



EXECUTION VERSION

# WestConnex M4-M5 Link Main Tunnel State Works Deed

Roads and Maritime Services

ABN 76 236 371 088

and

WCX State Works Contractor Pty Ltd

ACN 624 154 089

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION.....	1
1.1 Project Deed definitions .....	1
1.2 Definitions .....	1
1.3 Interpretation.....	8
1.4 Contra proferentem.....	9
1.5 Business Day.....	9
1.6 Certification.....	9
1.7 Order of precedence .....	9
1.8 Provisions limiting or excluding liability .....	9
1.9 Condition precedent .....	10
2. OBLIGATIONS OF STATE WORKS CONTRACTOR.....	10
2.1 General obligations .....	10
2.2 Establishment and operation of State Works Payments Account.....	11
3. FUNDING FEE AMOUNT .....	12
4. REPRESENTATIVES.....	12
5. PAYMENT .....	12
5.1 General .....	12
5.2 Payment Claims for State Works Payment.....	13
5.3 Payment Statements for State Works Contractor's Works.....	14
5.4 Payment certification.....	15
5.5 Payment of the Payment Amount.....	15
5.6 Tax invoices and credit notes.....	15
5.7 Drawdown and withdrawal from the State Works Payments Account.....	16
5.8 Security of Payment Act.....	16
5.9 Equity cure.....	17
5.10 Change payments .....	17
5.11 Deductions.....	17
5.12 Interest .....	18
6. ASSUMPTION OF RISK BY STATE WORKS CONTRACTOR .....	18
7. CHANGES.....	19
7.1 Any party may propose a Change .....	19
7.2 Pre-Agreed Changes.....	19
7.3 Payment for Changes .....	20
7.4 State Works Contractor's entitlements.....	22
7.5 Approvals for Changes.....	22
7.6 Changes undertaken by the State Works Contractor .....	22
7.7 Corresponding amendments .....	22
8. FORCE MAJEURE .....	23
8.1 Suspension of obligations.....	23
8.2 Duty to remedy Force Majeure.....	23
8.3 Alternative arrangements.....	23
8.4 Cessation of Force Majeure .....	23
8.5 No financial relief to the State Works Contractor .....	23
8.6 No compensation to RMS .....	23
9. ASSIGNMENT .....	23
9.1 Entitlement to assign.....	23
9.2 Change of Control prior to State Works Completion .....	24

9.3	Change of Control after State Works Completion.....	24
10.	SUSPENSION.....	24
11.	TERMINATION .....	25
11.1	Terminated if Project Deed terminates.....	25
11.2	Termination payments.....	25
12.	DISPUTE RESOLUTION.....	25
13.	REPRESENTATIONS, WARRANTIES AND COVENANTS .....	26
13.1	Representations and warranties by the State Works Contractor .....	26
13.2	Representations and warranties by RMS .....	27
14.	RESTRICTIONS ON THE STATE WORKS CONTRACTOR .....	27
14.1	Restrictions on business.....	27
14.2	Restrictions on acquisition of property and liabilities being incurred .....	27
14.3	Restrictions on subcontracting .....	27
15.	GST.....	28
16.	NOTICES.....	29
16.1	How to give a notice.....	29
16.2	Effectiveness of notices.....	29
16.3	When a notice is given.....	30
16.4	Address for notices.....	30
16.5	Communications by email .....	31
17.	GENERAL .....	31
17.1	Governing law .....	31
17.2	Jurisdiction.....	31
17.3	Cost .....	31
17.4	Waiver.....	32
17.5	Further acts and documents .....	32
17.6	Provisions limiting or excluding liability .....	32
17.7	Survival of certain provisions.....	32
17.8	Counterparts .....	33
17.9	Amendments.....	33
17.10	Expenses .....	33
17.11	Severability of provisions .....	33
17.12	Exclusion of proportionate liability scheme .....	33
17.13	Entire Agreement.....	34
17.14	Indemnities.....	34
17.15	No representation or reliance .....	34
17.16	Moratorium legislation .....	34
17.17	No partnership, joint venture or other fiduciary relationship .....	34
17.18	Taxes .....	34

## Schedule

1	Payment Claim .....	35
2	Payment Schedule.....	37
3	Form of Payment Statement.....	42
4	Cost to Complete Certificate .....	43
5	Adjustment mechanics.....	49
6	Change Procedures .....	50

**THIS DEED** is made on

**BETWEEN:**

- (1) **Roads and Maritime Services** (ABN 76 236 371 088) of 20-44 Ennis Road, Milsons Point, New South Wales (**RMS**); and
- (2) **WCX State Works Contractor Pty Ltd** (ACN 624 154 089) of Level 33, 259 George Street, Sydney New South Wales 2000 (**State Works Contractor**).

**RECITALS:**

- (A) The SWTC describes a defined scope of work, the totality of which must be provided or procured by the Trustees and RMS in accordance with the Project Deed.
- (B) The Project Deed requires:
  - (1) the Asset Trustee to design and construct the Asset Trustee's Works; and
  - (2) RMS to enter into the WestConnex M4-M5 Link Main Tunnel State Works Deed pursuant to which the State Works Contractor must procure and manage the design and construction of the State Works Contractor's Works.
- (C) In order to discharge their obligations to provide the totality of work contained in the SWTC:
  - (1) RMS and the State Works Contractor will enter into this deed; and
  - (2) the State Works Contractor and the Asset Trustee as principals (and not as agents of RMS) will enter into the Main Tunnel D&C Deed, requiring the Main Tunnel Contractor to design and construct the Main Tunnel Project Works and the Main Tunnel Temporary Works related to the Main Tunnel.
- (D) RMS and the State Works Contractor have agreed that:
  - (1) the State Works Contractor will procure the design and construction of the State Works Contractor's Works; and
  - (2) RMS will pay the State Works Contractor the State Works Payment and GST in respect of the State Works Payment,

in accordance with this deed.

**Operative provisions**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Project Deed definitions**

Definitions in the Project Deed apply in this deed unless the relevant term is defined in this deed.

**1.2 Definitions**

In this deed:

**Account Bank** means Westpac Banking Corporation.

**Account Bank Deed** means the document entitled "WestConnex M4-M5 State Works Contractor Account Bank Deed" between RMS, the State Works Contractor and the Account Bank dated on or about the date of this deed.

**Aggregate State Works Payment** means, as at any date, the aggregate of all State Works Instalments previously paid to the State Works Contractor by RMS under this deed up to that date.

**Asset Trustee's Activities** has the meaning given to that term in the Main Tunnel D&C Deed.

**Asset Trustee's Works** has the meaning given to that term in the Main Tunnel D&C Deed.

**Available Funding** means, at any time the aggregate of the following amounts (without double counting):

- (a) the unpaid amount of the State Works Payment at that time (including the amount of any RMS Funded Change which has not yet been paid by RMS);
- (b) any amount of equity which any party has committed to provide to any Group Member but which has, at the relevant time, not yet been contributed and which is (where such amount has been committed by an entity other than the State of New South Wales or any entity which is wholly owned by the State of New South Wales) supported by a letter of credit in favour of a member of the M4-M5 Link Group or Project Trustee, or other appropriate security;
- (c) the balance standing to the credit of any bank account held by any Group Member which can be used to pay for Project Costs or other amounts reasonably likely to be payable by the M4-M5 Link Group prior to the Date of Opening Completion and not yet paid, and the then current value of any investments made from any such accounts;
- (d) liquidated damages to which any member of the M4-M5 Link Group is entitled under the Main Tunnel D&C Deed to the extent secured by the D&C Security;
- (e) insurance proceeds which are not required to be paid to third parties provided:
  - (i) the claim has been accepted by the relevant insurer as being payable by it before the Date for Opening Completion; or
  - (ii) RMS is otherwise satisfied (acting reasonably) that such amounts are likely to be received in time to meet scheduled Project Costs;
- (f) GST input tax credits forecast to be received by the M4-M5 Link Group prior to the anticipated Date of Opening Completion;
- (g) compensation payments and other amounts which are reasonably likely to be payable by RMS under the Project Deed; and
- (h) other amounts which RMS is satisfied will be received before the anticipated Date of Opening Completion and will be available to pay for Project Costs.

**Change** means any change or variation to the Main Tunnel Project Works, the Main Tunnel Temporary Works, the D&C Phase Maintenance, the Asset Renewal, the Asset Trustee's Activities or the SWC's Activities and includes additions, increases, decreases, omissions, deletions, demolition or removal to or from any of these.

**Change Costs** means, to the extent a Change increases the cost of the Main Tunnel Project Works, the Main Tunnel Temporary Works, the Asset Trustee's Activities, the SWC's Activities, the Asset Renewal or the D&C Phase Maintenance, the following amounts:

- (a) the direct costs and associated on-site overheads reasonably arising out of or in connection with the Change (including any increased construction costs, operating costs, maintenance costs and financing costs (to the extent that those costs are reasonable and incurred on an arm's length basis));
- (b) a reasonable amount on account of the off-site overheads and profit margin of (as applicable):
  - (i) the Main Tunnel Contractor (which, if the Change Order in respect of the Change is issued prior to the Date of Completion, will be no greater than the D&C Margin);
  - (ii) the O&M Contractor (which will be no greater than the O&M Margin); and/or
  - (iii) any applicable contractor in respect of the Asset Renewal (which will be a reasonable margin taking into consideration the type of works undertaken by the applicable contractor),

not including any amount on account of off-site overheads, management costs or profit margin of the Trustees or the State Works Contractor; and

- (c) in the case of:
  - (i) a Change directed by RMS pursuant to clause 7.1(a) or 7.2(e), if the proposed Change will delay the Date of Completion beyond the Date for Completion or the Date of Opening Completion beyond the Date for Opening Completion (as applicable), an amount calculated to ensure the return to the Equity Investors equals the Projected Equity Return calculated upon their contributed amount of Equity for the period of that delay beyond the Date for Completion or the Date for Opening Completion (as applicable), if any;
  - (ii) a Change which is an Alignment Change Event, if the Change will delay the Date of Completion beyond the Date for Completion or the Date of Opening Completion beyond the Date for Opening Completion (as applicable), an amount calculated to ensure the return to the Equity Investors equals the Projected Equity Return calculated upon their contributed amount of Equity for the period of that delay beyond the Date for Completion or the Date for Opening Completion (as applicable); and
  - (iii) a Change the subject of a Change Order otherwise deemed to have been given to the State Works Contractor by RMS in accordance with this deed, if that Change will result in the delay notified by the State Works Contractor under section 1.2(d) of the Change Procedure (subject to section 1.7 of the Change Procedure) to the Date of Completion beyond the Date for Completion or the Date of Opening Completion beyond the Date for Opening Completion (as applicable), an amount calculated to ensure the return to the Equity Investors equals the Projected Equity Return calculated upon their contributed amount of Equity for the period of that delay beyond the Date for Completion or the Date for Opening Completion (as applicable), if any,

after deducting Change Savings arising from the Change.

**Change of Control** means, in relation to the State Works Contractor:

- (a) if the State Works Contractor comes under the Control of a person (acting alone or together with its Associates) who did not Control the State Works Contractor as at the date of this deed or following any event which is approved by RMS under clause 9; or
- (b) if a person (acting alone or together with its Associates) who was in Control of the State Works Contractor as at the date of this deed or following any event which is approved by RMS under clause 9 stops having Control of the State Works Contractor,

other than as a result of a Permitted Dealing.

**Change Order** means a notice given by RMS under section 1.4(b), 1.7(b), 1.7(d), 1.7(e) or 1.9 of the Change Procedure.

**Change Procedure** means the procedure in Schedule 6.

**Change Proposal** means a notice given by RMS under section 1.1(a) of the Change Procedure.

**Change Savings** means:

- (a) the cost savings arising out of or in connection with the Change (including any savings in relation to construction costs and associated on-site overheads, operating costs, maintenance costs or financing costs); and
- (b) a reasonable amount on account of off-site overheads and profit margin of (as applicable):
  - (i) the Main Tunnel Contractor (which, if the Change Order in respect of the Change is issued prior to the Date of Completion, will be no greater than the D&C Margin); and/or
  - (ii) the O&M Contractor (which will be no greater than the O&M Margin),

not including any amount on account of off-site overheads, management costs or profit margin of the Trustees or the State Works Contractor.

**Cost to Complete** means, at any time, an amount calculated by the Independent Certifier (without double counting and, where applicable, by reference to the Base Case Financial Model and to information regarding the amounts other than Project Costs which remain to be paid to achieve Opening Completion provided by the State Works Contractor) as being the aggregate of Project Costs and other amounts reasonably likely to be payable by the M4-M5 Link Group prior to the Date of Opening Completion and not yet paid (excluding operating costs associated with completed aspects of the Project and which are not in substance amounts which must be paid in order to achieve Opening Completion).

**Cost to Complete Certificate** means a certificate in the form of Schedule 4 signed by the Independent Certifier in respect of the Cost to Complete Test.

**Cost to Complete Test** is satisfied if at the time the test is run, or re-run, Available Funding equals or exceeds the Cost to Complete.

**Cumulative Payment Claim Limit Schedule** means the schedule of maximum cumulative payments under the Main Tunnel D&C Deed set out in the Payment Schedule, as adjusted pursuant to clause 5.1(b).

**D&C Deed Sum** has the meaning given to that term in the Main Tunnel D&C Deed.

**D&C Effective Date** has the meaning given to the term "D&C Close" in the Main Tunnel D&C Deed.

**D&C Phase Maintenance Works** has the meaning given to that term in the Main Tunnel D&C Deed.

**D&C Security** means the security bonds referred to in clause 10.1(a) of the Main Tunnel D&C Deed.

**Delivery Funding Deed** means the deed titled 'Delivery Funding Deed WestConnex Stage 3A' dated on or about the date of this deed between RMS and the Asset Trustee.

**Final Payment Date** means the date on which the full amount of the State Works Payment has been paid to the State Works Contractor.

**Funding Fee Amount** means, for each Funding Fee Payment Date, an amount, **X**, calculated by the State Works Contractor (without double counting) in accordance with the following formula:

$$X = I - F - T$$

where:

**I** is the amount of any interest that has accrued on balances standing to the credit of the State Works Payments Account during the Funding Fee Period ending on that Funding Fee Payment Date;

**F** is the amount of any bank charges or fees which have accrued in relation to the State Works Payments Account during the Funding Fee Period ending on that Funding Fee Payment Date; and

**T** is the amount of any net income tax liability which has accrued during the Funding Fee Period or would be payable in respect of that Funding Fee Period, ending on that Funding Fee Payment Date with respect to any interest income earned by the State Works Contractor on balances standing to the credit of the State Works Payments Account.

If the Funding Fee Amount for a Funding Fee Payment Date would be a negative number it will be deemed to be zero.

**Funding Fee Payment Date** means, for each calendar month beginning with (and including) the month immediately after the date of the first payment of a Payment Amount by RMS under this deed and ending with (and including) the month immediately after the month during which the Final Payment Date occurs, the final Business Day in that calendar month.

**Funding Fee Period** means:

- (a) the period commencing on the date of the first payment of a Payment Amount by RMS and ending on the next succeeding Funding Fee Payment Date; and
- (b) thereafter, each period commencing on the date after the end of the preceding Funding Fee Period and ending on the next succeeding Funding Fee Payment Date.

**Initial Equity Contribution Amount** means \$ [REDACTED]

**M4-M5 Link Group** means the State Works Contractor and the Asset Trustee.



**Main Tunnel D&C Commitment Deed** means the deed titled "M4-M5 Link Main Tunnel Works D&C Commitment Deed" to be entered into on or about the date of this deed between the Asset Trustee, the State Works Contractor and the Main Tunnel Contractor.

**Main Tunnel Contractor** has the meaning given to the term "Contractor" in the Project Deed.

**Main Tunnel Project Works** means the Project Works that relate to the Main Tunnel.

**Main Tunnel Temporary Works** means the Temporary Works that relate to the Main Tunnel.

**Maximum Payment Claim Amount** means, for each month, an amount equal to:

- (a) the aggregate of:
  - (i) the maximum cumulative amount of payments in respect of the State Works Contractor's Works as set out in the Cumulative Payment Claim Limit Schedule for that month; and
  - (ii) any Residual DFA Amount at that time,

less

- (b) the amount of the Aggregate State Works Payment prior to any instalment being paid by RMS in respect of the State Works Payment for that month.

**Payment Amount** means any amount payable by RMS pursuant to clause 5.5.

**Payment Claim** means a pro forma tax invoice progress claim in respect of the State Works Payment submitted by the State Works Contractor in accordance with clause 5.2 and in the form of Schedule 1.

**Payment Schedule** means Schedule 2, as adjusted pursuant to clause 5.1(b).

**Payment Statement** means a payment statement issued by the RMS Representative in accordance with clause 5.3 in the form of Schedule 3.

**Permitted Dealing** means:

- (a) a restructure of a Holding Company (other than an Ultimate Unitholder) of the State Works Contractor;
- (b) a transfer or issue of any securities in an Ultimate Unitholder listed on any recognised stock or securities exchange;
- (c) the listing of any securities in the State Works Contractor or any Holding Company (other than the Ultimate Unitholder) of the State Works Contractor on any recognised stock or securities exchange; or
- (d) any other transaction which is permitted in accordance with clause 37 of the Project Deed.

**Project Costs** means the design and construction costs payable:

- (a) under the D&C Payment Schedule (as defined in the Main Tunnel D&C Deed); or
- (b) under the Main Tunnel D&C Deed in respect of Changes,

and which will be certified by the D&C Independent Certifier as being in accordance with the Main Tunnel D&C Deed.

**Project Deed** means the document entitled "WestConnex M4-M5 Link Project Deed" between RMS and the Trustees dated on or about the date of this deed.

**Reference Date** has the meaning given in clause 5.2(b).

**Residual DFA Amount** means, at any time, an amount equal to any amount which has been repaid by the Asset Trustee to RMS pursuant to clause 6.4(b) of the Delivery Funding Deed to the extent that such amount has not previously been included in the calculation of any amount claimed under a Payment Claim.

**RMS Funded Change** means any Change directed by RMS in accordance with clause 7.1(a) or 7.2(e) which results in Change Costs.

**Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**State Works Completion** means the stage when Completion is achieved in relation to the Main Tunnel.

**State Works Contractor's Works** means the components of:

- (a) the Main Tunnel Project Works;
- (b) the Main Tunnel Temporary Works; and
- (c) the D&C Phase Maintenance Works,

representing an amount equal to the State Works Payments and such other works as may be agreed between the parties from time to time.

**State Works Instalment** means an amount paid to the State Works Contractor by RMS under this deed.

**State Works Payment** means the aggregate of:

- (d) the total of the amounts described as the "Main Tunnel State Works Instalments" in the Model Outputs Schedule (exclusive of GST) as adjusted pursuant to clause 5.1(b); and
- (e) the total amount of any RMS Funded Changes.

**State Works Payments Account** means the account established in accordance with clause 2.2.

**State Works Proportion** has the meaning given to it in paragraph 1 of Schedule 2 (which paragraph is subject to adjustment pursuant to clause 5.1(b)).

**SWC's Activities** means all things and tasks which the State Works Contractor does, is, or may be, required to carry out or do to comply with its obligations under this deed with respect to the State Works Contractor's Works, but does not include the Asset Trustee's Activities.

**SWC Change Notice** has the meaning given to that term in Schedule 6.

**SWD Early Termination Amount** means, on any date, subject to clause 11.2(c) and subject to the limitations in clause 9.2 of the Project Deed, the total of the amounts which

the State Works Contractor must pay as a consequence of the termination to the Main Tunnel Contractor, excluding any amount payable to the Main Tunnel Contractor which relates to any amount payable by the Main Tunnel Contractor to any "related entity" (as defined in the Corporations Act) of the Main Tunnel Contractor other than where the related entity is engaged on an arm's length basis and on commercial terms.

### 1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed;  
and unless the context indicates a contrary intention:
- (b) person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) includes in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or code and standard but not including RMS policies referred to in the SWTC) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to:
  - (i) this deed includes all schedules, exhibits, attachments and annexures to it; and

- (ii) the SWTC includes all appendices to the SWTC;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) "day" means calendar day;
- (m) a reference to a court or tribunal is to an Australian court or tribunal;
- (n) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (o) a reference to a "month" is a reference to a calendar month; and
- (p) a reference to "\$" or "dollar" is to Australian currency.

#### 1.4 **Contra proferentem**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party (or its representative) put forward or drafted this 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 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 deed, a copy of a document will be regarded as duly certified by the State Works Contractor if it is certified as a true copy by a director, secretary or general manager of the State Works Contractor.

#### 1.7 **Order of precedence**

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

- (a) the deed, excluding the schedules and exhibits;
- (b) the schedules and the exhibits,
- (c) except to the extent that any part of the various documents comprising this deed impose a higher standard, quality, level of service or quantum than any other part of the various documents comprising this deed in which case the higher standard, quality, level of service or quantum prevails.

#### 1.8 **Provisions limiting or excluding liability**

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

1.9 **Condition precedent**

The rights and obligations of the parties under this deed will not commence until the D&C Effective Date.

2. **OBLIGATIONS OF STATE WORKS CONTRACTOR**

2.1 **General obligations**

(a) **Design and construction of State Works Contractor's Works:** The State Works Contractor must procure and manage the design and construction of the State Works Contractor's Works to ensure that RMS fully discharges its obligations to the Asset Trustee to procure the design and construction of the State Works Contractor's Works under the Project Deed and, in respect of the State Works Contractor's Works and the SWC's Activities:

- (i) must comply with all requirements of the Project Deed that apply to the Asset Trustee's Works and the Asset Trustee's Activities;
- (ii) assumes all obligations and gives all warranties to RMS that the Asset Trustee assumes or gives in respect of the Asset Trustee's Works or the Asset Trustee's Activities;
- (iii) bears all risks and liabilities that the Asset Trustee bears in respect of the Asset Trustee's Works or the Asset Trustee's Activities; and
- (iv) will have the benefit of all relief, rights, benefits and warranties provided under the Project Deed in favour of the Asset Trustee in respect of the Asset Trustee's Works and the Asset Trustee's Activities,

as though:

- (v) the State Works Contractor's Works were the Asset Trustee's Works;
- (vi) the SWC's Activities were the Asset Trustee's Activities; and
- (vii) the State Works Contractor were the Asset Trustee.

(b) **Asset Trustee's warranties, releases or waivers, acknowledgements and risks:** Without limiting paragraph (a) above, the State Works Contractor acknowledges that, in respect of the State Works Contractor's Works and the SWC's Activities, it:

- (i) gives all warranties to RMS;
- (ii) provides all releases or waivers in favour of RMS;
- (iii) makes all acknowledgements; and
- (iv) accepts all risks,

that the Asset Trustee gives to RMS, provides in favour of RMS, acknowledges or accepts under the Project Deed in respect of the Asset Trustee's Works and the Asset Trustee's Activities.

(c) **RMS's warranties, releases or waivers, acknowledgements and risks:** Without limiting clause 2.1(a)(iv), RMS acknowledges that it:

- (i) gives all warranties to the State Works Contractor;

- (ii) provides all releases or waivers in favour of the State Works Contractor;
- (iii) makes all acknowledgements; and
- (iv) except to the extent expressly provided in this deed, accepts all risks,

that RMS gives to the Asset Trustee, provides in favour of the Asset Trustee, acknowledges or accepts under the Project Deed in respect of the Asset Trustee's Works and the Asset Trustee's Activities for the benefit of the State Works Contractor in respect of the State Works Contractor's Works and the SWC's Activities.

- (d) **Asset Trustee's obligations:** Without limiting clause 2.1(a), the State Works Contractor acknowledges that it must do everything necessary to ensure that the Asset Trustee complies with its obligations under the Project Deed in relation to the design and construction of the Main Tunnel Project Works, to the extent such obligations relate to the State Works Contractor's Works.
- (e) **Cash flow reports:** From the D&C Effective Date until the Final Payment Date, the State Works Contractor must provide to RMS a copy of any formal cash flow report:
  - (i) that is prepared by the Main Tunnel Contractor and is provided to the State Works Contractor; and
  - (ii) that is prepared by the State Works Contractor and which would be materially relevant to RMS's funding obligation under this deed,
 from time to time in relation to the Main Tunnel Project Works.
- (f) **Reporting:** From the D&C Effective Date until the Final Payment Date, the State Works Contractor must provide to RMS a copy of all documents received from the Independent Certifier under the Project Deed or the D&C Independent Certifier under the Main Tunnel D&C Deed from time to time in relation to the Main Tunnel Project Works.

## 2.2 Establishment and operation of State Works Payments Account

- (a) On or about the D&C Effective Date, the State Works Contractor must establish and maintain an interest bearing account with the Account Bank to be approved by RMS on the terms and conditions approved by RMS. Such account shall be named the "State Works Payments Account".
- (b) The State Works Payments Account must be denominated in Australian dollars.
- (c) Subject to this clause 2.2, any balance standing to the credit of the State Works Payments Account must remain in that account and, except with the prior consent of RMS or as permitted under this deed, must not be removed, transferred or invested in any way.
- (d) If this deed terminates in accordance with clause 11, RMS may, by written notice to the State Works Contractor:
  - (i) advise the Account Bank and State Works Contractor that funds may only be withdrawn from the account with the consent of RMS with effect from the date of that notice; and

- (ii) assume sole control of the State Works Payments Account with effect from date nominated in that notice (which must be no less than 5 Business Days after the date of the notice),

and the State Works Contractor must comply with the terms of any such notice.

- (e) Upon this deed terminating, RMS may apply the proceeds standing to the credit of the State Works Payments Account at its discretion.
- (f) On or about the D&C Effective Date, the State Works Contractor must at the same time as opening the State Works Payments Account, procure the execution of the Account Bank Deed.

### 3. **FUNDING FEE AMOUNT**

- (a) By no later than the date falling 5 Business Days after each Funding Fee Payment Date, the State Works Contractor must pay to RMS any Funding Fee Amount for the Funding Fee Period ending on that Funding Fee Payment Date.
- (b) The State Works Contractor's obligations under paragraph (a) above constitute a separate and independent obligation from any other obligation owed by a party under this deed and RMS's obligations to make payments under this deed (including, without limitation, under clause 5 below) are not contingent on the performance by the State Works Contractor of its obligations under paragraph (a) above.

### 4. **REPRESENTATIVES**

- (a) RMS and the State Works Contractor acknowledge and agree that the RMS Representative acts at all times as the servant or agent of RMS and is subject to the directions of RMS and will act solely in the interests of RMS in connection with this deed.
- (b) The State Works Contractor confirms that the persons appointed by the Asset Trustee under clause 8.3 of the Project Deed to act as a representative of and be authorised to act on behalf of the Asset Trustee in discharging the Asset Trustee's functions under the Project Deed with respect to the design and construction of the Asset Trustee's Main Tunnel Works and the performance of the Asset Trustee's Activities that relate to the Main Tunnel will also act as a representative of and be authorised to act on behalf of the State Works Contractor in discharging the State Works Contractor's functions under this deed.

### 5. **PAYMENT**

#### 5.1 **General**

- (a) Subject to the terms of this deed:
  - (i) the State Works Contractor is entitled to be paid the State Works Payment;
  - (ii) in consideration of delivery of the State Works Contractor's Works, RMS must pay the State Works Contractor:
    - (A) the State Works Payment in accordance with clause 5.2 to clause 5.12 and the Payment Schedule; and
    - (B) any other amounts which are payable by RMS to the State Works Contractor under this deed.

- (b) The parties agree that, on the D&C Effective Date:
  - (i) the amount of the State Works Payment; and
  - (ii) the Payment Schedule,will be adjusted in accordance with the terms of Schedule 5.

## 5.2 **Payment Claims for State Works Payment**

- (a) Subject to the terms of this clause 5.2, the State Works Contractor may make a Payment Claim on or about each Reference Date for:
  - (i) an instalment amount in respect of the State Works Payment; and
  - (ii) the amount of GST which the State Works Contractor projects will be payable in respect of that instalment amount.
- (b) For the purposes of clause 5.2(a), a **Reference Date** occurs on the later of:
  - (i) each date on which the Main Tunnel Contractor submits a payment claim under clause 21.2 of the Main Tunnel D&C Deed; and
  - (ii) the 28th of each month during which the Main Tunnel Contractor submits such a payment claim.
- (c) The amount claimed under each Payment Claim must be calculated in accordance with the Payment Schedule and must not exceed the aggregate of:
  - (i) the lesser of:
    - (A) the claimable amount calculated in accordance with section 1 of the Payment Schedule; and
    - (B) the Maximum Payment Claim Amount for the month referable to the relevant Reference Date;
  - (ii) any amount claimed by the Main Tunnel Contractor in respect of an RMS Funded Change under the corresponding payment claim issued under clause 21.1 of the Main Tunnel D&C Deed;
  - (iii) an amount representing the amount of GST which the State Works Contractor projects will be payable in respect of any amount claimed under paragraph (i) or (ii); and
  - (iv) any amounts which the State Works Contractor is entitled to under this deed at that time (other than instalment amounts in respect of the State Works Payment).
- (d) The State Works Contractor agrees that the amount of a Payment Claim (for the purposes of section 9 of the Security of Payment Act and this clause 5.2) will be calculated in accordance with the terms of this deed (including the Payment Schedule).
- (e) If the State Works Contractor submits a Payment Claim before the Reference Date in respect of that Payment Claim:
  - (i) that Payment Claim will be deemed to have been submitted on the Reference Date;



- (ii) RMS will not be obliged to give the State Works Contractor a Payment Statement earlier than if the Payment Claim had been submitted on the Reference Date; and
  - (iii) RMS will not be liable to pay any amount set out in the Payment Claim earlier than if the Payment Claim had been submitted on the Reference Date.
- (f) Each Payment Claim made by the State Works Contractor under this clause 5 must be submitted to RMS in the form required by Schedule 1.
- (g) The State Works Contractor must not submit any further Payment Claims after the full amount of the State Works Payment has been paid except in respect of other amounts which may be payable to the State Works Contractor under the terms of this deed.

### 5.3 **Payment Statements for State Works Contractor's Works**

- (a) Within 5 Business Days after receiving a Payment Claim from the State Works Contractor under clause 5.2, the RMS Representative must give the State Works Contractor a Payment Statement setting out:
- (i) the amount claimed under the Payment Claim to which it relates;
  - (ii) the net amount proposed to be paid to the State Works Contractor; and
  - (iii) if the amount in clause 5.3(a)(ii) is less than the amount claimed in the relevant Payment Claim the reason why the amount in clause 5.3(a)(ii) is less than the amount claimed in the Payment Claim.
- (b) Any failure by the RMS Representative to include in a Payment Statement an amount payable by one party to the other party will not constitute a waiver of, or otherwise limit or affect, the receiving party's right to recover that amount from the paying party.
- (c) The State Works Contractor agrees that the RMS Representative may at any time (but is not obliged to) issue a Payment Statement to the State Works Contractor as if an invoice had been made on the 28th day of a month. If a Payment Statement is issued under this paragraph (c) it must be prepared on the same basis as would have applied if the State Works Contractor had made a Payment Claim in the relevant month for an amount equal to the aggregate of:
- (i) the Maximum Payment Claim Amount;
  - (ii) the full amount which may be claimed by the Main Tunnel Contractor in respect of an RMS Funded Change; and
  - (iii) an amount representing the amount of GST which would be payable in respect of any relevant amount under paragraph (i) or (ii),
- for that month.
- (d) The RMS Representative may in any Payment Statement correct any previous Payment Statement issued by the RMS Representative.

#### 5.4 **Payment certification**

Within 2 Business Days after the D&C Independent Certifier gives a payment statement under clause 21.3 of the Main Tunnel D&C Deed, the Independent Certifier will issue a Cost to Complete Certificate to RMS, with a copy to the State Works Contractor.

#### 5.5 **Payment of the Payment Amount**

- (a) Within 10 Business Days after receiving a Payment Claim from the State Works Contractor under clause 5.2, RMS must pay the amount set out in the corresponding Payment Statement or, if no Payment Statement is provided, the amount claimed in the Payment Claim.
- (b) All payments made by RMS under this deed must be made:
  - (i) in Australian dollars;
  - (ii) by payment into the State Works Payments Account for value on the due date;
  - (iii) in immediately available funds; and
  - (iv) without (and free and clear of any deduction for) set-off or counterclaim (except to the extent of any deduction which RMS is entitled to make under clause 5.11).

#### 5.6 **Tax invoices and credit notes**

- (a) Within 5 Business Days of submitting a Payment Claim under clause 5.2, the State Works Contractor must submit to RMS a tax invoice within the meaning of the GST law reflecting the amounts set out in the relevant Payment Claim.
- (b) On receipt of a tax invoice from the Main Tunnel Contractor under 21.4(b) of the Main Tunnel D&C Deed, the State Works Contractor must provide a copy of that tax invoice to the RMS Representative.
- (c) If, in any month:
  - (i) the amount withdrawn from the State Works Payments Account under clause 5.7(a) or 5.7(b)(i) and paid to the Main Tunnel Contractor;  
  
is less than
  - (ii) the gross amount referred to in the corresponding Payment Claim in respect of instalment amounts of the State Works Payment and GST which is projected to be payable on such instalment amounts,  
  
(the amount by which the amount referred to in paragraph (ii) above exceeds the amount referred to in paragraph (i) above being the **Excess RMS Payment** for the relevant month) the State Works Contractor must, within 5 Business Days of making the relevant withdrawal from the State Works Payments Account for payment to the Main Tunnel Contractor, submit to RMS a credit note setting out the amount of the relevant Excess RMS Payment (which credit note must include a break down to show the amount of the Excess RMS Payment that is referable to GST).

## 5.7 **Drawdown and withdrawal from the State Works Payments Account**

- (a) Without prejudice to paragraph (b) below, the State Works Contractor may withdraw the Payment Amount (or part thereof) from the State Works Payments Account if:
  - (i) RMS has received:
    - (A) a tax invoice from the State Works Contractor under clause 5.6(c)(ii) to which the Payment Amount relates; and
    - (B) a Cost to Complete Certificate which confirms that the Cost to Complete Test is satisfied; and
  - (ii) the amount withdrawn is being used by the State Works Contractor to pay the Main Tunnel Contractor in accordance with the Main Tunnel D&C Deed (including in respect of GST).
- (b) The State Works Contractor may make withdrawals from the State Works Payments Account at any time:
  - (i) to make any payment to the Main Tunnel Contractor (including in respect of GST) in respect of any part of a Payment Claim where such payment is required to be made in order to comply with the Security of Payment Act;
  - (ii) to comply with its obligations under clause 3; or
  - (iii) to make payments from time to time in respect of:
    - (A) bank charges or fees which accrue in respect of the operation of the State Works Payments Account; or
    - (B) tax liabilities in respect of interest income earned on the State Works Payments Account.
- (c) Notwithstanding any other provision of this deed, the State Works Contractor must ensure that at all times the aggregate of the amounts withdrawn from the State Works Payments Account does not exceed the aggregate of the Payment Amounts and any amounts withdrawn pursuant to paragraph (b) above.

## 5.8 **Security of Payment Act**

- (a) If the Security of Payment Act applies to this deed, RMS and the State Works Contractor agree that:
  - (i) each Payment Statement is a "payment schedule" for the purposes of the Security of Payment Act; and
  - (ii) the amount set out in the Payment Statement in accordance with clause 5.3(a)(ii) to the extent permitted by and for the purposes of the Security of Payment Act, is the amount of the "progress payment" calculated in accordance with the terms of this deed, to which the State Works Contractor is entitled in respect of this deed.
- (b) RMS and the State Works Contractor agree that the Reference Date prescribed in clause 5.2(b) is the "reference date" for the purposes of section 8 of the Security of Payment Act.

- (c) All terms used in this clause 5.8 which have a defined meaning in the Security of Payment Act have the same meaning when used in this clause 5.8.

#### 5.9 **Equity cure**

- (a) The State Works Contractor may at any time procure additional equity funding for the Project in order to ensure that the Cost to Complete Test can be satisfied for the purposes of this deed.
- (b) If the Cost to Complete Test is not satisfied at any time when the Cost to Complete Test is run, the State Works Contractor may request that the test be rerun at any time and, if the Cost to Complete Test is satisfied when the test is re-run, it will be deemed to have been satisfied.

#### 5.10 **Change payments**

Without prejudice to clause 7.6, the parties acknowledge and agree that (except to the extent of any notice to the contrary delivered by the State Works Contractor to RMS from time to time) any Change:

- (a) will be effected in accordance with clause 7 of this deed as a Change to the State Works Contractor's Works under this deed and the Main Tunnel D&C Deed; and
- (b) will not be treated as a Change made under clause 14 (*Changes*) of the Project Deed to the Asset Trustee's Works under the Project Deed and the Main Tunnel D&C Deed,

and that any Change Costs associated with RMS Funded Changes will form part of the State Works Payment.

#### 5.11 **Deductions**

- (a) RMS may deduct from the amount claimed under the relevant Payment Claim:
  - (i) any amount by which the Aggregate State Works Payment at the relevant time exceeds the aggregate amount which has been paid by the State Works Contractor to the Main Tunnel Contractor at that time (including in respect of GST), but for the purposes of this clause 5.11(b), the effect of any withholding, retention, deduction or set-off that may be made from time to time under the terms of the Main Tunnel D&C Deed from or against any amount claimed by the Main Tunnel Contractor under the Main Tunnel D&C Deed shall be disregarded such that the aggregate amount paid by the State Works Contractor to the Main Tunnel Contractor will, for the purposes of this clause 5.11(b), be determined as though any amounts so withheld, retained, deducted or set-off had instead been paid to the Main Tunnel Contractor in the month for which they were claimed; and
  - (ii) (where the relevant Payment Claim includes a claim in respect of an RMS Funded Change) the amount of any Change Savings which RMS is entitled to set off against Change Costs under clause 7.3(c)(i).
- (b) Any failure by the RMS Representative to set out in a Payment Statement an amount which RMS is entitled to deduct under paragraph (a) above from the amount which would otherwise be payable to the State Works Contractor by RMS will not constitute a waiver of, or otherwise limit or affect, RMS's right to subsequently deduct such amount in accordance with paragraph (a) above.

## 5.12 Interest

If a party does not pay any money payable by it to any other party under this 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;
- (b) calculated on daily balances at the rate of [REDACTED] % per annum; and
- (c) capitalised monthly.

## 6. ASSUMPTION OF RISK BY STATE WORKS CONTRACTOR

Except to the extent expressly provided under this deed or the Project Deed:

- (a) the State Works Contractor accepts all risks in respect of the State Works Contractor's Works, including the risk of:
  - (i) the actual cost of the design and construction of the State Works Contractor's Works being greater than the State Works Payment; and
  - (ii) the design and construction of the State Works Contractor's Works not being completed in accordance with the requirements of this deed or so as to enable RMS to satisfy its obligations to the Asset Trustee under the Project Deed;
- (b) the State Works Contractor acknowledges that:
  - (i) under the Project Deed, the Asset Trustee is required to investigate, finance, fund, plan, design and construct the Asset Trustee's Works and the Main Tunnel Temporary Works; and
  - (ii) the State Works Contractor must integrate, interface and co-ordinate the design and construction of the State Works Contractor's Works with the design and construction of the Asset Trustee's Works and the Main Tunnel Temporary Works; and
- (c) other than as expressly provided in clause 7 of this deed, RMS will have no liability to the State Works Contractor and the State Works Contractor will have no Claim against RMS arising out of or in connection with the Main Tunnel Works, the Main Tunnel Temporary Works, the Asset Trustee's Activities, the SWC's Activities or this deed, including:
  - (i) the actual cost of the design and construction of the State Works Contractor's Works being greater than the State Works Payment; or
  - (ii) the design and construction of the State Works Contractor's Works not being completed in accordance with the requirements of this deed or so as to enable RMS to satisfy its obligations to the Asset Trustee under the Project Deed.

## 7. CHANGES

### 7.1 Any party may propose a Change

- (a) RMS may require the State Works Contractor to carry out a Change in accordance with section 1 of the Change Procedure.
- (b) The State Works Contractor will not be obliged to carry out any Change proposed by RMS if the proposed Change will amend clause 21 (*Payments and revenue*) of the Project Deed or Schedule 27 (*Toll Calculation Schedule*) of the Project Deed or will affect the Project Trustee's ability to levy or collect tolls (including by way of a Change which requires the removal of any tolling equipment).
- (c) The State Works Contractor may propose a Change to RMS in accordance with paragraph 2 of the Change Procedure.

### 7.2 Pre-Agreed Changes

- (a) RMS's Representative may, in its absolute discretion and without being under any obligation to do so, direct by way of a Change any Pre-Agreed Change by giving notice to the State Works Contractor.
- (b) RMS and the State Works Contractor agree that if a notice pursuant to clause 7.1(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule 22 (*Pre-Agreed Changes*) of the Project Deed, this deed and the Project Deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 22 (*Pre-Agreed Changes*) of the Project Deed from the date the State Works Contractor receives such notice.
- (c) Where RMS's Representative directs a Pre-Agreed Change by giving notice to the State Works Contractor by the relevant date referred to in clause 7.2(b), the State Works Contractor, in respect of that Pre-Agreed Change:
  - (i) must carry out its obligations under this deed as amended by clause 7.2(b); and
  - (ii) acknowledges that:
    - (A) the Change Costs for each Pre-Agreed Change are as set out in Schedule 22 (*Pre-Agreed Changes*) of the Project Deed;
    - (B) the payment of the Change Costs set out in Schedule 22 (*Pre-Agreed Changes*) of the Project Deed in respect of a Pre-Agreed Change by RMS to the State Works Contractor will be full compensation for any Loss or delay the State Works Contractor or any Trustee suffers or incurs arising out of or in connection with the issue of such a notice and neither the State Works Contractor nor any Trustee will be entitled to be paid any further amount in respect of the Pre-Agreed Change; and
    - (C) neither the State Works Contractor nor any Trustee is entitled to make any Claim:
      - (aa) for any acceleration to the carrying out of the Asset Trustee's Activities or the SWC's Activities which the any member of the M4-M5 Link Group must perform at any time in order to achieve Rozelle Interface Works Completion by the Date for Rozelle Interface Works Completion, Opening Completion by the Date for Opening Completion and Completion by the Date

for Completion or satisfy a Rozelle Interface Milestone by the applicable Rozelle Interface Milestone Date; or

- (bb) for any delay to the carrying out of the Asset Trustee's Activities or the SWC's Activities,
  - (cc) in connection with the issue of such a notice or the amendment of this deed or the Project Deed pursuant to clause 7.2(b).
- (d) Nothing in this clause 7.2 prevents RMS's Representative from issuing a Change Proposal or a Change Order pursuant to clause 7.1 or the Change Procedure that involves the same (or similar) changes to the Project Works as a Pre-Agreed Change after the relevant date for giving notice of the Pre-Agreed Change specified in Schedule 22 (*Pre-Agreed Changes*) of the Project Deed.
- (e) If RMS's Representative issues a Change Order pursuant to clause 7.1 which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Change and which is issued or directed (as relevant) after the relevant date in Schedule 22 (*Pre-Agreed Changes*) of the Project Deed for that Pre-Agreed Change, the parties agree that the Change Costs or Change Savings of the Change will be determined in accordance with clause 7.1.

### 7.3 **Payment for Changes**

- (a) If a Change directed by RMS in accordance with clause 7.1(a) or 7.2(e) results in Change Costs:
- (i) if RMS directed the State Works Contractor to proceed to implement the Change under section 1.4(b), section 1.7(b) or section 1.7(e) of the Change Procedure RMS must pay to State Works Contractor the Change Costs set out in the SWC Change Notice issued by the State Works Contractor pursuant to section 1.2 of the Change Procedure and:
    - (A) in the case of section 1.4(b) of the Change Procedure, as accepted by RMS;
    - (B) in the case of section 1.7(b) of the Change Procedure, as varied by the parties' agreement under that section; and
    - (C) in the case of section 1.7(e) of the Change Procedure, as varied by the determination under that section,progressively and in accordance with the payment terms set out in clause 5 unless otherwise agreed between the parties; and
  - (ii) if RMS directed the State Works Contractor to proceed to implement the Change under section 1.7(d) or section 1.9 of the Change Procedure, RMS must pay the State Works Contractor its Change Costs:
    - (A) pending determination by RMS pursuant to section 1.7(d) of the Change Procedure agreement between the parties or determination in accordance with the Dispute Resolution Procedure, as reasonably determined by RMS; and
    - (B) following any determination referred to in clause 7.3(a)(A) (or agreement between the parties), as so determined (or agreed),

progressively and in accordance with the payment terms set out in clause 5. If the Change Costs paid under clause 7.3(a)(A) are more or less than the Change Costs for the relevant month as subsequently determined or agreed, the difference must be paid by the relevant party to the other.

- (b) If a Change directed by RMS under clause 7.1(a), 7.2(e) or section 1 of the Change Procedure results in Change Savings (or in the case of a Change directed by RMS under section 2 of the Change Procedure, is expected to result in Change Savings, as advised by the State Works Contractor under section 2.2(a)(iii) of the Change Procedure), RMS and the State Works Contractor agree that:
  - (i) in the case of a Change directed by RMS under clause 7.1(a), 7.2(e) or section 1 of the Change Procedure, RMS is entitled to receive 100% of the Change Savings; and
  - (ii) in the case of a Change directed by RMS under section 2.3 of the Change Procedure, RMS is entitled to receive 25% of the greater of:
    - (A) the actual Change Savings; and
    - (B) the estimated Change Savings (as advised by the State Works Contractor under section 2.2(a)(iii) of the Change Procedure).
- (c) Where an amount is payable to RMS pursuant to clause 7.3(b) then:
  - (i) to the extent that it relates to the Project Works, this shall be set off against Change Costs in respect of the Project Works payable by RMS to the State Works Contractor under clause 7.3(a); or
  - (ii) to the extent that it relates to the Asset Renewal, the State Works Contractor must pay this to RMS in the manner and at the time as agreed between RMS and the State Works Contractor.
- (d) If RMS and the State Works Contractor are unable to reach the agreement required by clause 7.3(c)(ii) within 20 Business Days after the date of the relevant Change Order, any party may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure, with the dispute to be determined on the basis that timing of the payment must not have an adverse impact upon the ability which, prior to the change:
  - (i) the Borrower, the Asset Trustee or the Project Trustee had to repay the Debt Financiers interest, amortisation and any net interest rate management agreement payments owing under the Debt Financing Documents on the dates on which such amounts are due to be repaid thereunder; and
  - (ii) the Group had to give the Equity Investors the lower of the:
    - (A) Equity Return they would have received if the Change had not been made; and
    - (B) Projected Equity Return.

For the purposes of this clause 7.3(d) the Dispute Resolution Procedure is incorporated into this deed *mutatis mutandis* but as though all references therein to a Trustee were instead a reference to the State Works Contractor.

- (e) Except where the State Works Contractor is directed to carry out a Change pursuant to a Change Order, RMS will not be liable to the State Works Contractor



for any Loss or otherwise upon any Claim arising out of or in any way in connection with any Change.

#### 7.4 **State Works Contractor's entitlements**

This clause 7 is an exhaustive code of the State Works Contractor's rights in any way in connection with any Change. The State Works Contractor waives all rights at Law to make any Claim against RMS in any way in connection with any of the matters set out in this clause 7 otherwise than in accordance with the terms of this deed.

#### 7.5 **Approvals for Changes**

- (a) Subject to clause 7.5(b), the State Works Contractor must apply for and obtain, all:
  - (i) necessary amendments or modifications to any existing Approvals; and
  - (ii) new Approvals that may be,  
required for the execution of a Change.
- (b) Where the amendment or modification to any Approval required for the execution of the Change relates to the Planning Approval, clauses 7.3, 7.4 and 7.4A of the Project Deed will apply.
- (c) The State Works Contractor must implement the Change once the Approvals referred to in this clause 7.5 have been amended, modified or granted to permit the Change to be implemented.

#### 7.6 **Changes undertaken by the State Works Contractor**

The parties acknowledge and agree that:

- (a) Changes under this clause 7 can be:
  - (i) designed by the Asset Trustee as a Change to the Asset Trustee's Works;  
and
  - (ii) constructed by the State Works Contractor as a Change to the State Works Contractor's Works,  
  
to the extent agreed between the Asset Trustee and the State Works Contractor.
- (b) in calculating Change Costs payable under this clause 7, there will be no double counting of any amounts that are included in calculating Change Costs (as defined in the Project Deed) arising from a Change (as defined in the Project Deed) under clause 14 (*Changes*) of the Project Deed.

#### 7.7 **Corresponding amendments**

The parties acknowledge and agree that they will jointly amend:

- (a) this clause 7;
- (b) the Change Procedure; and
- (c) any definition in this deed which is used in clause 7 or the Change Procedure,

to reflect any amendments which may be made from time to time to the corresponding provisions set out in clause 1.1 (*Definitions*), clause 14 (*Changes*) or Schedule 21 (*Change Procedure*) of the Project Deed as soon as practicable after the relevant corresponding changes to the Project Deed are made.

## 8. **FORCE MAJEURE**

### 8.1 **Suspension of obligations**

- (a) If a Force Majeure occurs the State Works Contractor's obligations under this deed which are affected by the Force Majeure will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure.
- (b) If a Force Majeure occurs and a notice under clause 33.1(a) of the Project Deed is issued, no party will be in default of its obligations under this 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 specified in the notice under clause 33.1(a) of the Project Deed.
- (c) Upon the State Works Contractor becoming able to recommence performing its obligations which were suspended under clause 8.1(a), the State Works Contractor must recommence the performance of those obligations.

### 8.2 **Duty to remedy Force Majeure**

To the extent the effects of a Force Majeure relate to the State Works Contractor's Works or the SWC's Activities, the State Works Contractor must remedy and Mitigate those effects promptly in accordance with clause 26.9 of the Project Deed.

### 8.3 **Alternative arrangements**

During the period of suspension, RMS may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the State Works Contractor).

### 8.4 **Cessation of Force Majeure**

The State Works Contractor must notify RMS immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure.

### 8.5 **No financial relief to the State Works Contractor**

Subject to clause 23A of the Project Deed, RMS will not be obliged to provide any financial relief related to such suspension to the State Works Contractor during the period of suspension.

### 8.6 **No compensation to RMS**

The State Works Contractor will not be liable to compensate RMS for any costs or losses which RMS incurs during the period of suspension.

## 9. **ASSIGNMENT**

### 9.1 **Entitlement to assign**

- (a) The State Works Contractor must not sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in:
  - (i) the State Works Contractor's Works; or

- (ii) any of the Project Documents,  
without the prior written consent of RMS.
- (b) In granting its consent under clause 9.1(a) RMS may withhold its consent in its absolute discretion.
- (c) RMS may sell, transfer or assign or otherwise dispose of or deal with its interest in the Project Documents without the prior written consent of the State Works Contractor provided that the transferee is supported by a guarantee from the Crown in right of the State of New South Wales on terms no less favourable than those contained in the PAFA Act Guarantee.

## 9.2 **Change of Control prior to State Works Completion**

- (a) Subject to clause (b), the State Works Contractor undertakes to RMS that the direct legal and beneficial owners of the State Works Contractor will remain unchanged until State Works Completion.
- (b) Nothing in this deed will restrict any:
  - (i) change in the direct or indirect legal or beneficial ownership of the State Works Contractor; or
  - (ii) Change of Control of the State Works Contractor,  
which is either:
    - (A) permitted under, or has been consented to by RMS under, the Project Deed; or
    - (B) occurs as a consequence of any corresponding change to the ownership or Control of the Project Trustee which is permitted under, or to which RMS has consented under, the Project Deed.

## 9.3 **Change of Control after State Works Completion**

For the purposes of clause 9.1, any Change of Control of the State Works Contractor arising after State Works Completion will be deemed to be an assignment by the State Works Contractor of its interest in this deed and the other Project Documents and such change will be subject to the terms and conditions of clause 9.1.

## 10. **SUSPENSION**

The parties agree that:

- (a) if the obligations of the Asset Trustee are suspended for any reason under the Project Deed, RMS may elect by notice in writing to the State Works Contractor to suspend the obligations of both the State Works Contractor and RMS under this deed;
- (b) if the obligations of the State Works Contractor and RMS are suspended pursuant to clause 10(a), those obligations will recommence upon the obligations of the Asset Trustee recommencing under the Project Deed; and
- (c) if a suspension occurs pursuant to clause 10(a), the State Works Contractor will not be entitled to:
  - (i) any adjustment of the State Works Payment; or


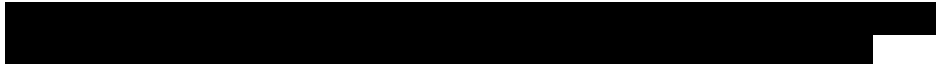
- (ii) make any Claim against RMS arising out of, or in any way in connection with, the suspension, except to the extent relief is expressly allowed for under the Project Deed.

## 11. **TERMINATION**

### 11.1 **Terminated if Project Deed terminates**

This deed terminates if the Project Deed terminates. This deed may not be terminated by any party in any other circumstances (including repudiation at common law).

### 11.2 **Termination payments**

- (a) If this deed terminates under clause 11.1 prior to the Final Payment Date, the State Works Contractor agrees that, subject to clause 11.2(b), it will not be entitled to:
  - (i) 
  - (ii) 
- (b) Without limiting clause 31.11 of the Project Deed, if, prior to Completion of the Main Tunnel Works, this deed terminates under clause 11.1 as a result of the Project Deed being terminated under clause 31.7, 31.7A, 31.8 or 31.9 of the Project Deed, RMS must within 30 Business Days after the date of termination pay the SWD Early Termination Amount to the State Works Contractor.
- (c) The State Works Contractor agrees that in calculating the SWD Early Termination Amount, there will be no double counting of amounts that are included in the calculation of the Early Termination Amount under the Project Deed.

## 12. **DISPUTE RESOLUTION**

Any dispute or difference arising out of, relating to, or in connection with this deed or the conduct of the parties in relation to this deed, or its subject matter (including any question regarding the existence, validity or termination of this deed) (**Dispute**) must be resolved in accordance with the Dispute Resolution Procedure, as if:

- (a) Schedule 3 of the Project Deed was set out in full in this deed; and
- (b) a reference therein:
  - (i) to "any Trustee" and "the Asset Trustee" was a reference to "the State Works Contractor";
  - (ii) to "the parties" was a reference to "RMS and the State Works Contractor"; and
  - (iii) to "party" was a reference to either one of them,

provided that:

- (c) the State Works Contractor authorises the chief executive officer of the Asset Trustee to resolve any Dispute on behalf of, and relinquish any right of, the State Works Contractor in connection with this deed;

- (d) the State Works Contractor's agreement will not be required to effect a valid selection of any expert or arbitrator; and
- (e) the State Works Contractor will not be obliged to pay any part of the costs of any expert or arbitrator.

**13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**13.1 Representations and warranties by the State Works Contractor**

The State Works Contractor 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 Project Document to which it is expressed to be a party;
- (b) it has power to enter into and perform its obligations under each 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 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) it subsists and is properly constituted;
- (e) it is not a 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 RMS Project Document;
- (g) it is not involved in, and does not conduct, any business other than the business related to the Project and will not do so without the prior written approval of RMS;
- (h) its obligations under the State Works Security will rank ahead of, and its obligations under this deed and each Project Document to which it is expressed to be a party (other than the State Works Security) will rank at least equally with, all its other unsecured indebtedness, other than indebtedness preferred by law;
- (i) the execution, delivery and performance of each 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;
- (j) 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);

- (k) no litigation (which has not been disclosed to RMS in writing prior to the date of this 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 Project Document to which it is expressed to be a party; and
- (l) except as contemplated under a Project Document or in connection with a transaction which is contemplated by a Project Document, it will not trade or incur any Liabilities or carry on any business or enter into any document or agreement other than the Project Documents without RMS's prior written approval.

### 13.2 **Representations and warranties by RMS**

RMS makes the following continuing representations and warranties for the benefit of the State Works Contractor:

- (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 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 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 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 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.

## 14. **RESTRICTIONS ON THE STATE WORKS CONTRACTOR**

### 14.1 **Restrictions on business**

The State Works Contractor must not (without the prior written approval of RMS) engage in any business other than procuring and managing the design and construction of the State Works Contractor's Works and the carrying out of its obligations and the exercise of its rights under this deed.

### 14.2 **Restrictions on acquisition of property and liabilities being incurred**

The State Works Contractor must not (without the prior written approval of RMS) acquire or hold any property or incur any liability other than for the purposes of the State Works Contractor's Works other than under an Intercompany Loan.

### 14.3 **Restrictions on subcontracting**

The State Works Contractor must not (without the prior written approval of RMS) enter into any Subcontracts other than the Main Tunnel D&C Deed.

15. **GST**

- (a) Notwithstanding any other provision of this deed, any amount payable for a supply made under this deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
  - (i) any amount payable or consideration to be provided under any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST; and
  - (ii) an additional amount will be payable by the party providing consideration for that supply (the **Recipient**), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount.
- (c) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Arbitrators and Mediators Australia for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this 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 parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert. However, this clause 15(c) shall not apply to any supply dealt with under clause 15(d).
- (d) Notwithstanding clause 15(b), if two parties (or entities on whose behalf those parties are acting) in accordance with this deed exchange non-monetary consideration:
  - (i) the additional amount payable on any supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; unless
  - (ii) it is determined, whether by agreement between the parties or by demand, assessment or private ruling issued by the Commissioner of Taxation that there is a disparity between:
    - (A) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Recipient to the Supplier; and
    - (B) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Supplier and having their nexus with the non-monetary consideration and monetary consideration being provided by the Recipient and referred to in clause 15(d)(ii)(A).
  - (iii) Where clause 15(d)(ii) applies, the Supplier and the Recipient will use best endeavours to determine a mutually acceptable means of calculating

additional amounts to be provided between the parties to ensure, as far as possible that neither the Supplier nor the Recipient suffers a net cost or loss. If within 30 Business Days of the determination under clause 15(d)(ii), the parties are unable to agree on a means of calculating the additional amounts payable, clause 15(b) shall apply without any limitation imposed by this clause 15(d), however:

- (A) the Supplier must only issue a tax invoice or an adjustment note to reflect the application of clause 15(d)(iii) after the parties have either reached an agreement under this clause 15(d)(iii) or have determined that they are unable to reach such an agreement; and
- (B) the additional amount payable pursuant to clause 15(d)(iii) will only be payable 5 Business Days after the receipt by the Recipient of the tax invoice or adjustment note issued by the Supplier in accordance with clause 15(d)(ii)(A).

## 16. NOTICES

### 16.1 How to give a notice

A notice, Payment Claim or consent under this deed (**Notice**) is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it (unless the Notice is sent from the email address of either RMS's Representative or the Asset Trustee's Representative on behalf of the State Works Contractor, in which even the Notice is deemed to be signed by the RMS Representative or the Asset Trustee's Representative (as applicable));
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
  - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
  - (iii) subject to clause 16.1(d), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address; and
- (d) in the case of Notices which have been sent in accordance with clause 16.1(c)(iii) under clauses 5 or 10(a), in addition to the Notice sent pursuant to clause 16.1(c)(iii), a copy of the Notice must also be printed and delivered or posted to the person's address or sent to the person's facsimile number in accordance with clauses 16.1(c)(i) or 16.1(c)(ii).

### 16.2 Effectiveness of notices

- (a) A Notice referred to in clause 16.1(d) will not be effective unless it is delivered in accordance with clause 16.1(c)(i) or clause 16.1(c)(ii).
- (b) A Notice issued pursuant to clause 16.1(c)(iii) and a Notice issued pursuant to clause 16.1(c)(i) or clause 16.1(c)(ii) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.



### 16.3 **When a notice is given**

A Notice that complies with this clause 16 is regarded as given and received:

- (a) if it is delivered or sent by fax:
  - (i) by 5.30 pm (local time in the place of receipt) on a Business Day – on that day; or
  - (ii) after 5.30 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail:
  - (i) within Australia – 2 Business Days after posting; or
  - (ii) to or from a place outside Australia – 5 Business Days after posting;
- (c) subject to clause 16.3(d), if it is sent by email:
  - (i) by 5:30pm (local time in the place of receipt) on a Business Day – at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; or
  - (ii) after 5:30pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day – on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; and
- (d) where clause 16.1(c)(iii) applies, the relevant Notice will be taken to have been received on the later of:
  - (i) the date determined in accordance with clause 16.3(c); and
  - (ii) the date determined in accordance with clause 16.3(a) or 16.3(b) (as the case may be).

### 16.4 **Address for notices**

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

#### **RMS**

Address: 20-44 Ennis Road  
Milsons Point NSW 2061

Email address: [REDACTED]

Attention: Executive Director, Motorways

Fax number: 02 8588 4171

#### **State Works Contractor**

Address: Level 33, 259 George Street  
Sydney NSW 2000

Email address: [REDACTED]

Attention: Project Director, M4-M5 Link

Fax number:

## 16.5 **Communications by email**

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 16.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 16. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 16.1(c)(iii) will only form part of a communication under this clause 16 if it is in .pdf, .jpeg, .xls, .doc, .vsd, .mpp, .mdb, .xer or .ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this deed:
  - (i) to ensure that their respective firewall and/or mail server (as applicable):
    - (A) allows messages of up to 20 MB (or such greater size as may be agreed between the parties from time to time) to be received;
    - (B) automatically sends a receipt notification to the sender upon receipt of a message; and
  - (ii) to use reasonable endeavours to ensure that their respective systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

## 17. **GENERAL**

### 17.1 **Governing law**

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

### 17.2 **Jurisdiction**

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed,
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, where that venue falls within clause 17.2(a).

### 17.3 **Cost**

A party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.

#### 17.4 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by any party to this deed 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 deed.
- (b) Any waiver or consent given by a party under this deed will only be effective and binding on the other party if it is given or confirmed in writing by that party.
- (c) No waiver by a party of:
  - (i) a breach of any term of this deed; or
  - (ii) any other failure by the other party to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim,  
  
will operate as a waiver of:
    - (iii) another breach of that term or of a breach of any other term of this deed; or
    - (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

#### 17.5 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party or parties to give effect to this deed.

#### 17.6 **Provisions limiting or excluding liability**

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

#### 17.7 **Survival of certain provisions**

Without limiting clause 17.14:

- (a) clauses 1, 4, 5.12, 11.2, 12, 16 and 17 and any other provisions of this deed which are expressed to survive termination (together the Surviving Clauses) will survive rescission, novation, termination or expiration of this deed;
- (b) if this deed is rescinded or terminated, no party will be liable to any other party except:
  - (i) under the Surviving Clauses; or
  - (ii) in respect of any breach of this deed occurring before such rescission or termination;
- (c) no right or obligation of any party will merge on completion of any transaction under this deed, and all rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed; and

- (d) no provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

#### 17.8 **Counterparts**

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

#### 17.9 **Amendments**

This deed may only be varied by a deed executed by or on behalf of both RMS and the State Works Contractor.

#### 17.10 **Expenses**

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

#### 17.11 **Severability of provisions**

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

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and
  - (ii) subject to clause 17.11(b)(i), preserves to the maximum possible extent:
    - (A) the enforceability of the provision and the provisions of this deed; and
    - (B) the original effect and intent of this deed.

#### 17.12 **Exclusion of proportionate liability scheme**

To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or Liabilities of either party under this deed whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and Liabilities of RMS and the State Works Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

17.13 **Entire Agreement**

To the extent permitted by Law, this deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
  - (b) supersedes any prior written or other agreement of the parties,
- in relation to the subject matter of this deed.

17.14 **Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

17.15 **No representation or reliance**

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

17.16 **Moratorium legislation**

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

17.17 **No partnership, joint venture or other fiduciary relationship**

Neither this deed nor any other Project Document to which RMS or the State Works Contractor are expressed to be parties creates a partnership, joint venture or fiduciary relationship between RMS (on the one hand) and the State Works Contractor (on the other hand).

17.18 **Taxes**

Subject to clause 38.2 of the Project Deed, the State Works Contractor must pay all Taxes which may be payable in respect of the SWC's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

**SCHEDULE 1**

**Payment Claim**

(Clause 5.2)

Pro Forma Tax Invoice Number: [##]

To: Roads and Maritime Services (**RMS**)

From: WCX State Works Contractor Pty Ltd (ACN 624 154 089) (the **State Works Contractor**)

In accordance with clause 5.2 of the WestConnex M4-M5 Link Main Tunnel State Works Deed between RMS and the State Works Contractor dated [insert date] (**State Works Deed**) with respect to the Project, I hereby submit this Payment Claim as follows:

<b>Date of Payment Claim</b>	<b>Payment period</b>	<b>Particulars of State Works in respect of which payment is claimed</b>	<b>Documents or other information provided in respect of amount claimed</b>	<b>Amount claimed</b>
<b>A. Amount claimed in respect of State Works Contractor's Works</b>				
<i>[Insert date of Payment Claim]</i>	<i>[Insert period in respect of which payment is claimed]</i>	<i>[Insert detailed list of work completed for which payment is claimed]</i>	<i>[Insert details of any supporting documentation or other information provided to verify amounts claimed]</i>	<i>[Insert amounts claimed in respect of each item of State Works Contractor's Works]</i>
<b>B. Amount claimed in respect of RMS Funded Changes</b>				
<i>[Insert date of Payment Claim]</i>	<i>[Insert period in respect of which payment is claimed]</i>	<i>[Insert detailed list of work completed for which payment is claimed]</i>	<i>[Insert details of any supporting documentation or other information provided to verify amounts claimed]</i>	<i>[Insert amounts claimed in respect of each item of RMS Funded Changes]</i>
			<b>Total (excluding GST)</b>	<b>#[##]</b>

**PLUS** GST which the State Works Contractor projects will be payable by it in respect of the above amount **#[##]**

**TOTAL AMOUNT CLAIMED**

**#[##]**

This is not a tax invoice.

Signed by the Asset Trustee's Representative  
For and on behalf of  
WCX State Works Contractor Pty Ltd

Signed: .....

Dated: .....

## SCHEDULE 2

### Payment Schedule

(Clauses 1.2 and 5.2)

For each Payment Claim, the total amount claimed must be no more than the aggregate of:

- (a) the claimable amount calculated in accordance with section 1 below and which must be no more than the Maximum Payment Claim Amount at the relevant time (calculated by reference to the Cumulative Payment Claim Limit amounts set out in section 2 below, any Residual DFA Amount at that time and the Aggregate State Works Payment at the relevant time);
  - (b) any amount claimed by the Main Tunnel Contractor in respect of an RMS Funded Change under a corresponding payment claim issued under clause 21.1 of the Main Tunnel D&C Deed; and
  - (c) any amounts which the State Works Contractor is entitled to under this deed at that time (other than instalment amounts in respect of the State Works Payment).
1. (**Claimable amount**): The value of work (other than in respect of RMS Funded Changes) that may be the subject of a Payment Claim in respect of a particular month (for the purposes of this paragraph 1 the **State Works Claimable Amount**) will be calculated as follows:
- (a) The total amount claimed by the Main Tunnel Contractor (as set out in the relevant "Payment Claim" submitted by the Main Tunnel Contractor under clause 21.2 of the Main Tunnel D&C Deed) (for the purposes of this paragraph 1, the **Total Claim Amount**) will be calculated in accordance with paragraphs 1 and 2 of Schedule 31A of the Main Tunnel D&C Deed.
  - (b) That Total Claim Amount will be split to ascertain the amount to be applied in payment for the State Works Contractor's Works by applying the percentages shown in the table below (the **State Works Proportion**).
  - (c) Each Total Claim Amount will be assessed to determine the Tranche that the payment falls within. The State Works Proportion for that Tranche will then be applied to the Total Claim Amount to calculate the State Works Claimable Amount that may be the subject of the Payment Claim for that month.
  - (d) If for any month, the Total Claim Amount falls within more than one Tranche, this calculation will be performed separately for the amount of the Total Claim Amount that falls within each Tranche, to calculate the State Works Claimable Amount that may be the subject to the Payment Claim for each Tranche for that month. Each of these State Works Claimable Amounts shall be aggregated to be the total State Works Claimable Amount for that month.
  - (e) In this paragraph 1, a **Tranche** represents the amount of the D&C Deed Sum shown as such in the following table, paid to the Main Tunnel Contractor in sequential order. For example, Tranche 1 is the first \$ [REDACTED] paid to the Contractor (including payments funded under the Delivery Funding Deed), Tranche 2 is the amount paid to the Main Tunnel Contractor between \$ [REDACTED] and \$ [REDACTED], and so on.
  - (f) If any amount is retained, deducted or withheld from, or set-off against, any amount paid to the Main Tunnel Contractor in accordance with the terms of the Main Tunnel D&C Deed, then the amount of the retention, deduction, withholding or set-off will be apportioned between the Asset Trustee's Works and the State



Works Contractor's Works in accordance with the percentages that would be applicable if such amount was not retained, deducted, withheld or set-off. If any such amount is subsequently paid to the Main Tunnel Contractor in accordance with the Main Tunnel D&C Deed, it will be apportioned between the Asset Trustee's Works and the State Works Contractor's Works in accordance with those same percentages.

- (g) The State Works Contractor acknowledges and agrees that the State Works Claimable Amounts will be zero until such time as an amount equal to the Initial Equity Contribution Amount has been paid by the State Works Contractor to the Main Tunnel Contractor (or will be paid as part of the same Total Claim Amount) in satisfaction of Total Claim Amounts and the parties acknowledge that this is reflected in the table set out below.

Tranche	Tranche amount - lower limit (\$)	Tranche amount - upper limit (\$)	State Works Proportion
Payments funded under the Delivery Funding Deed			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
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52	
53	
54	
55	

The table set out above is subject to adjustment in accordance with Schedule 5.

2. **(Cumulative Payment Claim Limit Schedule):** For the purposes of calculating the Maximum Payment Claim Amount applicable in relation to each Payment Claim (and without prejudice to the amount of any Payment Claim which may be referable to an amount claimed by the Main Tunnel Contractor in respect of an RMS Funded Change under a corresponding payment claim issued under clause 21.1 of the Main Tunnel D&C Deed), the maximum cumulative payment claim limits referable to the State Works Contractor's Works for each month are as set out in the table below:

Month	Maximum Cumulative Payment Claim
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
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36	
37	
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41	
42	
43	
44	
45	
46	
47	
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55	

Note: In this table, Month 1 is [redacted] 2018.

The table set out above is subject to adjustment in accordance with Schedule 5.

**SCHEDULE 3**

**Form of Payment Statement**

(Clause 5.3)

**WestConnex M4-M5 Link Project (Project)**

**To:** WCX State Works Contractor Pty Ltd (**the State Works Contractor**)  
**Copy:** Roads and Maritime Services (**RMS**) a New South Wales Government agency  
**From:** *[insert name of RMS Representative]*

In accordance with clause 5.3 of the WestConnex M4-M5 Link Main Tunnel State Works Deed between RMS and the State Works Contractor dated *[insert date]* (**State Works Deed**) with respect to the Project, I hereby confirm that:

1. this payment statement relates to the following payment claim:  
  
*[insert details of payment claim to which State Works Contractor Payment Statement relates];*
2. RMS considers that it is entitled to deduct (in accordance with its rights under clause 5.11 of the State Works Deed) against any monies otherwise due to the State Works Contractor an amount of \$*[Insert]*.
3. in respect of the payment claim described in paragraph 1, the amount to be paid by RMS is *[insert amount]*; and
4. *[delete if not applicable]* the amount to be paid by RMS as set out in paragraph 3 is less than the payment claimed in the payment claim described in paragraph 1, due to *[insert reason in accordance with clause 5.3(a)(iii) of the State Works Deed]*.

Terms defined in the Project Deed and the State Works Deed have the same meaning in this statement.

.....  
**Signed for and on behalf of  
RMS Representative**

.....  
**Date**

**IMPORTANT NOTE:**

Any evaluation or issue of a Payment Statement by the **RMS Representative** will not:

1. constitute approval of any work nor will it be taken as admission or evidence that the part of the State Works Contractor's Works covered by the Payment Statement has been satisfactorily carried out in accordance with the Project Deed or the State Works Deed; and
2. constitute a waiver of the requirements of clause 5.2 of the State Works Deed in relation to any Payment Claim other than to the extent (if any) to which RMS expressly waives such requirements in respect of the Payment Claim the subject of the Payment Statement.

**SCHEDULE 4**

**Cost to Complete Certificate**

(Clause 5.6)

From: Independent Certifier

To: RMS

Copy: State Works Contractor

Certificate No. [##]

Date of Cost to Complete Certificate : [month end date]

Dear Sir / Madam

**Independent Certifier's certification**

1. We refer to:
  - (a) the Design and Construct Deed (the **Main Tunnel D&C Deed**) dated [Insert] between WCX M4-M5 Link AT Pty Ltd, the State Works Contractor and [Insert], being an unincorporated joint venture comprising [Insert] (ABN [Insert]) and [Insert] (ABN [Insert]) (the **Main Tunnel Contractor**); and
  - (b) the State Works Deed dated [Insert] between RMS and the State Works Contractor (the **State Works Deed**).
2. This is a Cost to Complete Certificate for the purposes of the State Works Deed.
3. In accordance with the terms of clause 5.4 of the State Works Deed and with reference to all Payment Statements issued by the D&C Independent Certifier under the Main Tunnel D&C Deed prior to the date of this Certificate, I hereby certify that as at the date of this certificate, the Cost to Complete is \$[Insert] comprising:
  - (a) an amount of \$[Insert] which remains to be paid under the Main Tunnel D&C Deed; and
  - (b) other Project Costs which fall within the definition of "Cost to Complete" in the State Works Deed and which remain unpaid of \$[Insert] (which is based on the information provided to us by the State Works Contractor in the attached certificate).
4. I certify that as of the date of this certificate:
  - (a) each item of Available Funding is in the amount set out in the following table (which is based on the information provided to us by the State Works Contractor in the attached certificate): and
  - (b) the Available Funding is \$[Insert].

	<b>Item</b>	<b>\$</b>
a)	[REDACTED]	

	Item	\$
	[REDACTED]	
b)	[REDACTED]	
c)	[REDACTED]	
d)	[REDACTED]	
e)	[REDACTED]	
f)	[REDACTED]	
g)	[REDACTED]	
h)	[REDACTED]	
<b>TOTAL AVAILABLE FUNDING</b>		

5. I note that any amounts under (g) and (h) of this certificate have been certified by me after due consideration of information provided by any of the parties to the State Works Deed.

6. Accordingly, I confirm that the Cost to Complete Test is [satisfied][not satisfied] as at the date of this certificate.

Yours sincerely

[ ]

for and on behalf of the Independent Certifier



**Attachment – State Works Contractor's certificate**

From: [State Works Contractor] as State Works Contractor

To: Independent Certifier

Certificate No. [##]

Date of certificate : [Insert]

Dear Sir / Madam

**State Works Contractor's certification**

- 1.1 We certify that the amount which falls within the definition of "Cost to Complete" in the State Works Deed but which is not a Project Cost and which remains unpaid is \$[Insert].
- 1.2 We certify that the Available Funding is \$[Insert] as of the date of this certificate based on the following calculation:

	<b>Item</b>	<b>\$</b>
a)	[REDACTED]	
b)	[REDACTED]	
c)	[REDACTED]	
d)	[REDACTED]	
e)	[REDACTED]	

	Item	₤
	[REDACTED]	
f)	[REDACTED]	
g)	[not used]	
h)	[REDACTED]	
<b>TOTAL AVAILABLE FUNDING</b>		

1.3 We attach a copy of the payment statement issued by the D&C Independent Certifier under clause 21.3 of the Main Tunnel D&C Deed.

Yours faithfully

.....  
 Authorised Signatory  
 for and on behalf of  
**State Works Contractor**

**Attachment – D&C Payment Statement**

***[State Works Contractor to attach copy of D&C Payment Statement.]***

**SCHEDULE 5**

**Adjustment mechanics**

(Clause 5.1(b))

**1. GENERAL OVERVIEW**

1.1 As at the date of this deed, the Base Case Financial Model will include assumptions as to:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

the **(State Works Assumptions)**.

1.2 The Base Case Financial Model will be updated on the D&C Effective Date to update the State Works Assumptions in accordance with this Schedule 5 as required by clause 5.1(b).

1.3 After the updates contemplated by this Schedule 5 have been made, the parties will jointly replace the pages of this document on which:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

in each case to reflect those updates.

**2. STEPS TO BE FOLLOWED ON THE D&C EFFECTIVE DATE**

In order to update the Base Case Financial Model as required by clause 5.1(b), the State Works Contractor and RMS will apply the protocol set out in Schedule 34A to the Project Deed.

## SCHEDULE 6

### Change Procedures

(Clause 7)

#### 1. CHANGES PROPOSED BY RMS

##### 1.1 Change Proposal

- (a) RMS may at any time issue to the State Works Contractor a notice titled "Change Proposal" setting out the details of a proposed Change which RMS is considering, including:
- (i) RMS's proposed requirements for the implementation of the proposed Change;
  - (ii) Not used; and
  - (iii) any specific information that RMS requires the State Works Contractor to include in its SWC Change Notice or that may be relevant to the preparation of the SWC Change Notice.
- (b) The State Works Contractor acknowledges that RMS may issue a Change Proposal that decreases, omits, deletes or removes work from the scope of the:
- (i) Project Works;
  - (ii) Temporary Works;
  - (iii) the D&C Phase Maintenance; or
  - (iv) the Asset Renewal,
- (Excluded Works)** and may carry out that Excluded Works itself or may engage another person to carry out the Excluded Works on its behalf.
- (c) Except as:
- (i) directed in a Change Order; or
  - (ii) in respect of a Change contemplated in clauses 7.4(a) (*Planning Approval Change Events*), 22A.2(b) (*RMS will direct a Change*), 25.2 (*Change in Law prior to Opening Completion*) and 39.1(c)(i) (*Notice of Change*) of the Project Deed,
- the State Works Contractor will not be entitled to:
- (iii) make any Claim against RMS arising out of, or in any way in connection with, a Change proposed by RMS; or
  - (iv) vary or change the Project Works, the Temporary Works, the D&C Phase Maintenance or the Asset Renewal.

##### 1.2 SWC Change Notice

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

- (a) estimated costs comprised of the Change Costs the Trustees or the State Works Contractor will incur, or the Change Savings the Trustees or the State Works Contractor will derive, by carrying out the proposed Change (which may include Trustee's Delay Costs if applicable), substantiated (to the full extent possible) with a detailed breakdown (including an indicative program of when costs will be incurred);
- (b) the basis (if any) on which the State Works Contractor would be prepared to fund the whole or part of the Change and the cost difference if the State Works Contractor, rather than RMS, funds the Change;
- (c) the effect (if any) the State Works Contractor anticipates the Change will have on the Overall D&C Program and the Asset Trustee and the State Works Contractor achieving a Rozelle Interface Milestone by the applicable Rozelle Interface Milestone Date, Rozelle Interface Works Completion by the Date for Rozelle Interface Works Completion, Opening Completion by the Date for Opening Completion and achieving Completion by the Date for Completion;
- (d) if the proposed Change will delay the Asset Trustee or the State Works Contractor in achieving a Rozelle Interface Milestone, Rozelle Interface Works Completion, Opening Completion or Completion (as applicable), the number of days for which the Date for Rozelle Interface Works Completion, the Date for Opening Completion or the Date for Completion (as applicable) should be adjusted to account for the delay together with the basis of calculating that period;
- (e) if the Change is proposed to be carried out after a Rozelle Interface Milestone Date, the Date of Rozelle Interface Works Completion, the Date of Opening Completion or the Date of Completion (as applicable), the time within which the proposed Change will be implemented;
- (f) the effect the State Works Contractor anticipates the Change will have on the performance of the Asset Trustee's Activities, the Project Trustee's Activities, the SWC's Activities, the Project Works, the Temporary Works, the Asset Renewal and the D&C Phase Maintenance (including specific details of the work that will be affected and how and to what extent it will be affected);
- (g) the effect the State Works Contractor anticipates the Change will have on the functionality or integrity of the elements of the Asset Trustee's Activities, the Project Trustee's Activities, the SWC's Activities, the Project Works, the Temporary Works, the Asset Renewal and the D&C Phase Maintenance and the quality or performance standards required by this deed and the Project Deed, including specific details of:
  - (i) the elements of the Asset Trustee's Activities, the Project Trustee's Activities, the SWC's Activities, the Project Works, the Temporary Works, the Asset Renewal and the D&C Phase Maintenance that will be affected;
  - (ii) how and to what extent the functionality or integrity of those elements will be affected;
  - (iii) the quality or performance standards affected and how and to what extent they will be affected;
  - (iv) any adverse effect which the Change will have on the ability of the State Works Contractor to satisfy its obligations under this deed or a Trustee to satisfy its obligations under the Project Deed (including any warranties the State Works Contractor is required to give under this deed or the Trustees are required to give under the Project Deed); and

- (v) any adverse effect which the Change will have on the Trustees' ability to achieve Final Handover in accordance with the requirements of the Project Deed;
- (h) any other information concerning the proposed Change which RMS's Representative reasonably requires, including:
  - (i) sufficient detail to allow RMS to reconsider the need for the Change; and
  - (ii) whether any land in addition to the Construction Site or the Maintenance Site is required to implement the Change; and
- (i) the period within which the SWC Change Notice remains valid for acceptance by RMS, which must be a reasonable period of not less than 20 Business Days after the date of the SWC Change Notice (**Validity Period**),

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

### 1.3 SWC Change Notice Requirements

The State Works Contractor must ensure that the SWC Change Notice is prepared:

- (a) so as to avoid, as far as practicable, the need for a new Approval or a change to an existing Approval for the implementation of the Change;
- (b) on an Open Book Basis with respect to:
  - (i) the State Works Contractor's and (where relevant) the relevant Trustee's internal costs; and
  - (ii) the costs of the Contractors and O&M Contractor (and to this end the State Works Contractor must allow RMS review and audit rights sufficient to verify that the SWC Change Notice has been prepared in accordance with the requirements of this deed (including the definitions of "Change Costs" and "Change Savings"));
- (c) assuming the Trustees and the State Works Contractor are willing, efficient and competent providers of the Change in an efficient and competitive market;
- (d) in a manner which is consistent with the reasonable requirements of RMS for the implementation of the Change and which includes any specific information required by RMS in the Change Proposal;
- (e) having regard to minimising:
  - (i) the disruption to road users;
  - (ii) delay in achieving the Rozelle Interface Milestones, Rozelle Interface Works Completion, Opening Completion or Completion, to the extent that it has not yet been achieved; and
  - (iii) any adverse safety impacts of the Change;
- (f) in a manner which ensures that all appropriate insurances relevant to the Change are taken out and maintained consistently with those that would have been required by RMS if the Change had been included in the Asset Trustee's Activities, Project Trustee's Activities, SWC's Activities, Project Works, the Temporary Works, the Asset Renewal or the D&C Phase Maintenance as applicable, as at the date of this deed (unless RMS otherwise determines); and

(g) in a manner so that there is no double counting.

#### 1.4 **Election by RMS**

Within the Validity Period, RMS must either:

- (a) advise the State Works Contractor that RMS:
  - (i) requires further information and/or clarification with respect to the SWC Change Notice; and/or
  - (ii) has altered the scope of the Change Proposal;
- (b) accept the SWC Change Notice in whole or in part and:
  - (i) if the SWC Change Notice contains any options, nominate which option or options RMS accepts; and
  - (ii) if RMS accepts part of the SWC Change Notice, identify which part RMS accepts and which part RMS rejects;
- (c) reject the whole of the SWC Change Notice; or
- (d) except in the case of a Change contemplated in clauses 7.4(a) (*Planning Approval Change Events*), 22A.2(b) (*RMS will direct a Change*), 25.2 (*Change in Law prior to Opening Completion*) and 39.1(c)(i) (*Notice of Change*) of the Project Deed, withdraw the proposed Change,

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

#### 1.5 **Further information or altered scope**

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

#### 1.6 **Acceptance of the SWC Change Notice**

If RMS accepts the SWC Change Notice in whole or in part in accordance with section 1.4(b):

- (a) the State Works Contractor must proceed to implement (or procure the implementation of) the Change on the basis of the SWC Change Notice (to the extent accepted by RMS); and
- (b) the State Works Contractor's obligations under this deed, and the Trustees' obligations under the Project Deed, will be varied in each case to the extent specified in the SWC Change Notice (as accepted by RMS).

#### 1.7 **Rejection of the SWC Change Notice**

- (a) If RMS rejects the SWC Change Notice in accordance with section 1.4(c) or rejects part of the SWC Change Notice in accordance with section 1.4(b), RMS may require that:
  - (i) within a period of 5 Business Days after the date of RMS's notice under section 1.4(b) or section 1.4(c), the parties commence consultation in good faith, and use their reasonable endeavours to agree on a mutually



acceptable resolution to the matters set out in the SWC Change Notice which are in dispute; and/or

- (ii) if the SWC Change Notice does not accurately set out the State Works Contractor's entitlements in accordance with the requirements of this deed or comply with the requirements of the Change Proposal, the State Works Contractor amend and resubmit the SWC Change Notice.
- (b) If the parties reach agreement on the disputed matters in the SWC Change Notice and RMS directs the State Works Contractor to proceed with the Change (by notice titled "Change Order"):
- (i) the State Works Contractor must proceed to implement (or procure the implementation of) the Change on the basis of the SWC Change Notice (as varied by the parties' agreement, as recorded in the "Change Order", on the matters in the SWC Change Notice which were in dispute); and
  - (ii) the State Works Contractor 's obligations under this deed, and the Trustees' obligations under the Project Deed, will be varied in each case to the extent specified in the SWC Change Notice (as varied by the parties' agreement, as recorded in the "Change Order", on the matters in the SWC Change Notice which were in dispute).
- (c) If the parties are unable to reach agreement under section 1.7(a) within 10 Business Days after the later of:
- (i) the commencement of the consultation; or
  - (ii) the outcome of the tender process is advised to RMS (if applicable),

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

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

For the purposes of this section 1.7(c) the Dispute Resolution Procedure is incorporated into this deed *mutatis mutandis* but as though all references therein to a Trustee were instead a reference to the State Works Contractor.

- (d) If RMS refers the matter for dispute resolution, RMS may also direct the State Works Contractor to proceed to implement (or procure the implementation of) the Change by a notice titled "Change Order" whether or not the matters in dispute have been agreed or determined in accordance with the Dispute Resolution Procedure. If RMS gives such a notice:
- (i) the disputed matters will, until RMS and the State Works Contractor otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure under section 1.7(c), be reasonably determined by RMS. In making its determination, RMS will:
    - (A) have regard to the principles set out in section 1.3, to the extent relevant;

- (B) assume that funding for the Change will be provided by RMS, unless the parties otherwise agree; and
  - (C) determine all disputed matters required to enable the Change to be implemented, including the changes required to any Project Documents within 18 Business Days of the referral of the Dispute;
- (ii) the State Works Contractor must proceed to implement (or procure the implementation of) the Change on the basis determined reasonably by RMS, notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure under section 1.7(c); and
  - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.
- (e) Following resolution of the dispute referred for dispute resolution under section 1.7(c), RMS must (unless it has already exercised its right under section 1.7(d)) elect to do either of the following:
- (i) require the State Works Contractor to proceed to implement (or procure the implementation of) the Change in accordance with the SWC Change Notice as varied by the resolution; or
  - (ii) except in the case of a Change contemplated in clauses 7.4(a) (*Planning Approval Change Events*), 22A.2(b) (*RMS will direct a Change*), 25.2 (*Change in Law prior to Opening Completion*) and 39.1(c)(i) (*Notice of Change*) of the Project Deed, withdraw the proposed Change,
- by notice to the State Works Contractor (which in the case of section 1.7(e)(i) must be titled "Change Order").
- (f) If RMS gives the State Works Contractor a Change Order pursuant to section 1.7(e)(i):
- (i) the State Works Contractor must proceed to implement (or procure the implementation of) the Change in accordance with the SWC Change Notice (as varied by the resolution, once made); and
  - (ii) the State Works Contractor's obligations under this deed, and the Trustees' obligations under the Project Deed, will be varied in each case to the extent specified in the SWC Change Notice (as varied by the resolution, once made).

## 1.8 **Withdrawal of the proposed Change**

If RMS withdraws the Change Proposal in accordance with section 1.4(d) or section 1.7(e)(ii), the Trustees and the State Works Contractor are not obliged or permitted to carry out the Change Proposal.

## 1.9 **RMS may instruct the State Works Contractor to proceed**

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

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

- (b) In making its determination, RMS will:
  - (i) have regard to the principles set out in section 1.3, to the extent relevant;
  - (ii) assume that funding for the Change will be provided by RMS, unless the parties otherwise agree; and
  - (iii) determine all matters required to enable the Change to be implemented within 15 Business Days of issue of the relevant Change Order referred to in section 1.9(a).
- (c) If the State Works Contractor disagrees with a matter determined by RMS under this section 1.9:
  - (i) the State Works Contractor may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure;
  - (ii) the State Works Contractor must proceed to implement (or procure the implementation of) the Change on the basis determined by RMS notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure; and
  - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

## **2. CHANGES PROPOSED BY THE STATE WORKS CONTRACTOR**

### **2.1 No Change without consent**

The State Works Contractor must not undertake any Change without RMS's prior consent.

### **2.2 State Works Contractor proposal**

- (a) The State Works Contractor may propose a Change to RMS by giving RMS a written notice with details of:
  - (i) the proposed Change;
  - (ii) the reason for the proposed Change;
  - (iii) the State Works Contractor's estimate of the Change Costs it or the Trustees will incur, or the Change Savings the State Works Contractor or the Trustees will derive, by carrying out the proposed Change, substantiated (to the full extent possible) with a detailed breakdown;
  - (iv) the effect of the proposed Change on the Asset Trustee's Activities, the SWC's Activities and the Project Trustee's Activities;
  - (v) the time within which the proposed Change will be implemented and the manner in which the State Works Contractor proposes to implement (or procure the implementation of) the Change;

- (vi) the effect of the proposed Change on the Overall D&C Program, the Rozelle Interface Milestone Dates, the Date for Rozelle Interface Works Completion, the Date for Opening Completion and the Date for Completion; and
  - (vii) the effect the State Works Contractor anticipates the Change will have on the functionality or integrity of the elements of the Asset Trustee's Activities, the SWC's Activities and the Project Trustee's Activities, the Project Works, the Temporary Works and the Asset Renewal and the quality or performance standards required by this deed and the Project Deed, including specific details of:
    - (A) the elements of the Asset Trustee's Activities, the SWC's Activities, the Project Trustee's Activities, the Project Works, the Temporary Works and the Asset Renewal that will be affected;
    - (B) how and to what extent the functionality or integrity of those elements will be affected;
    - (C) the quality or performance standards affected and how and to what extent they will be affected;
    - (D) any adverse effect which the Change will have on the ability of the State Works Contractor to satisfy its obligations under this deed or a Trustee to satisfy its obligations under the Project Deed (including any warranties the State Works Contractor is required to give under this deed or a Trustee is required to give under the Project Deed); and
    - (E) any adverse effect which the Change will have on the Trustees' ability to achieve Final Handover in accordance with the requirements of the Project Deed.
- (b) If the State Works Contractor proposes a Change under this section 2.2, the State Works Contractor will, if required by RMS, give to RMS:
- (i) a written statement from the State Works Contractor and, if applicable, the Asset Trustee stating that the proposed Change:
    - (A) will not adversely affect the functional integrity of any of the elements of the Asset Trustee's Activities, the Project Trustee's Activities, the SWC's Activities, the Project Works, the Temporary Works and the D&C Phase Maintenance and the performance standards required by this deed and the Project Deed; and
    - (B) will not adversely affect the quality standards, warranties and other obligations required under this deed or the Project Deed;
  - (ii) a written statement confirming that the State Works Contractor and/or a Trustee has appropriate financial and technical resources to undertake the proposed Change; and
  - (iii) any other information and supporting documentation RMS's Representative reasonably requires.

### 2.3 **RMS may approve or reject**

- (a) Subject to section 2.3(b), RMS:
  - (i) (in its absolute discretion) may, by notice in writing, approve (with or without conditions) or reject any Change the State Works Contractor proposes; and
  - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the State Works Contractor or the Trustees.
- (b) If, prior to the Date of Opening Completion:
  - (i) an event or circumstance occurs which prevents the Asset Trustee from achieving a Rozelle Interface Milestone, Rozelle Interface Works Completion, Opening Completion or Completion, other than an event or circumstance arising as a consequence of:
    - (A) a Trustee's or the State Works Contractor's failure to comply with its obligations under a Project Document;
    - (B) a breach by a Trustee or the State Works Contractor of its warranties under a Project Document;
    - (C) a wrongful act or omission of a Trustee, the State Works Contractor or any of their respective Related Parties; or
    - (D) a failure by a Trustee, the State Works Contractor or any of their respective Related Parties to comply with any Law; and
  - (ii) the State Works Contractor proposes a Change to the SWTC pursuant to section 2.2 to enable the State Works Contractor to complete the Project Works at the State Works Contractor 's cost and risk,  
  
then RMS must act reasonably in considering the proposed Change.
- (c) Prior to giving any notice under section 2.3(d), RMS's Representative may seek to negotiate with the State Works Contractor over the amount of the Change Costs or Change Savings arising from the proposed Change. If the parties agree the amount of the Change Costs or Change Savings arising from the proposed Change, the State Works Contractor's notice will be deemed to be amended by the inclusion of this different amount of Change Costs or Change Savings in place of the original Change Costs or Change Savings notified by the State Works Contractor.
- (d) If RMS approves a Change proposed by the State Works Contractor:
  - (i) RMS will issue a written notice entitled "Change Order";
  - (ii) the State Works Contractor must thereafter implement (or procure the implementation of) the Change on the basis approved by RMS; and
  - (iii) the State Works Contractor obligations under this deed, and the Trustees' obligations under the Project Deed, will be varied in each case to the extent specified in the State Works Contractor's notice issued under section 2.2(a) and approved by RMS.

#### 2.4 **State Works Contractor risk**

Unless otherwise agreed in writing by RMS, the State Works Contractor will:

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

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

If the State Works Contractor implements a Change under clause 7 after the Date of Completion, the State Works Contractor must:

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

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

**EXECUTED** as a deed.

The Seal of Roads and Maritime Services was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the *Transport Administration Act 1988* (NSW):

---

Signatory Name

**EXECUTED** by **WCX STATE WORKS  
CONTRACTOR PTY LTD (ACN 624 154  
089)** in accordance with section 127(1) of  
the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name