25. Utilities, services and other infrastructure potentially affected by construction and operation shall be identified prior to construction to determine requirements for access to, diversion, protection, and/or support. Consultation with the relevant owner and/or provider of services that are likely to be affected by the SSI shall be undertaken to make suitable arrangements for access to, diversion, protection, and/or support of the affected infrastructure as required. The cost of any such arrangements shall be borne by the Proponent.

URBAN DESIGN AND LANDSCAPE

B26. The Proponent, in consultation with Relevant councils, shall where feasible and reasonable, implement the urban design strategies and elements taking into account the opportunities and design strategies identified in WestConnex M4 Widening, Pitt Street, Parramatta to Homebush Bay Drive, Homebush, Urban Design Concept, Landscape Character and Visual Impact Assessment Report, Ki Studio, July 2014. Where an urban design strategy or element is not considered feasible or reasonable, this will be clearly demonstrated to the Secretary in conjunction with the submission of the Urban Design and Landscape Plan required by condition B27.

B27. Prior to the commencement of permanent built works and/ or landscaping, or as otherwise agreed by the Secretary, an Urban Design and Landscape Plan shall be prepared and implemented (following approval) for the SSI. The Plan shall be prepared by suitably qualified and experienced person(s), in consultation with the relevant Council and community, for the approval of the Secretary. The Plan shall present an integrated urban and landscape design for the SSI, and shall include, but not necessarily be limited to:

- (a) identification of design objectives, principles and standards based on:
 - (i) local environmental and heritage values,
 - (ii) urban design context,
 - (iii) sustainable design and maintenance,
 - (iv) community safety, amenity and privacy, including 'safer by design' principles where relevant,

- (v) relevant design standards and guidelines; and
 - (vi) the urban design objectives and principles outlined in WestConnex M4 Widening, Pitt Street, Parramatta to Homebush Bay Drive, Homebush, Urban Design Concept, Landscape Character and Visual Impact Assessment Report, Ki Studio, July 2014;
- (b) the location of existing vegetation and proposed landscaping (including use of endemic and advanced tree species where practicable). Details of species to be replanted/ revegetated shall be provided, including their appropriateness to the area and habitat for threatened species (including rehabilitation of riparian and wetland vegetation);
 - (c) a description of disturbed areas (including compounds) and details of the strategies to progressively rehabilitate, regenerate and/ or revegetate these areas;
 - (d) design features, built elements, lighting and building materials(including noise walls);
 - (e) opportunities for use of space underneath viaducts for community or public recreation purposes;
 - (f) an assessment of the visual screening effects of existing vegetation and the proposed landscaping and built elements. Where receivers have been identified as likely to experience high visual impact as a result of the SSI, the Proponent shall in consultation with affected receivers, identify opportunities for providing at-receiver landscaping to further screen views of the SSI. Where agreed to with the landowner, these measures shall be implemented during the construction of the SSI;
 - (g) graphics such as sections, perspective views and sketches for key elements of the SSI, including, but not limited to built elements of the SSI;
 - (h) monitoring and maintenance procedures for the built elements, rehabilitated vegetation and landscaping (including weed control) including performance indicators, responsibilities, timing and duration and contingencies where rehabilitation of vegetation and landscaping measures fail; and
 - (i) evidence of consultation with the relevant Council and community on the proposed urban design and landscape measures prior to its finalisation.

Note:

The Plan may be submitted in stages to suit a staged construction program of the SSI.

PROPERTY AND LAND USE

B28. Any damage caused to property as a result of the SSI shall be rectified or the landowner compensated, within a reasonable timeframe, with the costs borne by the Proponent. This condition is not intended to limit any claims that the landowner may have against the Proponent.

B29. The Proponent shall construct and operate the SSI with the objective of minimising light spillage to residential properties and be generally consistent with the requirements of Australian Standard 4282-1997 Control of the obtrusive effects of outdoor lighting.

B30. Affected residential properties are to receive a minimum of three (3) hours of direct sunlight in habitable rooms and in at least 50% of the private open space between 9.00am and 3.00pm on 21 June. Where existing residential development currently receives less than this requirement, existing access to sunlight should not be unreasonably reduced.

LAND ACQUISITION

B31. The Proponent shall in relation to the viaduct between Church Street, Granville and James Ruse Drive, Clyde, offer landowners for those properties identified as highly impacted residences within *WestConnex M4 Widening, Pitt Street, Parramatta to Homebush Bay Drive, Homebush, Urban Design Concept, Landscape Character and Visual Impact Assessment Report, Ki Studio, July 2014*, and residential properties and subdivisions and other sensitive receivers that will be overshadowed at any time between 9.00am and 3.00pm on June 21 the right to have their land holdings acquired.

B32. An acquisition offer shall be made to landowners in writing and within six months of the SSI approval. A schedule of properties that are subject to the acquisition offer will be provided to the Secretary within six months of the SSI approval.

Note:

The notification of acquisition shall also be undertaken consistent with the requirements of the Community Communication Strategy required by condition C1.

B32. At the request in writing of the owner(s) of any of the lots notified under condition B31, if such a request is made within six months of the date of service of the notification required under condition B31 and provided that this approval has not lapsed, the Proponent shall proceed to acquire the relevant landholding. The acquisition shall be undertaken in a manner generally consistent with the process outlined in Section 7 of the *Roads and Maritime Services land acquisition information guide, July 2014*. A schedule of properties that are subject to the acquisition offer shall be provided to the Secretary within six months of the SSI approval.

B33. The Proponent shall bear the reasonable costs of any valuation or survey assessment required and the costs of determination referred to under condition B32.

If the Proponent has initiated the acquisition process referred to in condition B31 and the owners of the relevant lot to be acquired notify the Proponent in writing that they do not consent to their lot being acquired, or fail to provide a written request to the Proponent for their land to be acquired in accordance with condition B32, then the requirement to acquire that land lapses.

Note:

Any inconsistencies between conditions B31 to B33 and the Roads and Maritime Services land acquisition information guide, July 2014, the conditions shall prevail.

PART C

COMMUNITY INFORMATION AND REPORTING

COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

C1. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Proponent shall prepare and implement a Community Communication Strategy to the satisfaction of the Secretary. The Strategy shall provide mechanisms to facilitate communication between the Proponent (and its contractor(s)), the Environmental Representative (see condition D1), the relevant Council and community stakeholders (particularly adjoining landowners) on the construction environmental management of the SSI. The Strategy shall include, but not be limited to:

- (a) identification of stakeholders to be consulted as part of the Strategy, including affected and adjoining landowners, key community and business groups, major event generators (such as Sydney Olympic Park, Rosehill Racecourse and the University of Western Sydney), and community and social service organisations;
- (b) procedures and mechanisms for the regular distribution of accessible information to community stakeholders on construction progress and matters associated with environmental management including provision of information in appropriate community languages;
- (c) the formation of community-based forums that focus on key environmental management issues for the SSI. The Strategy shall provide detail on the structure, scope, objectives and frequency of the community-based forums;
- (d) procedures and mechanisms through which the community stakeholders can discuss or provide feedback to the Proponent and/or Environmental Representative in relation to the environmental management and delivery of the SSI;
- (e) procedures and mechanisms through which the Proponent can respond to enquiries or feedback from the community stakeholders in relation to the environmental management and delivery of the SSI; and
- (f) procedures and mechanisms that would be implemented to resolve issues/ disputes that may arise between parties on the matters relating to environmental management and the delivery of the SSI. This may include the use of a suitably qualified and experienced independent mediator.

The Proponent shall maintain and implement the Strategy throughout construction of the SSI.

COMPLAINTS AND ENQUIRIES PROCEDURE

C2. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Proponent shall ensure that the following are available for community enquiries and complaints for the duration of construction:

- (a) a 24 hour telephone number(s) on which complaints and enquiries about the SSI may be registered;
- (b) a postal address to which written complaints and enquires may be sent;
- (c) an email address to which electronic complaints and enquiries may be transmitted; and

- (d) a mediation system to assist in addressing complaints that are unable to be resolved through initial contact.

The telephone number, the postal address and the email address shall be published in newspaper(s) circulating in the local area prior to the commencement of construction and prior to the commencement of operation. This information shall also be provided on the website (or dedicated pages) required by this approval.

C3. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Proponent shall prepare and implement a Construction Complaints Management System consistent with AS 4269: Complaints Handling and maintain the System for the duration of construction and up to 12 months following completion of construction of the SSI.

Information on all complaints received, including the means by which they were addressed and whether resolution was reached, with or without mediation, shall be maintained in a complaints register and included in the construction compliance reports required by this approval. The information contained within the System shall be made available to the Secretary on request.

PROVISION OF ELECTRONIC INFORMATION

C4. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Proponent shall establish and maintain a new website, or dedicated pages within an existing website, for the provision of electronic information associated with the SSI, for the duration of construction and for 12 months following completion of construction of the SSI. The Proponent shall, subject to confidentiality, publish and maintain up-to-date information on the website or dedicated pages including, but not necessarily limited to:

- (a) information on the current implementation status of the SSI;
- (b) a copy of the documents referred to under condition A2 of this approval, and any documentation supporting modifications to this approval that may be granted from time to time;
- (c) a copy of this approval and any future modification to this approval;
- (d) a copy of each relevant environmental approval, licence or permit required and obtained in relation to the SSI;
- (e) a copy of each current strategy, plan, program or other document required under this approval;
- (f) the outcomes of compliance tracking in accordance with condition A12 of this approval; and
- (g) details of contact point(s) to which community complaints and inquiries may be directed, including a telephone number, a postal address and an email address.

PART D

CONSTRUCTION ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING

ENVIRONMENTAL REPRESENTATIVE

D1. Prior to the commencement of construction of the SSI, or as otherwise agreed by the Secretary, the Proponent shall appoint a suitably qualified and experienced Environmental Representative(s) that is independent of the design and construction personnel, and that has been approved by the Secretary. The Proponent shall employ an Environmental Representative(s) for the duration of construction, or as otherwise agreed by the Secretary. The Environment Representative(s) shall:

- (a) be the principal point of advice in relation to the environmental performance of the SSI;
- (b) monitor the implementation of environmental management plans and monitoring programs required under this approval and advise the Proponent upon the achievement of these plans/programs;
- (c) have responsibility for considering, and advising the Proponent on, matters specified in the conditions of this approval, and other licences and approvals related to the environmental performance and impacts of the SSI;
- (d) ensure that environmental auditing is undertaken in accordance with the Proponent's Environmental Management System(s);
- (e) be given the authority to approve/reject minor amendments to the Construction Environment Management Plan. What constitutes a "minor" amendment shall be clearly explained in the Construction Environment Management Plan;
- (f) be given the authority and independence to require reasonable steps be taken to avoid or minimise unintended or adverse environmental impacts, and failing the effectiveness of such steps, to direct that relevant actions be ceased immediately should an adverse impact on the environment be likely to occur; and
- (g) be available to be consulted in responding to the community concerning the environmental performance of the SSI where the resolution of points of conflict between the Proponent and the community is required .

D2. The Environmental Representative shall prepare and submit to the Secretary a monthly report on the Environmental Representative's actions and decision on matters specified in condition D1 for the preceding month. The reports shall be submitted within seven (7) days for the end of each month for the duration of construction of the SSI, or as otherwise agreed by the Secretary. Notwithstanding, the Environmental Representative shall be given the independence to report to the Secretary at any time and/or at the request of the Secretary.

SOIL, WATER QUALITY AND HYDROLOGY

Construction Soil and Water Management

D3. Soil and water management measures consistent with Managing Urban Stormwater - Soils and Construction Vols 1 and 2, 4th Edition (Landcom, 2004) shall be employed during the construction of the SSI to minimise soil erosion and the discharge of sediment and other pollutants to land and/or waters.

D4. Where available and practicable, and of appropriate chemical and biological quality, stormwater, recycled water or other water sources shall be used in preference to potable water for construction activities, including concrete mixing and dust control.

NOISE AND VIBRATION

Land Use Survey

D5. Prior to construction, a detailed land use survey to identify properties that are sensitive to construction vibration shall be undertaken. The results of the survey shall be incorporated into the Construction Noise and Vibration Management Plan as required by condition D32(a).

CONSTRUCTION HOURS

D6. Except as permitted by an EPL, construction activities associated with the SSI shall be undertaken during the following standard construction hours:

- (a) 7:00am to 6:00pm Mondays to Fridays, inclusive; and
- (b) 8:00am to 1:00pm Saturdays; and
- (c) at no time on Sundays or public holidays.

D7. Except as permitted by an EPL, high noise impact works and activities shall only be undertaken:

- (d) between the hours of 8:00 am to 6:00 pm Monday to Friday;
- (e) between the hours of 8:00 am to 1:00 pm Saturday; and
- (f) in continuous blocks not exceeding three hours each with a minimum respite from those activities and works of not less than one hour between each block.

For the purposes of this condition 'continuous' includes any period during which there is less than a one hour respite between ceasing and recommencing any of the work the subject of this condition.

D8. Notwithstanding conditions D6 and D7 construction works outside of the standard construction hours may be undertaken in the following circumstances:

- (a) construction works that generate:
 - (i) LAeq (15 minute) noise levels no more than 5 dB(A) above rating background level at any residence in accordance with the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009); and
 - (ii) LAeq (15 minute) noise levels no more than the noise management levels specified in Table 3 of the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009) at other sensitive receivers; and
 - (iii) continuous or impulsive vibration values, measured at the most affected residence, that are no more than those for human exposure to vibration, specified for residences in Table 2.2 of Assessing Vibration: a technical guideline; and
 - (iv) intermittent vibration values, measured at the most affected residence, that are no more than those for human exposure to vibration, specified for residences in Table 2.4 of Assessing Vibration: a technical guideline; or

- (b) where a negotiated agreement has been reached with affected receivers, where the prescribed noise and vibration levels cannot be achieved; or
- (c) for the delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons; or
- (d) where it is required in an emergency to avoid the loss of lives, property and/or to prevent environmental harm; or
- (e) works approved through an EPL, including for works identified in an out of hours procedure.

CONSTRUCTION NOISE AND VIBRATION

D9. The SSI shall be constructed with the aim of achieving the construction noise management levels detailed in the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009). All feasible and reasonable noise mitigation measures shall be implemented and any activities that could exceed the construction noise management levels shall be identified and managed in accordance with the Construction Noise and Vibration Management Plan required under condition D32(a).

Note:

The Interim Construction Noise Guideline identifies 'particularly annoying' activities that require the addition of 5dB(A) to the predicted level before comparing to the construction NML.

D10. The SSI shall be constructed with the aim of achieving the following construction vibration goals:

- (a) for structural damage to heritage structures, the vibration limits set out in the German Standard DIN 4150-3: Structural Vibration - effects of vibration on structures;
- (b) for damage to other buildings and/or structures, the vibration limits set out in the British Standard BS 7385-2:1993 Evaluation and measurement for vibration in buildings – Guide to damage levels from groundborne vibration (as referenced in Australian Standard AS 2187.2-2006 Explosives – Storage and use – Use of Explosives); and
- (c) for human exposure, the acceptable vibration values set out in the Environmental Noise Management Assessing Vibration: A Technical Guideline (Department of Environment and Conservation, 2006).

D11. Wherever feasible and reasonable, piling activities shall be undertaken using quieter alternative methods than impact or percussion piling, such as bored piles or vibrated piles.

D12. Where Feasible and Reasonable, operation noise mitigation measures shall be implemented at the start of Construction (or at other times during Construction) to minimise Construction noise impacts.

D13. During construction, affected educational institutions shall be consulted and feasible and reasonable steps taken to ensure that noise generating construction works in the vicinity of affected buildings are not timetabled during examination periods where practicable, unless other reasonable arrangements to the affected institutions are made at no cost to the affected institution.

AIR QUALITY

D14. The SSI shall be constructed in a manner that minimises dust emissions from the site, including wind-blown and traffic-generated dust and tracking of material onto public roads. All activities on the site shall be undertaken with the objective of preventing visible emissions of dust from the site. Should such visible dust emissions occur at any time, the Proponent shall identify and implement all feasible and reasonable dust mitigation measures, including cessation of relevant works, as appropriate, such that emissions of visible dust cease.

HERITAGE

D15. In undertaking the SSI, impacts to heritage, shall where feasible and reasonable, be avoided and minimised. Where impacts are unavoidable, works shall be undertaken in accordance with the strategy outlined in the Construction Heritage Management Plan required by condition D32(e).

D16. Where substantial intact archaeological relics of State or local significance are discovered during excavation, work must cease in the affected area and the Heritage Council must be notified in writing, in accordance with Section 145 of the *Heritage Act 1977*. An archaeological assessment including an archaeological methodology and research design (if appropriate) shall be prepared in consultation with the Heritage Council and in accordance with the 1996 Heritage Council Archaeological Assessment Guidelines.

D17. This approval does not allow the Proponent to destroy, modify or otherwise physically affect human remains as part of the SSI. Where previously un-identified heritage items are discovered during construction of the SSI, all work should stop in the affected area and a suitably qualified and experienced heritage expert should be contacted to provide specialist heritage advice. The measures to consider and manage this process, including the requirements of condition D16, should be specified in the Construction Heritage Management Plan required by condition D31(e) including approvals and, where relevant, notification of the Heritage Council of NSW in accordance with section 146 of the *Heritage Act 1977* or registration in the OEH's Aboriginal Heritage Information Management System (AHIMS) register.

TRANSPORT AND ACCESS

D18. The SSI shall be constructed, where feasible and reasonable, to avoid the use of local roads (through residential streets) by heavy vehicles to gain access to ancillary facilities.

D19. Access to construction compounds via local roads shall be limited to standard construction hours, where practicable.

D20. Safe pedestrian and cyclist access through or around worksites shall be maintained during construction. In circumstances where pedestrian and cyclist access is restricted due to construction activities, a satisfactory alternate route shall be provided and signposted.

D21. Construction vehicles (including staff vehicles) associated with the SSI shall be managed to:

- (a) minimise parking or queuing on public roads;

- (b) minimise idling and queuing in local residential streets where practicable; and
- (c) adhere to the nominated haulage routes identified in the Construction Traffic Management Plan required under condition D32(c).

D22. Access to all properties shall be maintained during construction, where feasible and reasonable, unless otherwise agreed by the relevant property owner or occupier. Any access physically affected by the SSI shall be reinstated to at least an equivalent standard, unless agreed with by the property owner.

D23. Upon determining the haulage route(s) for construction vehicles associated with the SSI, and prior to construction, a suitably qualified and experienced independent expert shall prepare a Road Dilapidation Report for all local roads utilised. The Report shall assess the current condition of the road and describe mechanisms to restore any damage that may result due to its use by traffic and transport related to the construction of the SSI. The Report shall be submitted to the relevant Council for review prior to the commencement of haulage.

Following completion of construction, a subsequent Report shall be prepared to assess any damage to the road that may have resulted from the construction of the SSI.

Measures undertaken to restore or reinstate roads affected by the SSI shall be undertaken in a timely manner, in accordance with the reasonable requirements of the relevant Council, and at the full expense of the Proponent.

Note:

Nothing in this condition restricts the Proponent commencing adjustments and minor upgrades to the existing road network to cater for construction traffic and installation of temporary project signage prior to the commencement of construction.

BIODIVERSITY

Biodiversity Offsets

D24. The Proponent shall develop and implement a Biodiversity Offset Package. The Package shall detail how the ecological values lost as a result of the SSI will be offset. The Package shall be consistent with the NSW Principles for the Use of Biodiversity Offsets in NSW (DECCW, 2008) and align, as far as is feasible and reasonable, with the Biodiversity Offset Strategy requirements of the NSW Biodiversity Offsets Policy for Major Projects, OEH, 2014 and developed in consultation with and to meet the requirements of OEH and DPI (Fisheries), unless otherwise agreed by the Secretary.

The Package shall include, but not necessarily be limited to:

- (a) the identification of the extent and types of habitat that would be lost or degraded as a result of the final design of the SSI;
- (b) the objectives and biodiversity outcomes to be achieved;
- (c) the final suite of the biodiversity offset measures selected and secured in accordance with the Biodiversity Offsets Strategy;
- (d) the management and monitoring requirements for compensatory habitat works and other biodiversity offset measures proposed to ensure the outcomes of the package are achieved, including;
- (e) the monitoring of the condition of species and ecological communities at offset (including translocation) locations;

- (f) the methodology for the monitoring program(s), including the number and location of offset monitoring sites, and the sampling frequency at these sites;
- (g) provisions for the annual reporting of the monitoring results for a set period of time as determined in consultation with the OEH; and
- (h) timing and responsibilities for the implementation of the provisions of the Package.

Where land offsets cannot solely achieve compensation for the loss of habitat, additional measures shall be provided to collectively deliver an improved or maintained biodiversity outcome for the region.

Where monitoring referred to in condition D24(e) indicates that biodiversity outcomes are not being achieved, remedial actions shall be undertaken to ensure that the objectives of the Biodiversity Offset Package are achieved.

HAZARDS AND RISK

D25. Dangerous goods, as defined by the Australian Dangerous Goods Code, shall be stored and handled strictly in accordance with:

- (a) all relevant Australian Standards;
- (b) for liquids, a minimum bund volume requirement of 110% of the volume of the largest single stored volume, within the bund; and
- (c) the Environment Protection Manual for Authorised Officers: Bunding and Spill Management, technical bulletin (Environment Protection Authority, 1997).

In the event of an inconsistency between the requirements listed from (a) to (c) above, the most stringent requirement shall prevail to the extent of the inconsistency.

PROPERTY AND LAND USE

D26. The Proponent shall provide boundary screening at all construction compounds that adjoin or are adjacent to residential and/or commercial properties, with the objective of being consistent with the surrounding context.

ANCILLARY FACILITIES

D27. The location of the ancillary facilities shall be identified in the Construction Environment Management Plan required under condition D31.

D28. Unless approved by the Secretary, the location of Ancillary Facilities shall comply with the following locational criteria:

- (a) be located more than 50 metres from a waterway;
- (b) be located within or adjacent to land where the SSI is being carried out;
- (c) have ready access to the road network;
- (d) be located to minimise the need for heavy vehicles to travel through residential areas;
- (e) be sited on relatively level land;
- (f) be separated from nearest residences by at least 200 metres (or at least 300 metres for a temporary batching plant);
- (g) not require vegetation clearing beyond that already required by the SSI;

- (h) not impact on heritage items (including areas of archaeological sensitivity) beyond those already impacted by the SSI;
- (i) not unreasonably affect the land use of adjacent properties;
- (j) be above the 20 ARI flood level unless a contingency plan to manage flooding is prepared and implemented; and
- (k) provide sufficient area for the storage of raw materials to minimise, to the greatest extent practical, the number of deliveries required outside standard construction hours.

D29. All ancillary facilities and access points shall be rehabilitated to at least their pre-construction condition or better, unless otherwise agreed by the landowner where relevant.

D30. The Secretary's approval is not required for minor Ancillary Facilities (e.g. lunch sheds, office sheds, and portable toilet facilities) that do not comply with the criteria set out in condition D28 and:

- (a) are located within an active construction zone within the approved SSI footprint; and
- (b) have been assessed by the Environmental Representative to be -
 - (i) of low amenity risk to surrounding residences, with consideration to matters such as noise and vibration impacts, traffic and access impacts, dust and odour impacts, and visual (including light spill) impacts, and
 - (ii) of low environmental risk in respect to waste management and impacts on flora and fauna, soil and water, and heritage; and
- (c) have environmental and amenity impacts that can be managed through the implementation of environmental measures detailed in the Construction Environmental Management Plan for the project.

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

D31. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Proponent shall prepare and implement (following approval) a Construction Environmental Management Plan (CEMP) for the SSI. The CEMP is to be prepared in consultation with relevant agencies and the Relevant council, for the approval of the Secretary. The CEMP shall outline the environmental management practices and procedures that are to be followed during construction. The CEMP is to be prepared in accordance with the Guideline for the Preparation of Environmental Management Plans (Department of Infrastructure, Planning and Natural Resources, 2004). The CEMP shall include, but not necessarily be limited to:

- (a) a description of activities to be undertaken during construction of the SSI (including staging and scheduling);
- (b) statutory and other obligations that the Proponent is required to fulfil during construction, including approvals, consultations and agreements required from authorities and other stakeholders under key legislation and policies;
- (c) a description of the roles and responsibilities for relevant employees involved in the construction of the SSI, including relevant training and induction provisions for ensuring that employees, including contractors and sub-contractors, are aware of their environmental and compliance obligations under these conditions of approval;

- (d) an environmental risk analysis to identify the key environmental performance issues associated with the construction phase;
- (e) and details of how environmental performance would be managed and monitored to meet acceptable outcomes, including what actions will be taken to address identified potential adverse environmental impacts (including any impacts arising from the staging of the construction of the SSI). These should include consideration of cumulative impacts in relation to staging or other major potential construction activities in the project area. In particular, the following environmental performance issues shall be addressed in the CEMP:
 - (i) measures for the handling, treatment and management of hazardous and contaminated materials (including asbestos);
 - (ii) measures to monitor and manage waste generated during construction including but not necessarily limited to: general procedures for waste classification, handling, reuse, and disposal; use of secondary waste material in construction wherever feasible and reasonable; procedures or dealing with green waste including timber and mulch from clearing activities; and measures for reducing demand on water resources (including potential for reuse of treated water from sediment control basins);
 - (iii) measures to monitor and manage hazard and risks; and
 - (iv) the issues identified in condition D32.

The CEMP shall include procedures for its periodic review and update (including the sub-plans required under condition D32), as necessary (including where minor changes can be approved by the Environmental Representative).

The CEMP shall be submitted for the approval of the Secretary no later than one month prior to the commencement of construction, or as otherwise agreed by the Secretary. The CEMP may be prepared in stages; however, construction works shall not commence until written approval of the relevant stage has been received from the Secretary.

The approval of a CEMP does not relieve the Proponent of any requirement associated with this SSI approval. If there is an inconsistency with an approved Construction Environmental Management Plan and the conditions of this SSI approval, the requirements of this SSI approval shall prevail.

CEMP — SUB PLANS

D32. As part of the CEMP for the SSI, the Proponent shall prepare and implement (following approval):

- (a) a Construction Compound and Ancillary Facilities Management Plan to detail the management of site compounds associated with the infrastructure activity. The Plan shall include but not be limited to:
 - (i) a description of the facility, its components and the surrounding environment;
 - (ii) details of the activities to be carried out at each facility, including the hours of use and the storage of dangerous and hazardous goods;
 - (iii) an assessment of the facility against the criteria provided in condition D28. Where proposed facilities do not meet those criteria, the assessment must justify and (where relevant) quantify potential impacts of the facility.

- (iv) details of the mitigation and management procedures specific to the facility that would be implemented to minimise environmental and amenity impacts and an assessment of the adequacy of the mitigation or offsetting measures;
 - (v) identification of the timing for the completion of activities at the facility and how the site will be decommissioned (including any necessary rehabilitation); and
 - (vi) appropriate monitoring, review and amendment mechanisms.
- (b) a Construction Noise and Vibration Management Plan to detail how construction noise and vibration impacts will be minimised and managed. The Plan shall be consistent with the guidelines contained in the Interim Construction Noise Guidelines (DECC, 2009) and shall include, but not be limited to:
- (i) identification of sensitive receivers and relevant construction noise and vibration goals applicable to the SSI stipulated in this approval;
 - (ii) details of construction activities and an indicative schedule for construction works; including the identification of key noise and/or vibration generating construction activities (based on representative construction scenarios, including at ancillary facilities) that have the potential to generate noise and/or vibration impacts on surrounding sensitive receivers, particularly residential areas;
 - (iii) identification of feasible and reasonable measures proposed to be implemented to minimise and manage construction noise and vibration impacts (including construction traffic noise impacts);
 - (iv) procedures and mitigation measures to ensure relevant vibration criteria are achieved, including applicable buffer distances for vibration intensive works, use of low-vibration generating equipment/ vibration dampeners or alternative construction methodology, and pre- and post- construction dilapidation surveys of sensitive structures where vibration is likely to result in damage to buildings and structures (including surveys being undertaken immediately following a monitored exceedance of the criteria); and
 - (v) a program for construction noise and vibration monitoring (including the monitoring of the effectiveness of noise and vibration mitigation measures) during construction, clearly indicating the monitoring frequency, monitoring locations, how the monitoring results would be recorded and reported, and, if any exceedance is detected, how any non-compliance would be rectified;
 - (vi) procedures for notifying sensitive receivers of construction activities that are likely to affect their noise and vibration amenity, as well as procedures for managing and responding to noise complaints; and
 - (vii) mechanisms for the monitoring, review and amendment of this plan.
- (c) a **Construction Traffic and Access Management Plan** to ensure traffic and access controls are implemented to avoid or minimise impacts on traffic, pedestrian and cyclist access, and the amenity of the surrounding environment. The Plan shall be developed in consultation with the relevant Council, emergency services, road user groups, and pedestrian and bicycle user groups, and include, but not necessarily be limited to:
- (i) identification of construction traffic routes and construction traffic volumes (including heavy vehicle/spoil haulage) on these routes;

- (ii) details of vehicle movements for construction sites and site compounds including parking, dedicated vehicle turning areas, and ingress and egress points;
 - (iii) discussion of construction impacts that could result in disruption of traffic, public transport, pedestrian and cycle access, access to public land, property access, including details of oversize load movements, and the nature and duration of those impacts;
 - (iv) details of management measures to minimise traffic impacts, including temporary road work traffic control measures, onsite vehicle queuing and parking areas and management measures to minimise peak time congestion and measures to ensure safe pedestrian and cycle access;
 - (v) details of measures to maintain or provide alternative safe and accessible routes for pedestrians throughout the duration of construction, including provision of replacement pedestrian and cyclist paths where necessary;
 - (vi) details of measures to maintain connectivity for cyclists, with particular emphasis on providing adequate access between key existing cycle routes;
 - (vii) details of measures to manage traffic movements, parking, loading and unloading at ancillary facilities during out-of-hours work;
 - (viii) details of methods to be used to communicate proposed future traffic changes to affected road users, pedestrians and cyclists, consistent with the Community Communication Strategy required under condition C1;
 - (ix) an adaptive response plan which sets out a process for response to any traffic, construction or other incident; and
 - (x) mechanisms for the monitoring, review and amendment of this plan.
- (d) **A Construction Soil and Water Quality Management Plan** to manage surface and groundwater impacts during construction of the SSI. The plan shall be developed in consultation with OEH, EPA, and DPI (Office of Water and Fisheries), Sydney Water, and Relevant councils and include, but not necessarily be limited to:
- (i) details of construction activities and their locations, which have the potential to impact on water courses, storage facilities, stormwater flows, and groundwater, including identification of all pollutants that may be introduced into the water cycle;
 - (ii) the construction related requirements of condition B8;
 - (iii) an Acid Sulfate Soils Management Plan, including measures for the management, handling, treatment and disposal of acid sulfate soils, including monitoring of water quality at acid sulfate soils treatment areas;
 - (iv) management measures for contaminated material, consistent with the Contaminated Land Strategy required by Condition B9, and a contingency plan to be implemented in the case of unanticipated discovery of contaminated material during construction;
 - (v) an Asbestos Management Plan, to be developed in accordance with the *National Environment Protection (Assessment of Site Contamination) Measure 1999*, and to include measures for the safe removal and disposal of known and

undiscovered asbestos within the SSI footprint and related construction ancillary facilities, stockpile sites and site access;

- (vi) a description of how the effectiveness of these actions and measures would be monitored during the proposed works, clearly indicating how often this monitoring would be undertaken, the locations where monitoring would take place, how the results of the monitoring would be recorded and reported, and, if any exceedance of the criteria is detected how any non-compliance can be rectified; and
 - (vii) mechanisms for the monitoring, review and amendment of this plan.
- (e) a Construction Heritage Management Plan to ensure construction impacts on Aboriginal and non-Aboriginal heritage will be appropriately avoided, minimised and managed. The Plan shall be developed in consultation with OEH, the relevant Council, the NSW Heritage Council (for non-Aboriginal heritage) and Aboriginal stakeholders (for Aboriginal heritage), and include, but not necessarily be limited to:
- (i) in relation to Aboriginal Heritage:
 - (A) procedures for dealing with previously unidentified Aboriginal objects (excluding human remains), including cessation of works in the vicinity, assessment of the significance of the item(s) and determination of appropriate mitigation measures, including when works can recommence, by a suitably qualified and experienced archaeologist in consultation with Department of Planning and Environment, OEH and Aboriginal stakeholders, and assessment of the consistency of any Aboriginal heritage impacts against the approved impacts of the SSI;
 - (B) procedures for dealing with human remains, including cessation of works in the vicinity, notification of Department of Planning and Environment, NSW Police Force, OEH and Aboriginal stakeholders, and commitment to cease recommencing any works in the area unless authorised by the OEH and/or the NSW Police Force;
 - (C) heritage training and induction processes for construction personnel (including procedures for keeping records of inductions) and obligations under the conditions of this approval including site identification, protection and conservation of Aboriginal cultural heritage; and
 - (D) procedures for ongoing Aboriginal consultation and involvement for the duration of the SSI, in the event that previously unidentified Aboriginal objects are discovered; and
 - (ii) in relation to non-Aboriginal Heritage:
 - (A) listing of heritage Items directly and indirectly affected by the SSI;
 - (B) details of management measures to be implemented to prevent and minimise impacts on heritage items (including measures to protect unaffected sites from vibration and other impacts during construction works in the vicinity);
 - (C) details of monitoring and reporting requirements for impacts on heritage items;
 - (D) procedures for dealing with previously unidentified heritage objects, (including cessation of works in the vicinity, assessment of the significance of the item(s) and determination of appropriate mitigation

measures including when works can re-commence by a suitably qualified and experienced archaeologist in consultation with the OEH, NSW Heritage Council and Department of Planning and Environment, and assessment of the consistency of any heritage impacts against the approved impacts of the SSI; and

- (E) heritage training and induction processes for construction personnel (including procedures for keeping records of inductions and obligations under this approval including site identification, protection and conservation of non-Aboriginal cultural heritage; and
 - (iii) mechanisms for the monitoring, review and amendment of this plan.
- (f) a Construction Flora and Fauna Management Plan to detail how construction impacts on ecology will be minimised and managed. The Plan shall be endorsed by an appropriately qualified and experienced ecologist and in consultation with the OEH and DPI, and shall include, but not necessarily be limited to:
- (i) plans for impacted and adjoining areas showing vegetation communities, including riparian and wetland communities; important flora and fauna habitat areas; locations where threatened species, populations or ecological communities have been recorded; including pre-clearing surveys to confirm the location of threatened flora and fauna species and associated habitat features;
 - (ii) the identification of areas to be cleared and details of management measures to avoid residual habitat damage or loss and to minimise or eliminate time lags between the removal and subsequent replacement of habitat such as:
 - (A) clearing minimisation procedures (including fencing),
 - (B) pre-clearing and clearing procedures,
 - (C) removal and relocation of fauna during clearing,
 - (D) habitat tree management, and
 - (E) construction worker education;
 - (iii) rehabilitation details, including identification of flora species and sources, and measures for the management and maintenance of rehabilitated areas;
 - (iv) a Weed Management Strategy, incorporating weed management measures focusing on early identification of invasive weeds and effective management controls (including for those related to aquatic and riparian zones);
 - (v) a description of how the effectiveness of these management measures would be monitored;
 - (vi) a procedure for dealing with unexpected EEC/ threatened species identified during construction, including cessation of work and notification of the OEH, determination of appropriate mitigation measures in consultation with the OEH (including relevant re-location measures) and updating of ecological monitoring and/ or biodiversity offset requirements and
 - (vii) mechanism for the monitoring, review and amendment of this plan.
- (g) a Construction Air Quality Management Plan to detail how construction impacts on air quality will be minimised and managed. The Plan shall be developed in consultation with the EPA and shall include, but not necessarily be limited to:

- (i) the identification of potential sources of dust;
- (ii) dust management objectives;
- (iii) measures to monitor and manage dust emissions, including dust from stockpiles, and materials tracking from construction sites onto public roads;
- (iv) mitigation measures to be implemented, including measures during weather conditions where high level dust episodes are probable (such as strong winds in dry weather);
- (v) a monitoring program to assess compliance with the identified objectives;
- (vi) strategies to minimise air emissions from off road diesel equipment, including but not limited to graders, bulldozers and loaders; and
- (vii) mechanism for the monitoring, review and amendment of this plan.

PART E

OPERATIONAL ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING

NOISE

OPERATIONAL NOISE

E1. The SSI shall be designed and operated with the objective of not exceeding the road noise criteria outlined in the NSW Road Noise Policy (Department of Environment, Climate Change and Water, 2011).

OPERATIONAL NOISE REVIEW

E2. Unless otherwise agreed by the Secretary, within six months of commencing construction, the Proponent shall, in consultation with the EPA, submit for the approval of the Secretary, a review of the operational noise mitigation measures proposed to be implemented for the SSI, including measures proposed to mitigate noise at sensitive receivers along Parramatta Road between Woodville Road, Parramatta and the intersection of Parramatta Road/M4, Concord, impacted as a result of the SSI. The review shall:

- (a) confirm the operational noise predictions of the SSI based on detailed design, including maximum night time noise events (utilising an appropriately calibrated noise model which has incorporated additional noise monitoring where necessary for calibration purposes);
- (b) review the suitability of the operational noise mitigation measures identified in the documents listed under condition A2 and the noise assessment report required under condition E2 to achieve the criteria outlined in the NSW Road Noise Policy (Department of Environment, Climate Change and Water, 2011), based on the operational noise performance of the SSI predicted under condition E1; and
- (c) where necessary, investigate and identify additional feasible and reasonable noise mitigation measures to achieve the criteria outlined in the NSW Road Noise Policy (Department of Environment, Climate Change and Water, 2011); and
- (d) identify all sensitive receiver locations where architectural treatments shall be implemented (subject to agreement by the landowner).

The review shall be undertaken by a suitably qualified and experienced acoustic specialist.

E3. Once the need for architectural treatment of a residential building has been confirmed under condition E4, and that building comprises multiple levels, all dwellings of the building shall be considered for architectural treatment unless it can be demonstrated that operational noise levels on a particular floor(s) comply with the criteria outlined in the NSW Road Noise Policy (Department of Environment, Climate Change and Water, 2011).

ARCHITECTURAL TREATMENT AT SENSITIVE RECEIVERS

E4. Within four weeks of the Secretary's approval of the report required by condition E3, the Proponent shall write to each landowner whose property is identified as eligible for

architectural treatment, offering to provide and fund feasible and reasonable architectural treatments to reduce the impact of operational traffic noise at the affected premises. The Proponent's offer shall remain open for acceptance by the affected landowner for at least 12 months from the date of the notification required under this condition.

E5. Architectural treatments agreed between the parties shall be implemented as soon as practicable after reaching such an agreement.

OPERATIONAL NOISE COMPLIANCE

E6. Within 12 months of the commencement of operation of the SSI, or as otherwise agreed by the Secretary, the Proponent shall undertake operational noise monitoring to compare actual noise performance of the SSI, including noise levels at sensitive receivers along Parramatta Road impacted as a result of the SSI, against noise performance predicted in the review of noise mitigation measures required by condition E4, and prepare an Operational Noise Compliance Report to document this monitoring. The Report shall include, but not necessarily be limited to:

- (a) noise monitoring to assess compliance with the operational noise levels predicted in the review of operational noise mitigation measures required under condition E4 and documents specified under condition A2 of this approval;
- (b) a review of the operational noise levels in terms of criteria established in the *NSW Road Noise Policy* (Department of Environment, Climate Change and Water, 2011);
- (c) methodology, location and frequency of noise monitoring undertaken, including monitoring sites at which SSI noise levels are ascertained, with specific reference to locations indicative of impacts on sensitive receivers;
- (d) details on average daily traffic volumes on the widened M4 and impacted length of Parramatta Road during the daytime and night-time periods based on recorded observations;
- (e) details of any complaints and enquiries received in relation to operational noise generated by the SSI between the date of commencement of operation and the date the report was prepared;
- (f) any required recalibrations of the noise model taking into consideration factors such as actual traffic numbers and proportions;
- (g) an assessment of the performance and effectiveness of applied noise mitigation measures together with a review and if necessary, reassessment of feasible and reasonable mitigation measures; and
- (h) identification of additional feasible and reasonable measures to those identified in the review of noise mitigation measures required by condition E4, that would be implemented with the objective of meeting the criteria outlined in the *NSW Road Noise Policy* (Department of Environment, Climate Change and Water, 2011), when these measures would be implemented and how their effectiveness would be measured and reported to the Secretary and the EPA.

The Proponent shall provide the Secretary and the EPA with a copy of the Operational Noise Report within 60 days of completing the operational noise monitoring referred to in (a) above or as otherwise agreed by the Secretary.

TRANSPORT AND ACCESS

E7. The Proponent shall prepare an Operational Traffic Performance Review. The Review shall be undertaken at 12 months and 5 years after the commencement of operation of the SSI, or as otherwise agreed by the Secretary. The Review shall be undertaken in consultation with Transport for NSW and relevant Councils and include, but not necessarily be limited to:

- (a) an assessment of the traffic and road network performance of the SSI and mitigation measures identified the **Road Network Performance Report** required by condition xx,
- (b) a review and confirmation of the timeframe for prioritising and delivering outstanding mitigation measures required by (a) above;
- (c) a review of bus priority measures implemented to mitigate detrimental impacts on bus performance; and
- (d) details of any complaints received relating to traffic, transport and access impacts, and how they have been addressed in the Review.

The Review shall be submitted to the Secretary, Transport for NSW (in relation to impacts on bus services) and to relevant Councils within 60 days of its completion and made publicly available. If the Review indicates ongoing traffic, transport and access impacts attributable to the SSI, via level of service, queue lengths, road safety, and other relevant parameters of performance, the Proponent shall implement further feasible and reasonable measures to mitigate these impacts. The timing for the implementation of these measures shall be clearly articulated in the Review.

URBAN DESIGN AND LANDSCAPING

E8. The ongoing maintenance of urban design and landscaping items and works implemented as part of this infrastructure approval shall remain the Proponent's responsibility unless satisfactory arrangements have been put in place for the transfer of ownership of the asset to another authority. The Proponent will maintain items and works to the standards established in the Urban Design and Landscape Plan required under condition B26, unless and until landscaping items have been transferred.

OPERATION ENVIRONMENTAL MANAGEMENT PLAN

E9. Prior to the commencement of operation, or as otherwise agreed by the Secretary, the Proponent shall prepare and implement (following approval) an Operation Environmental Management Plan for the SSI. The OEMP shall outline the environmental management practices and procedures that are to be followed during operation, and shall be prepared in consultation with relevant agencies and in accordance with the Guideline for the Preparation of Environmental Management Plans (Department of Infrastructure, Planning and Natural Resources, 2004). The OEMP shall include, but not necessarily be limited to:

- (a) a description of activities to be undertaken during operation of the infrastructure activity (including staging and scheduling);
- (b) statutory and other obligations that the Proponent is required to fulfil during operation, including approvals, consultations and agreements required from authorities and other stakeholders under key legislation and policies;
- (c) overall environmental policies, guidelines and principles to be applied to the operation of the infrastructure activity;
- (d) a description of the roles and responsibilities for relevant employees involved in the operation of the infrastructure activity, including relevant training and induction

provisions for ensuring that employees are aware of their environmental and compliance obligations under these conditions of approval;

- (e) an environmental risk analysis to identify the key environmental performance issues associated with the operation phase; and
- (f) details of how environmental performance would be managed and monitored to meet acceptable outcomes, including what actions will be taken to address identified potential adverse environmental impacts, including those safeguards and mitigation measures detailed in section 8 of the PIR (and any impacts arising from the staging of the construction of the infrastructure activity). In particular, the following environmental performance issues shall be addressed in the OEMP:
 - (i) noise and vibration;
 - (ii) traffic and transport;
 - (iii) visual amenity and landscaping; and
 - (iv) surface water quality and hydrology.

The Plan shall be submitted for the approval of the Secretary no later than one month prior to the commencement of operation, or as otherwise agreed by the Secretary. Operation shall not commence until written approval has been received from the Secretary.

Note:

The approval of an OEMP does not relieve the Proponent of any requirement associated with this infrastructure activity approval. If there is an inconsistency with an approved OEMP and the conditions of this infrastructure activity approval, the requirements of this infrastructure activity approval prevail.

INDEPENDENT ENVIRONMENTAL AUDIT

E10. Within 18 months of the commencement of operation, the Proponent shall commission and pay the full cost of an Independent Environmental Audit of the SSI. This audit shall:

- (a) be conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
- (b) include consultation with the relevant agencies and local Councils;
- (c) assess the environmental performance of the SSI and assess whether it is complying with the requirements in this approval, and any other relevant environment approvals (including any assessment, plan or program required under these approvals);
- (d) review the accuracy of predicted environmental outcomes discussed in the documents listed in condition A2;
- (e) review the adequacy of any approved strategy, plan or program required under the abovementioned approvals; and
- (f) recommend measures or actions to improve the environmental performance of the SSI, and/or any strategy, plan or program required under these approvals.

Within 90 days of commissioning this audit, or as otherwise agreed by the Secretary, the Proponent shall submit a copy of the audit report to the Secretary and relevant public authorities, together with its response to any recommendations contained in the audit report.

Should the Audit identify unsatisfactory compliance with the SSI approval, the Secretary may require an additional Audit to be undertaken at a later date(s).

Notes:

- This audit team shall be led by a suitably qualified and experienced auditor, and include relevant experts.
- The audit may be staged to suit the staged operation of the SSI.

SCHEDULE 61

MASTER ACCESS DEED

(Clause 23.3)

SCHEDULE 62

RETAINED RESPONSIBILITIES

(Clause 23.3)

1. INTERPRETATION OF THIS SCHEDULE

Where obligations or matters are listed in this Schedule 62 as remaining the responsibility of RMS:

- (a) references to clauses are references to clauses of the Master Access Deed, unless otherwise indicated;
- (b) this schedule refers to the terms of the Master Access Deed as if they were directly between the Project Company and RailCorp even though those obligations are to be performed by the Project Company to RMS to satisfy RMS's obligations to RailCorp;
- (c) without limiting clause 23.3 of this deed, the matter or obligation remains RMS's responsibility as between RMS and RailCorp, and at the same time is a matter or an obligation, as between the Project Company and RMS in relation to which:
 - (i) the Project Company must not do, or omit to do, anything that may cause RMS to be in breach of RMS's obligations under the Master Access Deed; and
 - (ii) the Project Company must if requested provide information and assistance to RMS to enable RMS to fulfil the relevant requirements under the Master Access Deed; and
- (d) nothing in this Schedule 62 will limit, or is to be taken to limit, any of the Project Company's obligations and liabilities under this deed.

2. RMS'S RESPONSIBILITIES IN RESPECT OF THE MASTER ACCESS DEED

The only matters that remain the responsibility of RMS, as between RMS and the Project Company, in ensuring compliance with the Master Access Deed, are that RMS is to be responsible for:

- (a) negotiating any replacement of the Master Access Deed under clause 2;
- (b) obligations or matters referred to under clause 3.1;
- (c) discussions about any tender pursuant to clause 4.1(a)(ii);
- (d) providing RailCorp with any notice about a design element referred to under clause 4.1(b)(i);
- (e) requests to, and discussions with, RailCorp referred to under clause 4.1(c);
- (f) obligations or matters referred to under clause 4.7, except that:
 - (i) to the extent a requirement to submit a Corridor Access Application (within the meaning of that term under the Master Access Deed) under clause 4.7 arises out of or in connection with the Project Company's obligations to rectify Defects, the Project Company will be responsible for the obligations or matters referred to under clause 4.7; and
 - (ii) the Project Company is responsible for preparation of RailCorp Maintenance Plans pursuant to clause 23.3(j) of this deed;

- (g) payment of the part of RailCorp's Costs attributable to RMS determined by RailCorp under clause 14.4(b) of the Master Access Deed;
- (h) notifying RailCorp of the identity of any Condition Consultant (as defined in the Rail Agreement) and discussing and agreeing a Condition Consultant;
- (i) obligations or matters referred to under clause 18.1;
- (j) obligations or matters referred to under clause 20, except that to the extent a requirement under clause 20 arises out of or in connection with:
 - (i) rectification of Defects; or
 - (ii) preparation or revision of RailCorp Maintenance Plans pursuant to clause 23.3(j) of this deed,
 - (iii) the Project Company will be responsible for those obligations or matters referred to under clause 20;
- (k) obligations or matters referred to under clause 24, except that the Project Company will be responsible for effecting and maintaining, and ensuring that the Project Company's subcontractors and consultants effect and maintain, the policies of insurance referred to under clause 24.3(b) and 24.3(c) in accordance with the requirements of clause 24, as it applies to those policies (excluding clause 24.2, clause 24.4 and clause 24.7);
- (l) obligations or matters referred to under clause 26;
- (m) obligations or matters referred to under clause 27;
- (n) obligations or matters referred to under clause 29; and
- (o) obligations or matters referred to under clause 33.

SCHEDULE 63

RAIL CORRIDOR WORKS AND RAILCORP'S TECHNICAL CONDITIONS

(Clause 23.3)

(Clause 1.1 definition of *Rail Corridor Works* and *RailCorp's Technical Conditions*)

1. PRINCIPAL ITEMS OF INFRASTRUCTURE

The following principal items of infrastructure are included in the Rail Corridor Works: Bridge comprising an elevated viaduct structure, crossing the Western Rail Line and Carlingford Rail Line.

2. RAILCORP'S TECHNICAL CONDITIONS

The following documents and requirements comprise RailCorp's Technical Conditions as at the date of this deed:

- (a) All relevant RailCorp standards, manuals and other publications that are found at the following internet site : <http://engineering.railcorp.nsw.gov.au/>, including but not limited to the following:
 - (i) RailCorp Engineering Standard Track, ES 215 Transit Space, Version 4.5, 5 February 2011;
 - (ii) RailCorp Engineering Standard Civil, ESC 300 Structures System, Version 2.3, February 2011;
 - (iii) RailCorp Engineering Standard Structures, ESC 310 Underbridges, Version 2.2, July 2010;
 - (iv) RailCorp Engineering Standard Structures, ESC 320 Overbridges and Footbridges, Version 2.2, July 2010;
 - (v) RailCorp Engineering Standard Right of Way, ESC 550 Access Roads, Version 1.1, December 2009;
 - (vi) RailCorp Engineering Standard Electrical, EP 12 30 00 01SP Electrolysis from Stray DC Current, Version 3.0, May 2010; and
 - (vii) RailCorp Engineering Manual Civil, TMC 001, Civil Technical Competencies and Engineering Authority, Version 4.2, February 2011; and
- (b) sufficient space for access roads that give continuous trackside access for road vehicles along and within the rail corridor for both maintenance and emergency services purposes must be provided outside of both sides of the track clearance envelope.

The documents identified in clauses 2(a)(i) to (vii), inclusive above are identified and listed in Appendix K03 of the SPR and are Reference Documents within the meaning of the SPR.

WestConnex M4 Widening Project Deed Exhibits

EXHIBIT A

Overall D&C Program

The Overall D&C Program is included as "Exhibit C – Contractor's Program" within the disc forming Exhibit C of this deed.

EXHIBIT B

Not Used

EXHIBIT C

Electronic Files

See attached disc titled "*WestConnex, M4 Widening, Exhibit F – Electronic Files, December 2014*".

EXHIBIT D

Draft Motorway Stratum Lease

THIS Deed is made on

2014

BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 of 101 Miller Street, North Sydney, New South Wales 2060 (**Lessor**); and
- (2) **WCX M4 Pty Limited** ABN 92 602 93 806 of Level 18, 101 Miller Street, North Sydney, New South Wales 2060 (**Lessee**).

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

Words and expressions not defined in this Lease will have the same meaning as the words and expressions defined in the Project Deed except that in this Lease:

Claim includes any claim, action, demand or proceeding:

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

Commencement Date means the earlier of [*insert hard Date of Completion or, if the Motorway is opened prior to the Date of Completion, the hard Motorway Opening Date*].

Easements means those easements, restrictions on use, covenants, agreements, arrangements or other similar arrangements together with any leases, sub-leases, licences and rights or privileges in each case as contemplated by clause 8, which benefit or burden the Motorway Stratum.

Lease means this deed.

Lessee's Employees means the authorised officers, agents, employees, invitees and sub-contractors of the Lessee and their respective employees and invitees and any other person authorised by the Lessee.

Lessor's Employees means the authorised officers, agents, employees, invitees and sub-contractors of the Lessor and their respective employees and invitees and any other person authorised by the Lessor (but excluding the Lessee and the Lessee's Employees).

Motorway Stratum means the land (and improvements) details of which are set out in Schedule 1 annexed to this Lease.

Non-toll Business means the use of the Motorway or the Motorway Stratum by the Lessee for any business or revenue generating activity other than the collection of tolls and charges approved in accordance with the Project Deed and includes permitting others to have access to the Motorway or the Motorway Stratum for the purpose of installing and operating Utility Services and service centres.

Project Deed means the deed titled "WestConnex M4 Widening Project - Project Deed" between the Lessor and the Lessee dated [*insert*].

Rent means, in respect of any Rent Period, the aggregate of:

- (a) the amount of \$1.00; and
- (b) the amount equivalent to 50% (or such other percentage agreed between the Lessor and the Lessee from time to time) of all gross revenue (less any part of that revenue which is collected on account of GST and other taxes, levies, imposts or other government charges other than income tax) actually received and collected in respect of Non-toll Business during that period.

Rent Period means each of the following:

- (a) the period commencing on the earlier of:
 - (i) the Date of Completion; and
 - (ii) the date which is 3 months after the Motorway Opening Date,and terminating on the next 30 June;
- (b) each subsequent period of 12 months wholly within the Term; and
- (c) the period from 1 July during the last year of the Term to the Termination Date.

Term means the period beginning on the Commencement Date and ending on the Termination Date.

Termination Date means the earlier to occur of:

- (a) 31 December 2021; and
- (b) that date on which this Lease is terminated pursuant to clause 2.5.

1.2 **Governing law**

This Lease is governed by and must be construed according to the Law applying in New South Wales.

1.3 **Interpretation**

In this Lease:

- (a) headings are for convenience only and do not affect the interpretation of this Lease;
- and unless the context indicates a contrary intention:

- (b) person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) includes in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this Lease and any other deed, agreement, instrument, guideline, code of practice or code and standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Lease;
- (i) a reference to this Lease includes all schedules, exhibits, attachments and annexures to it;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) subject to clause 1.7(a)(ii), a reference in this Lease to any act or omission of the Lessor includes any demand, determination, direction, instruction, order, rejection, request or requirement made or given by the Lessor;
- (m) a reference to "day" is a reference to a calendar day;
- (n) a reference to "month" is a reference to a calendar month;
- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to "\$" or "dollar" is to Australian currency; and

- (q) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

1.4 Exclusion of implied covenants and powers

- (a) The covenants, powers and provisions implied by section 84, section 84A, section 85 and section 86 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.
- (b) If any of the forms of words used in the first column of Part 2 of Schedule 4 to the *Conveyancing Act 1919* (NSW) are used in this Lease, they do not imply a covenant under section 86 of that Act.

1.5 Lessee's obligations

The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature hereunder by the Lessor will not, except where this Lease expressly provides to the contrary, relieve the Lessee from its obligations under this Lease.

1.6 Policy and intent

The Lessor and the Lessee acknowledge and agree that their intention in entering into this Lease is to facilitate the implementation of the Project Deed by providing for the operation, maintenance and repair of a tollway comprising the Motorway and all things necessarily incidental thereto for the purpose of the Lessee (including its servants, agents, permitted sublessees and assigns) providing and operating the tollway to enhance and modernise public infrastructure for the benefit of the people of New South Wales.

1.7 Lessor's position as an Authority

- (a) Subject to clause 1.7(b), the Lessee acknowledges and agrees that:
 - (i) this Lease will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Lessor to exercise any of its functions or powers pursuant to any Law; and
 - (ii) without limiting clause 1.7(a)(i), anything which the Lessor does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Lessor (including a breach of contract) under or in connection with this Lease and will not entitle the Lessee to make any Claim against the Lessor.
- (b) The Lessor and the Lessee agree that clause 1.7(a) is not taken to limit any Liability which the Lessor would have had to the Lessee under this Lease as a result of a breach by the Lessor of a term of this Lease but for clause 1.7(a).

1.8 Severability of provisions

If at any time a provision of this Lease 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 Lease; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Lease; 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 1.8(b)(i), preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this Lease; and
 - (B) the original effect and intent of this Lease.

2. **LEASE**

2.1 **Grant of Lease and easements and rights**

- (a) The Lessor leases the Motorway Stratum together with the benefit and burden of any Easements to the Lessee for the Term on the terms and conditions set out in this Lease and subject to the Easements.
- (b) This Lease begins on the Commencement Date and ends on the Termination Date.
- (c) In consideration of the payment of \$10.00 by the Lessee to the Lessor, the receipt and sufficiency of which is acknowledged by the Lessor, the Lessor grants to the Lessee a non-exclusive right to access and use the Licensed Maintenance Areas for the Term on the terms and conditions set out in Schedule 2.

2.2 **Rent**

- (a) The Lessee must pay the Rent to the Lessor:
 - (i) annually in arrears, within 20 Business Days after the completion of each Rent Period;
 - (ii) without demand from the Lessor;
 - (iii) free of set-off or counterclaims; and
 - (iv) without any deduction whatsoever.
- (b) If any part of the Motorway constructed on the Motorway Stratum is damaged or destroyed the Rent will not abate and the Lessee must comply with its reinstatement obligations under, and to the extent required by, the Project Deed.
- (c) The Lessee must immediately notify the Lessor when it derives an amount sufficient to enable the Lessee to pay the Rent to the Lessor, other than where the only Rent payable is under paragraph (a) of the definition of Rent.
- (d) Within 20 Business Days after the end of each Rent Period the Lessee must provide to the Lessor a report specifying the moneys owing to the Lessor in respect of Rent.

2.3 **Rates and Taxes**

The Lessee must pay, or procure the payment of, all land-based rates, Taxes and charges in respect of the Motorway Stratum as from the Commencement Date in accordance with the terms of the Project Deed.

2.4 **Yielding up**

The Lessee must peaceably surrender and yield up the Motorway Stratum to the Lessor on the Termination Date in the state of repair and in the operating condition required by the Project Deed.

2.5 **Determination on termination of the Project Deed**

- (a) Notwithstanding any other provisions of this Lease as to the period of the Term, the tenancy created by this Lease will automatically and simultaneously be determined upon the termination of the Project Deed without the necessity of notice and the tenancy created under this Lease and all estates and interests derived or dependent upon this Lease will be determined for all time with effect from the date the Project Deed is terminated.
- (b) The parties expressly acknowledge and agree that, upon the termination of the Project Deed in accordance with the Project Deed:
 - (i) this Lease is intended to and will expire by effluxion of time despite any Law;
 - (ii) the non-exclusive licence to use the Licensed Maintenance Areas granted under clause 2.1(c) will automatically and simultaneously be determined; and
 - (iii) the Lessee will not, and will not be entitled to, bring an action for relief against forfeiture of this Lease.
- (c) The Lessor must not and cannot terminate this Lease unless the Project Deed has been or is simultaneously terminated.

3. **PROJECT DEED**

- (a) This Lease is subject to the terms and conditions of the Project Deed. If there is any inconsistency between the terms of this Lease and the terms of the Project Deed, the Project Deed will prevail.
- (b) The Lessor and Lessee agree that, to the extent that each of them relies on its respective rights pursuant to the Project Deed, nothing in this Lease will in any way operate as a bar to the exercise by the Lessor and the Lessee of, or a waiver of or modification to, their rights under the Project Deed.

4. **EXCLUSIVE POSSESSION**

Subject to this Lease, the Lessor gives the Lessee exclusive possession of the Motorway Stratum.

5. **USE**

- (a) The Lessee will not, without the consent in writing of the Lessor use, permit or suffer to be used any part of the Motorway Stratum for any purpose other than as a tollway and ancillary uses (including for any Non-toll Business approved by the Lessor) and in accordance with the Project Deed.
- (b) The Lessor makes no express or implied warranty:
 - (i) that the Motorway Stratum is now or will remain suitable or adequate for all or any of the purposes contemplated in the Project Deed or this Lease; or
 - (ii) as to the climatic and physical conditions and characteristics of the Motorway Stratum,

and save as aforesaid all warranties (if any) as to the matters referred to in clauses 5(b)(i) and (b)(ii) implied by Law are, to the extent permitted by Law hereby expressly negatived.

6. **MAINTENANCE AND REPAIR**

The Lessee undertakes to maintain and repair or procure the maintenance and repair of the Motorway in accordance with the Project Deed.

7. **LESSOR'S INSPECTION**

The Lessor, the Lessor's Employees and any other person authorised by the Lessor at any time during the Term may enter the Motorway Stratum during business hours or on reasonable notice and otherwise in accordance with the Project Deed to determine whether:

- (a) the Lessee is complying with this Lease; or
- (b) the Lessee is complying with the Project Deed,

or to exercise any right or perform any obligation which the Lessor has under any Project Document.

8. **EASEMENTS AND OTHER RIGHTS**

8.1 **Easements and other rights reserved by the Lessor**

The Lessor reserves the right at all times for the purposes set out in Part 1 of Schedule 3 to:

- (a) create any Easements benefiting or burdening the Motorway Stratum with:
 - (i) any of the owners, lessees, tenants or occupiers of the land adjacent to or in the vicinity of the Motorway Stratum; or
 - (ii) any public or other Authority,and to release, vary, modify or give waivers of such Easements; and
- (b) dedicate land of which it is the owner of the fee simple estate for road, rail, or other purposes,

upon such terms and conditions as the Lessor thinks fit, provided that where any such Easement (or release, variation, modification or waiver of such Easement) or dedication could reasonably be expected to have:

- (c) a material adverse effect on the design, construction, maintenance, repair or operation of the Motorway or upon the ability of the Lessee to undertake the Project in accordance with the Project Documents; or
- (d) an adverse effect on the patronage, capacity or use of the Motorway or the ability of the Lessee to levy, collect or, as against the Lessor and the NSW Government, keep the tolls,

the Lessor must obtain the prior written consent of the Lessee to the creation of any such Easement (or release variation, modification or waiver in respect of any such Easement) or dedication of land, which consent must not be unreasonably withheld.

8.2 **Easements for the Lessee's benefit**

Without in any way limiting clause 11.5 of the Project Deed, if, but only if:

- (a) the Lessor is the owner of the estate in fee simple of; and
- (b) there are no inconsistent interests in,

the land which is to be benefited or burdened by such Easement, the Lessor undertakes to the Lessee that it will, upon request after the Commencement Date, at the Lessee's cost, create Easements benefiting or burdening the Motorway Stratum in favour of:

- (c) the Lessee or any other person who is at any time entitled to an estate or interest in possession in the benefited land and every person authorised by any of them; or
- (d) any relevant provider of services and utilities, or any relevant infrastructure owner or any relevant third party as agreed by the Lessor,

where such Easements are proposed on reasonable terms and are reasonably required by any of those parties and at no cost to the Lessor for the purposes set out in Part 2 of Schedule 3.

8.3 No Claim

The Lessee may not make any Claim or requisition or rescind or terminate this Lease or the Project Deed because the Lessor wishes to grant any Easement.

9. LESSEE ACCEPTS RISK

The Lessee agrees that the Lessee's use and occupation of the Motorway Stratum during the Term will at all times be at the risk of the Lessee.

10. ASSIGNMENT OR SECURITY INTEREST

10.1 Assignment by the Lessee

- (a) The Lessee must not:
 - (i) assign or otherwise deal with its interest in or obligations under this Lease; or
 - (ii) sub-lease or licence the Motorway Stratum,except in accordance with clause 37 of the Project Deed.
- (b) For the purposes of this clause 10, it will be reasonable for the Lessor to require, as a condition of its consent to an assignment (other than by way of security) of or dealing with this Lease, that the assignee enters into a deed with the Lessor on terms reasonably acceptable to the Lessor under which the assignee covenants from the date of the assignment in favour of the Lessor to comply with and be bound by all of the covenants, obligations and liabilities of the Lessee under this Lease and whether or not such covenants, obligations or liabilities run with the land.

10.2 Security Interests

The Lessee must not give any Security Interest over its interest in this Lease to secure its obligations to any person except as permitted pursuant to the Debt Financing Documents or the Project Deed or otherwise with the prior written consent of the Lessor.

11. DISPUTE RESOLUTION

The Lessor and the Lessee must deal with any dispute in respect of this Lease in accordance with the Dispute Resolution Procedure except that upon any party serving a written notice upon the other under the Dispute Resolution Procedure the dispute will be determined by an expert in accordance with section 5 of the Dispute Resolution Procedure as if:

- (a) references in the Project Deed to "the parties" were references to "Lessor and the Lessee";

- (b) references in the Project Deed to "party" were references to "Lessor" or "Lessee" (as appropriate);
- (c) references in the Project Deed to "dispute" were references to dispute under this Lease; and
- (d) the notice under this clause was the notice under section 2 of the Dispute Resolution Procedure.

12. GST

12.1 Definitions and interpretation

GST, GST law and other terms used in this clause 12 (except **Recipient**) have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference in this clause 12 to GST payable by the Supplier (as defined in clause 12.2) includes any GST payable by the representative member of any GST group of which the Supplier is a member. Any reference to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which the representative member of any GST group of which the party is a member is entitled.

12.2 GST payable

- (a) Notwithstanding any other provision of this Lease, any amount payable for a supply made under this Lease which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Lease:
 - (i) any amount payable or consideration to be provided under any other provision of this Lease for that supply, including an amount of non-monetary consideration (as reduced in accordance with clauses 12.2(a) and 12.2(b) where applicable) (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (the **Recipient**), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Lease.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Lease (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 12.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.

- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Arbitrators and Mediators Australia for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this Lease, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.

13. NOTICES

13.1 How to give a notice

A notice or consent under this Lease (**Notice**) is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) subject to clause 13.1(d), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address; and
- (d) in the case of Notices which have been sent in accordance with clause 13.1(c)(ii) under clauses 5, 8, 10, 11 and 14.1, in addition to the Notice sent pursuant to clause 13.1(c)(ii), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 13.1(c)(i).

13.2 Effectiveness of notices

- (a) A Notice referred to in clause 13.1(d) will not be effective unless it is delivered in accordance with clause 13.1(c)(i).
- (b) A Notice issued pursuant to clause 13.1(c)(ii) and a Notice issued pursuant to clause 13.1(c)(i) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

13.3 When a notice is given

A Notice that complies with this clause 13 is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – 2 Business Days after posting; or
 - (ii) to or from a place outside Australia – 5 Business Days after posting;
- (b) subject to clause 13.3(c), if it is sent by email:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; or

- (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; and
- (c) where clause 13.1(c)(ii) applies, the relevant Notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 13.3(b); and
 - (ii) the date determined in accordance with clause 13.3(a).

13.4 **Address for notices**

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

Lessor

Address:

Email address:

Attention:

Lessee

Address:

Email address:

Attention:

13.5 **Communications by email**

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 13.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 13. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 13.1(c)(ii) will only form part of a communication under this clause 13 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this Lease:
 - (i) to ensure that their respective firewall and/or mail server (as applicable):
 - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received;
 - (B) does not trap any messages in the spam filter;
 - (aa)
 - (C) automatically sends a receipt notification to the sender upon receipt of a message; and

- (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

14. GENERAL

14.1 Costs

- (a) The Lessee must, within 28 days from the date of notice from the Lessor requesting payment, pay all stamp duties, fees, fines, penalties for late payment (other than due to the default of the Lessor) and charges of or incidental to the stamping of this Lease.
- (b) Each party must bear its own costs, charges and expenses of or incidental to the negotiation, preparation, execution and completion of this Lease.

14.2 Interest

If a party does not pay an amount payable by it to the other party under this Lease by the date that it is due, the first mentioned party must pay interest on that amount on demand by the other party. Interest is:

- (a) payable from the date the payment was due until the date the payment is made by the first mentioned party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged;
- (b) calculated on daily balances at the rate of BBSY + 2% per annum; and
- (c) capitalised monthly.

14.3 Moratorium legislation

Unless application is mandatory by Law, any present or future Law will not apply to this Lease so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to RMS.

14.4 Utility Services

The Lessor is not responsible for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of inability to obtain Utility Services and the Lessee acknowledges that it is the responsibility of the Lessee to obtain all the Utility Services.

14.5 No agency

Except as expressly permitted or contemplated by the Project Deed, the Lessee must not (in connection with the Motorway Stratum, the Licensed Maintenance Areas or otherwise) directly or indirectly hold out nor permit to be held out to any person any statement, act, deed, matter or thing indicating that the Motorway Stratum, the Licensed Maintenance Areas or the business conducted or operated that the Motorway Stratum or the Licensed Maintenance Areas (or any part of them) are being carried on or managed or supervised by the Lessor, and the Lessee must not act as or represent itself to be the servant or agent of the Lessor.

14.6 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Lease by a party will not in any way preclude, or operate as a waiver of, any exercise

or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Lease.

(b) Any waiver or consent given by a party under this Lease will only be effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver by a party of:

(i) a breach of any term of this Lease; or

(ii) any other failure by the other party to comply with a requirement of this Lease, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim,

will operate as a waiver of:

(iii) another breach of that term or of a breach of any other term of this Lease; or

(iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this Lease.

14.7 **Variation**

This Lease may only be varied by a document signed by or on behalf of each of the Lessor and the Lessee.

14.8 **Time for determining rights and obligations**

For the purpose of determining the rights and obligations of the parties, this Lease will be construed as if it had been executed on the date from which the Term is expressed to run.

SCHEDULE 1

Motorway Stratum

[To be completed by inserting the details of the Motorway Stratum determined in accordance with Schedule 19A of the Project Deed and excluding such land as is excluded under the Project Deed.]

SCHEDULE 2

Licensed Maintenance Areas

1. DEFINITIONS

For the purposes of this Schedule:

Licensed Maintenance Areas means the areas shown shaded and cross hatched on the plan attached as Appendix A to this Schedule.

2. ACCESS

- (a) In consideration of the fee payable pursuant to section 3 hereof, the Lessor hereby grants to the Lessee the right of access to and use of the Licensed Maintenance Areas (the **Access and Use Rights**), for the Term and for the purposes and otherwise in accordance with, and subject to the terms and conditions of, this Schedule.
- (b) The Lessor authorises the Lessee to access and use the Licensed Maintenance Areas only for the purposes of enabling the Lessee to carry out its obligations under and in accordance with the Project Deed in connection with the operation and maintenance of, or otherwise for the benefit of, the Motorway (the **Permitted Use**) and for no other purpose unless the Lessor otherwise agrees in writing.
- (c) The Lessor authorises the Lessee, the Lessee's Employees and the Lessee's permitted sublessees and assignees under the Lease, together with all necessary vehicles, equipment and materials, to enter upon, remain upon, and use the Licensed Maintenance Areas for the Permitted Use.

3. GENERAL CONDITIONS OF ACCESS

3.1 Fee

The rights of access to and use of the Licensed Maintenance Areas are hereby granted by the Lessor in consideration of both the receipt by the Lessor of the amount of \$10.00 from the Lessee (the receipt of which is acknowledged) and by the Lessee's undertaking to the Lessor hereby given that the Lessee will only carry out the Permitted Use on the Licensed Maintenance Areas.

3.2 Access not exclusive

- (a) The Access and Use Rights are not exclusive to the Lessee.
- (b) The Lessee repeats and affirms to the Lessor the acknowledgements made in clause 8.4 of the Project Deed.
- (c) The Lessee acknowledges and agrees that the Access and Use Rights will, at all times, be subject to those rights of access to any part of the Licensed Maintenance Areas which any Authority (including the Lessor) may wish to exercise in the lawful exercise of their statutory functions.

3.3 Licence not coupled with grant or interest

The Lessee acknowledges and agrees that the Access and Use Rights hereby granted do not create or confer upon the Lessee any estate or proprietary interest in the Licensed Maintenance Areas whether at law or in equity and that those rights are merely personal rights between the Lessor and the Lessee in relation to the Licensed Maintenance Areas.

3.4 **Revocation**

The Access and Use Rights may be revoked by the Lessor at any time after the termination or earlier determination of the Lease whereupon the Lessee must desist immediately from entering on to and/or using the Licensed Maintenance Areas.

4. **NOTICES**

Any communication under or in connection with this Schedule must be in writing and must be addressed and delivered in the same manner as set out in the Lease.

APPENDIX A - LICENSED MAINTENANCE AREAS

SCHEDULE 3

Easements and other rights

1. **EASEMENTS WHICH MAY BE CREATED BY LESSOR BENEFITING OR BURDENING THE MOTORWAY STRATUM (CLAUSE 12.1(a))**

Easements created for the purposes of:

- (a) providing public or private access to or egress from the Motorway Stratum, the Licensed Maintenance Areas, any Additional Land or other land adjacent to or in the vicinity of that land (**Adjacent Land**);
- (b) providing access to or support for the structures of the M4 Motorway or any railway infrastructure;
- (c) providing any Utility Infrastructure to, or to pass through the Motorway Stratum or any Additional Land or to pass through the Licensed Maintenance Areas or the adjacent land and access to any such Utility Infrastructure;
- (d) providing any statutory easements; and
- (e) satisfying any requirements of the Project Deed or the Scope of Works and Technical Criteria, or for any other purpose reasonably requested by an owner of adjacent land (including for drainage purposes) or provided under Division 4 of Part 6 of the *Conveyancing Act 1919* (NSW).

2. **EASEMENTS AND RIGHTS TO BE GRANTED IN FAVOUR OF THE LESSEE**

Easements created (and contemplated by clause 18.2 of the Project Deed) which benefit or burden the Motorway Stratum for:

- (a) access and structural support for rock anchors, columns, footings, beams, structural support and other structures protecting and/or supporting the Motorway Structure;
- (b) not used
- (c) not used
 - (i)
- (d) not used
- (e) providing support for structures and access for maintenance purposes to the Motorway; and
- (f) other than as referred to in this paragraph, satisfying any requirements to be satisfied by the Lessee pursuant to the Project Deed or the Scope of Works and Technical Criteria.

Executed as a deed.

I certify that I am an eligible witness and that an authorised officer of the Lessor signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Authorised officer's name

Address of witness

Authority of officer

Signing on behalf of

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: **WCX M4 PTY LIMITED**

Authority: **[Section 127 of the Corporations Act]**

Signature of authorised person

Signature of authorised person

Name of authorised person

Name of authorised person

[Director, Secretary, Sole
Director/Secretary]
Office held

[Director, Secretary, Sole
Director/Secretary]
Office held

