

M5 West Widening Deed

**The Honourable Duncan Gay MLC,
Minister for Roads and Ports for and on
behalf of Her Majesty Queen Elizabeth the
Second in right of the State of New South
Wales**

Roads and Maritime Services
ABN 76 236 371 088

Interlink Roads Pty Ltd
ABN 53 003 845 430

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Annexure

A DESIGN, CONSTRUCTION AND COMMISSIONING OF THE M5 WEST WIDENING

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- B TIMING OF AMENDMENTS FOR F-5 TOLLROAD PROJECT DEED AND M5 WESTERN LINK PROJECT DEED**
 - C AMENDMENTS TO F-5 TOLLROAD PROJECT DEED, M5 WESTERN LINK PROJECT DEED AND M5 LEASES**
 - D TERMS OF APPOINTMENT FOR EXPERT**
 - E EXPEDITED ARBITRATION RULES**
 - F PAYMENTS**
 - G COST PAYMENT SCHEDULE**
 - H SCOPE OF WORKS AND TECHNICAL CRITERIA**
 - I EARLY DESIGN DOCUMENTATION**
 - J OVERALL D&C PROGRAM**
 - K TERMS OF INSURANCE**
 - L SITE ACCESS SCHEDULE**
 - M MODEL OUTPUTS SCHEDULE**

M5 West Widening Deed

DATE 19 JUNE 2012

PARTIES

The Honourable Duncan Gay MLC, Minister for Roads and Ports for and on behalf of Her Majesty Queen Elizabeth the Second in right of the State of New South Wales (Minister)

Roads and Maritime Services
ABN 76 236 371 088
(RMS)

Interlink Roads Pty Ltd
ABN 53 003 845 430
(Company)

RECITALS

- A. RMS, the Honourable Wallace Telford Murray MP and the Company entered into the F-5 Tollroad Project Deed on 22 February 1991 for the financing, design, construction, maintenance, operation and repair of the Tollroad (**F-5 Tollroad Project Deed**).
- B. RMS, the Honourable Bruce G Baird MP and the Company entered into the M5 Western Link Project Deed on 29 June 1993 for the financing, design, construction, maintenance, operation and repair of the M5 Western Link (**M5 Western Link Project Deed**).
- C. The Parties have now agreed to proceed with the M5 West Widening Project on the terms and conditions of this M5 West Widening Deed and the other M5 West Widening Project Documents.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this M5 West Widening Deed, capitalised terms have the meaning given to those terms in annexure A and:

Acceptable LC means a letter of credit from an Authorised Bank and which is in a form and on terms reasonably acceptable to RMS.

Additional Works has the meaning given to that term in clause 9.6.

Agent has the meaning given to the term "Agent" in the Senior Facilities Agreement.

Anticipated RMS Completion Date means the date specified in an RMS Completion Notice.

Authorised Bank means an authorised deposit taking institution within the meaning of the *Banking Act 1959* (Cth) and which has a rating of A+ by Standard & Poor's (Australia) Pty Limited (ACN 007 324 852) (or its successors and assigns).

Available Funds has the meaning given to the term "Available Cash" in the Senior Facilities Agreement.

Base Case Model means the financial model and assumptions prepared by the Company and agreed and audited in accordance with clause 3.1(e) and initialled by the Parties (other than the Minister) for identification, as adjusted from time to time in accordance with clause 1.16 of the F-5 Tollroad Project Deed.

Carbon Scheme means:

- (a) the *Clean Energy Act 2011* (Cth) and any associated legislation and such regulations or other instruments as may be made under any of that legislation; and
- (b) any other law and any regulation or instrument made under any law with respect to the production, emission, reduction, limitation, cessation, prevention, offsetting, removal or sequestration of greenhouse gas emissions.

Change in Law means:

- (a) an increase in the cost of performance of the Company's obligations under this M5 West Widening Deed beyond that reasonably anticipated at the time of entering into this M5 West Widening Deed due to:
 - (i) a change in:
 - (A) New South Wales or local government legislation including regulations or by-laws;
 - (B) New South Wales Authority requirements; or
 - (C) New South Wales government, local government or State Authority guidelines with which the Company is legally required to comply;
 - (ii) a change in the application of the existing lawful requirements of a New South Wales Authority; or
 - (iii) a court handing down a Final Determination which changes the judicial interpretation of New South Wales legislation; or
- (b) an increase in the cost of performance of the Company's obligations under this M5 West Widening Deed beyond that reasonably anticipated at the time of entering into this M5 West Widening Deed due to:
 - (i) a change in:
 - (A) Commonwealth government legislation including regulations or by-laws;
 - (B) Commonwealth Authority requirements; or
 - (C) Commonwealth government or Commonwealth Authority guidelines with which the Company is legally required to comply;
 - (ii) a change in the application of the existing lawful requirements of a Commonwealth Authority; or
 - (iii) a court handing down a Final Determination which changes the judicial interpretation of Commonwealth legislation,

except in respect of Taxes and any Carbon Scheme.

Change to M5 West Widening Project Approval means at any time after the date of this M5 West Widening Deed:

- (a) the M5 West Widening Project Approval is modified under the EP&A Act from that which is in force immediately before that time; or
- (b) the Minister for Planning issues a new Approval under the EP&A Act in respect of the M5 West Widening Works in substitution for or replacement of the M5 West Widening Project Approval; or
- (c) any such new Approval is modified under the EP&A Act, other than as a result of:

- (d) a breach of the M5 West Widening Project Approval by the Company, the Contractor or any of their Subcontractors;
- (e) a breach of any M5 West Widening Project Document by the Company or the Contractor;
- (f) an application for modification or a new Approval made, requested or initiated by the Company or the Contractor; or
- (g) any change to the M5 West Widening Project proposed by the Company and agreed by RMS under clause 8.2 of annexure A,

and such modification or new Approval requires a Change to the M5 West Widening Works (but excluding any effect which such modification or new Approval has upon the M5 West Widening Temporary Works or the process required to design and construct the M5 West Widening Works).

Commitment has the meaning given in the Shareholder Debt Note Facility Agreement.

Controller has the same meaning as in the *Corporations Act 2001* (Cth).

Cost Payment Schedule means annexure G.

CPI has the meaning given in the F-5 Tollroad Project Deed.

Debt Finance Side Deed means the deed so titled dated on or about the date of this M5 West Widening Deed between RMS, the Company, the Contractor and the Financiers.

Debt Financing Document means each of:

- (a) the Senior Facilities Agreement;
- (b) the Security Trust Deed (as defined in the Senior Facilities Agreement);
- (c) each Fee Letter;
- (d) each Hedge Agreement (as defined in the Senior Facilities Agreement); and
- (e) each Security.

Debt Notes has the meaning given in the Shareholder Debt Note Facility Agreement.

Default Step-In Date means the date specified in a Default Step-In Notice.

Default Step-In Notice means a notice given under clause 9.3(a)(iii).

Default Step-In Rights means the step-in rights set out in clause 9.4(a).

Deferred Interest Rate means the rate set out in item 4 of the Model Outputs Schedule.

Enforcement Date occurs upon RMS issuing a notice terminating the F-5 Tollroad Project Deed on the basis of an Event of Default (as defined in the F-5 Tollroad Project Deed) or upon the cancellation and/or acceleration of the Bank Debt (as defined in the F-5 Tollroad Project Deed) due to a default or breach (however described) under the Senior Facilities Agreement or the taking of steps to enforce the Security in respect of the Bank Debt (as defined in the F-5 Tollroad Project Deed).

Equity Document means:

- (a) the Shareholder Debt Note Facility Agreement;
- (b) the Shareholder Equity Facility Agreement (as defined in the Senior Facilities Agreement);
- (c) the Shareholder Subordination Deed (as defined in the Senior Facilities Agreement); and
- (d) the Subscription (Further Matters) Agreement.

Event of Default means any event specified as such in clause 9.1.

F-5 Tollroad Project Deed has the meaning given in recital A.

Fee Letter has the meaning given to that term in the Senior Facilities Agreement.

Final Determination means a decision of a court:

- (a) from which no appeal can be taken and in respect of which no application for special leave to appeal can be made; or
- (b) in respect of which the relevant appeal or special leave application period has expired without an appeal being taken or an application for special leave to appeal being made.

Financier means each Participant (as defined in the Senior Facilities Agreement), and, where the context permits, includes the Agent and the Security Trustee.

Force Majeure Event means:

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

which is beyond the reasonable control of, and is not caused by any of, the Company, the Contractor and any of their Subcontractors and which causes the Company to be unable to perform an obligation under this M5 West Widening Deed, where that cause could not

have been prevented or avoided by the Company, the Contractor or any of their Subcontractors taking those steps which a prudent, experienced and competent concessionaire, designer or constructor would have taken.

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

GST and GST law have the meanings used in 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. Terms defined in the GST law have the same meaning in clauses concerning GST unless the context requires otherwise. Any reference to GST payable by the Supplier 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.

Indirect Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of any business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production, loss of value to the Tollroad or the M5 Western Link, or any failure to realise anticipated savings, reduced costs or other benefits, to the extent that the loss or failure is special, indirect or consequential.

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b)
 - (i) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
 - (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property (not being an application withdrawn or dismissed within 20 Business Days of such application being made); or
 - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest, or any agent on its behalf, appointing a Controller or taking possession of any of the person's property;
- (d) the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- (e) an application being made to a court for its winding up (not being an application withdrawn or dismissed within 20 Business Days of such application being made);
- (f) an order being made, or the person passing a resolution, for its winding up;
- (g) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (h) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

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- (i) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property in an amount exceeding \$100,000, unless the person has instituted proceedings in good faith to set aside that judgment and that judgment is set aside within 30 days of such proceedings having been instituted; or
 - (j) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by RMS (such approval not to be unreasonably withheld or delayed), or is otherwise approved by RMS.

Land has the meaning given to that term in the F-5 Tollroad Project Deed.

Lease has the meaning given to that term in the F-5 Tollroad Project Deed.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of the Company to pay the Financiers the amounts due under, and substantially in accordance with, the M5 West Widening Debt Financing Documents; or
- (b) M5 West Widening Base Case Project Return.

For the avoidance of doubt, until the Date of Construction Completion, any assessment of whether there has been a material adverse effect on the M5 West Widening Base Case Project Return will only take into account the incremental cashflows forecast from the M5 West Widening Project as shown in the Updated M5 West Base Case Financial Model.

Model Outputs Schedule means the document identified as the "Model Outputs Schedule" which forms part of the Updated M5 West Base Case Financial Model, substantially in the form set out in annexure M.

Moorebank Avenue Lease means the lease for Lots 2, 3 and 4 in DP1063765 (being the land in Auto-Consol 8663-150) granted by RMS (as the lessor) to the Company (as the lessee) for the term commencing on 24 April 2003 and terminating on 22 August 2023.

M5 West Widening Assets means all assets associated with the M5 West Widening including:

- (a) the M5 West Widening Works and the M5 West Widening Temporary Works;
- (b) the Design Documentation;
- (c) the Subsidiary D&C Programs;
- (d) quality assurance plans and other documents;
- (e) the Company's rights under the M5 West Widening Project Documents; and
- (f) residual rights under insurances required under this M5 West Widening Deed.

M5 West Widening Base Case Project Return means the Company's project internal rate of return on the M5 West Widening Project, as specified in item 1 of the Model Outputs Schedule and as calculated in accordance with the Base Case Model.

M5 West Widening D&C Contract means the document titled "M5 West Widening Design and Construction Contract" between the Company and the Contractor dated on or about the date of this M5 West Widening Deed.

M5 West Widening Debt means all amounts drawn or to be drawn from time to time under Tranche B (as defined in the Senior Facilities Agreement) which are utilised (or to be utilised) to pay the M5 West Widening Costs (as defined in the Senior Facilities Agreement).

M5 West Widening Debt Financing Documents means the Debt Financing Documents as they relate to the M5 West Widening Debt.

M5 West Widening Deed means this document including the annexures to this document.

M5 West Widening Early Termination Amount on any date:

- (a) is:
 - (i) an amount equal to the M5 West Widening Project Debt on that date; plus
 - (ii) an amount such that the total of paragraphs (a)(i) and (a)(ii) is sufficient to enable the Company to recover an agreed rate of return on the M5 West Widening Project equal to the M5 West Widening Base Case Project Return, having regard to:
 - (A) the incremental cashflows generated by the M5 West Widening Project, up to the date of termination; and
 - (B) amounts the Company has previously paid and received and the amounts that the Company must pay as a consequence of the termination, including (but only where the Company has complied with clause 7.8(e) of annexure A) to its contractors excluding however any amount payable to the Contractor which relates to any amount payable by the Contractor to any Related Entity of the Contractor other than where the Related Entity is engaged on an arm's length basis and on commercial terms; and
- (b) does not include:
 - (i) any interest on the M5 West Widening Project Debt to the extent that it is calculated at a rate which would constitute a penalty; or
 - (ii) any amount which has been paid by, or is or may become payable by, RMS to the Company under clauses 13.3 or 13.5 of the F-5 Tollroad Project Deed or clauses 13.3 or 13.5 of the M5 Western Link Project Deed so as to ensure that there is no double counting or double relief afforded to the Company in circumstances where RMS becomes liable to pay each of the M5 West Widening Early Termination Amount, the Early Termination Amount (as defined in the F-5 Tollroad Project Deed) and the Early Termination Amount (as defined in the M5 Western Link Project Deed) to the Company.

M5 West Widening Project means the financing, planning, design, construction, commissioning and completion of the M5 West Widening Works and the M5 West Widening Temporary Works in accordance with this M5 West Widening Deed.

M5 West Widening Project Debt means:

- (a) any actual indebtedness under the M5 West Widening Debt Financing Documents; and
- (b) any moneys payable on the termination of any interest rate risk management agreement entered into by the Company to limit or otherwise manage its exposure

to interest rate fluctuations in respect of the facilities referred to in paragraph (a) provided that the method of calculating the termination amount and the actual calculation of the termination amount is furnished to RMS.

M5 West Widening Project Documents means:

- (a) the M5 West Widening Deed (including, for the avoidance of doubt, annexure A and the Scope of Works and Technical Criteria);
- (b) the Deed of Appointment of Independent Verifier;
- (c) the Interim Design and Independent Verification Deed;
- (d) the Deed of Appointment of Environmental Representative;
- (e) the Deed of Engagement of Principal Contractor;
- (f) the M5/M7 Interface Deed;
- (g) the M5 West Widening Side Deed;
- (h) the M5 West Widening D&C Contract;
- (i) the RMS Consent Deed;
- (j) the RMS Security; and
- (k) any other document the Parties agree is a M5 West Widening Project Document for the purposes of the M5 West Widening Deed or the M5 West Widening Project.

M5 Western Link Project Deed has the meaning given in recital B.

Net Available Funds means, on any date, the Available Funds in the 12 month period immediately preceding that date, as certified in writing by the Company, indexed by increases in the CPI between the end of the 12 month period and the Anticipated RMS Completion Date.

New Hedge Agreements means the Hedge Agreements (as defined in the Senior Facilities Agreement) which are to be entered into on or about the date of this M5 West Widening Deed.

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

Quarter means each 3 month period ending on 31 March, 30 June, 30 September and 31 December in each year.

Quarterly Instalment means, in respect of any Quarter after Construction Completion has occurred:

- (a) in which there are RMS Default Step-In Costs owing to RMS which have not been paid by the Company, the lesser of:
 - (i) the amount of the instalment for that Quarter calculated in accordance with the Cost Payment Schedule; and
 - (ii) the RMS Default Step-In Costs which are owing to RMS at the relevant time; or
- (b) in which there are no RMS Default Step-In Costs owed to RMS, zero.

Quarterly Payment Date means, in respect of a Quarter, the date which is 30 days after the end of that Quarter.

Reinstatement Criteria has the meaning given to that term in clause 9.6B(b).

Required Level means in circumstances where:

- (a) RMS is exercising its Default Step-In Rights and Construction Completion has not yet occurred, an amount of money equal to the Quarterly Instalments to be paid to RMS (as set out in the Cost Payment Schedule) for the 12 month period following the Anticipated RMS Completion Date; and
- (b) RMS has exercised Default Step-in Rights and Construction Completion has occurred, an amount of money equal to the Quarterly Instalments to be paid to RMS (as set out in the Cost Payment Schedule) for the 12 month period following the relevant SCR Date.

RMS Completion Notice has the meaning given in clause 9.5A(b).

RMS Consent Deed means the document titled "RMS Consent Deed – 2012" dated on or about the Satisfaction Date between, among others, the Company, RMS and the Security Trustee.

RMS Default Step-In Costs has the meaning given in clause 9.5(a).

RMS Reinstatement Plan has the meaning given to that term in clause 9.6B(c).

RMS Security means the deed entitled "General Security Deed" entered into between the Company and RMS on or about the Satisfaction Date as security for performance of the Company's obligations under the Project Documents as defined in the F-5 Tollroad Project Deed.

RMS Step-In Required Shareholder Contribution means a cash payment to be made to RMS in an amount not exceeding:

- (a) the RMS Step-In Shareholder Contribution Amount, less
- (b) the aggregate principal amount of all Debt Notes issued on or prior to the relevant RMS Contribution Date.

RMS Step-In Shareholder Contribution Amount means \$63,000,000.

Satisfaction Date means the day on which all of the conditions precedent in clause 3.1 have been satisfied or waived in accordance with clause 3.1.

Satisfactory Rating means the rating of at least "A-" by Standard & Poor's or an equivalent rating by another recognised rating agency.

SCR means, at any time after the Default Step-In Date, the ratio of Net Available Funds to the Required Level.

SCR Date has the meaning given in clause 9.5A(c).

Second Refinancing Deed has the meaning given to that term in the Senior Facilities Agreement.

Security means each Security (as defined in the Senior Facilities Agreement).

Security Interest means:

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- (a) a mortgage, charge, pledge, lien, hypothecation, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the *Income Tax Assessment Act 1936* (Cth), subdivision 260–A in schedule 1 of the *Taxation Administration Act 1953* (Cth) or any similar legislation;
 - (b) any other interest or arrangement of any kind that secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property; or
 - (c) any agreement to create any of them or to allow any of them to exist.

Security Trustee has the meaning given to the term "Security Trustee" in the Senior Facilities Agreement.

Senior Facilities Agreement means the agreement titled "Amended and Restated Senior Facilities Agreement" dated on or about the Satisfaction Date between, among others, the Company and Commonwealth Bank of Australia as agent and Commonwealth Bank of Australia as security trustee.

Shareholder means each of:

- (a) M5 Holdings Pty Ltd;
- (b) Utilities of Australia Pty Ltd (in its capacity as trustee for the Utilities Trust of Australia);
- (c) Cogent Nominees Pty Ltd (as custodian for AMP Investment Services Pty Ltd, which is the trustee of the AMP Capital Infrastructure Equity Fund);
- (d) State Street Australia Limited (as custodian for the Retail Employees Superannuation Trust);
- (e) JP Morgan Nominees Australia Pty Ltd (as sub-custodian for Industry Funds Management (Nominees) Limited as trustee for IFM Infrastructure Funds); and
- (f) State Street Australia Limited (as custodian for Sunsuper Superannuation Fund).

Shareholder Debt Note Facility Agreement means the agreement so entitled dated on or about the date of this M5 West Widening Deed between the Company, CBA Corporate Services (NSW) Pty Limited (in its capacity as Security Trustee) and the Shareholders.

Step-In Costs Reserve Account means the account styled "M5 West Widening - Step-In Costs Reserve Account" established by the Company in accordance with clause 9.5A.

Step-Out Date has the meaning given in clause 9.4(i)(ii).

Step-Out Notice means a notice given under clause 9.4(h).

Subscription (Further Matters) Agreement means the agreement so entitled dated on or about the date of this M5 West Widening Deed between the Company and the Shareholders.

Termination Notice means a notice given under clause 9.3(a)(iv).

Toll Schedule means Schedule 3 of the F-5 Tollroad Project Deed.

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

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- (a) **(specific events)** the occurrence of an event referred to in paragraph (c), (d) or (e) of the definition of Force Majeure; or
- (b) **(unanticipated events)** the occurrence of an unanticipated physical event which:
- (i) is beyond the reasonable control of the Company and its contractors and which could not have been prevented or avoided by the Company or its contractors taking steps which a prudent, experienced and competent concessionaire, designer or constructor of tollroads would have taken, including by the exercise of reasonable care;
 - (ii) is not in the exercise by RMS of any of its functions and powers pursuant to any legislation; and
 - (iii) directly results in a loss arising out of or in connection with physical loss of or damage to the M5 West Widening Works,

in respect of which:

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

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

- (vii) **(acts or omissions)** the insurance (if any) effected by the Company did not respond to the event due to an act or omission of the Company or its contractors, including a breach of the policy by, or the negligence of, the Company or its contractors;
- (viii) **(insurer insolvent)** the amount that should have been paid under the insurance (if any) effected by the Company in respect of the event was not paid because the insurer was insolvent;
- (ix) **(breach)** the event resulted from a breach of the M5 West Widening Deed or any other contract by the Company or its contractors, or any negligence of the Company or its contractors, agents or employees; or
- (x) **(under-insurance)** the recoverable amount (after deductibles) under the insurance (if any) effected by the Company in respect of the event was less than the recoverable amount (after deductibles) under the insurance (if any) for that event generally available from Relevant Insurers and being purchased in Recognised Insurance Markets by prudent, competent and experienced concessionaires, designers and contractors of tollroads from

Relevant Insurers at that time (notwithstanding that the Company effected insurance for the limits of liability specified in clause 15.4 of annexure A).

Unpaid Quarterly Instalment means any Quarterly Instalment (or part thereof) which should (but for the operation of clause 9.5(e)) have been paid by the Company on a previous Quarterly Payment Date, but which has not yet been paid.

Updated M5 West Base Case Financial Model means the Base Case Model with:

- (a) the widening scenario activated (cell K6 on the 'sens' worksheet is selected); and
- (b) all model integrity checks showing "OK" (cell E324 on the 'tbl' worksheet is zero).

Western Link Lease means the lease granted by RMS (as the lessor) to the Company (as the lessee) for the term commencing on 26 June 1994 and terminating on 22 August 2023, as varied from time to time.

1.2 Order of precedence

The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this M5 West Widening Deed:

- (a) this M5 West Widening Deed, excluding annexures;
- (b) annexure A, excluding the schedules to annexure A;
- (c) appendix 5 to the Scope of Works and Technical Criteria; and
- (d) Environmental Documents; and
- (e) the remaining annexures to this M5 West Widening Deed and the schedules to annexure A.

1.3 Interpretation

In this M5 West Widening Deed unless the context indicates a contrary intention:

- (a) the expression person includes an individual, body politic, a corporation, a statutory or other authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the expressions **including**, **includes** and **include** have the meaning as if followed by the words "without limitation";
- (c) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking 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 to 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 that organisation which serves substantially the same purpose or object as that Authority, institute, association or body;

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- (e) a reference to this M5 West Widening Deed or to any other deed, agreement, document or instrument includes, respectively, this M5 West Widening Deed or such other 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 any statutory modification or re-enactment or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;
 - (g) subject to clause 2.3, a reference in this M5 West Widening Deed to any act or omission of RMS includes any demand, determination, direction, instruction, order, rejection, request or requirement made or given by RMS;
 - (h) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
 - (i) headings are for convenience only and do not affect the interpretation of this M5 West Widening Deed;
 - (j) a reference to a clause, or annexure is a reference to a clause or annexure of or to this M5 West Widening Deed;
 - (k) a reference to any M5 West Widening Project Document includes all schedules, annexures or exhibits to the M5 West Widening Project Document;
 - (l) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
 - (m) a reference to a court or tribunal is to an Australian court or tribunal;
 - (n) a reference to a day, month, quarter or year is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year respectively;
 - (o) a reference to **\$** or **dollar** is to Australian currency; and
 - (p) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

1.4 Contra proferentem

In the interpretation of this M5 West Widening Deed, no rule of construction applies to the disadvantage of one Party on the basis that that Party put forward or drafted this M5 West Widening Deed or any provision in it.

1.5 Business Day

If the day on or by which any thing is to be done under this M5 West Widening Deed is not a Business Day, that thing must be done:

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

1.6 Certification

For the purposes of this M5 West Widening Deed, a copy of a document will be regarded as duly certified by the Company if it is certified as a true copy by a director, secretary or general manager of the Company, as the case may be.

1.7 No partnership, joint venture, agency or other fiduciary relationship

Except to the extent contemplated in clause 2A (in respect of agency), neither this M5 West Widening Deed nor any other M5 West Widening Project Document to which RMS and the Company are both expressed to be parties creates a partnership, joint venture, agency or fiduciary relationship between RMS and the Company.

2. RELATIONSHIP OF RMS AND THE COMPANY

2.1 Fundamental obligations

The Company must finance, plan, design, construct, commission and complete the M5 West Widening Works and the M5 West Widening Temporary Works in accordance with this M5 West Widening Deed.

2.2 M5 West Widening Project risk

- (a) Except as otherwise expressly provided in this M5 West Widening Deed, the Company accepts all risks associated with the M5 West Widening Project. Without limiting the generality of the foregoing, the Company accepts:
- (i) all risks associated with the costs of the M5 West Widening Project;
 - (ii) the risk that revenue from the M5 West Widening Project or traffic volumes may be less than expected by the Company or its advisers;
 - (iii) all risks associated with any liability for Taxes being greater than estimated by the Company or its advisers;
 - (iv) all risks associated with changes in interest rates, whether before, on or after the Satisfaction Date;
 - (v) the introduction of cashless tolling as contemplated in clause 7.5(c) of the F5 Tollroad Project Deed including all implementation, cost and revenue risk; and
 - (vi) all risks associated with Losses or delays which it incurs or suffers arising out of or in any way in connection with the performance of its obligations under this M5 West Widening Deed.
- (b) The Company acknowledges and agrees that RMS has not made any representation and gives no warranty in respect of the traffic usage of the Tollroad or the M5 Western Link.

2.3 RMS as an Authority

- (a) Subject to clause 2.3(b), the Company acknowledges and agrees that:
- (i) nothing in this M5 West Widening Deed or in any of the other M5 West Widening Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RMS to exercise any of its functions and powers pursuant to any legislation; and

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- (ii) without limiting clause 2.3(a)(i), anything which RMS does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by RMS under this M5 West Widening Deed and will not entitle the Company to make any Claim against RMS arising out of the subject matter of this M5 West Widening Deed and the other M5 West Widening Project Documents to which RMS is a party.
 - (b) RMS and the Company agree that clause 2.3(a) is taken not to limit any liability which RMS would have had to the Company under this M5 West Widening Deed, or any other M5 West Widening Project Document to which RMS is a party, as a result of a breach by RMS of a term of this M5 West Widening Deed or any other M5 West Widening Project Document to which RMS is a party but for clause 2.3(a).

2.4 Other Authorities

The Company acknowledges and agrees that:

- (a) there are Authorities (other than RMS) with jurisdiction over aspects of the Company's Work and parts of the M5 West Widening Site, Temporary Areas, any Extra Land and other land affected by the Company's Work;
- (b) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Company's Work; and
- (c) except as otherwise expressly provided in this M5 West Widening Deed, it bears the full risk of all occurrences of the kind referred to in clause 2.4(b) and will not be entitled to make any Claim against RMS arising out of or in any way in connection with such occurrences.

2.5 RMS action

- (a) If:
 - (i) the Company fails to perform an obligation under this M5 West Widening Deed; and
 - (ii) the Company has not within a reasonable time after the date of receipt of a written notice from RMS requiring such failure to be remedied, taken steps to remedy the failure, or having taken such steps, fails to remedy the failure within a reasonable time,

then RMS may take such action as may be necessary to remedy the failure by the Company and RMS (or its nominees) may for this purpose enter the M5 West Widening Site, the Temporary Areas, any Extra Land and any other land upon which the Company's Work is being carried out. RMS must give reasonable notice to the Company of its intention to cease taking such action, and must cease taking such action as soon as the failure has been remedied.

- (b) If RMS takes action under this clause 2.5, the Company:
 - (i) must give, and must ensure that the Contractor and any of their Subcontractors give, all reasonable assistance to RMS (or its nominees) to remedy the failure including by:
 - (A) making available all relevant Company staff, the Contractor and any of their Subcontractors;

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- (B) giving RMS (or its nominees) access to all relevant plant, equipment, materials, M5 West Widening Temporary Works, tools, spare parts, consumables and reparable items, documents and other relevant things being used in, or which are required to facilitate, the Company's Work;
 - (C) doing all other acts and things reasonably required by RMS to enable RMS (or its nominees) to remedy the failure by the Company;
- (ii) will not be entitled to any relief from its obligations, nor any compensation from RMS, in respect of any action taken by RMS under this clause 2.5; and
 - (iii) releases RMS from and against any Loss or Claim which the Company suffers or incurs as a result of any action taken by RMS under this clause 2.5 except to the extent of RMS' negligence or wilful default in taking action under this clause 2.5.
- (c) Any Loss reasonably suffered or incurred by RMS in taking action under this clause 2.5 will be a debt due and payable from the Company to RMS but excluding Loss caused by the negligence or wilful misconduct of RMS or its employees, agents or contractors (other than the Company, the Independent Verifier and the Environmental Representative) in taking any such action, provided that:
- (i) if RMS has exercised its Default Step-In Rights in connection with a failure by the Company to perform an obligation; or
 - (ii) to the extent RMS is or was entitled to exercise its Default Step-In Rights in connection with the failure and takes action under this clause,

RMS' rights in connection with Loss suffered or incurred in the exercise of its Default Step-In Rights or this clause 2.5 are limited to its right to repayment of any RMS Default Step-In Costs by the Company in accordance with clause 9.5.

2.6 Indemnities

- (a) Where under the terms of this M5 West Widening Deed:
 - (i) the Company indemnifies RMS from and against any Claim or Loss, the Company's liability to indemnify RMS will be reduced to the extent that any breach of this M5 West Widening Deed or the other M5 West Widening Project Documents to which RMS is a party by the Minister or RMS, or other act or omission (including any negligence) of RMS, including an act or omission (including any negligence) of its employees, agents or contractors (other than the Company, the Independent Verifier and the Environmental Representative), contributed to the Claim or Loss;
 - (ii) RMS indemnifies the Company from and against any Claim or Loss, RMS' liability to indemnify the Company will be reduced to the extent that any breach of this M5 West Widening Deed or the other M5 West Widening Project Documents to which RMS is a party by the Company, or other act or omission (including any negligence) of the Company, including an act or omission (including any negligence) of its employees, agents or contractors, contributed to the Claim or Loss; and
 - (iii) a Party is obligated to pay an amount in respect of any Loss suffered or incurred by another Party, it excludes Loss as a result of the negligence or wilful default of the payee Party, its employees or agents.

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- (b) Clauses 2.6(a)(i) and 2.6(a)(iii) will not apply to reduce the Company's liability to indemnify or pay RMS to the extent that RMS is held to be vicariously liable at Law for any acts or omissions of the Company or its employees, agents or contractors.
 - (c) Clause 2.6(a)(i) will not apply to reduce the Company's liability to indemnify RMS to the extent that the act or omission of RMS is an act or omission in the exercise of its rights or powers under this M5 West Widening Deed.
 - (d) No indemnity in this M5 West Widening Deed limits the effect or operation of any other indemnity in this M5 West Widening Deed.
 - (e) Except as otherwise expressly provided in this M5 West Widening Deed, each indemnity in this M5 West Widening Deed is a continuing obligation, separate and independent from the other obligations of the Parties, and survives the rescission, termination or expiration of this M5 West Widening Deed.
 - (f) It is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this M5 West Widening Deed.

2A. AGENCY WORKS

2A.1 Appointment of Company as agent of RMS

- (a) RMS appoints the Company as its agent on the terms of this clause 2A, and the Company accepts such appointment, to plan, design, construct, commission and complete the Agency Works.
- (b) Nothing in this clause 2A operates to limit in any way the exercise by RMS of its rights under this M5 West Widening Deed.
- (c) The appointment of agent referred to in clause 2A.1(a) will automatically terminate upon termination of this M5 West Widening Deed.

2A.2 Scope of authority

- (a) The Company is authorised to enter into and administer the M5 West Widening D&C Contract as agent for, and on behalf of, RMS but only in respect of the planning, design, construction, commissioning and completion of the Agency Works.
- (b) The Company must:
 - (i) perform RMS' obligations under;
 - (ii) exercise all of RMS' rights and entitlements under; and
 - (iii) otherwise ensure due and proper administration of,the M5 West Widening D&C Contract in accordance with its terms in so far as the M5 West Widening D&C Contract relates to the Agency Works and without reference to RMS as if the Company had entered into the M5 West Widening D&C Contract as principal in respect of the Agency Works and not as agent.
- (c) The Company must not:
 - (i) with the exception of the M5 West Widening Project Documents, enter into any contract or other arrangement (that is not contemplated by the M5 West Widening Project Documents);

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- (ii) vary the terms of the M5 West Widening D&C Contract without the prior written consent of RMS; or
 - (iii) appoint, or authorise the appointment of, any sub-agent of RMS, in respect of the planning, design, construction, commissioning and completion of the Agency Works.
- (d) The Company must provide RMS promptly upon request with any documentation or other information required by RMS in connection with:
- (i) the planning, design, construction, commissioning and completion of the Agency Works; and
 - (ii) any matter referred to in clause 2A(b)(i)-(iii).
- (e) The Company must ensure that the Contractor issues valid tax invoices for all costs which form part of the Capped Contribution and must provide the original tax invoice to RMS promptly upon receipt to enable RMS to claim any input tax credits to which it is entitled.
- (f) For the avoidance of doubt, where a third party is engaged by the Company to perform or remedy the Agency Works due to a default of the Contractor:
- (i) the Company does so as principal and not as agent of RMS; and
 - (ii) the Company must submit a tax invoice to RMS in accordance with clause 7.1(a) (and that invoice will be due and payable to the Company by RMS subject to, and in accordance with, clause 2A.7) if it seeks to claim the cost of such work from RMS as part of the Capped Contribution in accordance with this clause 2A.

2A.3 Company to retain all risk in and responsibility for Agency Works

- (a) Notwithstanding that the Company is the agent of RMS in entering into the M5 West Widening D&C Contract for the Agency Works:
- (i) the Company:
 - (A) is and remains primarily liable to RMS for, and, other than in respect of an Excepted Claim, accepts all risk in, the planning, design, construction, commissioning and completion of the Agency Works, including that the cost of the planning, design, construction, commissioning and completion of the Agency Works is greater than the Capped Contribution;
 - (B) must ensure that the Agency Works are planned, designed, constructed, commissioned and completed in accordance with this M5 West Widening Deed;
 - (C) provides and continues to provide in favour of RMS, and without any limitation, all warranties, covenants and undertakings as set out in this M5 West Widening Deed in respect of the planning, design, construction, commissioning and completion of the Agency Works; and
 - (D) without limiting clause 2A.3(i)(A) and other than in respect of an Excepted Claim, accepts all risk in relation to integrating and delivering the Agency Works with, and as part of, the M5 West Widening Works and the M5 West Widening Temporary Works

including in respect of any adverse effect, liability, additional cost or delay in relation to the M5 West Widening Works or the M5 West Widening Temporary Works arising out of or in connection with the planning, design, construction, commissioning and completion of the Agency Works and the integration and delivery of the Agency Works with, and as part of, the M5 West Widening Works and the M5 West Widening Temporary Works; and

- (ii) RMS may exercise any right, and the Company must perform all of its obligations under, this M5 West Widening Deed,

as if the Agency Works formed part of the M5 West Widening Works and for this purpose all references in this M5 West Widening Deed to the M5 West Widening Works (other than in this clause 2A) are taken to include a reference to, and are to be regarded as including, the Agency Works.

- (b) Without limiting clause 2A.3(a) and other than in respect of an Excepted Claim, the Company acknowledges and agrees that it is solely responsible and accepts all risk in relation to:
 - (i) the procurement of (including the decision to procure) the Agency Works on the structure and basis contemplated in this clause 2A; and
 - (ii) the terms, suitability and adequacy of the M5 West Widening D&C Contract for the purposes of the planning, design, construction, commissioning and completion of the Agency Works.
- (c) To the extent that there is any Final Determination which invalidates the arrangements contemplated in this clause 2A the Company must plan, design, construct, commission and complete the Agency Works as principal and as if they had always formed part of the M5 West Widening Works provided always that RMS must pay the Capped Contribution to the Company in accordance with clause 2A.7.

2A.4 No duty owed by RMS

Without limiting any other provision of this M5 West Widening Deed, the Company acknowledges and agrees that:

- (a) RMS owes no duty of care to the Company, and has not made any representation or given any warranty, in relation to the matters referred to in clause 2A.3(b) and that nothing in the M5 West Widening D&C Contract operates to qualify or limit those matters;
- (b) without limiting Clause 2A.3(b), RMS owes no duty to the Company:
 - (i) to review the terms of the M5 West Widening D&C Contract for the purpose of determining whether they are suitable or adequate to ensure that the Agency Works are planned, designed, constructed, commissioned and completed in accordance with this M5 West Widening Deed or to give effect to the agency established by this clause 2A; or
 - (ii) to take any steps in relation to the matters referred to in clause 2A.2(b)(i)-(iii) in respect of the M5 West Widening D&C Contract,

and any such review or steps, or any failure to undertake any such review or steps, will not lessen or otherwise affect:

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- (iii) the Company's obligations and warranties under this clause 2A or any of its other liabilities or responsibilities under this M5 West Widening Deed or otherwise according to Law in respect of the planning, design, construction, commissioning and completion of the Agency Works; or
 - (iv) RMS' rights against the Company in respect of the planning, design, construction, commissioning and completion of the Agency Works whether under the M5 West Widening Deed or otherwise according to Law.

2A.5 Proceedings

The Company must take all steps and provide such information as RMS may require to defend or bring any proceeding, suit, demands or prosecution (including those initiated or maintained by or against the Contractor or any other person) arising out of or in connection with the Company's appointment as agent under this clause 2A or the planning, design, construction, commissioning and completion of the Agency Works.

2A.6 Indemnity and release

- (a) Without limiting clause 15.2(b) of annexure A or any other right of RMS under common law or in equity, the Company indemnifies and must hold harmless RMS and the Minister from and against any Claim or Loss (other than an Excepted Claim) suffered or incurred by RMS or the Minister arising out of or in connection with:
 - (i) the appointment of the Company as the agent of RMS in accordance with this clause 2A;
 - (ii) any act or omission (including any negligent act or omission) of the Company while acting in its capacity as the agent of RMS or in respect of the planning, design, construction, commissioning and completion of the Agency Works;
 - (iii) the Agency Works, including:
 - (A) in relation to the planning, design, construction, commissioning and completion of the Agency Works; and
 - (B) in relation to the engagement by the Company of a third party contemplated in this clause 2A;
 - (iv) any adverse effect, liability, additional cost or delay in relation to the M5 West Widening Works and the M5 West Widening Temporary Works arising out of or in connection with the planning, design, construction, commissioning and completion of the Agency Works or the integration and delivery of the Agency Works with, and as part of, the M5 West Widening Works and the M5 West Widening Temporary Works;
 - (v) any Claim by the Contractor, or other third party contemplated in this clause 2A, arising out of or in connection with the planning, design, construction, commissioning and completion of the Agency Works or the M5 West Widening D&C Contract (in so far as the M5 West Widening D&C Contract relates to the Agency Works) and whether:
 - (A) made against RMS or the Minister; or
 - (B) arising out of or in connection with any of the matters referred to in clauses 2A.6(a)(i) to (iv) above or otherwise.

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- (b) Neither clause 15.2(e)(ii) of annexure A nor clause 15.2(g) of annexure A applies in respect of, or to limit the Company's liability to RMS or the Minister under, clause 2.6A(a).
- (c) Other than in respect of an Excepted Claim, and without limiting any other provision of this M5 West Widening Deed, the Company:
- (i) acknowledges and agrees that it bears the sole risk of Loss; and
 - (ii) releases and forever discharges RMS and the Minister from any Claim by the Company,
- arising out of or in connection with:
- (iii) the appointment of the Company as the agent of RMS in accordance with this clause 2A;
 - (iv) any act or omission (including any negligent act or omission) of RMS or imputed to RMS as principal under the M5 West Widening D&C Contract in respect of the Agency Works;
 - (v) the Agency Works including:
 - (A) the planning, design, construction, commissioning and completion of the Agency Works; or
 - (B) the engagement by the Company of a third party contemplated in this clause 2A;
 - (vi) the procurement of (including the decision to procure) the Agency Works on the structure and basis contemplated in this clause 2A including the entry into the M5 West Widening D&C Contract for the planning, design, construction, commissioning and completion of the Agency Works;
 - (vii) any act or omission (including any negligent act or omission) of the Contractor or any other person; and
 - (viii) any matter arising out of the matters referred to in clause 2A.3(a) and (b) and 2A.5 above.

2A.7 Payments by RMS in respect of agency and Agency Works

- (a) RMS agrees to pay the Company (as RMS' agent), for on payment to the Contractor (or a third party engaged by the Company in its own right to perform or remedy the Agency Works due to a default of the Contractor), the Capped Contribution in the manner set out in clause 2A.7(c).
- (b) The Company acknowledges and agrees that, other than in respect of Excepted Claims or pursuant to clause 7, the Capped Contribution is the maximum aggregate amount which the Company or the Contractor can recover from RMS and includes all amounts payable by RMS to the Company arising out of or in connection with:
 - (i) the planning, design, construction, commissioning and completion of the Agency Works; and
 - (ii) any act, matter or thing arising out of or in connection with the appointment of the Company as the agent of RMS in respect of the Agency Works (including any remuneration as agent or any costs or liabilities incurred by the Company in the course of acting as agent),

and that, other than in respect of the obligation of RMS to pay the Capped Contribution in accordance with this clause 2A, RMS shall have no liability whatsoever to the Company or the Contractor in respect of the matters referred to in subparagraphs 2A.7(b)(i) and (ii).

- (c) RMS must, subject to the Company complying with any request under clause 2A.2(d), pay the Capped Contribution to the Company as follows:
- (i) in one or more instalments as and when the corresponding amount is certified by the Independent Verifier as being properly due and payable to:
 - (A) the Contractor in accordance with the M5 West Widening D&C Contract; or
 - (B) the third party performing or remedying the Agency Works due to a default of the Contractor as contemplated in this clause 2A, as set out in a written claim by the Company; and
 - (ii) within 30 Business Days of the later of RMS receiving:
 - (A) the relevant certification from the Independent Verifier; and
 - (B) copies of tax invoices for all costs included in the relevant instalment amount in accordance with clauses 2A.2(e) and 2A.2(f).
- (d) For the purposes of clause 7.1(a), the Company will not be assumed to be entitled to any input tax credits in relation to the Agency Works (other than any Agency Works carried out by a third party engaged by the Company to perform or remedy the Agency Works due to a default of the Contractor).

2A.8 Definitions

For the purposes of this clause 2A:

- (a) **Agency Works** means the following elements of the M5 West Widening Works:
- (i) all works necessary to provide three traffic lanes and associated shoulders eastbound on the Tollroad from King Georges Road (Ch 8930) to Fairfield Road (Ch 12055) identified in Appendix 39 to the Scope of Works and Technical Criteria;
 - (ii) all works necessary to provide the cross drainage infrastructure identified in Appendix 48 to the Scope of Works and Technical Criteria; and
 - (iii) all works necessary to provide the noise walls identified in Appendix 52 of the Scope of Works and Technical Criteria;
- (b) **Capped Contribution** means \$34,290,459;
- (c) **Excepted Claim** means:
- (i) one or more claims for payment by the Company in accordance with clause 2A.7(c) in respect of the costs of the planning, design, construction, commissioning and completion of the Agency Works which in aggregate do not exceed the Capped Contribution;
 - (ii) any:

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- (A) express entitlement to compensation or relief (in whatever form) which the Company has or may have under the M5 West Widening Deed in respect of the planning, design, construction, commissioning and completion of the Agency Works; and
 - (B) any rights available to the Company under common law or in equity in relation to a breach of this M5 West Widening Deed by RMS in respect of the planning, design, construction, commissioning and completion of the Agency Works,

in each case as if the Agency Works formed part of the M5 West Widening Works; and

- (d) without limiting the operation of clause 7.8 of annexure A to this M5 West Widening Deed, a reference to "third party" where appearing in this clause 2A means a third party engaged by the Company with the prior written consent of RMS (not to be unreasonably withheld).

2A.9 Design obligations

Each of the rights and obligations set out in this clause 2A are subject to clause 6.1(c) of annexure A.

2A.10 Obligations under F5 Tollroad Project Deed and M5 Western Link Project Deed

Nothing in this clause 2A in any way affects the parties' rights, liabilities and obligations under the F-5 Tollroad Project Deed or the M5 Western Link Project Deed.

2A.11 Liability for pure economic loss

The liability of the Company under the indemnities in this clause 2A does not extend to pure economic loss suffered or incurred by a third party to the extent that such Claims or Loss arise as a result of:

- (a) the decision by the Government or RMS to proceed with the M5 West Widening Project;
- (b) the existence or location of the M5 West Widening; or
- (c) the existence or location of local area traffic management measures in accordance with the Environmental Documents.

3. CONDITIONS PRECEDENT

3.1 Conditions precedent to obligations of the Parties

The rights and obligations of the Parties under this M5 West Widening Deed, other than this clause 3 and clauses 1, 2.3, 8, 11, 12, 14, 15, 16, 17 and 18 and clauses 1 and 5.19(a) of annexure A and any clause of the Scope of Works and Technical Criteria which is expressly contemplated to apply prior to the Satisfaction Date, are subject to the satisfaction or waiver of the following conditions precedent:

- (a) execution of all other M5 West Widening Project Documents by all parties to them all in a form satisfactory to RMS and satisfaction of all conditions precedent to such documents (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this M5 West Widening Deed), and (without limiting the foregoing) in respect of the RMS Security, delivery of the RMS Security to RMS together with all documentation, information and satisfactory

funding that RMS reasonably requires to have the RMS Security duly stamped and registered, with its agreed priority;

- (b) execution of the Second Refinancing Deed, each Fee Letter, each Equity Document and the New Hedge Agreements by all parties to them in a form satisfactory to RMS and satisfaction of all conditions precedent to such documents (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this M5 West Widening Deed) and delivery to RMS of a certified copy of each such document;
- (c) the Treasurer has given written approval in accordance with section 20 of the *Public Authorities (Financial Arrangements) Act 1987* (NSW) for RMS to enter into the arrangements reflected by the M5 West Widening Project Documents;
- (d) all other necessary Ministerial consents and approvals having been obtained;
- (e) the Base Case Model has been agreed by the Parties and audited by an independent auditor acceptable to RMS;
- (f) in respect of the insurance policies required by this M5 West Widening Deed:
 - (i) the insurance policies required by:
 - (A) clause 15.4(a)(i) of annexure A (contract works or construction risks policy of insurance);
 - (B) clause 15.4(a)(ii) of annexure A (transit insurance);
 - (C) clause 15.4(a)(iii) of annexure A (public and products liability insurance);
 - (D) clause 15.4(a)(iv) of annexure A (project specific professional indemnity insurance); and
 - (E) clause 15.4(a)(vii) of annexure A (advance consequential loss insurance),being effected in the form of the wording set out in annexure K or as otherwise agreed by RMS and the Company and a certified copy of those insurance policies being provided to RMS; and
 - (ii) all other insurance policies required by clause 15.4 of annexure A being effected, and a certificate of currency for such policies being provided to RMS;
- (g) the Company has provided evidence satisfactory to RMS that either:
 - (i) the Company has FIRB approval; or
 - (ii) the Company does not require FIRB approval,to enter into this M5 West Widening Deed;
- (h) each of RMS and the Company has received evidence in form and substance satisfactory to it that the Agent and Security Trustee has consented to this M5 West Widening Deed;
- (i) the Minister has directed under section 63 of the *Roads Act 1993* (NSW) that all the functions of a roads authority in respect of the M5 West Widening are the responsibility of RMS; and

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- (j) RMS has obtained any necessary consent of the "Security Trustee" under the document titled "Western Sydney Orbital RTA Consent Deed" between RMS and others dated 13 February 2003 in relation to the entry into the M5/M7 Interface Deed.

3.2 Notification, waiver and satisfaction

- (a) Each Party must use all reasonable endeavours to satisfy the conditions precedent to the extent that any such condition precedent is capable of being satisfied by that Party. The Parties (other than the Minister) must notify each other as and when a condition precedent has been satisfied.
- (b) The Parties may jointly waive any of the conditions precedent referred to in clause 3.1.
- (c) Upon satisfaction or waiver of all conditions precedent in clause 3.1, the Company must notify each of the other parties to the M5 West Widening Project Documents of the Satisfaction Date.
- (d) Should any of the conditions precedent referred to in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(e), 3.1(f), 3.1(g), 3.1(i) and 3.1(j) not be satisfied or waived within 3 months of the date of this M5 West Widening Deed (or such other period as is agreed by the Parties), then RMS may rescind this M5 West Widening Deed by notice in writing to the other Parties.
- (e) Should the condition precedent referred to in clause 3.1(h) not be satisfied or waived within 3 months of the date of this M5 West Widening Deed (or such other period as is agreed by the Parties), then any Party may rescind this M5 West Widening Deed by notice in writing to the other Parties.
- (f) If this M5 West Widening Deed is rescinded pursuant to clause 3.2(d) or clause 3.2(e), then no Party will have any other obligations to any other Party arising on or out of such rescission or otherwise out of this M5 West Widening Deed, except in relation to breaches arising prior to such rescission.

3.3 Investment structure

- (a) For the purposes of the condition precedent in clause 3.1(b), and without otherwise limiting the generality of RMS' discretion, RMS may not withhold its consent to the Second Refinancing Deed, the Fee Letters, the Equity Documents and the New Hedge Agreements solely for the reason that the investment structure reflected in those document is consistent with the following:
 - (i)
 - (ii)
 - (iii)
 - (iv)

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- (b) To the extent that the Company intends to vary the parameters set out in clause 3.3(a)(i)-(iv), the Company agrees that, except to the extent permitted by clause 6.2 of the Shareholder Debt Note Facility Agreement in relation to the parameters set out in clause 3.3(a)(iii), it must first obtain RMS' consent (which consent must not be unreasonably withheld).

4. DESIGN, CONSTRUCTION, COMMISSIONING AND COMPLETION; PAYMENTS

4.1 Design, construction, commissioning and completion

The Company must plan, design, construct, commission and complete the M5 West Widening Works and the M5 West Widening Temporary Works in accordance with annexure A.

4.2 Payments by RMS to the Company

RMS must pay the Company the amounts described in, and subject to the conditions in, Part A of annexure F.

4.3 Payments by the Company to RMS

The Company must pay RMS the amounts described in, and subject to the conditions in, Part B of annexure F.

4.4 Payments by the Minister to the Company

- (a) If RMS fails to make a payment in accordance with clause 2A or clause 4.2, the Minister agrees that it will make that payment. Any such payment made by the Minister will be deemed to be a discharge of RMS' obligation to make such payment.
- (b) Nothing in this clause 4.4 limits the Minister's obligation under clause 9.13(c).

5. AMENDMENTS TO THE F-5 TOLLROAD PROJECT DEED, M5 WESTERN LINK PROJECT DEED AND M5 LEASES

5.1 F-5 Tollroad Project Deed, M5 Western Link Project Deed and M5 Leases in full force

The Parties agree that each provision of the F-5 Tollroad Project Deed, M5 Western Link Project Deed and M5 Leases remain in full force and effect in accordance with its terms, except to the extent expressly amended pursuant to this M5 West Widening Deed.

5.2 Amendments to F-5 Tollroad Project Deed and M5 Western Link Project Deed

- (a) Part 1 and Part 2 of annexure C set out a consolidated mark-up version of all amendments which the Parties agree are to be made (on the dates contemplated in this clause 5.2) to:
- (i) the general terms of the F-5 Tollroad Project Deed (in part 1 of annexure C);
 - (ii) exhibit "E" (the F-5 Tollroad Project Scope of Works and Design Criteria) to the F-5 Tollroad Project Deed (in part 1 of annexure C), it being acknowledged by the Parties that:
 - (A) this clause 5.2 applies only to the amendments which are marked-up in red in that exhibit "E"; and

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- (B) this clause 5.2 does not apply to the marked-up amendments in black or green in that exhibit "E", which are historic amendments made prior to the date of this M5 West Widening Deed; and
 - (iii) exhibit "D" (the M5 Western Link Scope of Works and Design Criteria) to the M5 Western Link Project Deed (in part 2 of annexure C).
 - (b) Annexure B identifies the date on which each of the amendments referred to in clause 5.2(a) is to take effect.
 - (c) The Parties agree that each amendment to the F-5 Tollroad Project Deed and exhibit "D" to the M5 Western Link Project Deed which is expressed in annexure B to take effect:
 - (i) on the Satisfaction Date, is to take effect on the Satisfaction Date; and
 - (ii) on the Date of Construction Completion, is to take effect on the Date of Construction Completion.
 - (d) The Parties agree that, with effect from the Date of Construction Completion, the M5 Western Link Project Deed is also amended in the manner outlined in part 3 of annexure C.

5.3 Amendments to M5 Leases

The Parties agree that, with effect from the relevant date specified in part 4 of annexure C, the M5 Leases are amended in the manner outlined in part 4 of annexure C.

5A LEASE ACKNOWLEDGEMENT

RMS and the Company acknowledge and agree that the planning, design, construction, commissioning and completion of the M5 West Widening Works and the M5 West Widening Temporary Works in accordance with the M5 West Widening Deed are:

- (a) for the purposes of the Lease (excluding the Moorebank Avenue Lease), to facilitate the implementation of the Project (as defined in the Lease (excluding the Moorebank Avenue Lease));
- (b) for the purposes of the Western Link Lease, to facilitate the implementation of the M5 Western Link Project (as defined in the Western Link Lease); and
- (c) for the purposes of the Moorebank Avenue Lease, to facilitate the implementation of the Moorebank Project (as defined in the Moorebank Avenue Lease).

6. MATERIAL ADVERSE EFFECT

6.1 Clause 2.1 of the F-5 Tollroad Project Deed

- (a) The Company acknowledges and agrees that clause 2.1 of the F-5 Tollroad Project Deed (including for the avoidance of doubt sub clause (e)(3) thereof) does not apply in relation to the entry into this M5 West Widening Deed or the undertaking of the M5 West Widening Project.
- (b) Subject to clause 2.5A of the F-5 Tollroad Project Deed, for the avoidance of doubt, clause 2.1(e) of the F-5 Tollroad Project Deed will continue to apply (and clause 6 of the M5 West Widening Deed will cease to apply) to the Tollroad after the Date of Construction Completion.

6.2 Company to notify RMS

If:

- (a) a Change in Law occurs;
- (b) a court issues an injunction (including a court order referred to in clause 4.3 of annexure A) or makes (or makes in respect of a matter) a Final Determination which prevents the Company from undertaking the M5 West Widening Project substantially in accordance with this M5 West Widening Deed (except where the injunction or Final Determination is issued as a result of a breach by the Company, the Contractor or any of their Subcontractors of any of the M5 West Widening Project Documents or some other wrongful act or wrongful omission by the Company, the Contractor or any of their Subcontractors);
- (c) an Uninsurable Event occurs; or
- (d) a Change to the M5 West Widening Project Approval occurs (notwithstanding the Company receiving any Change Costs referred to in clause 8 of annexure A),

and this has had or has started to have a Material Adverse Effect, the Company:

- (e) may provide RMS with a notice of that fact, including full details of the effect of the event or circumstance on the M5 West Widening Project; and
- (f) must use all reasonable endeavours to:
 - (i) mitigate the adverse consequences of the event or circumstance; and
 - (ii) ensure that redress afforded under this clause 6 is efficiently applied and structured (so as, for example, not to create or increase any liability for Taxes, the liability for which need not be incurred or need only be incurred to a limited extent).

6.3 Consequences of Material Adverse Effect

- (a) As soon as practicable, but no later than 20 Business Days after RMS receives a notice under clause 6.2, the Parties must enter into negotiations and thereafter negotiate in good faith to enable:
 - (i) the Company to earn a rate of return on the M5 West Widening Project equal to the M5 West Widening Base Case Project Return; and
 - (ii) the Company to repay the interest and amortisation payments (and net interest rate management agreement payments, if any) that are or would have been owing under the M5 West Widening Debt Financing Documents were it not for the relevant event or circumstance, on the dates on which such amounts are or would be due to be repaid thereunder (but not more than the amortisation payments contained in item 5 of the Model Outputs Schedule),

provided that if the Company:

- (iii) was not able to earn a rate of return on the M5 West Widening Project equal to the M5 West Widening Base Case Project Return; and
- (iv) the Company was not able to repay the interest and amortisation payments (and net interest rate management agreement payments, if any) that are or would have been owing under the M5 West Widening Debt

Financing Documents on the dates on which such amounts are or would have been due to be repaid thereunder,

prior to the occurrence of the relevant event or circumstance, then the Parties will negotiate in good faith with a view to enabling the Company to have a similar ability to do so as it had prior to the occurrence of the relevant event or circumstance.

- (b) In any negotiations under clause 6.3(a), the Parties must take into account any negotiations conducted under clause 2.1(g) of the F-5 Tollroad Project Deed in respect of the same or a related event or circumstance so as to ensure that there is no double counting or double relief afforded to the Company in respect of the relevant event or circumstance.
- (c) The Parties acknowledge that in any negotiations under clause 6.3(a) they will take a flexible approach, including giving consideration to:
 - (i) amending the M5 West Widening Project Documents;
 - (ii) varying the Term;
 - (iii) varying the financial or other contributions of the Parties;
 - (iv) amending the F-5 Tollroad Project Deed and the M5 Western Link Project Deed; and/or
 - (v) taking such other action as may be agreed,having regard to any payments made by RMS under this M5 West Widening Deed.

7. GST

7.1 GST

- (a) Notwithstanding any other provision of the M5 West Widening Project Documents, any amount payable in connection with this M5 West Widening Deed which is calculated by reference to a cost, expense or other amount (including GST) paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that Party is entitled in respect of that cost, expense or other amount. Each of the Parties will be assumed to be entitled to full input tax credits unless they provide evidence to the other Parties to the contrary.
- (b) If GST is or becomes payable on any supply made by a Party (**Supplier**) under or in connection with this M5 West Widening Deed:
 - (i) unless indicated otherwise, any amount payable or consideration provided under any other provision of this M5 West Widening Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the Party providing consideration for that supply (**Recipient**), equal to the amount of GST payable on that supply as calculated where appropriate in accordance with this clause; and
 - (iii) the additional amount will be payable by the Recipient on the due date for payment of the tax invoice.

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- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under or in connection with this M5 West Widening Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 7.1(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, and subject to clause 7.1(d), 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) Prior to the issue of any tax invoices or adjustment notes, the Parties must use their best endeavours to determine the mutually acceptable market value of any non-monetary consideration provided for supplies made under or in connection with this M5 West Widening Deed to be included in tax invoices or adjustment notes to be issued to the Recipient of the relevant supply. This may involve the Supplier and Recipient engaging a suitably qualified valuer to provide a valuation of any non-monetary consideration, with the costs of such valuation to be borne equally between them.
- (e) If the Recipient is dissatisfied with any tax invoice or adjustment note to be issued by the Supplier, including as to the calculation of the GST payable, attribution of the GST or the description of the supply, the Recipient may, after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all Parties (absent manifest error). The costs of the expert will be borne equally by the Recipient and the Supplier. The expert will act as an expert and not as an arbitrator and will take into account the terms of this M5 West Widening Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination. The Recipient and the Supplier must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert.
- (f) The right of the Supplier to recover any additional amount in respect of GST under this clause is subject to the issuing of the relevant tax invoice or adjustment note to the Recipient by the later of:
- (i) 4 years after the Supplier's liability to pay that GST arises; and
 - (ii) the date on which the Recipient is no longer entitled to an input tax credit for the additional amount.

8. CONFIDENTIALITY AND PUBLICITY

8.1 General restriction

Subject to clause 8.2, no Party will, at any time, without the consent of the other Parties, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the Contractor, the Independent Verifier, the Environmental Representative and their officers, employees, consultants, advisers and agents who require such reports, studies, information and data to enable them properly to carry out their duties):

- (a) any of the contents of this M5 West Widening Deed or the other M5 West Widening Project Documents;
- (b) any information relating to the negotiations concerning this M5 West Widening Deed or the other M5 West Widening Project Documents; or

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- (c) any information which may have come to a Party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the other Parties.

8.2 Exceptions

The restrictions imposed by clause 8.1 will not apply to the disclosure of any information:

- (a) which is now or hereafter comes into the public domain (other than as a result of a breach of clause 8.1) or which is obtainable with no more than reasonable diligence from sources other than the Parties;
- (b) which is required to be disclosed by Law or the Listing Rules of the Australian Stock Exchange Limited (if applicable);
- (c) as required for any legitimate Government purpose or process;
- (d) pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007 and the New South Wales Government Working with Government Guidelines for Privately Financed Projects December 2006;
- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing Party is a party or to an expert in the course of any determination by him to which the disclosing Party is a party; or
- (f) which, in the reasonable opinion of the Company or RMS (as the case may be), is required to be disclosed to:
 - (i) any actual or prospective investor in or lender to (or assignee or novatee of a lender to) the Company;
 - (ii) any insurer in respect of the M5 West Widening;
 - (iii) any of the Company's or RMS' officers, employees, professional advisers, auditors and consultants; or
 - (iv) any person to whom disclosure is reasonably necessary to enable that person to comply with the M5 West Widening Project Documents to which it is a party.

8.3 Publicity

- (a) The Company must not:
 - (i) announce, promote or hold any event, function or party on the M5 West Widening Site, Temporary Areas or any Extra Land (or permit any third party to do so) without the prior written approval of RMS (acting reasonably); or
 - (ii) issue any information, publication, document or article for publication concerning the M5 West Widening Works or the M5 West Widening Temporary Works in any media without prior written approval of RMS (acting reasonably) and only in a manner approved by RMS' Representative (acting reasonably).
- (b) If any of the Company, the Contractor or any of their Subcontractors receives a direct request from the media for comment in respect of any aspect of the M5 West Widening Works or the M5 West Widening Temporary Works, the Company must,

and must ensure that the Contractor and any of their Subcontractors, promptly provide details of such request to RMS' Representative.

9. DEFAULT AND TERMINATION

9.1 Event of Default

Each of the following events is an Event of Default:

- (a) the Company fails to commence, or to expeditiously and diligently progress the Company's Work as required by clauses 9.1(a) and (c) of annexure A or displays an intention to permanently abandon the M5 West Widening Project;
- (b) the Company fails in a material respect to insure the M5 West Widening in accordance with its obligations under annexure A and the F-5 Tollroad Project Deed;
- (c) the Company defaults in a material respect in the due observance and performance of any of its other obligations under this M5 West Widening Deed or any other M5 West Widening Project Document to which RMS is a party;
- (d) the RMS Step In Required Shareholder Contribution is not paid following the issue of a Demand Notice under clause 9.5B(a), whether or not the Company is then in breach of this M5 West Widening Deed;
- (e) an Insolvency Event occurs in relation to the Company, whether or not the Company is then in breach of this M5 West Widening Deed; or
- (f) a representation or warranty given by the Company under this M5 West Widening Deed is breached in a material respect.

9.2 Notice of default

- (a) Upon the occurrence of an Event of Default, RMS may, by notice in writing to the Company, require the Company to remedy the Event of Default (or overcome its effects) within, subject to clause 9.2(b), such period specified in the notice (not exceeding 40 Business Days) as in the opinion of RMS is reasonably required to remedy the Event of Default (or overcome its effects).
- (b) The Parties agree that:
 - (i) if an Event of Default is a failure to pay money, a reasonable time to remedy that Event of Default is 10 Business Days; and
 - (ii) if an Event of Default is:
 - (A) a failure to commence the Company's Work as required by clause 9.1 of annexure A; or
 - (B) if the Company displays an intention to permanently abandon the M5 West Widening Project,the Company must give the program referred to in clause 9.2(c)(ii) to RMS within 10 Business Days after receipt of a notice from RMS under clause 9.2(a) and a reasonable time to remedy that Event of Default is a period of no longer than that permitted under clause 9.2(g).
- (c) If RMS gives the Company a notice referred to in clause 9.2(a):

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- (i) the Company must comply with the notice; and
 - (ii) unless the relevant Event of Default is a failure to pay money:
 - (A) the Company must give RMS a program to remedy the Event of Default (or overcome its effects) in accordance with the terms of RMS' notice;
 - (B) RMS must consult with the Company in good faith to develop and settle that program; and
 - (C) the Company must thereafter comply with that program.
 - (d) Subject to clause 9.2(g), if, at any time (even if the Company has previously given RMS a notice under clause 9.2(d)(i)), the Company considers, in good faith, that the time specified in a notice given by RMS under clause 9.2(a) is not reasonable:
 - (i) the Company must immediately give RMS written notice of that fact, including details of its reasons and the period of time which it believes is reasonably required to remedy the Event of Default (or overcome its effects); and
 - (ii) subject to clause 9.2(e), RMS must, as soon as practicable after receiving a notice under clause 9.2(d)(i), review the time specified in the notice under clause 9.2(a).
 - (e) Subject to clause 9.2(g), if the Company gives a notice to RMS under clause 9.2(d) and:
 - (i) the Company is diligently pursuing a program to remedy the Event of Default (or to overcome its effects); and
 - (ii) the Tollroad and the M5 Western Link is open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 7.4 of annexure A, the F-5 Tollroad Project Deed or the M5 Western Link Project Deed),

the time specified in the notice given by RMS under clause 9.2(a) will be extended by such period which is reasonably required to remedy the Event of Default (or overcome its effects), which extensions will not exceed 21 months in the aggregate in respect of that Event of Default, as notified by RMS to the Company in writing.
 - (f) Subject to clause 9.2(g), if the Company considers in good faith that the period specified in the notice given by RMS under clause 9.2(e) is not reasonable, it may refer the matter to expert determination in accordance with clause 11. The Parties acknowledge and agree that the expert or arbitrator (if applicable) is not entitled to determine that the reasonable period referred to in clause 9.2(e) will exceed 21 months in the aggregate in respect of the relevant Event of Default.
 - (g) If the relevant Event of Default is an Event of Default referred to in clause 9.2(b)(ii), this clause 9.2 applies except that the Company will not be entitled to give RMS a notice under clause 9.2(d) or 9.2(e) seeking an extension or otherwise seek or be granted an extension to the time specified in the notice given by RMS under clause 9.2(a) which exceeds 6 months in the aggregate after the date of receipt of RMS' notice under clause 9.2(a).

9.3 Notice by RMS

- (a) If the Event of Default is not remedied (or its effects overcome) within the period specified in the notice given pursuant to clause 9.2(a) (as extended if at all in accordance with clause 9.2(e), clause 9.2(f) or clause 9.2(g)) or if at any time during that period:
- (i) the Company is not diligently pursuing a program to remedy the Event of Default (or to overcome its effects); or
 - (ii) the Tollroad or the M5 Western Link is not open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 7.4 of annexure A, the F-5 Tollroad Project Deed or the M5 Western Link Project Deed),

RMS may give the Company 20 Business Days' written notice of its intention to:

- (iii) exercise its Default Step-In Rights in accordance with clause 9.4; or
- (iv) terminate this M5 West Widening Deed in accordance with clause 9.8,

and during that 20 Business Day period the Company will have a right to remedy the Event of Default (or overcome its effects).

- (b) Nothing in this M5 West Widening Deed requires RMS to:
- (i) exercise its Default Step-In Rights;
 - (ii) otherwise remedy or cure any breach by the Company; or
 - (iii) without limiting clause 2.6, mitigate any risk, or the consequences or potential consequences of any risk, which might entitle RMS to exercise its Default Step-In Rights.

9.4 Default Step-In by RMS

- (a) If, at the expiration of the 20 Business Day period following the issue of a Default Step-In Notice, the Event of Default has not been remedied (or its effects overcome), RMS is entitled to (but is not obliged to) in its absolute discretion:
- (i) assume total possession, management and control of the M5 West Widening, the M5 West Widening Works, the M5 West Widening Temporary Works and the performance of the Company's Work (**Total Step-In**);
 - (ii) assume partial possession, management and control of the M5 West Widening, the M5 West Widening Works, the M5 West Widening Temporary Works and the performance of the Company's Work (**Partial Step-In**); or
 - (iii) otherwise take such other steps as it determines are necessary or desirable to continue the performance of the Company's Work, including any steps to minimise the risk to the health and safety of persons, the Environment, the M5 West Widening, any property or the safe and secure performance of the Company's Work,

in connection with the remedy, or overcoming the effects, of the Event of Default.

In performing the Company's Work, whether pursuant to a Total Step-In, Partial Step-In or otherwise (to the extent permitted by clause 9.4(a)(iii)), RMS must

undertake such work in accordance with the Scope of Works and Technical Criteria and, where a verification, determination or certification of the Independent Verifier would have been required by the Company in respect of the performance of that work, obtain that verification, determination or certification from the Independent Verifier in accordance with the procedures in this M5 West Widening Deed.

- (b) If RMS proposes to exercise its Default Step-In Rights, RMS' Representative must notify the Company in writing of the date RMS proposes to commence exercising its Default Step-In Rights (including identifying the M5 West Widening Works, the M5 West Widening Temporary Works and the Company's Work in respect of which RMS is exercising those rights) and promptly consult with the Company in relation to:
 - (i) the action that RMS proposes to take; and
 - (ii) the time period which RMS believes may be necessary for RMS to take such action.
- (c) If RMS exercises its Default Step-In Rights, RMS must:
 - (i) keep the Company informed of all communications with the Independent Verifier and Environmental Representative in relation to the performance of the relevant aspects of the Company's Work in respect of which RMS has exercised those rights; and
 - (ii) diligently pursue the exercise of its Default Step-In Rights:
 - (A) where the failure to do so would have an adverse effect on the use, patronage or capacity of the Tollroad, the M5 Western Link or the Company's ability to levy tolls; and
 - (B) so as to enable Existing Operations to resume as soon as is reasonably practicable.
- (d) If RMS exercises its Default Step-In Rights, the Company's obligation to perform those parts of the Company's Work in respect of which RMS has exercised its Default Step-In Rights is suspended and RMS' Representative may on or after the Default Step-In Date direct the Company to do any one or more of the following:
 - (i) immediately suspend performance of all or any other part of the Company's Work;
 - (ii) co-operate with RMS or its nominees as and when required by RMS (in its absolute discretion) in relation to the exercise of RMS' Default Step-In Rights; and
 - (iii) take such other steps as RMS determines are reasonably necessary or desirable in order to:
 - (A) continue the performance of the Existing Operations;
 - (B) minimise the risk of harm to:
 - (I) the health or safety of persons;
 - (II) the Environment;
 - (III) any property; and

(IV) the safe operation of the Tollroad and the M5 Western Link; or

(C) efficiently exercise its Default Step-In Rights,

in each case to ensure that the Event of Default is remedied (or its effects overcome) and Existing Operations are able to resume as soon as is reasonably practicable, and the Company must promptly comply with RMS' reasonable direction.

(e) If RMS exercises its Default Step-In Rights, the Company must (and must, to the full extent reasonably practicable, procure that the Company's Subcontractors) give all reasonable assistance to RMS and its nominees required by RMS while RMS is exercising its Default Step-In Rights, including (without limitation) by:

- (i) giving RMS or its nominees access to the M5 West Widening Site, the Temporary Areas, the Extra Land and any other land upon which the Company's Work is being carried out (or those parts in respect of which RMS has exercised its Default Step-In Rights);
- (ii) making available to RMS or its nominees all relevant staff of the Company and, upon a Partial Step-In and to the extent the Company's Subcontractors are performing works in respect of which RMS has exercised its Default Step-In Rights, the Company's Subcontractors;
- (iii) to the extent practicable (including having regard to the Company's obligations in relation to the Existing Operations, the Company's rights under its Subcontracts and the Company's obligations under this M5 West Widening Deed), giving RMS or its nominees possession of all plant, equipment, materials, temporary works, tools, spare parts, consumables and reparable items being used in the Company's Work and other things on or in the vicinity of the M5 West Widening Site, the Temporary Areas, the Extra Land and any other land upon which the Company's Work (or those parts in respect of which RMS has exercised its Default Step-In Rights) is being carried out, in each case which are owned by or in the lawful possession of the Company and its Subcontractors and are required to facilitate the carrying out of the Company's Work (or those parts in respect of which RMS has exercised its Default Step-In Rights) (**Step-In Items**) or otherwise procuring that such Step-In Items are made available to enable RMS to exercise its Default Step-In Rights;
- (iv) making available to RMS or its nominees all documentation (or copies of documentation) relating to the M5 West Widening Project within the custody or control of the Company and the Company's Subcontractors, including all M5 West Widening Proprietary Documentation and any other documentation relating to the M5 West Widening Project within the custody or control of the Company or the Company's Subcontractors;
- (v) upon a Partial Step-In and subject to clause 9.5(h), enabling RMS to step-in to any Subcontracts relevant to those parts of the Company's Work in respect of which RMS has exercised its Default Step-In Rights;
- (vi) if required by RMS (other than in connection with a Partial Step-In), procuring a novation to RMS or its nominees of any Subcontract entered into by the Company or Subcontract entered into by the Contractor in connection with the performance of the Company's Work which has not yet achieved Construction Completion at the date of RMS exercising its Default Step-In Rights;

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- (vii) facilitating the smooth transfer of the performance, management and control of the Company's Work (or those parts in respect of which RMS has exercised its Default Step-In Rights) to RMS or its nominees (or both, as the case may be);
 - (viii) taking no action at any time which is calculated or intended, directly or indirectly, to prejudice or frustrate or make a transfer of responsibility referred to in clause 9.4(e)(vi) difficult; and
 - (ix) doing all other acts and things reasonably required by RMS to enable RMS or its nominees to be in a position to remedy or overcome the effects of, and to remedy or overcome the effects of, the Event of Default.
- (f) The Company, for the sole purpose of executing any document reasonably required for the sole purpose of, or to give effect to, this clause 9.4, irrevocably appoints RMS as its attorney on and from the Default Step-In Date until RMS ceases exercising its Default Step-In Rights, with full power and authority to execute any such document and do any such other thing on behalf of the Company if the Company fails to execute such document or do such other thing within 5 Business Days of being requested in writing to do so by RMS, where the appointment is necessary to allow RMS to exercise its Default Step-In Rights.
- (g) If RMS achieves Construction Completion in the course of exercising its Default Step-In Rights:
- (i) the achievement of Construction Completion will be deemed to be a remedy by the Company of the Event of Default in respect of which RMS exercised such Default Step-In Rights;
 - (ii) the M5 West Widening will form part of the Tollroad as if the Company had achieved Construction Completion; and
 - (iii) the Company must comply with its obligations under this M5 West Widening Deed, the F-5 Tollroad Project Deed and the M5 Western Link Project Deed (including, for the avoidance of doubt, the Company's obligations under clause 11 of annexure A) as if the Company had achieved Construction Completion.
- (h) RMS may give the Company notice of RMS' intention to cease the exercise of its Default Step-In Rights at any time.
- (i) If RMS gives the Company a Step-Out Notice:
- (i) RMS will cease the exercise of its Default Step-In Rights in accordance with the Step-Out Notice; and
 - (ii) the Company must recommence performance of the Company's Work (where such performance has been prevented by RMS exercising its Default Step-In Rights) with effect from the date specified in the Step-Out Notice (which date must be a reasonable date nominated by RMS but in any event will be no later than 60 Business Days after the date on which RMS gives the Company the Step-Out Notice) (**Step-Out Date**).
- (j) Notwithstanding any other provision of this clause 9, if, after the Company recommences performance of the Company's Work under clause 9.4(i)(ii), an Event of Default of the same type as the Event of Default that has previously entitled RMS to exercise its Default Step-In Rights occurs (or an Event of Default which is substantially the same as it occurs) (**Repeated Event of Default**), RMS

may give the Company notice that a Repeated Event of Default has occurred and this clause 9 will apply to the Repeated Event of Default, except:

- (i) the period available to the Company under this M5 West Widening Deed and any person appointed by the Financiers under a Security in accordance with the RMS Consent Deed (as referred to in clauses 9.2(a), 9.2(e), 9.2(f) and 9.2(g) of this M5 West Widening Deed) to remedy or overcome the effects of the Repeated Event of Default will not exceed 3 months in aggregate; and
 - (ii) if the Repeated Event of Default has not been remedied (or its effects overcome) within the period required under clause 9.2 (as limited by clause 9.4(j)(i)), RMS may terminate this M5 West Widening Deed in accordance with clause 9.3(a)(iv) or exercise its Default Step-In Rights in accordance with this clause 9.4.
- (k) The Company acknowledges and agrees that:
- (i) RMS has no liability for any Loss or Claim which the Company suffers or incurs as a result of the exercise of the Default Step-In Rights (including, where RMS does not exercise its right to require novation of a Subcontract under clause 9.4(e)(vi), any amounts payable by the Company to the relevant Subcontractor following termination of that Subcontract, but excluding amounts required to be reimbursed by RMS to the Company in accordance with clause 9.5(i)) except to the extent of RMS' negligence or wilful default in the exercise of its Default Step-In Rights;
 - (ii) the Company must indemnify and release RMS from and against any such Loss or Claim except to the extent of RMS' negligence or wilful default in the exercise of its Default Step-In Rights;
 - (iii) the Company will not be entitled to any relief from its obligations except to the extent expressly provided for by this clause 9, nor any compensation from RMS, in respect of the exercise by RMS or its nominees of Default Step-In Rights in accordance with this clause 9; and
 - (iv) neither RMS' rights nor the Company's liabilities or obligations, whether under this M5 West Widening Deed or otherwise according to Law, in respect of any event entitling RMS to exercise the Default Step-In Rights, will be limited by the terms of this clause 9.4(k), except to the extent expressly provided in this clause 9.
- (l) In the case of a Partial Step-In by RMS, the Parties agree to co-operate openly and constructively (having regard to the reasonable protection of their commercial and legal positions) in relation to the management of their respective rights in connection with Subcontracts and Subcontractors and the performance of the Company's Work during any period in which RMS is exercising Default Step-In Rights so as to minimise, to the extent reasonably practicable, any adverse impact of the exercise of Default Step-In Rights on the Company's ability to carry out the Company's Work and the Existing Operations.

9.5 RMS Default Step-In Costs

- (a) The reasonable costs incurred by RMS in exercising its Default Step-In Rights up to the amount set out in item 2 of the Model Outputs Schedule:
 - (i) including but not limited to the reasonable:

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- (A) contracting and procurement costs incurred by RMS in connection with the negotiation, entry into, and management of contracts for work and/or services;
 - (B) financing costs incurred by RMS in respect of any loan taken out by RMS; and
 - (C) costs incurred by RMS pursuant to any Subcontract novated to RMS pursuant to clause 9.4(e)(vi),

in connection with remedying or overcoming the effects of the Event of Default; and

(ii) excluding:

- (A) any costs incurred by RMS in carrying out Additional Works; and
- (B) any costs payable by RMS to the Company in accordance with clause 2A.7 relating to the planning, design, construction, commissioning and completion of the Agency Works other than to the extent that RMS has already paid the Company any such amounts,

(RMS Default Step-In Costs) will, with effect on and from the Date of Construction Completion, be a debt due from the Company to RMS and, and subject to clause 9.5(l), payable to RMS in instalments in accordance with the Cost Payment Schedule on the basis that the RMS Default Step-In Costs accrue interest from the date that they are incurred by RMS at the Deferred Interest Rate (without any double counting of the costs referred to in clause 9.5(a)(i)(B)).

- (b) The Parties agree that RMS must provide the Company with all documentation upon which RMS relies, and any other information reasonably required by the Company, to substantiate the costs referred to in clause 9.5(a).
- (c) Subject to clause 9.5(d) and 9.5(f), on each Quarterly Payment Date after the Date of Construction Completion, the Company must pay the Quarterly Instalment for that Quarter.
- (d) The Company is only required to pay a Quarterly Instalment to RMS to the extent that the Company has Available Funds to make such payment, and, to the extent that on any Quarterly Payment Date the Company has insufficient Available Funds to pay the Quarterly Instalment due on that Quarterly Payment Date:
 - (i) the Company must pay that portion of the Quarterly Instalment to the full extent to which it has Available Funds on that date; and
 - (ii) any shortfall between the amount of the Quarterly Instalment and the Available Funds (**Shortfall**) will accrue capitalised interest at the Deferred Interest Rate from (but excluding) the Quarterly Payment Date on which such amount would have been payable if not for this clause 9.5(d) until the date the amount (and any accrued interest) is paid in accordance with clause 9.5(e),

and any shortfall will not be payable other than in accordance with clause 9.5(e).

- (e) Where clause 9.5(c) has applied in relation to a Quarter and there remains any Unpaid Quarterly Instalments, the Company must, on each Quarterly Payment Date until there ceases to be any Unpaid Quarterly Instalments, pay an amount to RMS calculated as the lesser of:

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- (i) Available Funds after the payment of any amount payable under clause 9.5(d); and
 - (ii) an amount equal to the aggregate of:
 - (A) any Unpaid Quarterly Instalment; and
 - (B) accrued interest on those Unpaid Quarterly Instalment calculated in accordance with clause 9.5(d)(ii).
 - (f) Subject to clause 9.5(g), RMS acknowledges and agrees that if RMS exercises its Default Step-In Rights and Construction Completion does not occur, the Company will not have any obligation to repay any RMS Default Step-In Costs to RMS in accordance with this clause 9.
 - (g) Notwithstanding any other provision of this clause 9, RMS will be deemed to have achieved Construction Completion if the Independent Verifier issues a written notice under clause 10.1(e)(i)(B) of annexure A that the only work remaining to be completed to achieve Construction Completion is:
 - (i) [not used];
 - (ii) the work which is to be performed by the Company itself and not the Contractor;
 - (iii) the updating of the Maintenance Manual in accordance with clause 13 of annexure A;
 - (iv) any work RMS has been prevented from performing as a consequence of RMS complying with RMS' obligations to the Company under this clause in connection with the Company carrying out the Existing Operations; or
 - (v) any other work RMS has been prevented from performing as a result of:
 - (A) a breach by the Company;
 - (B) a failure by the Company to provide RMS with access to the M5 West Widening Site, the Temporary Areas, the Extra Land, the Tollroad or the M5 Western Link (provided that the Company is not required to provide access to the M5 West Widening Site, the Temporary Areas, the Tollroad or the M5 Western Link beyond those rights it has under the M5 West Widening Project Documents, the F-5 Tollroad Project Deed, the M5 Western Link Project Deed or the leases granted under clause 4 of the F-5 Tollroad Project Deed or clause 4 of the M5 Western Link Project Deed).
 - (h) Without prejudice to the mechanism for calculating the RMS Default Step-In Costs in this clause 9.5 and subject to RMS' rights:
 - (i) in respect of any Event of Default set out in clause 9.1;
 - (ii) under the RMS Security, the Deed of Charge (as defined in paragraph (a) of the definition of "Deed of Charge" in the F-5 Tollroad Project Deed) and the RMS Consent Deed; and
 - (iii) available under common law or in equity in respect of any breach of the Company's payment obligations under this clause 9.5,

RMS' rights to recover the RMS Default Step-In Costs from the Company are limited to the rights specified in this clause 9.5.

- (i) If RMS steps in to a Subcontract, RMS must promptly reimburse the Company for any portion of the contract sum payable by the Company (including amounts payable by the Contractor to the relevant Subcontractor and any change costs payable under the Subcontract in connection with Additional Works) in connection with the Subcontract in respect of the period from the Default Step-In Date to the Step-Out Date.
- (j) The Company agrees that any reimbursement made in accordance with clause 9.5(i) will be included in the calculation of the RMS Default Step-In Costs.
- (k) The Parties agree that this clause 9.5 sets out RMS' sole rights for the recovery of the RMS Default Step-In Costs.
- (l) Any amounts of RMS Step-In Required Shareholder Contribution received by RMS in accordance with clause 9.5B will be applied upon receipt to reduce the RMS Default Step-In Costs debt.
- (m) Any amount of RMS Default Step-In Costs which are owing to RMS under this clause 9.5, and unpaid, as at the Enforcement Date will become immediately due and payable as at that Enforcement Date.

9.5A Step-In Costs Reserve Account

- (a) Within 5 Business Days after the Default Step-In Date, the Company must establish an account to be styled "M5 West Widening - Step-In Cost Reserve Account".
- (b) If at any time after the Default Step-In Date, RMS reasonably believes (based on advice from the Independent Verifier) that Construction Completion will occur within a period of 12 months or less, RMS may provide written notice to the Company specifying the date on which RMS reasonably believes the Date of Construction Completion will occur (**RMS Completion Notice**).
- (c) If at any time after the date on which:
 - (i) the Company receives an RMS Completion Notice; or
 - (ii) RMS achieves Construction Completion pursuant to the exercise of its Default Step-In Rights,

the SCR is less than 2.0:1, then from that date (an **SCR Date**) and subject to clause 9.5A(d), the Company must, within 30 days of each Quarter, transfer to the Step-In Costs Reserve Account any Available Funds for that preceding Quarter until the cash balance of the Step-In Costs Reserve Account is equal to the Required Level.

- (d) The Company's obligation to fund the Step-In Costs Reserve Account to the Required Level under clause 9.5A(c) will immediately cease if:
 - (i) at any time after the relevant SCR Date, the SCR is equal to or greater than 2.0:1; or
 - (ii) where clause 9.5A(c)(i) applies, the Company and RMS agree (each acting reasonably and on the advice of the Independent Verifier) that the Anticipated RMS Completion Date will not occur within 12 months of the relevant SCR Date.

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- (e) The Company may not withdraw any amount from the Step-In Costs Reserve Account:
- (i) other than to pay a Quarterly Instalment (or part thereof) due to RMS in accordance with clause 9.5 which would otherwise be unpaid because the Company has insufficient Available Funds to pay the Quarterly Instalment (or part thereof) on the relevant Quarterly Payment Date; or
 - (ii) unless RMS has issued a Step-Out Notice or has otherwise ceased to exercise its Default Step-In Rights prior to RMS achieving Construction Completion; or
 - (iii) unless clause 9.5A(f) applies.
- (f) If, at any time, the cash balance of the Step-In Costs Reserve Account exceeds the Required Level, the Company may withdraw an amount of money equal to the difference between the Required Level and the cash balance of the Step-In Costs Reserve Account (prior to that withdrawal).
- (g) The Company may, at any time, replace all of the cash balance maintained in the Step-In Costs Reserve Account by providing RMS with one or more Acceptable LCs with a face value equivalent to that cash balance.
- (h) If an Authorised Bank which has issued an Acceptable LC ceases to have a Satisfactory Rating, the Company must promptly, but in any event within 7 Business Days of the Authorised Bank ceasing to hold a Satisfactory Rating, replace the relevant letter of credit:
- (i) with cash deposited in the Step-In Costs Reserve Account; or
 - (ii) by providing a new Acceptable LC to RMS with an equivalent face value to the letter of credit to be replaced.
- (i) If the face value of any Acceptable LC provided under this clause 9.5A exceeds the Required Level, the Company may replace that Acceptable LC:
- (i) with cash deposited into the Step-In Costs Reserve Account; or
 - (ii) by providing a new Acceptable LC to RMS,
- so that the cash balance in the Step-In Costs Reserve Account or the aggregate face value of all Acceptable LCs provided (or combination thereof) is equal to the Required Level.
- (j) For the purposes of this M5 West Widening Deed, the cash balance in the Step-In Costs Reserve Account will be taken to include the face value of any Acceptable LC's provided to RMS in accordance with this clause 9.5A.
- (k) The Company must (without limiting the obligations of the Company under clause 15.1 of the F-5 Tollroad Project Deed or 15.1 of the M5 Western Link Project Deed):
- (i) keep books of account and all other records relating to the performance of its obligations, the Step-In Costs Reserve Account and the Available Funds at the administrative building located on the Premises (as defined in the F-5 Tollroad Project Deed) or the Company's principal place of business in New South Wales and ensure that the books of account and records are available to RMS at all reasonable times for examination, audit, inspection, transcription and copying;

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- (ii) if this M5 West Widening Deed is terminated, allow RMS access to any books of account and records referred to in clause 9.5A(k)(i) for a period of seven years; and
 - (iii) as soon as practicable (and in any event not later than 120 days) after the close of each financial year, the Company must give RMS certified copies of the audited financial statements for the previous financial year of the Company.

9.5B RMS Step-In Required Shareholder Contribution

- (a) Subject to clause 9.5B(b), if at any time after the Default Step-In Date, the Shareholders have not subscribed for Debt Notes having an aggregate principal amount equal to or exceeding the RMS Step-In Shareholder Contribution Amount, RMS may by written notice to the Company (**Demand Notice**) require the Company to prepare and deliver to each Shareholder a "Utilisation Notice (RMS Step-In)" under the Shareholder Debt Note Facility Agreement in the prescribed form and in compliance with the terms of the Shareholder Debt Note Facility Agreement.
- (b) At the same time as it provides the Company with a Demand Notice under clause 9.5B(a), RMS must provide to the Company for provision to the Shareholders copies of the documentation equivalent to those described in clause 9.5(b).
- (c) The Company must irrevocably direct each Shareholder to pay, or cause to be paid, its share of the requested RMS Step-In Required Shareholder Contribution in proportion to its Commitment and in compliance with the terms of the Shareholder Debt Note Facility Agreement into the account specified by RMS in the Demand Notice (**Specified Account**).
- (d) The Company irrevocably appoints RMS and each of its authorised officers, severally, the Company's attorney (**Attorney**) to complete, execute and deliver any notice or document, or undertake any acts necessary in the opinion of the Attorney to discharge the Company's obligations under this clause 9.5B. The Company acknowledges and agrees that:
 - (i) an Attorney may, but is not obliged to, do any of the things it is appointed to do under this clause;
 - (ii) an Attorney may do anything contemplated by this clause even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it;
 - (iii) an Attorney may do anything contemplated by this clause in its name, in the name of the Company or in the name of both of them; and
 - (iv) the Company must ratify anything done by an Attorney under this clause.

9.6 Additional Works

If, during the exercise of RMS' Default Step-In Rights, RMS proposes to carry out a Change (**Additional Works**):

- (a) RMS may issue a document entitled "Additional Works Proposal" to the Company which sets out details of the proposed Additional Works;
- (b) within 15 Business Days of receipt of an "Additional Works Proposal" from RMS under clause 9.6(a), the Company must provide RMS with a written notice containing:

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- (i) the Company's estimate of the operating and maintenance costs or savings that will be incurred by the Company as a result of the RMS carrying out the Additional Works, substantiated (to the extent possible) by detailed particulars;
 - (ii) details of the functional integrity of any of the elements of the M5 West Widening Works and the performance standards required by this M5 West Widening Deed which will be adversely affected by the proposed Additional Works;
 - (iii) details of the quality standards, warranties and other obligations required under this M5 West Widening Deed which will be adversely affected by the proposed Additional Works;
 - (iv) details of any adverse effects of the proposed Additional Works on the use, patronage or capacity of the Tollroad, the M5 Western Link or the M5 West Widening or the Company's ability to levy or collect tolls;
 - (v) details of any adverse affect of the proposed Additional Works on Existing Operations; and
 - (vi) any other information requested by the "Additional Works Proposal" (if applicable);
- (c) within 15 Business Days of receipt of the notice given under clause 9.6(b), RMS must:
- (i) give a written notice to the Company that it withdraws the relevant "Additional Works Proposal", in which case RMS will not carry out the Additional Works;
 - (ii) give a written notice to the Company that it agrees with the matters referred to in the Company's notice, in which case RMS may carry out the Additional Works and the Company's obligations under this M5 West Widening Deed, the Existing Operations and the other matters referred to in clause 9.6(b) will be varied to the extent set out in the notice given under clause 9.6(b); or
 - (iii) give a written notice to the Company that it disagrees with the matters referred to in the Company's notice and requires the dispute to be referred for determination under clause 11, in which case RMS may, where the carrying out of the Additional Works by RMS has been agreed to by the Parties, or is permitted, in accordance with clause 9.6(d) (even if the matters referred to in the Company's notice have not been), carry out the Additional Works before the dispute has been determined under clause 11 and the Existing Operations and the Company's obligations under this M5 West Widening Deed and the other matters referred to in clause 9.6(b) will be varied to the extent set out in the notice given under clause 9.6(b) and agreed by RMS or, to the extent that agreement is not reached, as determined in accordance with clause 11;
- (d) unless otherwise agreed by the Parties, RMS may not carry out any Additional Works if the Additional Works would:
- (i) during the period between the date of this M5 West Widening Deed and the Date of Final Completion cause a greater reduction in capacity or patronage of the Tollroad and the M5 Western Link than the reduction in capacity or patronage which the Updated M5 West Base Case Financial

Model forecasts at the date of this M5 West Widening Deed will arise as a consequence of carrying out the Company's Work; or

- (ii) adversely affect:
 - (A) the use, patronage or capacity of the M5 West Widening;
 - (B) the use, patronage or capacity of the Tollroad and the M5 Western Link following Final Completion; or
 - (C) the Company's ability to levy or collect tolls; and
- (e) if Additional Works undertaken by RMS in accordance with this clause 9.6 result in the Company incurring additional operating and maintenance costs, RMS must pay the Company those costs (as agreed under clause 9.6(c) or determined in accordance with clause 11). Unless otherwise agreed, RMS must pay the Company the additional operating and maintenance costs:
 - (i) to the extent that any amounts are due and payable by the Company to RMS in accordance with clause 9.5 at that time (**Owed Amounts**), by setting-off amounts due to the Company under this clause 9.6(e) against the Owed Amounts; or
 - (ii) otherwise within 10 Business Days after completion of the Additional Works.

9.6A Rights and obligations not affected

The Parties acknowledge that unless expressly stated otherwise in this M5 West Widening Deed, during such period RMS is exercising its Default Step-In Rights, the rights and obligations of the Parties as set out in this M5 West Widening Deed remain unaffected.

9.6B Reinstatement of the Tollroad and the M5 Western Link

- (a) Where an Event of Default is subsisting, and RMS:
 - (i) has a right under this M5 West Widening Deed to exercise its Default Step-In Rights, but has not given the Company a notice under clause 9.3(a) within 60 Business Days of being entitled to do so under clause 9.3(a);
 - (ii) exercises its Default Step-In Rights but elects to cease exercising those rights prior to Construction Completion; or
 - (iii) has a right under this M5 West Widening Deed to terminate this M5 West Widening Deed, but has not yet elected to do so within 60 Business Days of being entitled to do so under clause 9.3(a),

and either:

- (iv) the Company is not able to comply with the Existing Operations, the F-5 Tollroad Project Deed or the M5 Western Link Project Deed; or
- (v) RMS and the Company agree (acting reasonably) that the Tollroad and the M5 Western Link should be reinstated to minimise a material adverse effect that the Event of Default will have on the capacity or patronage of the Tollroad and the M5 Western Link,

either Party may propose a plan (**Reinstatement Plan**) for the reinstatement of the Tollroad and the M5 Western Link.

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- (b) A Reinstatement Plan must contain a detailed description of the works necessary to ensure the prompt repair or replacement of the Tollroad and the M5 Western Link so that:
- (i) the Company is able to comply with its obligations under the F-5 Tollroad Project Deed and the M5 Western Link Project Deed;
 - (ii) the material adverse effect of the Event of Default upon the capacity or patronage of the Tollroad and the M5 Western Link is minimised; and
 - (iii) to the extent reasonably practicable having regard to the other Reinstatement Criteria only, it preserves the flexibility of the Parties to continue to carry out the M5 West Widening Project (having regard to the nature of the relevant Event of Default),
- (the **Reinstatement Criteria**).
- (c) Within 20 Business Days following receipt of a Reinstatement Plan from the Company (**Company Reinstatement Plan**), RMS may either:
- (i) direct the Company to carry out the Company Reinstatement Plan; or
 - (ii) direct the Company to carry out an alternate Reinstatement Plan proposed by RMS (**RMS Reinstatement Plan**).
- (d) If RMS proposes an RMS Reinstatement Plan in accordance with clause 9.6B(c)(ii), the Company must, within 20 Business Days of receipt of the RMS Reinstatement Plan, either:
- (i) notify RMS of its acceptance of the RMS Reinstatement Plan; or
 - (ii) if the Company considers in good faith that the RMS Reinstatement Plan does not comply with the Reinstatement Criteria, refer this dispute for determination under clause 11.
- (e) As soon as reasonably practicable following the earlier of:
- (i) a direction by RMS to carry out a Company Reinstatement Plan;
 - (ii) notification by the Company to RMS of its acceptance of the RMS Reinstatement Plan; and
 - (iii) determination of a dispute as to whether the RMS Reinstatement Plan complies with the Reinstatement Criteria and, if not, the changes required so that it does meet the Reinstatement Criteria,

the Company must diligently pursue the implementation of the applicable Reinstatement Plan.

9.7 Latent defects in existing structures

- (a) RMS agrees that if RMS discovers any latent defect in the condition of a structure on, above or adjacent to, or under the surface of, the M5 West Widening Site, the Temporary Areas or any Extra Land in exercising its Default Step-In Rights, RMS will promptly notify the Company.
- (b) The Company may (but is not obliged to) propose a Change in relation to alternative design solutions for achieving the functionality, durability and quality requirements of the Scope of Works and Technical Criteria requested by RMS

(Alternative Design Solutions) within 20 Business Days after receipt of a notice from RMS under clause 9.7(a).

- (c) If the Company proposes a Change in accordance with clause 9.7(b) and in RMS' reasonable opinion, it would not have been feasible for the Company to carry out the M5 West Widening Works in accordance with the Scope of Works and Technical Criteria (taking into account any additional capital and operating costs to be borne by the Company as a consequence of the latent defect) then without limiting any other rights RMS has under this clause 9.7, RMS will:
 - (i) consider the Change proposed by the Company, including the Company's proposed Alternative Design Solutions;
 - (ii) consider any information and supporting documentation in relation to the Alternative Design Solutions;
 - (iii) cooperate with the Company in assessing the Alternative Design Solutions (taking into account total capital and operating costs); and
 - (iv) consider the proposed Change in good faith pursuant to clause 8.2(c)(i) of annexure A.
- (d) If the Company proposes a Change in accordance with clause 9.7(b) then, for the purposes of clause 9.5, any determination of the reasonable costs incurred by RMS in connection with the latent defect in the condition of a structure on, above or adjacent to, or under the surface of, the M5 West Widening Site, the Temporary Areas or any Extra Land encountered by RMS in exercising its Default Step-In Rights must:
 - (i) include all costs which RMS considers are reasonable for RMS to incur in taking steps to render any structure affected by such latent defect safe and to otherwise minimise the risk of harm to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any property; and
 - (D) the safe operation of the Tollroad and the M5 Western Link; and
 - (ii) otherwise be made having regard to RMS' obligations under clause 9.7(c).
- (e) All disputes relating to or arising out of this clause 9.7 are to be resolved in accordance with the procedures set out in clause 11.

9.7A Rights and warranties

- (a) Where RMS engages a contractor to perform any works or services in connection with its Default Step-In Rights, RMS must use reasonable endeavours to obtain:
 - (i) rights and warranties in relation to the performance of those works or services that a reasonable and prudent principal would obtain, including:
 - (A) warranties on similar terms to those contained in clauses 6.1, 7.1 and 7.9 of annexure A;
 - (B) a defects liability period of 12 months (plus an additional 12 months in respect of any defects rectified by the contractor); and

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- (C) indemnities on similar terms to clause 15.2(a) of annexure A, in relation to the works or services to be performed by the contractor; and
- (ii) a collateral warranty given by the contractor for the benefit of the Company that the contractor will indemnify the Company against all Loss suffered by the Company as a result of any damage to the Tollroad and the M5 Western Link arising out of, or in connection with, the works or services performed by the contractor (including any loss of tolling revenue by the Company as a result of the damage and performance liquidated damages on similar terms to those contained in clause 14.4 of annexure A to the M5 West Widening D&C Contract).
- (b) If the Company recommences performance of the Company's Work or Construction Completion is achieved, RMS must assign to the Company the benefit of warranties and rights obtained by RMS from a contractor referred to in clause 9.7A(a) (other than the collateral warranty referred to in clause 9.7A(a)(ii)) in connection with those works (other than a novated contract between RMS and a Subcontractor entered into pursuant to clause 9.4).
- (c) Nothing in this clause 9.7A obliges RMS to actually obtain the rights and warranties referred to in clause 9.7A(a) or to obtain those rights and warranties without a cap or other limitation on the liability of the contractor engaged to perform the relevant works or services.
- (d) Any reasonable costs incurred by RMS in obtaining rights and warranties under this clause 9.7A may be included in the RMS Default Step-In Costs under clause 9.5.

9.8 Termination

- (a) If, at the expiration of the 20 Business Day period following the issue of a Termination Notice the Event of Default has not been remedied (or its effects overcome), RMS may, subject to the Financier's rights under the RMS Consent Deed, terminate this M5 West Widening Deed by written notice to the Company.
- (b) Upon termination of this M5 West Widening Deed pursuant to this clause 9.8:
- (i) subject to clause 9.10, RMS will not be liable to pay any compensation or other moneys to the Company by reason of that termination (including, where RMS does not exercise its right to require novation of a Subcontract under clause 9.8(b)(iv), any amounts payable by the Company to the relevant Subcontractor following termination of that Subcontract);
- (ii) the Company must carry out any rectification or remediation work reasonably required by RMS to reinstate the Tollroad or the M5 Western Link in accordance with the Reinstatement Criteria (other than paragraph (iii) of those criteria) and enable the Tollroad to be operated in accordance with the F-5 Tollroad Project Deed and the M5 Western Link to be operated in accordance with the M5 Western Link Project Deed;
- (iii) if and to the extent that the Company fails to carry out such rectification or remediation work:
- (A) to the reasonable satisfaction of RMS; and
- (B) within the period to be specified by RMS after notice is given under clause 9.8(a),

RMS will be entitled to carry out itself, or procure, the rectification or remediation work, and any Loss suffered or incurred by RMS in taking action under this clause 9.8(b)(iii) will be a debt due and payable from the Company to RMS except to the extent such Loss arises from the negligence or wilful default of RMS or its contractors;

- (iv) RMS may require a novation of any one or more of any Subcontract or other contract entered into by the Company in respect of the Company's Work to the extent necessary to enable RMS to exercise its rights under clause 9.8(b)(iii);
 - (v) the Company must execute all documentation required to effect a transfer to RMS of its interest in the M5 West Widening Assets to the extent necessary to enable RMS to exercise its rights under clause 9.8(b)(iii);
 - (vi) the Company must:
 - (A) hand over (or provide copies of) books of account and all other records relating to the Company's Work;
 - (B) hand over the M5 West Widening Proprietary Documentation;
 - (C) procure the assignment of the Company's rights under the insurance policies maintained by the Company under clause 15 of annexure A; and
 - (D) hand over (or provide copies of) any other documentation relating to the M5 West Widening Project within the custody or control of the Company and the Company's Subcontractors,

to RMS or its nominee to the extent necessary to enable RMS to exercise its rights under clause 9.8(b)(iii);
 - (vii) not used;
 - (viii) other than to the extent it forms part of the Tollroad in accordance with clause 9.4(g) or Land (as defined in the F-5 Tollroad Project Deed) or the M5 Western Link, the M5 West Widening Site, the Temporary Areas and any other land upon which the Company's Work is being carried out will revert to RMS; and
 - (ix) the Company must continue to operate and maintain the Tollroad in accordance with the F-5 Tollroad Project Deed and the M5 Western Link in accordance with the M5 Western Link Project Deed.
- (c) The Company acknowledges that nothing in this clause 9 obliges RMS to require the novation of any Subcontract under clause 9.8(b)(iv).
 - (d) The Company, for the sole purpose of executing any document reasonably required for the sole purposes of or to give effect to clause 9.8(b), irrevocably appoints RMS as its attorney on and from the date of termination of this M5 West Widening Deed with full power and authority to execute any such document on behalf of the Company if the Company fails to execute such document or do such other thing within 5 Business Days of being requested in writing to do so by RMS.

9.9 Management of incidents and safety

- (a) Without limiting any other obligations of the Company under this M5 West Widening Deed, the F-5 Tollroad Project Deed or the M5 Western Link Project Deed:
 - (i) the Parties agree to co-operate openly and constructively (having regard to the reasonable protection of their commercial and legal positions) in relation to the investigation and management of, and response to, incidents occurring in connection with the Tollroad or the M5 Western Link during any period in which RMS is exercising Default Step-In Rights where such incidents have resulted, or have the potential to result, in serious injury or death to any person; and
 - (ii) the Company must immediately inform and keep RMS' Representative informed in writing about any action or measures the Company has taken or proposes to take to respond to, overcome or minimise the effects of such incident, event or circumstance on the safe operation of the Tollroad or the M5 Western Link.
- (b) Notwithstanding any other provision of this clause 9 or the RMS Consent Deed, if the Company or a person appointed by the Financiers fails to promptly remedy an Event of Default (or the consequences of its negligence or wilful misconduct) and RMS' Representative believes that urgent action must be taken to minimise the risk to the health and safety of persons, the Environment, the M5 West Widening or any property arising as a consequence of that failure, RMS may immediately exercise and take such steps as it determines necessary to minimise the risk or, if the risk materialises, the effects of the risk.

9.10 Right to damages

- (a) Any termination of this M5 West Widening Deed under clause 2.11(e), 2.12(d) or 2.13(d) of annexure A or this clause 9 will not in any way prejudice any Party's rights to claim and recover damages for any breach of contract by another Party or any other accrued entitlement.
- (b) Any termination of this M5 West Widening Deed by RMS under this clause 9 will entitle RMS to recover all Loss that RMS may suffer or incur arising out of or in any way in connection with termination of this M5 West Widening Deed.
- (c) Nothing in this clause 9.10 will entitle RMS to recover any Indirect Loss that RMS may suffer or incur arising out of or in connection with the termination of this M5 West Widening Deed from any other Party.

9.11 Termination by the Company

- (a) Subject to clause 9.12, the Company may terminate this M5 West Widening Deed by giving RMS 30 Business Days' written notice if:
 - (i) a court makes (or makes in respect of a matter) a Final Determination which prevents the Company from undertaking the Company's Work substantially in accordance with this M5 West Widening Deed (except where the Final Determination is issued as a result of a default by the Company or its contractors under the M5 West Widening Project Documents or some other wrongful act or wrongful omission by the Company or its contractors) and RMS fails to procure that the effect of the court order is overcome within 12 months of the Company notifying RMS in writing of the court order;

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- (ii) the Government enacts legislation (including any rules, regulations or by-laws under that legislation) which prohibits or has the effect of prohibiting the Company from undertaking the Company's Work substantially in accordance with this M5 West Widening Deed;
 - (iii) an Authority resumes any part of the land on which the Company's Work is to be carried out and as a result the Company is prevented from undertaking the Company's Work substantially in accordance with this M5 West Widening Deed;
 - (iv) RMS breaches clause 2.1 of annexure A and such breach:
 - (A) prevents the Company from undertaking the Company's Work substantially in accordance with this M5 West Widening Deed; and
 - (B) is not remedied (or its effects overcome) within 12 months after written notice from the Company to RMS specifying the breach;
 - (v) RMS breaches clause 4.2 and either:
 - (A) such breach is:
 - (I) not disputed by RMS; and
 - (II) not remedied (or its effects overcome),
within 6 months after written notice from the Company to RMS specifying the breach; or
 - (B) such breach is:
 - (I) disputed by RMS; and
 - (II) a Final Determination is made that moneys are due and payable by RMS to the Company under clause 4.2,
and RMS has not paid such moneys within 6 months after the Final Determination.
 - (b) If an event referred to in clause 9.11(a)(i) or 9.11(a)(iv) occurs, then in respect of the 12 month period referred to in clause 9.11(a)(i) or 9.11(a)(iv)(B) (as applicable), RMS must pay the Company in respect of that period monthly in arrears an amount (including costs, losses or expenses) sufficient to place the Company in the net (including after Tax) position it would have been in had the event referred to in clause 9.11(a)(i) or 9.11(a)(iv) (as applicable) not occurred.
 - (c) Subject to the F-5 Tollroad Project Deed and the M5 Western Link Project Deed remaining on foot, if the Company terminates this M5 West Widening Deed, clauses 9.8(b)(ii) to 9.8(b)(viii) will apply (except that the cost of performance of any obligations of the Company under those clauses will be borne by RMS).

9.12 Suspension of termination notice

- (a) If the Company issues a notice of termination under clause 9.11, RMS may suspend the Company's right to terminate, by giving it written notice to that effect within 30 Business Days of receipt of the Company's notice.
- (b) RMS' suspension of the Company's right to terminate expires:
 - (i) upon notice to that effect from RMS;

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- (ii) 12 months after the date of the Company's notice under clause 9.11; or
 - (iii) when the relevant event is remedied by RMS or no longer exists, whichever is earliest.
- (c) If RMS' suspension of the Company's right to terminate expires:
- (i) under clause 9.12(b)(i) or 9.12(b)(ii), this M5 West Widening Deed automatically terminates under clause 9 on that date; or
 - (ii) under clause 9.12(b)(iii), this M5 West Widening Deed continues in force.
- (d) The Company must continue to perform its obligations under this M5 West Widening Deed while its right to terminate is suspended if:
- (i) it is lawfully able to do so; and
 - (ii) it is practicable to do so.
- (e) If RMS suspends the Company's rights to terminate, it must pay the Company in respect of the period of suspension monthly in arrears an amount (including costs, losses or expenses) sufficient to place the Company in the net (including after Taxes) position it would have been in had the event on the basis of which the Company's notice under clause 9.11 was issued not occurred.

9.13 M5 West Widening Early Termination Amount

Without prejudice to clause 9.8, if this M5 West Widening Deed is terminated under:

- (a) clause 2.11(e), 2.12(d) or 2.13(d) of annexure A or clause 9.11; or
- (b) clause 9.14, in circumstances where termination of the F-5 Tollroad Project Deed has occurred in accordance with clause 13.3 of the F-5 Tollroad Project Deed or termination of the M5 Western Link Project Deed has occurred in accordance with clause 13.3 of the M5 Western Link Project Deed,

then within 30 days of such termination:

- (c) the Minister must pay the M5 West Widening Early Termination Amount to the Company; and
- (d) RMS must release any Security Bonds then held by RMS.

9.14 Termination of the F-5 Tollroad Project Deed or the M5 Western Link Project Deed

Subject to the RMS Consent Deed, this M5 West Widening Deed will automatically terminate upon termination of the F-5 Tollroad Project Deed or the M5 Western Link Project Deed and, subject to clause 9.13, clauses 9.8(b)(i) to 9.8(b)(viii) (inclusive), 9.8(c) and 9.8(d) will apply to such termination.

10. FORCE MAJEURE EVENT

10.1 Force Majeure Event notice

- (a) If the Company alleges or wishes to claim that a Force Majeure Event has occurred, the Company must give RMS' Representative prompt written notice of the Force Majeure Event once it becomes aware of the same and the obligations affected together with full particulars of all relevant matters including:

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- (i) details of the Force Majeure Event;
 - (ii) details of the obligations affected;
 - (iii) details of the action the Company has taken and/or proposes to take to remedy the situation;
 - (iv) an estimate of the time during which the Company will be unable to carry out its obligations due to the Force Majeure Event;
 - (v) an estimate of the costs that the Company will incur to remedy the situation; and
 - (vi) details of all insurance moneys upon which the Company will be able to rely in making good damage caused by the Force Majeure Event.
- (b) After giving notice under clause 10.1(a), the Company must continue to provide to RMS' Representative all relevant information pertaining to the Force Majeure Event.

10.2 Meeting

The Parties must meet within 5 Business Days of service of a notice of Force Majeure Event to determine the estimated length of time for which the Force Majeure Event will continue.

10.3 Suspension of obligations

- (a) If a Force Majeure Event occurs, the Company's obligations under this M5 West Widening Deed (other than under this clause 10) which are affected by the Force Majeure Event will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure Event.
- (b) If a Force Majeure Event occurs and a notice under clause 10.1(a) is issued, no Party will be in default of its obligations under this M5 West Widening Deed in so far as the failure or delay in the observance or performance of those obligations by that Party is caused by the Force Majeure Event specified in the notice given under clause 10.1(a).
- (c) Upon the Company becoming able to recommence performing its obligations which were suspended under clause 10.3(a), the Company must recommence the performance of those obligations.

10.4 Best endeavours to remedy Force Majeure Event

The Company must use its best endeavours to remedy the effects of a Force Majeure Event promptly in accordance with clause 15.10 of annexure A, including making any reasonable expenditure of funds which may mitigate or avoid the effects of the Force Majeure Event.

11. DISPUTE RESOLUTION

11.1 Procedure for resolving disputes

- (a) Any dispute between RMS and the Company in respect of any fact, matter or thing in any way relating to or arising out of this M5 West Widening Deed, or the Company's Work, including any question regarding the existence, validity or

termination of this M5 West Widening Deed (**Dispute**) are to be resolved in accordance with the procedures set out in this clause 11.

- (ab) For the avoidance of doubt and without otherwise limiting the general operation of this clause 11, RMS and the Company acknowledge and agree that (except as otherwise agreed in writing between RMS and the Company):
- (i) this clause 11 applies to any dispute in respect of any fact, matter or thing in any way relating to or arising out of:
 - (A) the planning, design, construction, commissioning or completion of the M5 West Widening Works; or
 - (B) the timing as to when each of the amendments to the:
 - (I) F-5 Tollroad Project Deed;
 - (II) M5 Western Link Project Deed; or
 - (III) M5 Leases,is to take effect in accordance with clause 5; and
 - (ii) this clause 11 does not apply to any dispute in respect of any fact, matter or thing in any way relating to or arising out of:
 - (A) the operation, maintenance or repair of the M5 West Widening Works; or
 - (B) the content or interpretation of each of the amendments to the:
 - (I) F-5 Tollroad Project Deed;
 - (II) M5 Western Link Project Deed; or
 - (III) M5 Leases,which is made in accordance with clause 5,as those matters would be addressed under the dispute resolution procedures of the F-5 Tollroad Project Deed, the M5 Western Link Project Deed or the M5 Leases (as the case may be).
- (b) The sequential procedure that is to be followed to resolve a Dispute is as follows:
- (i) firstly, the Dispute must be negotiated in accordance with clause 11.2;
 - (ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation in clause 11.2(c) and the Dispute is one of the following:
 - (A) a Dispute as to whether or not a Manifest Error exists in a determination of the Independent Verifier;
 - (B) those Disputes referred to in, contemplated by, or arising under or in connection with clauses 7.3(c), 8.1(a)(iii)(C), 8.1(a)(iv), 8.3(a) or 8.3(e)(ii) of annexure A or clause 9.6(c)(iii); or
 - (C) a Dispute as to whether or not an event or circumstance referred to in clause 6.2(a) or 6.2(b) has had or has started to have a Material Adverse Effect,

then the Dispute must be referred to expert determination in accordance with clauses 11.3 to 11.8 (inclusive); and

- (iii) thirdly, if:
 - (A) the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation in clause 11.2(c) and the Dispute is not one of those referred to in clause 11.1(b)(ii); or
 - (B) the Dispute has been referred to expert determination and:
 - (I) a determination has not been made by the Expert within 30 days after the Expert's acceptance of the appointment or such extended period as the Parties may agree; or
 - (II) a notice of dissatisfaction is given under clause 11.6(a)(ii),
- then the Dispute must be referred to arbitration in accordance with clauses 11.9 to 11.12 (inclusive).

- (c) It is a condition precedent to the referral of a Dispute to arbitration under clauses 11.9 to 11.12 (inclusive) that a Party first comply with the procedures referred to in clauses 11.1(b)(i) and 11.1(b)(ii) (as applicable).

11.2 Negotiation

- (a) If a Dispute arises then a Party may give notice to each other Party requesting that the Dispute be referred for resolution by negotiation between the chief executive officers of RMS and the Company or their nominees.
- (b) A notice under clause 11.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 11.2; and
 - (iii) include or be accompanied by reasonable particulars of the matters the subject of the Dispute.
- (c) If a Dispute is referred for resolution by negotiation to the persons referred to in clause 11.2(a) (**Representatives**), then the Representatives must meet and use reasonable endeavours acting in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 11.2(a) is received (or such later date as the Parties may agree). The joint decision (if any) of the Representatives resolving this Dispute (in whole or in part) will be reduced to writing executed by the Parties in a manner which is contractually binding on the Parties.

11.3 Expert determination

- (a) If a Dispute of the nature referred to in or contemplated by clause 11.1(b)(ii), which has been referred to the Representatives for negotiation pursuant to clause 11.2 remains unresolved (in whole or in part) after the expiration of the period referred to in clause 11.2(c) then any Party may by giving notice to each other Party in accordance with clause 11.3(b) within 10 Business Days after the expiry of that period require that those parts of the Dispute which remain unresolved be referred to an expert for determination in accordance with clauses 11.4 to 11.8 (inclusive).
- (b) A notice under clause 11.3(a) must:

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- (i) be in writing;
 - (ii) state that it is a notice under this clause 11.3; and
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.

11.4 Selection of expert

- (a) Within 7 Business Days after the date of the notice under clause 11.3(a) the Parties must exchange written lists of 3 persons in order of preference from whom the expert is to be appointed pursuant to clause 11.4(b).
- (b) A Dispute the subject of a notice under clause 11.3(a) will be determined by a person who will act as an expert being any person that appears on each Parties' list under clause 11.4(a) and if more than one person appears on each list the person given the highest order of priority by the Party that gave the notice under clause 11.4(a).

If no person appears on the list of each Party, the Party which gave the notice under clause 11.3(a) must procure the National President (or acting National President for the time being) of the Institute of Arbitrators and Mediators Australia to nominate a person to act as the Expert. The person nominated must be independent of the Parties.

The expert determination process is to be administered in accordance with clause 11.5.

- (c) RMS and the Company must jointly appoint the person selected or nominated under clause 11.4(b) as the expert for the purposes of determining the Dispute in accordance with clauses 11.3 to 11.8 (inclusive) (**Expert**).
- (d) It is the intention of the Parties that the Expert appointed to determine a Dispute will be a person with appropriate skills having regard to the nature of the matters in dispute.
- (e) RMS and the Company will not be entitled to challenge the appointment of the Expert under clause 11.4 on the basis that the Expert does not satisfy the requirements of clause 11.4(d).
- (f) Any agreement for expert determination under this M5 West Widening Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (g) RMS and the Company must enter into an agreement with the Expert appointed under clause 11.4(b) on the terms of annexure D or such other terms as the Expert may require.

11.5 Rules of expert determination

- (a) The Expert will:
 - (i) act as an expert and not as an arbitrator and the dispute resolution procedure under clauses 11.3 to 11.8 (inclusive) is not an arbitration within the meaning of any statute;
 - (ii) proceed in any manner he or she thinks appropriate without being bound to observe the rules of natural justice or the rules of evidence;

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- (iii) take into consideration all documents, information and other material which the Parties give the Expert including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
 - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks it is appropriate;
 - (v) use his or her own expertise in forming his or her conclusions; and
 - (vi) make his or her determination of the Dispute within 30 days from the date of acceptance by the Expert of the appointment, or such extended period as the Parties may agree.
- (b) The Expert may, if he or she thinks appropriate, arrange to meet or otherwise have discussions with the Parties, together but not separately, and in connection with any such meeting or discussions:
- (i) a Party may be accompanied by legal or other advisers; and
 - (ii) the Parties agree to be bound by such procedural directions as may be given by the expert, both in preparation for and during the course of the meeting or discussions.
- (c) Without restricting the generality of clause 11.5(b)(ii), RMS and the Company agree and undertake to produce such information and documents as the Expert may from time to time direct at such place and at such time as the Expert may direct.
- (d) The Expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers, engineers, surveyors or other technical consultants, to provide information to assist the Expert in his or her determination.
- (e) Any advisers or consultants engaged by the Expert must be independent of the Parties and impartial, and must treat as confidential any information obtained pursuant to any expert determination process under clauses 11.3 to 11.8 (inclusive).
- (f) RMS and the Company must indemnify the Expert for the reasonable cost of retaining those advisers or consultants.
- (g) The Expert will disclose to the Parties any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents who are involved in expert determination and any interest the Expert has in the matters in dispute or any other matter that may give rise to the possibility of bias.
- (h) If the Expert becomes aware of any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert will immediately inform RMS and the Company.
- (i) After the Parties have had the opportunity to consider the Expert's disclosure then a Party may require that the Dispute be referred to another expert for resolution in accordance with clauses 11.4 to 11.8 (inclusive) by giving notice in writing to the other Parties within 5 Business Days of the date on which it was informed of the circumstance.

11.6 Expert finding

- (a) The determination of the Expert:

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- (i) must be immediately notified and given to the Parties in writing signed by the Expert; and
 - (ii) following the expiration of the period allowed for a request to correct the determination under clause 11.6(b), will be final and binding on RMS and the Company unless within:
 - (A) 10 Business Days of receipt of the determination; or
 - (B) 5 Business Days of the receipt of the determination amended under clause 11.6(b) or the notification by the Expert that no amendment will be made to the determination,

a Party gives notice to each other Party of its dissatisfaction and intention to refer the matter to arbitration pursuant to clauses 11.9 to 11.12 (inclusive).

- (b) A Party may request the Expert to amend the determination within 5 Business Days of receipt of the determination and following any such request, the Expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (iv) a defect in form.

If a request for amendment to a determination is made by any Party under this clause 11.6(b), the Expert must amend the determination and notify the Parties or notify the Parties that no amendment will be made (as is applicable) within 5 Business Days of the request.

- (c) Any determination of an Expert that is final and binding will be determinative of the matters in Dispute that were referred to the Expert pursuant to a notice under clause 11.3(a).

11.7 Release and indemnity

The Expert will not be liable in respect of the expert determination pursuant to clauses 11.3 to 11.8 (inclusive), except in the case of fraud on the part of the Expert. RMS and the Company agree to release and indemnify the Expert from and against all claims, except in the case of fraud on the part of the Expert, which may be made against him or her by any person in respect of the Expert's appointment to determine the Dispute or the determination itself.

11.8 Costs

RMS and the Company must bear their own costs in connection with the Expert determination proceedings and must pay an equal portion of the cost of the expert.

11.9 Arbitration

- (a) If:
 - (i) in the case of a Dispute that is referred to expert determination:
 - (A) a notice is given under clause 11.6(a)(ii);

(B) a determination is not made within 60 days from the date of acceptance by the Expert of the appointment or such extended period as the Parties may agree; or

(ii) a Dispute (other than a Dispute of the nature referred to in or contemplated by clause 11.1(b)(ii)) which has been referred to the Representatives for negotiation pursuant to clause 11.2 remains unresolved (in whole or in part) after the expiration of the period referred to in clause 11.2(c),

RMS or the Company may notify the other Parties in writing that it requires the Dispute to be referred to arbitration.

(b) Upon receipt by each other Party of a notice under clause 11.9(a) the Dispute will then be referred to arbitration.

11.10 Identity of arbitrator

Any arbitration under clause 11.9 must be conducted by a single arbitrator to be agreed between the Parties or, failing such agreement within 10 Business Days after referral of the Dispute to arbitration under clause 11.9(b), then by an arbitrator to be nominated by the Institute of Arbitrators and Mediators Australia.

11.11 Rules for conduct of arbitration

Any Dispute which is referred to arbitration will be conducted as follows:

- (a) if the arbitration is in respect of a matter which has been the subject of an expert determination pursuant to clauses 11.3 to 11.6 (inclusive), in accordance with the Expedited Arbitration Rules set out in annexure E; or
- (b) subject to clause 11.11(a), in accordance with the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators and Mediators Australia current at the date of referral of the Dispute to arbitration under clause 11.9(b).

11.12 Place of expert determination or arbitration

The place of any expert determination or arbitration will be Sydney.

11.13 Continue to perform

Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under this M5 West Widening Deed.

11.14 Summary or urgent relief

Nothing in this M5 West Widening Deed will prejudice the right of a Party to institute proceedings in the courts of the State of New South Wales to seek urgent injunctive, interlocutory or declaratory relief.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and warranties by Company

The Company makes the following continuing representations and warranties for the benefit of RMS:

- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under each M5 West Widening Project Document to which it is expressed to be a party;
- (b) it has power to enter into and perform its obligations under each M5 West Widening Project Document to which it is expressed to be a party, to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;
- (c) its obligations under each M5 West Widening Project Document to which it is expressed to be a party are valid and binding and are enforceable against it and in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights;
- (d) the Company subsists and is properly constituted;
- (e) it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) it is not in default of its material obligations under any M5 West Widening Project Document to which RMS is expressed to be a party;
- (g) the execution, delivery and performance of each M5 West Widening Project Document to which it is expressed to be a party and the transactions under each of them do not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (h) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (i) no litigation (which has not been disclosed to RMS in writing prior to the date of this M5 West Widening Deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any M5 West Widening Project Document to which it is expressed to be a party; and
- (j) except as contemplated under a M5 West Widening Project Document, the F-5 Tollroad Project Deed or the M5 Western Link Project Deed or in connection with a transaction which is contemplated by a M5 West Widening Project Document, the

F-5 Tollroad Project Deed or the M5 Western Link Project Deed, it is not involved in, and does not conduct, and it will not trade or incur any liabilities or carry on any business other than the business related to the Tollroad and the M5 Western Link or enter into any document or agreement other than the M5 West Widening Project Documents, the F-5 Tollroad Project Deed and the M5 Western Link Project Deed without RMS' prior written approval (acting reasonably).

12.2 Representations and warranties by RMS

RMS makes the following continuing representations and warranties for the benefit of the Company:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each M5 West Widening Project Document to which it is expressed to be a party;
- (c) it is legally entitled and has all statutory power to enter into and perform its obligations under each M5 West Widening Project Document to which it is expressed to be a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of power;
- (d) its obligations under each M5 West Widening Project Document to which it is expressed to be a party are valid and binding and are enforceable against it in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and
- (e) the execution, delivery and performance of each M5 West Widening Project Document to which it is expressed to be a party and the transactions under each of them does not violate any law to which RMS is subject.

13. AMENDMENTS

- (a) This M5 West Widening Deed may only be varied by a document signed by or on behalf of each Party.
- (b) The Company agrees with RMS that it will not agree to any modification, variation, waiver or amendment to the terms of the M5 West Widening D&C Contract without the prior written consent of RMS, which shall not be unreasonably withheld.

14. ASSIGNMENT

- (a) The Company may not sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in the M5 West Widening Works, the M5 West Widening Temporary Works or in any of the M5 West Widening Project Documents without the prior written consent of RMS, such consent not to be unreasonably withheld.
- (b) RMS may sell, transfer or assign or otherwise dispose of its interest in the M5 West Widening Project Documents without the prior written consent of the Company.

15. EXPENSES AND STAMP DUTIES

15.1 Expenses

Each Party must bear its own costs, including professional costs and disbursements, associated with the preparation and execution of this M5 West Widening Deed and any subsequent consent, agreement, approval or waiver hereunder or amendment thereto.

15.2 Stamp duties

As between the Parties, the Company must pay all stamp, registration and similar taxes including fines and penalties payable to or required to be paid by any appropriate Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this M5 West Widening Deed and the other M5 West Widening Project Documents or any payment receipt or other transaction contemplated by them.

16. GOVERNING LAW AND JURISDICTION

16.1 Governing law

This M5 West Widening Deed is governed by and will be construed according to the laws of the State of New South Wales.

16.2 Jurisdiction

Subject to clause 11:

- (a) each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this M5 West Widening Deed; and
- (b) each Party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within the State referred to in clause 16.2(a).

17. NOTICES

Any communication under or in connection with this M5 West Widening Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Minister

Address: Level 35, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Facsimile: (02) 9228 5499

Attention: Minister for Roads and Ports

RMS

Address: 101 Miller Street
North Sydney NSW 2060

Facsimile: (02) 8588 4170

Attention: Director, Infrastructure Development

RMS' Representative

Address: 101 Miller Street
North Sydney NSW 2060

Facsimile: (02) 8588 4171

Attention: Paul Goldsmith

Company

Address: Toll Plaza, M5 South West Motorway
Hammondville NSW 2170

Facsimile: (02) 9825 1101

Attention: General Manager

(or as otherwise notified in writing by that Party to the other Parties from time to time);

- (c) must be signed by the Party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary or authorised agent of, that Party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the second business day after the date of posting;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety unless that local time is a non-Business Day, or is after 5.00pm on a Business Day, in which case that communication will be deemed to have been received at 9.00am on the next Business Day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 17(b), unless that delivery is made on a non-Business Day, or after 5.00pm on a Business Day, in which case that communication will be deemed to have been received at 9.00am on the next Business Day.

18. MISCELLANEOUS

18.1 Entire agreement

To the extent permitted by Law, the M5 West Widening Project Documents to which the Minister, RMS and the Company are parties embody the entire understanding of the Parties and constitute the entire terms agreed upon between the Parties and supersede any prior agreement (whether or not in writing) between the Parties, in relation to the subject matter of those documents.

18.2 Further acts

Each Party will promptly do and perform all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that Party) required by Law or reasonably requested by the other Parties (including the execution and registration of any variation of lease documents) to give effect to this M5 West Widening Deed.

18.3 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 M5 West Widening Deed 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 M5 West Widening Deed.
- (b) Except as otherwise expressly provided in this M5 West Widening Deed, any waiver or consent given by a Party under this M5 West Widening Deed 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 a breach of any term of this M5 West Widening Deed will operate as a waiver of another breach of that term or of a breach of any other term of this M5 West Widening Deed.

18.4 Consents

Any consent or approval referred to in, or required under, this M5 West Widening Deed from RMS may be given or withheld, or may be given subject to any conditions as RMS (in its absolute discretion) thinks fit, unless this M5 West Widening Deed expressly provides otherwise.

18.5 Cost of performing obligations

A Party which has an obligation to do anything under this M5 West Widening Deed must perform that obligation at its cost, unless this M5 West Widening Deed expressly provides otherwise.

18.6 Interest

If a Party does not pay any money payable by it to another Party under this M5 West Widening Deed by the due date, the first mentioned Party must pay interest on that amount on demand by the other Party. Interest is:

- (a) payable from the due date until payment is made by the first mentioned Party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged; and
- (b) calculated on daily balances at the rate of BBSY +3% per annum; and

(c) capitalised monthly.

18.7 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of the Company any obligation under this M5 West Widening Deed, or to delay or otherwise prevent or prejudicially affect the exercise by RMS of any right, power or remedy under this M5 West Widening Deed or otherwise, are expressly waived.

18.8 No agency

Except as otherwise expressly provided in this M5 West Widening Deed, the Company will not in connection with the M5 West Widening Works or the M5 West Widening Temporary Works or otherwise directly or indirectly hold out nor permit to be held out to any person any statement, act, agreement, matter or thing indicating that the M5 West Widening Works or the M5 West Widening Temporary Works are being carried on or managed or supervised by RMS nor must the Company act as or represent itself to be the servant or agent of RMS.

18.9 Amendments

This M5 West Widening Deed may only be varied by a document signed by or on behalf of each Party.

18.10 Counterparts

This M5 West Widening Deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this M5 West Widening Deed, all of which together constitute one deed.

18.11 No representation or reliance

- (a) The Company acknowledges that neither RMS nor the Government nor anyone on their behalf have made any representation or other inducement to the Company to enter into those M5 West Widening Project Documents to which RMS and the Company are both expressed to be parties, except for inducements expressly set out in those M5 West Widening Project Documents.
- (b) The Company acknowledges and confirms that it does not enter into this M5 West Widening Deed in reliance on any representation or other inducement by or on behalf of RMS, the Government or anyone on their behalf except for any inducement expressly set out in those M5 West Widening Project Documents to which RMS and the Company are both expressed to be parties.

18.12 English language

All documents provided under or in connection with this M5 West Widening Deed must be in English and all communications between the Parties must be in English.

18.13 Survival of certain provisions; no merger

- (a) Without limiting clause 2.6(e), clauses 2.6 (together with each clause which contains an indemnity under this M5 West Widening Deed, including under annexure A), 2A.5, 2A.6, 7, 8, 9.4(k), 9.5, 9.5A, 9.5B, 9.8, 9.10, 9.11, 9.13, 9.14, 11, 16 and this clause 18.13 of this M5 West Widening Deed, together with clauses 6.4, 12.2, 15.2, 16 and 17.1 of annexure A and any clause of the Scope of Works and Technical Criteria which is expressly contemplated to survive the

rescission, termination or expiration of this M5 West Widening Deed, will survive rescission, termination or expiration of this M5 West Widening Deed.

- (b) Without limiting clause 2.6(e), if this M5 West Widening Deed is rescinded or terminated, no Party will be liable to the other Parties under this M5 West Widening Deed except:
 - (i) in light of clause 2.6, each clause which contains an indemnity under this M5 West Widening Deed;
 - (ii) under the clauses referred to in clause 18.13(a) and this clause 18.13; or
 - (iii) in respect of any breach of this M5 West Widening Deed occurring before such rescission or termination.
- (c) No right or obligation of any Party will merge on completion of any transaction under this M5 West Widening Deed. All rights and obligations under this M5 West Widening Deed survive the execution and delivery of any transfer or other document which implements any transaction under this M5 West Widening Deed.

18.14 Severance

If at any time any provision of this M5 West Widening Deed or any other M5 West Widening Project Document to which RMS is a party 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 the relevant M5 West Widening Project Document; or
- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of the relevant M5 West Widening Project Document.

18.15 Approvals not to affect Company's obligations

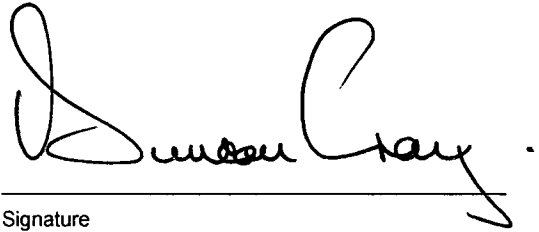
The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature hereunder by RMS will not, except where this M5 West Widening Deed expressly provides to the contrary, relieve the Company from its obligations under this M5 West Widening Deed.

EXECUTED as a deed.

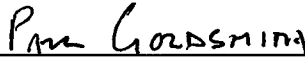
SIGNED SEALED AND DELIVERED by
the Honourable Duncan Gay MLC,
Minister for Roads and Ports for and on
behalf of Her Majesty Queen Elizabeth
the Second in right of the State of New
South Wales in the presence of:



Signature of Witness

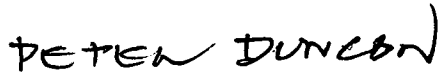


Signature



Name of Witness in full

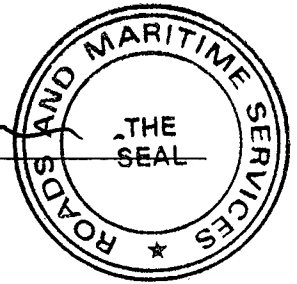
The Seal of Roads and Maritime Services
ABN 76 236 371 088 was hereunto affixed
by its authorised signatory:



Name



Signature



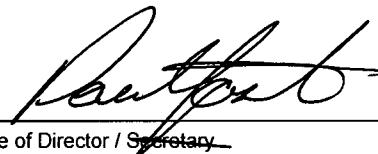
EXECUTED by Interlink Roads Pty Ltd,
ACN 53 003 845 430 in accordance with
section 127(1) of the *Corporations Act 2001*
(Cth)



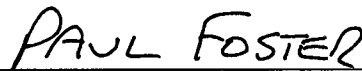
Signature of Director



Name of Director in full



Signature of Director / Secretary



Name of Director / Secretary in full