
Annexure F

PAYMENTS

(Clauses 4.2 and 4.3)

PART A: Payments by RMS to the Company

1. Trust

1.1 In recognition of the interest RMS as lessor acquires in the works the subject of this M5 West Widening Deed RMS agrees to contribute the following amounts to the Company on the terms and conditions set out below:

- (a) the Escalation Amount (as defined in clause 2.1 below);
- (b) the Additional Project Approval Costs Amount (as defined in clause 3.1 below).

1.2 The Company will receive each of the above payments on trust for RMS and which are to be applied towards:

- (a) in the case of the Escalation Amount, the satisfaction of equivalent amounts invoiced by the Contractor to the Company on account of escalation; and
- (b) in the case of the Additional Project Approval Costs Amount, the payment of outgoings and expenses invoiced to the Company in respect of the Additional Project Approvals.

1.3 If and when the sum of the payments under clauses 1.1(a) and 1.1(b) exceeds the payments made by the Company under clauses 1.2(a) and 1.2(b) then the difference shall belong beneficially to the Company.

1.4 Nothing in this clause 1 operates to limit or qualify in any way the obligations of the Company under this M5 West Widening Deed.

2.1 Escalation payment

2.1 RMS must, in accordance with the provisions of this clause 2, pay the Company an amount of (exclusive of GST) for each month (or part thereof calculated on a pro rata basis) commencing on 1 April 2011 and ending on the Satisfaction Date (in aggregate the Escalation Amount)

2.2 On and from the Satisfaction Date and subject to clause 2.3, RMS must pay the Company the Escalation Amount in quarterly instalments (the first of such quarters being taken to be the period from the Satisfaction Date to 30 September 2012 and the remainder of such quarters to be calculated on a calendar quarter basis from 1 October 2012) which are equal to 5% of the value of the M5 West Widening Works executed by the Contractor during the relevant quarter, such:

- (a) work to be evidenced in a payment claim certified by the Independent Verifier (and following receipt by RMS of a tax invoice from the Company for the relevant amount); and
- (b) payment to be made by RMS to the Company within 30 Business Days of receipt of the payment claim and tax invoice provided in accordance with paragraph (a).

2.3 If, at Construction Completion, and having been provided with tax invoices from the Company in accordance with clause 2.2, the Escalation Amount has not become payable (or been paid) in full, RMS must pay that remaining balance to the Company within 30 Business Days after Construction Completion (and following receipt by RMS of a tax invoice from the Company for the relevant amount) provided that, for the avoidance of doubt, RMS will have no liability to pay any amount greater than the Escalation Amount.

3. Other payments

3.1 Within 30 Business Days after the Satisfaction Date (and following receipt by RMS of a tax invoice from the Company for the relevant amount), RMS must pay the Company \$730,125 (exclusive of GST) in respect of additional requirements arising out of the Project Approval as agreed between the Parties prior to the Satisfaction Date (the **Additional Project Approval Costs Amount**).

3.2 The scope of RMS' responsibility for "any Company programme implications" noted in condition nos. B4, B5, B6(g) and C9, and "any cost and time implications" noted in condition no. B9, in Part B of Schedule 4 to annexure A to the M5 West Widening Deed (**Specified Part B Conditions**) is as follows:

(a) subject to clauses 3.2(b)(iii) and 3.2(e), RMS will pay the Company the reasonable costs and expenses directly incurred by:

(i) the Contractor (excluding any amounts payable by the Contractor to the Company, a Related Entity of the Company or a Related Entity of the Contractor, to the extent that the Contractor or the Related Entity is not engaged by the Contractor on an arm's length basis and on commercial terms); and

(ii) the Company (without double counting) (excluding any amounts payable by the Company to the Contractor or a Related Entity of the Contractor),

arising directly as a result of RMS carrying out, or failing to carry out, any of the Specified Part B Conditions (including delay costs);

(b) the Company must:

(i) take all reasonable steps to mitigate such costs and expenses;

(ii) for this purpose, comply with all reasonable directions of RMS concerning the Specified Part B Conditions and the consequences thereof; and

(iii) ensure that the Contractor complies with the requirements of this clause 3.2(b).

(c) For the purposes of clause 3.2(a):

(i) reasonable costs and expenses directly incurred by:

(A) the Contractor includes reasonable on-site overheads, but does not include any off-site overheads or any margin for the Contractor's profit; and

(B) the Company includes any reasonable interest, fees and other amounts payable by the Company under the M5 West Widening Debt Financing Documents during the period of the delay;

(ii) reasonable costs and expenses directly incurred by the Company includes loss and delay of receipt of revenue suffered by the Company arising directly as a result of RMS carrying out, or failing to carry out, any of the

Specified Part B Conditions, to the extent only that such carrying out or failure prevents the Company from achieving Construction Completion by the Date for Construction Completion.

- (d) Clause 3.2(a) does not apply in respect of any costs or expenses incurred by the Company (without double counting) or the Contractor to the extent that such costs or expenses result from a failure by the Company to comply with clause 3.2(b).
- (e) Clause 3.2(a) does not apply in respect of any Specified Part B Condition in circumstances where the Company is responsible for carrying out that Specified Part B Condition through a Change as contemplated in clause 4.1(b) of annexure A.
- (f) Other than as may be expressly set out elsewhere in the M5 West Widening Deed, the Company's entitlement under clause 3.2(a) will be its sole and exclusive right to payment of money arising out of, or in any way connection with RMS carrying out, or a failure by RMS to carry out, any of the Specified Part B Conditions.

4. General

- 4.1 Without limiting clause 2.1 of this M5 West Widening Deed, and subject to clause 4.2 of this annexure F, the Company acknowledges and agrees that it is not entitled to make any other Claim or to additional costs arising out of or in connection with any matter contemplated in this annexure F.
- 4.2 Nothing in this annexure F limits any of the Company's rights under the F-5 Tollroad Project Deed or the M5 Western Link Project Deed in respect of its operation, maintenance and repair activities under the F-5 Tollroad Project Deed or the M5 Western Link Project Deed.

PART B: Payments by the Company to RMS

- 1. Upon the Satisfaction Date the Company must pay to RMS \$5,236,912.65 (exclusive of GST) in respect of payments made to the Company by RMS consequent upon the cessation of prior negotiations with respect to the M5 West Widening Project.