



Rozelle Interchange and Western Harbour Tunnel Enabling Works Design and Construction Deed

Transport for NSW
(ABN 18 804 239 602)

and

CPB Contractors Pty Limited
(ABN 98 000 893 667)

and

John Holland Pty Ltd
(ABN 11 004 282 268)

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	16
1.1 Definitions	16
1.2 Interpretation.....	81
1.3 Contra proferentem	83
1.4 Business Day	83
1.5 Certification	84
1.6 Ambiguous terms.....	84
1.7 Order of precedence.....	84
1.8 Severability.....	85
1.9 Electronic file	85
2. D&C DOCUMENTS	85
2.1 Consent or Approvals	85
2.2 Scope of Works and Technical Criteria	86
3. NOT USED	86
4. PROJECT RISKS	86
5. CONDITIONS PRECEDENT	88
5.1 Commencement of obligations.....	88
5.2 Satisfaction of conditions precedent	88
5.3 Target Satisfaction Date	88
5.4 Legal opinions	88
6. PLANNING APPROVAL	88
7. COMPLIANCE WITH LAW AND APPROVALS	89
7.1 Compliance with Law.....	89
7.1A M4 Planning Approvals and M5 Planning Approvals.....	89
7.2 Consents and Approvals	90
7.3 Modification Application Documents	91
7.4 Planning Approval Change Events	92
7.4A Modifications to the Planning Approvals	93
7.4B Spoil Movement.....	94
7.5 Environmental assessment.....	96
7.5A [REDACTED].....	97
7.6 IPIAP Decisions	103
8. RELATIONSHIP OF THE PRINCIPAL AND THE CONTRACTOR.....	103
8.1 Principal's Representative and Principal Surveillance Officer	103
8.2 Contractor's representatives.....	105
8.3 Authorities	105
8.4 Senior Project Group	106
8.5 Project Group.....	107
8.6 The Principal's action.....	107
8.7 Document management and transmission.....	107
8.8 Construction Site meetings	108
8.9 Project Design Group	109
8.10 Completion Working Group	110
8.11 No legal effect.....	111
9. CONTRACTOR'S FUNDAMENTAL OBLIGATIONS	111

9.1	Contractor's general obligations.....	111
9.2	Subcontracts.....	113
9.3	Utility Services	116
9.4	Long service levy	116
9.5	Project Plans	116
9.6	Control of traffic	117
9.7	Principal contractor	120
9.8	Work health and safety.....	126
9.9	Project WHS Management Plan	128
9.10	Site induction	129
9.11	Community relations	129
9.12	Environmental Requirements.....	129
9.13	Not used.....	129
9.14	Not used.....	129
9.15	Aboriginal participation in construction	129
9.15A	Heavy Vehicle National Law.....	131
9.16	Management of customers, stakeholders and other affected parties	134
9.17	Existing Operations	136
9.18	Third Party Agreements.....	137
9.19	Personnel	138
9.20	WestConnex AIP Plan	139
9.21	Media events.....	139
10.	SECURITY	140
10.1	Provision of Security Bonds for the Project Works (Rozelle Interchange) ..	140
10.1A	Provision of Security Bonds for the WHT Southern Tunnel Works	141
10.2	Release of Security Bonds for the Project Works (Rozelle Interchange)	141
10.2A	Release of Security Bonds for the WHT Southern Tunnel Works	142
10.3	Recourse to Security Bonds.....	143
10.4	Replacement of Security Bonds	144
10.5	No injunction.....	145
10.6	Replacement of Security Bond for the Project Works (Rozelle Interchange) – Further Defects Correction Periods	145
10.6A	Replacement of Security Bond for the WHT Southern Tunnel Works – Further Defects Correction Periods	146
10.7	D&C Guarantee	147
10.8	Letter of Affirmation.....	147
11.	ACCESS AND CONSTRUCTION SITE	147
11.1	Access.....	147
11.2	Mitigation	149
11.2A	Access to Other WestConnex Assets or Systems	149
11.2B	Access to Main Tunnel	151
11.2C	Access to Western Harbour Tunnel and access to Construction Site by WHT Contractor	152
11.3	Property Works.....	153
11.4	Extra Land	155
11.5	Access and inspection by the Principal	156
11.6	Physical conditions.....	158
11.7	Information Documents	160
11.7A	Principal Geotechnical Data	163
11.8	Artefacts.....	165
11.9	Native Title Claim	165
11.10	Contamination.....	166

11.11	Environmental Representative (Rozelle Interchange) and Environmental Representative (WHT)	168
11.12	Unknown Site Conditions	169
11.13	Fixings and penetrations.....	171
11A	WESTCONNEX ROAD NETWORK INTEGRATION	171
11A.1	Stage 3 Integration Sites.....	171
11A.2	Stage 3 Integration Site Defect	172
11A.3	Main Tunnel Works	176
11A.4	Western Harbour Tunnel.....	177
11A.5	WHT ASSET MANAGER	181
11B	WESTCONNEX OPERATIONAL INTEGRATION	182
11B.1	Purpose of integration	182
11B.2	Integration Works.....	182
11B.3	Assets or Systems Design Specification and Documentation.....	182
11B.4	WestConnex System Defects.....	184
11C.1	LIABILITY WHERE CONTRACTOR'S ACTIVITIES CAUSE ANY ADVERSE EFFECT ON AN OTHER WESTCONNEX ASSET OR SYSTEM OR A MOTORWAY	187
11C.2	LIABILITY WHERE CONTRACTOR'S ACTIVITIES CAUSE ANY ADVERSE EFFECT ON THE WESTERN HARBOUR TUNNEL.....	188
11D	CRITICAL OPERATIONAL EQUIPMENT AND SYSTEMS	189
11D.1	Integration Works carried out on a COES	189
11D.2	COES Modification Proposal.....	189
11D.3	COES Modification Readiness Review.....	190
11D.4	Revised COES Modification Proposal	191
11D.5	COES Temporary Disruption Proposal	192
12.	QUALITY.....	193
12.1	Quality Management System.....	193
12.1A	Additional testing.....	193
12.2	Access to information	194
12.3	D&C Independent Certifier	194
12.3A	WHT Independent Certifier.....	196
12.4	Replacement of the D&C Independent Certifier or the WHT Independent Certifier.....	199
12.5	No relief from obligations.....	199
12.6	Monitoring and audits by the Principal's Representative	199
12.7	Proof Engineers	200
12.8	Independent Checking Engineers	201
13.	DESIGN AND DESIGN DOCUMENTATION.....	203
13.1	Design development.....	203
13.2	Design obligations.....	204
13.3	Preparation of Design Documentation.....	209
13.4	Change in Codes and Standards	212
14.	CHANGES	213
14.1	Either party may propose a Change	213
14.2	Pre-Agreed Changes.....	214
14.2A	Water Treatment	215
14.3	Payment for Changes	215
14.4	Contractor's entitlements.....	216

14.5	Approvals for Changes.....	217
14.6	Amendments to the Technical Requirements	217
15.	CONSTRUCTION	219
15.1	Construction	219
15.2	Performance of Contractor's Activities	221
15.3	Training management – Project Works (Rozelle Interchange)	222
15.3A	Training Management – WHT Southern Tunnel Works.....	222
15.4	Cleaning up.....	223
15.5	Signage.....	223
15.6	Work methods.....	224
15.7	As constructed documentation and reports.....	224
15.8	Spare Parts.....	224
15.9	Warranties by others.....	226
15.10	Preferred suppliers and products.....	226
16.	TIME AND COMPLETION.....	226
16.1	Start and progress.....	226
16.2	Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works), Date for Final Completion and Sunset Dates	227
16.3	Contractor's programming obligations	227
16.4	Risk and notice of delay.....	229
16.4A	Acceleration by direction.....	230
16.5	Delay	230
16.6	Corrective action plan.....	232
16.7	Claim for extension of the Dates for WHT Interface Milestone Completion, WHT Southern Tunnel Design Milestone Completion, Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works) and the Date for Final Completion	233
16.8	Extension of the Dates for WHT Interface Milestones Completion, Dates for WHT Southern Tunnel Design Milestones Completion, Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works) and Date for Final Completion	234
16.9	Compensation Events.....	235
16.10	Liquidated Damages.....	237
16.10A	WHT Incentive Payments	241
16.10B	WHT EARLY COMPLETION PAYMENT	242
16.11	Process for WHT Interface Milestone Completion, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion 242	
16.11A	Process for WHT Southern Tunnel Design Milestone Completion.....	245
16.12	Effect of a Notice of WHT Interface Milestone Completion, WHT Southern Tunnel Design Milestone Completion, Notice of Opening Completion, Notice of Completion, Notice of Completion (WHT Southern Tunnel Works) and Notice of Final Completion	245
16.13	Defects or omissions	246
16.14	Opening of the Rozelle Interchange Works after Opening Completion	246
16.15	Early completion of part of Project Works	246
16.16	Occupation and use of partially completed WHT Southern Tunnel Works..	247
17.	DEFECTS CORRECTION PERIODS.....	249
17.1	Correction of Defects.....	249
17.2	Principal's Direction.....	249

17.3	Correction of Defects.....	251
17.4	Rectification by others.....	252
17.5	Rozelle Interchange Works.....	253
17.5A	WHT Interface Works and WHT Southern Tunnel Works.....	253
17.5B	WestConnex Disaster Recovery Site.....	254
17.6	Local Area Works.....	254
17.7	Utility Service Works.....	255
17.8	Property Works.....	256
17.9	Failure by the Contractor to comply with direction.....	256
17.10	Rights not affected.....	256
17.11	Access for defects.....	256
17.12	Defects in D&C Phase Maintenance.....	258
17.13	Role of the D&C Independent Certifier and WHT Independent Certifier	258
17A	TRANSFER OF ROZELLE INTERCHANGE.....	258
17A.1	Rozelle Interchange Transfer Date.....	258
17A.2	Collateral Warranty Deed.....	259
17A.3	IFC Drawings.....	261
17A.4	Principal Retained Works.....	261
17A.5	Principal release.....	261
17A.6	Connections to the Rozelle Interchange.....	262
17A.7	262
18.	ROZELLE INTERCHANGE LEASE.....	262
18.1	Rozelle Interchange Lease.....	262
18.2	Easements.....	263
19.	OPERATION, MAINTENANCE AND REPAIR.....	263
19.1	Maintenance during construction.....	263
19.2	O&M Manuals.....	264
19.3	Cableways.....	265
19.4	O&M Contractor and WHT Asset Manager.....	265
20.	REPORTING AND NOTICES.....	266
20.1	Accounting and financial reporting.....	266
20.2	Copies of notices.....	266
20.3	Advice regarding rights.....	266
21.	PAYMENT.....	267
21.1	General.....	267
21.1A	Initial Payment.....	267
21.2	Payment Claims for Project Works, Temporary Works and Post Completion Activities.....	269
21.2A	Provisional Sum Work.....	271
21.3	Payment Statements for Project Works, Temporary Works and Post Completion Activities.....	272
21.4	Tax invoice for the Project Works, Temporary Works and/or Post Completion Activities.....	274
21.5	Payment of the instalment Payment Amount.....	274
21.6	Final Payment Claim for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange).....	275
21.6A	Final Payment Claim for the WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities.....	275
21.7	Final Payment Statement for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange).....	275

21.7A	Final Payment Claim for the WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities	276
21.8	Final tax invoices	276
21.9	Final payments	276
21.10	Net amount due from the Contractor to the Principal	277
21.11	Payment is not acceptance of the Project Works, Temporary Works or Post Completion Activities	277
21.12	Correction of Payment Statements	277
21.13	Payment for Key Plant and Equipment	277
21.14	Unfixed or offsite Materials	279
21.15	Payment of subcontractors	280
21.16	Security of Payment Act	280
21.17	Set-off and retention	281
21.18	Suspension for non-payment	283
21.19	Passing of Title in the Project Works, the Temporary Works and Post Completion Activities	283
22.	TRANSPORT NETWORK MANAGEMENT	283
22.1	No restrictions on the Principal or SMC	283
23.	INTERFACES	284
23.1	Tolling Equipment Works Subcontract	284
23.1A	IOMCS and OMCS Works Subcontract	285
23.2	Tolling Interface Deed	286
23.3	Western Harbour Tunnel – Rozelle Interchange Interface Deed	286
23.4	Interfaces	286
23.5	Contractor Cooperation and Integration Deed	287
23.6	Coordination Committee	288
24.	RATES, TAXES AND GST	288
24.1	Rates and Taxes	288
24.2	GST	288
25.	CHANGES IN LAW	290
25.1	No claim unless Qualifying Change in Law	290
25.2	Change in Law prior to Opening Completion or Completion (WHT Southern Tunnel Works)	291
26.	LOSS OR DAMAGE AND INSURANCE	291
26.1	Risk of loss or damage	291
26.2	Certain third party claims	292
26.3	Insured Liability	293
26.4	Damage to third party property	293
26.5	Project Insurances	294
26.6	Premiums	295
26.7	Dealing with claims	295
26.8	Insurance proceeds	295
26.9	Reinstatement	296
26.10	Direction by the Principal to reinstate to different specifications	297
26.11	Procedure for Third Party Claims	297
26.12	Force Majeure Event	298
26.13	Uninsurable Risks	299
27.	INDEMNITY AND LIABILITY EXCLUSIONS	300
27.1	Indemnity from the Contractor	300

27.2	Exclusions from indemnity	300
27.3	Consequential Loss	301
27.4	No circularity.....	303
27.5	Mitigation	303
28.	CAP ON LIABILITY.....	304
28.1	Liability cap (general).....	304
28.2	Exclusions to the General Cap (Rozelle Interchange) and General Cap (WHT Southern Tunnel Works)	307
29.	INTELLECTUAL PROPERTY	308
29.1	Licence of Intellectual Property Rights	308
29.2	Warranty	311
29.3	Contractor to procure for the Principal	312
29.4	Moral rights	314
29.5	Escrow Agreement	315
29A	FINANCIAL REPORTING AND NOTIFICATIONS	315
29A.1	Financial Reporting	315
29A.2	Financial Assessment	316
30.	CONFIDENTIALITY, PUBLICITY AND PRIVACY	319
30.1	General restriction	319
30.2	Exceptions	320
30.2A	Third Party Confidential Information.....	321
30.3	Publicity	321
30.4	Disclosure by the Principal	321
30.5	Privacy	322
31.	DEFAULT AND TERMINATION	323
31.1	Events of Default	323
31.2	Notice of default	324
31.3	Step-in by the Principal	325
31.4	Termination by the Principal.....	326
31.5	Termination for Final Determination	330
31.6	Termination by the Contractor.....	331
31.7	Termination for Uninsurable Force Majeure Event	331
31.8	Termination for convenience	331
31.8A	Termination in connection with a Force Majeure event.....	332
31.9	Suspension of termination notice	332
31.10	Termination payments.....	333
31.11	Power of Attorney	335
32.	DISPUTE RESOLUTION	335
33.	FORCE MAJEURE.....	335
33.1	Force Majeure notice	335
33.2	Meeting	336
33.3	Suspension of obligations	336
33.4	Duty to remedy Force Majeure	337
34.	EXPIRATION.....	337
34.1	Design Life.....	337
35.	REPRESENTATIONS, WARRANTIES AND COVENANTS	338
35.1	Representations and warranties by the Contractor	338

35.2	Representations and warranties by the Principal	338
36.	AMENDMENTS TO OTHER D&C DOCUMENTS.....	339
36.1	Variations to this deed.....	339
36.2	Amendments to other D&C Documents.....	339
37.	ASSIGNMENT AND CHANGE IN CONTROL	340
37.1	Entitlement to assign	340
37.2	Change in Control of the Contractor	341
37.3	Change in Control of the Contractor Guarantor	342
37.4	Restructure Event.....	343
38.	EXPENSES AND STAMP DUTIES	343
38.1	Expenses.....	343
38.2	Stamp duties.....	343
39.	NOTIFICATION OF CLAIMS.....	343
39.1	Notice of Change	343
39.2	Notice of other Claims	345
39.3	Prescribed notices.....	345
39.4	Continuing events.....	346
39.5	Bar	346
39.6	Other provisions unaffected	347
39.7	Payments by the Principal.....	347
40.	NSW CODE OF PRACTICE.....	347
40.1	NSW Code and NSW Guidelines	347
40.2	Primary Obligation	347
40.3	Access and information.....	348
40.4	Sanctions.....	348
40.5	Compliance.....	349
40.6	Workplace Relations Management Plan	349
41.	PRINCIPAL'S REQUIREMENTS	349
41.1	Building Code	349
41.2	WHS Accreditation	351
41.3	Principal business ethics	352
41.4	National Construction Code.....	352
42.	NOTICES	352
42.1	How to give a notice	352
42.2	PDCS	353
42.3	Effectiveness of notices	353
42.4	When a notice is given	354
42.5	Address for notices	354
42.6	Communications by email.....	355
42.7	Communications by the PDCS	355
43.	GENERAL	356
43.1	Governing Law and jurisdiction	356
43.2	Cost.....	356
43.3	Taxes	356
43.4	Indemnities.....	356
43.5	Vienna Convention.....	357
43.6	Non reliance.....	357

43.7	Entire agreement.....	357
43.8	Counterparts.....	357
43.9	Unlimited discretion	357
43.10	Joint and several liability	358
43.11	No agency, partnership, joint venture or other fiduciary relationship	359
43.12	Waiver	359
43.13	Further acts and documents.....	359
43.14	Provisions limiting or excluding liability.....	359
43.15	Survival of certain provisions	359
43.16	PPS Act	360
43.17	Exclusion of proportionate liability scheme.....	361
43.18	Contractor not to apply proportionate liability scheme	361
43.19	Proportionate liability scheme - Subcontracts	361
43.20	Moratorium legislation	362
43.21	Interest.....	362
43.22	Approvals not to affect obligations	362

SCHEDULES

PART A – GENERAL

- 1 Conditions precedent
- 1A The Contractor’s obligations in respect of the Scope of Works and Technical Criteria
- 2 Commercially Sensitive Information
- 3 Dispute Resolution Procedure
- 4 Moral Rights Consent
- 4A Form of D&C Guarantee
- 4B Key Personnel
- 4C Significant Subcontracts
- 4D Form of Deed of Novation
- 4E Subcontractor Requirements
- 4F Letters of Affirmation
- 5 Escrow Agreement
- 5A COVID-19 Mitigation Measures

PART B - LAND, PROPERTY AND THIRD PARTY AGREEMENTS

- 6 Approvals
- 6A WHT Planning Approval
- 6B WHT Southern Tunnel Works Water Discharge
- 7 Environmental Requirements
- 8 Terms of Access
- 9 Property Owner's Certificate
- 10 Not used
- 11 Licensed Maintenance Areas
- 12 Requirements of Third Party Agreements
- 13 Variations to the Tunnel Substratum
- 14 Connections to the Rozelle Interchange
- 15 Not used
- 16 Project Group
- 17 Proof Engineer and Independent Checking Engineer

PART C - ADMINISTRATIVE

- 18 Project Plans
- 19 Not used
- 20 Quality Management
- 21 Change Procedure
- 22 Pre-Agreed Changes
- 23 Extension of Time Procedure
- 24 Conditions precedent to WHT Interface Milestone Completion, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion
- 24A Post Completion Activities
- 25 Contractor's Certificate
- 26 Independent Certifier's Certificate
- 27 Form of Notice of WHT Southern Tunnel Design Milestone Completion

PART D - FINANCIAL

- 28 Consumer Price Index and Indexation
- 29 Lane Occupancy Fees
- 30 Project Insurances
- 31 Form of Unconditional Undertakings
- 31A D&C Payment Schedule
- 32 Key Plant and Equipment
- 32A Unfixed or offsite Materials
- 32B Payment Claim for Project Works, Temporary Works and Post Completion Activities
- 32C Certificate of value for Project Works, Temporary Works and Post Completion Activities
- 32D Form of Payment Statement for Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange)
- 32E Statutory Declaration (Employees and Subcontractors)
- 32F Not used
- 32G Subcontractors Proof of Payment Procedure
- 33 Financial Reporting Form
- 34 Delay Cost Caps

PART E – TECHNICAL

35	Spares List
36	Key Other WestConnex Assets or Systems
37	Rozelle Interface Milestones
37A	WHT Interface Milestones
37AA	WHT Southern Tunnel Design Milestones
37B	Main Tunnel Contractor Systems Design Information
38	Main Tunnel Assets or Systems Design Specification
39	Critical Operational Equipment and Systems
40	Heavy Vehicle National Law Requirements
41	Principal Geotechnical Data
42	Principal Retained Works
43	Preferred Suppliers and Products
44	Existing Assets

EXHIBITS

- A Rozelle Interchange D&C Independent Certifier Deed
- B Deed of Disclaimer
- C Third Party Agreements
- D Deed of Appointment of Environmental Representative (Rozelle Interchange)
- E Overall D&C Program (Rozelle Interchange), Overall D&C Program (WHT Southern Tunnel Works) and Supporting Information
- F Insurance Policies
- G Information Documents
- H Site Access Schedule
- I Scope of Works and Technical Criteria
- J Declaration of Compliance
- K Tolling Interface Deed
- L WestConnex AIP Plan
- M Not used
- N Stage 3 Integration Site Agreed Condition Specification
- O Collateral Warranty Deeds
- P Contractor Cooperation and Integration Deed
- Q Western Harbour Tunnel – Rozelle Interchange Interface Deed
- R WHT Independent Certifier Deed

THIS DEED is made on

BETWEEN:

- (1) **Transport for NSW (ABN 18 804 239 602)** a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (the **Principal**); and
- (2) **CPB Contractors Pty Limited (ABN 98 000 893 667)** of Level 18, 177 Pacific Highway, North Sydney NSW 2060 and **John Holland Pty Ltd (ABN 11 004 282 268)** of Level 5, 380 St Kilda Road Melbourne VIC 3004 (together, the **Contractor**).

RECITALS:

- (A) The Principal is a statutory body representing the Crown in the right of the State of New South Wales.
- (B) The Principal, the Project Trustee and the Asset Trustee have entered into the Project Deed. The Project Deed sets out the terms on which, among other things:
 - (1) the Principal will:
 - (i) procure the investigation, funding, planning, design and construction and commissioning of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange); and
 - (ii) handover the Rozelle Interchange to the Project Trustee on the Rozelle Interchange Transfer Date; and
 - (2) the M4-M5 Link Concessionaires will carry out:
 - (i) the operation, maintenance and repair of the Rozelle Interchange;
 - (ii) the handover of the Rozelle Interchange to the Principal at the end of the term of the Project Deed; and
 - (iii) the levying and collection of tolls.
- (C) The overall strategic objectives of the NSW Government and the Principal for the Rozelle Interchange, as part of the WestConnex Program of Works, are:
 - (1) to provide a high standard access controlled motorway that integrates with the regional transport network;
 - (2) to minimise adverse social and environmental impacts in the local area during construction and operation;
 - (3) to ensure the Rozelle Interchange is safe and reliable for road users;
 - (4) that the Project Works (Rozelle Interchange) and the Rozelle Interchange will demonstrate excellence in design and environmental sustainability; and
 - (5) that the Project Works (Rozelle Interchange) and the Rozelle Interchange will be economically justified and affordable to government and that Opening Completion and Completion of the Project Works (Rozelle Interchange) will be achieved on time and on budget.
- (D) The Principal is also procuring the Western Harbour Tunnel and Beaches Link Program (**WHTBL Program**) on behalf of the NSW Government and the people of New South Wales and the WHT Southern Tunnel Works are a critical component of the WHTBL Program.

- (E) The Contractor will be required to integrate the WHT Southern Tunnel Works with the works being delivered by the WHT Contractor and the successful completion of the WHT Southern Tunnel Works will require a high level of co-operation and collaboration between the Contractor, the WHT Contractor and the Principal.
- (F) The Principal wishes to engage the Contractor to design, construct and complete the Project Works in accordance with the terms of this deed.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed.

ABC Commissioner means the commissioner of the ABCC referred to in subsection 15(1) of the BCIIIP Act.

Accrued Liability (Rozelle Interchange) means the liability of the Contractor to the Principal, its Related Parties, the D&C Independent Certifier and the Environmental Representative (Rozelle Interchange) which arises:

- (a) under this deed and any other D&C Document;
- (b) in tort (including negligence or otherwise);
- (c) under any statute; or
- (d) otherwise at Law or in equity,

which:

- (e) arises out of or in connection with the performance of the Contractor's Activities (Rozelle Interchange) and any other obligation under any D&C Document to the extent relevant to the Contractor's Activities (Rozelle Interchange); and
- (f) is paid or otherwise satisfied by the Contractor before the Date of Completion,

except in the case of clause 17A.5(b)(i), excluding any liability that, pursuant to clause 28.2, is excluded from or not limited by the General Cap (Rozelle Interchange) which applies under clause 28.1.

ACICA means the Australian Centre for International Commercial Arbitration.

Act of Prevention means:

- (a) a breach of this deed by the Principal, excluding a failure by the Principal to grant the Contractor access to:
 - (i) a Stage 3 Integration Site by the relevant date for access specified in the Site Access Schedule; or
 - (ii) a M4 Integration Site or M5 Integration Site by the relevant date for access specified in the Site Access Schedule;

- (b) an act or omission by the Principal or its Related Parties, not being an act or omission:
 - (i) expressly permitted, allowed or required by this deed, including any Direction given by the Principal or the Principal's Representative (other than a matter referred to in paragraph (c) of this definition);
 - (ii) which is carried out within the timeframe expressly permitted or allowed by this deed (other than a matter referred to in paragraph (c) of this definition);
 - (iii) to the extent the act or omission is caused or contributed to by a breach by the Contractor of this deed or any negligent or unlawful act or omission of the Contractor or its Related Parties;
 - (iv) required in order to comply with any Law; or
 - (v) being the exercise by the Principal of any of its functions and powers pursuant to, or required in order to comply with, any Law; and
- (c) a Change the subject of a Direction by the Principal's Representative, other than:
 - (i) a Change approved by the Principal under section 2.3 of the Change Procedure; and
 - (ii) a Change which is deemed to have occurred under clause 7.4(a), 25.2(b) or 26.12(a), is required under clause 11.7A(f), is proposed under clause 11.10(c)(ii) or is directed under clause 11.12(e), 13.4(a)(ii)(B) or 26.13(d).

Additional Foundational Documents means any other Design Documentation as may be directed by the Principal when issuing a Direction under clause 13.3(g)(i).

Affected Party has the meaning given to that term in clause 33.1(a).

Agreed Amount has the meaning given to that term in clause 24.2(b)(i).

Amendment has the meaning given to that term in clause 36.2(a).

Amendment Date means the date on which all conditions precedent in the Deed of Amendment and Restatement are satisfied or waived.

APIC Policy means:

- (a) in relation to the Project Works (Rozelle Interchange), the NSW Government Policy on Aboriginal Participation in Construction (May 2015, updated August 2016); and
- (b) in relation to the WHT Southern Tunnel Works, the NSW Government Aboriginal Procurement Policy (January 2021), as amended or updated from time to time.

Approval means any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Law, or any requirement made under any Law which must be obtained or satisfied (as the case may be):

- (a) to perform the Contractor's Activities;
- (b) in connection with the Rozelle Interchange, the Construction Site, any Extra Land, the Project Works or the Maintenance Site;

(c) for the use and occupation of the Project Works (Rozelle Interchange) after Opening Completion or Completion and for the use and occupation of the WHT Southern Tunnel Works after Completion (WHT Southern Tunnel Works) or Final Completion (as applicable); or

(d) otherwise to comply with Law,

including:

(e) the Planning Approvals; and

(f) any Environment Protection Licence issued in relation to the Contractor's Activities,

but not including:

(g) any Direction given by the Principal or the Principal's Representative pursuant to this deed;

(h) the exercise by the Principal of its rights under this deed; or

(i) any requirement by a person carrying out Existing Operations.

Approved Insurer means:

(a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia with a rating specified in paragraph (e) of this definition;

(b) Lloyds Underwriters;

(c) an iCare managed statutory insurance scheme or a Treasury Managed Fund insurance scheme with the NSW State Government;

(d) the Comcover insurance scheme for the Australian Federal Government; or

(e) an insurer with a rating of not less than A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc or such other rating approved by the Principal (which approval shall not be unreasonably withheld or delayed).

Approved Project Works Traffic Management Plans has the meaning given to that term in clause 9.6(a)(vi).

Artefacts means any and all:

(a) valuable minerals, fossils or coins;

(b) articles or objects of value or antiquity; or

(c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest.

Asset Items has the meaning given to that term in the SWTC.

Asset Renewal means the replacement and refurbishment of an asset item on the Motorway from time to time.

Asset Trustee means WCX M4-M5 Link AT Pty Limited (ACN 624 153 742) in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Asset Trust (ABN 18 934 919 866) of Level 33, 259 George Street, Sydney, New South Wales, 2000.

Ausgrid Relocation Deed means the agreement entered into between Ausgrid (ABN 67 505 337 385) and the Principal entitled "Network Assets Relocation Deed", the form of which is included in Exhibit C.

Australian Building and Construction Commission or **ABCC** means the body referred to in subsection 29(2) of the BCIIP Act.

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, Utility Services, the Utility Service Works, the Local Areas or the Local Area Works.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a Law of the Commonwealth or any state to carry on banking business.

BBSY, for a period, means the rate expressed as a yield per cent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by 10.30 am then the BBSY will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

BCIIP Act means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Code means the *Code for the Tendering and Performance of Building Work 2016* (Cth) issued under section 34 of the BCIIP Act.

Building Contractor has the meaning given to that term in the BCIIP Act.

Building Industry Participant has the meaning given to that term in the BCIIP Act.

Building Work has the meaning given to that term in subsection 3(4) of the Building Code.

Business Day means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

Category 1 Temporary Works has the meaning given to that term in section 3 of the Contractor Documentation Schedule.

Category 2 Temporary Works has the meaning given to that term in section 3 of the Contractor Documentation Schedule.

Category 3 Temporary Works has the meaning given to that term in section 3 of the Contractor Documentation Schedule.

Category 1 Temporary Works Design Documentation has the meaning given to that term in section 3 of the Contractor Documentation Schedule.

Category 2 Temporary Works Design Documentation has the meaning given to that term in section 3 of the Contractor Documentation Schedule.

Category 3 Temporary Works Design Documentation has the meaning given to that term in section 3 of the Contractor Documentation Schedule.

CCCC means China Communications Construction Company Limited of Building A, No. 85, Deshengmenwai Street, Beijing-100088, China.

Chain of Responsibility Guideline means Attachment 1 of Schedule 40.

Chain of Responsibility Management Plan or **CoR Management Plan** means the plan to be delivered by the Contractor in accordance with the requirements of the Schedule 40 and this deed.

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle National Law under which the Contractor or its Subcontractors are "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

Change means any change or variation to the Project Works, the Temporary Works, the Contractor's Activities or the D&C Phase Maintenance 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 Project Works, the Temporary Works, the Contractor's Activities 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); and
- (b) a reasonable amount on account of the off-site overheads and profit margin of the Contractor (which together, will be equal to the D&C Margin unless otherwise agreed by the parties),

after deducting Change Savings arising from the Change.

Change in Codes and Standards means a change in Codes and Standards which takes effect:

- (a) in respect of the Contractor's Activities (Rozelle Interchange), after the date of this deed and prior to the Date of Opening Completion; and
- (b) in respect of the Contractor's Activities (WHT Southern Tunnel Works), after the Amendment Date and prior to the Date of Completion (WHT Southern Tunnel Works),

other than a change in Codes and Standards that, on or before the date of this deed or, in respect of the Contractor's Activities (WHT Southern Tunnel Works, on or before the Amendment Date):

- (c) has been published or publicly notified; or

- (d) a contractor experienced and competent in the design and construction of works and services similar to the Project Works or the Temporary Works would have foreseen or anticipated.

Change in Control means, in respect of an entity, the occurrence of any event which results in a change in the Control of that entity.

Change in Environmental Law means:

- (a) a change in an Environmental Law existing at the Effective Date applicable to the relevant Project Works or Contractor's Activities;
- (b) the enactment or making of a new Environmental Law after the Effective Date applicable to the relevant Project Works or Contractor's Activities; or
- (c) a change in the way an Environmental Law is applied, or in the interpretation of an Environmental Law, after the Effective Date applicable to the relevant Project Works or Contractor's Activities,

which:

- (d) requires a Change; and
- (e) is not in substantially the same form as a bill introduced or tabled in the parliament of the Commonwealth or the State of New South Wales prior to the Effective Date applicable to the relevant Project Works or Contractor's Activities.

Change Order means a notice given by the Principal 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 21.

Change Proposal means a notice given by the Principal 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); and
- (b) except in respect of any Change Savings which remain after the Change Savings for the Change are deducted from the Change Costs, a reasonable amount on account of off-site overheads and profit margin of the Contractor (which, together, will be equal to the D&C Margin unless otherwise agreed by the parties).

CIMIC Group means CIMIC Group Limited (ABN 57 004 482 982).

CIMIC Group's Website means CIMIC's Group's publicly available website address, being <https://www.cimic.com.au/>.

Claim includes any claim, action, demand or proceeding for payment of money (including damages or an increase in the D&C Deed Sum (Rozelle Interchange) or D&C Sum (WHT Southern Tunnel Works)) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, this deed;

- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Project Works, the Temporary Works, the D&C Phase Maintenance, the Contractor's Activities or any party's conduct prior to the date of this deed; or
- (c) otherwise at Law including:
 - (i) under or for breach of any statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution including restitution based on unjust enrichment.

Clean Energy Regulator means the "Clean Energy Regulator" established under the *Clean Energy Regulator Act 2011* (Cth).

Codes and Standards means all codes, standards, specifications and guidelines referred to in the SWTC.

COES Modification means any permanent modification, disruption or interference to a COES.

COES Modification Proposal means a proposal for a COES Modification which complies with the requirements of clause 11D.2.

COES Modification Readiness Review has the meaning given to that term in clause 11D.3(a).

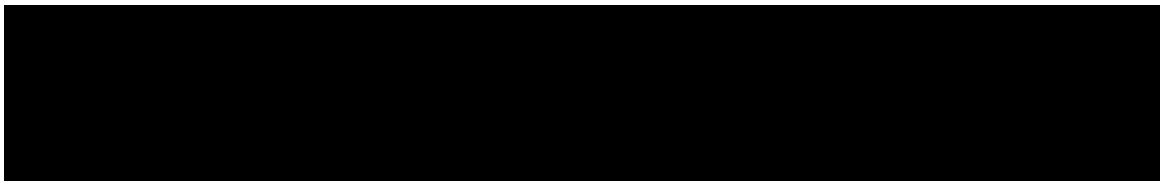
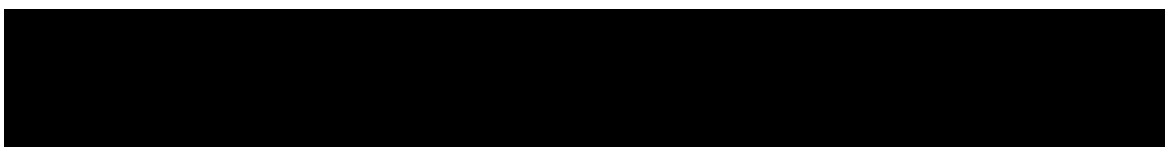
COES Temporary Disruption means any temporary modification, disruption or interference to a COES.

COES Temporary Disruption Proposal means a proposal for a COES Temporary Disruption which complies the requirements of clause 11D.5.

Collateral Warranty Deed means the deed titled "Rozelle Interchange and Western Harbour Tunnel Enabling Works – Collateral Warranty Deed" between the Contractor and the Asset Trustee substantially in the form set out in Part A of Exhibit O or such other form as is agreed by the parties in writing.

Collateral Warranty General Cap means ■% of the Transferred Works Price.

Collateral Warranty Guarantee means the deed of guarantee and indemnity dated on or about the date of the Collateral Warranty Deed given by the Contractor Guarantor to the Asset Trustee in respect of the obligations of the Contractor under the Collateral Warranty Deed substantially in the form set out in Schedule 2 of the Collateral Warranty Deed.



Commercially Sensitive Information means:

- (a) any information relating to the Contractor's cost structure or profit margins;
- (b) any information relating to any of the Contractor's Intellectual Property Rights; or
- (c) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Contractor,

which, in respect of the information contained in the D&C Documents, is the information described in Schedule 2.

Commonwealth means the Commonwealth of Australia.

Commonwealth Funded Building Work means the Building Work in items 1 to 8 of Schedule 1 of the Building Code.

Commonwealth Works means any Commonwealth Funded Building Work the Contractor is required to carry out under this deed.

Communications Strategy has the meaning given to that term in Appendix D.2 of the SWTC.

Compensation Event means a Compensation Event (Rozelle Interchange) or a Compensation Event (WHT Southern Tunnel Works), as the context requires.

Compensation Event (Rozelle Interchange) means the occurrence of any of the following events prior to the Date of Completion:

- (a) an Act of Prevention described in paragraph (a) of the definition of "Act of Prevention";
- (b) a Legal Challenge occurs and, as a consequence of that Legal Challenge, the Contractor is issued a stop work order by an Authority, or receives an order by a court or direction by the Principal's Representative, pursuant to clause 7.5(a) or clause 7.5(d) which requires that the Contractor suspend or cease to perform any or all of its obligations under this deed relevant to the Project Works (Rozelle Interchange or the Contractor's Activities (Rozelle Interchange)), other than due to:
 - (i) the Contractor's failure to comply with its obligations under a D&C Document;
 - (ii) a breach of the Contractor's warranties under clause 7.3(b);
 - (iii) a negligent or otherwise wrongful act or omission of the Contractor or any of its Related Parties; or
 - (iv) a failure by the Contractor or any of its Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation;
- (c) a Native Title Claim is made and, as a consequence of that Native Title Claim, the Contractor receives an order by a court or a direction by the Principal's Representative pursuant to clause 11.9(a) or clause 11.9(b), or is required at Law, to suspend or cease to perform any or all of its obligations under this deed relevant to the Project Works (Rozelle Interchange or the Contractor's Activities (Rozelle Interchange));

- (d) the Principal fails to grant the Contractor access to a M4 Integration Site or M5 Integration Site by the relevant date for access specified in the Site Access Schedule;
- (e) the Principal fails to grant the Contractor access to a Stage 3 Integration Site by the relevant date for access specified in the Site Access Schedule;
- (f) a "Compensation Event (Rozelle Interchange)" which occurs in accordance with clause 11A.2(g);
- (g) the Main Tunnel Contractor fails to achieve:
 - (i) a Rozelle Interface Milestone by the relevant Rozelle Interface Milestone Date;
 - (ii) Rozelle Interface Works Completion by the Date for Rozelle Interface Works Completion; or
 - (iii) Main Tunnel Opening Completion by the Main Tunnel Date for Opening Completion;
- (h) a "Compensation Event (Rozelle Interchange)" which occurs in accordance with clause 11B.4(f); and
- (i) the Contractor suspends performance of the Contractor's Activities (Rozelle Interchange) in accordance with clause 21.18.

Compensation Event (WHT Southern Tunnel Works) means the occurrence of any of the following events prior to the Date of Final Completion:

- (a) an Act of Prevention described in paragraph (a) of the definition of "Act of Prevention";
- (b) a Legal Challenge occurs and, as a consequence of that Legal Challenge, the Contractor is issued a stop work order by an Authority, or receives an order by a court or direction by the Principal's Representative, pursuant to clause 7.5(a) or clause 7.5(d) which requires that the Contractor suspend or cease to perform any or all of its obligations under this deed relevant to the WHT Southern Tunnel Works or the Contractor's Activities (WHT Southern Tunnel Works)), other than due to:
 - (i) the Contractor's failure to comply with its obligations under a D&C Document;
 - (ii) a breach of the Contractor's warranties under clause 7.3(b);
 - (iii) a negligent or otherwise wrongful act or omission of the Contractor or any of its Related Parties; or
 - (iv) a failure by the Contractor or any of its Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation;
- (c) a Native Title Claim is made and, as a consequence of that Native Title Claim, the Contractor receives an order by a court or a direction by the Principal's Representative pursuant to clause 11.9(a) or clause 11.9(b), or is required at Law, to suspend or cease to perform any or all of its obligations under this deed relevant to the WHT Southern Tunnel Works or the Contractor's Activities (WHT Southern Tunnel Works));
- (d) the Contractor suspends performance of the Contractor's Activities (WHT Southern Tunnel Works) in accordance with clause 21.18;

(e) a [REDACTED]; and

(f) a [REDACTED].

Completion means the stage in the execution of the Contractor's Activities (Rozelle Interchange) when the Contractor has satisfied all the conditions precedent to completion of the Contractor's Activities (Rozelle Interchange) set out in Part B of Schedule 24 but, for the avoidance of doubt, does not require Completion (WHT Southern Tunnel Works) or Final Completion to have occurred.

Completion (WHT Southern Tunnel Works) means the stage when:

- (a) the WHT Southern Tunnel Works are complete in accordance with this deed except for:
 - (i) minor Defects which:
 - (A) do not prevent the WHT Southern Tunnel Works from being reasonably capable of being used for their intended purpose;
 - (B) can be corrected without prejudicing the convenient or intended use of the WHT Southern Tunnel Works; and
 - (C) the Contractor has reasonable grounds for not promptly rectifying; and
 - (ii) the elements of the WHT Southern Tunnel Works described in Part D of Schedule 24 titled "Conditions Precedent to Final Completion"; and
- (b) the Contractor has satisfied each of the conditions precedent to Completion (WHT Southern Tunnel Works) set out in Part C of Schedule 24,

but, for the avoidance of doubt, does not require Opening Completion or Completion to have occurred.

Completion Working Group means the group referred to in clause 8.10(a).

Concept Design means the Concept Design (Rozelle Interchange) and the Concept Design (WHT Southern Tunnel Works).

Concept Design (Rozelle Interchange) means the concept design prepared by the Contractor and included in Appendix E.3 and Appendix E.4 of the SWTC (Rozelle Interchange).

Concept Design (WHT Southern Tunnel Works) means the concept design prepared by the Contractor and included in Appendix E.3 of the SWTC (WHT Southern Tunnel Works).

Condition Precedent means a condition precedent set out in Schedule 1.

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect);
- (b) increase in direct or indirect financing costs; or

- (c) any loss, damage, cost, expense or Liability that is:
- (i) not a loss, damage, cost, expense or Liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
 - (ii) not fairly and reasonably contemplated by both the Principal and the Contractor:
 - (A) in relation to the Project Works (Rozelle Interchange) or the Contractor's Activities (Rozelle Interchange), at the date of this deed; and
 - (B) in relation to the WHT Southern Tunnel Works or the Contractor's Activities (WHT Southern Tunnel Works), at the Amendment Date,
- as the probable result of the breach or relevant matter,

whether present or future, fixed or unascertained, actual or contingent, or suffered or incurred by a party or a third party to which the party is liable.

Construction Compliance Unit or **CCU** means the unit of that name forming part of NSW Industrial Relations, a division of the NSW Government Department of Finance and Services.

Construction Plan means the Project Plan of that name, the initial version of which is set out in Appendix C.1 of the SWTC (Rozelle Interchange).

Construction Plant means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things (whether owned, leased, hired or otherwise) used in the carrying out of the Contractor's Activities but not forming part of the Project Works.

Construction Site means the Rozelle Interchange Works Site, the WHT Southern Tunnel Works Site, the Local Areas identified in the Site Access Schedule as forming part of the Construction Site, the Rozelle Interchange Temporary Areas and the WHT Southern Tunnel Temporary Areas.

Consumer Price Index or **CPI** has the meaning given in Schedule 28.

Contamination means:

- (a) any Pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance in any water, soil or in the air including acid sulphate soils; and
- (b) without limiting paragraph (a), any "contamination" as defined in the *Contaminated Land Management Act 1997* (NSW).

Contamination Notice means a notice or direction given, or purporting to have been given, under any Law which requires the person to whom it is issued to take action to investigate, remediate or manage Contamination and includes a site investigation notice, remediation notice and requirement to prepare a site management plan.

Contract Documentation and Deliverables has the meaning given to that term in clause 29.1(a).

Contractor Change Notice has the meaning given to that term in section 1.2 of Schedule 21.

Contractor Cooperation and Integration Deed means the deed titled "WestConnex M4-M5 Link Contractor Cooperation and Integration Deed" substantially in the form of Exhibit P dated 17 August 2018 to which the Contractor will become a party in accordance with the Contractor Cooperation and Integration Accession Deed.

Contractor Cooperation and Integration Accession Deed means the deed poll titled "WestConnex M4-M5 Link Contractor Cooperation and Integration Accession Deed" dated on or about the date of this deed entered into by the Contractor in the form of Schedule 2 to the Contractor Cooperation and Integration Deed.

Contractor Documentation Schedule means the Contractor Documentation Schedule (Rozelle Interchange) or the Contractor Documentation Schedule (WHT Southern Tunnel Works), as the context requires.

Contractor Documentation Schedule (Rozelle Interchange) means Appendix C.2 of the SWTC (Rozelle Interchange).

Contractor Documentation Schedule (WHT Southern Tunnel Works) means Appendix C.2 of the SWTC (WHT Southern Tunnel Works).

Contractor Guarantor means each of:

- (a) CCCC; and
- (b) CIMIC Group.

Contractor's Activities means the Contractor's Activities (Rozelle Interchange) and the Contractor's Activities (WHT Southern Tunnel Works).

Contractor's Activities (Rozelle Interchange) means all things and tasks which the Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by the Contractor to another person, including carrying out the Project Works (Rozelle Interchange), the Temporary Works (Rozelle Interchange), the D&C Phase Maintenance (Rozelle Interchange), and the relevant Contractor's obligations under Schedule 1A and the SWTC (Rozelle Interchange), but excluding the Contractor's Activities (WHT Southern Tunnel Works).

Contractor's Activities (WHT Southern Tunnel Works) means all things and tasks which the Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed insofar as it relates to the WHT Southern Tunnel Works and Temporary Works (WHT Southern Tunnel Works), whether or not the performance of such things or tasks is subcontracted by the Contractor to another person, including carrying out the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works), the D&C Phase Maintenance (WHT Southern Tunnel Works), the Post Completion Activities, and the relevant Contractor's obligations under Schedule 1A and the SWTC (WHT Southern Tunnel Works).

Contractor's Change Notice (WHT) means the response provided by the Contractor to the Principal's Change Proposal dated 5 October 2021 (and all things associated with such Change Notice) to undertake the WHT Southern Tunnel Works.

Contractor's Delay Costs means the extra costs and associated on-site overheads reasonably incurred or payable or to be paid by the Contractor excluding:

- (a) any related Change Costs for which the Contractor has otherwise been or is entitled to be compensated under this deed; and
- (b) any amounts payable by the Contractor to the Principal, a Related Party of the Principal or a Related Body Corporate of the Contractor, to the extent that the Principal, the Related Party or Related Body Corporate is not engaged by the Contractor on an arm's length basis and on commercial terms.

Contractor's Representative means:

- (a) [REDACTED]; or
- (b) any other person appointed from time to time by the Contractor under clause 8.2(b) or clause 8.2(c).

Contractor's Statement means:

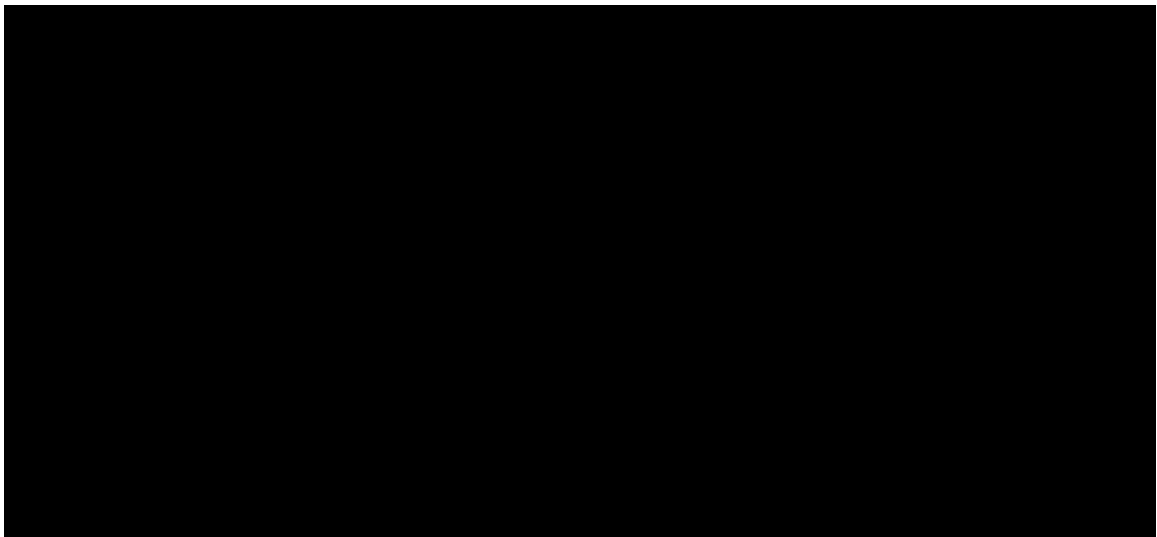
- (a) a statement comprising the statement under section 127 of the *Industrial Relations Act 1996* (NSW);
- (b) a statement comprising the statement under section Schedule 2 Part 5 of the *Pay-Roll Tax Act 2007* (NSW); and
- (c) a statement comprising the statement under section 175B of the *Workers Compensation Act 1987* (NSW),

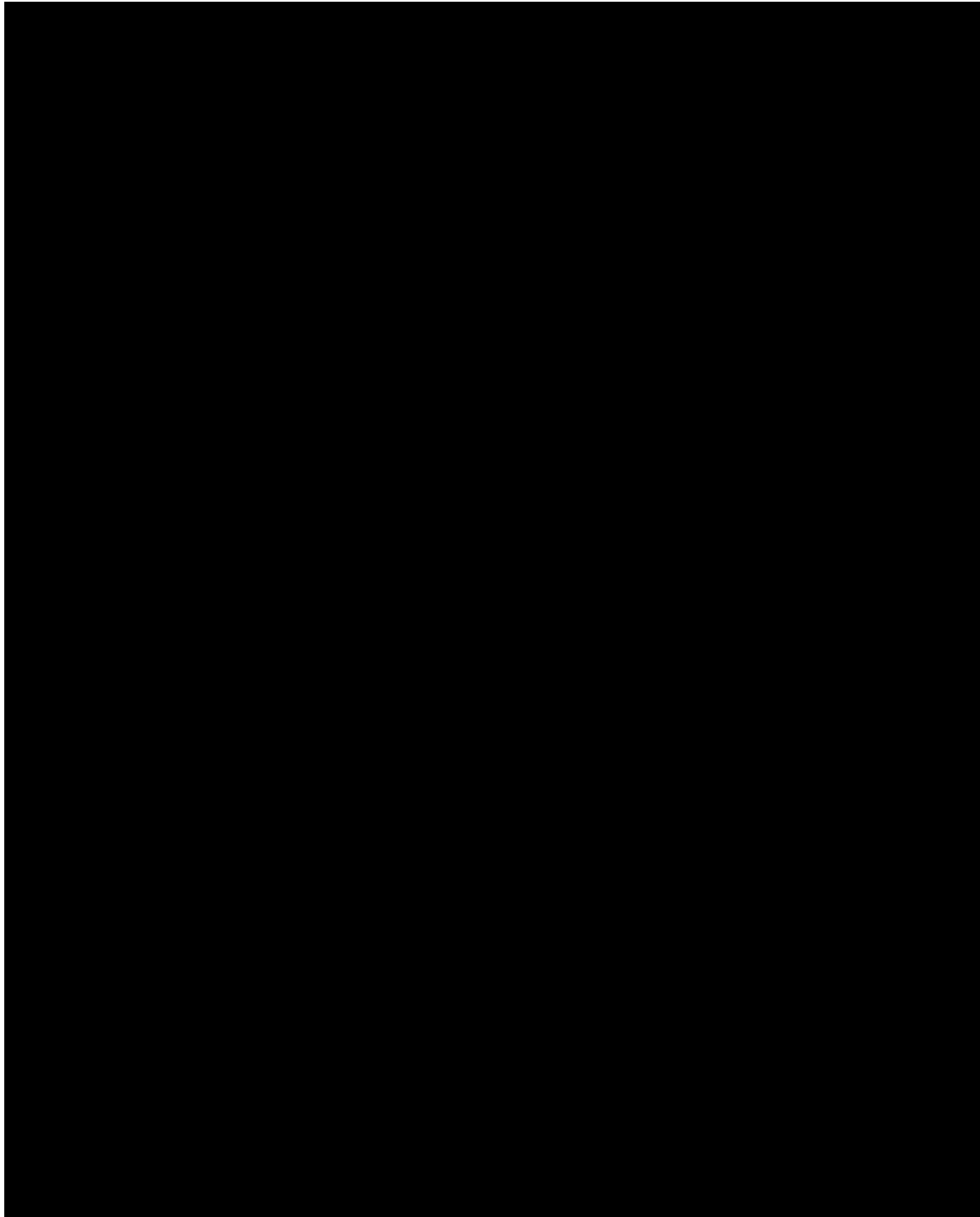
in the form set out in Attachment B to the statutory declaration contained in Schedule 32E (or other form required by the applicable legislation) and providing the detail required by the applicable legislation.

Control has the meaning given in section 50AA of the Corporations Act.

Corporate WHS Management System has the meaning given in the WHS Management Systems and Auditing Guidelines.

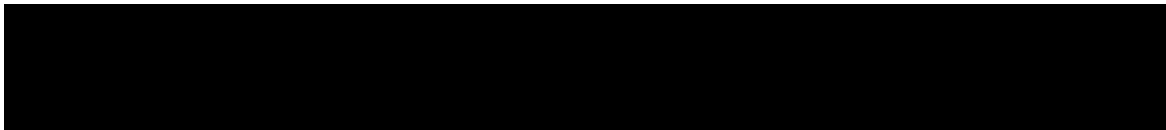
Corporations Act means the *Corporations Act 2001* (Cth).





CPB Contractors means CPB Contractors Pty Limited (ABN 57 004 482 982).

CPB Contractor's Website means CPB Contractor's publicly available website address, being <https://www.cpbcon.com.au/>.



Critical Non-Contestable Provisional Sum Work means the Provisional Sum Work specified in Appendix B40 of the SWTC (Rozelle Interchange) as "critical non-contestable work".

Critical Operational Equipment and Systems or **COES** means any Other WestConnex Assets or Systems that are significant to the operation of the Main Tunnel or Other WestConnex Motorways, including:

- (a) the COES listed in Schedule 39; and
- (b) any Other WestConnex Assets or Systems the Principal's Representative considers to be a COES as notified to the Contractor in accordance with clause 11.2A(c).

Crown Building Work has the meaning given to that term in section 109R of the EP&A Act.

Customer Journey Management means the branch of Transport for NSW, which monitors and manages the NSW transport network and forms part of the infrastructure and services division of Transport for NSW.

Current Design means the latest Design Documentation submitted by the Contractor pursuant to the Contractor Documentation Schedule (WHT Southern Tunnel Works) applicable to the element of the WHT Southern Tunnel Works impacted by the relevant Technical Requirements Change.

Customer Journey Planning means the branch of Transport for NSW, which oversees the planning and coordination of traffic and transport in response to major construction or events around the Sydney CBD and is a delivery office of Transport for NSW.

D&C Close means the date on which the last of the Conditions Precedent have been satisfied or waived in accordance with clause 5.2.

D&C Deed Sum means the aggregate of the D&C Deed Sum (Rozelle Interchange) and the D&C Deed Sum (WHT Southern Tunnel Works).

D&C Deed Sum (Rozelle Interchange) means \$3,804,065,000 or as otherwise adjusted in accordance with this deed.

D&C Deed Sum (WHT Southern Tunnel Works) means [REDACTED] or as otherwise adjusted in accordance with this deed.

D&C Documents means:

- (a) this deed;
- (b) the D&C Guarantees;
- (c) the Collateral Warranty Deed;
- (d) the Collateral Warranty Guarantees;
- (e) the D&C Independent Certifier Deed;
- (f) the D&C Independent Certifier Deed Poll;
- (g) the Deed of Appointment of Environmental Representative (Rozelle Interchange);

- (h) the Significant Subcontracts;
- (i) any Moral Rights Consent;
- (j) the Escrow Agreements;
- (k) the Tolling Interface Deed;
- (l) the Contractor Cooperation and Integration Deed;
- (m) the Contractor Cooperation and Integration Accession Deed;
- (n) the Western Harbour Tunnel – Rozelle Interchange Interface Deed;
- (o) [REDACTED]
- (p) [REDACTED]
- (q) the WHT Independent Certifier Deed;
- (r) the WHT Independent Certifier Deed Poll; and
- (s) any other document the parties agree is a D&C Document.

D&C Guarantee means:

- (a) the deed of guarantee and indemnity dated on or about the date of this deed given by CCCC to the Principal in respect of the obligations of John Holland under the D&C Documents to which the Principal is a party, substantially in the form set out in Part A of Schedule 4A; and
- (b) the deed of guarantee and indemnity dated on or about the date of this deed given by CIMIC Group to the Principal in respect of the obligations of CPB Contractors under the D&C Documents to which the Principal is a party, substantially in the form set out in in Part B of Schedule 4A.

D&C Independent Certifier means Jacobs Group (Australia) Pty Ltd (ABN 37 001 024 095) and Aurecon Australasia Pty Ltd (ABN 54 005 139 873), or such other person(s) as may be engaged by the Principal and the Contractor to act as independent certifier in respect of the Project Works (Rozelle Interchange), Temporary Works (Rozelle Interchange) and D&C Phase Maintenance (Rozelle Interchange).

D&C Independent Certifier Deed means the deed titled "Rozelle Interchange and Western Harbour Tunnel Enabling Works D&C Independent Certifier Deed" entered into between the Principal, the Contractor and the D&C Independent Certifier on or about the date of this deed, substantially in the form set out in Exhibit A.

D&C Independent Certifier Deed Poll means the deed poll titled "Independent Certifier Deed Poll" executed by the D&C Independent Certifier on or about the date of this deed, substantially in the form set out in Schedule 6 of Exhibit A.

D&C Margin means:

- (a) where the relevant Change results in net savings, ■%; and
- (b) where the relevant Change results in net costs, ■%.

The D&C Margin will be calculated on the aggregate net costs or savings arising from the Change, not on individual cost or savings items.

D&C Payment Schedule means the payment schedule in Schedule 31A.

D&C Phase Maintenance means the services described in clause 19.1.

D&C Phase Maintenance (Rozelle Interchange) means the D&C Phase Maintenance to the extent the services relate to the Project Works (Rozelle Interchange) and roads within the Rozelle Interchange Works Site, the Local Areas relevant to the Project Works (Rozelle Interchange) and the Rozelle Interchange Temporary Areas.

D&C Phase Maintenance (WHT Southern Tunnel Works) means the D&C Phase Maintenance to the extent the services relate to the WHT Southern Tunnel Works and roads within the WHT Southern Tunnel Works Site, the Local Areas relevant to the WHT Southern Tunnel Works and the WHT Southern Tunnel Temporary Areas.

Date for Completion means 31 March 2024, or such later date determined in accordance with the terms of this deed.

Date for Completion (WHT Southern Tunnel Works) means [REDACTED].

Date for WHT Southern Tunnel Design Milestone Completion means, for a WHT Southern Tunnel Design Milestone, the relevant date specified in Schedule 37AA.

Date for Final Completion means [REDACTED].

Date for Opening Completion means 31 December 2023, or such later date determined in accordance with the terms of this deed.

Date for Rozelle Interface Works Completion means 1 August 2022.

Date for WHT Interface Milestone Completion means, for a WHT Interface Milestone, the relevant date specified in Schedule 37A, or such later date determined in accordance with the terms of this deed.

Date of Completion means the date notified in a Notice of Completion as the date Completion was achieved.

Date of Completion (WHT Southern Tunnel Works) means the date notified in a Notice of Completion (WHT Southern Tunnel Works) as the date Completion (WHT Southern Tunnel Works) was achieved.

Date of WHT Southern Tunnel Design Milestone Completion means the date notified in a Notice of WHT Southern Tunnel Design Milestone Completion as the date WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone was achieved.

Date of Final Completion means the date notified in a Notice of Final Completion as the date Final Completion was achieved.

Date of Opening Completion means the date notified in a Notice of Opening Completion as the date Opening Completion was achieved.

Date of Opening Completion (WHT) means the date notified by the Principal's Representative pursuant to clause 11A.4(h) as the date the WHT Contractor achieved "Opening Completion" under the WHT Contract.

Date of WHT Interface Milestone Completion means the date notified in a Notice of WHT Interface Milestone Completion as the date WHT Interface Milestone Completion of the relevant WHT Interface Milestone was achieved.

Day 1 Clauses means clauses 1, 4, 5, 6, 7.1, 7.2, 7.3, 7.4, 10, 11.7, 14, 21.1A, 23.1, 23.1A, 26.5, 26.11(c), 27, 28, 30, 32, 35, 36, 37, 39, 42 and 43 and any other clauses or schedules required to have commenced in order to give effect to those clauses.

Dealing means a sale, transfer, assignment or any other disposal or dealing with shares, units, partnership interests or other form of equity.

Debt Financier means the providers of any facilities, financial arrangements or accommodation provided from time to time in relation to the Rozelle Interchange or any other part of the WestConnex Program of Works and may, where the context permits, include any agent of or trustee for such Debt Financiers.

Declaration of Compliance means the form of declaration in Exhibit J.

Deed of Appointment of Environmental Representative (Rozelle Interchange) means the deed titled "Rozelle Interchange and Western Harbour Tunnel Enabling Works Deed of Appointment of Environmental Representative" entered into between the Principal, the Contractor and the Environmental Representative (Rozelle Interchange) on or about the date of this deed, substantially in the form set out in Exhibit D.

Deed of Amendment and Restatement means the deed titled "Rozelle Interchange and Western Harbour Tunnel Enabling Works Design and Construction Deed – Amendment and Restatement Deed" entered into between the Principal and the Contractor.

Deeds of Disclaimer means:

- (a) the content of clauses 2, 3, 4, 8.1(e) and 8.1(h) of the Stage 1 CCC Process Deed Poll; and
- (b) the deed of disclaimer signed by the Contractor on or about the date of this deed substantially in the form of Exhibit B.

Defect means:

- (a) any defect, deficiency, fault, error or omission in the Project Works, the Temporary Works or the D&C Phase Maintenance; or
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the Project Works or the Temporary Works; or
 - (ii) other aspect of the Contractor's Activities, the Project Works, the Temporary Works or the D&C Phase Maintenance,

which is not in accordance with the requirements of this deed, except where, following Opening Completion in respect of the Contractor's Activities (Rozelle Interchange), or

following Completion (WHT Southern Tunnel Works) in respect of the Contractor's Activities (WHT Southern Tunnel Works), it is caused by:

- (c) a Force Majeure event;
- (d) fair wear and tear;
- (e) a failure to maintain the Project Works (Rozelle Interchange) or WHT Southern Tunnel Works (as applicable) in accordance with the O&M Manuals (except where the O&M Contractor or the WHT Asset Manager is the Contractor or a related entity of the Contractor); or
- (f) the occurrence of an event giving rise to loss of or damage to the Project Works (Rozelle Interchange) (including the Rozelle Interchange or any part of it after the Rozelle Interchange Transfer Date) or WHT Southern Tunnel Works (as applicable) to the extent that event is not caused by or contributed to by the Contractor or its Related Parties.

Defects Correction Period means a period referred to in clauses 17.5, 17.5A, 17.5B, 17.6, 17.7, 17.8 or 17.12.

Deliverable means the Project Works and any other deliverable required to be delivered or goods and services required to be provided by or for the Contractor to the Principal under this deed (or any part of them).

Design Baseline means each of the Concept Design (WHT Southern Tunnel Works) and the Current Design.

Design Documentation means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including any MX GENIO models prepared in relation to the Project Works, the Temporary Works or the Contractor's Activities), samples, prototypes, calculations, drawings, shop drawings, digital records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Activities or which the Contractor or any other person creates in performing the Contractor's Activities (including the design of the Temporary Works); and
- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Activities.

Design Plan has the meaning given to that term in Appendix C.1 of the SWTC.

Direction means any certificate, decision, demand, determination, direction, instruction, order, rejection, request or requirement.

Direct Costs means reasonable additional direct costs (which may include additional on-site overheads) incurred by the Contractor in carrying out the Contractor's Activities (WHT Southern Tunnel Works) in compliance with the [REDACTED] or dealing with a [REDACTED] (as applicable), but excluding any:

- (a) amount on account of profit, loss of profit or offsite overheads; and

- (b) Contractor's Delay Costs.

Discriminatory Change in State Law means:

- (a) the amendment, repeal or change after the Effective Date applicable to the relevant Project Works or Contractor's Activities of a State Law existing at the applicable Effective Date;
- (b) the enactment after the Effective Date applicable to the relevant Project Works or Contractor's Activities of a new State Law; or
- (c) a change after the Effective Date applicable to the relevant Project Works or Contractor's Activities in the interpretation or application of an existing State Law, brought about by:
 - (i) the amendment, repeal or change of another State Law; or
 - (ii) the enactment of a new State Law,

which directly affects the interpretation or application of the first mentioned existing State Law,

and which specifically and only:

- (d) affects the Project; or
- (e) has a direct effect upon the Project together with other privately owned and operated tollroads or other tollroads that are owned and operated by SMC in the State of New South Wales.

Dispute has the meaning given to that term in clause 32.

Dispute Resolution Procedure means the procedure for resolving Disputes set out in Schedule 3.

Easements means the easements, restrictions on use, covenants, agreements, arrangements or other similar arrangements, together with any leases, sub-leases, licences and rights and privileges, to benefit or burden the Construction Site, Extra Land or the Rozelle Interchange Motorway Stratum.

Effective Date means:

- (a) in relation to the Project Works (Rozelle Interchange) or the Contractor's Activities (Rozelle Interchange), the date of this deed; and
- (b) in relation to the WHT Southern Tunnel Works or the Contractor's Activities (WHT Southern Tunnel Works), the Amendment Date.

Enabling Works has the meaning given to that term in the SWTC (Rozelle Interchange).

Enterprise Agreement has the meaning given to that term in the *Fair Work Act 2009* (Cth).

Environment means components of the earth, including:

- (a) land, air and water;

- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c) of this definition.

Environment Protection Licence means an environment protection licence granted under the *Protection of the Environment Operations Act 1997* (NSW).

Environmental Documents means the Planning Approvals and Appendix D.1 of the SWTC.

Environmental Law means a Law of the Commonwealth or a State Law which expressly requires or necessitates the installation, modification or enhancement of air filtration or Contamination or other environmental control measures and which directly affects the Rozelle Interchange or the WHT Southern Tunnel Works.

Environmental Management System means the system referred to in section 3.3.1 of the SWTC.

Environmental Manager means the individual referred to in section 3.3.2 of the SWTC.

Environmental Notice means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information issued by an Authority in respect of a matter concerning the Environment.

Environmental Representative means each of the Environmental Representative (Rozelle Interchange) and the Environmental Representative (WHT).

Environmental Representative (Rozelle Interchange) or ER (Rozelle Interchange) means the person appointed under the Deed of Appointment of Environmental Representative (Rozelle Interchange) or any person appointed as a replacement in accordance with the Deed of Appointment of Environmental Representative (Rozelle Interchange) from time to time.

Environmental Representative (WHT) or ER (WHT) means the person engaged as the 'Environmental Representative' in accordance with the WHT Planning Approval by the WHT Independent Certifier under the WHT Independent Certifier Deed or any person appointed as a replacement in accordance with the WHT Independent Certifier Deed from time to time.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Act Approval means:

- (a) an approval granted by the Minister for the Environment under the EPBC Act, including all conditions to such approval and documents incorporated by reference;
- (b) any modification to the approval referred to in paragraph (a) of this definition; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approval referred to in paragraph (a) of this definition from time to time and all conditions to any of them,

and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Equity Investor means a person who holds an equity interest in, or provides security holder loans (or other loans in the nature of equity funding) to, or for the benefit of the M4-M5 Link Concessionaires or any Related Body Corporate of any of them or who otherwise makes an equity investment in the Rozelle Interchange or any other part of the WestConnex Program of Works at any time after the date of this deed.

Escrow Agreement means any escrow agreement in relation to Source Code relating to or forming part of the Deliverables:

- (a) for the Tolling Equipment Works Contractor and other relevant suppliers (other than the IOMCS and OMCS Works Contractor), substantially in the form set out in Part A of Schedule 5; and
- (b) for the IOMCS and OMCS Works Contractor, substantially in the form set out in Part B of Schedule 5,

entered into pursuant to clause 29.

Escrow Material means:

- (a) subject to paragraphs (b) and (c), all Source Code relating to or forming part of the Deliverables;
- (b) the "Escrow Material" as defined in the Tolling Equipment Works Subcontract; and
- (c) the "Escrow Material" as defined in in the IOMCS and OMCS Works Subcontract.

Escrow Term means the period commencing on the date of this deed and ending on 31 December 2023.

Event of Default means any event specified in clause 31.1.

Exclusion Sanction has the meaning given to that term in subsection 3(1) of the Building Code.

Excusable Cause of Delay means an Excusable Cause of Delay (Rozelle Interchange) or an Excusable Cause of Delay (WHT Southern Tunnel Works), as applicable.

Excusable Cause of Delay (Rozelle Interchange) means:

- (a) an Act of Prevention;
- (b) a Compensation Event (Rozelle Interchange);
- (c) a Force Majeure Event;
- (d) the discovery of an Unknown Artefact to the extent that the discovery of that Unknown Artefact results in the Contractor being directed, ordered to or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform any or all of the Contractor's Activities (Rozelle Interchange);
- (e) a planned Track Possession available to the Contractor in accordance with the Sydney Light Rail Interface Agreement is cancelled (in whole or in part) by Sydney Trains;

- (i) less than 4 weeks prior to the planned commencement time; or
- (ii) with more than 4 weeks' notice prior to the planned commencement time where Sydney Trains does not provide an alternative Track Possession in substitution for the cancelled Track Possession at a time the Contractor is reasonably able to utilise without delaying Completion or Opening Completion, except to the extent:
 - (iii) the Track Possession is cancelled due to an act or omission of the Contractor or its Related Parties, including a failure by the Contractor to comply with its obligations under clause 9.17, clause 9.18, the Sydney Light Rail Interface Agreement, Schedule 12 or the other provisions of this deed, in each case, relating to the Track Possession; or
 - (iv) the sum of the planned duration of the Track Possession and the duration of all other Track Possessions taken in accordance with the Sydney Light Rail Interface Agreement exceeds the Track Possession Threshold;
- (f) a test is directed by the Principal's Representative under clause 12.1A(a)(ii) and not otherwise required by this deed, unless the test detects a Defect or is upon a Defect;
- (g) a Change which is deemed to have occurred under clause 7.4(a), 25.2(b) or 26.12(a), is required under clause 11.7A(f), is proposed under clause 11.10(c)(ii) or is directed under clause 11.12(e), 13.4(a)(ii)(B) or 26.13(d);
- (h) a failure by the owner, operator or controller of the relevant Utility Service to complete any Critical Non-Contestable Provisional Sum Work:
 - (i) by the date for completion of that work set out in the Overall D&C Program (Rozelle Interchange);
 - (ii) within timeframes that could have been Reasonably Anticipated; and
 - (iii) by the time required to avoid any delay to Opening Completion or Completion, (whichever is the later) except to the extent the Contractor fails to take all reasonable steps to avoid or minimise such failure, which will include:
 - (iv) completing relevant design, contacting the owner, operator or controller of the relevant Utility Service and scheduling times for the work sufficiently in advance;
 - (v) providing required information (including any approvals) to the owner, operator or controller of the relevant Utility Service sufficiently in advance;
 - (vi) complying with the provisions of any agreement entered into with the owner, operator or controller of the relevant Utility Service;
 - (vii) proactively monitoring, managing, liaising and coordinating with the owner, operator or controller of the relevant Utility Service (or its relevant contractor); and
 - (viii) to the extent reasonably practicable, scheduling and (where relevant) rescheduling the Contractor's Activities so as to minimise the risk that such failure will delay Opening Completion or Completion; or

- (i) the Contractor is directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform any or all of the Contractor's Activities (Rozelle Interchange) as a result of a Known Artefact to the extent that:
 - (i) the direction, order or requirement differs materially in nature of scope from what could have been Reasonably Anticipated; and
 - (ii) the Contractor has taken all reasonable steps in accordance with Good Industry Practice to avoid interfering with or disturbing the Known Artefact.

Excusable Cause of Delay (WHT Southern Tunnel Works) means:

- (a) an Act of Prevention;
- (b) a Compensation Event (WHT Southern Tunnel Works);
- (c) a Force Majeure Event;
- (d) the discovery of an Unknown Artefact to the extent that the discovery of that Unknown Artefact results in the Contractor being directed, ordered to or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform any or all of the Contractor's Activities (WHT Southern Tunnel Works);
- (e) a test is directed by the Principal's Representative under clause 12.1A(a)(ii) and not otherwise required by this deed, unless the test detects a Defect or is upon a Defect;
- (f) a Change which is deemed to have occurred under clause 7.4(a), 25.2(b) or 26.12(a), is proposed under clause 11.10(c)(ii) or is directed under clause 11.12(e), 13.4(a)(ii)(B) or 26.13(d);
- (g) the Contractor is directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform any or all of the Contractor's Activities (WHT Southern Tunnel Works) as a result of a Known Artefact to the extent that:
 - (i) the direction, order or requirement differs materially in nature of scope from what could have been Reasonably Anticipated; and
 - (ii) the Contractor has taken all reasonable steps in accordance with Good Industry Practice to avoid interfering with or disturbing the Known Artefact;
- (h) physical loss or damage to:
 - (i) the WHT Southern Tunnel Works;
 - (ii) the Temporary Works (WHT Southern Tunnel Works); or
 - (iii) Key Plant and Equipment (WHT Southern Tunnel Works),

which is covered or is indemnified under the contract works insurance that the Principal is required to effect and maintain under clause 26.5 and Schedule 30, but excluding:

- (iv) the period of the first 30 days of delay to Completion (WHT Southern Tunnel Works) caused by the loss or damage (in aggregate for all such loss or damage);
 - (v) any delay to Completion (WHT Southern Tunnel Works) caused by the loss or damage which exceeds 24 months (in aggregate for all such loss or damage); and
 - (vi) to the extent the loss or damage is caused by the Contractor or its Related Parties (other than an innocent act, omission, mistake or error of judgement, irrespective of whether a default or negligence); and
- (i) a failure by the Principal to:
- (i) determine a consistency assessment for additional vehicle movements and/or undertaking the Contractor's Activities (WHT Southern Tunnel Works) from the City West Link cut and cover structure is consistent with the Division 5.2 Planning Approval; or
 - (ii) where the Principal's Representative has given a notice pursuant to clause 7.4B(b) that additional vehicle movements and/or undertaking the Contractor's Activities (WHT Southern Tunnel Works) from the City West Link cut and cover structure is not consistent with the Planning Approvals, obtain the Spoil Movement Modification,

on or before the Spoil Movement Modification Determination Date.

Existing Asset means an asset or item of infrastructure existing at the date of execution of this deed that will overlay, cross, intersect, connect, tie in or be adjacent to the Project Works, as identified in Schedule 44.

Existing Asset Condition means the Contractor is directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to correct a defect in, or modify or upgrade the condition, performance or standard of, an Existing Asset to the extent that the defect rectification, modification or upgrade work:

- (a) differs materially in nature, extent or scope from what could have been Reasonably Anticipated; and
- (b) is not a necessary consequence of the Project Works or required for the Project Works to comply with this deed.

Existing Operations means:

- (a) all infrastructure (including the existing infrastructure and Utility Services) which is owned, operated or under the control of an Existing Operator; and
- (b) the businesses and operations undertaken by an Existing Operator,

on or in the vicinity of the Construction Site.

Existing Operator means:

- (a) TAHE;
- (b) Sydney Trains ABN 38 284 779 682;

- (c) Transport for NSW ABN 18 804 239 602;
- (d) Ausgrid ABN 67 505 337 385;
- (e) Endeavour Energy ABN 59 253 130 878;
- (f) Telstra Corporation Limited ABN 33 051 775 556;
- (g) Sydney Water Corporation ABN 49 776 225 038;
- (h) ALTRAC Light Rail Partnership;
- (i) Jemena Gas Networks (NSW) Ltd ABN 87 003 004 322;
- (j) Landcom ABN 79 268 260 688;
- (k) Transgrid ABN 19 622 755 774;
- (l) Port Authority of NSW ABN 50 825 884 846;
- (m) Sydney Ferries ABN 46 202 040 027;
- (n) without limiting paragraph (f) above, any owner, operator or controller of any telecommunication infrastructure on or in the vicinity of the Construction Site (including NBN Co Limited ABN 86 136 533 741); and
- (o) any person notified by the Principal to the Contractor or by the Contractor to the Principal after the date of this deed who owns, operates or controls any infrastructure (including existing infrastructure and Utility Services) or undertakes any business or operation on or in the vicinity of the Construction Site,

and any of their Related Bodies Corporate.

Extra Land means the land referred to in clauses 11.4(a)(ii) and 11.4(b)(i).

Final Completion means the stage in the execution of the Contractor's Activities (WHT Southern Tunnel Works) when the Contractor has satisfied all the conditions precedent to completion of the Contractor's Activities (WHT Southern Tunnel Works) set out in Part D of Schedule 24 but, for the avoidance of doubt, does not require Opening Completion or Completion to have occurred.

Final Design Documentation Stage is the design stage described in section 3 of Appendix C.2 of the SWTC.

Final Determination means a decision of a court:

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

which prevents the Contractor from undertaking the Contractor's Activities in accordance with this deed.

Final Payment Statement means each of the final instalment payment statement issued by the D&C Independent Certifier in accordance with clause 21.7 in the form of Schedule 32D and the final instalment payment statement issued by the Principal's Representative in accordance with clause 21.7A.

Financial Assessment has the meaning given to that term in clause 29A.2(a).

Financial Capacity Event means any fact, matter or thing which, in the opinion of the Principal (acting reasonably), has a material adverse effect upon the financial standing of the Contractor (or any entity that comprises the Contractor) or any Contractor Guarantor.

Financial Mitigation Plan means a plan which satisfies the requirements of clause 29A.4 for the mitigation of a Financial Capacity Event.

Financial Reporting Event means any of the following events, as applicable to the Contractor (or any entity that comprises the Contractor) or any Contractor Guarantor:

- (a) a substantial downgrade in any applicable credit rating;
- (b) a significant loss suffered or incurred by any entity that comprises the Contractor;
- (c) a material statutory fine or statutory financial penalty;
- (d) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;
- (e) a public investigation into improper financial accounting and reporting or suspected fraud;
- (f) a material refinancing (other than a material refinancing in the ordinary course of business);
- (g) a failure to pay a Significant Subcontractor engaged on the Project (other than for reason of a bona fide dispute);
- (h) any financial indebtedness becoming due as a result of an event of default; or
- (i) its external auditor expressing a qualified opinion in relation to its audited accounts,

provided that, in the case of CPB Contractor's and CIMIC Group, the relevant event has been Publicly Notified.

Foundational Documents means the following Design Documents:

- (a) Design Package 10_33 TUNNEL DESIGN - TUNNEL AND ROCK SHAFT STANDARD DETAILS;
- (b) Design Package 50_16 TUNNEL DESIGN - WHT MAINLINES, XP's, FRNSW AP's;
- (c) Design Package 10_34 TUNNEL DESIGN MANUAL;
- (d) Design Package 10-47 GROUND CLASSIFICATION AND GROUND SUPPORT TYPES SPECIFICATION;
- (e) Design Package 10_20 GEOTECHNICAL INTERPRETIVE REPORT;

- (f) Design Package 10_21 HYDROGEOLOGICAL INTERPRETIVE REPORT & GROUND WATER AND SOIL SALINITY ASSESSMENT REPORT;
- (g) Design Package 00_40 FIRE DESIGN;
- (h) Design Package 00_10 INSTRUMENTATION AND MONITORING REPORT;
- (i) Design Package 00_05 GROUND MOVEMENT AND SETTLEMENT IMPACT ASSESSMENT;
- (j) Design Package 50_01 ALIGNMENT AND ROAD GEOMETRY; and
- (k) Design Package 50_05 WHT ANCILLARY ALIGNMENT TUNNEL GEOMETRY.

Force Majeure means:

- (a) earthquake, cyclone, fire, explosion, flood;
- (b) malicious damage, sabotage, act of a public enemy, terrorism or civil unrest taking place in Australia or any Key Plant and Equipment Place of Manufacture;
- (c) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;
- (d) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel taking place in Australia;
- (e) confiscation, nationalisation, requisition or property damage under the order of any government taking place in Australia; or
- (f) a state-wide or nationwide strike or lockout taking place in Australia,

which is beyond the reasonable control of the parties and their respective Related Parties, and which is an event which, or an event the effects of which, both:

- (g) prevents or delays the Contractor or the Principal from performing an obligation under the D&C Documents; and
- (h) could not have been wholly mitigated, prevented, avoided, remedied or overcome by the party affected by the Force Majeure event or its respective Related Parties taking those steps which a prudent, experienced and competent design and construction contractor (in the case of the Contractor) or concessionaire (in the case of the Asset Trustee) would have taken.

Forecast Cumulative Limit has the meaning given to it in section 1 of Part A of Schedule 31A in respect of a Payment Claim for the D&C Deed Sum (Rozelle Interchange) and section 1 of Part B of Schedule 31A in respect of a Payment Claim for the D&C Deed Sum (WHT Southern Tunnel Works).

Future Motorways means any or all future motorway projects currently in development by the Principal to augment with the WestConnex Program of Works, including the Western Harbour Tunnel, Beaches Link, F6 Extension and Sydney Gateway.

General Cap (Rozelle Interchange) means ■% of the D&C Deed Sum (Rozelle Interchange), as:

- (a) reduced in accordance with clause 28.1(b) on and from the Date of Completion; and

- (b) may be increased by the Principal and the Contractor in accordance with clause 31.4(c)(iii).

General Cap (WHT Southern Tunnel Works) means ■% of the D&C Deed Sum (WHT Southern Tunnel Works), as may be increased by the Principal and the Contractor in accordance with clause 31.4(c)(iii).

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the Contractor or its Related Parties, as the case may be, under the same or similar circumstances as the performance of the Contractor's Activities.

GST and **GST law** and other terms used in clause 24.2 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except **GST law** also includes any applicable Australian Tax Office rulings and any reference to GST payable by the Supplier (as defined in clause 24.2(b)) includes GST payable by the representative member of any GST group of which the Supplier is a member.

Handover Date (WHT Southern Tunnel Works) means the later of:

- (a) the day after the Date of Completion (WHT Southern Tunnel Works); and
- (b) where the Contractor is instructed by the Principal to carry out the Post Completion Activities pursuant to clause 16A.1(a), the date notified in the corresponding notice given under clause 16A.1(c).

Handover Works means those works referred to as the "Handover Works" in the SWTC, including in section of the SWTC (WHT Southern Tunnel Works) (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Hazardous Substance means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment.

Heavy Vehicle National Law means:

- (a) the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as it applies through being adopted in other States and Territories, including through, *inter alia*, the *Heavy Vehicle National Law* (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW), as amended, reproduced or updated from time to time; and
- (b) regulations in force under the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as they apply through being adopted in other States and Territories, including through, *inter alia*, the *Heavy Vehicle National Law* (NSW), as amended, reproduced or updated from time to time.

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of a designated authority.

iCare means the NSW Self Insurance Corporation (Construction Risks Insurance Fund) through its statutory service provider Insurance and Care NSW.

Immediate Termination Event has the meaning given to that term in clause 31.4(c).

Included Open Source Software has the meaning given to that term in the Tolling Equipment Works Subcontract.

Indemnified Party has the meaning given to that term in clause 27.1(a).

Independent Certifier means the entity or such other person(s) engaged to act as the independent certifier under the Project Deed, being at the date of this deed, Arcadis Australia Pacific Pty Ltd (ACN 104 485 289).

Independent Checking Engineer means the person or persons as may be engaged from time to time by the Contractor to perform the role of Independent Checking Engineer, and approved by the Principal.

Independent Commission Against Corruption means the corporation of that name constituted by the *Independent Commission Against Corruption Act 1988* (NSW).

Information Document means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

- (a) referred to in Exhibit G;
- (b) issued or made available by, or on behalf of, the Principal or the NSW Government to the Contractor in connection with the Project Works or the Contractor's Activities (including anything issued or made available through the Principal's website), regardless of whether it was expressly classified or stated to be an "Information Document"; or
- (c) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available on, before or after the date of execution of this deed.

Initial Payment has the meaning given in clause 21.1A(a).

Insolvency Event means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;

- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
 or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Insured Liability has the meaning given to that term in clause 26.3(b).

Integration Works means the works required by the SWTC which are necessary to ensure the safe and efficient integration and integrated operation of the Rozelle Interchange Works together with the rest of the WestConnex Program of Works, any Future Motorways and any corresponding local road networks, which form part of the Project Works.

Intellectual Property Right means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, registered and registrable designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, technical data and know-how, trade marks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Interface Protocol means an interface protocol developed by the Contractor pursuant to clause 23.4, in each case being a protocol related to interface and coordination issues, including:

- (a) design, construction, maintenance, services and operation management, coordination and compatibility of works, services and other activities;
- (b) timing and programming of works, services and other activities;
- (c) access arrangements to relevant parts of the Construction Site;

- (d) processes and procedures for managing and minimising:
 - (i) impacts and interface issues; and
 - (ii) changes arising from interface issues,
including setting up an interface working group which meets regularly;
- (e) exchange of information and dispute resolution;
- (f) management of work health and safety issues; and
- (g) the transition of services to and from the Contractor.

IOMCS means the Integrated Operations Management Control System referred to in the SWTC (Rozelle Interchange) which will be delivered as part of the Main Tunnel Works.

IOMCS and OMCS Works means the works to be undertaken by the Contractor in respect of the IOMCS and the OMCS as set out in the SWTC (Rozelle Interchange) and which form part of the Rozelle Interchange Works.

IOMCS and OMCS Works Contractor means SICE Pty Ltd ABN 75 113 609 055 or such other contractor as may be engaged from time to time to carry out the development of the IOMCS and OMCS Works.

IOMCS and OMCS Works Subcontract means the agreement titled "Rozelle Interchange IOMCS and OMCS Works Subcontract" dated on or about D&C Close between the Contractor and the IOMCS and OMCS Works Contractor.

IPIAP means the Independent Property Impact Assessment Panel established by the Principal for the WHTBL Program in accordance with the requirements of the WHT Planning Approval.

ISLP Targets means the "Infrastructure Skills Legacy Program" targets as set out in the NSW Procurement Board Direction PBD: 2020-03: Skills, training and diversity in construction.

ITS Maintenance Contractor means LT Joint Venture Pty Limited (ABN 89 169 720 718) or such other contractor as may be engaged from time to time to carry out maintenance services in relation to the intelligent transport systems (ITS) on the roads impacted by the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange).

Iron Cove Link Vent Structure Planning Approval Modification has the meaning given to it in clause 7.4A(f).

John Holland means John Holland Pty Ltd (ABN 11 004 282 268).

Key Interfaces has the meaning given to that term in Appendix B.34 of the SWTC.

Key Plant and Equipment means that plant and equipment identified in Schedule 32.

Key Plant and Equipment Place of Manufacture means any country where the Contractor is undertaking or procuring the manufacturing of the Key Plant and Equipment as set out in Schedule 32.

Key Plant and Equipment (Rozelle Interchange) means that plant and equipment identified in Part A of Schedule 32.

Key Plant and Equipment (WHT Southern Tunnel Works) means that plant and equipment identified in Part B of Schedule 32.

Known Artefact means an Artefact to the extent that the Artefact:

- (a) at the Effective Date applicable to the relevant Project Works or Contractor's Activities, was in existence on the Construction Site; and
- (b) is not an Unknown Artefact.

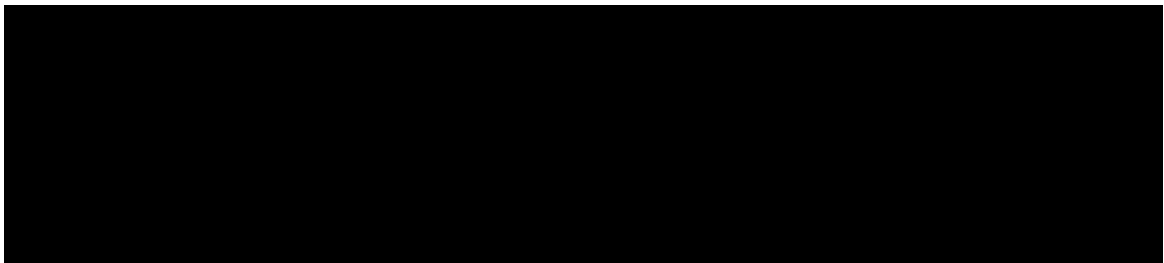
Lane Occupancy Fees means lane occupancy fees payable by the Contractor to the Principal, as calculated in accordance with Schedule 29.

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts;
- (c) Approvals (including any condition or requirement under them); and
- (d) for the purposes of the definition of "██████████" or "██████████", any other government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance) of a State or Territory of Australia, other than New South Wales.

Legal Challenge has the meaning given to that term in clause 7.5(a).

Letters of Affirmation means:



Liability includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Licensed Maintenance Areas means the areas described in Schedule 11 and any adjustments to those areas directed by the Principal in writing based on the areas reasonably necessary to operate any intelligent transportation system devices (such as variable message signs, closed circuit television, tunnel closure traffic lights and moveable medians) which are:

- (a) located outside of the Rozelle Interchange Motorway Stratum;
- (b) required for the operation of the Rozelle Interchange in the Rozelle Interchange Motorway Stratum; and
- (c) connected to the Operations Management and Control System.

Liquidated Damages (Opening Completion) means:

- (a) in respect of the period from (but not including) the Date for Opening Completion until (and including) the first anniversary of the Date for Opening Completion, \$██████████ per day (excluding GST);
- (b) in respect of the period from (but not including) the first anniversary of the Date for Opening Completion until (and including) the second anniversary of the Date for Opening Completion, \$██████████ per day (excluding GST); and
- (c) in respect of the period from (but not including) the second anniversary of the Date for Opening Completion, \$██████████ per day (excluding GST).

Liquidated Damages (WHT Southern Tunnel Design Milestone) means, in respect of the period from (but not including) the Date for WHT Southern Tunnel Design Milestone Completion, the amount per day (excluding GST) for the relevant WHT Southern Tunnel Design Milestone specified in Schedule 37AA.

Liquidated Damages (WHT Southern Tunnel Works) means:

- (a) in respect of the period from (but not including) the Date for Completion (WHT Southern Tunnel Works) until the date which is 30 days after the Date for Completion (WHT Southern Tunnel Works), \$██████████ per day (excluding GST);
- (b) in respect of the period on and from the date which is 31 days after the Date for Completion (WHT Southern Tunnel Works) until the date which is 60 days after the Date for Completion (WHT Southern Tunnel Works), \$██████████ per day (excluding GST);
- (c) in respect of the period on and from the date which is 61 days after the Date for Completion (WHT Southern Tunnel Works) until the date which is 90 days after the Date for Completion (WHT Southern Tunnel Works), \$██████████ per day (excluding GST); and
- (d) in respect of the period on and from the date which is 91 days after the Date for Completion (WHT Southern Tunnel Works), \$██████████ per day (excluding GST).

Liquidated Damages Cap (Rozelle Interchange) means ████% of the D&C Deed Sum (Rozelle Interchange), as may be increased by the Contractor in accordance with clause 31.4(c)(iv).

Liquidated Damages Cap (WHT Southern Tunnel Works) means ■% of the D&C Deed Sum (WHT Southern Tunnel Works), as may be increased by the Contractor in accordance with clause 31.4(c)(iv).

Local Area Works means the modification, reinstatement and improvement of Local Areas which the Contractor must design, construct and hand over to the Principal or the relevant Authority in accordance with this deed (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves and areas acquired or made available for the purposes of Local Area Works (and designated in the Site Access Schedule as Local Areas), which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the Project Works or the Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

Long Service Corporation means the corporation of that name constituted by the *Long Service Corporation Act 2010* (NSW).

Loss means:

- (a) any cost, expense, fee, loss, damage, Liability or other amount; and
- (b) without being limited by paragraph (a) of this definition and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent, which for the avoidance of doubt includes Consequential Loss.

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

M4 Independent Certifier means the entity engaged to act as the independent certifier under the project deed in respect of the M4 Motorway.

M4 Integration Site means any area indicated as an "M4 Integration Site" in the Site Access Schedule.

M4 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M4 Motorway'.

M4 Planning Approvals means:

- (a) each approval granted by the Minister for Planning under the EP&A Act in relation to the applications for approvals under Part 5.1 in respect of the concept design for the 'M4 East' and 'M4 West' components of the M4 Motorway, including all conditions to such approval and documents incorporated by reference;
- (b) the approval granted by the Minister for the Environment under the EPBC Act in respect of the M4 Motorway, including all conditions to such approval and documents incorporated by reference;
- (c) any modification to an approval referred to in paragraph (a) or (b) of this definition; and
- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approval referred to in paragraph (a) or (b) of this definition from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

M5 Independent Certifier means the entity engaged to act as the independent certifier under the project deed in respect of the M5 Motorway.

M5 Integration Site means any area indicated as a "M5 Integration Site" in the Site Access Schedule.

M5 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway also known as the 'M5 South-West Motorway'.

M5 Planning Approvals means:

- (a) the approval granted by the Minister for Planning under the EP&A Act in relation to the application for approval under Part 5.1 of the EP&A Act in respect of the concept design for the M5 Motorway submitted by the Principal to the Minister for Planning, including all conditions to such approval and documents incorporated by reference;
- (b) the approval granted by the Minister for the Environment under the EPBC Act in respect of the M5 Motorway, including all conditions to such approval and documents incorporated by reference;
- (c) any modification to an approval referred to in paragraph (a) or (b) of this definition; and
- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approval referred to in paragraph (a) or (b) of this definition from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Main Tunnel means:

- (a) prior to the Main Tunnel Date of Opening Completion, the Main Tunnel Works; and
- (b) on and from the Main Tunnel Date of Opening Completion, the motorway described in paragraph (a) of the definition of Motorway.

Main Tunnel Assets or Systems means those WestConnex Assets and Systems that are located on the Main Tunnel.

Main Tunnel Contractor means the entity or entities that will design and construct the Main Tunnel, as notified to the Contractor by the Principal, being, at the date of this deed, an unincorporated joint venture comprising Lendlease Engineering Pty Ltd (ACN 000 201 516), Samsung C&T Corporation, a duly organised company under the laws of the Republic of Korea (ABN 49 160 079 470) and Bouygues Construction Australia Pty Ltd (ABN 37 144 013 801).

Main Tunnel Contractor System Design Information means, for a Main Tunnel Contractor System Design Information Milestone, the information specified in Schedule 37B.

Main Tunnel Contractor System Design Information Milestone means a milestone specified in Schedule 37B.

Main Tunnel Contractor's Activities means all activities carried out by the Main Tunnel Contractor pursuant to the Main Tunnel D&C Deed which includes the design and construction of the Main Tunnel Works.

Main Tunnel D&C Deed means the deed entitled "WestConnex M4-M5 Link Main Tunnel Works Design and Construction Deed" between the Asset Trustee, the State Works Contractor and the Main Tunnel Contractor dated 17 August 2018.

Main Tunnel Date for Opening Completion means 31 March 2023.

Main Tunnel Date of Opening Completion means the "Date of Opening Completion" under the Main Tunnel D&C Deed.

Main Tunnel Motorway Stratum means the stratum of real property on which the Main Tunnel will be located to be the subject of the lease in respect of the Main Tunnel granted to the Asset Trustee, as notified to the Contractor by the Principal.

Main Tunnel Opening Completion means "Opening Completion" under the Main Tunnel D&C Deed.

Main Tunnel Works means the physical works which the Main Tunnel Contractor must design, construct and complete under the Main Tunnel D&C Deed.

Maintenance Site means all areas affected by the O&M Work and the Asset Renewal, or on which the O&M Work or the Asset Renewal is carried out, including:

- (a) the Rozelle Interchange Motorway Stratum;
- (b) the Licensed Maintenance Areas; and
- (c) for a period of 12 months commencing on the date on which the Defects Correction Period begins for the Local Area Works relevant to the Project Works (Rozelle Interchange), the landscaped areas of such Local Area Works.

Major Australian Bank means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

Major Closure means either:

- (a) any complete closure of a carriageway; or

- (b) only one lane of a carriageway will be available and that lane has a posted speed limit of 40km/h or less.

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods parts and other items incorporated or to be incorporated into the Project Works, the Temporary Works or the D&C Phase Maintenance.

Maximum Payment Claim Amount has the meaning given to it in section 1 of Part A of Schedule 31A in respect of a Payment Claim for the D&C Deed Sum (Rozelle Interchange) or section 1 of Part B of Schedule 31A in respect of a Payment Claim for the D&C Deed Sum (WHT Southern Tunnel Works).

Minimum Aboriginal Participation Requirements means one or a combination of the following:

- (a) at least ■■■ per cent of the value of the D&C Sum (WHT Southern Tunnel Works) as at the Amendment Date is subcontracted to Aboriginal businesses;
- (b) at least ■■■ per cent of the Contractor's Australian based workforce (full time equivalent) directly contribute to the Contractor's Activities (WHT Southern Tunnel Works) are Aboriginal employees; or
- (c) at least ■■■ per cent of the value of the D&C Sum (WHT Southern Tunnel Works) as at the Amendment Date is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the contract.

Minor Amendment means a Technical Requirements Change that requires:

- (a) a setting out change to a tunnel element of the WHT Southern Tunnelling Works that results in the tunnel element moving 10 metres or less when compared to either the Concept Design (WHT Southern Tunnel Works) or the Current Design, but only where such change is proposed by the Principal on or before the actual date of commencement of excavation by the Contractor of the area directly impacted by the setting out change;
- (b) a setting out change to a tunnel element of the WHT Southern Tunnelling Works that:
 - (i) results in the tunnel element moving 10 metres or more; and
 - (ii) does not require a change in the proposed ground support type,when compared to either the Concept Design (WHT Southern Tunnel Works) or the Current Design, but only where such change is proposed by the Principal on or before the actual date of commencement of excavation by the Contractor of the area directly impacted by the setting out change;
- (c) a setting out change to the WHT Southern Tunnelling Works that results in the excavation dimensions:
 - (i) increasing by a span less than or equal to 600mm over a linear length of tunnel of 5 metres or less;
 - (ii) increasing by a span less than or equal to 300mm over a linear length of tunnel of greater than 5 metres and less than 15 metres;

- (iii) increasing by a span less than or equal to 100mm over a linear length of tunnel of 15 metres or greater;
- (iv) in relation to the height or depth of the excavation dimensions, increasing by:
 - (A) less than or equal to 300mm over a linear length of tunnel of 5 metres or less;
 - (B) less than or equal to 200mm over a linear length of tunnel of greater than 5 metres and less than 15 metres; or
 - (C) less than or equal to 100mm over a linear length of tunnel of 15 metres or greater; or
- (v) relation to the length of the excavation dimensions increasing by a length of tunnel less than 0.5 metres,

when compared to either the Concept Design (WHT Southern Tunnel Works) or the Current Design, but only where such change is proposed by the Principal on or before the actual date of commencement of excavation by the Contractor of the area directly impacted by the setting out change; or

- (d) an amendment to the WHT Southern Tunnelling Works related to the installation of the following items:
 - (i) drainage pits and associated connections;
 - (ii) flame traps and associated connections;
 - (iii) subsurface drainage details beneath CRCP installation; and
 - (iv) conduits to be installed beneath CRCP installation,

where such information is provided to the Contractor on or before 30 September 2023.

Mitigate means, in respect of any event, taking all reasonable steps to preclude the cause of the event and avoiding or minimising the consequences of the event, including (to the extent a prudent, experienced and competent contractor in the position of the Contractor would do so) by expending reasonable sums of money and taking reasonable steps to accommodate the event or the effect of the event on the Contractor's Activities (including by changing the sequencing or timing of, or the construction methodologies used by the Contractor in carrying out, the Contractor's Activities but excluding any acceleration).

Modification Application Documents has the meaning given to that term in clause 7.3(a).

Moral Rights means any rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.

Moral Rights Consent means a consent by the owner of Moral Rights substantially in the form of:

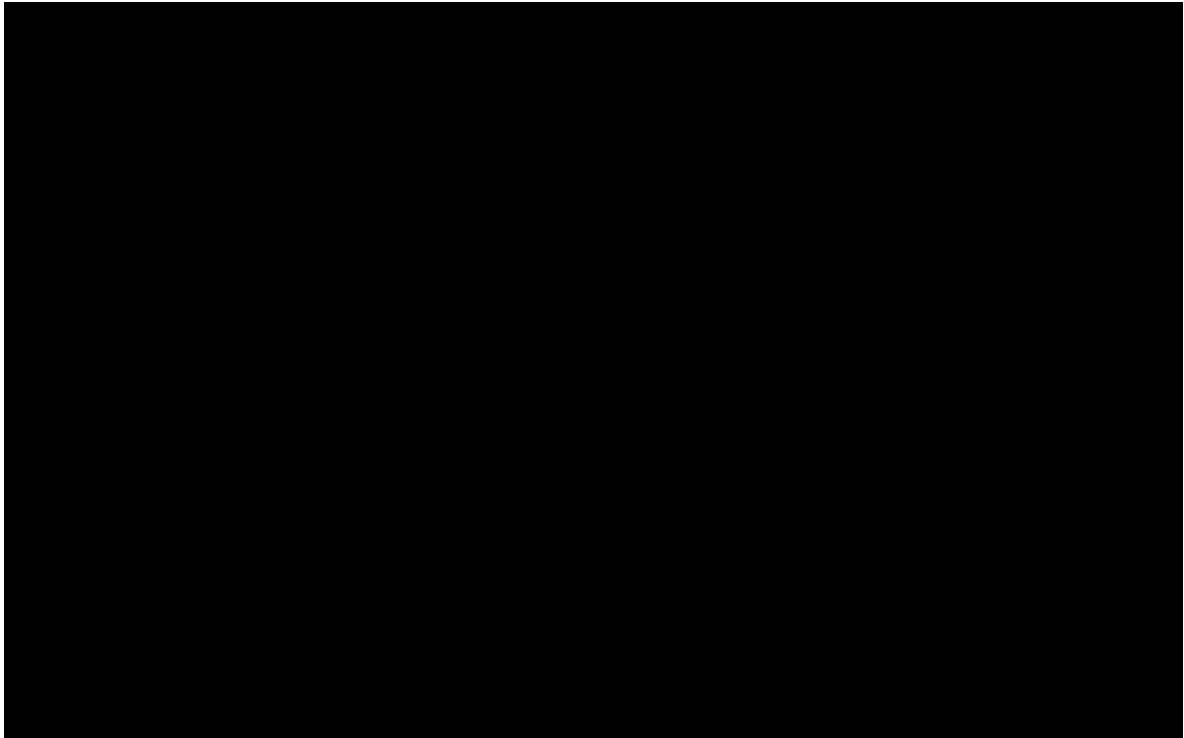
- (a) for the Project Works (Rozelle Interchange), Part A of Schedule 4; and
- (b) for the WHT Southern Tunnel Works, Part B of Schedule 4.

Motorway means:

- (a) on and from the Main Tunnel Date of Opening Completion, the roads, tunnels and other physical works, facilities, systems and utility services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements, which comprise the "Main Tunnel" described in the SWTC (Rozelle Interchange); and
- (b) on and from the Rozelle Interchange Transfer Date, the roads, tunnels and other physical works, facilities, systems and Utility Services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Rozelle Interchange Motorway Stratum.

National Construction Code means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

Native Title Claim means any claim or application relating to native title under the *Native Title Act 1993* (Cth) or any other Law concerning native title.



New Network Project means a project undertaken by the Principal, or its nominee, after the date of this deed to connect any new road or other means of motor vehicle access to the Motorway, including the proposed Western Harbour Tunnel but not including the Main Tunnel.

Non-TfNSW Parcel means a parcel of land and property of which the Principal is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.

Notice has the meaning given to that term in clause 42.1.

Notice of Completion means a notice in the form of Schedule 26 issued by the D&C Independent Certifier pursuant to clause 16.11(f)(i) in relation to Completion.

Notice of Completion (WHT Southern Tunnel Works) means a notice in the form of Schedule 26 issued by the WHT Independent Certifier pursuant to clause 16.11(f)(i) in relation to Completion (WHT Southern Tunnel Works).

Notice of Final Completion means a notice in the form of Schedule 26 issued by the WHT Independent Certifier pursuant to clause 16.11(f)(i) in relation to Final Completion.

Notice of Opening Completion means a notice in the form of Schedule 26 issued by the D&C Independent Certifier pursuant to clause 16.11(f)(i) in relation to Opening Completion.

Notice of WHT Interface Milestone Completion means a notice in the form of Schedule 26 issued by the D&C Independent Certifier pursuant to clause 16.11(f)(i) in relation to a WHT Interface Milestone.

Notice of WHT Southern Tunnel Design Milestone Completion means a notice in the form of Schedule 27 issued by the WHT Independent Certifier pursuant to clause 16.11A(c)(i) in relation to a WHT Southern Tunnel Design Milestone.

Notifiable Claim has the meaning given to that term in clause 26.7(a).

NSW Code means the NSW Government Code of Practice for Procurement (January 2005) or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

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

NSW Government Policies means the NSW Code, NSW Guidelines, APIC Policy, Environmental Management Systems Guidelines (3rd edition) (August 2013), WHS Management Systems and Auditing Guidelines, Quality Management System Guidelines for Construction (August 2013), NSW Government Resource Efficiency Policy (GREP), NSW Government Procurement Guideline Skills and Training in Construction Industry and any other NSW Government guidelines and requirements specified or required by this deed.

NSW Government Procurement Guideline Skills and Training in Construction Industry means the NSW Government Procurement Guideline "Skills and Training in the Construction Industry" (attached to NSW Procurement Board Direction PBD 2016-02 – Construction apprenticeships).

NSW Guidelines means the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (July 2013) (as published by NSW Treasury on 7 June 2013).

O&M Contractor means the entity appointed by the Project Trustee and notified to the Contractor by the Principal as the entity that will operate and maintain the Motorway pursuant to the O&M Deed.

O&M Deed means the deed titled "WestConnex M4-M5 Link O&M Deed" entered into, or to be entered into, between the Project Trustee and the O&M Contractor in relation to the operation and maintenance of the Motorway.

O&M Manuals means the manuals developed in accordance with clause 19.2 including the Project Plans incorporated into them as required by clause 9.5(e), which describe the policy, practices and procedures for the operation, maintenance and repair (including Asset Renewal) of the Rozelle Interchange Works, the maintenance and repair of the WHT Southern Tunnel Works and the maintenance of the Third Party Works.

O&M Plan has the meaning given to that term in Appendix C.1 of the SWTC.

O&M Work means the operation, maintenance and repair of the Motorway (but for the avoidance of doubt, does not include Asset Renewal).

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

Office of the Federal Safety Commissioner's Audit Criteria Guidelines means the Office of the Federal Safety Commissioner's Audit Criteria Guidelines (last updated 4 May 2015) as amended from time to time.

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

Opening Completion means the stage when:

- (a) the Project Works (Rozelle Interchange) are complete in accordance with this deed except for:
 - (i) minor Defects which:
 - (A) do not prevent the Project Works (Rozelle Interchange) from being reasonably capable of being used for their intended purpose;
 - (B) can be corrected without prejudicing the convenient or intended use of the Project Works (Rozelle Interchange); and
 - (C) the Contractor has reasonable grounds for not promptly rectifying; and
 - (ii) the elements of the Project Works (Rozelle Interchange) described in Part B of Schedule 24 titled "Conditions Precedent to Completion";
- (b) without limiting paragraph (a), the Project Works (Rozelle Interchange) are capable of being opened to the public for the safe, efficient and continuous passage of vehicles;
- (c) the Contractor has carried out and passed all tests which must necessarily be carried out and passed before the Project Works (Rozelle Interchange) are opened to the public for the safe, efficient and continuous passage of vehicles, except for the Operational Acceptance Tests;
- (d) the Operational Readiness Evaluation has been completed to the satisfaction of the D&C Independent Certifier, having regard to the opinions of relevant representatives of the Principal, Transport Management Centre, Fire and Rescue NSW and NSW Police Force; and
- (e) without limiting paragraph (b), the Contractor has satisfied each of the conditions precedent to Opening Completion set out in Part A of Schedule 24,

but, for the avoidance of doubt, does not require Completion (WHT Southern Tunnel Works) or Final Completion to have occurred.

Operational Acceptance Tests means the tests of the same name applicable to the Roadside Tolling Equipment described in the SWTC (Rozelle Interchange), Appendix B.10 (Toll Collection System), Attachment B.10-1, section 5.3.4.

Operational Readiness Evaluation or **ORE** means the series of tests required by the SWTC (Rozelle Interchange) to ensure that all of the:

- (a) Rozelle Interchange Works physical assets;
- (b) personnel that will be involved in carrying out the O&M Work which the Contractor is required to train as set out under the SWTC (Rozelle Interchange); and
- (c) processes documented in the O&M Manuals for the Rozelle Interchange Works and all other documents related to the O&M Work that the Contractor is required to prepare under the SWTC (Rozelle Interchange),

function seamlessly and correctly to facilitate safe traffic operations.

Operations Management and Control System or **OMCS** means the Operations Management Control System for the Rozelle Interchange referred to in the SWTC (Rozelle Interchange).

Other Project Stakeholders means:

- (a) the counterparties to the Third Party Agreements;
- (b) contractors of any tier of the persons listed in paragraph (a) of this definition; and
- (c) employees, agents and officers of the persons listed in paragraphs (a) and (b) of this definition.

Other WestConnex Assets or Systems means:

- (a) a WestConnex Asset and System that is located on either of the Other WestConnex Motorways; and
- (b) the Main Tunnel Assets or Systems.

Other WestConnex Motorway means either:

- (a) the M4 Motorway; or
- (b) the M5 Motorway,

or both if the context so requires.

Overall D&C Program means:

- (a) the Overall D&C Program (Rozelle Interchange); or
- (b) the Overall D&C Program (WHT Southern Tunnel Works),

or both, as the context requires.

Overall D&C Program (Rozelle Interchange) means the overall program for design and construction activities which is contained in Part A of Exhibit E, as updated in accordance with clause 16.3(b).

Overall D&C Program (WHT Southern Tunnel Works) means the overall program for design and construction activities which is contained in Part B of Exhibit E, as updated in accordance with clause 16.3(b).

Payment Amount means the instalment payment amount certified by the D&C Independent Certifier under clause 21.3(a)(i) or stated by the Principal's Representative under clause 21.3(a)(ii) and to be paid to the Contractor under clause 21.5.

Payment Claim means an instalment payment progress claim in respect of the D&C Deed Sum (Rozelle Interchange) or the D&C Deed Sum (WHT Southern Tunnel Works) submitted by the Contractor in accordance with clause 21.2 in the form of Schedule 32B.

Payment Statement means an instalment payment statement:

- (a) in respect of a Payment Claim for the D&C Deed Sum (Rozelle Interchange), issued by the D&C Independent Certifier in accordance with clause 21.3(a)(i) in the form of Schedule 32D ;or
- (b) in respect of a Payment Claim for the D&C Deed Sum (WHT Southern Tunnel Works), issued by the Principal's Representative in accordance with clause 21.3(a)(ii).

PDCS means the web based project data and collaboration system nominated by the Principal for the purposes of this deed or any other communications system agreed by the parties from time to time.

Peak Period means, on any day, 5am to 9.30pm.

Permitted Noise and Vibration Limits means the permitted noise and vibration limits specified in the Planning Approvals.

Permitted Working Parameters means the permitted working hours, truck movements and truck haulage routes specified in the Planning Approvals.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Planned Lane Closure has the meaning given in Schedule 29.

Planning Approvals means each of:

- (a) the approval granted by the Minister for Planning under the EP&A Act in relation to the Planning Approval Application, including all conditions to such approval and documents incorporated by reference;
- (b) the WHT Planning Approval;
- (c) any modification to the Primary Planning Approval or the WHT Planning Approval; and
- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Primary Planning Approval or the WHT Planning Approval from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Planning Approval Application means the application for approval under section 115X (now Division 5.2, section 5.15) of the EP&A Act for the construction and operation of the Motorway which will comprise a new, tolled multi-lane road link between the M4 Motorway and the M5 Motorway as submitted by the Principal to the Minister for Planning on or about 20 January 2016 and as amended on or about 22 September 2016 and 15 March 2017, respectively.

Planning Approval Change means:

- (a) the Planning Approval referred to in paragraphs (a), (b) or (c) of the definition of Planning Approvals is modified under the EP&A Act;
- (b) the Minister for Planning issues a new Approval in respect of the Project Works in substitution for, or replacement of, the Planning Approval referred to in paragraphs (a), (b) or (c) of the definition of Planning Approvals;
- (c) any new Approval referred to in paragraph (b) of this definition is modified under the EP&A Act;
- (d) an EPBC Act Approval is issued in respect of the Project Works; or
- (e) any EPBC Act Approval referred to in paragraph (d) of this definition is modified under the EPBC Act.

Planning Approval Change Event means the occurrence of a Planning Approval Change not arising as a consequence of:

- (a) the Contractor's failure to comply with its obligations under a D&C Document;
- (b) a breach by the Contractor of its warranties under clause 7.3(b);
- (c) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties;
- (d) a failure by the Contractor or any of its Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation; or
- (e) any change or amendment requested or instigated by the Contractor or which results from any direct action of the Contractor (including any Change requested by the Contractor under this deed).

Pollution includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

Port Authority of New South Wales Deed of Licence means the agreement entered into between Newcastle Port Corporation trading as Port Authority of New South Wales ABN 50 825 884 846 and the Principal (formerly RMS) entitled "Deed of Licence for Part of Lot 10 DP 1170710", the form of which is included in Exhibit C.

Post Completion Activities means those Contractor's Activities (WHT Southern Tunnel Works) described in Schedule 24A which the Contractor may be instructed by the Principal to carry out after the Date of Completion (WHT Southern Tunnel Works) pursuant to clause 16A.1.

PPS Act means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

PPS Register has the meaning given to the term "Register" in the PPS Act.

Pre-Agreed Change means any of the Changes described in Schedule 22.

Preferred Product means, with respect to each Asset Item listed in Schedule 43 to this deed, the product listed in Schedule 43 for that Asset Item.

Preferred Supplier means, with respect to each Asset Item listed in Schedule 43 to this deed, the supplier listed in Schedule 43 for that Asset Item.

Primary Planning Approval means the approval referred to in paragraph (a) of the definition of Planning Approval.

Principal Contractor means John Holland.

Principal Geotechnical Data means raw factual data:

- (a) only within the categories confirmed in Schedule 41 to be raw factual data; and
- (b) which is contained in Information Documents that are specified in Schedule 41 as geotechnical reports for the purposes of this definition.

Principal Retained Works means the works described in Schedule 42, as varied in accordance with clause 17A.4.

Principal Retained Works (Rozelle Interchange) means the works described in Part A of Schedule 42, as varied in accordance with clause 17A.4.

Principal's Representative means:

- (a) the person appointed by the Principal under clause 8.1(a)(i); or
- (b) any other person appointed from time to time by the Principal under clause 8.1(a)(ii),

and includes any appointee under clauses 8.1(b) or 8.1(d).

Principal Surveillance Officer has the meaning given in clause 8.1(e)(i).

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (c) any other current or future legislation, mandatory codes and policies (where such codes and policies have been notified by an affected party to the other party) relating to the handling of Personal Information which may apply from time to time to a party or to any other recipient of Personal Information permitted under this deed.

Procured Third Party Software means:

- (a) the "Procured Third Party Software" as defined in the Tolling Equipment Works Subcontract; and
- (b) the "Procured Third Party Software" as defined in the IOMCS and OMCS Works Subcontract.

Proposal means the Contractor's stage 2 proposal submitted in response to the Request for Proposals.

Project means:

- (a) the investigation, financing, funding, planning, design, construction, commissioning and maintenance of the Project Works, the Temporary Works and the Main Tunnel Works;
- (b) the operation, maintenance and repair of the Motorway;
- (c) the handover of the Motorway to the Principal at the end of the Term; and
- (d) the levying and collection of tolls on the Motorway.

Project Aboriginal Participation Plan means the plan referred to as the "Aboriginal Participation Plan" in the APIC Policy.

Project Deed means the deed titled "WestConnex M4-M5 Link Project Deed" between the Principal, the Project Trustee and the Asset Trustee dated 12 June 2018.

Project Design Group means the group referred to in clause 8.9(c).

Project Group means the group referred to in clause 8.5.

Project Insurance means, in relation to a party, a policy or policies of insurance which that party is obliged to obtain or cause to be obtained under clause 26.5 and Schedule 30.

Project Plan means any plan of the kind referred to in clause 9.5(a), as that plan may be updated, amended and further developed under clause 9.5 and Schedule 18.

Project Trustee means WCX M4-M5 Link PT Pty Limited (ACN 624 153 788) in its personal capacity and in its capacity as Trustee of the WCX M4-M5 Link Project Trust (ABN 67 667 191 375).

Project WHS Management Plan has the meaning given to that term in Appendix C.1 of the SWTC.

Project Works means the Project Works (Rozelle Interchange) and the WHT Southern Tunnel Works.

Project Works (Rozelle Interchange) means the physical works which the Contractor must design, construct and complete under this deed (including, to the extent relevant to such works, Changes directed in accordance with this deed) including:

- (a) the Rozelle Interchange Works (including the Tolling Equipment Works, Enabling Works, IOMCS and OMCS Works, Integration Works and WHT Interface Works);
- (b) the Utility Service Works referred to in the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed);
- (c) the Local Area Works referred to in the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed); and
- (d) the Property Works referred to in the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed),

but excluding the WHT Southern Tunnel Works, the Temporary Works and D&C Phase Maintenance.

Project Works Traffic Management Plan has the meaning given to that term in clause 9.6(a)(ii).

Proof Engineer means the person or persons as may be engaged from time to time by the Contractor to perform the role of Proof Engineer, and approved by the Principal.

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of the Contractor's Activities as described or specified in the SWTC (Rozelle Interchange), including in section 2.3.2 of the SWTC (Rozelle Interchange) (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Provisional Sum Work means the Provisional Sum Work (Utilities) and the Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant).

Provisional Sum Work (Utilities) means that part of the Project Works and Temporary Works specified as Provisional Sum Work in Appendix B40 of the SWTC (Rozelle Interchange) and the Technical Requirements and for which payment will be made in accordance with clause 21.2A and the D&C Payment Schedule.

Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant) means that part of the Project Works and Temporary Works described in Part B of Schedule 6B and for which payment will be made in accordance with clause 21.2A and the D&C Payment Schedule.

Publicly Notified means information which is publicly available or accessible due to the notification or lodgement of such information by the Contractor (or any entity that comprises the Contractor) or any Contractor Guarantor to an Authority or to the public by the following means:

- (a) pursuant to the listing rules of a recognised stock exchange;
- (b) pursuant to the Law, including the Law relating to corporations, security of payment or industrial relations; or
- (c) via the website of the Contractor (or any entity that comprises the Contractor) or any Contractor Guarantor.

Pure Economic Loss means Consequential Loss other than Consequential Loss arising from:

- (a) any injury to, or disease or death of, persons;
- (b) the loss of (whether total or partial), or destruction of or damage to, any real or personal property; or
- (c) loss of use or access to any real or personal property where such loss of use or access is an Insured Liability and caused by the Contractor's or a Contractor's Related Party's negligent or otherwise wrongful act or omission or breach of this deed.

Qualifying Change in Law means:

- (a) a Discriminatory Change in State Law; or
- (b) a Change in Environmental Law.

Quality Management System means a corporate system that details the organisational structure, policies, procedures, practices, recourses and responsibilities for quality management.

Quality Manager means the person specified as such in Schedule 4B or such other persons engaged as Quality Manager from time to time.

Quality Plan has the meaning given to that term in Appendix C.1 of the SWTC.

Rail Track means the light rail track operated by the Existing Operator listed in paragraph (h) of the definition of Existing Operator.

RailCorp means Rail Corporation New South Wales ABN 59 325 778 353.

RAM Activity means the Reliability, Availability and Maintainability activity the Contractor is required to complete in accordance with section 4.5 of Appendix B.14 of the SWTC.

RCTI has the meaning given to that term in clause 21.4.

Reasonably Anticipated means reasonably anticipated or foreseen at the Effective Date applicable to the relevant Project Works or Contractor's Activities by a prudent and competent contractor in the position of the Contractor, who had:

- (a) done those things that the Contractor warrants under clause 11.6(a)(i) that it has done; and
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's Proposal and obligations under the D&C Documents which was obtainable through reasonable enquiries.

Recipient has the meaning given to that term in clause 24.2(b)(ii).

Reference Date has the meaning given in clause 21.2(b).

Reference Documents means the documents identified as such in the Stage 3 Integration Site Agreed Condition Specification, as updated in accordance with clause 11A.1.

Related Body Corporate has the same meaning as in the Corporations Act.

Related Parties means:

- (a) in respect of the Contractor, its Related Bodies Corporate, Subcontractors and any of the respective employees, agents or officers of the Contractor, its Related Bodies Corporate and its Subcontractors, but excludes:
 - (i) the Principal;
 - (ii) the Principal's Representative;
 - (iii) the WestConnex Concessionaires and their contractors of any tier (in their capacity as contractors for the relevant motorways excluding the Contractor's Activities);
 - (iv) the Main Tunnel Contractor and its contractors of any tier (in their capacity as the Main Tunnel Contractor or contractors in respect of the Main Tunnel Contractor's Activities);

- (v) the Tolling Contractor (Back Office);
 - (vi) any contractor engaged from time to time to design and construct all or a component of an Other WestConnex Motorway and its contractors of any tier (in their capacity as the design and construction contractor or contractors for the Other WestConnex Motorway);
 - (vii) the D&C Independent Certifier;
 - (viii) each Environmental Representative;
 - (ix) the WestConnex O&M Contractors;
 - (x) the parties to the Third Party Agreements;
 - (xi) [REDACTED]
 - (xii) the WHT Independent Certifier;
 - (xiii) the WHT Asset Manager;
 - (xiv) contractors of any tier of the persons listed in paragraphs (a)(i), (ii), (v), (vii), (viii), (ix), (x), (xi), (xii) and (xiii) of this definition; and
 - (xv) employees, agents and officers of the persons listed in paragraphs (a)(i) to (xiv) of this definition;
- (b) in respect of the Principal:
- (i) the Principal's Representative; and
 - (ii) any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative,
- but excludes:
- (iii) the D&C Independent Certifier;
 - (iv) each Environmental Representative;
 - (v) the Contractor and its Subcontractors (in their capacity as the Contractor or contractors in respect of the Contractor's Activities);
 - (vi) the Main Tunnel Contractor and its contractors of any tier (in their capacity as the Main Tunnel Contractor or contractors in respect of the Main Tunnel Contractor's Activities);
 - (vii) the WHT Contractor and its contractors of any tier (in their capacity as the WHT Contractor or contractors for the Western Harbour Tunnel);
 - (viii) the WestConnex O&M Contractors;
 - (ix) the Tolling Contractor (Back Office);
 - (x) the parties to the Third Party Agreements;

- (xi) the WestConnex Concessionaires and their contractors of any tier (in their capacity as contractors for the relevant motorways excluding the Contractor's Activities);
 - (xii) the WHT Independent Certifier;
 - (xiii) the WHT Asset Manager;
 - (xiv) contractors of any tier of the persons listed in paragraphs (b)(iii), (iv), (viii), (ix), (x), (xii) and (xiii) of this definition; and
 - (xv) employees, agents and officers of the persons listed in paragraphs (b)(iii) to (xiv) of this definition;
- (c) in respect of the M4-M5 Link Concessionaires, the State Works Contractor, their contractors of any tier (in their capacity as contractors for the Project excluding the Contractor's Activities) and any of their respective employees, agents or officers, but excluding:
- (i) the Independent Certifier;
 - (ii) the independent certifier appointed for the purposes of the Main Tunnel D&C Deed;
 - (iii) the Environmental Representative (Rozelle Interchange); and
 - (iv) employees, agents, contractors of any tier and officers of the persons listed in paragraphs (c)(i) to (c)(iii) of this definition; and
- (d) in respect of an entity other than the Principal, the Contractor and the M4-M5 Link Concessionaires, its Related Bodies Corporate, its contractors of any tier and any of their respective employees, agents or officers.

Release Date means the date the D&C Independent Certifier issues the Notice of Completion.

Relevant Insurer means an insurance company having a financial performance rating of at least A by Standard and Poor's (Australia) Pty Limited (or equivalent rating).

Relevant Party has the meaning given to that term in clause 13.3(e)(ii).

Remaining WHT Works means the works required for the proposed Western Harbour Tunnel project other than the WHT Works.

Remediable Termination Event has the meaning given to that term in clause 31.4(a).

Remedy means to remedy or cure the Event of Default or, if the Event of Default is not capable of being remedied or cured, to overcome the consequences of the Event of Default.

Remedy Notice has the meaning given to that term in clause 31.2(c).

Remedy Period has the meaning given to that term in clause 31.2(a).

Remedy Plan has the meaning given to that term in clause 31.2(c)(ii)(A).

Request for Proposals means the Request for Proposals titled 'Design and Construction of Rozelle Interchange – Stage 2 Request for Proposal' in respect of the Contractor's Activities issued by the Principal dated May 2018.

Required Rating means a credit rating of at least A by Standard and Poor's (Australia) Pty Limited, A2 by Moody's Investors Service Inc, or A by Fitch Ratings.

Restructure Event means where there is one or more asset transfer or corporate restructure that:

- (a) results in any Contractor Guarantor or the Contractor (or any entity that comprises the Contractor) having a materially diminished financial capacity; and
- (b) adversely affects the ability of any Contractor Guarantor or the Contractor (or any entity that comprises the Contractor) to meet its obligations under the relevant D&C Guarantee or this deed (as relevant).

Revenue means the revenue, including tolling revenue, derived or expected to be derived from the Project or the WHTBL Program.

Reviewer has the meaning given to that term in the Contractor Documentation Schedule.

Road Occupancy Licence or **ROL** means a road occupancy licence issued by Customer Journey Management in accordance with the requirements of Appendix C.4 of the SWTC.

Road Transport Legislation has the meaning given to it by the definition in section 6 of the *Road Transport Act 2013 (NSW)* and includes the regulations and statutory rules made under that Act (such as the Road Rules 2014 (NSW)).

Rozelle Interchange means:

- (a) on and from the date of this deed until the Rozelle Interchange Transfer Date, the Rozelle Interchange Works; and
- (b) on and from the Rozelle Interchange Transfer Date, the motorway described in paragraph (b) of the definition of Motorway.

Rozelle Interchange IFC Drawings means the final developed Design Documentation for the Rozelle Interchange Works, which includes all the design standards, design reports, specifications, models and calculations and the final developed design drawings and shop drawings, for any design element of the Rozelle Interchange or part thereof, which is verified by the D&C Independent Certifier and issued for construction in accordance with this deed.

Rozelle Interchange Lease means the lease granted in respect of the Rozelle Interchange Motorway Stratum to the Asset Trustee.

Rozelle Interchange Motorway Stratum means the stratum of real property on which the Rozelle Interchange will be located to be the subject of the Rozelle Interchange Lease, as notified by the Principal to the Contractor.

Rozelle Interchange Temporary Areas means the land described as such in the Site Access Schedule.

Rozelle Interchange Transfer Date means the date the D&C Independent Certifier issues the Notice of Opening Completion.

Rozelle Interchange Works means the road, tunnel and other physical works, facilities, systems and Utility Services described in section 2.3.1 of the SWTC (Rozelle Interchange) or are otherwise Transferred Works, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements provided by the Contractor as part of the Project Works (Rozelle Interchange) under this deed.

Rozelle Interchange Works Site means:

- (a) the land described as the Rozelle Interchange Works Site in the Site Access Schedule; and
- (b) the tunnel substratum shown in the Site Access Schedule as forming part of the Rozelle Interchange Works Site.

Rozelle Interface Milestone means a deliverable identified in Schedule 37.

Rozelle Interface Milestone Date means a date identified in Schedule 37.

Rozelle Interface Works means those works to be carried out by the Main Tunnel Contractor as described in the Stage 3 Integration Site Agreed Condition Specification.

Rozelle Interface Works Completion means the stage when the Independent Certifier issues a notice under the Project Deed that the Rozelle Interface Works are complete.

Security Bond means an unconditional undertaking provided pursuant to clause 10 or clause 10A.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a "security interest" as defined in section 12 of the PPS Act;
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

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

Senior Project Group means the group established by the Principal and the M4-M5 Link Concessionaires under the Project Deed to review and monitor the progress of the Project activities.

Significant Subcontract means any Subcontract which:

- (a) has a contract value of greater than \$██████████; or
- (b) is for the works and services described in Schedule 4C.

Significant Subcontractor means a Subcontractor engaged under a Significant Subcontract.

Site Access Schedule means Exhibit H.

Site Conditions means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Construction Site and any Extra Land or their surroundings including:

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Substance or other spoil or waste;
- (f) topography of the Construction Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions; and
- (k) any latent conditions.

SMC means Sydney Motorway Corporation Pty Limited (ABN 47 601 507 591) a non-guaranteed company owned by the NSW Treasurer, the Minister for Roads, Maritime and Freight and the Minister for WestConnex.

Source Code means the complete high level language computer programs which, when compiled, generate the object and executable program that constitutes the useable software product. Source Code includes the make files, flow charts, programming notes and other necessary instructions to the compiler and linker.

Spare Parts means the spares parts listed in Schedule 35.

Spares Allowance has the meaning given to that term in clause 15.8(a)(iii).

Spares Finalisation Date has the meaning given to that term in clause 15.8(c).

Spares List has the meaning given to that term in clause 15.8(a)(i).

Spoil Movement Modification means any Planning Approval Change required to allow additional vehicle movements and undertaking the Contractor's Activities (WHT Southern Tunnel Works) from the City West Link cut and cover structure.

Spoil Movement Modification Date means [REDACTED] (as may be extended in accordance with clause 7.4B(g)).

Stage 1 CCC Process Deed Poll means the process deed poll executed by the Contractor dated [REDACTED].

Stage 3 Integration Site means any area indicated as a "Stage 3 Integration Site" in the Site Access Schedule.

Stage 3 Integration Site Agreed Condition Specification means Exhibit N.

Stage 3 Integration Site Defect means any material failure of any part of a Stage 3 Integration Site to comply with the requirements of the applicable Stage 3 Integration Site Agreed Condition Specification, which has a material adverse effect on the Contractor's ability to comply with its obligations under this deed or on the cost of performing any of its obligations, except to the extent that failure is due to:

- (a) fair wear and tear;
- (b) deviations from design documentation in accordance with construction tolerances that would be reasonable for a contractor acting in accordance with Good Industry Practice to make; or
- (c) an act or omission of the Contractor or its Related Parties.

Stakeholders has the meaning given to that term in clause 9.16(b).

State Law means legislation of the State of New South Wales including regulations and subordinate legislation (but which excludes any Approval).

State Works Contractor means WCX State Works Contractor Pty Limited (ABN 65 624 154 089) of Level 33, 259 George Street, Sydney, New South Wales, 2000.

Statutory Declaration (Employees and Subcontractors) means a statutory declaration in the form set out in Schedule 32E which includes a completed and signed Contractor's Statement and a completed and signed Supporting Statement as attachments.

Subcontract means a contract between the Contractor and a Subcontractor or between two or more Subcontractors and includes an agreement for supply of goods or services (including professional services and Construction Plant hire) or both.

Subcontractor means a subcontractor, sub-subcontractor and so on right down the contracting chain of the Contractor in performing the Contractor's Activities and includes a supplier of goods or services (including professional services and Construction Plant hire) or both.

Subcontractors Proof of Payment Procedure means an administrative procedure by which the Contractor provides proof to the Principal that it has paid Subcontractors and implements the monthly process set out in Schedule 32G.

Sunset Date (Opening Completion) means the date which is [REDACTED] after the Date for Opening Completion.

Sunset Date (WHT Southern Tunnel Works) means the date which is [REDACTED] after the Date for Completion (WHT Southern Tunnel Works).

Supplier has the meaning given to that term in clause 24.2(b).

Supplier Licensed Software means:

- (a) the "Supplier Licensed Software" as defined in the Tolling Equipment Works Subcontract; and
- (b) the "IOMCS and OMCS Works Contractor Licensed Software" as defined in the IOMCS and OMCS Works Subcontract.

Supporting Statement means a statement required by section 13(7) of the Security of Payment Act in the form set out in Attachment A to the statutory declaration contained in Schedule 32E (or other form required by the Security of Payment Act) and providing the detail required by the Security of Payment Act.

Surviving Clauses has the meaning given to that term in clause 43.15(a).

SWTC or **Scope of Works and Technical Criteria** means Exhibit I, updated in accordance with this deed including for any Changes directed by the Principal under this deed.

SWTC (Rozelle Interchange) means that part of the SWTC contained in Part A of Exhibit I.

SWTC (WHT Southern Tunnel Works) means that part of the SWTC contained in Part A of Exhibit I.

Sydney Light Rail Interface Agreement means the agreement entered into between Sydney Trains, TfNSW (formerly RMS), TAHE (formerly RailCorp) and the Principal entitled "Works Deed (Light Rail Interface)", the form of which is included in Exhibit C.

Sydney Metro West Interface Agreement means the agreement entered into between the Principal (formerly RMS) and Sydney Metro (ABN 12 354 063 515) entitled "Sydney Metro West – Rozelle Interchange Interface Deed", the form of which is included in Exhibit C.

Sydney Metro West – Western Harbour Tunnel Interface Agreement means the agreement entered into between the Principal and Sydney Metro (ABN 12 354 063 515) entitled "Sydney Metro West – Western Harbour Tunnel Interface Agreement", the form of which is included in Exhibit C.

Sydney Trains means Sydney Trains ABN 38 284 779 682.

Sydney Trains Rozelle Works Deed means the agreement entered into between Sydney Trains, TAHE (formerly RailCorp) and the Principal (formerly RMS) entitled "Rozelle Works Deed" on or about 26 November 2018, the form of which is included in Exhibit C.

Sydney Water Deed of Licence means the agreement entered into between Sydney Water and the Principal (formerly RMS) entitled "Deed of Licence for the land located at Railway Parade, Annandale" the form of which is included in Exhibit C.

Sydney Water Interface Agreement means the agreement to be entered into between Sydney Water and the Principal entitled "Sydney Water Interface Deed (Western Harbour Tunnel Project)" the draft form of which is included in Exhibit C.

TAHE means Transport Asset Holding Entity of New South Wales ABN 59 325 778 353 as constituted by Part 2 of the *Transport Administration Act 1988* (NSW).

Target Satisfaction Date means the date which is 10 Business Days after the date of this deed.

Taxes means income, stamp, indirect or other taxes (including payroll tax, goods and services tax and land tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Technical Requirements means the requirements set out in Annexure A of Part B of the SWTC.

Technical Requirements Change has the meaning given to that term in clause 14A(a).

Temporary Works means the Temporary Works (Rozelle Interchange) and the Temporary Works (WHT Southern Tunnel Works).

Temporary Works (Rozelle Interchange) means any temporary physical works required for the purpose of the carrying out of the Contractor's Activities (Rozelle Interchange), but which does not form part of the Project Works (Rozelle Interchange) including any such works specified in section 2.4 of the SWTC (Rozelle Interchange) and including, to the extent relevant to such works, Changes directed in accordance with this deed.

Temporary Works (WHT Southern Tunnel Works) means any temporary physical works required for the purpose of the carrying out of the Contractor's Activities (WHT Southern Tunnel Works), but which does not form part of the WHT Southern Tunnel Works including any such works specified in the SWTC (WHT Southern Tunnel Works) and including, to the extent relevant to such works, Changes directed in accordance with this deed.

Term means the period:

- (a) commencing on:
 - (i) with respect to the Project Works (Rozelle Interchange), the Date of Opening Completion; and
 - (ii) with respect to the WHT Southern Tunnel Works, the Date of Completion (WHT Southern Tunnel Works); and
- (b) ending on 31 December 2060.

Third Party Agreements means:

- (a) the Sydney Light Rail Interface Agreement;
- (b) the Sydney Trains Rozelle Works Deed;
- (c) the Sydney Metro West Interface Agreement;
- (d) the Ausgrid Relocation Deed;
- (e) the Port Authority of New South Wales Deed of Licence;
- (f) the UrbanGrowth Licence Deed;

- (g) the Sydney Water Deed of Licence;
- (h) the Sydney Metro West – Western Harbour Tunnel Interface Agreement;
- (i) the Sydney Water Interface Agreement; and
- (j) any other agreement to which clause 9.18(b) applies.

Third Party Claim has the meaning given to that term in clause 26.11(a).

Third Party Confidential Information means information provided to the Principal by any third party and which the Principal has given the Contractor prior written notice is confidential.

Third Party Works means the Local Area Works, Property Works and Utility Service Works.

Toll Collection System means the system proposed to be used or used (as the case may be) for imposing and collecting tolls in relation to the use of the Motorway, as described in Appendix B.10 of the SWTC (Rozelle Interchange).

Tolling Contractor (Back Office) means the contractor engaged by the Project Trustee to carry out the Tolling Services Work.

Tolling Equipment means any roadside tolling equipment specified in the SWTC, including the gantries and associated equipment.

Tolling Equipment Works means the works to be undertaken by the Contractor in respect of the Toll Collection System for the Rozelle Interchange as set out in section 5.12 of the SWTC (Rozelle Interchange) which form part of the Rozelle Interchange Works.

Tolling Equipment Works Contractor means the subcontractor engaged by the Contractor to perform the Tolling Equipment Works. At the date of this deed, the Tolling Equipment Works Contractor is Kapsch TrafficCom Australia Pty Ltd.

Tolling Equipment Works Subcontract means the agreement titled "Rozelle Interchange Tolling Equipment Works Subcontract" dated on or about the date of D&C Close between the Contractor and the Tolling Equipment Works Contractor.

Tolling Interface Deed means the agreement titled "Rozelle Interchange Tolling Interface Deed" to be entered into between the Contractor and the Tolling Contractor (Back Office), substantially in the form set out in Exhibit K.

Tolling Services Agreement means the deed titled "Tolling Services Agreement" between the Project Trustee and the Tolling Contractor (Back Office) in relation to the Rozelle Interchange dated on or about 12 June 2018.

Tolling Services Work means the back office tolling work to be carried out by the Tolling Contractor (Back Office) under the Tolling Services Agreement.

Track Possession means a prescribed period available to the Contractor during which the Contractor has or may have temporary access to a defined portion of the Rail Track for the purposes of carrying out the Contractor's Activities (Rozelle Interchange), including for the purpose of rectifying Defects.

Track Possession Threshold means all of the following Track Possessions:

- (a) 2 shared Track Possessions, each comprising at least 10 consecutive days;

- (b) 4 shared Track Possessions, each comprising 2 consecutive days over a weekend; and
- (c) 2 non-shared Track Possessions, each comprising 2 consecutive days over a weekend.

Training Management Guidelines means the NSW Government Training Management Guidelines: Skills, training and diversity in construction, July 2020.

Transferred Works means the Project Works (Rozelle Interchange) excluding the Principal Retained Works.

Transferred Works Price means the portion of the D&C Deed Sum (Rozelle Interchange) which is for the Transferred Works, as determined by the D&C Independent Certifier prior to the Rozelle Interchange Transfer Date with reference to the Schedule of Prices in Part A of Schedule 31A.

Transferred Works Proportion is calculated as follows:

$$TWP = \frac{TWPR}{DCDS}$$

where:

TWP = the Transferred Works Proportion;

DCDS = the D&C Deed Sum (Rozelle Interchange) as at the Date of Completion; and

TWPR = the Transferred Works Price.

Transport for New South Wales or **TfNSW** means Transport for NSW ABN 18 804 239 602.

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

Uninsurable means, in relation to a risk, either that:

- (a) insurance is not available with any Relevant Insurer; or
- (b) the insurance premium payable for the insurance is at such a level or the terms and conditions are such that a reputable insurance broker acceptable to the parties certifies that in its reasonable opinion, the risk is not generally being insured against with Relevant Insurers by prudent, competent and experienced concessionaires, designers, contractors and/or operators (as applicable) of motorways or tollroads,

at the time that the insurance is sought to be obtained or renewed.

Uninsurable Force Majeure Event means, at any time:

- (a) a Force Majeure event referred to in paragraphs (c), (d) or (e) of the definition of "Force Majeure" or sabotage, act of public enemy or terrorism (to the extent not covered by the *Terrorism Insurance Act 2003* (Cth)); or
- (b) a Force Majeure event which causes physical loss or damage to the Project Works or the Temporary Works,

in respect of which neither the Principal nor the Contractor is insured and which is Uninsurable.

Unknown Artefacts means an Artefact to the extent that the Artefact:

- (a) at the Effective Date applicable to the relevant Project Works or Contractor's Activities was:
 - (i) in existence on the Construction Site; and
 - (ii) not known, or substantially known, to the Contractor;
- (b) differs materially in nature or scope from what could have been Reasonably Anticipated; and
- (c) will result in the Contractor incurring more or less cost in performing the Contractor's Activities or a delay to Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion.

Unknown Contamination means Contamination to which clause 11.10(e) applies to the extent that:

- (a) in the case of Contamination in existence within the Construction Site at the Effective Date applicable to the relevant Project Works or Contractor's Activities, or which migrates onto the Construction Site after the Effective Date applicable to the relevant Contractor's Activities, such Contamination:
 - (i) was not known, or substantially known, to the Contractor at the Effective Date applicable to the relevant Project Works or Contractor's Activities; and
 - (ii) differs materially in nature, extent or scope from what could have been Reasonably Anticipated; or
- (b) in the case of Contamination in existence outside the Construction Site at the Effective Date applicable to the relevant Project Works or Contractor's Activities which migrates onto the Construction Site after the Effective Date applicable to the relevant Project Works or Contractor's Activities, it could not have been Reasonably Anticipated that such Contamination would migrate onto the Construction Site as a result of the Contractor's Activities,

and, in each case, will result in the Contractor incurring more or less cost in performing the Contractor's Activities or a delay to Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion.

Unknown Site Condition means:

- (a) an Unknown Utility Service;
- (b) Unknown Contamination; or
- (c) an Existing Asset Condition.

Unknown Site Condition Notice means a written notice to be given by the Contractor pursuant to clause 11.12(a)(ii) which must contain all relevant details in relation to an Unknown Site Condition, including:

- (a) the type of Unknown Site Condition;

- (b) the location of the Unknown Site Condition;
- (c) the nature and extent of the Unknown Site Condition;
- (d) detailed particulars on why the Contractor believes the relevant characteristic or condition constitutes or involves an Unknown Site Condition which entitles the Contractor to make a Claim under clause 11.12;
- (e) the alternative measures that the Contractor considers are necessary and practicable to deal with the Unknown Site Condition, including a preliminary estimate of the extent to which each such alternative has a resourcing, cost, disruption or delay impact; and
- (f) any other information that the Contractor considers is relevant in the circumstances.

Unknown Utility Service means a Utility Service to the extent that the Utility Service:

- (a) is in existence on the Construction Site;
- (b) at the Effective Date applicable to the relevant Project Works or Contractor's Activities was not known, or substantially known, to the Contractor;
- (c) differs materially in nature, extent, type or scope from what could have been Reasonably Anticipated; and
- (d) will result in the Contractor incurring more or less cost in performing the Contractor's Activities or a delay to Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion.

For the avoidance of doubt, an Unknown Utility Service does not include:

- (e) a known Utility Service that was not located as shown in any Information Document or otherwise differs materially in nature, extent, type or scope from what could have been Reasonably Anticipated;
- (f) a Utility Service that is redundant; or
- (g) a Utility Service connecting a property to a main or common Utility Service that was not identified in any Information Document or otherwise differs materially in nature or scope from what could have been Reasonably Anticipated.

Unplanned Lane Closure has the meaning given in Schedule 29.

Updated Rozelle Interchange Connections has the meaning given in clause 17A.6(a).

UrbanGrowth Licence Deed means the agreement entered into between UrbanGrowth NSW Development Corporation ABN 41 163 782 371 (now Infrastructure NSW) and the Principal (formerly RMS) entitled "Licence Deed for Site A and Site B at White Bay Power Station", the form of which is included in Exhibit C.

Urgent Defect means a Defect in connection with the Contractor's Activities (WHT Southern Tunnel Works) which:

- (a) poses an actual or potential risk:
 - (i) to the health or safety of any person; or

- (ii) of loss of or damage to property; or
- (b) if not corrected, will cause a critical path delay to the construction activities to be performed by the WHT Contractor, such as to entitle the WHT Contractor to an extension of time under its contract with the Principal.

Urgent Rozelle Interface Works Defect means a Stage 3 Integration Site Defect which will have an adverse impact on the ability of the Contractor to achieve Opening Completion or Completion by the Date for Opening Completion or the Date for Completion (as applicable) in accordance with this deed.

Utility Service means any service, facility or item of infrastructure, including water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, railway, industrial waste disposal and electronic communications service, and includes any such service, facility, or item of infrastructure that comes into existence after the date of this deed.

Utility Service Works means the construction, modification or relocation of Utility Services all of which are to be designed and constructed by the Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SWTC (Rozelle Interchange), including in section 2.3.4 (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

WestConnex AIP Plan means the Australian Industry Participation Plan contained in Exhibit L.

WestConnex Assets and Systems include all assets and systems which, comprise or are intended to form part of the WestConnex Program of Works in the form such assets and systems are to be built and commissioned, including facilities, buildings, structures, finishes, plant, equipment, hardware and software (including the tunnel structures, civil systems and mechanical and electrical systems).

WestConnex Concessionaire means a concessionaire of the Motorway, or any Other WestConnex Motorway, and includes the M4-M5 Link Concessionaires.

WestConnex Disaster Recovery Site has the meaning given to that term in the SWTC (Rozelle Interchange).

WestConnex Motorway Control Centre or **WMCC** has the meaning given to that term in the SWTC (Rozelle Interchange).

WestConnex O&M Contractors means any entity engaged to operate and maintain the Motorway or an Other WestConnex Motorway.

WestConnex Program of Works means the 33-km motorway that will link Sydney's west with the airport and Port Botany precinct, and will include the M4 extension and duplication of the M5 East to King Georges Road, as augmented from time to time.

WestConnex Project Stakeholders means:

- (a) the persons listed in paragraphs (a)(iii) to (ix) of the definition of "Related Parties";
- (b) contractors of any tier of the persons listed in paragraphs (a)(v), (vii), (viii) and (ix) of the definition of "Related Parties"; and
- (c) employees, agents and officers of the persons listed in paragraphs (a) and (b) of this definition.

WestConnex System Defect means a material failure of any key Other WestConnex Assets or Systems listed in Schedule 36 to comply with the design specification for that system identified in Schedule 36 (as that design specification is updated in accordance with clause 11B.3(aa) to (ac)), which has a material adverse effect on the Contractor's ability to comply with its obligations under this deed or on the cost of performing any of those obligations, except to the extent that failure is due to:

- (a) fair wear and tear;
- (b) deviations from the design documentation in accordance with construction tolerances that would be reasonable for a contractor acting in accordance with Good Industry Practice to make; or
- (c) an act or omission of the Contractor or its Related Parties.

Western Harbour Tunnel means the roads, tunnels and other physical works, facilities, systems and utility services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which will connect with the WestConnex Program of Works at the Rozelle Interchange, cross underneath Sydney Harbour between the Birchgrove and Waverton areas and connect with the Warringah Freeway at North Sydney.

Western Harbour Tunnel – Rozelle Interchange Interface Deed means the deed entitled "Western Harbour Tunnel – Rozelle Interchange Interface Deed" to be entered into between the Principal, [REDACTED] the Contractor and the WHT Contractor.

[REDACTED]

WHS Accreditation Scheme means the accreditation scheme established by the Commonwealth for the accreditation of builders of building work that is funded directly or indirectly by the Commonwealth while that scheme continues in operation.

WHS Legislation means:

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

WHS Management Systems and Auditing Guidelines means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines 5th edition (September 2013, updated May 2014), or any document issued from time to time which amends or replaces that document.

WHT Asset Manager means a person or persons engaged by the Principal or the [REDACTED] to operate or maintain the Western Harbour Tunnel (or any part of it), as notified to the Contractor by the Principal.

WHT Asset Manager Deed means the contract to be entered into between the Principal and the WHT Asset Manager in relation to the operation, maintenance and repair of the Western Harbour Tunnel.

WHTBL Program has the meaning given to that term in the Recitals.

WHT Contract means the deed under which the WHT Contractor is engaged to design and construct the Remaining WHT Works.

WHT Contractor means the person engaged to design and construct the Remaining WHT Works.

WHT Early Completion Payment means the amount of \$ [REDACTED] (excluding GST).

WHT Early Completion Payment Date means [REDACTED].

WHT Independent Certifier means the entity to be procured by the Principal and engaged by the Principal and the Contractor for the performance of independent certifier services for the WHT Southern Tunnel Works and the Remaining WHT Works.

WHT Independent Certifier Deed means the deed titled "Rozelle Interchange & Western Harbour Tunnel and Beaches Link – WHT Southern Tunnel Works Independent Certifier Deed" to be entered into between the Principal, the Contractor and the WHT Independent Certifier, in the form set out in Exhibit R or as otherwise agreed between the parties.

WHT Independent Certifier Deed Poll means the deed poll titled "WHT Independent Certifier Deed Poll" executed by the WHT Independent Certifier on or about the date of the WHT Independent Certifier Deed, substantially in the form set out in Schedule 6 of the Sydney Metro West – Western Harbour Tunnel Interface Deed.

WHT Incentive Payment means, in respect of a WHT Interface Milestone, the relevant "WHT Incentive Payment" specified in Schedule 37A.

WHT Interface Contractor means:

- (a) the WHT Asset Manager; and
- (b) the WHT Contractor.

WHT Interface Design Documentation means the Design Documentation required by Appendix B.30 of the SWTC (Rozelle Interchange) or any part of it.

WHT Interface Milestone means a milestone relating to the WHT Interface Works, as specified in Schedule 37A.

WHT Interface Milestone Completion means, in respect of a WHT Interface Milestone, the stage when:

- (a) the WHT Interface Works required for the WHT Interface Milestone are complete in accordance with this deed except for minor Defects which:
 - (i) do not prevent the WHT Interface Works required for the WHT Interface Milestone from being reasonably capable of being used for their intended purpose;
 - (ii) can be corrected without prejudicing the convenient or intended use of the WHT Interface Works required for the WHT Interface Milestone; and
 - (iii) the Contractor has reasonable grounds for not promptly rectifying;

- (b) without limiting paragraph (a), the WHT Interface Works required for the WHT Interface Milestone are capable of being used for their intended purpose;
- (c) the Contractor has carried out and passed all tests which must necessarily be carried out and passed before the WHT Interface Works required for the WHT Interface Milestone may be used for their intended purpose; and
- (d) without limiting paragraph (b), the Contractor has satisfied each of the conditions precedent to WHT Interface Milestone Completion for the WHT Interface Milestone set out in Part AA of Schedule 24.

WHT Interface Works means those Enabling Works described in Schedule 37A.

WHT Planning Approval means the instrument of approval CSSI 8863 granted by the Minister for Planning and Public Spaces under section 5.19 of the EP&A Act dated 21 January 2021 in respect of the WHT Southern Tunnel Works, a copy of which is located on the NSW Department of Planning, Industry and Environment website <http://www.planning.nsw.gov.au> and includes all conditions to such approval and documents incorporated by reference, as modified from time to time.

WHT Southern Tunnel Design Milestone means a milestone specified in Schedule 37AA.

WHT Southern Tunnel Design Milestone Completion means, in respect of a WHT Southern Tunnel Design Milestone, when the Contractor's Activities for that WHT Southern Tunnel Design Milestone are complete and comply with the requirements of this deed.

WHT Southern Tunnel Temporary Areas means the land described as such in the Site Access Schedule.

WHT Southern Tunnel Works means the road, tunnel and other physical works and facilities described in the SWTC (WHT Southern Tunnel Works) which the Contractor must design, construct and complete under this deed (including, to the extent relevant to such works, Changes directed in accordance with this deed), including:

- (a) all plant, machinery, equipment, fixtures, furniture, fittings, spare parts and other improvements provided by the Contractor as part of performing works described in the SWTC (WHT Southern Tunnel Works); and
- (b) the Local Area Works referred to in the SWTC (WHT Southern Tunnel Works),

but excluding the Temporary Works (WHT Southern Tunnel Works) and the D&C Phase Maintenance.

WHT Southern Tunnel Works IFC Drawings means the final developed Design Documentation for the WHT Southern Tunnel Works, which includes all the design standards, design reports, specifications, models and calculations and the final developed design drawings and shop drawings, for any design element of the Western Harbour Tunnel or part thereof, which is verified by the WHT Independent Certifier and issued for construction in accordance with this deed.

WHT Southern Tunnel Works Site means:

- (a) the land described as the WHT Southern Tunnel Works Site in the Site Access Schedule; and

- (b) the tunnel substratum shown in the Site Access Schedule as forming part of the WHT Southern Tunnel Works Site.

WHT Works means the WHT Interface Works and the WHT Southern Tunnel Works.

Wilful Default means a deliberate or intentional breach of this deed by the Contractor or a breach by the Contractor in deliberate disregard of, or deliberate indifference to, the consequences, excluding any innocent act, omission, mistake or error of judgement.

Wilful Misconduct means an act or failure to act by the relevant party or its Related Parties that was intended to cause, or was in deliberate disregard of or deliberate indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

Workplace Relations Management Plan means the workplace relations management plan prepared by the Contractor in accordance with clause 40.6(a).

1.2 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) 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, including the SWTC; and
 - (ii) the SWTC includes all Annexures and 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) for the purposes of clause 16.8:
 - (i) any extension of time stated in days; or
 - (ii) any reference to "day",
will exclude days which are public holidays in Sydney;
- (m) for all purposes other than as set out in clause 1.2(l), "day" means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) 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;
- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "\$" or "dollar" is to Australian currency;
- (r) the:
 - (i) Environmental Representative (Rozelle Interchange) will perform the functions of the "Environmental Representative" or the "ER" under the Primary Planning Approval (to the extent relevant to the Project Works (Rozelle Interchange)) and this deed; and
 - (ii) Environmental Representative (WHT) will perform the functions of the "Environmental Representative" or the "ER" under the WHT Planning Approval (to the extent relevant to the WHT Southern Tunnel Works) and this deed;
- (s) any reference to:
 - (i) the Project Works (including the Third Party Works);
 - (ii) the Temporary Works;
 - (iii) the D&C Phase Maintenance;

- (iv) the Project Plans;
 - (v) the SWTC;
 - (vi) the Design Documentation; or
 - (vii) any other document or thing,
- or any part of any of them:
- (viii) being fit for its purpose or for its intended purpose; or
 - (ix) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use stated in, contemplated by or ascertainable prior to and at the Date of Opening Completion in respect of the Contractor's Activities (Rozelle Interchange) or prior to and at the Date of Completion (WHT Southern Tunnel Works) in respect of the Contractor's Activities (WHT Southern Tunnel Works) from:

- (x) the D&C Documents; or
 - (xi) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change) the Change Order, the documents referred to in the Change Order and documents issued by the Principal in connection with the Change Order;
- (t) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
 - (u) any obligation of the Contractor under this deed with respect to a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the Contractor to the Principal's Representative under clause 9.5 in respect of which the Principal's Representative has not given a notice under section 5 of Schedule 18; and
 - (v) references to defined terms in the SWTC will be read in accordance with the relevant interpretation section in the relevant part of the SWTC.

1.3 **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.

1.4 **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.

1.5 **Certification**

For the purposes of this deed, a copy of a document will be regarded as duly certified by the Contractor if it is certified as a true copy by a director, secretary, project director, technical director or general manager of the Contractor, as the case may be.

1.6 **Ambiguous terms**

- (a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any schedules, exhibits or annexures), the Principal's Representative must, subject to clause 1.7, direct the interpretation of this deed which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.6(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.6(a):
 - (i) will not relieve the Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;
 - (ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
 - (iii) will not limit or otherwise affect the Principal's rights against the Contractor, whether under this deed or otherwise according to Law; and
 - (iv) must, in respect of a notice given by the Contractor under clause 1.6(a), be given within 20 Business Days of receipt of that notice.
- (d) If the parties disagree as to the interpretation of any part of the SWTC, including as to how Table 1 in section B3 of the SWTC (WHT Southern Tunnel Works) operates or any inconsistency between the SWTC (WHT Southern Tunnel Works) and the Technical Requirements, then the parties must refer the matter to the Project Group for consideration at the next Project Group meeting. If the Project Group is unable to agree on the interpretation or resolve the inconsistency, then either party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

1.7 **Order of precedence**

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

- (a) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (i) this deed excluding the schedules and exhibits; and
 - (ii) the schedules and exhibits;

- (b) to the extent that clause 1.7(a) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different codes, standards, specifications or guidelines with which the Contractor must comply, the order of precedence set out in section 1.6 of the SWTC and section B2 of the Technical Requirements (as applicable) will apply; and
- (c) to the extent that clauses 1.7(a) and 1.7(b) do not apply or resolve the ambiguity, discrepancy or inconsistency, that part of the deed, SWTC or Environmental Documents which prescribes or requires the highest standard of compliance, the highest quality or standard or the more onerous obligation will take precedence (unless directed otherwise by the Principal's Representative).

The documents comprising this deed (including the SWTC and the Environmental Documents) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.

1.8 **Severability**

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 1.8(b)(i), preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this deed; and
 - (B) the original effect and intent of this deed.

1.9 **Electronic file**

Where this deed (including the SWTC) refers to an electronic file on a separate disc, such electronic files form part of this deed.

2. **D&C DOCUMENTS**

2.1 **Consent or Approvals**

Unless the context requires otherwise, any endorsement, review, consent, approval or rejection by the Principal, the M4-M5 Link Concessionaires, the WHT Independent Certifier or the D&C Independent Certifier in accordance with this deed or otherwise is solely to monitor the performance of the Contractor and will not relieve the Contractor from its total responsibility for its obligations under this deed, including the design and construction of the Project Works and the Temporary Works and the performance of the Post Completion Activities and D&C Phase Maintenance.

2.2 **Scope of Works and Technical Criteria**

The Contractor must, subject to the allocation in Schedule 1A:

- (a) comply with any obligation imposed on "the Project Company" by the SWTC relating to the Project Works, the Temporary Works, the D&C Phase Maintenance or the Contractor's Activities;
- (b) give the Principal any document which the Principal is required by the SWTC to give to the D&C Independent Certifier and/or the WHT Independent Certifier (as applicable) within the period of time prescribed by this deed, or if no period of time is prescribed, in sufficient time to enable the Principal to review that document and give it to the D&C Independent Certifier and/or the WHT Independent Certifier (as applicable) within the time required by the SWTC (if any); and
- (c) send a copy of any document to the Principal, which the Contractor:
 - (i) sends to the D&C Independent Certifier or the WHT Independent Certifier in connection with the Contractor's Activities, at the same time that the Contractor sends it to the D&C Independent Certifier or the WHT Independent Certifier (as applicable); and
 - (ii) receives from the D&C Independent Certifier or the WHT Independent Certifier in connection with the Contractor's Activities, promptly following receipt of that document from the D&C Independent Certifier or the WHT Independent Certifier (as applicable),

and keep the Principal fully informed of any other communications between the Contractor, the WHT Independent Certifier and the D&C Independent Certifier in connection with the Contractor's Activities.

3. **NOT USED**

4. **PROJECT RISKS**

Subject to the express provisions of this deed, the Contractor:

- (a) accepts all risks associated with the Contractor's Activities;
- (b) without limiting the generality of clause 4(a), accepts all risks associated with:
 - (i) the cost of the Contractor's Activities, including the cost of all Subcontractors and increases in the cost of Materials, Construction Plant, Utility Services and labour required for the performance of the Contractor's Activities;
 - (ii) the performance of Subcontractors;
 - (iii) obtaining access to all areas other than the Construction Site and the occupation and use of such areas;
 - (iv) the occupation and use of the Construction Site, the Motorway, the Other WestConnex Motorways and the Western Harbour Tunnel by the Contractor (including the risk of any Lane Occupancy Fees that may be payable and the costs that may be payable pursuant to clause 11C.2 in connection with such occupation or use);
 - (v) the Site Conditions encountered;

- (vi) all information provided or not provided by the Principal, SMC, the M4-M5 Link Concessionaires, [REDACTED] the WHT Asset Manager and the WHT Contractor about the Project Works, the Temporary Works, the D&C Phase Maintenance, the Main Tunnel, the Other WestConnex Motorways, the Construction Site, the WestConnex Program of Works and the WHTBL Program;
- (vii) traffic conditions on approach roads (including the Main Tunnel and Other WestConnex Motorways) to the Construction Site and any other difficulties with obtaining access to and from the Construction Site;
- (viii) complying with all Laws, Approvals and requirements of Authorities;
- (ix) reliance upon or the use of the Concept Design;
- (x) providing all Materials, Construction Plant, Utility Services and labour necessary for the Contractor's Activities;
- (xi) industrial relations issues;
- (xii) foreign exchange movements in any currencies adverse to the Contractor;
- (xiii) damage to the Contractor's Activities, the Project Works, the Temporary Works, the D&C Phase Maintenance, the Construction Site, the Extra Land, the Rozelle Interchange or the Western Harbour Tunnel;
- (xiv) the time taken to achieve WHT Interface Milestone Completion of each WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion;
- (xv) third party claims;
- (xvi) the interfaces between, and the integration of the Rozelle Interchange Works, the Main Tunnel Works and the Other WestConnex Motorways, including:
 - (A) the condition of the Main Tunnel and the Other WestConnex Motorways;
 - (B) the performance of the M4-M5 Link Concessionaires and their Related Parties with respect to the Main Tunnel and any delays in completion of the Main Tunnel;
 - (C) the performance of the WestConnex Concessionaires (other than the M4-M5 Link Concessionaires) and their Related Parties with respect to the Other WestConnex Motorways and any delays in completion of the Other WestConnex Motorways;
- (xvii) Liability for Taxes, including the risk that Liability for Taxes is greater than estimated by the Contractor or its advisers; and
- (xviii) the interface with the WHT Contractor and the interface between the WHT Works and the Remaining WHT Works.

5. **CONDITIONS PRECEDENT**

5.1 **Commencement of obligations**

The rights and obligations of the parties under this deed (other than Day 1 Clauses which commence on the date of this deed) will commence on D&C Close.

5.2 **Satisfaction of conditions precedent**

- (a) To the extent this deed does not expressly impose a more onerous requirement, the Contractor must use all reasonable endeavours to satisfy the Conditions Precedent by the Target Satisfaction Date.
- (b) The Principal may waive in writing any of the Conditions Precedent.
- (c) The Principal must give the Contractor notice when the Principal has reasonably formed the view that a Condition Precedent has been satisfied, and the Contractor must give notice to the Principal of whether or not it agrees with such notice.
- (d) The Principal's Representative will notify the Contractor promptly of the date on which the Principal's Representative is satisfied that all Conditions Precedent have been satisfied or unconditionally waived and that D&C Close has occurred.

5.3 **Target Satisfaction Date**

- (a) If any of the Conditions Precedent is still not satisfied (or waived under clause 5.2) by 11:59pm on the Target Satisfaction Date, then the Principal may terminate this deed by prior notice to the Contractor.
- (b) The period of the notice referred to in clause 5.3(a) will expire 1 Business Day after 11.59 pm on the date of a notice under clause 5.3(a) and this deed will only be terminated if the Conditions Precedent have not been satisfied (or waived under clause 5.2) within that period.
- (c) If this deed is terminated pursuant to this clause 5.3:
 - (i) each of the other D&C Documents will be taken to have terminated at the time this deed is terminated;
 - (ii) the Principal must return all unconditional undertakings provided by the Contractor within 7 Business Days after the date of termination of this deed; and
 - (iii) no party will have any Claim against any other party under or in respect of the D&C Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with the D&C Documents or the Contractor's Activities, except for any Claim in relation to breaches of any Day 1 Clause.

5.4 **Legal opinions**

Prior to D&C Close, the Contractor must provide the legal opinions required by clause 4 of Schedule 1.

6. **PLANNING APPROVAL**

The parties acknowledge and agree that the Principal has received:

- (a) as at the date of this deed, the Primary Planning Approval for the Project Works and the Main Tunnel Works; and
- (b) as at the Amendment Date, the WHT Planning Approval for the WHT Southern Tunnel Works.

7. **COMPLIANCE WITH LAW AND APPROVALS**

7.1 **Compliance with Law**

The Contractor must:

- (a) in carrying out the Contractor's Activities, comply with;
- (b) ensure that its Related Parties, in carrying out the Contractor's Activities, comply with;
- (c) ensure that:
 - (i) in the case of the Project Works (Rozelle Interchange), at the Date of Opening Completion;
 - (ii) in the case of the WHT Interface Works required for a WHT Interface Milestone, at the Date of WHT Interface Milestone Completion of the WHT Interface Milestone;
 - (iii) in the case of the WHT Southern Tunnel Works, the WHT Southern Tunnel Works,comply with and are capable of continuing to comply with;
- (d) ensure that the Temporary Works, Post Completion Activities and D&C Phase Maintenance comply with; and
- (e) provide the Principal with such assistance as may reasonably be required by it to enable the Principal to comply with,

all:

- (f) applicable Laws (including the Heavy Vehicle National Law), including any change in Law after the date of this deed and any New COVID-19 Directive after the Amendment Date; and
- (g) NSW Government Policies,

and must not engage in, and must ensure that its Related Parties in carrying out the Contractor's Activities do not engage in, any fraud, bribery or corruption.

7.1A **M4 Planning Approvals and M5 Planning Approvals**

The Contractor:

- (a) acknowledges and agrees that it has reviewed the M4 Planning Approvals and the M5 Planning Approvals as at the date of this deed;
- (b) must comply with the M4 Planning Approvals and M5 Planning Approvals to the extent relevant to the Contractor's Activities; and

- (c) warrants that:
 - (i) the design and construction of the Project Works and Temporary Works and the performance of the D&C Phase Maintenance will not cause the Principal or the relevant WestConnex Concessionaires to be in breach of a condition of the M4 Planning Approvals or the M5 Planning Approvals (as applicable); and
 - (ii) in carrying out the Contractor's Activities, it will not do anything that will cause the Principal or the relevant WestConnex Concessionaires to be in breach of a condition of the M4 Planning Approvals or the M5 Planning Approvals (as applicable).

7.2 Consents and Approvals

- (a) In relation to any document required to be prepared pursuant to the Planning Approvals which relates to the Contractor's Activities and which is also required to be submitted to an Authority, the Contractor:
 - (i) must promptly (other than in respect of a condition of the Planning Approvals that the Contractor is not required to comply with pursuant to Part B of Schedule 6 and Schedule 6A):
 - (A) provide the Principal's Representative with copies of any such documents;
 - (B) provide the Principal with an opportunity to comment on any such documents;
 - (C) consider any comments made by the Principal in relation to any such documents; and
 - (D) deliver a final version of any such documents in order to enable the Principal to submit the relevant document to any Authority in accordance with the requirements of the Planning Approvals; and
 - (ii) warrants that:
 - (A) any document the Contractor prepares in accordance with this clause 7.2(a) will comply with the EP&A Act and any other applicable legislation; and
 - (B) it will prepare each document in accordance with Good Industry Practice.
- (b) The Contractor must:
 - (i) expeditiously apply for and obtain from each relevant Authority all Approvals required to perform the Contractor's Activities (other than the Planning Approvals, the EPBC Act Approval (if any) and the Approvals specified in Part A of Schedule 6);
 - (ii) comply with the lawful requirements of each such Authority to permit their proper consideration of the applications for Approvals;
 - (iii) comply with, carry out and fulfil, all conditions and requirements of all Approvals (including those which the Principal is expressed under the terms

of the Approval to be required to comply with, carry out and fulfil) to the extent relevant to the Contractor's Activities, (other than in respect of a condition of the Planning Approvals that the Contractor is not required to comply with pursuant to Part B of Schedule 6 or Schedule 6A);

- (iv) in respect of any Approval relating to the Contractor's Activities, pay all fees, effect all insurances other than the Principal's Project Insurances, take reasonable steps to verify that all of the Principal's Project Insurances have been effected, provide any bonds and execute any undertakings or agreements required by any relevant Authority;
 - (v) without limiting the Principal's obligation to satisfy or fulfil the conditions and requirements of the Planning Approvals allocated to the Principal under Schedule 6 and Schedule 6A, provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to obtain, or satisfy or fulfil the conditions and requirements of any Approvals which are:
 - (A) obtained by the Principal after the date of this deed; or
 - (B) as between the Principal and the Contractor, required to be satisfied or fulfilled by the Principal pursuant to Schedule 6 and Schedule 6A,provided that the Principal must reimburse the Contractor for the reasonable costs incurred by the Contractor in providing such assistance to the Principal; and
 - (vi) otherwise comply with clause 7.1.
- (c) The Contractor acknowledges that:
- (i) the Principal is the proponent under the EP&A Act in respect of the submission of any such document; and
 - (ii) the Principal and the M4-M5 Link Concessionaires will rely upon the Contractor's warranties in this clause 7.2.
- (d) Subject to clause 11.4(c), but notwithstanding anything else to the contrary in the D&C Documents, the Contractor is not responsible for applying for or obtaining any Approvals under the EPBC Act.

7.3 **Modification Application Documents**

- (a) The parties agree that, subject to the terms of Part B of Schedule 6 and Schedule 6A, the Contractor must:
 - (i) prepare any applications, documentation, plans or reports (including any consistency assessments) required to be prepared in respect of any proposed modification to the Planning Approvals relating to the Project Works (including, if applicable, the documents referred to in clause 7.2(a) and any other documents required to be submitted with the application for modification), excluding any proposed modification to the Planning Approvals relating to the Main Tunnel Works;
 - (ii) carry out and provide to the Principal all surveys, investigations, reports and studies reasonably requested by the Principal's Representative, to such

standard and within such time as reasonably directed by the Principal's Representative,

(together, **Modification Application Documents**); and

(iii) subject to clause 7.3(a)(i), provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain any necessary amendments or modifications to the Planning Approvals (including any proposed modification to the Planning Approvals relating to the Main Tunnel Works provided that the Principal must reimburse the Contractor for the reasonable costs incurred by the Contractor in providing such assistance to the Principal).

(b) The Contractor warrants that:

(i) each Modification Application Document that it prepares will comply with the EP&A Act, the EPBC Act and any other applicable legislation; and

(ii) it will prepare each Modification Application Document in accordance with Good Industry Practice.

(c) The Contractor acknowledges that:

(i) the Principal is the proponent under the EP&A Act in respect of the submission of any Modification Application Documents; and

(ii) the Principal and the M4-M5 Link Concessionaires will rely upon the Contractor's warranties in this clause 7.3.

7.4 **Planning Approval Change Events**

(a) Without limiting clause 7.4(b), clause 14.1 will apply as if the Principal had issued a Change Order if a Planning Approval Change Event occurs:

(i) with respect to the Primary Planning Approval, after the date of this deed and prior to the Date of Opening Completion; and

(ii) with respect to the WHT Planning Approval, after the Amendment Date and prior to the Date of Completion (WHT Southern Tunnel Works),

and requires:

(iii) a Change to be made; or

(iv) a reduction in the Permitted Working Parameters or Permitted Noise and Vibration Limits under the applicable Planning Approval.

(b) The Contractor must:

(i) take all reasonable steps to Mitigate the cost of the Change;

(ii) for this purpose, comply with all reasonable directions of the Principal concerning the Change, and its consequences; and

(iii) ensure that its Subcontractors comply with this clause 7.4(b),

and the Principal's liability under clause 7.4(a) will be reduced to the extent that the Contractor fails to comply with these obligations.

- (c) Except to the extent expressly stated otherwise in this clause 7.4, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (i) a modification to the Planning Approvals; or
 - (ii) a Planning Approval Change Event.

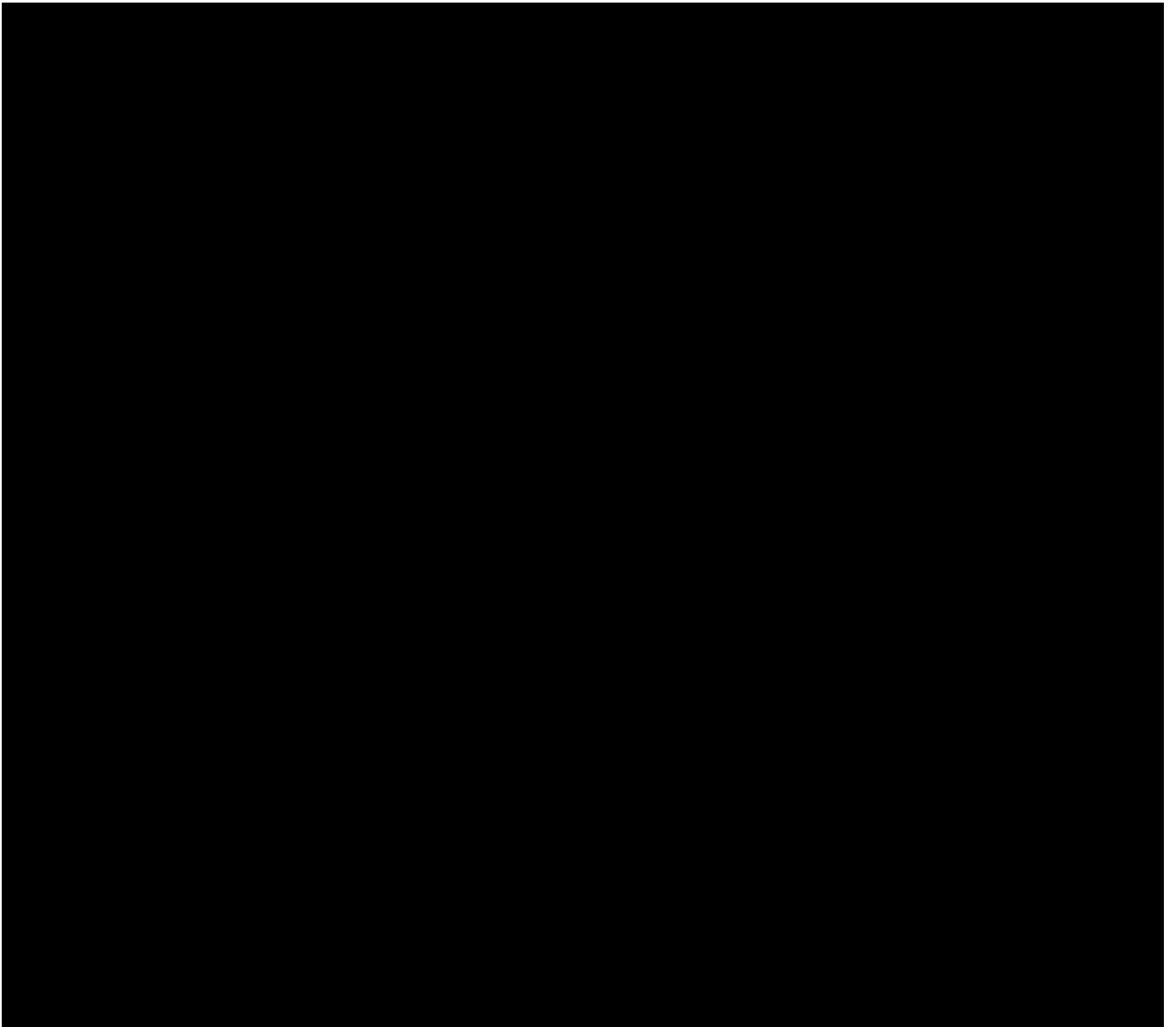
7.4A **Modifications to the Planning Approvals**

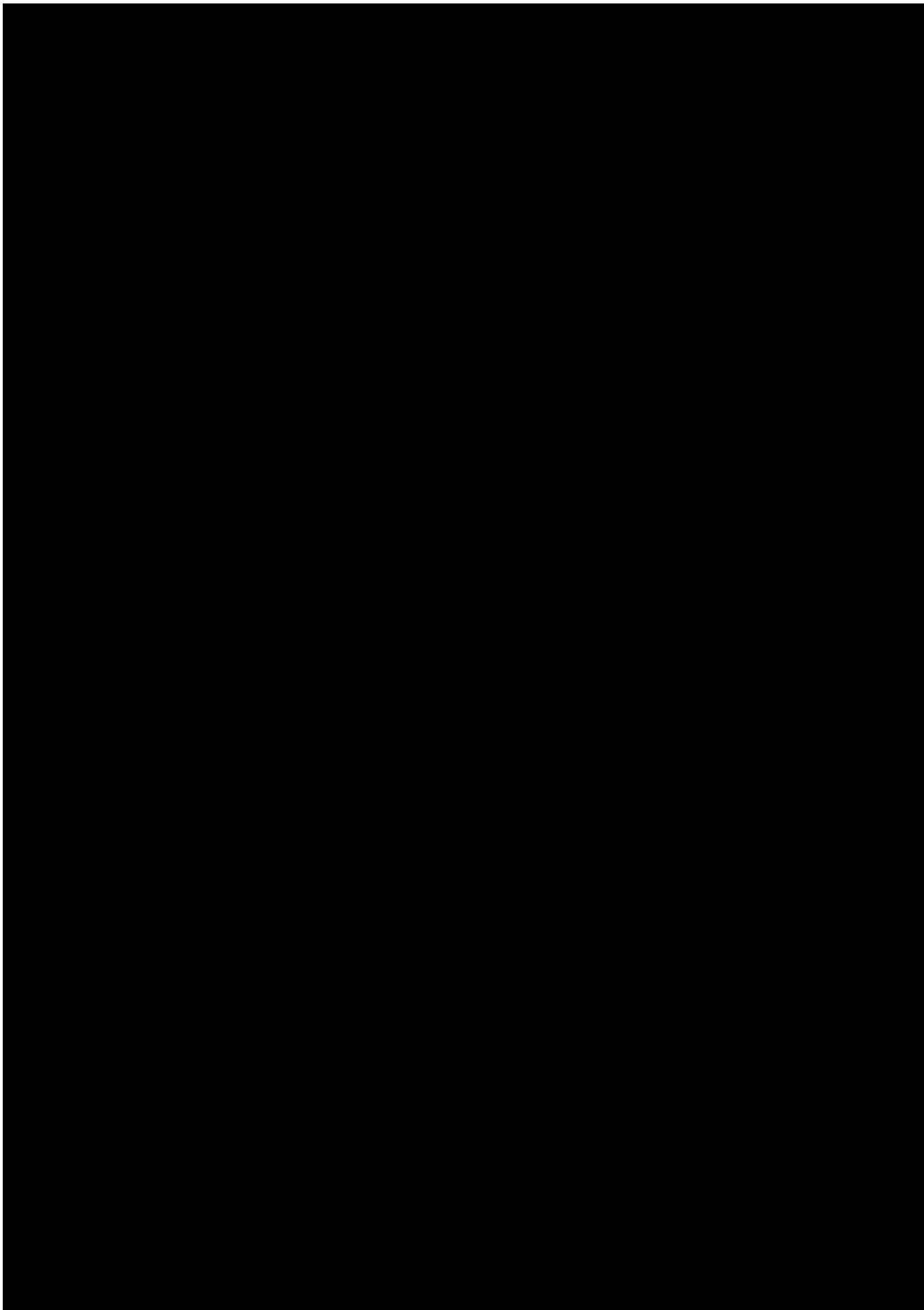
- (a) The Contractor acknowledges and agrees that:
 - (i) as between the Principal and the Contractor, only the Principal is permitted to make or apply for modifications to the Planning Approvals;
 - (ii) subject to clause 7.4A(f) and clause 7.4B, the Principal may refuse to make, seek or apply for such modification or discontinue or withdraw or change an application for such modification at any time; and
 - (iii) if the Principal does agree to a request by the Contractor to apply for a modification to the Planning Approvals, the Principal need not apply for any modification to the Planning Approvals on behalf of the Contractor unless the Contractor first submits its proposal for modification to the Principal's Representative for its review and the Principal's Representative consents to the proposal.
- (b) The Contractor must not make, seek or apply for any modification to the Planning Approvals other than through the Principal.
- (c) The Contractor must pay to the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification to the Planning Approvals instigated or requested by the Contractor.
- (d) The Contractor must provide reasonable assistance to the Principal in relation to any modification to the Planning Approvals relating to the Project Works, Temporary Works, D&C Phase Maintenance or Contractor's Activities, including by attending any relevant meeting as required by the Principal and providing any information available to the Contractor or its Associates.
- (e) The Contractor must co-operate with the Principal and the Principal's Related Parties in relation to any modification to the Planning Approvals.
- (f) Where the modification to the Planning Approval is for the purposes of the Iron Cove Link ventilation exhaust cavern, tunnel and underground substation (**Iron Cove Link Vent Structure Planning Approval Modification**):
 - (i) clause 7.4A(a)(ii) does not apply;
 - (ii) the Principal will ensure the Principal's Representative does not unreasonably withhold its consent under clause 7.4A(a)(iii) to the Contractor's proposal for the Iron Cove Link Vent Structure Planning Approval Modification; and

- (iii) the Principal agrees to apply for, and provide all reasonable assistance to the Contractor in procuring, the Iron Cove Link Vent Structure Planning Approval Modification.
- (g) Where the application for the Iron Cove Bridge Vent Structure Planning Approval Modification:
 - (i) is rejected, then to the extent a change to the Concept Design (Rozelle Interchange) is necessary solely as a result of such rejection; or
 - (ii) is granted subject to new or amended conditions, then to the extent a change to the Concept Design (Rozelle Interchange) is necessary solely as a result of such new conditions or amendments to the conditions,

clause 14.1 will apply as if the Principal had issued a Change Order for that change to the Concept Design (Rozelle Interchange) (notwithstanding paragraph (e) of the definition of Planning Approval Change Event).

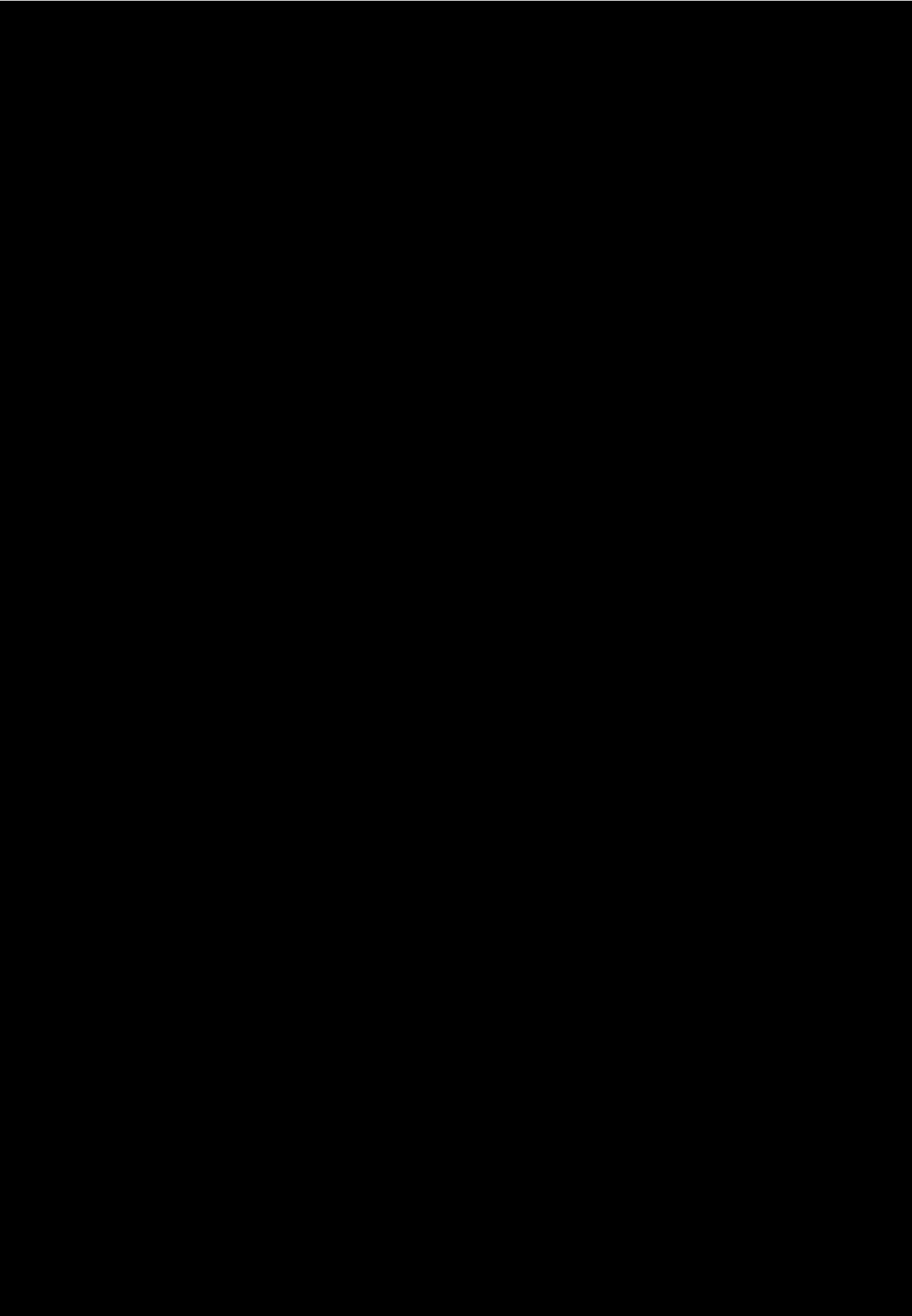
7.4B Spoil Movement

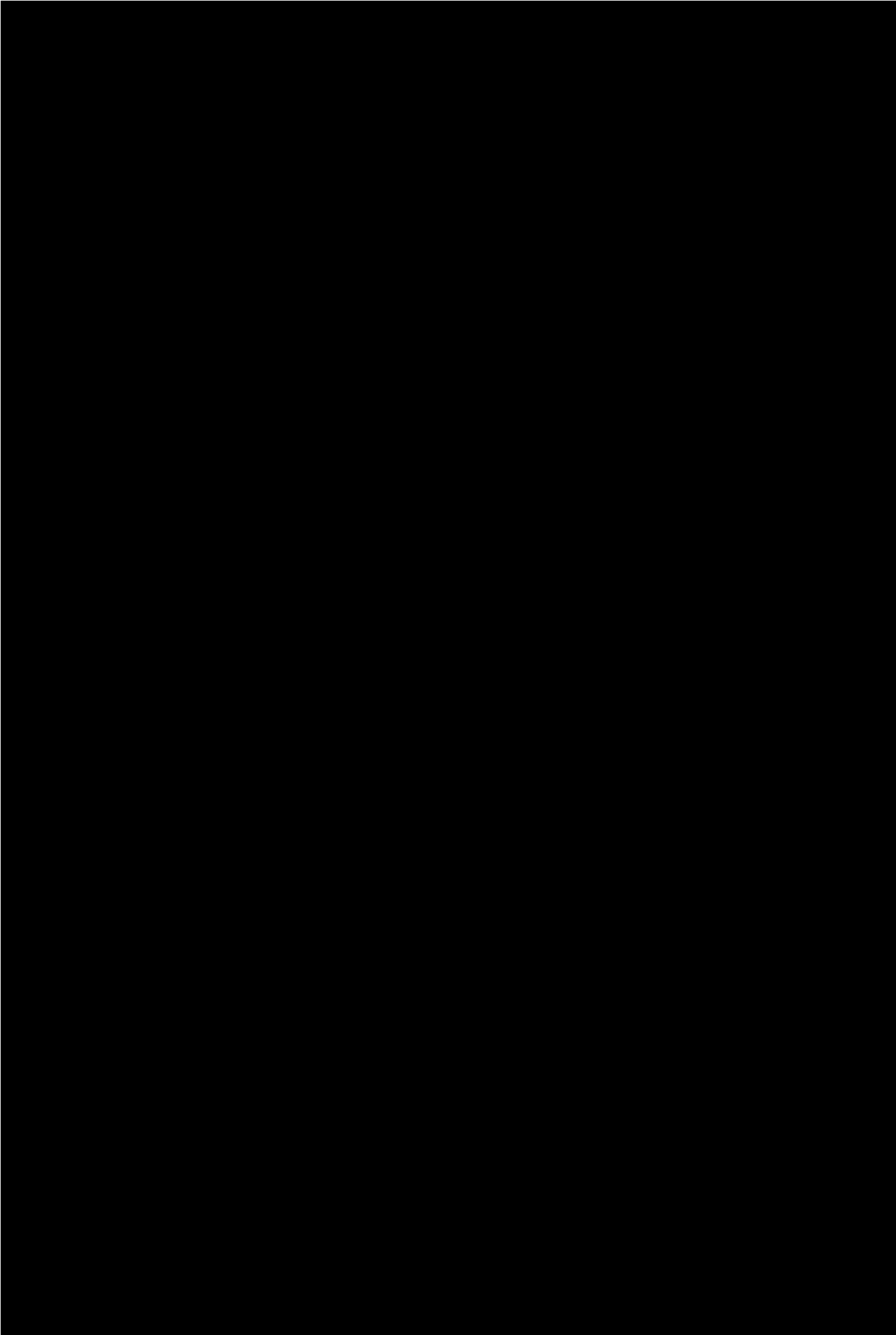


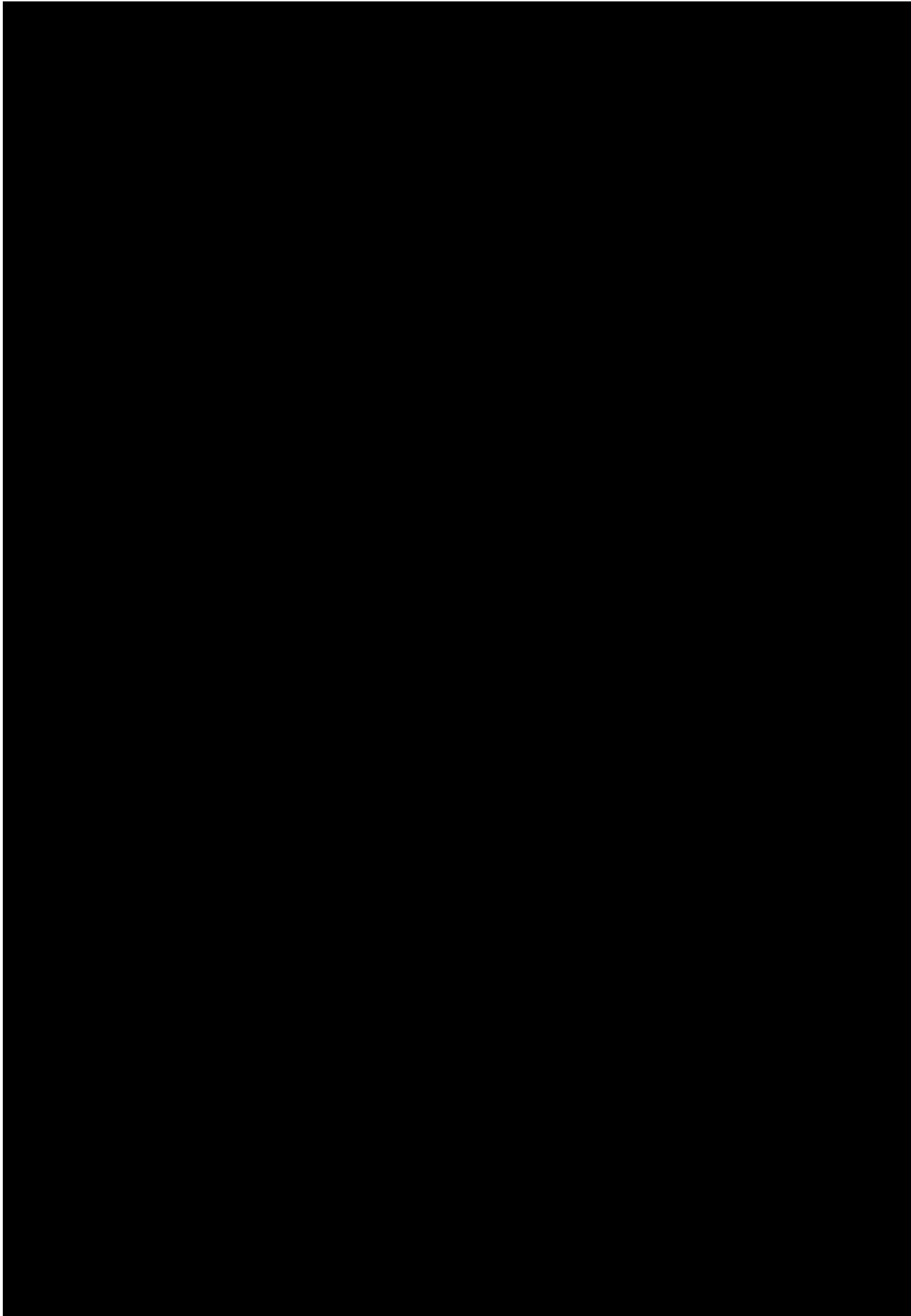


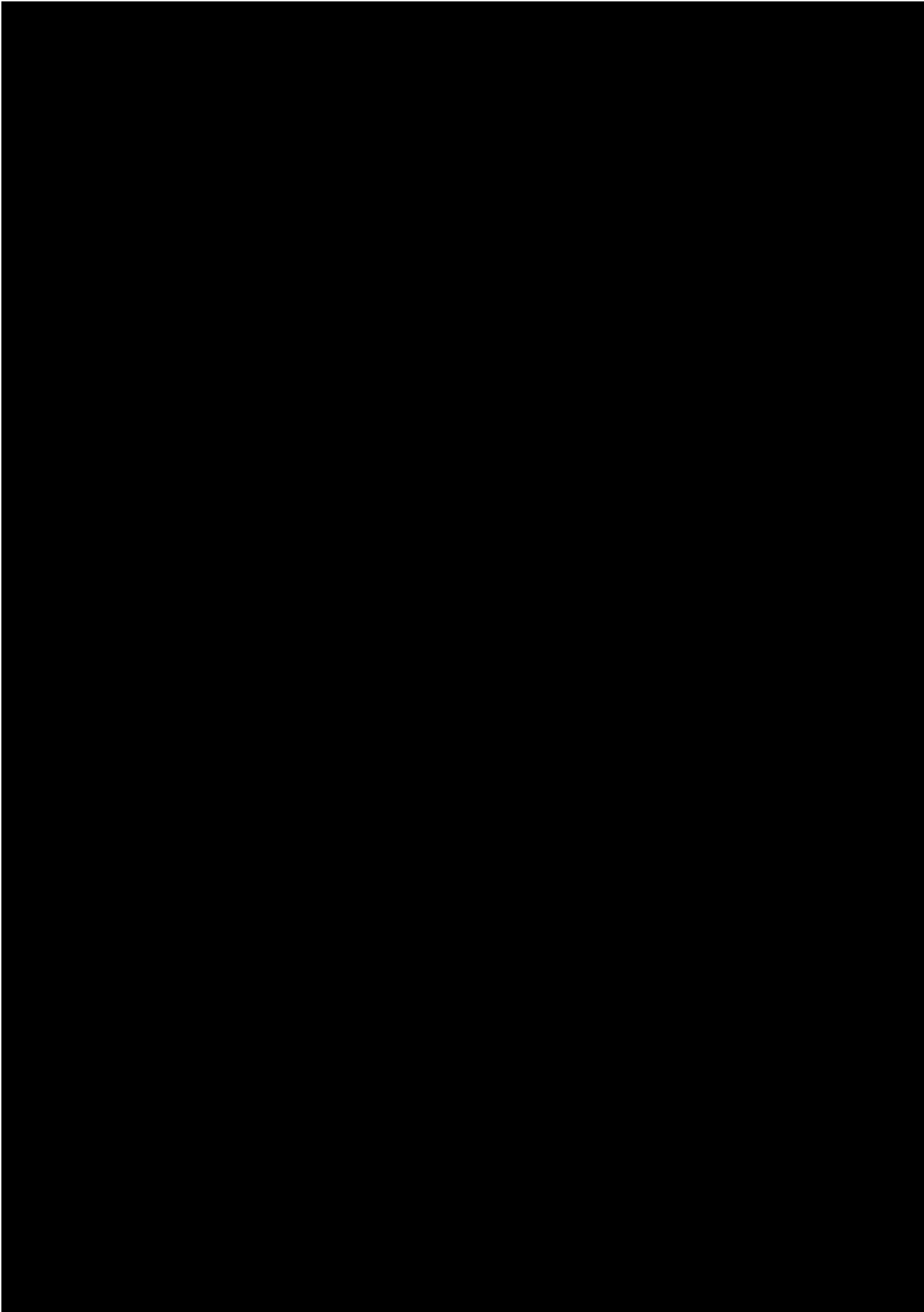
7.5 Environmental assessment

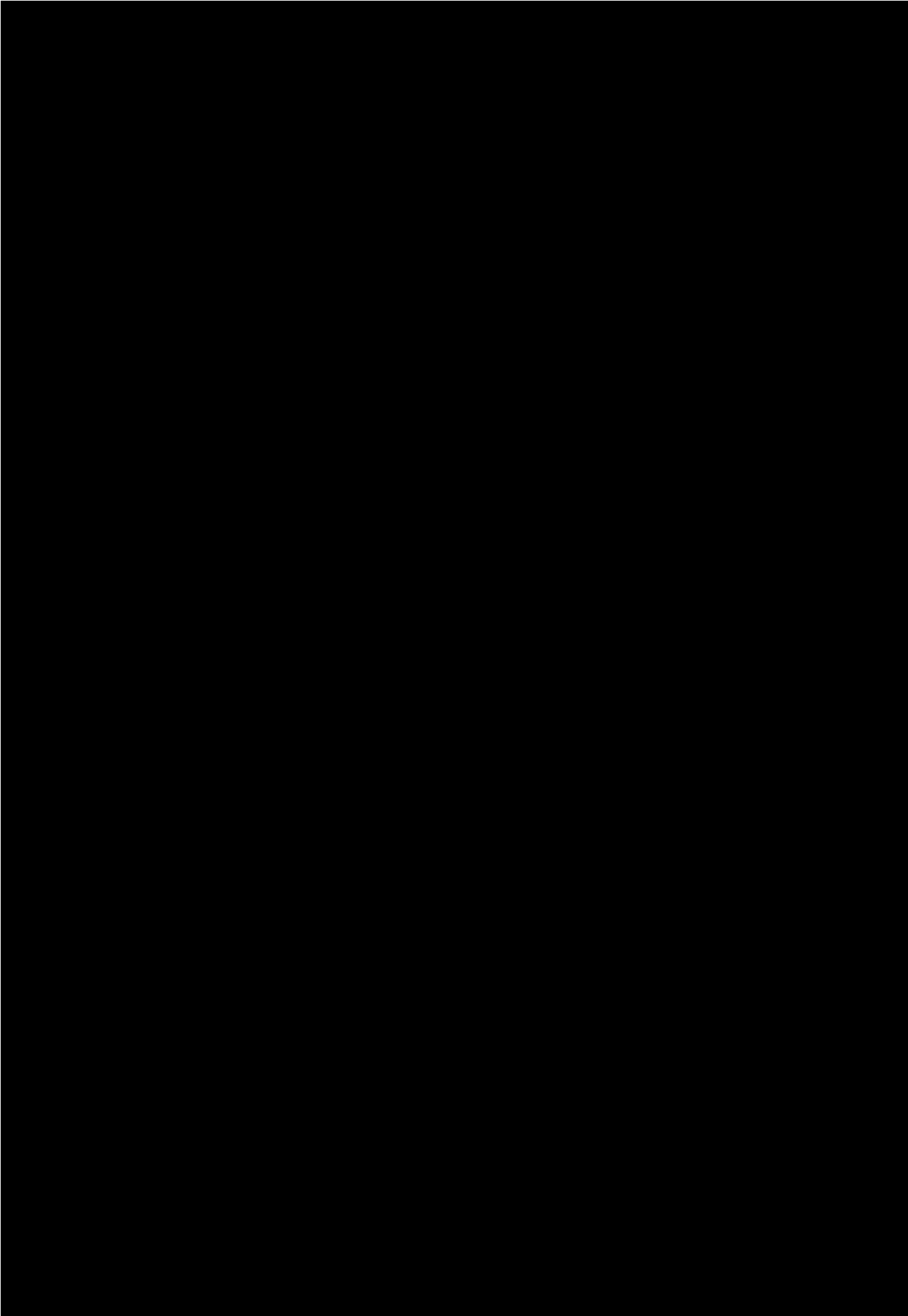
- (a) If there is a legal challenge brought about by way of commencement of court proceedings in relation to the environmental assessment or determination in respect of the Project, the Project Works, the Temporary Works, the Motorway or the Western Harbour Tunnel under:
- (i) the EP&A Act;
 - (ii) the EPBC Act; or
 - (iii) any other Law,
- (including a legal challenge to the Planning Approvals or a stop work order issued by an Authority) (**Legal Challenge**), the Contractor must continue to perform its obligations under this deed unless, as a result of that Legal Challenge, it is otherwise ordered by a court or directed by the Principal's Representative.
- (b) Subject to clause 7.5(c), as between the Principal and the Contractor, the Principal is responsible for dealing with the Legal Challenge as it sees fit in its absolute discretion.
- (c) If requested to do so by the Principal, the Contractor must provide reasonable assistance to the Principal dealing with any Legal Challenge, including by attending any relevant meetings and providing any information available to the Contractor, at the Contractor's cost.
- (d) For the purposes of clause 7.5(a), the Principal's Representative may by notice direct the Contractor to suspend any or all of its obligations under this deed until such time as the Principal gives the Contractor further notice and the Contractor must comply with that notice.
- (e) The Principal will have no liability to the Contractor in respect of an order by a court or direction by the Principal's Representative that the Contractor cease to perform all or part of its obligations under this deed as a result of a Legal Challenge (including under clause 16.8) to the extent that the Legal Challenge:
- (i) is initiated or upheld, or the court order is made, due to:
 - (A) the Contractor's failure to comply with its obligations under a D&C Document;
 - (B) a breach of the Contractor's warranties under clause 7.3(b);
 - (C) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or
 - (D) a failure by the Contractor or any of its Related Parties to comply with the EP&A Act or the EPBC Act or any other applicable legislation; or
 - (ii) relates to or arises out of or in connection with any Change proposed by the Contractor in accordance with section 2.2 of the Change Procedure or otherwise carried out by the Contractor without the Principal having issued a Change Order in respect of that Change.

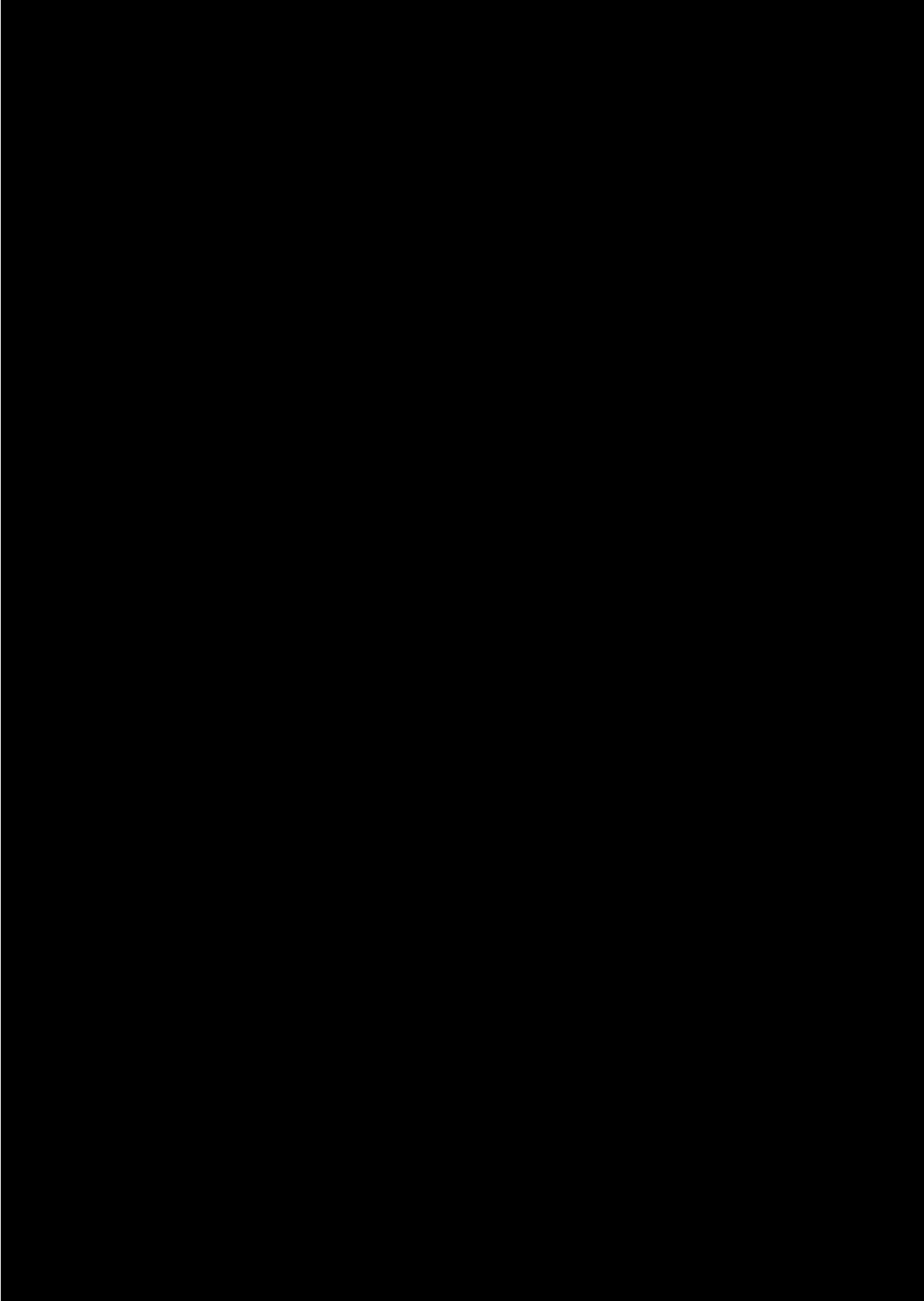




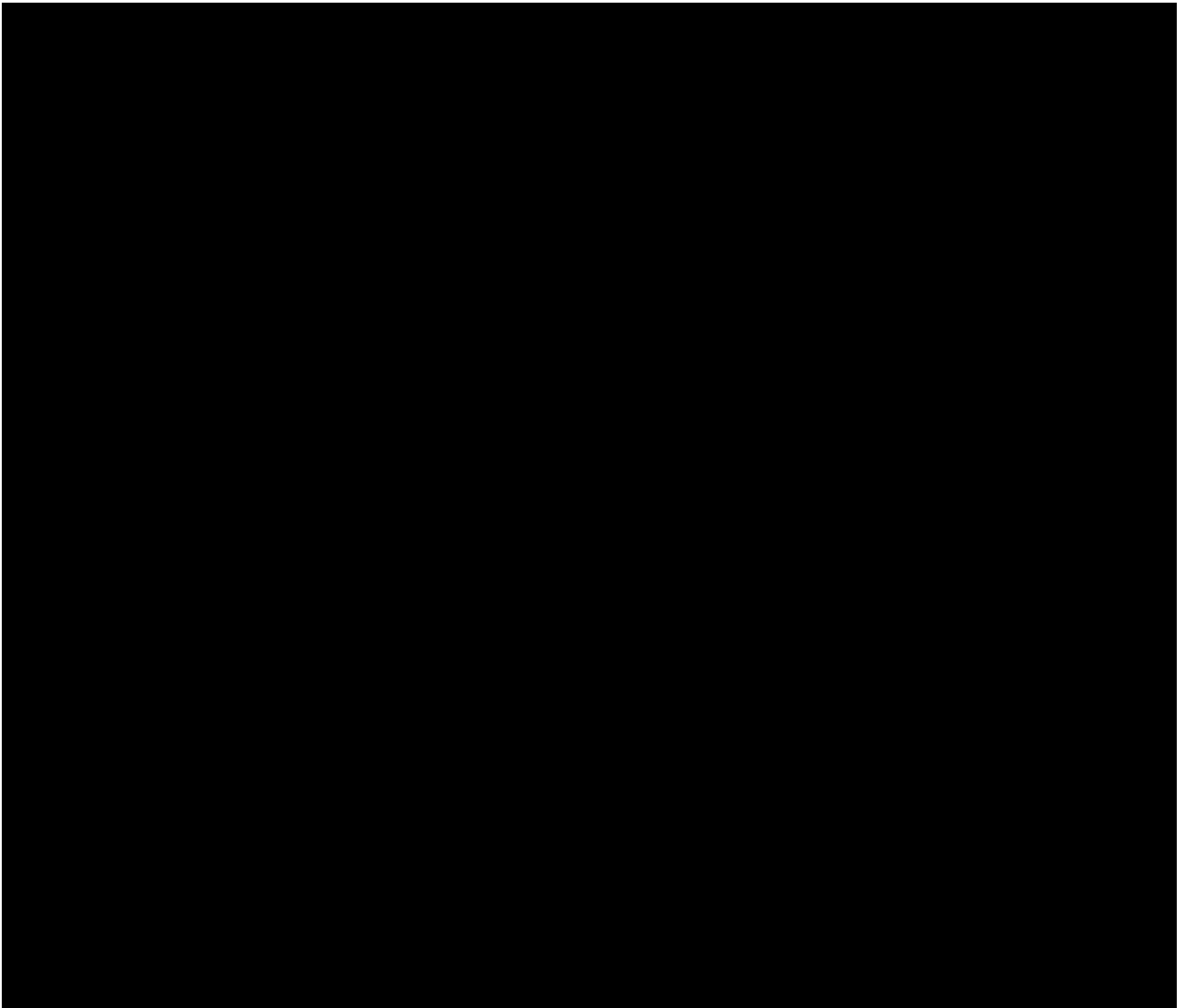








7.6 **IPIAP Decisions**



8. **RELATIONSHIP OF THE PRINCIPAL AND THE CONTRACTOR**

8.1 **Principal's Representative and Principal Surveillance Officer**

- (a) The Principal:
 - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
 - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
 - (iii) must give notice of all appointments under clauses 8.1(a)(i) and 8.1(a)(ii) to the Contractor.
- (b) The Principal's Representative may:
 - (i) by notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;

- (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) vary or revoke any appointment under clause 8.1(b)(i) by notice to the Contractor.
- (c) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 8.1(b).
- (d) An appointee of the Principal's Representative under clause 8.1(b) may:
- (i) by notice to the Contractor appoint persons to exercise any of the appointee's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 8.1(d)(i) by notice to the Contractor.
- (e) The Principal's Representative may:
- (i) by written notice to the Contractor appoint one or a number of officers to perform the functions identified in clause 8.1(f) (each a **Principal Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 8.1(e)(i) by notice in writing to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a Principal Surveillance Officer to exercise the function under clause 8.1(e)(i).
- (f) The functions of a Principal Surveillance Officer may be all or any of the following:
- (i) monitoring the Contractor's Activities, Project Works and Temporary Works including:
 - (A) product quality;
 - (B) quality management and verification;
 - (C) environmental management;
 - (D) work health and safety;
 - (E) Chain of Responsibility Provisions compliance;
 - (F) control of traffic; and
 - (G) community relations;
 - (ii) monitoring the D&C Independent Certifier's surveillance of the Contractor's Activities (Rozelle Interchange), Project Works (Rozelle Interchange and Temporary Works (Rozelle Interchange));
 - (iii) monitoring the WHT Independent Certifier's surveillance of the Contractor's Activities (WHT Southern Tunnel Works) and WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works); and

- (iv) reporting the findings of its monitoring activities under clauses 8.1(f)(i), 8.1(f)(ii) and 8.1(f)(iii) from time to time to the Principal's Representative.
- (g) The parties acknowledge and agree that:
 - (i) the Principal's Representative and Principal Surveillance Officers act at all times as the servant or agent of the Principal and are subject to the directions of the Principal and will act solely in the interests of the Principal;
 - (ii) subject to clause 8.1(g)(iii), a Principal Surveillance Officer is not entitled to issue a Direction to the Contractor, and if a Principal Surveillance Officer purports to do so:
 - (A) the Contractor must not comply with and the Principal is not bound by the purported Direction; and
 - (B) the Principal will not be liable for any Claim arising out of or in connection with any such purported Direction; and
 - (iii) a Principal Surveillance Officer is entitled to issue a Direction to the Contractor under clause 9.8(b) and the Contractor must comply with any Direction by a Principal Surveillance Officer given or purported to be given under clause 9.8(b).
- (h) Unless expressly provided otherwise in this deed, a representative of the Principal appointed pursuant to this clause 8.1 is not obliged to review, or comment upon, any documentation or information which the Contractor gives to the Principal in respect of the Contractor's Activities.

8.2 **Contractor's representatives**

- (a) The Contractor's Representative will act as a representative of and be authorised to act on behalf of the Contractor in discharging the Contractor's functions under this deed.
- (b) The Contractor may nominate more than one person as the Contractor's Representative, and if so, it must in its notice specify the functions which each person is authorised to discharge. The Contractor may not nominate more than one person to discharge the same function or functions under this deed.
- (c) The Contractor may by notice to the Principal substitute the Contractor's Representative(s) with another person(s).

8.3 **Authorities**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) The Contractor acknowledges and agrees that, without limiting clause 8.3(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed or any D&C Document and will not entitle the Contractor to make any Claim against the Principal.

- (c) The parties agree that clauses 8.3(a) and 8.3(b) are taken not to limit any Liability which the Principal would have had to the Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 8.3(a) and 8.3(b).
- (d) The Contractor acknowledges and agrees that:
 - (i) there are Authorities (other than the Principal) with jurisdiction over aspects of the Contractor's Activities, parts of the Construction Site and other areas affected by the Contractor's Activities (including Extra Land);
 - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers);
 - (iii) notwithstanding any other provision of this deed, the Principal is not authorised to:
 - (A) exercise any power, function or duty within the responsibility of any other Authority; or
 - (B) influence, override or direct any Authority in the proper exercise of its legal duties and functions;
 - (iv) notwithstanding any requirement that the Principal use its best endeavours or reasonable endeavours to do anything or bring about any outcome under any D&C Document, the Principal is not obliged to:
 - (A) interfere with or influence the exercise by any Authority of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that it regards as not being in the public interest; or
 - (C) develop policy or legislate by reference only, or predominantly, to the interests of the Project Works or Contractor's Activities; and
 - (v) except to the extent expressly stated otherwise in this deed, it bears the full risk of all occurrences of the kind referred to in clause 8.3(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

8.4 Senior Project Group

- (a) The Contractor acknowledges and agrees that the Principal and the M4-M5 Link Concessionaires will establish a Senior Project Group, and may establish other additional project management groups, to review and monitor the progress of the Project activities.
- (b) If the Principal or the Principal's Representative so requests, the Contractor must attend, or procure the attendance of any of its Subcontractors at any meeting of the Senior Project Group or any other project management group that may be established.

8.5 **Project Group**

A Project Group must be established, and the parties must participate in the Project Group, in accordance with Schedule 16.

8.6 **The Principal's action**

- (a) If:
 - (i) the Contractor:
 - (A) fails to perform an obligation under this deed, including the rectification of Defects; and
 - (B) has not within a reasonable time after the date of receipt of a notice from the Principal requiring such failure to be remedied or a direction from the Principal under clause 17.2(a), taken steps to remedy the failure, or having taken or procured such steps, fails to remedy or procure the remedy of the failure within the period of time prescribed by this deed, or if no period of time has been prescribed, a reasonable time; or
 - (ii) the Principal considers that urgent action is reasonably necessary to minimise the risk of harm to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any property; or
 - (D) the safe operation of any road,

then the Principal may take such action as it considers necessary either to remedy the failure by the Contractor (including requiring the Project Works or the Construction Site or part of either to be closed) or to take that urgent action to minimise that risk of harm and the Principal may for this purpose enter and remain on the Construction Site, any Extra Land, the Maintenance Site and any other land upon which the Contractor's Activities are being carried out.

- (b) Any Loss suffered or incurred by the Principal in taking action referred to in clause 8.6(a) following the events referred to in clause 8.6(a)(i) or (as a result of a breach or a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties) clause 8.6(a)(ii) will be a debt due and payable from the Contractor to the Principal.
- (c) Clause 8.6(a) does not relieve the Contractor from any of its obligations under this deed.

8.7 **Document management and transmission**

- (a) Without limiting clause 42.1, the Contractor must:
 - (i) implement and use the PDCS to manage and transmit all documentation connected with the Contractor's Activities in accordance with the processes, procedures and systems in the SWTC or as otherwise reasonably required by the Principal's Representative;

- (ii) align its document management and quality processes to complement and utilise the functions and features of the PDCS;
 - (iii) use the PDCS mail module for all correspondence relating to the Contractor's Activities between the Contractor and the Principal;
 - (iv) upload all Design Documentation and other documentation which is required for the performance of the Contractor's Activities to the PDCS; and
 - (v) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (b) Documents supplied to the Contractor will remain the property of the Principal and must be returned by the Contractor to the Principal on demand in writing, provided that the Contractor is not required to return a document to the Principal whilst the document is necessarily required to enable the Contractor to perform the Contractor's Activities in accordance with this deed. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Contractor's Activities.
- (c) The Contractor must keep all the Contractor's records relating to the Contractor's Activities in a secure and fire proof storage.
- (d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 8.7.
- (e) The Contractor must ensure that any documentation that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
- (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

8.8 **Construction Site meetings**

- (a) The Contractor must convene meetings on the Construction Site, or such other place or places as the Principal's Representative may direct, at weekly intervals (or such longer period as may be required by the Principal's Representative) prior to the date which is the later of the Date of Opening Completion and the Date of Completion (WHT Southern Tunnel Works).
- (b) The meetings referred to in clause 8.8(a) will be attended by:
- (i) the Contractor's Representative (or his or her delegate);
 - (ii) the Principal's Representative (or his or her delegate); and
 - (iii) any other person required by the Principal's Representative (including any Subcontractor).
- (c) The Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting under clause

8.8(a) no less than 48 hours prior to the meeting which must include any matter required by the Principal's Representative.

- (d) The role of chairperson for meetings under clause 8.8(a) will be held by the Principal's Representative (or his or her delegate).
- (e) The chairperson of a meeting under clause 8.8(a) must give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting.

8.9 **Project Design Group**

- (a) Without limiting clause 13.1, the Project Design Group must meet on a regular weekly basis, or such other regular period as the Principal and the Contractor agree in writing.
- (b) The purpose of the Project Design Group meetings under clause 8.9(a) is:
 - (i) to consider:
 - (A) the status of the Design Documentation;
 - (B) the quality of the Design Documentation and the physical works the subject of the Design Documentation; and
 - (C) any other matters required by the Principal; and
 - (ii) to undertake the function under clause 8.9(b)(i):
 - (A) in a co-operative manner which fosters open communication; and
 - (B) with the objective of facilitating the development of the Design Documentation and resolving issues arising out of or in connection with or identified in the Design Documentation.
- (c) The Project Design Group comprises:
 - (i) at least one representative of the Contractor, including the Contractor's project director and a senior construction representative of the Contractor, as notified by the Contractor to the Principal from time to time;
 - (ii) the Contractor's design manager;
 - (iii) at least one representative of the Principal, as notified by the Principal to the Contractor from time to time;
 - (iv) the D&C Independent Certifier; and
 - (v) the WHT independent Certifier,and the Contractor must ensure attendance at the relevant Project Design Group meeting of:
 - (vi) the Proof Engineer where relevant;
 - (vii) the Independent Checking Engineer where relevant;

- (viii) representatives of the Contractor's design consultants; and
 - (ix) such other persons as any member of the Project Design Group reasonably requires from time to time, having regard to the elements of the Design Documentation being considered at the Project Design Group meeting.
- (d) The Contractor must provide the Project Design Group with an agenda prepared in consultation with the Principal's Representative for each Project Design Group meeting under clause 13.1(a) no less than 2 Business Days prior to the Project Design Group meeting.
 - (e) The role of chairperson for Project Design Group meetings will be held by the Contractor's project director.
 - (f) The chairperson of a Project Design Group meeting under clause 8.9(a) must give the Principal's Representative and all other persons who attended the Project Design Group meeting (and any other person nominated by the Principal's Representative) minutes of the Project Design Group meeting within 2 Business Days after the Project Design Group meeting.

8.10 **Completion Working Group**

- (a) Within 3 months of the date of this deed, the parties must establish a Completion Working Group.
- (b) The Completion Working Group will comprise
 - (i) any nominee of the Principal's Representative;
 - (ii) any nominees of the Contractor's Representative;
 - (iii) the D&C Independent Certifier;
 - (iv) the WHT Independent Certifier, on and from the date that the WHT Independent Certifier is appointed; and
 - (v) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Working Group is to:
 - (i) provide a collaborative forum through which the parties can:
 - (A) plan and agree procedures for completion and handover of the Project Works;
 - (B) plan and agree the process for the progressive submission of records and documentation required for Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion;
 - (C) monitor the status of activities and tasks that must be completed in order to achieve Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion; and
 - (D) identify issues which may adversely impact upon the achievement of Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion by the applicable Date for Opening

Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works) or Date for Final Completion (as applicable);

- (ii) report to the Project Group on matters relating to completion and handover of the Project Works; and
 - (iii) fulfil such other roles and functions as may be agreed by the parties.
- (d) The Completion Working Group must meet:
- (i) at least once each month; and
 - (ii) at such other times as the parties may agree,
- until the date which is the later of achievement of Completion and Final Completion.

8.11 **No legal effect**

The Project Group, Completion Working Group and the Project Design Group are consultative and advisory only and nothing which occurs during a meeting, no resolution or communication at any meeting and no minutes recording any resolution or communication of any such group will:

- (a) affect the rights or obligations of either party under the D&C Documents or otherwise according to Law;
- (b) entitle a party to make any Claim against the other;
- (c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to Law;
- (d) prejudice a party's rights against the other whether under this deed or otherwise according to Law; or
- (e) be construed as a Direction by a party to do or not do anything.

9. **CONTRACTOR'S FUNDAMENTAL OBLIGATIONS**

9.1 **Contractor's general obligations**

The Contractor:

- (a) must carry out the Contractor's Activities, including:
 - (i) investigating, planning, designing, constructing and commissioning the Project Works and the Temporary Works;
 - (ii) contracting for the provision of, acquiring or otherwise procuring or providing all Materials, Construction Plant and Utility Services required for the performance of its obligations under this deed;
 - (iii) performing the D&C Phase Maintenance and Post Completion Activities in accordance with this deed; and
 - (iv) unless otherwise expressly permitted by this deed, keeping all traffic lanes of the Motorway and the Western Harbour Tunnel open to the public for the safe, efficient and continuous passage of vehicles at all times when undertaking

Contractor's Activities after the Date of Opening Completion and the Date of Opening Completion (WHT),

in accordance with this deed;

(b) warrants that:

(i) the Project Works will:

(A) be completed in accordance with, and at all relevant times satisfy the requirements of, this deed;

(B) upon:

(aa) in the case of the Project Works (Rozelle Interchange), Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT Interface Milestone Completion of the WHT Interface Milestone); and

(bb) in the case of the WHT Southern Tunnel Works, Completion (WHT Southern Tunnel Works),

be fit for their intended purposes; and

(C) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes;

(ii) the Temporary Works will at all relevant times be fit for their intended purposes;

(iii) upon Opening Completion, the Rozelle Interchange Works will be capable of satisfying the handover conditions specified in section 2.7 of the SWTC (Rozelle Interchange) at the end of the Term and upon Completion (WHT Southern Tunnel Works), the WHT Southern Tunnel Works will be capable of satisfying the handover conditions specified in section 2.7 of the SWTC (WHT Southern Tunnel Works) at the end of the Term;

(iv) the D&C Phase Maintenance will be completed in accordance with, and satisfy the requirements of, this deed;

(v) upon:

(A) in the case of the Project Works (Rozelle Interchange), Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, WHT Interface Milestone Completion of the WHT Interface Milestone), the design life of each part of the Project Works (Rozelle Interchange) will meet or exceed the design life standards specified in section 5.8 of the SWTC (Rozelle Interchange); and

(B) in the case of the WHT Southern Tunnel Works, the Date of Completion (WHT Southern Tunnel Works), the design life of each part of the WHT Southern Tunnel Works will meet or exceed the design life standards specified in section 5.8 of the SWTC (WHT Southern Tunnel Works) (as applicable);

- (vi) any modification to the Main Tunnel or the relevant Other WestConnex Assets or Systems by the Contractor will be completed in accordance with, and satisfy the requirements of, this deed;
 - (vii) where the Contractor integrates the Rozelle Interchange Works with the Main Tunnel and any relevant Other WestConnex Assets or Systems, it will be completed in accordance with, and upon Opening Completion satisfy the requirements of, this deed; and
 - (viii) upon Opening Completion, the Rozelle Interchange Works comply with and are capable of continuing to comply with all relevant Approvals, including relevant Planning Approval conditions, to the extent required by this deed; and
- (c) will be liable to the Principal for the acts and omissions of its Related Parties and their respective employees and agents as if such acts or omissions were acts or omissions of the Contractor.

9.2 Subcontracts

- (a) The engagement by the Contractor of any Subcontractor to perform some or all of the Contractor's obligations under this deed will not limit or affect the Contractor's obligations or Liability under any D&C Document.
- (b) The Contractor will be vicariously liable to the Principal for the acts and omissions of:
 - (i) its Related Parties and their respective employees and agents; and
 - (ii) its Subcontractors and their respective related parties in performing the Contractor's Activities,

as if such acts or omissions were the acts or omissions of the Contractor.
- (c) The Principal and the Contractor acknowledge and agree that the Contractor's obligations under this deed are not lessened or otherwise affected by the Principal's awareness of the terms of any Subcontract.
- (d) The Contractor must notify the Principal of any proposed contract to which the Contractor is a party with a contract sum of more than \$ [REDACTED] in respect of the Project Works, the Temporary Works or the D&C Phase Maintenance, and if the Principal requires, give the Principal access to, or a copy of any such contract (including to all plans, specifications and drawings relating to that contract but excluding confidential pricing information).
- (e) The Contractor acknowledges and agrees that if this deed is terminated or rescinded or otherwise comes to an end before it has been fully performed for any reason, or the Principal takes over the Contractor's Activities, the Contractor must, after the Principal has given a Direction to do so, consent to a novation of any Significant Subcontract to the Principal and execute a deed of novation in the form reasonably required by the Principal.
- (f) The Contractor must not:
 - (i) enter into;

- (ii) terminate, surrender, rescind or accept the repudiation of;
- (iii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
- (iv) where it may impact the rights or increase the liabilities or obligations of the Principal:
 - (A) enter into any agreement or arrangement which affects the operation or interpretation of; or
 - (B) make or permit any amendment to, or replacement of or waiver of a provision of,

a Significant Subcontract without obtaining the Principal's prior written consent (which consent must not be unreasonably withheld or delayed).

- (g) The Contractor must:
 - (i) in respect of each Subcontract to which the Contractor is a party (including Significant Subcontracts and regardless of the contract value):
 - (A) give the Principal's Representative details of the Subcontract, including the name of the Subcontractor and the goods or services being provided under the Subcontract;
 - (B) satisfy itself and warrants to the Principal that the proposed Subcontractor has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the work to be subcontracted; and
 - (C) include the provisions required by Part A of Schedule 4E in the Subcontract;
 - (ii) without limiting clause 9.2(g)(i), in each Subcontract to which the Contractor is a party with a contract value less than \$██████████ (excl GST), include a provision requiring the Contractor to pay the Subcontractor within 30 Business Days after the Subcontractor has claimed payment in accordance with the Subcontract; and
 - (iii) without limiting clause 9.2(g)(i), in each Subcontract to which the Contractor is a party with a contract value of \$██████████ (excl GST) or more, include the provisions required by Part B of Schedule 4E in the Subcontract,

and, in each case, include a clause to the same effect as this clause 9.2(g) and 9.2(k) (including this paragraph) which is binding on the Subcontractor, and provide evidence of this to the Principal's Representative when requested by the Principal's Representative.
- (h) The Contractor agrees that if required by the Principal it will, at no additional cost and to the Principal's reasonable satisfaction:
 - (i) implement a Subcontractors Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors Proof of Payment Procedure and which are identified in Schedule 32G.

- (i) If required to implement the Subcontractors Proof of Payment Procedure, in addition to implementing the process set out in Schedule 32G, the Contractor acknowledges and agrees:
 - (i) to pay, within 3 Business Days of receiving payment of a Payment Amount, all outstanding amounts due and payable to Subcontractors listed in the Supporting Statement and Contractor's Statement that are included in the Statutory Declaration (Employees and Subcontractors) for each of its Payment Claims;
 - (ii) within 5 Business Days of receiving payment of a Payment Amount to:
 - (A) provide proof, to the Principal's satisfaction, of payment of all outstanding amounts due and payable to Subcontractors; and
 - (B) confirm that no monies due and payable remain outstanding to Subcontractors in respect of each Payment Claim;
 - (iii) that if it fails to provide the required proof of payment:
 - (A) it will issue, no later than the 5th Business Day from receipt of payment from the Principal, an irrevocable payment direction in the form of an irrevocable authority in writing to the Principal in favour of each unpaid Subcontractor identified on the Supporting Statement and Contractor's Statement; and
 - (B) that the Principal will be entitled to rely on any irrevocable payment directions as a reason for withholding an amount from the Contractor in the next month's Payment Schedule; and
 - (iv) that if it fails to either provide the required proof of payment or issue an irrevocable payment direction as required by this clause 9.2(i) the Principal may have recourse to the Security Bond provided under clause 10.1(a)(i) or clause 10.1A(a)(i).
- (j) Without limiting clauses 21.15 and 21.16, the Contractor must immediately inform the Principal and provide a copy of the relevant documents, if it receives:
 - (i) a Contractor's Statement or Supporting Statement with a payment claim that identifies as unpaid any Subcontractor to another Subcontractor;
 - (ii) a payment withholding request (as defined in and served under the Security of Payment Act); or
 - (iii) any other written advice received by the Contractor in relation to the non-payment of a Subcontractor.
- (k) The Contractor agrees that if required by the Principal it will, at no additional cost and to the Principal's reasonable satisfaction, instruct a Subcontractor with which it has a Subcontract with a value of \$██████0 (excl GST) or more to:
 - (i) implement a Subcontractors Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors Proof of Payment Procedure.

9.3 **Utility Services**

- (a) The Contractor must:
 - (i) obtain and pay for any Utility Services and all connections for all Utility Services the Contractor needs to perform its obligations under the D&C Documents, and if required, install meters to record the Contractor's usage of Utility Services;
 - (ii) investigate, protect, relocate, remove, modify, support, reinstate and provide for all Utility Services necessary for the Contractor to comply with its obligations under the D&C Documents;
 - (iii) ensure there are no unplanned disruptions to the Utility Services in carrying out the Contractor's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the Contractor's Activities; and
 - (iv) to the extent not prohibited by Law, indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in connection with any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with any act or omission of the Contractor or its Related Parties.
- (b) Without limiting clause 9.3(a):
 - (i) clause 11.12 will apply to Unknown Utility Services and Existing Asset Conditions; and
 - (ii) clause 21.2A will apply to Provisional Sum Work.

9.4 **Long service levy**

Before any construction work commences under this deed, the Contractor must:

- (a) pay (or procure payment) to the Long Service Corporation or that body's agent all amounts due and payable for the long service levy in respect of the Contractor's Activities under the Building and Construction Industry *Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 9.4(a).

9.5 **Project Plans**

- (a) The Contractor must prepare and develop the Project Plans specified in Appendix C.1 of the SWTC and the Chain of Responsibility Management Plan in accordance with Schedule 18. For the purposes of this clause 9.5 and Schedule 18, any reference to "Project Plans" includes the Chain of Responsibility Management Plan.
- (b) No review of, comments upon or notice in respect of any Project Plan identified in clause 9.5(a) or any other act or omission of the Principal's Representative (including a direction under section 5 of Schedule 18) about any Project Plan will lessen or otherwise affect:

- (i) the Contractor's Liabilities or responsibilities whether under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (c) The Contractor:
- (i) must comply with each Project Plan which has been submitted to the Principal's Representative under this clause 9.5 and in respect of which the Principal's Representative has not given a notice under section 2(a)(ii) of Schedule 18; and
 - (ii) agrees that compliance with any Project Plan identified in clause 9.5(a) will not in any way lessen or affect:
 - (A) the Liabilities or responsibilities of the Contractor under this deed or otherwise according to Law; or
 - (B) the Principal's rights against it, whether under this deed or otherwise according to Law.
- (d) The Contractor must comply with the restrictions upon the carrying out of the Contractor's Activities specified in the SWTC.
- (e) To the extent they are relevant to the operation, maintenance, repair and reinstatement of the Rozelle Interchange during the Term, the maintenance, repair and restatement of the WHT Southern Tunnel Works or the maintenance and repair of the Third Party Works, all Project Plans must be incorporated into the O&M Manuals.
- (f) Except to the extent that the Project Plans must be incorporated into the O&M Manuals in accordance with clause 9.5(e), as a condition precedent to Opening Completion, the Contractor must provide the Principal with the Project Plans referred to in Appendix C.1 of the SWTC.

9.6 **Control of traffic**

- (a) Without limiting its obligations under clause 17.11, before the Contractor undertakes any Project Works, Temporary Works or D&C Phase Maintenance which would have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any road, the Contractor must undertake all matters necessary to carry out such Project Works, Temporary Works or D&C Phase Maintenance including:
- (i) obtaining all relevant Approvals (subject to clause 7.2);
 - (ii) preparing and submitting a traffic management plan for each stage of the Project Works (**Project Works Traffic Management Plan**) to the Customer Journey Planning, the Customer Journey Management and the Principal:
 - (A) in a timely manner (and in any event at least 25 Business Days prior to the commencement of physical works for that stage) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the Project Works Traffic Management Plan prior to the commencement of physical works for that stage; and

- (B) in accordance with Good Industry Practice;
 - (iii) preparing and submitting all applications for a Road Occupancy Licence to Customer Journey Planning and the Customer Journey Management (with a copy to the Principal):
 - (A) in a timely manner (and in any event at least 25 Business Days prior to any road occupancy that requires a ROL or any shorter period agreed by the Principal in writing) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the ROL prior to any road occupancy that requires a ROL;
 - (B) in accordance with the requirements of Appendix C.4 of the SWTC; and
 - (C) in accordance with Good Industry Practice;
 - (iv) using all reasonable endeavours in accordance with Good Industry Practice to agree and obtain approved Project Works Traffic Management Plans and ROLs;
 - (v) complying with road occupancy requirements, including all Project Works Traffic Management Plans and ROLs and paying any relevant Lane Occupancy Fees; and
 - (vi) accepting and implementing the reasonable requirements of the parties who have input into the approval of the Project Works Traffic Management Plans (once approved, the **Approved Project Works Traffic Management Plans**) and ROLs.
- (b) The Contractor:
- (i) is responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the Contractor's Activities;
 - (ii) must manage all such traffic to ensure:
 - (A) its continuous, safe and efficient movement;
 - (B) the traffic carrying capacity of Local Areas is maintained; and
 - (C) that any delays and disruptions to such traffic and the movement of such traffic are kept to an absolute minimum;
 - (iii) must carry out the Project Works, the Temporary Works and the Contractor's Activities in a way which minimises interference with the operation and use of the Main Tunnel, M4 Motorway, the M5 Motorway and the Western Harbour Tunnel, including by:
 - (A) scheduling work arising out of or in connection with the Project Works, the Temporary Works and the Contractor's Activities at a time and in a way that minimises the impact on traffic on the Main Tunnel, the M4 Motorway, the M5 Motorway and the Western Harbour Tunnel;
 - (B) not closing or materially reducing the carriageway, any lane or any ramps of the Main Tunnel, the M4 Motorway, the M5 Motorway or the

Western Harbour Tunnel in connection with the Project Works, the Temporary Works and the Contractor's Activities (except to the extent permitted under this deed);

- (C) ensuring that any Project Works, Temporary Works or Contractor's Activities that involve construction activities on the Main Tunnel Construction Site, the M4 Motorway, the M5 Motorway or the Western Harbour Tunnel are carried out so as to minimise any adverse effect on the free flow of traffic on all lanes on the carriageway and all ramps of the Main Tunnel, the M4 Motorway, the M5 Motorway or the Western Harbour Tunnel to the extent reasonably practicable having regard to the nature of the works or activities being carried out from time to time;
 - (D) ensuring that there is no Planned Lane Closure of a lane on the carriageway or any ramp of the Main Tunnel, the M4 Motorway, the M5 Motorway or the Western Harbour Tunnel during a Peak Period at any time in connection with the Project Works, Temporary Works and the Contractor's Activities;
 - (E) using its best endeavours to ensure there is no Unplanned Lane Closure of a lane on the carriageway or any ramp of the Main Tunnel, the M4 Motorway, the M5 Motorway or the Western Harbour Tunnel at any time in connection with the Project Works, the Temporary Works and the Contractor's Activities; and
 - (F) complying with clause 11.2A;
- (iv) must coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities;
 - (v) must at all times comply with the construction traffic management plan prepared in accordance with the Planning Approvals and the requirements of the SWTC and any Third Party Agreement in respect of road traffic management and safety;
 - (vi) must comply with the directions of any relevant Authority (including the Customer Journey Planning, the Customer Journey Management and the Principal in its capacity as an Authority) and the Principal's Representative with respect to such management; and
 - (vii) acknowledges and agrees that the Customer Journey Planning and the Customer Journey Management each exercise their own discretion in the exercise of delegated statutory functions and powers of the Principal, and that nothing that the Customer Journey Planning or the Customer Journey Management do, fail to do or purport to do pursuant to such delegation (including a decision not to grant a ROL) will:
 - (A) be considered as an act or omission of the Principal;
 - (B) constitute an Act of Prevention; or
 - (C) entitle the Contractor to make any Claim.

- (c) The Contractor must give the public sufficient notice of the arrangements agreed under clause 9.6(a) and in designing and implementing the Project Works Traffic Management Plans and all aspects of the Contractor's Activities, seek to minimise delays and disruption to traffic to the extent consistent with the performance of the Contractor's Activities in accordance with this deed.
- (d) Despite any ROL issued for any lane or shoulder closure, the Principal's Representative may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder.

9.7 **Principal contractor**

- (a) In this clause 9.7 and clause 9.8, the terms "principal contractor", "workplace", "construction project" and "construction work" have the same meaning as assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:
 - (i) construction work involved in the Contractor's Activities; and
 - (ii) any construction work carried out on the Construction Site by any WHT Interface Contractor, the Principal or any other person which is performed during any period in which the Principal Contractor has been engaged as principal contractor (**Construction Site Interface Work**),
 is taken to be part of the same "construction project".
- (b) For the purposes of the WHS Legislation, the Principal:
 - (i) engages the Principal Contractor as the principal contractor under the WHS Legislation in respect of the construction project(s) that comprise the Contractor's Activities and the Construction Site Interface Work and the Principal Contractor accepts such engagement;
 - (ii) authorises the Principal Contractor to have management or control of each workplace at which the construction project(s) that comprise(s) the Contractor's Activities and the Construction Site Interface Work is to be carried out, and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (iii) must give the Principal Contractor prior notice of any WHT Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences.
- (c) The Principal Contractor must carry out, and ensure compliance with, its obligations as principal contractor under the WHS Legislation in respect of the engagement referred to in clause 9.7(b). If the Principal Contractor fails to comply with any of its obligations in clause 9.7(b) or if for any reason the engagement of the Contractor as the principal contractor is not effective, the Principal may either itself carry out the Contractor's obligations or have the Principal Contractor's obligations as principal contractor carried out by others, and the cost incurred by the Principal in carrying out such obligations or having others carry out such obligations will be a debt due and payable from the Contractor to the Principal.
- (d) The Contractor acknowledges and agrees that:

- (i) the Principal has engaged the Principal Contractor as the principal contractor in respect of the construction project(s) that comprises the Contractor's Activities and any Construction Site Interface Work; and
 - (ii) without limiting this clause 9.7, the Principal Contractor has undertaken to discharge the duties imposed on a principal contractor by the WHS Legislation in respect of the construction project(s) that comprises the Contractor's Activities and any Construction Site Interface Work.
- (e) The parties agree that the Principal Contractor's engagement and authorisation as principal contractor pursuant to clause 9.7(b) and the performance of its obligations under clause 9.7(b) will continue:
- (i) subject to clause 9.7(e)(ii), until the earlier of:
 - (A) the termination of this deed;
 - (B) in respect of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange), the Date of Opening Completion;
 - (C) in respect of each discrete part of the Third Party Works, the point in time when:
 - (aa) if the Third Party Works are Local Area Works or Utility Service Works, the Principal and the D&C Independent Certifier or WHT Independent Certifier (as applicable) have been provided with a copy of the notice referred to in clause 17.6(a)(ii) or 17.7(a)(ii) (as applicable); or
 - (bb) if the Third Party Works are Property Works, the Principal's Representative has been provided with a certificate or statement referred to in clause 17.8(a)(ii);
 - (D) in respect of the WHT Interface Works required for a WHT Interface Milestone, the Date of WHT Interface Milestone Completion of the WHT Interface Milestone;
 - (E) in respect of the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works), the Handover Date (WHT Southern Tunnel Works); and
 - (F) in respect of any part of the Construction Site for a which a Site Access Expiry Date is specified in the Site Access Schedule, the date on which the Contractor vacates that area of the Construction Site,

(unless sooner revoked by the Principal); and
 - (ii) in respect of:
 - (A) any work the subject of clauses 26.1(c) or 26.1(d) which is construction work, during the period any such work is carried out, unless the O&M Contractor, the WHT Contractor or the WHT Asset Manager has possession of the part of the Construction Site where such work is carried out at the time the work is carried out, in which case:

- (aa) the Principal Contractor's engagement and authorisation as principal contractor under clause 9.7(b) or the performance of its obligations under clause 9.7(b) will end immediately before any work is commenced; and
 - (bb) where the work the subject of clauses 26.1(c) or 26.1(d) which is construction work:
 - (a) is being undertaken on the Motorway, the O&M Contractor will be the principal contractor for any construction project that the construction work comprises;
 - (b) is being undertaken on the WHT Southern Tunnel Works Site after the Handover Date (WHT Southern Tunnel Works) but before the Date of Opening Completion (WHT), the WHT Contractor will be the principal contractor for any construction project that the construction work comprises; or
 - (c) is being undertaken on the Western Harbour Tunnel after the Date of Opening Completion (WHT), the WHT Asset Manager will be the principal contractor for any construction project that the construction work comprises; and
 - (B) any rectification work carried out by the Contractor under clause 17.2(a) on the Motorway only, the Principal Contractor's engagement and authorisation as principal contractor under clause 9.7(b) or the performance of its obligations under clause 9.7(b) will end immediately before any work is commenced and the O&M Contractor will be the principal contractor for any construction project that the construction work comprises.
- (f) The Contractor must:
- (i) ensure that if any Law, including in the State or Territory in which the Project Works, the Temporary Works, the Post Completion Activities or the D&C Phase Maintenance are situated or being carried out (as the case may be) requires that:
 - (A) a person:
 - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed;

- (ii) not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of clause 9.7(f)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by the Principal or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the Contractor or a Subcontractor (as the case may be) commences such work.
- (g) If the engagement of the Principal Contractor as principal contractor under this deed is not effective for any reason, the Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under this deed.
- (h) The Contractor acknowledges that:
- (i) the relevant WestConnex O&M Contractor has been engaged by the Principal as principal contractor for the purposes of the WHS Legislation and is authorised by the Principal to have management and control of the maintenance site in respect of the relevant Motorway or Other WestConnex Motorway (as applicable) for the purpose of discharging the duties imposed on a principal contractor to the extent that operations and maintenance contractor's work includes construction work; and
 - (ii) where the Contractor is carrying out works on any Other WestConnex Motorway or the Main Tunnel, the Contractor will be required to carry out part of the Project Works on the Maintenance Site and the maintenance sites in respect of the Other WestConnex Motorways.
- (i) The Contractor, its Subcontractors and their respective personnel while they are carrying out any Contractor's Activities on the Maintenance Site or the maintenance sites in respect of the Other WestConnex Motorways must:
- (i) subject to clause 9.7(i)(iii), comply with any site safety regulations, rules and all directions of the relevant WestConnex O&M Contractor with respect to work health and safety, including those described in clause 9.7(j);
 - (ii) comply in a timely manner with directions of the relevant WestConnex O&M Contractor so that the WestConnex O&M Contractors can discharge their obligations as principal contractors;
 - (iii) consult, cooperate and coordinate activities with the WestConnex O&M Contractors and all other persons who have a work health and safety duty in relation to the same matter, including by entering into and complying with a safety interface;
 - (iv) subject to clause 9.7(i)(iii), comply with the work health and safety plan(s) prepared by the relevant WestConnex O&M Contractor while carrying out any Contractor's Activities on the Maintenance Site or the maintenance sites in respect of the Other WestConnex Motorways (as applicable); and
 - (v) subject to clause 9.7(i)(iii), where high risk construction work is to be carried out in the performance of the Project Works and Temporary Works on the

Maintenance Site or the maintenance sites in respect of the Other WestConnex Motorways:

- (A) prepare or procure its Subcontractors to prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (B) provide a copy of the safe work method statement to the relevant WestConnex O&M Contractor prior to the commencement of high risk construction work;
 - (C) revise or procure its Subcontractors to revise the safe work method statement in accordance with WHS Legislation;
 - (D) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (E) where so directed by a WestConnex O&M Contractor, suspend the performance of any high risk construction work.
- (ia) The Contractor, its Subcontractors and their respective personnel while they are carrying out any Contractor's Activities on the WHT Southern Tunnel Works Site after the Handover Date (WHT Southern Tunnel Works) but before the Date of Opening Completion (WHT) must:
- (i) subject to clause 9.7(i)(iii), comply with any site safety regulations, rules and all directions of the WHT Contractor with respect to work health and safety, including those described in clause 9.7(j);
 - (ii) comply in a timely manner with directions of the WHT Contractor so that the WHT Contractor can discharge its obligations as principal contractor;
 - (iii) consult, cooperate and coordinate activities with the WHT Contractor and all other persons who have a work health and safety duty in relation to the same matter, including by entering into and complying with a safety interface;
 - (iv) subject to clause 9.7(i)(iii), comply with the work health and safety plan(s) prepared by the WHT Contractor while carrying out any Contractor's Activities on the WHT Southern Tunnel Works Site; and
 - (v) subject to clause 9.7(i)(iii), where high risk construction work is to be carried out in the performance of the Project Works and Temporary Works on the WHT Southern Tunnel Works Site:
 - (A) prepare or procure its Subcontractors to prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (B) provide a copy of the safe work method statement to the WHT Contractor prior to the commencement of high risk construction work;
 - (C) revise or procure its Subcontractors to revise the safe work method statement in accordance with WHS Legislation;
 - (D) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and

- (E) where so directed by the WHT Contractor, suspend the performance of any high risk construction work.
- (ib) The Contractor, its Subcontractors and their respective personnel while they are carrying out any Contractor's Activities on the Western Harbour Tunnel after the Date of Opening Completion (WHT) must:
- (i) subject to clause 9.7(i)(iii), comply with any site safety regulations, rules and all directions of the WHT Asset Manager with respect to work health and safety, including those described in clause 9.7(j);
 - (ii) comply in a timely manner with directions of the WHT Asset Manager so that the WHT Asset Manager can discharge its obligations as principal contractor;
 - (iii) consult, cooperate and coordinate activities with the WHT Asset Manager and all other persons who have a work health and safety duty in relation to the same matter, including by entering into and complying with a safety interface;
 - (iv) subject to clause 9.7(i)(iii), comply with the work health and safety plan(s) prepared by the WHT Asset Manager while carrying out any Contractor's Activities on the Western Harbour Tunnel; and
 - (v) subject to clause 9.7(i)(iii), where high risk construction work is to be carried out in the performance of the Project Works and Temporary Works on the Western Harbour Tunnel:
 - (A) prepare or procure its Subcontractors to prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (B) provide a copy of the safe work method statement to the WHT Asset Manager prior to the commencement of high risk construction work;
 - (C) revise or procure its Subcontractors to revise the safe work method statement in accordance with WHS Legislation;
 - (D) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (E) where so directed by the WHT Asset Manager, suspend the performance of any high risk construction work.
- (j) The Contractor, while carrying out any Contractor's Activities on the Maintenance Site or the maintenance sites in respect of the Other WestConnex Motorways acknowledges that:
- (i) a WestConnex O&M Contractor may exclude the Contractor, any of its Subcontractors and their respective personnel from the Maintenance Site or the maintenance sites in respect of the Other WestConnex Motorways (as applicable) for work health and safety reasons; and
 - (ii) a WestConnex O&M Contractor may direct the Contractor, any of its Subcontractors and their respective personnel to perform or not perform certain acts in the Maintenance Site or the maintenance sites in respect of the Other WestConnex Motorways (as applicable) for work health and safety reasons.

- (k) The Contractor, while carrying out any Contractor's Activities on the WHT Southern Tunnel Works Site after the Handover Date (WHT Southern Tunnel Works) but before the Date of Opening Completion (WHT) acknowledges that:
 - (i) the WHT Contractor may exclude the Contractor, any of its Subcontractors and their respective personnel from the WHT Southern Tunnel Works Site for work health and safety reasons; and
 - (ii) the WHT Contractor may direct the Contractor, any of its Subcontractors and their respective personnel to perform or not perform certain acts in the WHT Southern Tunnel Works Site for work health and safety reasons.
- (l) The Contractor, while carrying out any Contractor's Activities on the Western Harbour Tunnel after the Date of Opening Completion (WHT) acknowledges that:
 - (i) the WHT Asset Manager may exclude the Contractor, any of its Subcontractors and their respective personnel from the Western Harbour Tunnel for work health and safety reasons; and
 - (ii) the WHT Asset Manager may direct the Contractor, any of its Subcontractors and their respective personnel to perform or not perform certain acts in the Western Harbour Tunnel for work health and safety reasons.

9.8 **Work health and safety**

- (a) The Contractor must carry out the Contractor's Activities:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (b) If there is a risk of injury to people or damage to property arising from the Contractor's Activities:
 - (i) the Principal's Representative or Principal Surveillance Officers may direct the Contractor to change its manner of working or to cease working to minimise that risk; and
 - (ii) the Contractor must, at its cost, comply with any direction by the Principal's Representative or Principal Surveillance Officers under clause 9.8(b)(i).
- (c) The Contractor must:
 - (i) ensure that in carrying out the Contractor's Activities under this deed:
 - (A) it complies with all Laws and other requirements of this deed for work, health, safety and rehabilitation management;
 - (B) all Subcontractors and consultants engaged by the Contractor comply with their respective obligations under the WHS Legislation; and
 - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

- (ii) have a Corporate WHS Management System which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and WHS Management Systems and Auditing Guidelines;
 - (iii) exercise and fulfil, or procure that the Principal Contractor exercises and fulfils, all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - (A) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
 - (B) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Construction Site;
 - (iv) notify the Principal's Representative immediately (and in any event, within 12 hours after such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
 - (v) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
 - (vi) provide the Principal's Representative with the written assurances referred to in clause 9.8(c)(v), together with written assurances from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (vii) provide the Principal's Representative with a written report of all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, clauses 9.7 and 9.8) or any other relevant matters as the Principal's Representative may reasonably require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
 - (viii) cooperate with the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (ix) exercise a duty of utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge its duties under the WHS Legislation;
 - (x) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (xi) ensure that each Subcontract includes provisions equivalent to this clause 9.8.
- (d) To the extent not prohibited by Law, the Contractor must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
- (i) the failure of the Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under WHS Legislation; or
 - (ii) the Contractor's failure to otherwise comply with clause 9.7 or this clause 9.8,

provided that in respect of clause 9.8(d)(i), to the extent the appointment or engagement of the Principal Contractor as principal contractor is revoked, the Contractor must indemnify the Principal (to the extent not prohibited by Law) from and against any claim against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a failure by the Principal Contractor referred to in clause 9.8(d)(i) before that revocation.

9.9 **Project WHS Management Plan**

- (a) The Contractor acknowledges that preparation of the Project WHS Management Plan in accordance with clause 9.5 is a condition precedent to the commencement of the Principal's obligations to provide access under clause 11.1.
- (b) Without limiting any requirement of the WHS Legislation or this deed, the Project WHS Management Plan must:
 - (i) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities, the D&C Phase Maintenance, the Project Works and the Temporary Works from a work health and safety perspective;
 - (ii) describe how the Contractor proposes to ensure that the Contractor's Activities, the D&C Phase Maintenance, the Project Works and the Temporary Works are performed consistently with the WHS Legislation and any other Law;
 - (iii) address the matters specified in the WHS Legislation;
 - (iv) comply with the requirements applicable to a "Work Health and Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines; and
 - (v) comply with the requirements applicable to a "Project WHS Management Plan" set out in the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and WHS Management Systems and Auditing Guidelines.
- (c) Without limiting clause 9.5, the Contractor must:
 - (i) continue to correct any defects in or omissions from the Project WHS Management Plan (whether identified by the Principal's Representative or the Contractor); and
 - (ii) regularly review and, as necessary, revise the Project WHS Management Plan in accordance with the WHS Legislation,

and submit an amended draft of its Project WHS Management Plan to the Principal's Representative, after which clause 9.5 will reapply (to the extent applicable).
- (d) The Contractor must document and maintain detailed records of inspections or audits undertaken as part of the Project WHS Management Plan.
- (e) The Contractor must carry out the Contractor's Activities in accordance with, and otherwise implement, the latest Project WHS Management Plan.

9.10 **Site induction**

- (a) Without limiting the Contractor's obligations under clause 7.2(b) to comply with the conditions and requirements of all Approvals, the Contractor must:
 - (i) provide safety and environmental site induction for persons nominated by the Principal's Representative on the Construction Site and for all personnel directly or indirectly engaged by the Contractor and requiring access to the Construction Site, any Extra Land and any other land upon which the Contractor's Activities are being carried out; and
 - (ii) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.
- (b) The induction must:
 - (i) comply with all applicable Law, Project Plans and the Principal's procedures, policies and rules; and
 - (ii) otherwise be in accordance with the requirements of this deed.
- (c) The Contractor must keep and maintain comprehensive and detailed induction records and provide the Principal's Representative or its nominee, upon request, with access to such records.

9.11 **Community relations**

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
 - (i) required by the SWTC;
 - (ii) contained in the Communications Strategy; or
 - (iii) reasonably required by the Principal from time to time.

9.12 **Environmental Requirements**

The parties must comply with the requirements of Schedule 7.

9.13 **Not used**

9.14 **Not used**

9.15 **Aboriginal participation in construction**

- (a) The Contractor must comply with the APIC Policy.
- (b) The Contractor must:

- (i) document and submit to the Principal's Representative a Project Aboriginal Participation Plan within 60 days of the date of this deed;
- (ii) implement and comply with the Project Aboriginal Participation Plan; and
- (iii) when:
 - (A) 90% of Opening Completion is reached and as a condition precedent to Opening Completion, provide to the Principal's Representative an Aboriginal Participation Report which explains how the Project Aboriginal Participation Plan has been implemented with respect to the Project Works (Rozelle Interchange) and what outcomes have been achieved; and
 - (B) 90% of Completion (WHT Southern Tunnel Works) is reached and as a condition precedent to Completion (WHT Southern Tunnel Works), provide to the Principal's Representative an Aboriginal Participation Report which explains how the Project Aboriginal Participation Plan has been implemented with respect to the WHT Southern Tunnel Works, what outcomes have been achieved and whether the Minimum Aboriginal Participation Requirements have been met; and

(Aboriginal Participation Report).

- (c) The Contractor must systematically manage its Aboriginal participation processes in accordance with the Project Aboriginal Participation Plan.
- (d) The Project Aboriginal Participation Plan and the Aboriginal Participation Reports must be prepared in accordance with the APIC Policy and in the format prescribed by the NSW Procurement Board.
- (e) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 9.15(a) to 9.15(d) inclusive.
- (f) The Contractor acknowledges that the Principal's Representative may review the Project Aboriginal Participation Plan:
 - (i) prior to the commencement of the Contractor's Activities (Rozelle Interchange) on the Construction Site;
 - (ii) prior to commencement of the Contractor's Activities (WHT Southern Tunnel Works) on the WHT Southern Tunnel Works Site; and
 - (iii) periodically during the course of carrying out the Contractor's Activities, including by conducting an on-site verification that the Project Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.
- (g) If the Minimum Aboriginal Participation Requirements have not been met by the Contractor prior to the Contractor's final Payment Claim in respect of the Contractor's Activities (WHT Southern Tunnel Works), the Principal may direct the Contractor to pay the remaining balance of the required spend to the "Aboriginal Participation Fund" account held by Training Services NSW, and if the Contractor fails to do so,

the Principal will make such payment and set-off the amount against any amounts owing to the Contractor under this deed.

- (h) In determining whether the Minimum Aboriginal Participation Requirements have been met by the Contractor, the Principal must have regard to Aboriginal participation across the whole of the Project, including with respect to the Project Works (Rozelle Interchange).

9.15A **Heavy Vehicle National Law**

- (a) The Contractor must, at all times during the term of this deed and without limiting any other provisions of this deed, including Schedule 40:
 - (i) comply with, and ensure that each Subcontractor complies with, the provisions of the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions) and the Road Transport Legislation;
 - (ii) ensure so far as is reasonably practicable, the safety of the Contractor's and any Subcontractors' transport activities relating to the use of any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities;
 - (iii) ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation and including the provisions of any Chain of Responsibility Management Plan which has been submitted to the Principal's Representative under this clause 9.15A; and
 - (iv) invite and permit the Principal's Representative or its nominee to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.
- (b) The Contractor acknowledges that for the purposes of the Chain of Responsibility Provisions of the Heavy Vehicle National Law, its Subcontractors, may hold a number of roles including as consignor, loader, unloader, loading manager, prime contractor, operator, scheduler and packer (as those terms are defined in the Heavy Vehicle National Law).
- (c) Before the Contractor undertakes any Project Works, Temporary Works, Post Completion Activities or D&C Phase Maintenance which would have the effect of the Contractor or any Subcontractor using any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities, the Contractor must develop a Chain of Responsibility Management Plan.
- (d) Without limiting the requirements set out in Schedule 40, the Chain of Responsibility Management Plan must (at a minimum):
 - (i) identify and assess the aspects of the Contractor's Activities and any activities performed by a Subcontractor that may lead to a contravention of the Heavy Vehicle National Law and undertake this identification and assessment at least annually and, in any event, after any event which reasonably indicates that the way that the Contractor has identified and assessed any such risks has

- led or may lead to a breach of the Heavy Vehicle National Law, whether by act or omission;
- (ii) for any such risks identified under clause 9.15A(d)(i), set out the measures that the Contractor or any Subcontractors may take to eliminate any such risk, or if it is not reasonably practicable to eliminate any such risk, to minimise it;
 - (iii) identify how the Contractor will ensure so far as is reasonably practicable, that the condition of all Construction Plant used in performing the Contractor's Activities meets, and will continue to meet, the requirements of the Heavy Vehicle National Law;
 - (iv) identify the systems to be developed by the Contractor to ensure that the Contractor and any Subcontractors meet their duties in respect of speed, fatigue, mass, dimension, maintenance and loading requirements under the Heavy Vehicle National Law (including the Chain of Responsibility Provisions);
 - (v) set out a process for notifying the Principal of any suspected, alleged or actual breaches of the Heavy Vehicle National Law by the Contractor or a Subcontractor;
 - (vi) identify how the Contractor will address and remedy any suspected or actual incident of non-compliance with the Heavy Vehicle National Law; and
 - (vii) address each of the matters and meet or exceed each of the compliance measures set out in the Chain of Responsibility Guideline.
- (e) The Chain of Responsibility Management Plan must be submitted to the Principal's Representative for its review at least 25 Business Days prior to the commencement of any of the Contractor's Activities using any Construction Plant governed by the Heavy Vehicle National Law on a road.
- (f) No review of, comments upon or any other act or omission of the Principal's Representative about a Chain of Responsibility Management Plan, will lessen or otherwise affect:
- (i) the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (g) The Contractor:
- (i) must comply with and ensure that any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to the Principal's Representative under this clause 9.15A; and
 - (ii) agrees that compliance with the Chain of Responsibility Management Plan will not in any way lessen or affect:
 - (A) its Liabilities or responsibilities of the Contractor under this deed or otherwise according to Law; or

- (B) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (h) The Contractor must ensure that its personnel, and its Subcontractors and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
 - (i) induction training prior to the commencement of the Contractor's Activities; and
 - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
 - (i) Where the Contractor becomes aware of any suspected, alleged or actual breach by the Contractor or any Subcontractor or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in respect of any Construction Plant used in performing the Contractor's Activities, the Contractor must:
 - (i) promptly give the Principal's Representative a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
 - (ii) otherwise comply with Law and the relevant Project Plans (including the Project WHS Management Plan, the Chain of Responsibility Management Plan and the Communications Strategy).
 - (j) The Principal's Representative may, if it reasonably believes that the Contractor is not in compliance with, or the Contractor has not procured a Subcontractor's compliance with, its obligations under this clause 9.15A or Schedule 40, by written notice direct the Contractor to show cause why the Contractor should not be directed to suspend any or all of the Contractor's Activities under this deed (including any activities carried out by any non-compliant Subcontractor) until such time as the Principal can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, the Principal may also, in its sole and absolute discretion:
 - (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are not used or engaged to provide any further goods or services in respect of the Project Works, Temporary Works, Post Completion Activities or D&C Phase Maintenance; and
 - (ii) report any suspected or alleged breach to any State or Territory road safety authority or authorised officer under the Heavy Vehicle National Law.
 - (k) The Principal will have no Liability to the Contractor in respect of an order by a court or direction by the Principal's Representative that the Contractor cease to perform its obligations under this deed as a result of a suspected, alleged or actual breach of this clause 9.15A, Schedule 40 or the Heavy Vehicle National Law.
 - (l) The Contractor is responsible for preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Construction Site, Extra Land, the Maintenance Site or any other areas affected by the Contractor's Activities,

including personal injury or death or loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site, Extra Land, the Maintenance Site or any other areas affected by the Contractor's Activities of items that require transport services or the movement on any road of any Construction Plant, whether loaded or not.

- (m) The Contractor must:
 - (i) keep and must ensure that any Subcontractors keep records of any steps taken in compliance with this clause 9.15A, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan for at least 3 years after taking any such steps; and
 - (ii) have its compliance independently audited, and provide the Principal with an audit report in relation to the Contractor's compliance with this clause 9.15A, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.

9.16 **Management of customers, stakeholders and other affected parties**

- (a) The Contractor must, in carrying out the Contractor's Activities:
 - (i) do all things reasonably possible to minimise the disturbance, nuisance or inconvenience to the occupants of land adjoining the Construction Site, Extra Land or Maintenance Site or located in the vicinity of the Construction Site, Extra Land or Maintenance Site (including Existing Operations and Utility Services);
 - (ii) to the extent reasonably possible in performing the Contractor's Activities, not interfere with the free movement of traffic into and out of, adjacent to, around, on or about the Construction Site or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, bicycle paths or facilities associated with the Existing Operations and Utility Services and must comply with the Principal's reasonable directions in relation to them; and
 - (iii) program and coordinate the Contractor's Activities using best practices so as to minimise the effect of the Contractor's Activities on occupants of land adjoining the Construction Site, Extra Land or Maintenance Site or located in the vicinity of the Construction Site, Extra Land or Maintenance Site (including Existing Operations and Utility Services).
- (b) The Contractor must, in dealing with customers of the Motorway, stakeholders and other third parties affected by the Contractor's Activities (**Stakeholders**):
 - (i) ensure that a representative of the Contractor can be contacted by Stakeholders during normal business hours and that the Contractor's contact details are publicly available, including on the Contractor's website;
 - (ii) give reasonable consideration to all feedback received from Stakeholders; and
 - (iii) actively manage any issues raised by Stakeholders,

and without limit, the Contractor must, subject to Schedule 1A, comply its obligations under Appendix D.2 of the SWTC.

- (c) The Contractor must immediately notify the Principal if any:
- (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,
- by anyone (including any Authority or any landowner, lessee or licensee on or near the Construction Site, Extra Land or Maintenance Site) against the Contractor or any of its Related Parties in respect of any aspect of the carrying out of the Contractor's Activities, including:
- (iv) Contamination, noise or vibration arising out of, or in any way in connection with, the Contractor's Activities;
 - (v) the Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder), any Project Plan or any Law regarding the Environment;
 - (vi) the Contractor's use or occupation of the Construction Site, the Maintenance Site or any Extra Land;
 - (vii) Loss or damage of the kind referred to in clause 26.2; or
 - (viii) the supply chain for the Contractor's Activities, including:
 - (A) any Subcontractor; and
 - (B) the bringing to and removal from the Construction Site, the Maintenance Site, Extra Land or any other areas affected by the Contractor's Activities of items that require transport services.
- (d) Without limiting the Contractor's obligations under section 2.8 of the SWTC, the Contractor must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clauses 9.16(b) and 9.16(c);
 - (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 9.16(c), which:
 - (A) contains full details of:
 - (aa) each complaint, proceedings, letter of demand, order and direction; and
 - (bb) the action taken by the Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - (B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and

- (C) may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (e) The Contractor must notify anyone who may be adversely affected by the Contractor's Activities before the relevant work is carried out including notification of:
 - (i) the likely duration of that work; and
 - (ii) the 24 hour telephone number, postal address and email address established by the Principal, in case any person wishes to make a complaint.

9.17 Existing Operations

- (a) The Contractor acknowledges that:
 - (i) Existing Operators must not be prevented from continuing their Existing Operations during the course of the carrying out of the Contractor's Activities; and
 - (ii) the access ways to the Construction Site are used by other persons (including in connection with the Existing Operations) and will not be available exclusively to the Contractor.
- (b) The Contractor bears the risk of coordinating its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site.
- (c) Without limiting any other obligations of the Contractor under the D&C Documents, the Contractor must:
 - (i) comply with the Principal's reasonable directions in connection with:
 - (A) the Existing Operations (including access to and use of the Construction Site); and
 - (B) work health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to work health and safety;
 - (ii) comply with all reasonable policies, procedures and rules applying from time to time as notified by the Principal), in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
 - (iii) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Construction Site;
 - (iv) ensure that in carrying out and completing the Contractor's Activities, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed;
 - (v) immediately:

- (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Contractor's Activities; and
- (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 9.17(c) are complied with; and
- (vi) without limiting clause 9.17(c)(iv), procure access to land in connection with Existing Operations (and comply with any terms or conditions of that access) and otherwise liaise with the Existing Operators as required to carry out and complete the Contractor's Activities.
- (d) The Contractor must ensure that its Related Parties at all times comply with this clause 9.17.

9.18 Third Party Agreements

- (a) The Contractor:
 - (i) acknowledges that it has reviewed and carefully considered the Third Party Agreements, the forms of which are included in Exhibit C; and
 - (ii) must comply with its obligations in Schedule 12.
- (b) The Contractor acknowledges that after the date of this deed the Principal may:
 - (i) enter into other Third Party Agreements (**Additional Third Party Agreements**); and
 - (ii) amend existing Third Party Agreements (the forms of which are included in Exhibit C) (**Amendments to Third Party Agreements**),

and where the Principal requires this clause 9.18 or Schedule 12 to apply to the Additional Third Party Agreements or Amendments to Third Party Agreements then:

- (iii) to the extent the Principal requires any amendment to be made to Schedule 12 as a result of an Additional Third Party Agreement or Amendment to Third Party Agreements (as applicable):
 - (A) the Principal's Representative will provide to the Contractor a revised version of Schedule 12 (with such revisions as are reasonable and necessary to reflect the Additional Third Party Agreement or Amendment to Third Party Agreements (as applicable)); and
 - (B) clause 14.1 will apply as if the Principal had issued a Change Proposal requiring the Contractor to comply with the revised version of Schedule 12 (but the Contractor will only be required to comply with the revised version of Schedule 12 if the Principal subsequently issues a Change Order); and
- (iv) to the extent the Principal does not require any amendments to be made to Schedule 12 as a result of the Additional Third Party Agreement or Amendment to Third Party Agreements (as applicable), but the Additional Third Party Agreement or Amendment to Third Party Agreements (as applicable) in effect changes the manner in which the Contractor complies

with Schedule 12, clause 14.1 will apply as if the Principal had issued a Change Proposal requiring the Contractor to comply with the Additional Third Party Agreement or Amendment to Third Party Agreements (as applicable) (but the Contractor will only be required to comply with the Additional Third Party Agreement or Amendment to Third Party Agreements (as applicable) if the Principal subsequently issues a Change Order).

- (ba) If requested by the Principal, the Contractor must provide any of the details contemplated by section 1.2 of the Change Procedure (prepared on the basis contemplated by section 1.3 of the Change Procedure) which are requested by the Principal in connection with a potential Change under this clause 9.18.

9.19 Personnel

- (a) The Contractor must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Contractor must:
 - (i) employ those personnel specified in section 1 of Schedule 4B in the positions specified in section 1 of Schedule 4B;
 - (ii) ensure that it and its Subcontractors employ those personnel specified in section 2 of Schedule 4B in the positions specified in section 2 of Schedule 4B;
 - (iii) subject to clause 9.19(b)(iv), not replace the personnel referred to in clause 9.19(b)(i) or clause 9.19(b)(ii) without the Principal's prior written approval (which must not be unreasonably withheld or delayed); and
 - (iv) if any of the personnel referred to in clause 9.19(b)(i) or clause 9.19(b)(ii):
 - (A) die;
 - (B) become seriously ill;
 - (C) resign from the employment of the Contractor or resign from the employment of a Subcontractor; or
 - (D) become the subject of a direction under clause 9.19(d),replace them, or procure that they are replaced, with personnel of at least equivalent experience, ability, competency and expertise.
- (c) The personnel referred to in clause 9.19(b) (including any replacements) must:
 - (i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and
 - (ii) otherwise be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.
- (ca) The Contractor must ensure that the person appointed to the position of "Project Director" (including any replacement):
 - (i) at all times has the authority to act on behalf of and to bind the Contractor in respect of the Contractor's Activities;

- (ii) has full authority to promptly execute directions of the Principal or the Principal's Representative and to promptly make decisions in relation to the Contractor's Activities; and
 - (iii) without limiting clause 9.19(ca)(i) or 9.19(ca)(ii), has delegated authority to bind the Contractor in relation to any matter relating to the Contractor's Activities which has a financial impact of \$[REDACTED] or less without the need to obtain any additional internal or corporate approvals from the Contractor or any entity that comprises the Contractor.
- (d) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice direct the Contractor to remove any person from the Construction Site or from the performance of the Contractor's Activities.
- (e) The Contractor must ensure that any person the subject of a direction under clause 9.19(d) is not again employed on the Construction Site or in the performance of the Contractor's Activities.

9.20 WestConnex AIP Plan

- (a) The Contractor must:
- (i) take reasonable steps directed towards allowing Australian entities to have full, fair and reasonable opportunities to bid for the supply of key goods and services required for the Contractor's Activities; and
 - (ii) without limiting clause 7.1, cooperate with the Principal in relation to compliance with the requirements of the WestConnex AIP Plan.
- (b) Without limiting clause 9.20(a), the Contractor must:
- (i) within 30 days of this deed, establish a publicly accessible page on its website of all available opportunities for Australian entities to supply key goods or services for the Project Works, Temporary Works or the Contractor's Activities as they arise (including details of the standards for such goods or services);
 - (ii) update the list of goods and services on this webpage on a regular basis to ensure Australian entities are provided up-to-date information on all opportunities to participate in the Contractor's Activities; and
 - (iii) provide promptly upon request evidence to the reasonable satisfaction of the Principal that the Contractor is complying with its obligation under this clause 9.20(b).

9.21 Media events

- (a) The Contractor must:
- (i) permit the Principal and the NSW Government to hold media events on the Construction Site:
 - (A) on or about the occurrence of:
 - (aa) the Main Tunnel Date of Opening Completion;
 - (bb) the Date of Opening Completion; and

- (cc) the Date of Completion (WHT Southern Tunnel Works); and
- (B) at such other times as may be reasonably requested by the Principal, provided that the attendees comply with the Contractor's reasonable site access requirements; and
- (ii) co-operate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.
- (b) The Principal must liaise with the Contractor in relation to any such media events, including the planned date and time for any such media events.
- (c) Where the Principal holds a media event:
 - (i) under clause 9.21(a)(i)(A), the Contractor will not be entitled to make, and the Principal will not be liable for, any Claim arising out of or in connection with such media event; or
 - (ii) under clause 9.21(a)(i)(B), the Contractor may claim the reasonable additional costs that it incurs in connection with the media event, but will not otherwise be entitled to make, and the Principal will not otherwise be liable for, any Claim arising out of or in connection with the media event.

10. SECURITY

10.1 Provision of Security Bonds for the Project Works (Rozelle Interchange)

- (a) The Contractor must provide to the Principal prior to D&C Close:
 - (i) Security Bonds which in total equal \$██████████;
 - (ii) Security Bonds which in total equal \$██████████; and
 - (iii) Security Bonds which in total equal to the Initial Payment.
- (b) On or before the Date of Completion, the Contractor must provide to the Principal Security Bonds which in total equal to the lesser of:
 - (i) the initial amount of the Security Bond under clause 10.1(a)(ii) less an amount equal to █████% of the Transferred Works Price; and
 - (ii) the total remaining uncalled value of the Security Bonds provided under clause 10.1(a) and then held by the Principal.
- (c) The Security Bonds provided under clauses 10.1(a) and 10.1(b) must be:
 - (i) in the form of Schedule 31, other than that the undertaking is to be in favour of Roads and Maritime Services and all other references to 'TfNSW' are to be to 'RMS';
 - (ii) in favour of the Principal;
 - (iii) where required, duly stamped;
 - (iv) in the case of the Security Bonds required by clause 10.1(a)(i) up to a total value of \$██████████, issued by a financial institution licensed in Australia

with a credit rating of no less than the Required Rating, or as otherwise approved by the Principal in its absolute discretion; and

- (v) in the case of the remaining Security Bonds required by clause 10.1(a)(i), 10.1(a)(ii), 10.1(a)(iii) and 10.1(b) issued by a bank licensed in Australia with a credit rating of no less than the Required Rating, or as otherwise approved by the Principal in its absolute discretion; and
- (vi) payable at an office of the issuer in Sydney (or such other place as the Principal may approve).

10.1A Provision of Security Bonds for the WHT Southern Tunnel Works

- (a) The Contractor must provide to the Principal on or before the Amendment Date:
 - (i) Security Bonds which in total equal \$██████████; and
 - (ii) not used.
- (b) The Security Bonds provided under clause 10.1A(a) must be:
 - (i) in the form of Schedule 31;
 - (ii) in favour of the Principal;
 - (iii) where required, duly stamped;
 - (iv) up to a total value of \$██████████ issued by a financial institution licensed in Australia with a credit rating of no less than the Required Rating, or as otherwise approved by the Principal in its absolute discretion;
 - (v) in the case of the remaining Security Bonds required by clause 10.1A(a), issued by a bank licensed in Australia with a credit rating of no less than the Required Rating, or as otherwise approved by the Principal in its absolute discretion; and
 - (vi) payable at an office of the issuer in Sydney (or such other place as the Principal may approve).

10.2 Release of Security Bonds for the Project Works (Rozelle Interchange)

- (a) Subject to clause 10.2(b) and to the Principal's rights to have recourse to the Security Bonds provided under clauses 10.1(a) or 10.1(b) (and to the cash proceeds if one or more of such Security Bonds are converted into cash), the Principal must:
 - (i) within 25 Business Days after the Date of Opening Completion release all Security Bonds provided by the Contractor under clause 10.1(a)(i) (or the remaining proceeds of such Security Bonds if they have been converted into cash);
 - (ia) within 25 Business Days after the earlier of:
 - (A) the date that the Initial Payment paid to the Contractor has been fully deducted in accordance with clause 21.1A(c); and
 - (B) the Date of Opening Completion,

release all Security Bonds provided by the Contractor under clause 10.1(a)(iii) (or the remaining proceeds of the Security Bonds if they have been converted into cash);

- (ii) in exchange for the provision by the Contractor of all Security Bonds under clause 10.1(b), release any Security Bond provided by the Contractor under clause 10.1(a)(ii) (or the remaining proceeds of any Security Bonds if they have been converted into cash); and
- (iii) within 25 Business Days after the expiry of the initial Defects Correction Period in respect of the Principal Retained Works (Rozelle Interchange), release any Security Bonds provided by the Contractor under clause 10.1(b) (or the remaining proceeds of any Security Bonds if they have been converted into cash), subject to the provision of further Security Bonds, if required under clause 10.6.

(b) Despite any other provision of this deed to the contrary, where:

- (i) this deed may otherwise require the Principal to release or procure the release of a Security Bond; or
- (ii) this deed is terminated by the Principal,

the Principal may continue to hold, after the date for its release or the termination of this deed:

- (iii) any Security Bond provided under clauses 10.1(a)(i), 10.1(a)(ii) or 10.1(b) to the extent of the value of ■■■% of any bona fide Claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this deed or the Contractor's Activities (Rozelle Interchange) whether for damages (including liquidated damages) or otherwise; and
- (iv) any Security Bond provided under clause 10.1(a)(iii) to the extent of the value of any bona fide Claim which the Principal may have against the Contractor for a debt due and payable under clause 21.1A(d).

However, the Security Bond must be released within 6 months of such date if the claim is not notified to the Contractor and made within that time.

10.2A **Release of Security Bonds for the WHT Southern Tunnel Works**

- (a) Subject to the Principal's rights to have recourse to the Security Bonds provided under clauses 10.1A(a) (and to the cash proceeds if one or more of such Security Bonds are converted into cash), the Principal must:
 - (i) within 25 Business Days after the Date of Completion (WHT Southern Tunnel Works) release all Security Bonds provided by the Contractor under clause 10.1A(a)(i) (or the remaining proceeds of such Security Bonds if they have been converted into cash);
 - (ii) within 25 Business Days after the expiry of the initial Defects Correction Period in respect of the WHT Southern Tunnel Works, release any Security Bonds provided by the Contractor under clause 10.1A(a)(ii) (or the remaining proceeds of the Security Bonds if they have been converted into cash), subject to the provision of further Security Bonds, if required under clause 10.6.

- (b) Despite any other provision of this deed to the contrary, where:
- (i) this deed may otherwise require the Principal to release or procure the release of a Security Bond; or
 - (ii) this deed is terminated by the Principal,

the Principal may continue to hold, after the date for its release or the termination of this deed any Security Bond provided under clauses 10.1A(a)(i) or 10.1A(a)(ii) to the extent of the value of █████% of any bona fide Claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this deed or the Contractor's Activities (WHT Southern Tunnel Works) whether for damages (including liquidated damages) or otherwise. However, the Security Bond must be released within 6 months of such date if the claim is not notified to the Contractor and made within that time.

10.3 Recourse to Security Bonds

- (a) The Principal:
- (i) may, without notice, only convert and have recourse to:
 - (A) any Security Bond provided under clauses 10.1(a)(i), 10.1(a)(ii) or 10.1(b) at any time; or
 - (B) the proceeds of any Security Bond provided under clauses 10.1(a)(i), 10.1(a)(ii), or 10.1(b) if it has been converted into cash,to the extent of a bona fide Claim arising out of or in connection with, or for breach of, this deed or any other D&C Documents and insofar as the bona fide Claim relates to, arises out of or is in connection with, the Contractor's Activities (Rozelle Interchange);
 - (ia) may, without notice, only convert and have recourse to:
 - (C) any Security Bond provided under clauses 10.1A(a)(i) or 10.1A(a)(ii) at any time; or
 - (D) the proceeds of any Security Bond provided under clauses 10.1A(a)(i) or 10.1A(a)(ii) if it has been converted into cash,to the extent of a bona fide Claim arising out of or in connection with, or for breach of, this deed or any other D&C Documents and insofar as the bona fide Claim relates to, arises out of or is in connection with, the Contractor's Activities (WHT Southern Tunnel Works);
 - (ib) may, without notice, only convert and have recourse to:
 - (A) any Security Bond provided under clause 10.1(a)(iii) at any time; or
 - (B) the proceeds of any Security Bond provided under clause 10.1(a)(iii) if it has been converted into cash,to satisfy any debt due and payable by the Contractor under clause 21.1A(d);
 - (ii) is not obliged to pay the Contractor or any Related Party of the Contractor interest on:

- (A) any Security Bond; or
- (B) the proceeds of any Security Bond if it has been converted into cash; and
- (iii) does not hold the proceeds referred to in clause 10.3(a)(i)(B), 10.3(a)(ib)(B) or clause 10.3(a)(ii)(B) on trust for the Contractor or any Related Party of the Contractor.

10.4 Replacement of Security Bonds

- (a) If the issuer of a Security Bond ceases to have the Required Rating, then the Contractor must:
 - (i) promptly and within 3 Business Days of the Contractor becoming aware of that circumstance, notify the Principal of that circumstance;
 - (ii) subject to clause 10.4(a)(iii), within 10 Business Days of being requested to do so by the Principal, procure the issue to the Principal of a replacement Security Bond which satisfies the requirements of clause 10.1 applicable to the relevant Security Bond (subject to any reduction in the amount of the Security Bond in accordance with clause 10.3), provided that, if at that time, at least 3 of the 4 Major Australian Banks no longer have the Required Rating, the Contractor may procure a replacement Security Bond from the Major Australian Bank with the then highest rating below the Required Rating. However, if the conditions applying to such replacement Security Bond are materially different to the Security Bond which it is replacing, the Contractor may seek the Principal's consent (not to be unreasonably withheld or delayed) to procure a replacement Security Bond from a foreign bank with a branch in Sydney which has the same rating; and
 - (iii) if, at any time after the Contractor has procured a replacement Security Bond from a Major Australian Bank which does not have the Required Rating or a foreign bank pursuant to clause 10.4(a)(ii), at least 3 of the 4 Major Australian Banks have the Required Rating, the Contractor must:
 - (A) promptly, and within 2 Business Days of becoming aware of that circumstance, notify the Principal of that circumstance; and
 - (B) within 10 Business Days of becoming aware of that circumstance, procure the issue to the Principal of a replacement Security Bond for the undrawn amount of the affected Security Bond from a Major Australian Bank with the Required Rating which satisfies the requirements of clause 10.1 or clause 10.1A (as applicable) applicable to the relevant Security Bond and this clause 10.4.
- (b) Not less than 20 Business Days before the expiry of any Security Bond, the Contractor must procure the issue to the Principal of a replacement Security Bond for the undrawn amount of the Security Bond that it is to replace which satisfies the requirements of clause 10.1 or clause 10.1A (as applicable) which are applicable to the relevant Security Bond and, following receipt of such replacement Security Bond, the Principal must promptly surrender (or procure the surrender of) the Security Bond that has been replaced.
- (c) If the Contractor fails to replace a Security Bond provided under clauses 10.1(a) or 10.1(b) or clauses 10.1A(a) or 10.1A(b) (as applicable) with a Security Bond as and

when required by clause 10.4(a), 10.4(a)(iii)(B) or 10.4(b), the Principal may have recourse to the relevant Security Bond and hold the proceeds as cash security until the relevant Security Bond is replaced under clause 10.4(a), 10.4(a)(iii)(B) or 10.4(b) as relevant.

10.5 **No injunction**

The Contractor must not, and must procure that its Related Parties do not, take any steps to injunct or otherwise restrain:

- (a) any issuer of any Security Bond provided by the Contractor under this clause 10 from paying the Principal pursuant to the relevant Security Bond;
- (b) the Principal from taking steps for the purposes of making a demand under any Security Bond provided under this clause 10 or receiving payment under any such Security Bond; or
- (c) the Principal using the proceeds received under any Security Bond provided under this clause 10.

10.6 **Replacement of Security Bond for the Project Works (Rozelle Interchange) – Further Defects Correction Periods**

- (a) If prior to (but not earlier than 25 Business Days prior to) the expiry of the initial Defects Correction Period in respect of the Principal Retained Works (Rozelle Interchange) there are Defects in respect of the Principal Retained Works (Rozelle Interchange) outstanding or claimed by the Principal to be outstanding which are the subject of a direction by the Principal under clause 17.2(a), the Contractor must procure a replacement Security Bond in the Principal's favour and in the form of the Security Bond it is replacing but which:
 - (i) is in an amount no less than the lesser of the amount of the Security Bond it is replacing and ■■■% of the amount required to rectify the Defects the subject of the Principal's direction under clause 17.2(a)(i), as reasonably determined by the D&C Independent Certifier; and
 - (ii) expires 1 month after the later of the date (such date to be reasonably determined by the Principal and notified to the Contractor) on which:
 - (A) the correction of all Defects is likely to occur; and
 - (B) the last of the Disputes in respect of any Defect or Defects is likely to be resolved or determined.
- (b) No later than 3 weeks prior to the expiry of the relevant replacement Security Bond identified in clause 10.6(a), if any such Defect or Defects the subject of the Principal direction under clause 17.2(a)(i) has not been rectified or the last Dispute in respect of such Defect or Defects has not been resolved or determined, the Contractor must procure the issue of a further replacement Security Bond in the Principal's favour and in the form of the Security Bond it is replacing and which expires no earlier than 6 months after its date of issue.
- (c) The Contractor must repeat compliance with this clause 10.6 in respect of the Security Bond at all times until the later of 20 Business Days after:

- (i) the date on which the last Defect or Defects identified in clause 10.6(a) has been rectified; and
 - (ii) the date on which the last of the Disputes in respect of such Defect or Defects is resolved by agreement between the parties or determined under clause 32, at which time the Principal must release the Security Bonds provided by the Contractor under clauses 10.6(a) and 10.6(b), subject to clause 10.2(b) and to the Principal's rights to have recourse to the Security Bonds and to the cash proceeds if one or more of the Security Bonds are converted into cash.
- (d) Subject to clause 10.2(b) and to the Principal's rights to have recourse to the Security Bonds provided under this clause 10.6 (and to the cash proceeds if one or more of the Security Bonds are converted into cash), the Principal must within 25 Business Days of the later of:
- (i) the date on which the last Defect or Defects identified in clause 10.6(a) has been rectified; and
 - (ii) the date on which the last of the Disputes in respect of such Defect or Defects is resolved by agreement between the parties or determined under clause 32,
- release all Security Bonds provided by the Contractor under this clause 10.6 (or the remaining proceeds of the Security Bonds if they have been converted into cash).

10.6A Replacement of Security Bond for the WHT Southern Tunnel Works – Further Defects Correction Periods

- (a) If prior to (but not earlier than 25 Business Days prior to) the expiry of the initial Defects Correction Period in respect of the WHT Southern Tunnel Works there are Defects in respect of the WHT Southern Tunnel Works outstanding or claimed by the Principal to be outstanding which are the subject of a direction by the Principal under clause 17.2(a), the Contractor must procure a replacement Security Bond in the Principal's favour and in the form of the Security Bond it is replacing but which:
- (i) is in an amount no less than the lesser of the amount of the Security Bond it is replacing and ■■■% of the amount required to rectify the Defects the subject of the Principal's direction under clause 17.2(a)(i), as reasonably determined by the WHT Independent Certifier; and
 - (ii) expires 1 month after the later of the date (such date to be reasonably determined by the Principal and notified to the Contractor) on which:
 - (A) the correction of all Defects is likely to occur; and
 - (B) the last of the Disputes in respect of any Defect or Defects is likely to be resolved or determined.
- (b) No later than 3 weeks prior to the expiry of the relevant replacement Security Bond identified in clause 10.6A(a), if any such Defect or Defects the subject of the Principal direction under clause 17.2(a)(i) has not been rectified or the last Dispute in respect of such Defect or Defects has not been resolved or determined, the Contractor must procure the issue of a further replacement Security Bond in the Principal's favour and in the form of the Security Bond it is replacing and which expires no earlier than 6 months after its date of issue.

- (c) The Contractor must repeat compliance with this clause 10.6A in respect of the Security Bond at all times until the later of 20 Business Days after:
 - (i) the date on which the last Defect or Defects identified in clause 10.6A(a) has been rectified; and
 - (ii) the date on which the last of the Disputes in respect of such Defect or Defects is resolved by agreement between the parties or determined under clause 32, at which time the Principal must release the Security Bonds provided by the Contractor under clauses 10.6A(a)), subject to the Principal's rights to have recourse to the Security Bonds and to the cash proceeds if one or more of the Security Bonds are converted into cash.
- (d) Subject to the Principal's rights to have recourse to the Security Bonds provided under this clause 10.6A (and to the cash proceeds if one or more of the Security Bonds are converted into cash), the Principal must within 25 Business Days of the later of:
 - (i) the date on which the last Defect or Defects identified in clause 10.6A(a) has been rectified; and
 - (ii) the date on which the last of the Disputes in respect of such Defect or Defects is resolved by agreement between the parties or determined under clause 32,release all Security Bonds provided by the Contractor under this clause 10.6A (or the remaining proceeds of the Security Bonds if they have been converted into cash).

10.7 **D&C Guarantee**

- (a) The Contractor must procure that prior to D&C Close, the Principal is given the executed D&C Guarantees (stamped if required by Law) from the Contractor Guarantors and that all stampings, registrations and filings required by Law or by the law of any foreign jurisdiction in relation to each D&C Guarantee, have been stamped, registered or filed in form and substance satisfactory to the Principal (in its absolute discretion).
- (b) If, after D&C Close, the Principal (in its absolute discretion) considers that, due to a Change in Law or change in law of any jurisdiction, it has become necessary or desirable to make any stamping, registration or filing with any Authority to support the enforceability of any D&C Guarantee or the performance of any obligations under any D&C Guarantee (including expatriation of amounts payable under any D&C Guarantee), the Contractor must take such action as is requested by the Principal's Representative (in its absolute discretion) to make that stamping, registration or filing.

10.8 **Letter of Affirmation**

11. **ACCESS AND CONSTRUCTION SITE**

11.1 **Access**

- (a) Subject to clause 9.9(a), Schedule 8 and any other provision of this deed, and the Contractor's compliance with clauses 10.1(a), 10.7 and 26.5, the Planning Approvals,

the EPBC Act Approval (if any) and any other Approval affecting access to land, the Principal must:

- (i) give, or ensure the Contractor and its Related Parties and invitees have, access to each area of the Construction Site specified in the Site Access Schedule:
 - (A) by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and
 - (B) in accordance with the conditions of access as set out in the Site Access Schedule (if applicable); and
 - (ii) thereafter continue to allow, or ensure that the Contractor and its Related Parties and invitees continue to be allowed, access to each such area of the Construction Site specified in the Site Access Schedule and in accordance with the conditions of access set out in the Site Access Schedule (if applicable).
- (b) The rights under clause 11.1(a) in respect of the areas of the Construction Site (or any part of them) specified in the Site Access Schedule will expire upon:
- (i) if an expiry date is specified in the Site Access Schedule, the date specified in the Site Access Schedule; or
 - (ii) if an expiry date is not specified in the Site Access Schedule:
 - (A) in respect of the Rozelle Interchange Temporary Areas, three months after the Date of Completion;
 - (B) in respect of the areas of the Construction Site where the WHT Interface Works required for a WHT Interface Milestone are carried out, the earlier of:
 - (aa) the date when those WHT Interface Works are handed over to the Principal; or
 - (bb) the Date of Opening Completion;
 - (C) in respect of the WHT Southern Tunnel Works Site and the WHT Southern Tunnel Temporary Areas, the Handover Date (WHT Southern Tunnel Works); and
 - (D) in respect of all other parts of the Construction Site, the Date of Opening Completion.
- (c) The parties acknowledge and agree that access to the Construction Site or any part of it in accordance with the Site Access Schedule pursuant to this clause 11.1 and Schedule 8 will confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including, where applicable as principal contractor.
- (d) The Contractor acknowledges and agrees that it is responsible, at its own cost, for securing all rights of ingress to and egress from the Construction Site as required to allow the Contractor to carry out the Contractor's Activities.

- (e) The Contractor acknowledges that the Construction Site incorporates other roads and facilities associated with motorways that will (subject to the terms of this deed) remain open to traffic at all times.
- (f) If the Principal agrees to give access to any part of the Construction Site earlier than the relevant dates set out in the Site Access Schedule:
 - (i) the Contractor bears the sole risk of such earlier access;
 - (ii) the Principal will not be liable upon any Claim (insofar as permitted by Law) by the Contractor arising out of or in any way in connection with:
 - (A) obtaining such earlier access (including a failure of the Principal to grant such earlier access); or
 - (B) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain such earlier access to the Construction Site; and
 - (iii) if an Excusable Cause of Delay arises during the period in which the Contractor is granted earlier access to a part of the Construction Site, the impact of the Contractor receiving such earlier access on the time required by the Contractor to achieve Opening Completion, Completion, WHT Interface Milestone Completion of a WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone, Completion (WHT Southern Tunnel Works) or Final Completion (as applicable) will be disregarded for the purposes of determining the Contractor's entitlements under clause 16 in connection with that Excusable Cause of Delay.

11.2 Mitigation

The Contractor must take all reasonable steps to Mitigate any delay caused by, or any other effect of, a failure by the Principal to give, or ensure that the Contractor has, access to the Construction Site in accordance with the Site Access Schedule pursuant to clause 11.1, including making any reasonable changes to the sequencing or timing of, or the construction methodologies used in, the Contractor's Activities and, where reasonably practicable, changing the Overall D&C Program (Rozelle Interchange) and/or Overall D&C Program (WHT Southern Tunnel Works (as applicable) to reflect this.

11.2A Access to Other WestConnex Assets or Systems

- (a) The Contractor acknowledges that the Other WestConnex Motorways (which include the Other WestConnex Assets or Systems) do not form part of the Construction Site (other than those parts of the Other WestConnex Motorways identified as M4 Integration Sites or M5 Integration Sites) and the Principal, subject to clause 11B, will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to any Other WestConnex Motorway (other than those parts of the Other WestConnex Assets or Systems identified as M4 Integration Sites or M5 Integration Sites), except to the extent caused or contributed to by breach by the Principal of this clause 11.2A.
- (b) If the Contractor needs to access, modify, test any aspect of or otherwise interface with any Other WestConnex Assets or Systems in respect of the Other WestConnex

Motorways as part of carrying out the Project Works or the Contractor's Activities under this deed, it must (within a reasonable time sufficient for the Principal to provide reasonable notice to the relevant WestConnex Concessionaire) provide a request to the Principal detailing:

- (i) the aspects of the Other WestConnex Assets or Systems the Contractor requires access to;
 - (ii) whether, in the Contractor's opinion, any of the Other WestConnex Assets or Systems it requires access to constitute a COES;
 - (iii) the type of access required and the nature of the works (including inspection activities, modification works or testing and commissioning activities) that the Contractor intends to carry out on the Other WestConnex Motorway;
 - (iv) the Contractor's preferred time and date for access, which must be at least 20 Business Days (or, in the case of a Major Closure, at least 90 calendar days) after the date of the Contractor's request, unless otherwise agreed by the Principal (acting reasonably, provided that it will be deemed reasonable to refuse agreement if the relevant WestConnex Concessionaire has not agreed to the earlier access requested by the Contractor);
 - (v) the anticipated duration of the access and the works;
 - (vi) any expected impact of the access and the works on the performance or availability of the relevant Other WestConnex Assets or Systems.
- (c) Within 15 Business Days of the Contractor's request, the Principal's Representative will confirm whether it considers any of the Other WestConnex Assets or Systems the Contractor requires access to constitute a COES.
- (d) The Principal will procure that the relevant WestConnex Concessionaire provides the access requested by the Contractor in accordance with clause 11.2A(b) and consistent with the access requirements set out in Part C of Schedule 8, provided that:
- (i) the Contractor's proposed date for such access is after the "Date of Opening Completion" (as defined under the project deed for the M4 Motorway or the M5 Motorway, as applicable) of the relevant Other WestConnex Motorway;
 - (ii) the Contractor has obtained all relevant Approvals (including an ROL) and otherwise complied with clause 9.6;
 - (iii) where the Principal is of the opinion that the access would require any traffic adjustments or could impact on the WestConnex Concessionaire's ability to toll the relevant Other WestConnex Motorway, the access and the works are carried out during an Off-Peak Period; and
 - (iv) prior to accessing the relevant Other WestConnex Motorway, the Contractor has agreed to reimburse the Principal for the relevant Lane Occupancy Fees payable by the Contractor in accordance with Schedule 29.
- (e) Not used.

- (f) Without limiting the Contractor's other obligations under this deed, the Contractor may only undertake the Project Works and the Contractor's Activities on any Other WestConnex Motorway:
 - (i) in a manner which does not:
 - (A) impede the safe and free flow of traffic along, onto or from the Other WestConnex Motorway at their normal operating speeds and volumes (except to the extent that this is a necessary consequence of work being carried out for or in connection with the Project Works (Rozelle Interchange) in accordance with this deed); or
 - (B) permit any untolled use of any section of any Other WestConnex Motorway (other than by vehicles which are otherwise exempt from paying the toll under the M4 Project Deed or the M5 Project Deed (as applicable)), or any unmetered use of any Utility Services by the WestConnex Concessionaires or any of their contractors; and
 - (ii) where the Contractor is undertaking a Planned Lane Closure, the Contractor and the M4-M5 Link Concessionaire have agreed the Lane Occupancy Fees payable by the Contractor in accordance with Schedule 29.

11.2B Access to Main Tunnel

- (a) The Contractor acknowledges that the Main Tunnel does not form part of the Construction Site (other than those parts of the Main Tunnel identified as Stage 3 Integration Sites) and the Principal, subject to clauses 11B and 17A, will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to the Main Tunnel.
- (b) Without limiting the Contractor's other obligations under this deed, the Contractor may only undertake the Project Works and the Contractor's Activities on the Main Tunnel:
 - (i) in a manner which does not:
 - (A) impede the safe and free flow of traffic along, onto or from the Main Tunnel at their normal operating speeds and volumes (except to the extent that this is a necessary consequence of work being carried out for or in connection with the Project Works (Rozelle Interchange) in accordance with this deed); or
 - (B) permit any untolled use of any section of the Main Tunnel (other than by vehicles which are otherwise exempt from paying the toll under the Project Deed), or any unmetered use of any Utility Services by the WestConnex Concessionaires or any of their contractors; and
 - (ii) where the Contractor is undertaking a Planned Lane Closure, the Contractor and the M4-M5 Link Concessionaire have agreed the Lane Occupancy Fees payable by the Contractor in accordance with Schedule 29.

11.2C Access to Western Harbour Tunnel and access to Construction Site by WHT Contractor

- (a) The Contractor acknowledges and agrees that, subject to clauses 11.1 and 11.2C(b), the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to the Western Harbour Tunnel, or any part of the Construction Site where the WHT Works are carried out.
- (b) If, following the Handover Date (WHT Southern Tunnel Works), the Contractor needs to access an area of the Construction Site (or any part of it) where the WHT Works are carried out, or the Western Harbour Tunnel as part of carrying out the WHT Works or the Contractor's Activities (WHT Southern Tunnel Works) under this deed:
 - (i) the Contractor must (within a reasonable time sufficient for the Principal to provide reasonable notice to the WHT Contractor or the WHT Asset Manager (as applicable)) provide a request to the Principal detailing:
 - (A) the type of access required;
 - (B) the nature of the works that the Contractor intends to carry out;
 - (C) the anticipated duration of the access and the works; and
 - (D) the Contractor's preferred time and date for access, which must be at least 20 Business Days after the date of the Contractor's request, unless otherwise agreed by the Principal (acting reasonably, provided that it will be deemed reasonable to refuse agreement if the WHT Contractor or the WHT Asset Manager (as applicable) has not agreed to the earlier access requested by the Contractor); and
 - (ii) the Principal will procure that the WHT Contractor or the WHT Asset Manager (as applicable) provides the access requested by the Contractor in accordance with this clause 11.2C(b) subject to:
 - (A) the Contractor complying with the reasonable site access and work, health and safety procedures of the WHT Contractor or the WHT Asset Manager (as applicable); and
 - (B) where the access is required from the WHT Asset Manager during the period on and from the Date of Opening Completion (WHT) until the expiry of the Defects Correction Period in respect of the WHT Southern Tunnel Works, the Contractor has agreed to reimburse the Principal for the relevant costs payable by the Contractor pursuant to clause 11C.2.
- (c) Without limiting any other provision of this deed, if, prior to the Handover Date (WHT Southern Tunnel Works), the WHT Contractor needs to access an area of the Construction Site (or any part of it) as part of carrying out the Remaining WHT Works under the WHT Contract:
 - (i) the Principal must provide a request to the Contractor detailing:
 - (A) the type of access required;
 - (B) the nature of the works that the WHT Contractor intends to carry out;

- (C) the anticipated duration of the access and the works; and
 - (D) the WHT Contractor's preferred time and date for access, which must be at least 20 Business Days after the date of the Principle's request, unless otherwise agreed by the Contractor (acting reasonably); and
- (ii) the Contractor must provide the access requested by the Principal in accordance with this clause 11.2C(c) subject to the WHT Contractor complying with the Contractor's reasonable site access and work, health and safety procedures.

11.3 **Property Works**

- (a) The Contractor must:
- (i) carry out the Property Works:
 - (A) in accordance with section 2.3.2 of the SWTC (Rozelle Interchange); and
 - (B) so that, upon Opening Completion they are fit for their intended purpose;
 - (ii) after completion of the Property Works with respect to a Non-TfNSW Parcel, including the work described in clause 11.3(f), provide to the Principal's Representative:
 - (A) a certificate in the form of Schedule 9, duly executed by the owner or owners of any part of the Non-TfNSW Parcel; or
 - (B) a statement signed by the Contractor to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule 9 within 12 Business Days of it being provided by the Contractor to the owner or owners following completion of the Property Works including the work described in clause 11.3(f); and
 - (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of a Non-TfNSW Parcel where:
 - (A) such owner or owners have not duly signed a certificate in the form of Schedule 9; and
 - (B) the claim or Loss arises out of or in any way in connection with a claim that the Property Works have not been carried out in accordance with this deed.
- (b) The acceptance of a certificate or statement provided by the Contractor under clause 11.3(a)(ii) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this clause 11.3.
- (c) Where any Property Works are required to be carried out on a Non-TfNSW Parcel, the Contractor must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:

- (i) describes the Property Works to be carried out;
 - (ii) requests access for the purposes of carrying out the Property Works; and
 - (iii) specifies the intended date for commencement of the Property Works,
- not less than 12 Business Days prior to the day on which the Contractor intends to commence the Property Works and the Principal will provide reasonable assistance to the Contractor in its requests to the owners of the relevant property.
- (d) If the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works from either:
- (i) the date notified in the notice under clause 11.3(c); or
 - (ii) such other date as may be agreed between the Contractor and the owner or owners,
- the Contractor must:
- (iii) give the Principal's Representative a notice stating this; and
 - (iv) not carry out the Property Works until the Principal's Representative gives the Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 11.3(c) will reapply.
- (e) Upon being given access to any property for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Non-TfNSW Parcel.
- (f) The Contractor must:
- (i) rehabilitate any part of a Non-TfNSW Parcel to the state agreed with the owner of such Non-TfNSW Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 11.3.
- (g) If:
- (i) the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works as contemplated by clause 11.3(d)(i) or 11.3(d)(ii);
 - (ii) the Contractor has given a notice to the Principal's Representative in accordance with clause 11.3(d)(iii);
 - (iii) the Contractor has otherwise achieved the requirements for Opening Completion; and
 - (iv) the Contractor has otherwise complied with its obligations under this clause 11.3,

the Contractor will not be required to complete the relevant Property Works as a condition precedent to Opening Completion, and the Principal may specify a reasonable period after Opening Completion within which the relevant Property Works must be completed.

- (h) If clause 11.3(g) applies, and the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works prior to the date which is 12 months after the Date of Opening Completion or the Date of Completion (WHT Southern Tunnel Works) (as applicable), the Contractor and the Principal must consult in good faith to agree an appropriate solution.

11.4 **Extra Land**

- (a) The Contractor must:
 - (i) subject to this clause 11.4, carry out the Project Works to ensure that:
 - (A) on Opening Completion, the whole of the Rozelle Interchange Works, excluding associated ancillary infrastructure including cables, signage, conduits and cameras, are located within the Rozelle Interchange Works Site; and
 - (B) on Completion (WHT Southern Tunnel Works), the whole of the WHT Southern Tunnel Works are located within the WHT Southern Tunnel Works Site;
 - (ii) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the Contractor's Activities (which may include additional land or buildings required for the Third Party Works or any ancillary infrastructure referred to in clause 11.4(a)(i)); and
 - (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:
 - (A) such owner or occupier has not executed a release in the form of Schedule 9; and
 - (B) the claim or Loss arises out of or in connection with the Contractor's Activities.
- (b) Without limiting clause 11.4(a):
 - (i) to the extent that:
 - (A) the Contractor is not able to comply, or has not complied, with clause 11.4(a)(i); or
 - (B) any ancillary infrastructure referred to in clause 11.4(a)(i)(A) is located outside the Rozelle Interchange Works Site,

the Contractor must procure at the Contractor's cost and transfer to the Principal or its nominee by the Date of Opening Completion or the Date of Completion (WHT Southern Tunnel Works) (as applicable), any land outside

the boundaries of the Rozelle Interchange Works Site or the WHT Southern Tunnel Works Site (as applicable) on which the Rozelle Interchange Works (including any ancillary infrastructure referred to in clause 11.4(a)(i)(A) located outside the Rozelle Interchange Works Site) are located;

- (ii) the Contractor must promptly give a notice to the Principal containing details of the land which the Contractor is obliged to procure; and
 - (iii) the Principal may give a notice to the Contractor that the Principal will procure all or part of the land the subject of the Contractor's notice.
- (c) The Contractor acknowledges that:
- (i) if the Contractor procures for itself any occupation, use or rights over Extra Land, the Contractor is responsible for obtaining any Approval or any modification to an Approval which may be required for that occupation or use or to exercise those rights, including obtaining any EPBC Act Approval or modification to the Primary Planning Approval or the WHT Planning Approval (notwithstanding clause 7.2(b)(i));
 - (ii) integration of the requirements for access to Extra Land is at the sole risk of the Contractor; and
 - (iii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with:
 - (A) identifying and obtaining access to Extra Land;
 - (B) obtaining any Approval (including any EPBC Act Approval) or any modification to an Approval (including the Planning Approvals) in respect of Extra Land; or
 - (C) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to Extra Land.
- (d) If the Principal gives the Contractor a notice pursuant to clause 11.4(b)(iii), the Contractor indemnifies the Principal against the costs incurred by the Principal in procuring the relevant land, including:
- (i) any compensation payable by the Principal in respect of the acquisition of that land under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) and any other reasonable compensation; and
 - (ii) reasonable legal and property valuer and other expert fees payable by the Principal in connection with the procurement of the land and any reasonable surveyor's fees.

11.5 Access and inspection by the Principal

- (a) The Contractor must ensure that at all times the Principal's Representative, any person authorised or nominated by the Principal (including visitors invited by the Principal, who may include SMC, a representative of the M4-M5 Link Concessionaires, the WHT Contractor, the WHT Asset Manager, existing or prospective contractors, financiers or equity investors and other contractors and consultants who are to perform work on the Construction Site), the Environmental Representative (Rozelle

Interchange), the Environmental Representative (WHT), the D&C Independent Certifier, the WHT Independent Certifier, Proof Engineer, Independent Checking Engineer, Principal Surveillance Officers and the personnel referred to in clause 40.3(b):

- (i) have safe, convenient, prompt and unimpeded access during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) to:
 - (A) the Construction Site and Extra Land (with such access rights to commence immediately after the Contractor is first given access under clause 11.1 or accesses the relevant area);
 - (B) the Project Works and the Temporary Works;
 - (C) the Contractor's Activities and all other areas relevant to the Contractor's Activities; and
 - (D) the Design Documentation and any other documentation created for the purposes of the Contractor's Activities; and
- (ii) be entitled to exercise this right of access for the purposes of:
 - (A) observing progress in and inspecting the Contractor's Activities and monitoring compliance by the Contractor of its obligations under this deed;
 - (B) seeking comments from others in respect of the Contractor's Activities; and
 - (C) exercising any right or performing any obligation the relevant party has under any this deed or any other D&C Document.
- (b) The Contractor must provide the Principal, the Principal's Representative, Principal Surveillance Officers, the D&C Independent Certifier, the WHT Independent Certifier, the Proof Engineer and the Independent Checking Engineer with every reasonable facility necessary for the inspection of the Contractor's Activities.
- (c) The Principal and the Principal's Representative may at any time provide comments to the D&C Independent Certifier in respect of the Contractor's Activities (Rozelle Interchange) and to the WHT Independent Certifier in respect of the Contractor's Activities (WHT Southern Tunnel Works) (with a copy to the Contractor).
- (ca) When accessing any area or thing referred to in clause 11.5(a)(i), the Principal must comply with and use best endeavours to ensure that any persons authorised by it to access that area or thing comply with, the Contractor's reasonable safety and security constraints (including compliance with the Contractor's reasonable access rules, site induction requirements, and safety and security procedures).
- (d) If the Principal believes that the Project Works or the Temporary Works are not being constructed, or the Contractor's Activities are not being carried out, in accordance with the requirements of this deed, the Principal may give a notice to the Contractor specifying the non-conformance or the Defect.
- (e) If the Contractor disagrees with any notice given by the Principal pursuant to clause 11.5(d), it must within 5 Business Days after receipt of such a notice give

notice of its disagreement to the Principal. The Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement.

If the matter is not resolved within 8 Business Days thereafter, either party may by notice to the other party and the D&C Independent Certifier (in respect of the Contractor's Activities (Rozelle Interchange) or the WHT Independent Certifier (in respect of the Contractor's Activities (WHT Southern Tunnel Works) refer the matter for determination by the relevant independent certifier, who must within 8 Business Days make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.

- (f) If the Principal gives a notice under clause 11.5(d) and the Contractor does not give a notice under clause 11.5(e) (or if the Contractor does give a notice under clause 11.5(e) and the D&C Independent Certifier or the WHT Independent Certifier (as relevant), or the resolution of the issue between the Principal and the Contractor, as applicable, determines that the Project Works or the Temporary Works are not being constructed, or the Contractor's Activities are not being carried out, in accordance with the requirements of this deed), the Contractor must correct the non-conformance or the Defect the subject of the notice under clause 11.5(d).
- (g) Neither the Principal, the Principal's Representative, the Principal Surveillance Officers, nor any person authorised under clause 11.5(a) owes any duty to the Contractor to:
 - (i) inspect the Contractor's Activities; or
 - (ii) review any construction, maintenance or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (h) No inspection or review of the Contractor's Activities or of any construction, maintenance or repair by the Principal, the Principal's Representative, or any person authorised under clause 11.5(a) will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations or warranties under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor whether under this deed or otherwise according to Law.

11.6 **Physical conditions**

- (a) Without limiting clause 11.7(b), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the Effective Date applicable to the relevant Project Works or Contractor's Activities, the Contractor has:
 - (i) examined the D&C Documents, the Construction Site and its surroundings, the Other WestConnex Motorways, the Information Documents, and any other information that was made available in writing by the Principal or any other person on the Principal's behalf as at the relevant Effective Date, to the Contractor for the purpose of submitting its Proposal;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Proposal and its obligations under the D&C Documents;

- (iii) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the D&C Documents and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities;
 - (iv) informed itself of:
 - (A) all matters relevant to the employment of labour at the Construction Site; and
 - (B) all industrial matters relevant to the Construction Site, the Maintenance Site and the Contractor's Activities;
 - (v) been given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (A) relating to the subject matter of the Information Documents; and
 - (B) for design purposes and otherwise;
 - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of the D&C Documents, the Information Documents (including the Principal Geotechnical Data), the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal, the performance of its obligations and its potential Liabilities under the D&C Documents; and
 - (vii) undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the D&C Documents and assume the obligations and potential risks and Liabilities which they impose on the Contractor.
- (b) Without limiting or otherwise affecting clauses 11.6(c), 11.6(d) or 11.7, the Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - (A) the Construction Site, Extra Land, the Other WestConnex Motorways, the Main Tunnel or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Construction Site, Extra Land, the Other WestConnex Motorways or the Main Tunnel; or
 - (ii) the existence, location, condition or availability of any Existing Operations or Utility Service on, under, above, adjacent to or related to the Construction Site, Extra Land, the Other WestConnex Motorways or the Main Tunnel.
- (c) Subject to clauses 11.7A, 11.8, 11A.2 and 11B.4, the Contractor accepts:
- (i) the Construction Site, any Extra Land and the Other WestConnex Motorways; and

- (ii) any structures or other things on, above or adjacent to, or under the surface of, the Construction Site, any Extra Land and the Other WestConnex Motorways,

in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:

- (iii) all Loss, delay or disruption it suffers or incurs; and

- (iv) any adverse effect on the Project Works or the Temporary Works,

arising out of, or in any way in connection with the Site Conditions encountered in performing the Contractor's Activities.

- (d) The Contractor must investigate, design and construct the Project Works and the Temporary Works in accordance with this deed and acknowledges that it will not be relieved of its obligations under this deed, irrespective of:

- (i) the Site Conditions encountered in performing the Contractor's Activities;

- (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:

- (A) the Construction Site, any Extra Land, the Other WestConnex Motorways, the Environment or their surroundings; or

- (B) any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, any Extra Land, the Other WestConnex Motorways, the Environment or their surroundings; and

- (iii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 11.6(d)(ii).

11.7 Information Documents

- (a) The parties acknowledge and agree that, prior to the date of this deed, the Contractor (or each entity that comprises the Contractor) signed the Deeds of Disclaimer and provided them to the Principal, in respect of information (including Information Documents) provided by the Principal to the Contractor.

- (b) Without limiting or otherwise affecting clause 11.7(c):

- (i) the Principal does not warrant, guarantee or assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of the Information Documents (other than the Principal Geotechnical Data to the extent contemplated by clause 10.7A(a));

- (ii) whether or not an Information Document or any part thereof forms a schedule to this deed, the Contractor acknowledges that:

- (A) the Information Document or part thereof does not form part of this deed and that clause 11.7(c) applies to the Information Document or part thereof; and

- (B) where an Information Document or any part thereof forms a schedule to this deed, it does so only for the purposes of identification of that document or part thereof;
- (iii) insofar as is permitted by Law, the Principal will not be liable upon any Claim by the Contractor or any Subcontractor arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed, (other than the Principal Geotechnical Data to the extent contemplated by clause 10.7A(a)); or
 - (B) a failure by the Principal to provide any information to the Contractor.
- (c) The Contractor:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the Contractor by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - (B) the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of such information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out the Contractor's Activities but nothing in this clause 11.7(c)(i) will limit or otherwise affect the Contractor's obligations under this deed;
 - (ii) warrants that it:
 - (A) or anyone it provides the Information Documents to, has sufficient expertise to understand the risks involved with any decision to enter into or perform any of the Contractor's obligations under this deed; and
 - (B) enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that:
 - (A) the Information Documents do not form the basis for the Contractor's decision to enter into this deed or provide the Contractor's Change Notice (WHT);
 - (B) the Information Documents do not purport to contain, or be, all of the information that an interested party may require in order to make any decision to enter into this deed, provide the Contractor's Change Notice (WHT) or perform any of the Contractor's obligations under this deed; and

- (C) it is aware that the Principal has entered into this deed relying upon:
 - (aa) the warranties, acknowledgements and agreements in clauses 11.7(c)(i) and 11.7(c)(ii); and
 - (bb) the warranties and acknowledgements in the Deeds of Disclaimer and the statutory declaration and proposal forming part of the Proposal.
- (d) To the maximum extent permitted by Law, but subject to the Contractor's express rights under this deed, the Contractor:
 - (i) unconditionally and irrevocably releases, discharges and indemnifies the Principal from and against:
 - (A) any Claim against the Principal and any beneficiary under the Stage 1 CCC Process Deed Poll by, or Liability of the Principal and any beneficiary under the Stage 1 CCC Process Deed Poll to, any person; or
 - (B) (without being limited by clause 11.7(d)(i)(A)) any Loss suffered or incurred by the Principal, and any beneficiary under the Stage 1 CCC Process Deed Poll,

arising, now or in the future, in any way out of or in any way in connection with:

 - (C) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed by the Contractor or a failure by the Principal or any other party to provide any information to the Contractor; or
 - (D) the Information Documents being relied upon or otherwise used by the Contractor or its Related Parties in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation); and
 - (ii) unconditionally and irrevocably agrees that no Claim can be made by the Contractor against the Principal arising in any way from, or relating in any way whatsoever to, the Information Documents, including:
 - (A) the accuracy, adequacy, currency, suitability, fitness for purpose, reasonableness, completeness or reliability of any of the Information Documents;
 - (B) the financial, taxation, accounting, environmental, legal or other implications of any reliance upon the Information Documents or anything whatsoever derived from them;
 - (C) the reasonableness, or possibility of achievement of, any forecasts which may be included in, or which may be or are capable of being derived in any way from, any of the Information Documents; and

- (D) the reliability of any of the Information Documents for use in any way whatsoever in connection with the decision to enter into this deed, provide the Contractor's Change Notice or perform the Contractor's obligations under this deed.
- (e) The indemnity given by the Contractor under clause 11.7(d)(i) for the benefit of the Principal, the WestConnex Concessionaires and any beneficiary under the Stage 1 CCC Process Deed Poll will not be adversely affected in any way by:
 - (i) any action, inaction or omission by the Principal and any beneficiary under the Stage 1 CCC Process Deed Poll, including in connection with the preparation and distribution of the Information Documents;
 - (ii) any actual or constructive knowledge the Principal and any beneficiary under the Stage 1 CCC Process Deed Poll may have relating to the Information Documents or any of their subject matters;
 - (iii) any inaccuracy in or omission from the Information Documents, including if and to the extent that any forecasts in, or which may be derived from them, may not be based upon reasonable grounds; or
 - (iv) anything else which might otherwise constitute waiver of the indemnity in whole or in part or which in any way may prejudice or adversely affect the Principal and any beneficiary under the Stage 1 CCC Process Deed Poll in any way whatsoever.
- (f) The parties acknowledge and agree that the Contractor is obliged under this deed to design and construct the Project Works to meet anticipated traffic volumes for the Motorway as detailed in the SWTC (Rozelle Interchange) and (despite any contrary provision in the D&C Documents) not obliged to meet (for the purposes of clause 1.2(s) or otherwise) any other traffic volumes.

11.7A Principal Geotechnical Data

- (a) Subject to clause 11.7A(b), the Principal acknowledges that the Contractor may rely on the Principal Geotechnical Data but only for the purposes of claiming:
 - (i) Changes under and in accordance with clause 11.7A(c); and
 - (ii) extensions of time, if any, under and in accordance with clause 16 arising from a Change described in paragraph (c) of the definition of "Act of Prevention" (if any).
- (b) The Contractor acknowledges and agrees that:
 - (i) the Contractor cannot rely on the Principal Geotechnical Data to the extent that:
 - (A) the Contractor's review, tests, enquiries, investigations and advice indicate; or
 - (B) a prudent and competent contractor in the position of the Contractor, who had examined:
 - (aa) all information made available in writing by the Principal or anyone on behalf of the Principal to the Contractor for the

purpose of tendering and up to the Effective Date applicable to the relevant Project Works or Contractor's Activities;

(bb) all information relevant to the risks, contingencies and other circumstances having an effect on the Proposal or the Contractor's Change Notice and obtainable by the making of reasonable enquiries; and

(cc) the Construction Site, the Extra Land and their surroundings, would have known or determined,

that the Principal Geotechnical Data was not correct; and

(ii) the acknowledgement of the Principal under clause 11.7A(a) does not extend to any interpretation, extrapolation, conclusion, assumption, projection or analysis of the Principal Geotechnical Data, whether it is contained or stated in the Information Documents, or made, drawn or undertaken by the Contractor.

(c) If the Principal Geotechnical Data is not correct and the Contractor seeks to assert that reliance on the incorrect Principal Geotechnical Data unavoidably necessitates a Change, the Contractor must:

(i) promptly, and in any event within 5 Business Days of becoming aware that the Principal Geotechnical Data is not correct, give notice to the Principal's Representative:

(A) that the Principal Geotechnical Data is not correct, including details; and

(B) which notice must state it is a notice under this clause 11.7A(c)(i); and

(ii) within 10 Business Days of giving the notice under clause 11.7A(c)(i), submit a written claim to the Principal's Representative which includes:

(A) detailed particulars of the Principal Geotechnical Data that is not correct;

(B) particulars of the proposed Change which the Contractor believes is necessary to deal with the incorrect Principal Geotechnical Data; and

(C) the information specified in clause 11.7A(c)(i) in respect of the proposed Change referred to in clause 11.7A(c)(ii)(B) (notwithstanding that the claim under this clause 11.7A(c)(ii) is not a Contractor Change Notice); and

(D) any other details reasonably required by the Principal's Representative.

(d) Within 20 Business Days of receipt of a notice under clause 11.7A(c)(ii), the Principal's Representative must state whether it believes the Principal Geotechnical Data referred to in the notice under clause 11.7A(c)(ii) is not correct and that the Contractor's reliance on that incorrect Principal Geotechnical Data unavoidably necessitates a Change, and notify the Contractor accordingly.

- (e) If the Principal's Representative does not give a notice under clause 11.7A(d) within the time required by clause 11.7A(d), the Principal's Representative is deemed to have notified the Contractor that it believes the Principal Geotechnical Data is correct or does not unavoidably necessitate a Change.
- (f) If the Principal Geotechnical Data referred to in the notice under clause 11.7A(c)(ii) is not correct and the Contractor's reliance on the incorrect Principal Geotechnical Data unavoidably necessitates a Change, the Principal Representative must issue a Change Order under clause 14.1.
- (g) The Contractor must take all reasonable steps to mitigate any additional costs and other adverse impacts resulting from the Principal Geotechnical Data being incorrect.

11.8 **Artefacts**

As between the Principal and the Contractor, any Artefacts found on or under the surface of the Construction Site are the property of the Principal.

The Contractor must upon the discovery of any Artefact on or under the surface of the Construction Site:

- (a) immediately notify the Principal's Representative that an Artefact has been found;
- (b) ensure that the Artefact is protected and not disturbed any further;
- (c) comply with all requirements of Authorities and Directions of the Principal's Representative in relation to the Artefact; and
- (d) continue to perform the Contractor's Activities except to the extent otherwise:
 - (i) directed by the Principal's Representative;
 - (ii) ordered by a court or tribunal; or
 - (iii) required by Law.

If the Contractor discovers an Unknown Artefact on or under the surface of the Construction Site, the Principal will pay the Contractor the reasonable net extra direct costs of carrying out the Contractor's Activities that result directly from complying with clauses 11.8(b) and 11.8(c) (and a reasonable amount on account of overhead and profit of the Contractor equal to the D&C Margin).

The Contractor must take all reasonable steps to mitigate any additional costs and other adverse impacts resulting from an Unknown Artefact.

11.9 **Native Title Claim**

- (a) If there is a Native Title Claim with respect to the Construction Site or the Maintenance Site, or any part of it, the Contractor must continue to perform its obligations under this deed, unless otherwise:
 - (i) directed by the Principal;
 - (ii) ordered by a court or tribunal; or
 - (iii) required by Law.

- (b) For the purposes of clause 11.9(a)(i), the Principal may give a notice directing the Contractor to suspend any or all of its obligations under this deed and the Contractor must comply until such time as the Principal gives the Contractor a further notice.

11.10 Contamination

- (a) If the Contractor discovers any Contamination or potential Contamination in, on or under the Construction Site, the Extra Land or the Maintenance Site (whether or not the Contractor or its Related Parties have caused or contributed to that Contamination), it must:
 - (i) notify the Principal immediately of the discovery of the Contamination or potential Contamination; and
 - (ii) give any notice required by Law.
- (b) Prior to:
 - (i) in respect of the Contractor's Activities (Rozelle Interchange), the Date of Opening Completion; or
 - (ii) in respect of the Contractor's Activities (WHT Southern Tunnel Works), the Date of Completion (WHT Southern Tunnel Works),

the Contractor must comply, and ensure that its Related Parties comply, with any Contamination Notice relating to Contamination referred to in clause 11.10(e) which is on, in, under, over or that emanated or is emanating from the Construction Site, the Extra Land or the Maintenance Site, regardless of whether:

 - (iii) the Contamination Notice is addressed to the Principal, the Contractor or some other person; or
 - (iv) the Contamination occurred before or after the Contractor or its Related Parties were given access to the relevant land.
- (c) If the Principal, the Contractor or any other person receives a Contamination Notice (other than a Contamination Notice relating to Contamination referred to in clause 11.10(e)), the Principal must either:
 - (i) direct the Contractor to provide the Principal and any person authorised by the Principal with such access to the Construction Site and the Extra Land as is required to enable the Principal to comply with that Contamination Notice, in which case the Contractor must promptly comply, with the Principal's direction; or
 - (ii) propose a Change in accordance with section 1 of the Change Procedure to require the Contractor to comply with that Contamination Notice.
- (d) Subject to their respective obligations at Law, the parties must not do anything with the intent, directly or indirectly, of causing or being likely to cause the service of a Contamination Notice.
- (e) In addition to the requirements of the Environmental Documents and without limiting clause 11.6 or 11.12, this clause 11.10 applies to all Contamination:

- (i) on, in, over, under or about (but in each case within) the Construction Site or any Extra Land but only to the extent of that part which is disturbed by or interfered with in the carrying out of the Contractor's Activities;
 - (ii) migrating into the Construction Site or any Extra Land as a result of the Contractor's Activities, provided that this clause 11.10(e) does not apply to any portion of such Contamination located outside the Construction Site or Extra Land;
 - (iii) which is brought onto the Construction Site or any Extra Land by the Contractor or any of its Related Parties;
 - (iv) in the case of tunnel excavation, which is ground water ingressing at the face of the Project Works or within the area of the tunnel excavation (and not to the extent such ground water remains beyond the face of the Project Works and outside the area of the tunnel excavation); or
 - (v) which must be remediated for the Project Works to comply with this deed.
- (f) To the extent clause 11.10(e) applies to Contamination, the Contractor must:
- (i) prevent such Contamination from migrating outside the Construction Site or Extra Land (as applicable);
 - (ii) dispose of, or otherwise deal with, such Contamination in accordance with Law and the Environmental Documents; and
 - (iii) remediate the relevant part of the Construction Site and any Extra Land to the standard required by Law and the Environmental Documents to the extent that:
 - (A) it is in any way degraded by such Contamination; and
 - (B) the Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated.
- (g) Except to the extent prohibited by Law, the Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
- (i) a failure by the Contractor to comply with this clause 11.10;
 - (ii) to the extent any Contamination has been brought onto the Construction Site or any Extra Land by the Contractor or any of its Related Parties; or
 - (iii) to the extent any Contamination has been caused or contributed to by a negligent or wrongful act or omission by the Contractor or its Associates.
- (h) The parties acknowledge and agree that:
- (i) in interpreting the requirement that the relevant part of the Construction Site be remediated to the standard required by Law, the uses that the Construction Site must be suitable for are the uses contemplated in this deed (including the uses contemplated in the SWTC, the Environmental Documents, the Concept Design (Rozelle Interchange) and the Concept Design (WHT Southern Tunnel Works)); and

- (ii) the Contractor is not obliged to comply with a Contamination Notice pursuant to clause 11.10(b) if clause 11.10(e)(v) applies to the Contamination Notice solely because the Contamination Notice is an Approval for the purposes of this deed, and the Contractor is required by this deed to comply with all Approvals.

11.11 Environmental Representative (Rozelle Interchange) and Environmental Representative (WHT)

- (a) The:
 - (i) Environmental Representative (Rozelle Interchange) has been engaged by the Principal and the Contractor on the terms of the Deed of Appointment of Environmental Representative (Rozelle Interchange). The cost of engaging the Environmental Representative (Rozelle Interchange) will be shared equally between the Principal and the Contractor; and
 - (ii) Environmental Representative (WHT) will be engaged by the WHT Independent Certifier pursuant to the WHT Independent Certifier Deed.
- (b) The Contractor acknowledges that each Environmental Representative is:
 - (i) obliged to act independently of the Principal, the Contractor and any of their subcontractors;
 - (ii) required to discharge certain functions as identified in the relevant Planning Approval and in accordance with the Deed of Appointment of Environmental Representative (Rozelle Interchange) or the WHT Independent Certifier Deed (as relevant);
 - (iii) required to oversee the implementation of all environmental management plans and monitoring programs required under the relevant Planning Approval and will advise the Principal upon achievement of the outcomes contemplated in the relevant Planning Approvals; and
 - (iv) required to advise the Principal and the Principal's Representative on the Contractor's compliance with the relevant Planning Approval.
- (c) The Contractor must provide each Environmental Representative with all information and documents and allow each Environmental Representative:
 - (i) to attend meetings; and
 - (ii) to access such premises,as may be:
 - (iii) necessary or reasonably required by each Environmental Representative or the Principal's Representative to allow each Environmental Representative to perform its obligations under the Deed of Appointment of Environmental Representative (Rozelle Interchange) or the WHT Independent Certifier Deed (as relevant); or
 - (iv) lawfully requested by each Environmental Representative or directed by the Principal's Representative.

- (d) The Contractor must:
 - (i) comply with the lawful requirements of each Environmental Representative, including so as to allow each Environmental Representative to discharge any functions of each Environmental Representative provided for in the relevant Planning Approval; and
 - (ii) not interfere with or improperly influence each Environmental Representative in the performance of any of its functions in connection with the Project Deed or this deed.
- (e) Nothing that an Environmental Representative does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of Environmental Representative (Rozelle Interchange) or the WHT Independent Certifier Deed (as applicable) will entitle the Contractor to make any Claim against the Principal.

11.12 **Unknown Site Conditions**

- (a) If the Contractor becomes aware of an Unknown Site Condition, the Contractor must:
 - (i) notify the Principal's Representative of the existence and possible scope of the Unknown Site Condition as soon as practicable and in any event within 1 Business Day after becoming aware of the Unknown Site Condition; and
 - (ii) within 10 Business Days after becoming aware of the Unknown Site Condition, provide an Unknown Site Condition Notice to the Principal's Representative.
- (b) Following receipt of an Unknown Site Condition Notice, the Principal's Representative may request any additional information it reasonably requires from the Contractor to assess the Unknown Site Condition Notice.
- (c) Within 5 Business Days after receipt of:
 - (i) the Unknown Site Condition Notice; and
 - (ii) any additional information requested by the Principal's Representative pursuant to clause 11.12(b),

whichever is later, the Principal's Representative must notify the Contractor whether it believes that the Unknown Site Condition Notice identifies an Unknown Site Condition.
- (d) If the Principal's Representative does not give a notice under clause 11.12(c) within the time required by clause 11.12(c), the Principal's Representative is deemed to have notified the Contractor that it believes the Unknown Site Condition Notice does not identify an Unknown Site Condition.
- (e) Subject to clauses 11.12(f) and 11.12(g), and without limiting the Contractor's entitlements in respect of an Excusable Cause of Delay (Rozelle Interchange) described in paragraph (h) of the definition of "Excusable Cause of Delay (Rozelle Interchange)", if the Contractor gives an Unknown Site Condition Notice and the Principal's Representative agrees or it is determined that there is an Unknown Site Condition, the Principal must issue a Change Order under clause 14.1 in respect of the Unknown Site Condition.

- (f) Notwithstanding any other provision of this deed, the Change Costs in respect of any Change directed under clause 11.12(e) will be determined disregarding:
- (i) any work performed, amount incurred or delay to the Contractor's Activities arising more than 10 Business Days before the Contractor gave an Unknown Site Condition Notice in respect of the relevant Unknown Site Condition;
 - (ii) any work performed, amounts incurred or delay arising to the extent caused or made necessary by the Contractor's breach of this deed or a negligent or wrongful act or omission of the Contractor or its Related Parties; and
 - (iii) any amounts incurred or delay arising to the extent the amounts or delay would have been avoided if the Contractor had Mitigated them,

and the Contractor is not entitled to make any Claim against the Principal, and the Principal has no liability to the Contractor, in respect of work, amounts or delay disregarded pursuant to this clause 11.12(f).

- (g) Notwithstanding any other provision of this deed, the Contractor is not entitled to make any Claim against the Principal, and the Principal has no liability to the Contractor, in respect of:
- (i) subject to clause 11.12(j), any extension of time, Contractor's Delay Costs or Change Costs which are delay costs as a result of a Change directed under clause 11.12(e) in relation to Unknown Contamination; or
 - (ii) any Contractor's Delay Costs or Change Costs which are delay costs as a result of a Change directed under clause 11.12(e) in relation to Unknown Utility Services.
- (h) To the extent that:
- (i) the Contractor has proposed a method for treating Unknown Contamination in its Unknown Site Condition Notice that complies with relevant Laws and Good Industry Practice; and
 - (ii) the Principal reasonably believes there is an alternative method that will reduce the Change Costs payable by the Principal, whilst also complying with relevant Laws and Good Industry Practice,

the Principal may give the Contractor written notice requesting the Contractor consider the alternative method.

- (i) The Contractor must, within 5 Business Days after receipt of a request under clause 11.12(h), give the Principal written notice detailing:
- (i) whether the Contractor agrees that the alternative method complies with relevant Laws and Good Industry Practice; and
 - (ii) any changes to the Change Costs or delay to the Contractor's Activities and Contractor's Delay Costs that would result from the alternative method compared to the method proposed by the Contractor.
- (j) The Principal may, after receipt of the Contractor's notice under clause 11.12(i), require the Contractor to use the alternative method as part of the Change Order issued by the Principal under clause 11.12(e), in which case clause 11.12(g)(i) will

not exclude any right of the Contractor to an extension of time, Contractor's Delay Costs or Change Costs resulting from delay in respect of any additional delay caused by the Contractor using the alternative method compared to the method it proposed.

11.13 **Fixings and penetrations**

- (a) The Contractor acknowledges that WHT Contractor will, in order to accommodate fixings, penetrate the lining of the tunnel being constructed as part of the WHT Southern Tunnel Works.
- (b) The Contractor hereby acknowledges that the warranties and undertakings under this deed in respect the WHT Southern Tunnel Works will not be diminished or avoided in any way provided that the WHT Contractor undertakes any repairs to the lining in accordance with the procedure developed by the Contractor in accordance with section 2.5(e) of the Technical Requirements.

11A **WESTCONNEX ROAD NETWORK INTEGRATION**

11A.1 **Stage 3 Integration Sites**

- (a) Subject to this clause 11A, the Contractor will have no Claim against the Principal arising out of or in any way in connection with the condition of the Stage 3 Integration Sites (including in relation to the Stage 3 Integration Sites not being fit for the purposes of enabling the Contractor to comply with its obligations under this deed) if the Stage 3 Integration Sites comply with the relevant Stage 3 Integration Site Agreed Condition Specification.
- (b) The Contractor warrants that it has reviewed and carefully considered the Stage 3 Integration Site Agreed Condition Specifications and it has satisfied itself that they are suitable for the purposes of the Rozelle Interchange Works.
- (c) The Contractor acknowledges that:
 - (i) it has been provided with the design documentation that comprises the Reference Documents, as at the date of this deed;
 - (ii) it has reviewed the Reference Documents as at the date of this deed and is satisfied that they are suitable for the purposes of the performance of its obligations under this deed; and
 - (iii) as at the date of this deed, the design of the items and elements referred to in the Stage 3 Integration Site Agreed Condition Specifications may not be complete and, if so, will be completed in accordance with the design development process under the Project Deed.
- (ca) The Principal will provide the Contractor with updates of the Reference Documents which are verified by the Independent Certifier as being appropriate for construction (together with any associated design reports that have been finalised), in each case within 5 Business Days of those documents being provided to the Principal by the Independent Certifier.
- (cb) On provision of updated Reference Documents pursuant to clause 11A.1(ca), the Contractor must review the updated Reference Documents and, to the extent that the Contractor considers that the updated Reference Documents are inconsistent with the Stage 3 Integration Site Agreed Condition Specifications such that compliance with the updated Reference Documents require or constitute a Change,

the Contractor must give the Principal written notice setting out reasonable details of the Change within 10 Business Days of receipt of the updated Reference Documents.

- (cc) Within 10 Business Days of receipt of the Contractor's notice under clause 11A.1(cb), the Principal's Representative must notify the Contractor that:
 - (i) the Principal agrees that the updated Reference Documents require or constitute a Change, in which case:
 - (A) the Principal's Representative must issue a Change Order in accordance with clause 14.1 of this deed; and
 - (B) the Reference Documents will be deemed to be updated for the purposes of this deed (and will be used for the purposes of determining whether a Stage 3 Integration Site Defect exists) by replacing the Reference Document listed in the Stage 3 Integration Site Agreed Condition Specification with the Reference Document that has been verified by the Independent Certifier as appropriate for construction;
 - (ii) the Principal does not agree that the updated Reference Documents require or constitute a Change, in which case the Contractor may, within 8 Business Days after the receipt of the notice under this clause 11A.1(cc) issue a notice of dispute under the Dispute Resolution Procedure; or
 - (iii) the Principal will have the Reference Documents amended so that they do not require or constitute a Change, in which case the Principal must provide amended Reference Documents, which do not require or constitute a Change, to the Contractor within 5 Business Days of those documents being provided to the Principal by the Independent Certifier.
- (d) The Contractor must review any design documentation provided by the Principal pursuant to this clause 11A.1 in accordance with Good Industry Practice.

11A.2 **Stage 3 Integration Site Defect**

- (a) The Principal must ensure that the Stage 3 Integration Sites comply with the requirements of the Stage 3 Integration Site Agreed Condition Specification on the date that the Contractor is granted access to the Stage 3 Integration Site in accordance with clause 11.1.
- (b) Prior to completion of the works carried out by the Main Tunnel Contractor on a Stage 3 Integration Site, and for the purposes of identifying any Stage 3 Integration Site Defects:
 - (i) the Principal may, and will if requested by the Contractor, provide the Contractor with any surveys, samples and any other information or documentation that the Principal has in respect of the works carried out by the Main Tunnel Contractor on a Stage 3 Integration Site, and the Contractor must promptly review the information or documentation provided;
 - (ii) the Principal and the Contractor must jointly inspect each Stage 3 Integration Site when reasonably requested by the Principal to do so, and otherwise:
 - (A) 3 months; and

- (B) 1 month; and
 - (C) 1 week,

prior to the estimated date for Rozelle Interface Works Completion; and
 - (iii) the Contractor must perform reviews and inspections under clauses 11A.2(b)(i) to 11A.2(b)(ii) in accordance with Good Industry Practice.
- (c) The Contractor acknowledges that:
- (i) without limiting clause 11A.2(b)(ii), the Principal will be entitled to determine the inspection methodology and the number of attendees for each inspection carried out in accordance with clause 11A.2(b)(ii) (and without limitation, such inspections may be restricted to visual inspection of the Stage 3 Integration Sites only, with invasive testing or inspection not permitted); and
 - (ii) following the Principal granting the Contractor access to the Stage 3 Integration Sites in accordance with clause 11.1, the Contractor may carry out any form of testing or inspection for the purposes of identifying any Stage 3 Integration Site Defects.
- (d) If the Contractor discovers or believes that there is a Stage 3 Integration Site Defect (including as a result of any review or inspection under clause 11A.2(b)), the Contractor must immediately (and where the Contractor discovers a Stage 3 Integration Site Defect during an inspection referred to in this clause 11A.2, within 5 Business Days of that inspection) after the Contractor first became aware of the Stage 3 Integration Site Defect, give a notice to the Principal's Representative containing:
- (i) details of the Stage 3 Integration Site Defect, including:
 - (A) the estimated time required to rectify the Stage 3 Integration Site Defect); and
 - (B) whether the Contractor considers that the Stage 3 Integration Site Defect is an Urgent Rozelle Interface Works Defect; and
 - (ii) the impact of the Stage 3 Integration Site Defect on the Contractor's ability to comply with its obligations under this deed, including on the Contractor's ability to achieve Opening Completion by the Date for Opening Completion.
- (e) If the Contractor gives a notice to the Principal in accordance with clause 11A.2(d), then the Principal must:
- (i) notify the Independent Certifier of the Stage 3 Integration Site Defect under the Project Deed;
 - (ii) procure that the Main Tunnel Contractor rectifies the Stage 3 Integration Site Defect;
 - (iii) direct a Change in accordance with clause 14.1 requiring the Contractor to either rectify the Stage 3 Integration Site Defect or to modify the Project Works or the Contractor's Activities to accommodate the Stage 3 Integration Site Defect;

- (iv) advise the Contractor that it disagrees that the alleged defect is a Stage 3 Integration Site Defect or an Urgent Rozelle Interface Works Defect (as applicable); or
 - (v) notify the Contractor that it is not entitled to any Claim in respect of the Stage 3 Integration Site Defect due to the operation of clause 11A.2(j). Any dispute concerning such notice will be resolved in accordance with this deed.
- (f) Where the Principal notifies the Independent Certifier of the Stage 3 Integration Site Defect under the Project Deed in accordance with clause 11A.2(e)(i):
- (i) not used;
 - (ii) the Principal will procure that the Independent Certifier determines whether the Stage 3 Integration Site Defect is a "Defect" under the Project Deed, and:
 - (A) the Independent Certifier's determination under the Project Deed will be treated as a determination of the D&C Independent Certifier under this deed solely for the purpose of clauses 12.3(c)(iii) and 32 (and without the D&C Independent Certifier assuming any responsibility or liability for that determination); and
 - (B) subject to clause 12.3(c)(iii), the Contractor agrees to be bound by that determination; and
 - (iii) where it is determined that a Stage 3 Integration Site Defect exists, the Principal must (at the Principal's discretion) either procure rectification pursuant to clause 11A.2(e)(ii) or direct a Change pursuant to clause 11A.2(e)(iii).
- (g) Where the Principal procures the Main Tunnel Contractor to rectify the Stage 3 Integration Site Defect pursuant to clause 11A.2(e)(ii):
- (i) the Contractor must give the Main Tunnel Contractor safe and convenient access to the relevant Stage 3 Integration Site for the purpose of the relevant contractor rectifying the Stage 3 Integration Site Defect, including in accordance with clause 11.5; and
 - (ii) the delay incurred with respect to the Project Works or the Contractor's Activities as a result of the Stage 3 Integration Site Defect or the Main Tunnel Contractor carrying out rectification work on the relevant Stage 3 Integration Site will be a Compensation Event (Rozelle Interchange).
- (h) Where the Principal directs a Change in accordance with clause 11A.2(e)(iii), the Contractor must bear and the Principal will not be liable for the first \$ [REDACTED] of Change Costs (aggregated together with the Change Costs for any other Stage 3 Integration Site Defects determined in accordance with this clause 11A.2 and Change Costs determined under clause 11B.4).
- (i) Where the Principal advises the Contractor that it disagrees that the alleged defect is a Stage 3 Integration Site Defect or that the alleged defect is an Urgent Rozelle Interface Works Defect pursuant to clause 11A.2(e)(iv):
- (i) the Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 5 Business Days after the date of the Principal's notice to the

Contractor, either the Principal or the Contractor may, by notice to the other party and the D&C Independent Certifier, refer the matter for determination by the D&C Independent Certifier, who must within 10 Business Days after receipt of the referral make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination, and the parties agree to be bound by the determination of the D&C Independent Certifier under this clause;

- (ii) the Contractor must continue to perform its obligations under this deed; and
 - (iii) where it is determined that a Stage 3 Integration Site Defect exists, the Principal must (at the Principal's discretion) either procure rectification pursuant to clause 11A.2(e)(ii) or direct a Change pursuant to clause 11A.2(e)(iii).
- (j) The Contractor will not have any Claim (including for an extension of time or other form of relief for any delay) against the Principal in respect of a Stage 3 Integration Site Defect:
- (i) not used;
 - (ii) not used; or
 - (iii) to the extent that it is not necessary for the Stage 3 Integration Site Defect to be rectified in order for the Contractor to comply with its obligations under this deed or to avoid a material adverse effect on the cost or timing of the Contractor performing any of those obligations.
- (ja) The Contractor's failure to perform a review or inspection in accordance with clause 11A.2(b), or to give notice in respect of a Stage 3 Integration Site Defect of which the Contractor is aware in accordance with clause 11A.2(d), does not relieve the Principal from any obligation under this clause 11A.2 to procure the rectification of the Stage 3 Integration Site Defect pursuant to clause 11A.2(e)(ii) or direct a Change pursuant to clause 11A.2(e)(iii). However, any Claim (including for an extension of time or other form of relief for any delay) which the Contractor has against the Principal in respect of the Stage 3 Integration Site Defect will be proportionately reduced to the extent that failure resulted in or contributed to the Claim.
- (k) Nothing in this clause 11A.2 prevents the Principal from directing a Change in accordance with clause 14.1 requiring the Contractor to rectify a Stage 3 Integration Site Defect:
- (i) whether or not the Principal has issued a notice pursuant to clause 11A.2(e) and the Contractor's entitlement to any Change Costs and any extension of time will be adjusted to reflect any subsequent determination (and for the avoidance of doubt, the Contractor will have no Claim if this deed provides that it will not have a Claim in respect of any Stage 3 Integration Site Defect); or
 - (ii) where the Principal has previously issued a notice pursuant to clause 11A.2(e)(i).
- (l) Where the Principal directs a Change under this clause 11A.2 requiring the Contractor to rectify a Stage 3 Integration Site Defect, the Contractor must (without limiting any requirements imposed on the Contractor under the Change Procedure in relation to how the Contractor carries out such works) carry out such works:

- (i) so as to minimise the impact on the use of the Main Tunnel;
 - (ii) so as to minimise the inconvenience to possible users of the Main Tunnel, any Local Area, a Utility Service, the Property Works or any access and the adjacent community;
 - (iii) in accordance with the requirements of any relevant Authority; and
 - (iv) in a manner which causes as little inconvenience as possible to the activities which the Main Tunnel Contractor may be carrying out in discharging its obligations under the Main Tunnel D&C Deed.
- (m) For the avoidance of doubt, the Contractor will be responsible for any Defects in the works that it carries out to the Stage 3 Integration Sites.

11A.3 Main Tunnel Works

- (a) The Contractor acknowledges that:
- (i) the Main Tunnel Works will form part of the WestConnex Program of Works;
 - (ii) the M4-M5 Link Concessionaires have engaged the Main Tunnel Contractor to carry out the Main Tunnel Works;
 - (iii) the Contractor's Activities will interface with the Main Tunnel Contractor's Activities; and
 - (iv) the Main Tunnel Contractor will be executing work adjacent to the Construction Site at the same time as the Contractor is performing the Contractor's Activities.
- (b) Either:
- (i) the Principal's Representative may request the Contractor to provide information to the Principal (for provision to the M4-M5 Link Concessionaires and the Main Tunnel Contractor); or
 - (ii) the Contractor may request the Principal to provide information to the Contractor,

to coordinate the design of the Main Tunnel Works with the Project Works and the Temporary Works. The Contractor must comply with any such request in a timely manner.

- (c) The Contractor will:
- (i) cooperate with the Main Tunnel Contractor to ensure the effective coordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Main Tunnel Works;
 - (ii) carefully coordinate the Contractor's Activities with the Main Tunnel Works;
 - (iii) be responsible for coordinating the Contractor's Activities, including work sequencing, access timing, construction methods, safety, industrial relations matters, commissioning and testing, acceptance, completion and defects management and resolution with those affecting, and influenced by, the Main Tunnel Contractor's personnel and work;

- (iv) attend coordination meetings with the Main Tunnel Contractor and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues;
- (v) promptly advise the Principal's Representative of all matters arising out of the liaison with the Main Tunnel Contractor that may have an adverse effect upon the Contractor's Activities and the Main Tunnel Contractor's Activities; and
- (vi) at all times comply with its obligations under clause 23.5.

11A.4 Western Harbour Tunnel

- (a) The Contractor acknowledges and agrees that the Contractor's Activities will need to interface with the Remaining WHT Works and that:
 - (i) achieving:
 - (A) WHT Interface Milestone Completion of each WHT Interface Milestone by the relevant Date for WHT Interface Milestone Completion;
 - (B) WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion;
 - (C) Opening Completion by the Date for Opening Completion;
 - (D) Completion by the Date for Completion;
 - (E) Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works); and
 - (F) Final Completion by the Date for Final Completion; and
 - (ii) delivering the Project Works in accordance with this deed,

are critical to ensuring that the WHT Contractor can meet its program for completion of the Remaining WHT Works.
- (b) Without limiting the Contractor's obligations under the Western Harbour Tunnel – Rozelle Interchange Interface Deed, the Contractor acknowledges that:
 - (i) the Contractor's Activities interface with the Remaining WHT Works;
 - (ii) the WHT Contractor may be executing the Remaining WHT Works on or adjacent to parts of the Construction Site or adjacent to the Extra Land at the same time as the Contractor is performing the Contractor's Activities;
 - (iii) the WHT Southern Tunnel Works will be handed over to the WHT Contractor;
 - (iv) it may require certain design and work methodology input from the WHT Contractor to coordinate the design of the WHT Southern Tunnel Works with the Remaining WHT Works;
 - (v) the WHT Contractor may require the Contractor to provide design and work methodology information to them to coordinate the design or conduct of the Remaining WHT Works with the WHT Southern Tunnel Works, and this must be provided in a timely manner by the Contractor; and

- (vi) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or cooperating and coordinating with any WHT Interface Contractor, may adversely impact upon, delay or disrupt any one or more WHT Interface Contractors or the Contractor's Activities in a way which may lead to the Principal or the [REDACTED] suffering or incurring additional costs, Losses and damages.
- (c) The Contractor must:
- (i) permit the WHT Contractor to execute the Remaining WHT Works on the applicable parts of the Construction Site, or on any adjacent property to the Construction Site:
 - (A) at the same time as the Contractor is performing the Contractor's Activities; and
 - (B) at the times agreed with the WHT Contractor, or failing agreement at the times determined by the Principal's Representative,and for this purpose where the Principal Contractor is principal contractor of the Construction Site, ensure the WHT Contractor has safe, clean and clear access to those parts of the Construction Site required by the WHT Contractor for the purpose of carrying out its work;
 - (ii) protect the WHT Southern Tunnel Works and other improvements on the Construction Site or Extra Land from accidental damage by WHT Interface Contractors;
 - (iii) not damage the Remaining WHT Works or the WHT Interface Contractors' plant and equipment;
 - (iv) cooperate with WHT Interface Contractors, and do everything reasonably necessary to facilitate the execution of the Remaining WHT Works, including providing WHT Interface Contractors with such assistance as may be directed by the Principal's Representative;
 - (v) carefully coordinate and interface the Contractor's Activities with the Remaining WHT Works and for this purpose:
 - (A) make proper allowance in all programs for the Remaining WHT Works;
 - (B) review all programs provided by the WHT Contractor and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Remaining WHT Works with the Contractor's Activities;
 - (C) monitor the progress or conduct of the Remaining WHT Works;
 - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress, Completion (WHT Southern Tunnel Works) or Final Completion; and
 - (E) provide the WHT Contractor with sufficient information about the current and expected Contractor's Activities to assist them to coordinate the Remaining WHT Works with the Contractor's Activities;

- (vi) cooperate, meet with, liaise and share information so that the Contractor and the relevant WHT Interface Contractor each comply with the provisions of any relevant Environmental Protection Licence (if applicable);
- (vii) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Remaining WHT Works;
- (viii) coordinate the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the WHT Contractors' personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the WHT Southern Tunnel Works or Temporary Works (WHT Southern Tunnel Works) which are adjacent to or interface with any Remaining WHT Works, at least 15 Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with the WHT Contractors where required to complete the design of the WHT Southern Tunnel Works and provide all necessary information to the WHT Contractor in respect of the WHT Southern Tunnel Works to permit the WHT Contractor to complete the design of the Remaining WHT Works so that they are acceptable to the Principal and otherwise comply with this deed, including the SWTC (WHT Southern Tunnel Works);
- (x) attend interface coordination meetings chaired by the Principal's Representative with WHT Interface Contractors and others monthly, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (xi) when information is required from a WHT Interface Contractor, provide reasonable written notice which must be at least 10 Business Days (except in special circumstances) or any longer period of notice required under the SWTC (WHT Southern Tunnel Works) to that WHT Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- (xii) ensure that any written notice given under clause 11A.4(c)(xi) provides the WHT Interface Contractor with the longest possible time for the provision of the information;
- (xiii) when any information is reasonably requested by the Principal or the WHT Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Remaining WHT Works with the WHT Southern Tunnel Works or the Contractor's Activities:
 - (A) provide the information to the Principal's Representative or the WHT Interface Contractor, with a copy to the Principal's Representative (as applicable), within the time requested by the Principal or the WHT Interface Contractor, provided that this time is reasonable; and
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;

- (xiv) achieve a high level of cooperation, coordination and collaboration with the WHT Contractor to ensure that:
 - (A) the WHT Southern Tunnel Works are fully integrated with the Remaining WHT Works; and
 - (B) any delay, or potential delay, to the Contractor's Activities or the Remaining WHT Works is mitigated;
- (xv) closely cooperate with the WHT Interface Contractors with respect to community and stakeholder liaison issues; and
- (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with the WHT Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, the WHT Interface Contractors;
 - (D) the compatibility of the WHT Southern Tunnel Works with the Remaining WHT Works;
 - (E) coordination in accordance with this clause 11A.4; and
 - (F) technical issues with the information provided to, or received from, the WHT Interface Contractors.
- (d) The Contractor must promptly advise the Principal's Representative of all matters arising out of the liaison with the WHT Contractor that may involve a change to design or construction work under this deed or otherwise have an adverse effect upon the Contractor's Activities.
- (e) If, despite the Contractor having complied with all of its obligations under this clause 11A.4 and the Western Harbour Tunnel – Rozelle Interchange Interface Deed, the Contractor and the WHT Contractor fails to resolve any interface issue or dispute between them, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with the WHT Contractor (with a copy to the WHT Contractor).
- (f) Upon receipt of the Contractor's notice under clause 11A.4(e), the Principal's Representative must:
 - (i) convene a meeting between the Contractor, the WHT Contractor and any other relevant person (as reasonably determined by the Principal's Representative); and
 - (ii) both the Principal's Representative and the Contractor must work in good faith with the WHT Contractor to resolve the issues or dispute.
- (g) The Contractor:
 - (i) acknowledges and agrees:

- (A) no act or omission by a WHT Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of this deed or Change directed by the Principal's Representative);
 - (B) subject to clause 11A.4(g), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - (aa) the WHT Interface Contractors carrying out their work; or
 - (bb) any act or omission of a WHT Interface Contractor;
 - (C) that the WHT Interface Contractors may require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal; and
 - (D) that the Overall D&C Program (WHT Southern Tunnel Works) will accommodate requirements for design iterations as part of the Remaining WHT Works and incorporate the requirements of the Western Harbour Tunnel – Rozelle Interchange Interface Deed; and
- (ii) warrants that as at the Amendment Date, each element of the D&C Deed Sum (WHT Southern Tunnel Works) and the Overall D&C Program (WHT Southern Tunnel Works) contain sufficient allowances for the assumption by the Contractor of the obligations and risks under this clause 11A.4 and, without limiting any entitlement the Contractor may have pursuant to this deed (including clause 14), including the cost of all the design iterations required to accommodate the Remaining WHT Works.
- (h) The Principal's Representative must notify the Contractor that the WHT Contractor has achieved "Opening Completion" under the WHT Contract, together with the date on which "Opening Completion" was achieved promptly after receiving notice from the [REDACTED]

11A.5 WHT Asset Manager

- (a) The Contractor acknowledges that under the terms of the WHT Asset Manager Deed if the WHT Asset Manager becomes aware of a Defect in the WHT Southern Tunnel Works after the Date of Opening Completion (WHT), the WHT Asset Manager will categorise the Defect and allocate the Defect a defect rating.
- (b) Where the WHT Asset Manager categorises a Defect in the WHT Southern Tunnel Works as having a defect rating of 4 (being a critical Defect that requires immediate attendance as a critical condition has occurred that could affect operation and / or availability of the Western Harbour Tunnel) or 5 (being a critical Defect that requires immediate attendance as a critical condition has occurred that affects safety of the Western Harbour Tunnel), the Contractor acknowledges and agrees that under the WHT Asset Manager Deed the WHT Asset Manager must, during the period on and from the Date of Opening Completion (WHT) until the expiry of the Defects Correction Period in respect of the WHT Southern Tunnel Works, immediately carry out a repair or temporary fix to allow the Western Harbour Tunnel to be operated in accordance with the WHT Asset Manager Deed.

11B WESTCONNEX OPERATIONAL INTEGRATION

11B.1 Purpose of integration

- (a) The Contractor acknowledges that a purpose of the Rozelle Interchange Works is that, to the extent specified in the SWTC (Rozelle Interchange), the Motorway and the Other WestConnex Motorways will be, and will operate as, a single, integrated tunnel asset.
- (b) Notwithstanding clause 11B.1(a), to the extent specified in the SWTC (Rozelle Interchange), the operation of the single, integrated tunnel asset must be able to accommodate one or more incidents within the WestConnex Program of Works such that unaffected parts of the WestConnex Program of Works can continue to operate in a safe, secure and efficient manner such that toll revenue impacts and road network operational impacts are minimised.

11B.2 Integration Works

- (a) The Contractor must carry out the Integration Works in accordance with the SWTC (Rozelle Interchange), including to the extent specified in the SWTC (Rozelle Interchange):
 - (i) developing the IOMCS and making provisions for the OMCS for the Rozelle Interchange in accordance with Appendix B.31 and Appendix B.32 of the SWTC (Rozelle Interchange);
 - (ii) integrating the IOMCS with the OMCS for the Rozelle Interchange Works and each of the Main Tunnel and Other WestConnex Motorways;
 - (iii) connecting and integrating the Rozelle Interchange with the Main Tunnel and the Other WestConnex Motorways, including by undertaking the physical Integration Works in accordance with Appendix B.33 of the SWTC (Rozelle Interchange);
 - (iv) modifying the Main Tunnel and Other WestConnex Assets or Systems necessary to complete the Integration Works (but not, except to the extent required by this deed to do so as a Change or otherwise caused by the Contractor's Activities, correcting a WestConnex System Defect) ; and
 - (v) testing and commissioning the Rozelle Interchange so that it integrates with the IOMCS, the Main Tunnel, the Other WestConnex Motorways and the Other WestConnex Assets and Systems.
- (b) After the Main Tunnel Date of Opening Completion and subject to the Contractor complying with Schedule 8, the Principal must procure that the Asset Trustee or the Project Trustee (as applicable) give the Contractor and its Related Parties such access to the Main Tunnel Motorway Stratum, during the permitted times stated in the ROLs and any Approvals or on reasonable notice as is necessary to enable the Contractor to comply with its obligations under this clause 11B.

11B.3 Assets or Systems Design Specification and Documentation

- (a) The Contractor acknowledges that:
 - (i) it has been provided with the design specification for the Main Tunnel Assets or Systems listed in Schedule 38;

- (ii) it has reviewed the design specification for the Main Tunnel Assets or Systems as at the date of this deed and is satisfied that the design specification is suitable for the purposes of enabling the Contractor to perform its obligations under this deed; and
 - (iii) as at the date of this deed, the design of the Main Tunnel Assets or Systems may not be complete and, if so, will be completed in accordance with the design development process under the Project Deed.
- (aa) The Principal will provide the Contractor with design documentation in respect of the Main Tunnel Assets or Systems which is verified by the Independent Certifier as being appropriate for construction (together with any associated design reports that have been finalised), in each case within 5 Business Days of those documents being provided to the Principal by the Independent Certifier.
 - (ab) On provision of the design documentation in respect of the Main Tunnel Assets or Systems pursuant to clause 11B.3(aa), the Contractor must review the updated design documentation and, to the extent that the Contractor considers that compliance with the updated design documentation in respect of the Main Tunnel Assets or Systems requires or constitutes a Change, the Contractor must give the Principal written notice setting out reasonable details of the Change within 10 Business Days of receipt of the updated design documentation.
 - (ac) Within 10 Business Days of receipt of the Contractor's notice under clause 11B.3(ab), the Principal's Representative must notify the Contractor that:
 - (i) the Principal agrees that the updated design documentation requires or constitutes a Change, in which case:
 - (A) the Principal's Representative must issue a Change Order in accordance with clause 14.1 of this deed; and
 - (B) the design documentation verified by the Independent Certifier as being appropriate for construction will be used for the purposes of determining whether any WestConnex System Defect exists;
 - (ii) the Principal does not agree that the updated design documentation requires or constitutes a Change, in which case the Contractor may, within 8 Business Days after the receipt of the notice under this clause 11B.3(ac) issue a notice of dispute under the Dispute Resolution Procedure; or
 - (iii) the Principal will have the design documentation amended so that they do not require or constitute a Change, in which case the Principal must provide amended design documentation, which do not require or constitute a Change, to the Contractor within 5 Business Days of those documents being provided to the Principal by the Independent Certifier.
 - (ad) The Principal will provide the Contractor with the Main Tunnel Contractor System Design Information for each Main Tunnel Contractor System Design Information Milestone within 3 Business days of those documents being provided to the Principal.
 - (b) The Contractor must review any design documentation provided by the Principal pursuant to this clause 11B.3 in accordance with Good Industry Practice.
 - (c) If the Contractor considers that it requires copies of the design documentation for the Other WestConnex Assets or Systems that are located on an Other WestConnex

Motorway in order to comply with its obligations under this deed, the Contractor must give a notice to the Principal's Representative detailing:

- (i) the specific design documentation for the Other WestConnex Assets or Systems on the Other WestConnex Motorway that the Contractor requires; and
 - (ii) why the Contractor requires copies of such design documentation.
- (d) If the Principal considers (acting reasonably) that the Contractor requires copies of the design documentation requested by the Contractor under clause 11B.3(c) in order to comply with its obligations under this deed, the Principal will use best endeavours to procure that design documentation from the relevant WestConnex Concessionaire.

11B.4 **WestConnex System Defects**

- (a) For the purposes of identifying any WestConnex System Defect:
- (i) the Contractor will be provided with design documentation for the Other WestConnex Assets or Systems in accordance with clause 11B.3, and the Contractor must promptly review the design documentation provided;
 - (ii) the Principal may, and will if requested by the Contractor, provide the Contractor with any results from the testing and commissioning of the Other WestConnex Assets or Systems, and the Contractor must promptly review the results provided;
 - (iii) the Principal and the Contractor must jointly inspect each of the Main Tunnel Assets or Systems when reasonably requested by the Principal and otherwise:
 - (A) 1 month; and
 - (B) 1 week,prior to the estimated dates for Main Tunnel Opening Completion; and
 - (iv) the Contractor must perform reviews and inspections under clauses 11B.4(a)(i) to 11B.4(a)(iii) in accordance with Good Industry Practice.
- (b) The Contractor acknowledges that the Principal will be entitled to determine the inspection methodology and the number of attendees for each inspection carried out in accordance with clause 11B.4(a)(iii).
- (c) If the Contractor discovers or believes that there is a WestConnex System Defect (including as a result of any review or inspection under clause 11B.4(a)), the Contractor must immediately (and in any event within 5 Business Days) after the Contractor first became aware of the WestConnex System Defect, give a notice to the Principal's Representative containing:
- (i) details of the WestConnex System Defect (including the estimated time required to rectify the WestConnex System Defect); and
 - (ii) the impact of the WestConnex System Defect on the Contractor's ability to comply with its obligations under this deed, including on the Contractor's ability to achieve Opening Completion by the Date for Opening Completion.

- (d) If the Contractor gives a notice to the Principal in accordance with clause 11B.4(c), then the Principal must:
 - (i) notify the Independent Certifier of the WestConnex System Defect under the Project Deed and clause 11B.4(e) will apply;
 - (ii) procure the rectification of the WestConnex System Defect;
 - (iii) direct a Change in accordance with clause 14.1 requiring the Contractor to either rectify the WestConnex System Defect or to modify the Project Works or the Contractor's Activities to accommodate the WestConnex System Defect;
 - (iv) advise the Contractor that it disagrees that the alleged defect is a WestConnex System Defect; or
 - (v) notify the Contractor that it is not entitled to any Claim in respect of the WestConnex System Defect due to the Contractor's failure to comply with clause 11B.4(c). Any Dispute concerning such notice will be resolved in accordance with this deed.

- (e) Where the Principal notifies the Independent Certifier of the WestConnex System Defect under the Project Deed in accordance with clause 11B.4(d)(i):
 - (i) not used;
 - (ii) the Principal will procure that the Independent Certifier, M4 Independent Certifier or M5 Independent Certifier (as applicable) determines whether the WestConnex System Defect is a "Defect" under the Project Deed, project deed in respect of the M4 Motorway or project deed in respect of the M5 Motorway, and:
 - (A) the Independent Certifier's, M4 Independent Certifier's or M5 Independent Certifier's (as applicable) determination will be treated as a determination of the D&C Independent Certifier under this deed solely for the purpose of clauses 12.3(c)(ii) and 32 (and without the D&C Independent Certifier, assuming any responsibility or liability for that determination); and
 - (B) subject to clause 12.3(c)(iii), the Contractor agrees to be bound by that determination; and
 - (iii) where it is determined that a WestConnex System Defect exists, the Principal must (at the Principal's discretion) either procure rectification pursuant to clause 11B.4(d)(ii) or direct a Change pursuant to clause 11B.4(d)(iii).

- (f) Where the Principal procures the rectification of the WestConnex System Defect pursuant to clause 11B.4(d)(ii):
 - (i) the Principal will be responsible for ensuring the WestConnex System Defect is rectified; and
 - (ii) any delay incurred with respect to the Project Works or the Contractor's Activities as a result of the WestConnex System Defect or the carrying out of the rectification work will be a Compensation Event (Rozelle Interchange).

- (g) Where the Principal directs a Change in accordance with clause 11B.4(d)(iii), the Contractor must bear and the Principal will not be liable for the first \$ [REDACTED] of Change Costs (aggregated together with the Change Costs for any other WestConnex System Defects determined in accordance with this clause 11B.4(d)(iii) and Change Costs determined under clause 11A.2).
- (h) Where the Principal advises the Contractor that it disagrees that the alleged defect is a WestConnex System Defect pursuant to clause 11B.4(d)(iv), then:
 - (i) the Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 5 Business Days after the date of the Principal's notice to the Contractor, either the Principal or the Contractor may, by notice to the other party and the D&C Independent Certifier, refer the matter for determination by the D&C Independent Certifier, who must within 10 Business Days after receipt of the referral make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination, and the parties agree to be bound by the determination of the D&C Independent Certifier under this clause in the absence of manifest error;
 - (ii) the Contractor must continue to perform its obligations under this deed; and
 - (iii) where it is determined that a WestConnex System Defect exists, the Principal must (at the Principal's discretion) either issue a notice pursuant to clause 11B.4(d)(ii) or direct a Change pursuant to clause 11B.4(d)(iii).
- (i) The Contractor shall not have any Claim (including for an extension of time or other form of relief for any delay) against the Principal in respect of any WestConnex System Defect if:
 - (i) not used;
 - (ii) not used;
 - (iii) to the extent that it is not necessary for the WestConnex System Defect to be rectified in order for the Contractor to comply with its obligations under this deed or to avoid a material adverse effect on the cost or timing of the Contractor performing any of those obligations;
 - (iv) to the extent the Claim is for Loss incurred by the IOMCS and OMCS Works Contractor, the WestConnex System Defect occurs in any Other WestConnex Assets or Systems that were supplied, installed, tested or commissioned by the IOMCS and OMCS Works Contractor; or
 - (v) where the Other WestConnex Assets or Systems are not completed in accordance with the design documentation given to the Contractor by the Principal in accordance with clause 11B.3 because the Principal has instructed a modification to the Other WestConnex Assets or Systems unless:
 - (A) the Contractor has relied on that design documentation;
 - (B) the change has a material adverse impact on the Contractor's ability to comply with its obligations under this deed or the cost or timing of performing those obligations; and

- (C) the costs the Contractor could be entitled to Claim are greater than \$█
█ in aggregate across all such claims and those under clause 11A.2 and 11B.
- (ia) The Contractor's failure to perform a review or inspection in accordance with clause 11B.4(a), or to give notice in respect of a WestConnex System Defect of which the Contractor is aware in accordance with clause 11B.4(b), does not relieve the Principal from any obligation under this clause 11B.4 to procure the rectification of the WestConnex System Defect pursuant to clause 11B.4(d)(ii) or direct a Change pursuant to clause 11B.4(d)(iii). However, any Claim (including for an extension of time or other form of relief for any delay) which the Contractor has against the Principal in respect of the WestConnex System Defect will be proportionately reduced to the extent that failure resulted in or contributed to the Claim.
- (j) Nothing in this clause 11B.4 prevents the Principal from directing a Change in accordance with clause 14.1 requiring the Contractor to rectify a WestConnex System Defect:
 - (i) whether or not the Principal has taken any action pursuant to clause 11B.4(d) and the Contractor's entitlement to any Change Costs and any extension of time will be adjusted to reflect any subsequent determination (and for the avoidance of doubt, the Contractor will have no Claim if this deed provides that it will not have a Claim in respect of any Stage 3 Integration Site Defect); or
 - (ii) where the Principal has previously procured the issue of a notice pursuant to clause 11B.4(d)(i).
- (k) For the avoidance of doubt, the Contractor will be responsible for any Defects in the works that it carries out to Other WestConnex Assets or Systems.

11C.1 LIABILITY WHERE CONTRACTOR'S ACTIVITIES CAUSE ANY ADVERSE EFFECT ON AN OTHER WESTCONNEX ASSET OR SYSTEM OR A MOTORWAY

If the Contractor's Activities (Rozelle Interchange) cause or require any adverse effect on the Motorway, an Other WestConnex Motorway or a WestConnex Asset or System that forms part of the Motorway or an Other WestConnex Motorway, such that:

- (a) traffic adjustments or lane closures occur or are required to be implemented on any Other WestConnex Motorway or the Motorway;
- (b) the functionality of a tolling system is impacted such that a WestConnex Concessionaire is unable to collect tolls; or
- (c) a WestConnex Concessionaire incurs additional expenditure (including increased operation costs) to mitigate the impact of any such adverse effect,

then the Contractor, provided section 2(a) of Schedule 29 applies, will be liable to pay the Principal on demand the following amounts:

- (d) the Lane Occupancy Fees calculated in accordance with Schedule 29 as a result; and
- (e) the additional reasonable costs incurred by a WestConnex Concessionaire or the Principal, in connection with taking steps to mitigate the potential Lane Occupancy Fees that could be payable by the Contractor as a result of any such adverse effect.

The aggregate amounts in clauses 11C.1(d) to 11C.1(e) are capped at an equivalent amount to the Lane Occupancy Fees that would be payable by the Contractor in connection with the adverse effect if not for the mitigation action taken by the WestConnex Concessionaire or the Principal (as applicable). This applies to both Planned Lane Closures and Unplanned Lane Closures.

11C.2 LIABILITY WHERE CONTRACTOR'S ACTIVITIES CAUSE ANY ADVERSE EFFECT ON THE WESTERN HARBOUR TUNNEL

(a) If, during the period on and from the Date of Opening Completion (WHT) until the expiry of the Defects Correction Period in respect of the WHT Southern Tunnel Works, the Contractor's Activities (WHT Southern Tunnel Works) cause or require any adverse effect on the Western Harbour Tunnel after opening of the Western Harbour Tunnel such that:

- (i) traffic adjustments or lane closures occur or are required to be implemented on the Western Harbour Tunnel;
- (ii) the functionality of a tolling system is impacted such that the operator of the Western Harbour Tunnel is unable to collect tolls (other than to the extent that the traffic adjustment can be accommodated within a planned maintenance period); or
- (iii) the [REDACTED] the WHT Asset Manager or the Principal incurs additional expenditure (including increased operation costs) to mitigate the impact of any such adverse effect,

as a result of either:

- (iv) the Contractor damaging the functionality of a tolling system in a tolling system such that the ability to collect tolls is impacted; or
- (v) a traffic adjustment being required by the Contractor in connection with the Contractor's Activities (WHT Southern Tunnel Works) or a Defect in respect of the WHT Southern Tunnel Works, or a Defect in respect of the WHT Southern Tunnel Works that results in a Planned Lane Closure or an Unplanned Lane Closure on the Western Harbour Tunnel, other than to the extent that the traffic adjustment can be accommodated within a planned maintenance period,

then the Contractor will be liable to pay the Principal the following amounts:

- (i) Loss suffered by the [REDACTED] for:
 - (A) Unplanned Lane Closures and Planned Lane Closures; and
 - (B) Defects which impact the operator of the Western Harbour Tunnel's ability to collect tolls on the Western Harbour Tunnel; and
- (ii) the additional reasonable costs incurred by the [REDACTED] the WHT Asset Manager or the Principal, in connection with taking steps to mitigate the potential Liability of the Contractor as a result of any such adverse effect.

(b) The Contractor's total aggregate Liability under clause 11C.2(a) is limited to an amount equal to [REDACTED]% of the D&C Sum (WHT Southern Tunnel Works) and falls

within the General Cap (WHT Southern Tunnel Works) (but for the avoidance of doubt does not form part of the Liquidated Damages Cap (WHT Southern Tunnel Works)).

11D **CRITICAL OPERATIONAL EQUIPMENT AND SYSTEMS**

11D.1 **Integration Works carried out on a COES**

- (a) The Contractor acknowledges that the purpose of this clause 11D is to minimise the risk of any unplanned disruption or adverse impact on a Critical Operational Equipment and System as a result of the Integration Works.
- (b) The Contractor must not carry out:
 - (i) any COES Modification until a COES Modification Readiness Review has been completed in accordance with clause 11D.3 and the D&C Independent Certifier notifies the Principal's Representative and the Contractor that:
 - (A) it has no comments in respect of the relevant COES Modification Proposal in accordance with clause 11D.4(b)(iii); or
 - (B) the Contractor addresses any comments notified by the D&C Independent Contractor in accordance with clause 11D.4(b)(ii); or
 - (ii) any COES Temporary Disruption until the D&C Independent Certifier notifies the Principal's Representative and the Contractor that:
 - (A) it has no comments in respect of the relevant COES Temporary Disruption Proposal in accordance with clause 11D.5(d)(iii); or
 - (B) the Contractor addresses any comments notified by the D&C Independent Certifier in accordance with clause 11D.5(d)(ii).

11D.2 **COES Modification Proposal**

For each proposed COES Modification, the Contractor must prepare a COES Modification Proposal that:

- (a) documents the scope of the proposed COES Modification, including:
 - (i) specifications and software release notes;
 - (ii) approved Design Documentation for the COES Modification; and
 - (iii) evidence that the COES Modification has been approved by the Contractor's design authority;
- (b) demonstrates that:
 - (i) the COES Modification has been adequately verified and tested through the provision of:
 - (A) test procedures;
 - (B) inspection and test results; and
 - (C) inspection and test reports;

- (ii) the Contractor's proposal for the COES Modification, including its proposed mitigation measures and safeguards, are appropriate (in accordance with the standards of this deed) for ensuring that the COES Modification will not result in any adverse impact on the COES or the operations of any Other WestConnex Motorway; and
 - (iii) the Contractor will have competent personnel available to execute the COES Modification and support any recovery procedures that may need to be implemented;
- (c) includes:
- (i) the detailed implementation program for the COES Modification;
 - (ii) the procedures the Contractor will use to implement the COES Modification;
 - (iii) details of any systems other than a COES that may be disturbed, impacted or interfered with as part of the COES Modification;
 - (iv) the testing procedures the Contractor will use to test the COES Modification, once implemented (including any regression testing to any disturbed systems);
 - (v) automated scripts, if applicable, to implement and reverse the COES Modification; and
 - (vi) the procedures to reinstate and retest any COES that is adversely affected by the COES Modification (including any automated scripts);
- (d) demonstrates that personnel who will operate or maintain the modified COES have successfully completed any necessary training (if applicable); and
- (e) demonstrates that amendments to manuals and procedures relevant to the COES Modification have been completed.

11D.3 **COES Modification Readiness Review**

- (a) For each COES Modification Proposal, the Contractor must facilitate a review meeting (**COES Modification Readiness Review**). The purpose of the COES Modification Readiness Review is:
- (i) for the Contractor to present its initial COES Modification Proposal to:
 - (A) the Principal's Representative and the Principal's invitees;
 - (B) the representatives of the relevant WestConnex Concessionaires and the WestConnex O&M Contractors (as applicable) and their respective invitees; and
 - (C) the D&C Independent Certifier; and
 - (ii) for those parties to review and discuss the COES Modification Proposal, its implications and the risks and mitigants associated with it.
- (b) The Contractor must give the Principal's Representative and the D&C Independent Certifier at least 10 Business Days' notice (or such other period as is agreed between

the parties), following the submission of its initial COES Modification Proposal, of the date, time and place of the relevant COES Modification Readiness Review.

- (c) The Principal's Representative and the D&C Independent Certifier may invite any of the WestConnex Concessionaires, the WestConnex O&M Contractors and any other affected stakeholder to attend the COES Modification Readiness Review.
- (d) The Principal's Representative, the D&C Independent Certifier and any of the other parties attending the COES Modification Readiness Review may comment on or raise any concerns in respect of any aspect of the Contractor's COES Modification Proposal as part of the COES Modification Readiness Review.

11D.4 Revised COES Modification Proposal

- (a) The Contractor must have due regard to any comments raised in the COES Modification Readiness Review and must, as soon as reasonably practicable after the COES Modification Readiness Review, submit a revised COES Modification Proposal to the D&C Independent Certifier and the Principal's Representative (or, if the Contractor considers that no revision is necessary to the COES Modification Proposal, advise the D&C Independent Certifier and the Principal Representative of that fact).
- (b) The D&C Independent Certifier must, within 10 Business Days of the date on which it receives the revised COES Modification Proposal (or Contractor's notification under clause 11D.4(a), review the revised COES Modification Proposal and:
 - (i) if the D&C Independent Certifier considers that the COES Modification Proposal does not comply with the requirements of this deed, the D&C Independent Certifier will notify the Principal's Representative and the Contractor of its response in the form of:
 - (A) a "rejection" of the COES Modification Proposal, including details of the non-compliances, in which case the Contractor may not proceed with the COES Modification and must submit a further revised COES Modification Proposal to the D&C Independent Certifier and the Principal's Representative whereupon the provisions of clause 11D.3 and this clause 11D.4 will re-apply; or
 - (B) "comments" on the COES Modification Proposal, in which case the Contractor will be able to proceed with the COES Modification provided the Contractor first addresses the comments raised by D&C Independent Certifier in its notice; or
 - (ii) if the D&C Independent Certifier considers that the COES Modification Proposal does comply with the requirements of this deed:
 - (A) the D&C Independent Certifier will notify the Principal's Representative and the Contractor that it has no comments in relation to the COES Modification Proposal; and
 - (B) the Contractor may proceed with the COES Modification in accordance with the COES Modification Proposal, which it may also do if the D&C Independent Certifier does not give any notice within the relevant 10 Business Day period.
- (c) The Contractor acknowledges that the D&C Independent Certifier may consult with any parties that may be impacted by the COES Modification, including the

WestConnex Concessionaires or the WestConnex O&M Contractors before giving any notice under this clause 11D.4.

11D.5 COES Temporary Disruption Proposal

- (a) For each proposed COES Temporary Disruption, the Contractor must prepare a COES Temporary Disruption Proposal that:
 - (i) details:
 - (A) how the COES will be modified, disrupted or interfered with;
 - (B) over what timeframe the COES will be modified, disrupted or interfered with;
 - (C) of the potential impacts to the operation of the COES;
 - (D) the Contractor's proposed mitigation measures and safeguards; and
 - (ii) demonstrates that:
 - (A) the Contractor's proposal for the COES Temporary Disruption, including its proposed mitigation measures and safeguards, are appropriate (in accordance with the standards of this deed) for ensuring that the COES Temporary Disruption will not result in any adverse impact on the COES or the operations of the WestConnex Motorway; and
 - (B) the Contractor will have competent personnel available to execute the COES Temporary Disruption and support any recovery procedures that may need to be implemented; and
 - (iii) includes the procedures the Contractor will use to:
 - (A) modify the COES; and
 - (B) to reinstate and retest any COES that is modified, disturbed or affected by the COES Temporary Disruption (including any automated scripts).
- (b) The Contractor must submit the COES Temporary Disruption Proposal to the Principal's Representative and the D&C Independent Certifier at least 5 Business Days prior to the date on which the Contractor proposes to carry out the COES Temporary Disruption.
- (c) The Principal may (but is not obliged to):
 - (i) review any COES Temporary Disruption Proposal submitted under this clause 11D.5; and
 - (ii) notify the D&C Independent Certifier in writing (with a copy to the Contractor) of any comments which the Principal has in respect of the COES Temporary Disruption Proposal,

within 5 Business Days of the date on which the COES Temporary Disruption Proposal is submitted to the Principal's Representative.

- (d) The D&C Independent Certifier must, within 5 Business Days of the date on which it receives the COES Temporary Disruption Proposal under this clause 11D.5, review each COES Temporary Disruption Proposal:
 - (i) if the D&C Independent Certifier considers that the COES Temporary Disruption Proposal does not comply with the requirements of this deed, the D&C Independent Certifier will notify the Principal's Representative and the Contractor of its response in the form of:
 - (A) a "rejection" of the COES Temporary Disruption Proposal, including details of the non-compliances, in which case the Contractor may not proceed with the COES Temporary Disruption and must submit a further revised COES Temporary Disruption Proposal to the D&C Independent Certifier and the Principal's Representative whereupon the provisions of this clause 11D.5 will re-apply; or
 - (B) "comments" on the COES Temporary Disruption Proposal, in which case the Contractor will be able to proceed with the COES Temporary Disruption provided the Contractor first addresses the comments raised D&C Independent Certifier in its notice and submits a revised COES Temporary Disruption Proposal which addresses those comments; or
 - (ii) if the D&C Independent Certifier considers that the COES Temporary Disruption Proposal does comply with the requirements of this deed:
 - (A) the D&C Independent Certifier will notify the Principal's Representative and the Contractor that it has no comments in relation to the COES Temporary Disruption Proposal; and
 - (B) the Contractor may proceed with the COES Temporary Disruption in accordance with the COES Temporary Disruption Proposal, which it may also do if the D&C Independent Certifier does not give any notice within the relevant 10 Business Day period.
- (e) The Contractor acknowledges and agrees that the D&C Independent Certifier may consult with any parties that may be impacted by the COES Temporary Disruption, including the WestConnex Concessionaires, the O&M Contractor and the WestConnex O&M Contractors before giving any notice under this clause 11D.5.

12. **QUALITY**

12.1 **Quality Management System**

- (a) The Contractor must implement a Quality Management System for the management of all aspects of the Contractor's obligations under this deed in accordance with Schedule 20, including in accordance with the applicable requirements of the SWTC, including section 3.7 of the SWTC and the Quality Plan.
- (b) The Contractor must develop and implement a Quality Plan in accordance with this deed, including the SWTC.

12.1A **Additional testing**

- (a) The Contractor must carry out all tests required:

- (i) by this deed; or
 - (ii) otherwise directed by the Principal's Representative.
- (b) The costs of a test directed by the Principal's Representative and not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect (in which case all such costs will be borne by the Contractor).
 - (c) Where any test that is not otherwise required by this deed is directed by the Principal's Representative under clause 12.1A(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify the Principal's Representative if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion, giving details of the estimated delay and how the Date of Opening Completion, the Date of Completion, the Date of Completion (WHT Southern Tunnel Works) and the Date of Final Completion are likely to be affected (if at all).
 - (d) The requirement to notify the Principal's Representative in accordance with clause 12.1A(c) is a condition precedent to the Contractor's entitlement to any extension of time in connection with a test directed by the Principal's Representative under clause 12.1A(a)(ii).

12.2 Access to information

- (a) Without limiting any other provision of this deed:
 - (i) the Principal may at any time notify the Contractor that it requires access to any information held by the Contractor or a Significant Subcontractor (including direct and appropriate access to any electronic quality management software) which relates to the Contractor's Activities;
 - (ii) upon receipt of a notice under clause 12.2(a)(i), the Contractor must immediately provide the Principal (and any person authorised by the Principal) with access to, or a copy of, the required information (including providing the Principal and any person authorised by the Principal with direct and appropriate access to any electronic quality management software if requested by the Principal), except to the extent that the information is subject to legal professional privilege; and
 - (iii) the Principal (and any person authorised by the Principal) may review, copy, access, retain or otherwise deal with such information.
- (b) The Contractor acknowledges that the Principal may require information pursuant to this clause 12.2 to facilitate the procurement of other contracts as part of the WestConnex Program of Works, the WHTBL Program or other projects, or to provide to an existing or prospective financier or equity investor in the WestConnex Program of Works or the WHTBL Program or other projects.

12.3 D&C Independent Certifier

- (a) The D&C Independent Certifier is to be engaged by the Principal and the Contractor on the terms of the D&C Independent Certifier Deed at the Principal's cost.
- (b) The D&C Independent Certifier's role is to, amongst other things:

- (i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the D&C Independent Certifier Deed that the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange) comply with the requirements of this deed;
 - (ii) independently certify in accordance with the D&C Independent Certifier Deed that the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange) comply with the requirements of this deed; and
 - (iii) make determinations on matters that this deed expressly requires be determined by the D&C Independent Certifier.
- (c) The parties acknowledge and agree that:
- (i) without limiting the effect which the determinations of the D&C Independent Certifier will have upon the rights and obligations of the parties under this deed, the D&C Independent Certifier does not have any power to give any Directions to either the Principal or the Contractor;
 - (ii) the D&C Independent Certifier is obliged to act independently of the Principal and the Contractor and any of their Related Parties, and is not an employee, agent or consultant of the Principal or the Contractor;
 - (iii) any determination by the D&C Independent Certifier in respect of a matter required by this deed to be determined by the D&C Independent Certifier will be final and binding upon the Principal and the Contractor, except in the case of:
 - (A) manifest error;
 - (B) determinations under clauses 11A.2(f), 11B.4(e), 16.5, 17.2(d) or 21; or
 - (C) a determination regarding liability for or the quantum of any amounts which the Principal is entitled to set-off under this deed based on a direction of the Principal under clause 4.5 of the D&C Independent Certifier Deed;
 - (iv) a certification or determination by the D&C Independent Certifier (including one that is final and binding) will not:
 - (A) constitute an approval by the Principal of the Contractor's performance of the Contractor's obligations under this deed;
 - (B) be taken as an admission or evidence that the Project Works (Rozelle Interchange), the Temporary Works (Rozelle Interchange) or any other matters certified or determined by the D&C Independent Certifier comply with this deed; or
 - (C) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects;
 - (v) no act or omission of the D&C Independent Certifier, including any certification or determination by the D&C Independent Certifier, whether or not such certification or determination:

- (A) is final and binding;
 - (B) contains a manifest error; or
 - (C) is overturned in subsequent dispute resolution proceedings,
- will:
- (D) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the D&C Documents; or
 - (E) entitle the Contractor to make any Claim against the Principal; and
- (vi) without limiting clause 12.3(c)(v), an act or omission (including negligence) of the D&C Independent Certifier will not:
- (A) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to Law; or
 - (B) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to Law.
- (d) The Contractor must provide the D&C Independent Certifier with all information and documents and allow the D&C Independent Certifier access to:
- (i) attend design meetings as they relate to the Project Works (Rozelle Interchange);
 - (ii) all premises where the Contractor's Activities (Rozelle Interchange) are being carried out;
 - (iii) insert Hold Points in the Project Plans in relation to the Contractor's Activities (Rozelle Interchange); and
 - (iv) release the Hold Points in relation to the Contractor's Activities (Rozelle Interchange) (unless the Principal has directed the Contractor that another authority will release the Hold Point),
- all as may be:
- (v) necessary or reasonably required by the D&C Independent Certifier or the Principal's Representative, to allow the D&C Independent Certifier to perform its obligations under the D&C Independent Certifier Deed; or
 - (vi) reasonably requested by the D&C Independent Certifier.
- (e) The Principal's Representative may provide comments to the D&C Independent Certifier in respect of the Contractor's Activities (Rozelle Interchange) (with a copy to the Contractor).

12.3A **WHT Independent Certifier**

- (a) The WHT Independent Certifier is to be engaged by the Principal and the Contractor at the Principal's cost and on the terms of the draft WHT Independent Certifier Deed set out in Exhibit R, with any amendments necessary to address comments received

from the WHT Independent Certifier to be procured by the Principal to the extent agreed by the Contractor (acting reasonably).

- (b) The Contractor acknowledges and agrees that:
 - (i) the WHT Independent Certifier Deed may be executed after the commencement of this deed; and
 - (ii) the Contractor must execute the WHT Independent Certifier Deed within 5 Business Days of receipt from the Principal.
- (c) The WHT Independent Certifier's role is to, amongst other things:
 - (i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the WHT Independent Certifier Deed that the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works) comply with the requirements of this deed;
 - (ii) independently certify in accordance with the WHT Independent Certifier Deed that the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works) comply with the requirements of this deed; and
 - (iii) make determinations on matters that this deed expressly requires be determined by the WHT Independent Certifier.
- (d) The parties acknowledge and agree that:
 - (i) without limiting the effect which the determinations of the WHT Independent Certifier will have upon the rights and obligations of the parties under this deed, the WHT Independent Certifier does not have any power to give any Directions to either the Principal or the Contractor;
 - (ii) the WHT Independent Certifier is obliged to act independently of the Principal and the Contractor and any of their Related Parties, and is not an employee, agent or consultant of the Principal or the Contractor;
 - (iii) any determination by the WHT Independent Certifier in respect of a matter required by this deed to be determined by the WHT Independent Certifier will be final and binding upon the Principal and the Contractor, except in the case of:
 - (A) manifest error; or
 - (B) determinations under clauses 16.5 or 17.2(d);
 - (iv) a certification or determination by the WHT Independent Certifier (including one that is final and binding) will not:
 - (A) constitute an approval by the Principal of the Contractor's performance of the Contractor's obligations under this deed;
 - (B) be taken as an admission or evidence that the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) or any other matters certified or determined by the WHT Independent Certifier comply with this deed; or

- (C) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects;
- (v) no act or omission of the WHT Independent Certifier, including any certification or determination by the WHT Independent Certifier, whether or not such certification or determination:
 - (A) is final and binding;
 - (B) contains a manifest error; or
 - (C) is overturned in subsequent dispute resolution proceedings,
 will:
 - (D) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the D&C Documents; or
 - (E) entitle the Contractor to make any Claim against the Principal; and
- (vi) without limiting clause 12.3(d)(v), an act or omission (including negligence) of the WHT Independent Certifier will not:
 - (A) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to Law; or
 - (B) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to Law.
- (e) The Contractor must provide the WHT Independent Certifier with all information and documents and allow the WHT Independent Certifier access to:
 - (i) attend design meetings as they relate to the WHT Southern Tunnel Works;
 - (ii) all premises where the Contractor's Activities (WHT Southern Tunnel Works) are being carried out;
 - (iii) insert Hold Points in the Project Plans in relation to the Contractor's Activities (WHT Southern Tunnel Works); and
 - (iv) release the Hold Points in relation to the Contractor's Activities (WHT Southern Tunnel Works) (unless the Principal has directed the Contractor that another authority will release the Hold Point),
 all as may be:
 - (v) necessary or reasonably required by the WHT Independent Certifier or the Principal's Representative, to allow the WHT Independent Certifier to perform its obligations under the WHT Independent Certifier Deed; or
 - (vi) reasonably requested by the WHT Independent Certifier.
- (f) The Principal's Representative may provide comments to the WHT Independent Certifier in respect of the Contractor's Activities (with a copy to the Contractor).

12.4 **Replacement of the D&C Independent Certifier or the WHT Independent Certifier**

- (a) If the D&C Independent Certifier Deed or the WHT Independent Certifier Deed is terminated before its scheduled expiry, or if any incumbent D&C Independent Certifier or WHT Independent Certifier ceases to act as D&C Independent Certifier or WHT Independent Certifier (as applicable), the Principal and the Contractor must, unless otherwise agreed by the Principal and the Contractor, prior to termination or cessation, and in any case within 10 Business Days after the termination of the D&C Independent Certifier Deed or WHT Independent Certifier Deed or cessation, whichever is applicable, appoint another person to act as D&C Independent Certifier or WHT Independent Certifier (as applicable).
- (b) In the circumstances described in clause 12.4(a), a replacement D&C Independent Certifier or WHT Independent Certifier to be appointed must meet any requirements set out in this deed.
- (c) If the Principal and the Contractor cannot agree such appointment under this deed, the Principal and the Contractor will request that the President of Engineers Australia (or its replacement or equivalent) nominate a D&C Independent Certifier or WHT Independent Certifier who has equivalent qualifications, experience and expertise to the incumbent D&C Independent Certifier or WHT Independent Certifier and is independent and such D&C Independent Certifier or WHT Independent Certifier will be appointed as soon as practicable in accordance with the previous D&C Independent Certifier Deed or WHT Independent Certifier Deed (as applicable).

12.5 **No relief from obligations**

The Contractor will not be relieved from any of its Liabilities or responsibilities under this deed (including under clause 17) or otherwise according to Law nor will the rights of the Principal against the Contractor, whether under this deed or otherwise according to Law, be limited or otherwise affected by or as a consequence of any of the following:

- (a) the implementation of, and compliance with, any quality system or the Quality Plan by the Contractor;
- (b) compliance with any requirements of the D&C Independent Certifier Deed and the WHT Independent Certifier Deed;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect; or
- (e) any monitoring or audit arranged by the Principal's Representative under, or any discussions between the Quality Manager and the Principal's Representative as contemplated under Schedule 20.

12.6 **Monitoring and audits by the Principal's Representative**

- (a) The Contractor acknowledges that the Principal's Representative may, at any time up to the date which is the later of the Date of Completion and the Date of Final Completion, arrange monitoring and audits (including testing) to see if the Contractor is complying with this deed (including the Quality Plan, the Project WHS Management Plan, the Chain of Responsibility Management Plan and the other Project Plans).

- (b) The Contractor must:
 - (i) make arrangements to ensure that the Principal's Representative (or its nominee) has access to all facilities, documentation, records and personnel (including those of Subcontractors) that are needed by the Principal's Representative for the carrying out of the monitoring and audits referred to in clause 12.6(a); and
 - (ii) ensure that the Quality Manager, the Environmental Manager, the Contractor's work health and safety representatives and the Contractor's personnel responsible for compliance with the Chain of Responsibility Provisions are available, as necessary, to discuss details of quality matters with the Principal's Representative during the above monitoring and audits.

12.7 **Proof Engineers**

- (a) The Contractor must engage one or more Proof Engineers at the Contractor's cost.
- (b) The Contractor:
 - (i) must obtain the Principal's approval to the identity of any Proof Engineer and any replacement Proof Engineer, each of whom must have the requisite experience and skill to undertake the role of Proof Engineer in accordance with this deed (including this clause 12.7); and
 - (ii) warrants to the Principal that each Proof Engineer has:
 - (A) at least the qualifications, experience and expertise described in Part A of Schedule 17; and
 - (B) the requisite experience and skill to undertake the role of Proof Engineer in accordance with this deed (including this clause 12.7).
- (c) Where the Contractor requests the Principal's approval to the identity of any Proof Engineer or any replacement Proof Engineer pursuant to clause 12.7(b)(i), the Principal Representative must provide a response to the Contractor within 20 Business Days from the date of the Contractor's request and any other information required by the Principal's Representative is submitted to the Principal's Representative.
- (d) A Proof Engineer's role is to:
 - (i) attend relevant Project Design Group meetings; and
 - (ii) in respect of the relevant elements of each of the Category 1 Temporary Works Design Documentation:
 - (A) undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Category 1 Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;

- (B) provide to the Contractor, with copies to the Principal's Representative and the D&C Independent Certifier (in respect of the Temporary Works (Rozelle Interchange) or the WHT Independent Certifier (in respect of the Temporary Works (WHT Southern Tunnel Works)), a comprehensive report on the assessment required under clause 12.7(d)(ii)(A); and
- (C) independently certify that those elements of the Category 1 Temporary Works:
 - (aa) are adequate and suitable for their intended purpose; and
 - (bb) comply with the SWTC,
 and issue the certification document referred to in clause 13.3.
- (e) The parties acknowledge and agree that:
 - (i) each Proof Engineer is obliged to act independently of the Contractor, the Principal and their Related Parties;
 - (ii) each Proof Engineer must not be an employee of the Contractor, the Principal, the D&C Independent Certifier, the WHT Independent Certifier or any of their Related Parties; and
 - (iii) all advice and comments (including drafts and calculations) provided by a Proof Engineer to the Contractor must be in writing and must be made available to the Principal's Representative, upon request.
- (f) The Contractor must provide each Proof Engineer with all information and documents and allow each Proof Engineer:
 - (i) to attend design meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that each Proof Engineer must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,
 all as may be:
 - (iii) necessary or reasonably required by a Proof Engineer or the Principal's Representative to allow each Proof Engineer to perform its obligations under this deed; and
 - (iv) requested by a Proof Engineer or directed by the Principal's Representative.
- (g) Nothing that a Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against the Principal.

12.8 Independent Checking Engineers

- (a) The Contractor must engage one or more Independent Checking Engineers at the Contractor's cost.
- (b) The Contractor:

- (i) must obtain the Principal's approval to the identity of any Independent Checking Engineer and any replacement Independent Checking Engineer, each of whom must have the requisite experience and skill to undertake the role of Independent Checking Engineer in accordance with this deed (including this clause 12.8); and
- (ii) warrants to the Principal that each Independent Checking Engineer has:
 - (A) at least the qualifications, experience and expertise described in Part B of Schedule 17; and
 - (B) the requisite experience and skill to undertake the role of Independent Checking Engineer in accordance with this deed (including this clause 12.8).
- (c) Where the Contractor requests the Principal's approval to the identity of any Independent Checking Engineer or any replacement Independent Checking Engineer pursuant to clause 12.7(b)(i), the Principal Representative must provide a response to the Contractor within 20 Business Days from the date the Contractor's request and any other information required by the Principal's Representative is submitted to the Principal's Representative.
- (d) An Independent Checking Engineer's role is to:
 - (i) attend relevant Project Design Group meetings; and
 - (ii) in respect of the relevant elements of each of the Category 2 Temporary Works Design Documentation:
 - (A) undertake a check of those elements of the Category 2 Temporary Works by checking design calculations and drawings and reviewing the Design Documentation and construction methodology;
 - (B) provide to the Contractor, with copies to the Principal's Representative and the D&C Independent Certifier (in respect of the Temporary Works (Rozelle Interchange) or the WHT Independent Certifier (in respect of the Temporary Works (WHT Southern Tunnel Works)), a comprehensive report on the check required under clause 12.8(d)(ii)(A); and
 - (C) independently certify that those elements of the Category 2 Temporary Works comply with the SWTC,

and issue the certification document referred to in clause 13.3. The Independent Checking Engineers are not required to undertake a full and independent assessment of all factors influencing the final integrity of those elements of the Category 2 Temporary Works.
- (e) The parties acknowledge and agree that:
 - (i) each Independent Checking Engineer is obliged to act independently of the Contractor, the Principal and their Related Parties;
 - (ii) each Independent Checking Engineer must not be an employee of the Contractor, the Principal, the D&C Independent Certifier, the WHT Independent Certifier, Proof Engineers or any of their Related Parties; and

- (iii) all advice and comments (including drafts and calculations) provided by an Independent Checking Engineer to the Contractor must be in writing and must be made available to the Principal's Representative, upon request.
- (f) The Contractor must provide each Independent Checking Engineer with all information and documents and allow each Independent Checking Engineer:
- (i) to attend design meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that each Independent Checking Engineer must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,
- all as may be:
- (iii) necessary or reasonably required by an Independent Checking Engineer or the Principal's Representative to allow an Independent Checking Engineer to perform its obligations under this deed; and
 - (iv) requested by an Independent Checking Engineer or directed by the Principal's Representative.
- (g) Nothing that an Independent Checking Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against the Principal.

13. **DESIGN AND DESIGN DOCUMENTATION**

13.1 **Design development**

- (a) The Contractor must hold regular meetings of its design team including its designers.
- (b) The Contractor must give reasonable prior written notice to the Principal's Representative, the D&C Independent Certifier or the WHT Independent Certifier (as applicable), the Proof Engineers (where relevant) and the Independent Checking Engineers (where relevant) of those meetings and of any other meetings at which design issues are to be discussed to enable the Principal's Representative, the D&C Independent Certifier or the WHT Independent Certifier (as applicable), the Proof Engineers (where relevant), the Independent Checking Engineers (where relevant) and any of their delegates to attend. The Principal may request the Contractor to ensure the presence at the meeting of any relevant persons from the Contractor or any of the Contractor's Subcontractors or consultants involved in the design of any part of the Project Works.
- (c) The Contractor must give the Principal's Representative, the D&C Independent Certifier or the WHT Independent Certifier (as applicable), the Proof Engineers (where relevant) and the Independent Checking Engineers (where relevant):
 - (i) an agenda for each design meeting no less than 72 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
 - (ii) minutes of each design meeting within 24 hours after each meeting.

The Contractor agrees that no such agenda or minutes of meeting shall be relied upon by the parties as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

- (d) The Contractor acknowledges and agrees that the Principal's Representative may invite any other person to attend any meeting provided for by this clause 13.1 (including the M4-M5 Link Concessionaires, the WHT Contractor and the WHT Asset Manager) and provide any invitee with a copy of the agenda for, and minutes for, each such meeting provided by the Contractor under clause 13.1(c).

13.2 Design obligations

- (a) The Contractor acknowledges and agrees that:
 - (i) prior to the date of this deed, it prepared the Concept Design (Rozelle Interchange); and
 - (ii) prior to the Amendment Date, it prepared the Concept Design (WHT Southern Tunnel Works),

and the Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Concept Design in performing the Contractor's Activities and that such use and reliance will not limit any of its obligations under this deed.

- (b) The Contractor is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
 - (i) the design and construction of the Project Works and the Temporary Works in accordance with the Concept Design costing more, or taking longer, than anticipated; and
 - (ii) any differences between the Project Works and the Temporary Works which the Contractor is required to design and construct (ignoring for this purpose any differences which are the subject of a Change Order or a notice issued by the Principal under section 2.3 of the Change Procedure) and the Concept Design including:
 - (A) differences necessitated by any Site Conditions encountered; and
 - (B) differences required to ensure that:
 - (aa) the:
 - (a) Project Works (Rozelle Interchange) will:
 - (i) upon Opening Completion (or in respect of the WHT Interface Works required for a WHT Interface Milestone, WHT Interface Milestone Completion of the WHT Interface Milestone) be fit for their intended purposes; and
 - (ii) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes;

- (b) WHT Southern Tunnel Works will:
 - (i) upon Completion (WHT Southern Tunnel Works) be fit for their intended purposes; and
 - (ii) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes;
- (bb) the Temporary Works will at all relevant times be fit for their intended purposes;
- (cc) upon:
 - (a) Opening Completion, the Rozelle Interchange Works will be capable of satisfying the handover conditions specified in section 2.7 of the SWTC (Rozelle Interchange) at the end of the Term; and
 - (b) the Handover Date (WHT Southern Tunnel Works), the WHT Southern Tunnel Works will be capable of satisfying the handover conditions specified in section 2.7 of the SWTC (WHT Southern Tunnel Works) at the end of the Term;
- (dd) upon:
 - (a) in the case of the Project Works (Rozelle Interchange) Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT Interface Milestone Completion of the WHT Interface Milestone), the design life of each part of the Project Works (Rozelle Interchange) will meet or exceed the design life standards set out in section 5.8 of the SWTC (Rozelle Interchange); and
 - (b) Completion (WHT Southern Tunnel Works), the design life of each part of the WHT Southern Tunnel Works will meet or exceed the design life standards set out in section 5.8 of the SWTC (WHT Southern Tunnel Works);
- (ee) the D&C Phase Maintenance will be completed in accordance with the requirements of this deed;
- (ff) any modification to the Main Tunnel or the relevant Other WestConnex Assets or Systems by the Contractor will be completed in accordance with, and satisfy the requirements of, this deed;
- (gg) where the Contractor integrates the Rozelle Interchange Works with the Main Tunnel and any relevant Other WestConnex Assets or Systems, it will be completed in accordance with this deed; and
- (hh) upon:

- (a) Opening Completion, the Rozelle Interchange Works comply with and are capable of continuing to comply with all relevant Approvals, including relevant Planning Approval conditions, to the extent required by this deed; and
- (b) the Handover Date (WHT Southern Tunnel Works), the WHT Southern Tunnel Works comply with and are capable of continuing to comply with all relevant Approvals, including relevant Planning Approval conditions, to the extent required by this deed,

and satisfy the requirements of this deed, irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in clauses 13.2(b)(i) or 13.2(b)(ii) above.

(c) The Contractor warrants to the Principal that:

- (i) the Contractor remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the Concept Design (as further developed by the Contractor under this deed);
- (ii) if:
 - (A) the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange) are designed and constructed in accordance with the Concept Design (Rozelle Interchange), the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange) will satisfy the requirements of this deed; and
 - (B) the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works) are designed and constructed in accordance with the Concept Design (WHT Southern Tunnel Works), the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works) will satisfy the requirements of this deed,but nothing in this clause 13.2(c)(ii) affects or limits clauses 13.2(a) or 13.2(b), which will prevail to the extent of any inconsistency;
- (iii) the Contractor will carry out and complete the Contractor's Activities in accordance with the Concept Design but nothing in this clause 13.2(c)(iii) affects or limits clauses 13.2(a) or 13.2(b), which will prevail to the extent of any inconsistency;
- (iv) the Contractor will not make any adjustments to the Concept Design without the prior written approval of the Principal's Representative, except as permitted by this deed;
- (v) the Contractor has checked, examined, analysed and carefully considered the SWTC and the Environmental Documents and that:
 - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC;

- (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
 - (C) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the D&C Independent Certifier or the WHT Independent Certifier (as relevant) or the Principal's Representative in accordance with this deed;
 - (D) without limiting clause 11.7(f), it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the Contractor of, or reliance upon, the SWTC; and
 - (E) without limiting clause 11.7(f), the use of, or reliance upon, the SWTC does not affect any of its obligations under this deed or entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the SWTC;
- (vi) the Design Documentation will:
- (A) satisfy the requirements of the SWTC, the Third Party Agreements and the other requirements of this deed;
 - (B) be, and will remain at all relevant times, fit for its intended purpose (or in the case of the WHT Interface Design Documentation, suitable for the purposes of the relevant WHT Interface Design Documentation described in the SWTC); and
 - (C) be prepared, certified, verified, completed and used in accordance with the requirements of this deed;
- (vii) construction will be carried out in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 13.3(d);
- (viii) construction carried out in accordance with the Design Documentation which the Contractor is entitled to use in accordance with clause 13.3(d) will satisfy the requirements of this deed;
- (ix) the Project Works will:
- (A) be completed in accordance with, and satisfy the requirements of, this deed;
 - (B) upon:
 - (aa) in the case of the Project Works (Rozelle Interchange), Opening Completion;
 - (bb) in the case of the WHT Southern Tunnel Works, Completion (WHT Southern Tunnel Works); or
 - (cc) in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT Interface Milestone Completion of the WHT Interface Milestone,

be fit for their intended purposes;

(C) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes; and

(D) upon:

(aa) in the case of the Project Works (Rozelle Interchange), Opening Completion; and

(bb) in the case of the WHT Southern Tunnel Works, Completion (WHT Southern Tunnel Works),

meet the requirements of the Environmental Documents;

(x) upon:

(A) Opening Completion, the Rozelle Interchange Works will be capable of satisfying the handover conditions specified in section 2.7 of the SWTC (Rozelle Interchange) at the end of the Term; and

(B) the Handover Date (WHT Southern Tunnel Works), the WHT Southern Tunnel Works will be capable of satisfying the handover conditions specified in section 2.7 of the SWTC (WHT Southern Tunnel Works) at the end of the Term;

(xi) upon:

(A) Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT Interface Milestone Completion of the WHT Interface Milestone) the design life of each part of the Project Works (Rozelle Interchange) will meet or exceed the design life standards set out in section 5.8 of the SWTC (Rozelle Interchange); and

(B) Completion (WHT Southern Tunnel Works) the design life of each part of the WHT Southern Tunnel Works will meet or exceed the design life standards set out in section 5.8 of the SWTC (WHT Southern Tunnel Works);

(xii) the D&C Phase Maintenance will be completed in accordance with, and satisfy the requirements of, this deed;

(xiii) any modification to the Main Tunnel or the relevant Other WestConnex Assets or Systems by the Contractor will be completed in accordance with, and satisfy the requirements of, this deed;

(xiv) where the Contractor integrates the Rozelle Interchange Works with the Main Tunnel and any relevant Other WestConnex Assets or Systems, it will be completed in accordance with, and satisfy the requirements of, this deed; and

(xv) upon:

(A) Opening Completion, the Rozelle Interchange Works comply with and are capable of continuing to comply with all relevant Approvals,

including relevant Planning Approval conditions, to the extent required by this deed; and

- (B) Completion (WHT Southern Tunnel Works) comply with and are capable of continuing to comply with all relevant Approvals, including relevant Planning Approval conditions, to the extent required by this deed.
- (d) Except as expressly provided in clauses 11A and 11B, the Contractor agrees that its obligations under, and the warranties given in, this clause 13.2 will remain unaffected and that it will bear and continue to bear full Liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:
 - (i) any design work carried out by others (including any design work carried out by SMC, the Principal, the WestConnex Concessionaires, the [REDACTED] and any of their Related Parties) prior to the date of this deed and incorporated into the Concept Design, the Design Documentation or this deed;
 - (ii) any Change the subject of a Direction by the Principal's Representative; or
 - (iii) the termination (for any reason) of this deed.

13.3 Preparation of Design Documentation

- (a) The Contractor must, throughout the preparation of the Design Documentation, give each Reviewer an opportunity to review, to comment on and to monitor the design performance of the Contractor in accordance with this clause 13.3 and the Contractor Documentation Schedule. Each Reviewer's role will be limited to providing comments to the D&C Independent Certifier or the WHT Independent Certifier (as relevant) or the Principal (as applicable under the relevant Contractor Documentation Schedule) on Design Documentation in accordance with the Contractor Documentation Schedule.
- (b) The Contractor must develop and complete all Design Documentation in accordance with this deed and the Design Plan.
- (c) The Contractor must ensure that the Design Documentation, with respect to the Final Design Documentation Stage, for each discrete design element of the Project Works and the Temporary Works:
 - (i) is certified in accordance with Schedule 20 by the Contractor and, other than in respect of Category 2 Temporary Works and Category 3 Temporary Works, verified by the D&C Independent Certifier in respect of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange) or the WHT Independent Certifier in respect of the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works) in the form set out in Appendix K of Schedule 20 as:
 - (A) in respect of the Contractor's certificate only, being appropriate for construction; and
 - (B) complying with this deed including the SWTC and, in particular, the durability requirements in section 5.9 of the SWTC and the design life requirements in section 5.8 of the SWTC;

- (ia) in respect of Category 1 Temporary Works Design Documentation, is certified by the Proof Engineer by providing a signed document in the form set out in Appendix L of Schedule 20;
- (ib) in respect of Category 2 Temporary Works Design Documentation, is certified by the Independent Checking Engineer by providing a signed document in the form set out in Appendix M of Schedule 20;
- (ii) where a Subcontractor has been involved in the preparation of the design, is certified in accordance with Schedule 20 by the Subcontractor as:
 - (A) in respect of the Contractor's certificate only, being appropriate for construction; and
 - (B) subject to clause 13.3(i), complying with this deed including the SWTC and, in particular, the durability requirements in section 5.9 of the SWTC and the design life requirements in section 5.8 of the SWTC; and
- (iii) is certified in accordance with Schedule 20 by the Contractor as not involving or constituting a Change which has not been the subject of a Change Order or a notice issued by the Principal under section 2.3 of the Change Procedure or a notice under clause 14,

in accordance with the Contractor Documentation Schedule.

- (d) Unless otherwise agreed in writing by the Principal, the Contractor must only use for construction purposes parts of the Design Documentation which:
 - (i) has been submitted to the Principal and the D&C Independent Certifier or the WHT Independent Certifier (as relevant) in accordance with the Contractor Documentation Schedule; and
 - (ii) the Contractor Documentation Schedule either states that the Contractor is entitled to proceed with the Contractor's Activities using or does not prevent the Contractor from proceeding to use.
- (e) The Principal and the Contractor acknowledge and agree that:
 - (i) the receipt or review of, or any consultation or comments regarding, any Design Documentation:
 - (A) by the Principal is solely for the purpose of monitoring the performance of the Contractor; and
 - (B) by the M4-M5 Link Concessionaires, is solely for the purpose of monitoring the progress of the Rozelle Interchange Works;
 - (ii) neither the Principal, the M4-M5 Link Concessionaires nor any other Reviewer (each a **Relevant Party**) assumes a duty or owes a duty to the Contractor to review the SWTC, Concept Design or Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation; and
 - (iii) neither:

- (A) any review or rejection of, or consultation or comments by a Relevant Party, nor any failure by a Relevant Party regarding any Design Documentation or any other Direction by the Principal in respect of any Design Documentation; nor
 - (B) the verification of any Design Documentation by the D&C Independent Certifier and/or the WHT Independent Certifier,
- will lessen or otherwise affect:
- (C) the Contractor's warranties under clause 13.2 or any of the Contractor's other Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (D) a Relevant Party's rights against the Contractor whether under this deed or otherwise according to Law.
- (f) The Principal and the Contractor acknowledge and agree that:
- (i) as at the Amendment Date, WHT Independent Certifier has not been appointed by the Principal and the Contractor and that the D&C Independent Certifier will review and certify the Foundational Documents in accordance with this deed, the Contractor Documentation Schedule (Rozelle Interchange) and the D&C Independent Certifier Deed;
 - (ii) once the WHT Independent Certifier is appointed by the Principal and the Contractor in accordance with 12.3A(a), the WHT Independent Certifier will review and re-certify the Foundational Documents in accordance with this deed, the Contractor Documentation Schedule (WHT Southern Tunnel Works) and the WHT Independent Certifier Deed;
 - (iii) the Contractor must address any comments received from the WHT Independent Certifier in relation to the Foundational Documents in accordance with this deed, the Contractor Documentation Schedule (WHT Southern Tunnel Works) and the WHT Independent Certifier Deed, independently of whether the relevant Foundational Document has been previously certified by the D&C Independent Certifier; and
 - (iv) the Principal will procure that the WHT Independent Certifier has proper regard to the Foundational Documents previously certified by the D&C Independent Certifier when re-certifying the Foundational Documents however nothing in this paragraph (d) will operate to compel the WHT Independent Certifier to re-certify the Foundational Documents or qualify any certification of the Foundational Documents or any other documentation that the WHT Independent Certifier is required to certify pursuant to the terms of the WHT Independent Certifier Deed.
- (g) If the WHT Independent Certifier is not appointed by the Principal and the Contractor in accordance with 12.3A(a) on or prior to 15 March 2022, the Principal and the Contractor acknowledge and agree that:
- (i) the D&C Independent Certifier will be directed under clause 7.1(a) of the D&C Independent Certifier Deed to review and certify the Additional Foundational Documents in accordance with this deed, the Contractor Documentation Schedule (Rozelle Interchange) and the D&C Independent Certifier Deed; and

- (ii) once the WHT Independent Certifier is appointed by the Principal and the Contractor in accordance with 12.3A(a), clause 13.3(f) will apply to the Additional Foundational Documents as if they were Foundational Documents.
- (h) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the review and re-certification of any Foundational Documents or Additional Foundational Documents.
- (i) Where the Design Documentation is in relation to the WHT Southern Tunnel Works, the Contractor will not be in breach of clause 13.3(c)(ii) if the form of certificate submitted by the Subcontractor certifies that the Design Documentation is fit for the purpose, intended purpose or intended use stated in or ascertainable prior to and at the Date of Completion (WHT Southern Tunnel Works) from the D&C Documents but does not include confirmation that the Design Documentation is fit for the purpose, intended purpose or intended use contemplated by the D&C Documents. The provision by a Subcontractor of a certificate in this form does not lessen or otherwise relieve the Contractor of its obligations under this deed, including any fitness for purpose warranty required to be provided by the Contractor.

13.4 **Change in Codes and Standards**

- (a) Where there is a Change in Codes and Standards:
 - (i) the Contractor must give a notice to the Principal's Representative within the later of 15 Business Days after the Change in Codes and Standards or when the Contractor first became aware (or ought reasonably to have first become aware of the change) containing details of the Change in Codes and Standards; and
 - (ii) if a notice is given by the Contractor which complies with clause 13.4(a)(i), then within 12 Business Days after the notice having been given, the Principal's Representative will either:
 - (A) direct the Contractor to disregard the Change in Codes and Standards where doing so will not result in the Project Works not complying with the requirements of Law;
 - (B) direct a Change in respect of the Change in Codes and Standards; or
 - (C) notify the Contractor it requires additional information from the Contractor regarding the Change in Codes and Standards, in which event:
 - (aa) the Contractor must provide the additional information sought by the Principal within a further period of 5 Business Days; and
 - (bb) this clause 13.4(a)(ii) will reapply as if the additional information were the notice given by the Contractor under clause 13.4(a)(i).
- (b) If the Principal's Representative gives a notice under clause 13.4(a)(ii)(A):
 - (i) the Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards; and

- (ii) the Principal will not be precluded from subsequently issuing a Change Proposal or a Change Order under clause 14.1 in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 13.4(a)(i).
- (ba) If the Principal's Representative fails to give a direction or notice under clause 13.4(a)(ii) within the time required by clause 13.4(a)(ii), then the Principal's Representative will be deemed to have issued a notice under clause 13.4(a)(ii)(A) and clause 13.4(b) will apply.
 - (c) If the Principal's Representative gives a notice under clause 13.4(a)(ii)(B) or otherwise issues a Change Proposal or a Change Order under clause 14.1 in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 13.4(a)(i), the Contractor will not have any Claim for Change Costs against the Principal:
 - (i) except to the extent that the relevant Design Documentation, before the issue of:
 - (A) a notice under clause 13.4(a)(ii)(B); or
 - (B) a Change Proposal or a Change Order under clause 14.1,
 as applicable, complied, or would have complied, with the requirements of this deed, including any requirement that the Design Documentation be fit for its intended purpose (or any similar reference); or
 - (ii) to the extent that, notwithstanding the Change in Codes and Standards, the Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that:
 - (A) the Project Works (Rozelle Interchange) be fit for their intended purposes (or any similar reference) at Opening Completion;
 - (B) the WHT Southern Tunnel Works be fit for their intended purposes (or any similar reference) at Completion (WHT Southern Tunnel Works); and
 - (C) the Temporary Works be fit for their intended purposes (or any similar reference).
 - (d) The Contractor acknowledges and agrees that nothing in this clause 13.4 prevents the Principal from issuing a Change Proposal or a Change Order under clause 14.1 in respect of any Change in Codes and Standards that the Principal becomes aware of that the Contractor does not notify the Principal of in accordance with clause 13.4(a)(i).

14. CHANGES

14.1 Either party may propose a Change

- (a) The Principal may require the Contractor to carry out a Change in accordance with section 1 of the Change Procedure.

- (b) The Contractor may propose a Change to the Principal in accordance with section 2 of the Change Procedure.

14.2 **Pre-Agreed Changes**

- (a) The Principal 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 a notice to the Contractor.
- (b) The Principal and the Contractor agree that if a notice pursuant to clause 14.2(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule 22, this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 22 from the date the Contractor receives such notice.
- (c) Where the Principal's Representative directs a Pre-Agreed Change by giving notice to the Contractor by the relevant date referred to in clause 14.2(b), the Contractor, in respect of that Pre-Agreed Change:
 - (i) must carry out its obligations under this deed as amended by clause 14.2(b); and
 - (ii) acknowledges that:
 - (A) the Change Costs for each Pre-Agreed Change are as set out in Schedule 22;
 - (B) the payment of the Change Costs set out in Schedule 22 in respect of a Pre-Agreed Change by the Principal to the Contractor will be full compensation for any Loss or delay the Contractor suffers or incurs arising out of or in connection with the issue of such a notice and the Contractor will not be entitled to be paid any further amount in respect of the Pre-Agreed Change; and
 - (C) the Contractor is not entitled to make any Claim for:
 - (aa) any acceleration to the carrying out of the Contractor's Activities which the Contractor must perform at any time in order to achieve WHT Interface Milestone Completion of each WHT Interface Milestone by the relevant Date for WHT Interface Milestone Completion or by Opening Completion (as applicable), Opening Completion by the Date for Opening Completion, Completion by the Date for Completion, Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works) or Final Completion by the Date for Final Completion; or
 - (bb) any delay to the carrying out of the Contractor's Activities, in connection with the issue of such a notice or the amendment of this deed pursuant to clause 14.2(b).
- (d) Nothing in this clause 14.2 prevents the Principal's Representative from issuing a Change Proposal or a Change Order pursuant to clause 14.1 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.

- (e) If the Principal's Representative issues a Change Order pursuant to clause 14.1 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 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 14.1.

14.2A **Water Treatment**

- (a) The parties will work cooperatively to develop the best solution for satisfying the WHT Planning Approval requirements in relation to water treatment, including by complying with Part A of Schedule 6B.
- (b) To the extent that the parties are able to agree on the relevant WHT Planning Approval requirements in relation to water treatment, or the relevant requirements are determined in accordance with the Dispute Resolution Procedure, the Principal must direct, to the minimum extent necessary to satisfy those requirements, any or all of:
 - (i) Pre-Agreed Change 5A contained in Schedule 22 in accordance with the provisions of clause 14.2;
 - (ii) Pre-Agreed Change 5B contained in Schedule 22 in accordance with the provisions of clause 14.2; and
 - (iii) the Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant) in accordance with clause 21.2A(a).
- (c) To the extent the parties do not agree on the relevant WHT Planning Approval requirements in relation to water treatment, either party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

14.3 **Payment for Changes**

- (a) If a Change directed by the Principal in accordance with clause 14.1(a) or clause 14.2(e) results in Change Costs:
 - (i) if the Principal directed the 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 the Contractor may claim the Change Costs set out in the Contractor's Change Notice issued by the 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 the Principal;
 - (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 under clause 21.2 after each month in which the relevant work was undertaken unless otherwise agreed between the parties; and

- (ii) if the Principal directed the Contractor to proceed to implement the Change under section 1.7(d) or section 1.9 of the Change Procedure, the Principal must pay the Contractor the Change Costs:
 - (A) pending determination by the Principal 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 the Principal; and
 - (B) following any determination referred to in clause 14.3(a)(ii)(A) (or agreement between the parties), as so determined (or agreed),

 progressively within 15 Business Days after each month in which the relevant work was undertaken. If the Change Costs paid under clause 14.3(a)(ii)(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 the Principal under clause 14.1(a), clause 14.2(e) or section 1 of the Change Procedure results in Change Savings (or in the case of a Change directed by the Principal under section 2 of the Change Procedure, is expected to result in Change Savings, as advised by the Contractor under section 2.2(a)(iii) of the Change Procedure), the Principal and the Contractor agree that:
 - (i) in the case of a Change directed by the Principal under clause 14.1(a), clause 14.2(e) or section 1 of the Change Procedure, the Principal is entitled to receive ■■■% of the Change Savings; and
 - (ii) in the case of a Change directed by the Principal under section 2.3 of the Change Procedure, the Principal is entitled to receive ■■■% of the greater of:
 - (A) the actual Change Savings; and
 - (B) the estimated Change Savings (as advised by the Contractor under section 2.2(a)(iii) of the Change Procedure).
- (c) Where an amount is payable to the Principal pursuant to clause 14.3(b) then to the extent that it relates to the Project Works, this may be:
 - (i) set-off against Change Costs in respect of the Project Works payable by the Principal to the Contractor under clause 14.3(a); or
 - (ii) where this is not set-off it must be paid by the Contractor to the Principal progressively within 8 Business Days after each month in which the relevant work which has been deleted or omitted would have been undertaken but for the Change.
- (d) Except where the Contractor is directed to carry out a Change pursuant to a Change Order, the Principal will not be liable to the Contractor for any Loss or otherwise upon any Claim arising out of or in any way in connection with any Change.

14.4 Contractor's entitlements

This clause 14 is an exhaustive code of the Contractor's rights in any way in connection with any Change. The Contractor waives all rights at Law to make any Claim against the Principal

in any way in connection with any of the matters set out in this clause 14 otherwise than in accordance with the terms of this deed.

14.5 **Approvals for Changes**

- (a) Subject to clause 14.5(b), the 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 Approvals clauses 7.3, 7.4 and 7.4A will apply.
- (c) The Contractor must implement the Change once the Approvals referred to in this clause 14.5 have been amended, modified or granted to permit the Change to be implemented.

14.6 **Amendments to the Technical Requirements**

- (a) The Contractor acknowledges and agrees that amendments may be required to the Technical Requirements to help ensure the WHT Southern Tunnel Works are coordinated with the Remaining WHT Works (**Technical Requirements Change**).
- (b) If a Technical Requirements Change is required by the Principal, the Principal must issue a Change Proposal to the Contractor detailing the required amendments to the Technical Requirements and, without limiting clause 14A(c), the Change Procedure will apply to such Change Proposal and any Contractor Change Notice prepared by the Contractor must cover the changes required to the Design Documentation to ensure that the WHT Southern Tunnel Works will be integrated with the Remaining WHT Works in accordance with the Contractor's obligations under clause 11A.4. A Contractor Change Notice is not required to be prepared by the Contractor if the Technical Requirements Change is a Minor Amendment only.
- (c) Despite any other provision in this deed but subject to clause 14.6(g), the Contractor will not be entitled to make, and the Principal shall not be liable for, any Claim arising out of or in connection with a Technical Requirements Change if the Technical Requirements Change:
 - (i) is a Minor Amendment only; or
 - (ii) would have been a Minor Amendment had the relevant Design Baseline complied with the requirements of the SWTC (WHT Southern Tunnel Works) and the other requirements of this deed.
- (d) If:
 - (i) a Technical Requirements Change required by the Principal is a Minor Amendment;
 - (ii) in order to comply with the Technical Requirements Change, the Contractor is required to amend any Final Design Documentation Stage Design Documentation or any Issue for Construction Design Documentation; and

- (iii) the WHT Independent Certifier has confirmed in writing that it requires the amendment to the Design Documentation required to document the Technical Requirements Change to be resubmitted for design review as required by Appendix C.2 of the SWTC (WHT Southern Tunnel Works) and not dealt with through the request for information process,

then the Contractor may issue a notice in writing to the Principal's Representative confirming that the Technical Requirements Change satisfies the triggers in clauses 14.6(d)(i) to 14.6(d)(iii) (inclusive). In any such notice, the Contractor must include evidence or other correspondence from the WHT Independent Certifier that the amendment to the Design Documentation cannot be dealt with through a request for information process.

- (e) The Contractor must:
 - (i) give the Principal's Representative notice of, and allow the Principal's Representative to attend, any meetings; and
 - (ii) copy in the Principal's Representative on any communication,with the WHT Independent Certifier regarding the use of the request for information process for documenting a Technical Requirements Change that is a Minor Amendment.
- (f) If the Contractor issues a notice to the Principal's Representative in accordance with clause 14.6(d), the Principal's Representative must either:
 - (i) issue a notice in writing to the Contractor withdrawing the Technical Requirements Change; or
 - (ii) direct the Contractor to prepare a Contractor Change Notice, with the Change Procedure to apply to such Change Proposal, and any Contractor Change Notice prepared by the Contractor must cover the changes required to the Design Documentation to ensure that the WHT Southern Tunnel Works will be integrated with the Remaining WHT Works in accordance with the Contractor's obligations under clause 11A.4.
- (g) If the Principal's Representative directs the Contractor to prepare a Contractor Change Notice pursuant to clause 14.6(f)(ii):
 - (i) the Contractor's entitlement in relation to the relevant Technical Requirements Change will be limited to design costs incurred by the Contractor as a direct result of the Technical Requirements Change only and the Principal will have no liability to the Contractor in respect of any extension of time, Contractor's Delay Costs or other Change Costs; and
 - (ii) if the Change Proposal was issued because the WHT Independent Certifier confirmed that the Design Documentation was required to be resubmitted as the Design Documentation was Issue for Construction Design Documentation, the Contractor's entitlement to design costs will be limited to those design costs reasonably incurred by the Contractor that are over and above the costs that the Contractor would have incurred in developing any and all supporting documentation which would have been required had the amendment proceeded through the request for information process.
- (h) If a Technical Requirements Change is required by the Principal:

- (i) the Contractor's entitlement to an extension to the Date for Completion (WHT Southern Tunnel Works) or Date for Final Completion under clause 16.8 or Change Costs in relation to a Technical Requirements Change will be limited to the time and cost associated with the change required to the WHT Southern Tunnel Works as a direct result of the change in Technical Requirements; and
- (ii) the Contractor's entitlement to claim an extension to the Date for Completion (WHT Southern Tunnel Works) or Date for Final Completion under clause 16.8 or Change Costs will be reduced to the extent that:
 - (A) the relevant Design Baseline did not comply, or would not have complied, with the requirements of this deed, including any requirement that the relevant Design Baseline be fit for its intended purpose (or any similar reference); or
 - (B) notwithstanding the Technical Requirements Change, the Contractor would have had to make a change to the WHT Southern Tunnel Works in order that the WHT Southern Tunnel Works be fit for their intended purposes (or any similar reference) at Completion (WHT Southern Tunnel Works).
- (i) In this clause 14.6, "Final Design Documentation Stage Design Documentation" and "Issue for Construction Design Documentation" have the meaning given to those terms in Appendix C.2 of the SWTC (WHT Southern Tunnel Works).

15. **CONSTRUCTION**

15.1 **Construction**

- (a) The Contractor must construct the Project Works and the Temporary Works:
 - (i) in accordance with the requirements of this deed including:
 - (A) the SWTC;
 - (B) the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 13.3(d); and
 - (C) any Direction of the Principal's Representative given under a provision of this deed, including any Change directed or approved by the Principal in accordance with the Change Procedure or clause 14.2;
 - (ii) using good workmanship and Materials which are:
 - (A) free of Defects and other imperfections; and
 - (B) of the quality specified in the SWTC;

so that the Temporary Works will at all relevant times be fit for their intended purposes;
 - (iii) so that:
 - (A) the Project Works (Rozelle Interchange) will:
 - (aa) upon Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT

Interface Milestone Completion of the WHT Interface Milestone) be fit for their intended purposes; and

(bb) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes; and

(B) the WHT Southern Tunnel Works will:

(aa) upon Completion (WHT Southern Tunnel Works) be fit for their intended purposes; and

(bb) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes;

(iv) so that upon:

(A) Opening Completion the Rozelle Interchange Works will be capable of satisfying the handover conditions set out in section 2.7 of the SWTC (Rozelle Interchange) at the end of the Term; and

(B) Completion (WHT Southern Tunnel Works), the WHT Southern Tunnel Works will be capable of satisfying the handover conditions specified in the SWTC (WHT Southern Tunnel Works) at the end of the Term;

(v) so that upon:

(A) Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT Interface Milestone Completion of the WHT Interface Works) the design life of each part of the Project Works (Rozelle Interchange) will meet or exceed the design life standards specified in section 5.8 of the SWTC (Rozelle Interchange); and

(B) Completion (WHT Southern Tunnel Works) the design life of each part of the WHT Southern Tunnel Works will meet or exceed the design life standards specified in the SWTC (WHT Southern Tunnel Works);

(vi) so that any modification to the Main Tunnel or the relevant Other WestConnex Assets or Systems by the Contractor will be completed in accordance with, and satisfy the requirements of, this deed;

(vii) so that where the Contractor integrates the Rozelle Interchange Works with the Main Tunnel and any relevant Other WestConnex Assets or Systems, upon Opening Completion it will be completed in accordance with, and satisfy the requirements of, this deed; and

(viii) so that upon:

(A) Opening Completion, the Rozelle Interchange Works comply with and are capable of continuing to comply with all relevant Approvals, including relevant Planning Approval conditions, to the extent required by this deed; and

- (B) Completion (WHT Southern Tunnel Works), the WHT Southern Tunnel Works comply with and are capable of continuing to comply with all relevant Approvals, including relevant Planning Approval conditions, to the extent required by this deed.
- (b) The Contractor warrants that:
 - (i) the Project Works (Rozelle Interchange) will:
 - (A) upon Opening Completion (or in the case of the WHT Interface Works required for a WHT Interface Milestone, upon WHT Interface Milestone Completion of the WHT Interface Milestone), be fit for their intended purpose; and
 - (B) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes; and
 - (ii) the WHT Southern Tunnel Works will:
 - (A) upon Completion (WHT Southern Tunnel Works), be fit for their intended purposes; and
 - (B) thereafter, at all relevant times during the Term (assuming no early termination), be capable of remaining fit for their intended purposes.
- (c) In carrying out the Contractor's Activities, the Contractor must:
 - (i) provide all things and take all measures necessary to protect people and property;
 - (ii) avoid unnecessary or unreasonable interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance (and such noise or disturbance will not be unreasonable to the extent that it is of a type addressed in, and which complies with, the Environmental Documents, relevant Approvals and the Law).

15.2 Performance of Contractor's Activities

- (a) Without limiting clause 15.1, in performing the Contractor's Activities the Contractor must:
 - (i) act in a timely and expeditious manner; and
 - (ii) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and the Temporary Works in accordance with this deed.
- (b) Without limiting clause 15.1, the Contractor warrants that it will perform the Contractor's Activities using the workmanship and Materials required by this deed and which are fit for their intended purposes.

15.3 **Training management – Project Works (Rozelle Interchange)**

- (a) The Contractor must demonstrate its commitment and capacity to plan and manage training in accordance with the NSW Government Procurement Guideline Skills and Training in Construction Industry, including by:
 - (i) providing the levels of skills and training development identified in Appendix C.2 of the SWTC (Rozelle Interchange);
 - (ii) cooperating with and assisting the Principal with any reviews undertaken by the Principal of the Contractor's compliance with this clause 15.3;
 - (iii) maintaining records evidencing the Contractor's compliance with this clause 15.3; and
 - (iv) making available all records maintained in accordance with clause 15.3(a)(iii) to the Principal.
- (b) Without limiting clause 15.3(a), the Contractor must also achieve the skills and employment outputs set out in Appendix C.2 of the SWTC (Rozelle Interchange).
- (c) The Contractor must report to the Principal, at least every 3 months, on the details of:
 - (i) the apprentices and trainees engaged in carrying out the Project Works (Rozelle Interchange); and
 - (ii) how the Contractor is meeting (or will meet at Opening Completion) its training commitments in respect of the Contractor's Activities (Rozelle Interchange).

15.3A **Training Management – WHT Southern Tunnel Works**

- (a) Subject to the express provisions of this deed and without limiting clause 15.3, the Contractor must:
 - (i) comply with the Training Management Guidelines; and
 - (ii) ensure the ISLP Targets are achieved with respect to the WHT Southern Tunnel Works and the Contractor's Activities (WHT Southern Tunnel Works).
- (b) The parties acknowledge and agree that for the purpose of the ISLP Targets, the relevant "local region" is the Sydney region.
- (c) Training management requirements specified in this deed and the Training Management Guidelines may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Law.
- (d) At least 10 Business Days before starting work on the WHT Southern Tunnel Works Site, the Contractor must prepare and submit an update of the Project Plan prepared for the purposes of clause 15.3 which sets out in adequate detail how the Contractor will implement and comply with the Training Management Guidelines and achieve the ISLP Targets with respect to the WHT Southern Tunnel Works and the Contractor's Activities (WHT Southern Tunnel Works).

- (e) The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in this deed.
- (f) The Contractor must provide quarterly reports to the Principal demonstrating the Contractor's performance against the ISLP Targets, in accordance with the Training Management Guidelines and using the template report provided on the Training Services NSW website: https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html.
- (g) The Contractor must actively consider the capacity of Subcontractor to contribute to achievement of the ISLP Targets and collect sufficient information from Subcontractors in order to allow the Contractor to provide the report required by clause 15.3A(f).
- (h) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 15.3A.
- (i) A failure by the Contractor to demonstrate to the Principal that it has met and is meeting at all times its obligations under clause 15.3A will not constitute an Event of Default under this deed unless such failure is due to a wilful default by the Contractor.

15.4 **Cleaning up**

In carrying out the Project Works, the Temporary Works, the Post Completion Activities and the D&C Phase Maintenance, the Contractor must:

- (a) keep the Construction Site, Extra Land, the Project Works and the Temporary Works clean and tidy;
- (b) regularly remove from the Construction Site, Extra Land, Project Works and Temporary Works, any waste rubbish, litter, graffiti and surplus material ;
- (c) prior to vacating any area of the Construction Site or Extra Land, remove all rubbish, litter, graffiti, surplus materials, Construction Plant and Temporary Works; and
- (d) as a condition precedent to:
 - (i) in respect of the Contractor's Activities (Rozelle Interchange), Opening Completion; or
 - (ii) in respect of the Contractor's Activities (WHT Southern Tunnel Works), Completion (WHT Southern Tunnel Works),

remove all rubbish, litter, graffiti, surplus materials, Construction Plant and Temporary Works from the relevant parts of the Construction Site and Extra Land except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

15.5 **Signage**

- (a) Subject to clause 15.5(b), the Contractor must not erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Project Works, the Temporary Works or the Construction Site (or permit any third

party to do so) at any time prior to the date which is the later of the Date of Completion and the Date of Final Completion.

- (b) Prior to the Date of Completion in respect of the Contractor's Activities (Rozelle Interchange or the Date of Final Completion in respect of the Contractor's Activities (WHT Southern Tunnel Works), the Contractor may only (with the prior written approval of the Principal) erect the following signage on or near the Construction Site or Local Areas (as applicable):
 - (i) temporary directional signage to assist businesses in the vicinity of the Construction Site, access to which has been, or is likely to be, adversely affected by the Contractor's Activities;
 - (ii) signage required by Law or reasonably required for the safety and security of the Project Works and the Temporary Works;
 - (iii) project identification signage approved by the Principal;
 - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the Contractor's Activities; and
 - (v) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the Construction Site.

15.6 **Work methods**

Whether or not this deed or the SWTC prescribes a particular work method or a work method is otherwise part of this deed or reviewed or approved (expressly or impliedly) by the Principal or the Principal's Representative, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this deed to be frustrated.

15.7 **As constructed documentation and reports**

The Contractor must prepare and submit to the Principal's Representative and the D&C Independent Certifier and/or the WHT Independent Certifier (as applicable) as constructed documentation and reports as required by and in accordance with the requirements of the Contractor Documentation Schedule or as otherwise reasonably requested by the Principal's Representative.

15.8 **Spare Parts**

- (a) The parties acknowledge that:
 - (i) the spares list is a list of Spare Parts that the Contractor must supply to the Principal by the Date of Opening Completion as part of the Project Works (Rozelle Interchange) (**Spares List**);
 - (ii) as part of its Proposal, the Contractor submitted an indicative Spares List;

- (iii) the D&C Deed Sum (Rozelle Interchange) includes an allowance for the purchase of Spare Parts (**Spares Allowance**), based on the indicative Spares List. The amount of the Spares Allowance is specified in the D&C Payment Schedule; and
 - (iv) Schedule 35 of this deed sets out the initial Spares List as at the date of this deed, together with a unit price for each Spare Part.
- (b) When:
- (i) the Contractor's Design Documentation has reached the stage where it can be used for construction purposes in accordance with clause 13.3(d); and
 - (ii) the RAM Activity under Appendix B.14 of the SWTC (Rozelle Interchange) has been completed,
- the Principal's Representative and the Contractor's Representative will review the initial Spares List to determine if any changes are warranted. As part of this review:
- (iii) the Contractor must recommend any updates to the Spares List that it considers appropriate as a result of the design development and RAM Activity; and
 - (iv) the Principal's Representative must advise the Contractor of any changes that it requires to the Spares List.
- (c) The Principal's Representative may, by notice to the Contractor, require changes to the Spares List at any time up until the date that is 6 months before the Date for Opening Completion (**Spares Finalisation Date**). The changes may increase or decrease the quantity of any Spare Part.
- (d) At the Spares Finalisation Date, the Spares List will be finalised, being the indicative Spares List set out in Schedule 35, subject to any changes required by the Principal under clause 15.8(c).
- (e) After the Spares Finalisation Date, the Principal's Representative may request further changes to the Spares List, but the Contractor will only be required to accept that request if, acting reasonably, it considers that it has sufficient time to procure the Spare Parts before Opening Completion.
- (f) When the Spares List is finalised (and also if it is subsequently changed under clause 15.8(e)), the Spares Allowance will be recalculated by aggregating the unit prices in Schedule 35 for each Spare Part in the Spares List. The revised Spares Allowance will replace the Spares Allowance in the D&C Payment Schedule.
- (g) The Contractor must:
- (i) deliver the Spare Parts in the Spares List (as updated under this clause) to the Principal as a condition of Opening Completion;
 - (ii) deliver the Spare Parts to a location in Sydney nominated by the Principal;
 - (iii) be responsible for storing and maintaining the Spare Parts until the Principal's Representative advises that it is ready to accept delivery, or Opening Completion (if earlier); and

- (iv) provide the Principal's Representative with the details of the suppliers of the Spare Parts (including terms and conditions of supply and warranty terms), to assist the Principal to purchase additional Spare Parts following Opening Completion, and must use reasonable endeavours to ensure that the suppliers offer the Principal and the Project Trustee equivalent pricing and terms as offered to the Contractor.
- (h) The Contractor may claim payment of the Spares Allowance (or part thereof) either:
 - (i) following delivery of the Spare Parts in accordance with clause 15.8(g); or
 - (ii) as unfixed Materials in accordance with clause 21.25.

15.9 **Warranties by others**

The Contractor must, as a condition precedent to Opening Completion, procure, and provide to the Principal (or, if directed by the Principal, to the Principal and the M4-M5 Link Concessionaires), the benefit of any third party warranties relevant to the Asset Items and the Spare Parts in a form approved by the Principal (acting reasonably).

15.10 **Preferred suppliers and products**

- (a) The parties acknowledge that:
 - (i) Schedule 43 to this deed sets out the Principal's Preferred Products and Preferred Suppliers in respect of certain Asset Items;
 - (ii) the Principal makes no representation to the Contractor as to the adequacy, quality, suitability or creditworthiness of any Preferred Product or Preferred Supplier and the Contractor must make its own enquiries and satisfy itself as to these matters; and
 - (iii) the Contractor must comply with its obligations under this deed, including its obligation in clause 11B.1, notwithstanding the inclusion of any Preferred Product or Preferred Supplier.
- (b) The Principal's preference is that the Contractor uses the Preferred Products and Suppliers.
- (c) If the Contractor intends to use an alternative supplier or product for an Asset Item listed in Schedule 43 to this deed, which is not a Preferred Supplier or Preferred Product, the Contractor must notify the Principal in writing of:
 - (i) the details of the alternative supplier or product;
 - (ii) the reasons why the Contractor intends not to use the Preferred Supplier or Preferred Product for that Asset Item; and
 - (iii) the benefits of using the alternative supplier or product to the Preferred Supplier or Preferred Product (respectively), including any potential price or delivery timeframe benefits.

16. **TIME AND COMPLETION**

16.1 **Start and progress**

The Contractor must:

- (a) subject to clause 5, commence:
 - (i) the Contractor's Activities (Rozelle Interchange), the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange) from the date of this deed; and
 - (ii) the Contractor's Activities (WHT Southern Tunnel), the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel) from the Amendment Date; and
- (b) regularly and diligently progress the Contractor's Activities, the Project Works and the Temporary Works in accordance with this deed to achieve WHT Interface Milestone Completion of each WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone, Opening Completion and Completion of the Project Works (Rozelle Interchange), Completion (WHT Southern Tunnel Works) of the WHT Southern Tunnel Works and Final Completion.

16.2 Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works), Date for Final Completion and Sunset Dates

The Contractor must:

- (a) not used;
- (b) achieve Opening Completion by the Date for Opening Completion;
- (c) achieve Completion by the Date for Completion;
- (d) if Opening Completion is not achieved by the Date for Opening Completion achieve Opening Completion by the Sunset Date (Opening Completion);
- (e) achieve Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works);
- (f) achieve Final Completion by the Date for Final Completion; and
- (g) if Completion (WHT Southern Tunnel Works) is not achieved by the Date for Completion (WHT Southern Tunnel Works) achieve Completion (WHT Southern Tunnel Works) by the Sunset Date (WHT Southern Tunnel Works).

16.3 Contractor's programming obligations

- (a) Prior to:
 - (i) the date of this deed, the Contractor prepared and submitted the Overall D&C Program (Rozelle Interchange) and supporting information setting out the detailed requirements set out in Appendix C.2 of the SWTC (Rozelle Interchange) and those documents form Part A of Exhibit E to this deed; and
 - (ii) the Amendment Date, the Contractor prepared and submitted the Overall D&C Program (WHT Southern Tunnel Works) and supporting information setting out the detailed requirements set out in Appendix C.2 of the SWTC (WHT Southern Tunnel Works) and those documents form Part B of Exhibit E to this deed.

(b) The Overall D&C Program (Rozelle Interchange) and the Overall D&C Program (WHT Southern Tunnel Works) and the supporting information must be:

(i) reviewed and updated by the Contractor in accordance with the detailed requirements set out in Appendix C.2 of the SWTC (Rozelle Interchange) or Appendix C.2 of the SWTC (WHT Southern Tunnel Works) (as relevant) at each of the following times:

(A) on a monthly basis;

(B) when requested by the Principal; and

(C) when the Contractor is otherwise required to review and update the relevant Overall D&C Program under this deed,

to take into account changes to the Contractor's program for the Contractor's Activities and delays which may have occurred, including any for which the Contractor is granted an extension of time under clause 16.8; and

(ii) given to the D&C Independent Certifier in respect of the Contractor's Activities (Rozelle Interchange) or the WHT Independent Certifier in respect of the Contractor's Activities (WHT Southern Tunnel Works) and the Principal's Representative with the reports required by the Contractor Documentation Schedule in both hard copy form and in native file format or other electronic form approved by the Principal.

(c) No submission of or Direction relating to, or review of or comment upon, a program (including the relevant Overall D&C Program) prepared by the Contractor, the Principal or the Principal's Representative, nor the inclusion of the Overall D&C Program (Rozelle Interchange) and Overall D&C Program (WHT Southern Tunnel Works) as an exhibit to this deed, will:

(i) relieve the Contractor from or alter its Liabilities or obligations under this deed, especially (without limitation) the obligations of the Contractor under clause 16.2;

(ii) evidence or constitute notification of a delay or the claiming or the granting of, an extension of time to any Date for WHT Interface Milestone Completion, Date for WHT Southern Tunnel Design Milestone Completion, Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works), Date for Final Completion or a Direction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or

(iii) affect the time for performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the Contractor to achieve WHT Interface Milestone Completion of each WHT Interface Milestone by the relevant Date for WHT Interface Milestone Completion, achieve WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion, achieve Opening Completion by the Date for Opening Completion, achieve Completion by the Date for Completion, achieve Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works) or achieve Final Completion by the Date for Final Completion.

- (da) The Principal may:
- (i) review any updates to the Overall D&C Program (Rozelle Interchange) or the Overall D&C Program (WHT Southern Tunnel Works) or the supporting information; and
 - (ii) instruct the D&C Independent Certifier to review any updates to the Overall D&C Program (Rozelle Interchange) or the supporting information or instruct the WHT Independent Certifier to review any updated to the Overall Program (WHT Southern Tunnel Works) or the supporting information (in which case the relevant independent certifier will provide its comments with 10 Business Days),

in each case to ascertain whether the relevant updated Overall D&C Program is compliant with this deed. If, following such review, the Principal considers that the relevant updated Overall D&C Program is not compliant with this deed, it may direct the Contractor to address the non-compliances, and the Contractor must do so and re-submit the relevant updated Overall D&C Program within 10 Business Days of that Direction.

- (d) If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress:
- (i) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve Opening Completion before the Date for Opening Completion, achieve Completion before the Date for Completion, achieve Completion (WHT Southern Tunnel Works) before the Date for Completion (WHT Southern Tunnel Works) or achieve Final Completion before the Date for Final Completion; and
 - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

16.4 Risk and notice of delay

- (a) Except as expressly provided in clause 16.7, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities (which, for the avoidance of doubt, includes the Contractor accepting the risk of all delays in, and disruption to, the carrying out of the Provisional Sum Work) and performance of its obligations and the obligations of the Related Parties under the D&C Documents both before and after each Date for WHT Interface Milestone Completion, each Date for WHT Southern Tunnel Design Milestone Completion, Date for Opening Completion, the Date for Completion, the Date for Completion (WHT Southern Tunnel Works) and the Date for Final Completion.
- (b) The Contractor must within 6 Business Days of when the Contractor first becomes aware (or should reasonably have first become aware) of the commencement of an occurrence causing any delay or which is likely to cause delay to the Contractor's Activities, give the Principal's Representative a notice of any delay or likely delay to the Contractor's Activities, details of the cause and how each Date for WHT Interface Milestone Completion, each Date for WHT Southern Tunnel Design Milestone Completion, the Date for Opening Completion, the Date for Completion, the Date for Completion (WHT Southern Tunnel Works) and the Date for Final Completion are likely to be affected (if at all).

16.4A Acceleration by direction

- (a) The Principal may direct the Contractor to submit a Contractor Change Notice in accordance with the Change Procedure to accelerate the Contractor's Activities (**Acceleration Request**).
- (b) Without limiting any other details the Contractor is required to include in the relevant Contractor Change Notice in accordance with the Change Procedure, the Contractor Change Notice must:
 - (i) set out:
 - (A) the Contractor's opinion (acting reasonably) of whether the acceleration is reasonably achievable in the circumstances; and
 - (B) if the Contractor does not consider that the acceleration is reasonably achievable, an alternative acceleration proposal setting out the Contractor's assessment (acting reasonably) of the maximum acceleration that it considers is reasonably achievable;
 - (ii) set out the estimated time and consequences of accelerating the Contractor's Activities in accordance with the Acceleration Request; and
 - (iii) include a revised Overall D&C Program (Rozelle Interchange) or Overall D&C Program (WHT Southern Tunnel Works) (as applicable) which sets out in sufficient detail the method by which the Contractor proposes to achieve the required acceleration.
- (c) The Principal may give to the Contractor a Change Order directing the acceleration that the Contractor (acting reasonably) agrees is reasonably achievable. The Principal must not direct any acceleration that the Contractor (acting reasonably) does not agree is reasonably achievable.
- (d) If the Principal gives the Contractor a Change Order to accelerate the Contractor's Activities:
 - (i) the Contractor must proceed to implement the Change on the basis of the Contractor's Change Notice (as accepted by the Principal);
 - (ii) the Contractor's obligations under this deed will be varied to the extent specified in the Contractor Change Notice (as accepted by the Principal), including that the Contractor accelerates the relevant part or the whole of the Contractor's Activities to achieve WHT Interface Milestone Completion of each WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion by the relevant revised dates as set out in the Contractor Change Notice (as accepted by the Principal); and
 - (iii) the Contractor will be entitled to its Change Costs as set out in the Contractor Change Notice (as accepted by the Principal).

16.5 Delay

- (a) If the Contractor becomes aware of any matter which will, or is likely to, give rise to a delay in achieving WHT Interface Milestone Completion of any WHT Interface

Milestone, WHT Southern Tunnel Design Milestone Completion of any WHT Southern Tunnel Design Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion, the Contractor must within 6 Business Days give the Principal a notice setting out detailed particulars of the delay together with (where the event causing the delay is not an Excusable Cause of Delay) a detailed corrective action plan which the Contractor proposes to implement to Mitigate the effects of the delay.

- (aa) If the Principal becomes aware of any matter (other than an Excusable Cause of Delay) which it reasonably considers will give rise to a delay in achieving WHT Southern Tunnel Design Milestone Completion of any WHT Southern Tunnel Design Milestone, the Principal may request the Contractor to prepare within 6 Business Days of the Principal's notice a detailed corrective action plan which the Contractor proposes to implement to Mitigate the effects of the delay.
- (b) Subject to clause 16.5(f), if on or after the date:
 - (i) which is 18 months after D&C Close, the D&C Independent Certifier reasonably believes that the Contractor will not achieve Opening Completion by the Sunset Date (Opening Completion) and gives the Contractor a notice to that effect; or
 - (ii) which is 18 months after the Amendment Date, the WHT Independent Certifier reasonably believes that the Contractor will not achieve Completion (WHT Southern Tunnel Works) by the Sunset Date (WHT Southern Tunnel Works) and gives the Contractor a notice to that effect,

then the Contractor must promptly provide the Principal with a detailed corrective action plan meeting the requirements of clause 16.5(c). A decision of the D&C Independent Certifier or the WHT Independent Certifier under this clause is capable of Dispute under clause 32

- (c) The corrective action plan:
 - (i) must demonstrate in reasonable detail what steps the Contractor proposes to take in order to regularly and diligently progress the Project Works and the Temporary Works and to achieve WHT Interface Milestone Completion of each WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion as soon as is possible and, in any event, achieve Opening Completion by the Sunset Date (Opening Completion) and/or achieve Completion (WHT Southern Tunnel Works) by the Sunset Date (WHT Southern Tunnel Works); and
 - (ii) may show a proposal by the Contractor to achieve WHT Interface Milestone Completion of one or more WHT Interface Milestones after the relevant Date for WHT Interface Milestone Completion, WHT Southern Tunnel Design Milestone Completion of one or more WHT Southern Tunnel Design Milestones after the relevant Date for WHT Southern Tunnel Design Milestone Completion, Opening Completion after the Date for Opening Completion, Completion after the Date for Completion, Completion (WHT Southern Tunnel Works) after the Date for Completion (WHT Southern Tunnel Works) and Final Completion after the Date for Final Completion (provided that Opening Completion is not later than the Sunset Date (Opening Completion) and that Completion (WHT Southern Tunnel Works) is not later than the Sunset Date

(WHT Southern Tunnel Works), in which case the provisions of clause 16.10 will apply.

- (d) If at any time the Contractor fails to provide a corrective action plan under clause 0 or the Contractor fails to diligently pursue its corrective action plan, then it will be an Event of Default and clause 31 will apply.
- (e) The D&C Independent Certifier and/or the WHT Independent Certifier (as applicable) may give multiple notices under clause 0 but no more frequently than every 3 months in respect of each of the Sunset Date (Opening Completion) and the Sunset Date (WHT Southern Tunnel Works).
- (f) The parties agree that clause 0 shall not apply to the extent that the Contractor has been prevented from undertaking the Contractor's Activities in accordance with this deed as a consequence of a Force Majeure event, provided that the Contractor has:
 - (i) strictly complied with its obligations in clauses 26.7 and 33; and
 - (ii) applied the insurance proceeds recovered by the Contractor under the relevant Project Insurance in connection with the Force Majeure event to any reinstatement of the Project Works in accordance with clause 26.

16.6 **Corrective action plan**

- (a) The Principal may (acting reasonably) within 7 Business Days of receipt of a corrective action plan:
 - (i) under clause 16.5(a), give a notice to the Contractor that it does not believe that implementation of the corrective action plan will enable the Contractor to Mitigate the effects of the delay; or
 - (ii) under clause 16.5(b), give a notice to the Contractor that it does not believe that implementation of the corrective action plan will enable the Contractor to achieve Opening Completion by the Sunset Date or to achieve Completion (WHT Southern Tunnel Works) by the Sunset Date (WHT Southern Tunnel Works) (as applicable),including comments.
- (b) If the Principal gives the Contractor a notice under clause 16.6(a) the Contractor must promptly (and in any event within 5 Business Days) amend and resubmit the corrective action plan to the Principal, after which this clause 16.6 will continue to apply until the Principal does not issue a notice under clause 16.6(a).
- (c) The Contractor must diligently pursue a corrective action plan for which the Principal does not issue a notice under clause 16.6(a).
- (d) The Contractor will not be relieved of any Liability or responsibility under this deed or otherwise at Law arising out of or in connection with (nor will the Principal's rights be affected by):
 - (i) any notice given by the Principal, the D&C Independent Certifier or the WHT Independent Certifier under clause 16.5 or this clause 16.6; or
 - (ii) implementation of any corrective action plan in respect of which the Principal has or has not issued a notice under this clause.

16.7 Claim for extension of the Dates for WHT Interface Milestone Completion, WHT Southern Tunnel Design Milestone Completion, Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works) and the Date for Final Completion

- (a) Subject to clauses 16.7(b) and 16.7(d), if the Contractor is or will be delayed in:
- (i) achieving Opening Completion or Completion by an Excusable Cause of Delay (Rozelle Interchange);
 - (ii) achieving Completion (WHT Southern Tunnel Works) or Final Completion by an Excusable Cause of Delay (WHT Southern Tunnel Works) (other than an Excusable Cause of Delay (WHT Southern Tunnel Works) described in paragraph (h) of the definition of Excusable Cause of Delay (WHT Southern Tunnel Works));
 - (iii) achieving Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works) or Final Completion by the Date for Final Completion by an Excusable Cause of Delay (WHT Southern Tunnel Works) described in paragraph (h) of the definition of Excusable Cause of Delay (WHT Southern Tunnel Works);
 - (iv) achieving WHT Interface Milestone Completion of a WHT Interface Milestone by an Act of Prevention; or
 - (v) achieving WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone by an Act of Prevention,
- the Contractor may claim an extension of time in accordance with Schedule 23.
- (b) If the Contractor is or will be delayed by an Excusable Cause of Delay (Rozelle Interchange) that occurs:
- (i) between D&C Close and the Date of Opening Completion (inclusive) and insofar as the Excusable Cause of Delay (Rozelle Interchange) impacts upon the Contractor's Activities (Rozelle Interchange), it may claim an extension of time to both the Date for Opening Completion and the Date for Completion of an equivalent number of days; and
 - (ii) after the Date of Opening Completion and insofar as the Excusable Cause of Delay (Rozelle Interchange) impacts upon the Contractor's Activities (Rozelle Interchange), it may claim an extension of time to the Date for Completion only.
- (c) If the Contractor is or will be delayed by an Excusable Cause of Delay (WHT Southern Tunnel Works) that occurs:
- (i) between the Amendment Date and the Date of Completion (WHT Southern Tunnel Works) (inclusive) and insofar as the Excusable Cause of Delay (WHT Southern Tunnel Works) impacts upon the Contractor's Activities (WHT Southern Tunnel Works), it may claim an extension of time to both the Date for Completion (WHT Southern Tunnel Works) and the Date for Final Completion of an equivalent number of days; and
 - (ii) after the Date of Completion (WHT Southern Tunnel Works) and insofar as the Excusable Cause of Delay (WHT Southern Tunnel Works) impacts upon

the Contractor's Activities (WHT Southern Tunnel Works), it may claim an extension of time to the Date for Final Completion only.

- (d) If the Contractor is or will be delayed in achieving WHT Interface Milestone Completion of one or more WHT Interface Milestones in a manner described in clause 16.7(a)(iv) but not Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion, the Contractor may claim an extension of time to the Date for WHT Interface Milestone Completion of those WHT Interface Milestones only.
- (e) If the Contractor claims an extension of time under this clause 16.7, it may also claim an extension to any relevant expiration date for access in the Site Access Schedule.

16.8 Extension of the Dates for WHT Interface Milestones Completion, Dates for WHT Southern Tunnel Design Milestones Completion, Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works) and Date for Final Completion

- (a) The Dates for WHT Interface Milestone Completion, Dates for WHT Southern Tunnel Design Milestone Completion, Date for Opening Completion, Date for Completion, Date for Completion (WHT Southern Tunnel Works) and/or Date for Final Completion will be extended by the period (if any) determined in accordance with Schedule 23.
- (b) If:
 - (i) an Excusable Cause of Delay (Rozelle Interchange) occurs:
 - (A) between D&C Close and the Date of Opening Completion (inclusive) and insofar as the Excusable Cause of Delay (Rozelle Interchange) impacts upon the Contractor's Activities (Rozelle Interchange), the Date for Opening Completion and the Date for Completion will both be extended; and
 - (B) after the Date of Opening Completion and insofar as the Excusable Cause of Delay (Rozelle Interchange) impacts upon the Contractor's Activities (Rozelle Interchange), only the Date for Completion will be extended,by the period (if any) determined in accordance with Schedule 23; and
 - (ii) an Excusable Cause of Delay (WHT Southern Tunnel Works) occurs:
 - (A) between the Amendment Date and the Date of Completion (WHT Southern Tunnel Works) (inclusive) and insofar as the Excusable Cause of Delay (WHT Southern Tunnel Works) impacts upon the Contractor's Activities (WHT Southern Tunnel Works), the Date for Completion (WHT Southern Tunnel Works) and the Date for Final Completion will both be extended; and
 - (B) after the Date of Completion (WHT Southern Tunnel Works) and insofar as the Excusable Cause of Delay (WHT Southern Tunnel Works) impacts upon the Contractor's Activities (WHT Southern Tunnel Works), only the Date for Final Completion will be extended,by the period (if any) determined in accordance with Schedule 23.

- (ba) If, between D&C Close and the Date of WHT Interface Milestone Completion of a WHT Interface Milestone, an Act of Prevention occurs, then the Date for WHT Interface Milestone Completion of that WHT Interface Milestone will be extended by the period (if any) determined in accordance with Schedule 23.
- (bb) If, between the Amendment Date and the Date of WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone, an Act of Prevention occurs, then the Date for WHT Southern Tunnel Design Milestone Completion of that WHT Southern Tunnel Design Milestone will be extended by the period (if any) determined in accordance with Schedule 23.
- (c) If any of the Date for Opening Completion, the Date for Completion, the Date for Completion (WHT Southern Tunnel Works), the Date for Final Completion or a Date for WHT Interface Milestone Completion or a Date of WHT Southern Tunnel Design Milestone Completion is extended under this clause 16.8, and the Contractor has claimed an extension to any expiration dates for access in the Site Access Schedule in accordance with clause 16.7(e), those expiration dates will be extended by such periods as are reasonable having regard to the extension granted under this clause 16.8.

16.9 **Compensation Events**

- (a) If:
 - (i) the Date for Opening Completion and/or the Date for Completion is extended pursuant to clause 16.8 and Schedule 23 due to a Compensation Event (Rozelle Interchange); or
 - (ii) the Date for Completion (WHT Southern Tunnel Works) and/or the Date for Final Completion is extended pursuant to clause 16.8 and Schedule 23 due to a Compensation Event (WHT Southern Tunnel Works),

the Contractor is entitled to claim compensation from the Principal in accordance with this clause 16.9.

- (b) Without limiting clause 7.5A, if a Compensation Event occurs, the Contractor must:
 - (i) take all reasonable steps to Mitigate the consequences of the Compensation Event;
 - (ii) otherwise comply with all reasonable directions of the Principal concerning the Compensation Event and the consequences thereof; and
 - (iii) ensure that its Related Parties comply with the requirements of this clause 16.9(b).
- (c) Subject to clauses 16.9(b) and 16.9(d), the Principal must pay the Contractor, the Contractor's Delay Costs arising as a direct result of the delay caused by the Compensation Event for which the extension of time was granted for the period for which the extension of time was granted (without double counting where clause 16.8(b)(i)(A) applies). The Contractor is not entitled to recover any amounts pursuant to this clause 16.9(c) in respect of an accepted Contractor Change Notice or Change Order.
- (ca) Subject to clauses 16.9(b) and 16.9(d), the Principal must pay to the Contractor (without double counting and subject to compliance with clause 39) the extra costs

reasonably incurred or payable by the Contractor arising from an event described in paragraph (d), (e) or (g) of the definition of Compensation Event (Rozelle Interchange) which does not result in a delay to Opening Completion or Completion.

- (d) The Contractor's entitlement to the Contractor's Delay Costs under clause 16.9(c) and extra costs under clause 16.9(ca) will not exceed:
 - (i) insofar as the Excusable Cause of Delay (Rozelle Interchange) impacts upon the Contractor's Activities (Rozelle Interchange), the amount per day specified in Part A of Schedule 34 for the phase of the Contractor's Activities (Rozelle Interchange) in which the Excusable Cause of Delay (Rozelle Interchange) occurs, except where clause 16.9(d)(ii) or 16.9(d)(iii) applies (in which case the Contractor's Delay Costs will be limited as set out in that clause); and
 - (ii) where the Contractor is delayed because of an Excusable Cause of Delay (Rozelle Interchange) referred to in paragraphs (d) or (e) of the definition of "Compensation Event (Rozelle Interchange)", the amount per day for the relevant Stage 3 Integration Site, M4 Integration Site or the M5 Integration Site (as applicable) and the phase of the Contractor's Activities (Rozelle Interchange) in which the Excusable Cause of Delay (Rozelle Interchange) occurs as specified in Part B of Schedule 34; and
 - (iii) where the Contractor is delayed because of an Excusable Cause of Delay (Rozelle Interchange) referred to in paragraph (g) of the definition of "Compensation Event (Rozelle Interchange)", the amount per day for:
 - (A) the relevant Rozelle Interface Milestone;
 - (B) Rozelle Interface Works Completion by the Date for Rozelle Interface Works Completion; or
 - (C) Main Tunnel Opening Completion by the Main Tunnel Date for Opening Completion,(as applicable) for the phase of the Contractor's Activities (Rozelle Interchange) in which the Excusable Cause of Delay (Rozelle Interchange) occurs as specified in Part C of Schedule 34; and
 - (iv) insofar as the Excusable Cause of Delay (WHT Southern Tunnel Works) impacts upon the Contractor's Activities (WHT Southern Tunnel Works), the amount per day specified in Part D of Schedule 34.
- (e) The costs payable to the Contractor under clauses 16.9(c) and 16.9(ca) will be the Contractor's sole remedy for the recovery of any Loss which the Contractor or its Related Parties suffers or incurs arising out of or in any way in connection with any delay and disruption that:
 - (i) the Contractor encounters in carrying out the Project Works or the Temporary Works; and
 - (ii) arises out of, or in any way in connection with, a Compensation Event (including a breach of this deed by the Principal).
- (f) Except as expressly set out in clause 14.3, this clause 16.9 is a limitation upon the Principal's liability to the Contractor and its Related Parties for any Losses suffered or incurred by the Contractor or its Related Parties arising out of or in any way in

connection with any such delay or disruption and the Contractor waives, and must ensure that its Related Parties waive, all rights at Law to make any Claim against the Principal in respect of such delay or disruption. The Principal will not be liable to the Contractor or its Related Parties in these circumstances for such delay or disruption other than in respect of the matters for which the Principal may be liable under this clause 16.9.

- (g) Notwithstanding the occurrence of a Compensation Event, the Contractor must continue to perform all of its obligations under the D&C Documents to the extent that the Contractor is not prevented from performing those obligations by that Compensation Event.

16.10 Liquidated Damages

- (a) Subject to clauses 16.10(f) and 16.10(g) (as applicable), if the Contractor fails to:
 - (i) reach Opening Completion by the Date for Opening Completion, the Contractor will be indebted to the Principal for Liquidated Damages (Opening Completion) at the rate specified in the definition of Liquidated Damages (Opening Completion) for every day after the Date for Opening Completion to and including:
 - (A) the Date of Opening Completion; or
 - (B) the date that this deed is terminated,whichever first occurs;
 - (ii) reach Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works), the Contractor will be indebted to the Principal for Liquidated Damages (WHT Southern Tunnel Works) at the rate specified in the definition of Liquidated Damages (WHT Southern Tunnel Works) for every day after Date for Completion (WHT Southern Tunnel Works) to and including:
 - (A) the Date of Completion (WHT Southern Tunnel Works); or
 - (B) the date that this deed is terminated,whichever first occurs; or
 - (iii) reach WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion, the Contractor will be indebted to the Principal for Liquidated Damages (WHT Southern Tunnel Design Milestone) at the rate specified in the definition of Liquidated Damages (WHT Southern Tunnel Design Milestone) for every day after the relevant Date for WHT Southern Tunnel Design Milestone Completion to and including:
 - (A) the relevant Date of WHT Southern Tunnel Design Milestone Completion; or
 - (B) the date that this deed is terminated,whichever first occurs.

(aa) In addition to any liability to pay liquidated damages under clause 16.10(a) (but subject to clause 16.10(g)), if there is a critical path delay to the WHT Contractor's project activities:

- (i) due to a Defect in the WHT Southern Tunnel Works:
 - (A) of which the Contractor has been notified of in accordance with clause 17.2(a)(i) or 17.2(a)(iv)(B);
 - (B) which arises after the Date of Completion (WHT Southern Tunnel Works) and prior to the expiry of the relevant Defects Correction Period; and
- (ii) which results in the WHT Contractor claiming and being entitled to and granted an extension of time under the WHT Contract as a result of such delay,

then the Contractor must pay to the Principal the amount of [REDACTED] (excluding GST) for every day of the period which is the lesser of:

- (iii) the extension of time granted under the WHT Contract in relation to the delay caused by the relevant Defect in the WHT Southern Tunnel Works; and
- (iv) the period from the date the Contractor receives the relevant direction under clause 17.2(a)(i) or clause 17.2(a)(iv)(B) to correct the Defect until completion of the correction of the Defect.

(b) For the purposes of this deed, the parties:

- (i) agree that:
 - (A) the amount of Liquidated Damages (Opening Completion), Liquidated Damages (WHT Southern Tunnel Works) and Liquidated Damages (WHT Southern Tunnel Design Milestone) referred to in clause 16.10(a) and the amount provided for in clause 16.10(aa) constitutes a reasonable and good faith pre-estimate of the anticipated or actual Loss that will be incurred by the Principal as a result of Opening Completion not occurring on or before the Date for Opening Completion, Completion (WHT Southern Tunnel Works) not occurring on or before the Date for Completion (WHT Southern Tunnel Works), the relevant WHT Southern Tunnel Design Milestone Completion not occurring on or before the relevant Date for WHT Southern Tunnel Design Milestone Completion or delay to the WHT Contractor due to a Defect in the WHT Southern Tunnel Works (as applicable); and
 - (B) the Principal's policy objectives on behalf of the NSW Government are to complete the Project Works so as to enable the Project Works (Rozelle Interchange) to be opened to the public and the WHT Southern Tunnel Works to be handed over to the WHT Contractor and that a failure to achieve Opening Completion by the Date for Opening Completion, a failure to achieve Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works), WHT Southern Tunnel Design Milestone Completion by the Date for WHT Southern Tunnel Design Milestone Completion or a Defect in the WHT Southern Tunnel Works that delays the WHT Contractor will lead to the Principal and the NSW Government suffering indirect losses and

lead to the failure of achieving its policy objectives to the detriment of the Principal and those for whose benefit the policy objectives are pursued;

- (ii) desire to avoid the difficulties of proving damages in connection with such failures and agree that the Liquidated Damages (Opening Completion), the Liquidated Damages (WHT Southern Tunnel Works), the Liquidated Damages (WHT Southern Tunnel Design Milestone) and the amount provided for in clause 16.10(aa) payable by the Contractor in accordance with clause 16.10(a) and 16.10(aa) are reasonable and do not constitute nor are they intended to be a penalty;
- (iii) agree that the amount of Liquidated Damages (Opening Completion), Liquidated Damages (WHT Southern Tunnel Works), Liquidated Damages (WHT Southern Tunnel Design Milestone) and the amount provided for in clause 16.10(aa) payable by the Contractor under this clause:
 - (A) will be recoverable from the Contractor as a debt due and payable to the Principal; and
 - (B) may be calculated and claimed by the Principal each 30 days (or part thereof):
 - (aa) after the Date for Opening Completion, in respect of the Liquidated Damages (Opening Completion);
 - (bb) after the Date for Completion (WHT Southern Tunnel Works), in respect of the Liquidated Damages (WHT Southern Tunnel Works);
 - (cc) after the Date for WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone in respect of the Liquidated Damages (WHT Southern Tunnel Design Milestone); or
 - (dd) after the date on which the Contractor was notified of the relevant WHT Southern Tunnel Works Defect; and
- (iv) agree that, despite anything to the contrary in this deed, subject to clauses 16.10(f) and 16.10(g) and without limiting the Principal's right to terminate this deed or the Contractor's liability to make any payment under clause 31, this clause 16.10 is the Principal's sole monetary remedy against the Contractor for delay in achieving WHT Interface Milestone Completion of each WHT Interface Milestone by the relevant Date for WHT Interface Completion, WHT Southern Tunnel Design Milestone Completion of each WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion, Opening Completion by the Date for Opening Completion, Completion by the Date for Completion, Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works) or Final Completion by the Date for Final Completion.
- (c) The Contractor agrees that its obligation to pay Liquidated Damages (Opening Completion), Liquidated Damages (WHT Southern Tunnel Works), Liquidated Damages (WHT Southern Tunnel Design Milestone) or the amount provided for in clause 16.10(aa) will not be affected by any circumstance, including:

- (i) any set-off, counter-claim or other right which the Contractor may have against the Principal; or
 - (ii) any other circumstance, happening or event whatsoever, whether or not unforeseen or similar to the foregoing.
- (d) For the avoidance of doubt the Contractor's liability for, or payment of, Liquidated Damages (Opening Completion), Liquidated Damages (WHT Southern Tunnel Works), Liquidated Damages (WHT Southern Tunnel Design Milestone) and/or the amount provided for in clause 16.10(aa) does not limit or otherwise reduce its obligation to:
- (i) achieve WHT Interface Milestone Completion of a WHT Interface Milestone by the relevant Date for WHT Interface Milestone Completion or as a requirement for Opening Completion (as applicable), WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion, Opening Completion by the Date for Opening Completion, Completion by the Date for Completion, Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works) or Final Completion by the Date for Final Completion; or
 - (ii) rectify any Defect or pay rectification costs.
- (e) Without in any way limiting this clause 16.10, if clause 16.10(a) or any part thereof is found to be void, invalid or inoperative so as to disentitle the Principal from recovering any Liquidated Damages (Opening Completion), Liquidated Damages (WHT Southern Tunnel Works) and/or Liquidated Damages (WHT Southern Tunnel Design Milestone) referred to in clause 16.10(a) and/or and the amount provided for in clause 16.10(aa), the Principal remains entitled to recover damages in connection with any failure by the Contractor to reach Opening Completion by the Date for Opening Completion, Completion (WHT Southern Tunnel Works), WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion by the Date for Completion (WHT Southern Tunnel Works) or delay to the WHT Contractor, provided that, subject to this clause 16.10(e), the damages will be limited to the Liquidated Damages (Opening Completion), Liquidated Damages (WHT Southern Tunnel Works), Liquidated Damages (WHT Southern Tunnel Design Milestone) and the amount provided for in clause 16.10(aa) (as applicable) that the Principal would otherwise have been entitled to recover from the Contractor.
- (f) The Contractor's aggregate liability for:
- (i) damages payable by the Contractor for breach of clause 15.2(a) or 16.1(b) to the extent that those damages flow from a delay to Opening Completion;
 - (ii) damages payable by the Contractor for breach of clause 16.2(a), 16.2(b), 16.2(c) or 16.2(d);
 - (iii) damages payable by the Contractor under clause 16.10(a)(i);
 - (iv) damages as contemplated in clause 16.10(e), to the extent that those damages flow from a delay to Opening Completion;

(v) any Revenue payable by the Contractor on any basis (other than any Lane Occupancy Fee) to the extent such Revenue is in connection with the Contractor's Activities (Rozelle Interchange); and

(vi) any payment obligation in clause 31.10(a)(iii)(BA),

will be limited to the Liquidated Damages Cap (Rozelle Interchange).

(g) The Contractor's aggregate liability for:

(i) damages payable by the Contractor for breach of clause 15.2(a) or 16.1(b) to the extent that those damages flow from a delay to Completion (WHT Southern Tunnel Works);

(ii) damages payable by the Contractor for breach of clause 16.2(e), 16.2(f) or 16.2(g);

(iii) damages payable by the Contractor under clause 16.10(a)(ii);

(iv) damages payable by the Contractor under clause 16.10(a)(iii);

(v) damages payable by the Contractor under clause 16.10(aa);

(vi) damages as contemplated in clause 16.10(e), to the extent that those damages flow from a delay to Completion (WHT Southern Tunnel Works);

(vii) any Revenue payable by the Contractor on any basis (other than any amounts payable pursuant to clause 11C.2) to the extent such Revenue is in connection with the Contractor's Activities (WHT Southern Tunnel Works); and

(viii) any payment obligation in clause 31.10(a)(iii)(B),

will be limited to the Liquidated Damages Cap (WHT Southern Tunnel Works).

16.10A WHT Incentive Payments

(a) If the Contractor reaches WHT Interface Milestone Completion of a WHT Interface Milestone on or before the Date for WHT Interface Milestone Completion of the WHT Interface Milestone, the WHT Incentive Payment for that WHT Interface Milestone will become payable to the Contractor.

(b) No portion of the WHT Incentive Payment, or reduced WHT Incentive Payment, will become payable to the Contractor for a WHT Interface Milestone if the Contractor does not reach WHT Interface Milestone Completion of the WHT Interface Milestone on or before the Date for WHT Interface Milestone Completion of the WHT Interface Milestone.

(c) The WHT Incentive Payments are not subject to adjustment for any reason, including as a result of a Change or Excusable Cause of Delay. Without limiting clause 16.10(a), if the Contractor fails to reach WHT Interface Milestone Completion of a WHT Interface Milestone on or before the Date for WHT Interface Milestone Completion of the WHT Interface Milestone, the Contractor will not be liable to the Principal for liquidated or general damages as a consequence, and nor will such failure constitute a default under this deed.

(d) This clause 16.10A is subject to clause 11A.4.

16.10B **WHT Early Completion Payment**

- (a) If the Contractor reaches Completion (WHT Southern Tunnel Works) on or before the WHT Early Completion Payment Date, the WHT Early Completion Payment will become payable to the Contractor.
- (b) No portion of the WHT Early Completion Payment will become payable to the Contractor if the Contractor does not reach Completion (WHT Southern Tunnel Works) on or before the WHT Early Completion Payment Date.
- (c) The WHT Early Completion Payment Date is not subject to adjustment for any reason, including as a result of a Change or Excusable Cause of Delay. Without limiting clause 16.10(a), if the Contractor fails to reach Completion (WHT Southern Tunnel Works) on or before the WHT Early Completion Payment Date, the Contractor will not be liable to the Principal for liquidated or general damages as a consequence, and nor will such failure constitute a default under this deed.

16.11 **Process for WHT Interface Milestone Completion, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) and Final Completion**

- (a) The Contractor must give the Principal's Representative and the D&C Independent Certifier or the WHT Independent Certifier (as relevant):
 - (i) 6 months and 3 Business Days';
 - (ii) 3 months and 3 Business Days';
 - (iii) 1 month and 3 Business Days'; and
 - (iv) 1 week and 3 Business Days',

prior notice of the estimated Date of WHT Interface Milestone Completion of each WHT Interface Milestone, the estimated Date of Opening Completion, the estimated Date of Completion, the estimated Date of Completion (WHT Southern Tunnel Works) and the estimated Date of Final Completion. The Contractor must give a copy of each notice in relation to Completion (WHT Southern Tunnel Works) and Final Completion to the WHT Contractor at the same time.
- (b) Subject to clause 16.11(h), the Principal's Representative, the Contractor and the D&C Independent Certifier or the WHT Independent Certifier (as relevant) must, within 7 Business Days after receipt of each notice given under clause 16.11(a)(iv), jointly inspect the relevant Project Works and the Contractor's Activities at a mutually convenient time.
- (c) Within 3 Business Days of the joint inspection referred to in clause 16.11(b), the D&C Independent Certifier or the WHT Independent Certifier (as relevant) must give the Contractor and the Principal a notice either:
 - (i) containing a list of items which it believes must be completed before WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) is achieved; or
 - (ii) stating that it believes that WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case

may be) is so far from being achieved that it is not practicable to issue a list as contemplated in clause 16.11(c)(i).

Where the notice relates to Completion (WHT Southern Tunnel Works) or Final Completion, the WHT The Independent Certifier will give a copy of the notice to the WHT Contractor at the same time.

- (d) When the Contractor considers WHT Interface Milestone Completion of a WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) has been achieved, the Contractor must notify the Principal's Representative and the D&C Independent Certifier or the WHT Independent Certifier (as relevant) in writing and provide them with an executed certificate in the form of Schedule 25. The Contractor must give a copy of each notice in relation to Completion (WHT Southern Tunnel Works) and Final Completion to the WHT Contractor at the same time.
- (e) Thereafter, and subject to clause 16.11(h), the Principal's Representative, the Contractor and the D&C Independent Certifier or the WHT Independent Certifier (as relevant) must as soon as reasonably practicable jointly inspect the relevant Project Works and the Contractor's Activities at a mutually convenient time.
- (f) Following the joint inspection under clause 16.11(e), the D&C Independent Certifier or the WHT Independent Certifier (as relevant) must within 6 Business Days after receipt of a notice under clause 16.11(d), or of receipt of a notice under clause 16.11(g):
 - (i) if WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) has been achieved, provide to the Principal's Representative and the Contractor a document signed by the D&C Independent Certifier or the WHT Independent Certifier (as relevant) in the form set out in Schedule 26; or
 - (ii) if WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) is achieved; or
 - (B) that WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) is so far from being achieved that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 16.11(f)(ii)(A).

The WHT Independent Certifier must give a copy of the notice in relation to Completion (WHT Southern Tunnel Works) and Final Completion to the WHT Contractor at the same time.

- (g) If the D&C Independent Certifier or the WHT Independent Certifier (as relevant) issues a notice under clause 16.11(f)(ii), the Contractor must proceed with the relevant Contractor's Activities and thereafter when it considers WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) has been achieved it must give the Principal's Representative and the D&C Independent Certifier or the WHT Independent Certifier (as relevant) written notice to that effect after which clauses 16.11(d), 16.11(e) and 16.11(f) will reapply. The Contractor must give a copy of the notice to the WHT Contractor at the same time.
- (h) The Contractor acknowledges and agrees that:
- (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.11 (including the Principal, representatives of the M4-M5 Link Concessionaires, the D&C Independent Certifier, WHT Independent Certifier, the WHT Contractor and the [REDACTED]); and
 - (ii) the Principal's Representative may provide comments to the D&C Independent Certifier or the WHT Independent Certifier (as relevant) (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this deed.
- (i) The Contractor and the Principal acknowledge and agree that:
- (i) Completion cannot occur until (among other things) WHT Interface Milestone Completion of each WHT Interface Milestone and Opening Completion have occurred;
 - (ii) once WHT Interface Milestone Completion of a WHT Interface Milestone has occurred the Contractor is not obliged to resatisfy the requirements of WHT Interface Milestone Completion of the WHT Interface Milestone in order to achieve Opening Completion and Completion;
 - (iii) once Opening Completion has occurred the Contractor is not obliged to resatisfy the requirements of Opening Completion in order to achieve Completion;
 - (iv) Final Completion cannot occur until (among other things) Completion (WHT Southern Tunnel Works) has occurred; and
 - (v) once Completion (WHT Southern Tunnel Works) have occurred the Contractor is not obliged to resatisfy the requirements of Completion (WHT Southern Tunnel Works) in order to achieve Final Completion.
- (j) The Contractor and the Principal acknowledge and agree that:
- (i) the D&C Independent Certifier's role under this clause 16.11 is limited to the achievement of WHT Interface Milestone Completion of the relevant WHT Interface Milestone, Opening Completion and Completion by the Contractor; and
 - (ii) the WHT Independent Certifier's role under this clause 16.11 is limited to the achievement of Completion (WHT Southern Tunnel Works) and Final Completion by the Contractor.

16.11A **Process for WHT Southern Tunnel Design Milestone Completion**

- (a) When the Contractor considers WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone has been achieved, the Contractor must notify the Principal's Representative and the WHT Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 25.
- (b) Within 7 Business Days of the notice referred to in clause 16.11A(a), the WHT Independent Certifier must give the Contractor and the Principal a notice either:
 - (i) if WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone has been achieved, provide to the Principal's Representative and the Contractor a document signed by the WHT Independent Certifier in the form set out in Schedule 27; or
 - (ii) if WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone is achieved; or
 - (B) that WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone is so far from being achieved that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 16.11A(b)(ii)(A).
- (c) If the WHT Independent Certifier issues a notice under clause 16.11A(b)(ii), the Contractor must proceed with the Contractor's Activities and thereafter when it considers WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone has been achieved it must give the Principal's Representative and the WHT Independent Certifier written notice to that effect after which clauses 16.11A(a) and 16.11A(b) will reapply.

16.12 **Effect of a Notice of WHT Interface Milestone Completion, WHT Southern Tunnel Design Milestone Completion, Notice of Opening Completion, Notice of Completion, Notice of Completion (WHT Southern Tunnel Works) and Notice of Final Completion**

- (a) A Notice of WHT Interface Milestone Completion, Notice of WHT Southern Tunnel Design Milestone Completion, Notice of Opening Completion, Notice of Completion, Notice of Completion (WHT Southern Tunnel Works) and a Notice of Final Completion will not:
 - (i) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the Project Works or D&C Phase Maintenance comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal or the Principal's Representative.
- (b) Without limiting clause 16.12(a), the parties agree that, in the absence of manifest error by the D&C Independent Certifier or the WHT Independent Certifier (as

relevant), the D&C Independent Certifier's or the WHT Independent Certifier's certification (as relevant) as set out in a Notice of WHT Interface Milestone Completion, a Notice of WHT Southern Tunnel Design Milestone Completion, a Notice of Opening Completion, a Notice of Completion, a Notice of Completion (WHT Southern Tunnel Works) and a Notice of Final Completion is final and binding on the parties for the purposes only of establishing that WHT Interface Milestone Completion of the relevant WHT Interface Milestone, WHT Southern Tunnel Design Milestone Completion of the relevant WHT Southern Tunnel Design Milestone, Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion (as the case may be) has occurred.

16.13 **Defects or omissions**

Notwithstanding that Opening Completion, Completion, Completion (WHT Southern Tunnel Works) or Final Completion may have occurred, the Contractor must as soon as practicable:

- (a) after Opening Completion (and in any event within 6 months after the Date of Opening Completion) correct any Defects which existed at the time of the issue of the Notice of Opening Completion; and
- (b) after Completion (WHT Southern Tunnel Works) (and in any event within 6 months after the Date of Completion (WHT Southern Tunnel Works)) correct any Defects which existed at the time of the issue of the Notice of Completion (WHT Southern Tunnel Works).

16.14 **Opening of the Rozelle Interchange Works after Opening Completion**

- (a) If Opening Completion of the Project Works (Rozelle Interchange) has been achieved, the Principal's Representative must, even though Completion of the Project Works (Rozelle Interchange) has not been achieved, open the Rozelle Interchange Works to the public for the continuous passage of vehicles.
- (b) The opening of the Rozelle Interchange Works will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Completion of the Project Works (Rozelle Interchange) by the Date for Completion.

16.15 **Early completion of part of Project Works**

- (a) If the Principal's Representative considers that a part of:
 - (i) the Project Works (Rozelle Interchange) has reached a stage equivalent to that of Opening Completion (to the extent applicable to that part) and is capable of being handed over and used, but the balance of the Project Works (Rozelle Interchange) has not reached such a stage; or
 - (ii) the WHT Southern Tunnel Works has reached a stage equivalent to that of Completion (WHT Southern Tunnel Works) (to the extent applicable to that part) and is capable of being handed over and used, but the balance of the WHT Southern Tunnel Works has not reached such a stage,

the Principal's Representative may give the Contractor written notice identifying that part of the Project Works (Rozelle Interchange) or WHT Southern Tunnel Works (as applicable) and requesting its early handover.

- (b) If the Principal's Representative gives notice under clause 16.15(a), the Contractor and the Principal must, acting in good faith, endeavour to agree the terms on which the relevant part of the Project Works (Rozelle Interchange) or WHT Southern Tunnel Works (as applicable) will be handed over, including any amendments required to the D&C Documents to effect that early handover.

16.16 Occupation and use of partially completed WHT Southern Tunnel Works

- (a) Without limiting clause 16.15, if a part of the WHT Southern Tunnel Works has reached a stage equivalent to Completion (WHT Southern Tunnel Works) (**Completed Portion**) but another part of the WHT Southern Tunnel Works has not yet reached such stage (**Incomplete Portion**), the Principal's Representative may by giving written notice to the Contractor direct by way of a Change Order:
 - (i) that the Completed Portion and Incomplete Portion will each be a separate portion (each a **Separate Portion**); and
 - (ii) a date from which the Principal (or its nominees, including the WHT Contractor) may occupy and use the Completed Portion.
- (b) If the Principal's Representative gives notice under clause 16.16(a):
 - (i) the Completed Portion will be deemed to have reached Completion (WHT Southern Tunnel Works) at 4:00 pm the day before the date specified in the Principal Representative's notice under clause 16.16(a)(ii) (unless such notice is subsequently revoked by the Principal's Representative prior to that time);
 - (ii) the Contractor must provide, prior to the date specified in the Principal Representative's notice under clause 16.16(a), all Approvals, certificates, releases or documents or other information or training in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Completed Portion which:
 - (A) are required by this deed to be given to the Principal's Representative before Completion (WHT Southern Tunnel Works); or
 - (B) must necessarily be handed over before the Completed Portion can be used for its intended purpose,to the extent available at that time;
 - (iii) the Principal or the Contractor may request the WHT Independent Certifier to inspect the works and to issue a Notice of Completion (WHT Southern Tunnel Works) in respect of the relevant Completed Portion in accordance with the process set out in clause 16.11 (other than clause 16.11(a)) if the Principal or the Contractor believes that all of the requirements for Completion (WHT Southern Tunnel Works) have been satisfied. Notwithstanding the date stated by the WHT Independent Certifier in the Notice of Completion (WHT Southern Tunnel Works), the Date of Completion (WHT Southern Tunnel Works) for the Completed Portion under this deed shall remain the date referred to in clause 16(a)(ii);
 - (iv) the Principal (or its nominees, including any WHT Interface Contractor) may from the date specified in the Principal Representative's notice under clause 16.16(a) occupy or use any part of the Completed Portion and the Contractor

must permit the Principal (or its nominees, including any WHT Interface Contractor) to do so;

- (v) the Contractor must do all things that are reasonably required to enable the Principal (or its nominees, including any WHT Interface Contractor) to safely occupy or use the relevant part of the Completed Portion from the date specified in the Principal Representative's notice under clause 16.16(a); and
 - (vi) the Principal must continue to allow (and procure that its nominees allow) the Contractor reasonable access to the Completed Portion that is being occupied or used by the Principal (or its nominees, including any WHT Interface Contractor) to enable the Contractor to perform the Contractor's Activities.
- (c) The exercise by the Principal of its rights under this clause 16.16 will not limit or affect the responsibilities, obligations or liabilities of the parties under this deed, including the obligation of the Contractor to:
- (i) achieve Completion (WHT Southern Tunnel Works) of the Completed Portion by the Date for Completion (WHT Southern Tunnel Works); and
 - (ii) achieve Completion (WHT Southern Tunnel Works) of the Incomplete Portion by the relevant Date for Completion (WHT Southern Tunnel Works).

16A **POST COMPLETION ACTIVITIES**

16A.1 **Post Completion Activities**

- (a) The Principal may give written notice to the Contractor at any time before the Date of Completion (WHT Southern Tunnel Works) that any of the Post Completion Activities must be carried out.
- (b) If the Principal's Representative does not instruct the Contractor to carry out the Post Completion Activities under clause 16A.1(a):
 - (i) the Contractor must not carry out the Post Completion Activities; and
 - (ii) these services do not form part of the Contractor's Activities (WHT Southern Tunnel Works).
- (c) At any time, the Principal may give 5 Business Days' written notice to the Contractor that the Contractor is to cease performance of any Post Completion Activities instructed under clause 16A.1(a).
- (d) The Contractor will be entitled to be paid for each day on which the Post Completion Activities are carried out at the rates and prices set out in Part B of the D&C Payment Schedule to the extent they are applicable or it is reasonable to use them.

16A.2 **Requirements for Post Completion Activities**

- (a) The Contractor must perform the Post Completion Activities:
 - (i) in accordance with:
 - (A) the SWTC (WHT Southern Tunnel Works);
 - (B) any applicable Laws and Approvals; and

- (C) Good Industry Practice; and
- (ii) in an efficient and cooperative manner.
- (b) The Contractor must allocate such resources and staff as are necessary to enable the due and proper performance of the Post Completion Activities.
- (c) Following the completion of the Post Completion Activities, the Contractor must handover the WHT Southern Tunnel Works to the Principal (or its nominee) in the same condition that the WHT Southern Tunnel Works were in at the Date of Completion (WHT Southern Tunnel Works), subject to the rectification of any Defects.
- (d) After the completion of Post Completion Activities, except to the extent directed by the Principal, the Contractor must promptly remove all Temporary Works (WHT Southern Tunnel Works) installed in connection with the Post Completion Activities.
- (e) Despite this clause 16A, the Contractor acknowledges and agrees that:
 - (i) the costs of rectifying Defects after the Date of Completion (WHT Southern Tunnel Works) are borne by the Contractor;
 - (ii) Defects rectified by the Contractor during the performance of the Post Completion Activities may be subject to an extended Defects Correction Period in accordance with clause 17; and
 - (iii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in connection with rectifying Defects during the period in which the Contractor is carrying out the Post Completion Activities.

17. DEFECTS CORRECTION PERIODS

17.1 Correction of Defects

Subject to clause 17.5(c), the Contractor must correct all Defects in the Rozelle Interchange Works, Local Area Works, Utility Service Works, Property Works, WHT Southern Tunnel Works and D&C Phase Maintenance prior to the expiry of the relevant Defects Correction Period whether or not the Principal's Representative, the O&M Contractor, the WHT Independent Certifier or the D&C Independent Certifier notifies the Contractor of them.

17.2 Principal's Direction

- (a) Without limiting clause 17.1, if prior to and during a Defects Correction Period, the Principal discovers or believes there is a Defect in the Rozelle Interchange Works, Local Area Works, Utility Service Works, Property Works, WHT Southern Tunnel Works or D&C Phase Maintenance, the Principal may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the Contractor a written direction specifying the Defect and doing one or more of the following (at the Principal's absolute discretion):
 - (i) requiring the Contractor to correct the Defect (or a part of it) and specifying a reasonable time within which this must occur;
 - (ii) advising the Contractor that the Principal will accept the work or a part of it despite the Defect;

- (iii) in respect of any Defect to which clause 17.3(c) applies, advising the Contractor that the Principal will have the Defect or any part of it corrected (including by the WHT Contractor);
 - (iv) in respect of an Urgent Defect (to which paragraph (b) of the definition of Urgent Defect applies), requiring the Contractor to:
 - (A) provide to the Principal, within a reasonable time in light of the urgency of the Urgent Defect, a detailed proposal setting out:
 - (aa) whether or not the Contractor will be able to correct the Urgent Defect (or any part of it) within a reasonable time; and
 - (bb) if the Contractor is able to correct the Defect (or any part of it) within a reasonable time, a detailed estimate of the time that would be taken to correct the Urgent Defect and the estimated cost to the Contractor in undertaking that work; and
 - (B) on further written direction from the Principal if the proposal in clause 17.2(a)(iv)(A) is provided and acceptable to the Principal (at the Principal's absolute discretion), correct the Urgent Defect (or any part of it) and specifying a reasonable time within which this must occur; or
 - (v) where the WHT Asset Manager categorises a Defect in the WHT Southern Tunnel Works as having a defect rating of 4 (being a critical Defect that requires immediate attendance as a critical condition has occurred that could affect operation and / or availability of the Western Harbour Tunnel) or 5 (being a critical Defect that requires immediate attendance as a critical condition has occurred that affects safety of the Western Harbour Tunnel) and is required to carry out a repair or temporary fix after the Date of Opening Completion (WHT) in accordance with the WHT Asset Manager Deed:
 - (A) advising the Contractor that the WHT Asset Manager has carried or will carry out the repair or temporary fix; and
 - (B) if relevant, requiring the Contractor to complete the correction of the Defect (or part of it) and specifying a reasonable time within which this must occur.
- (b) In determining the times in which the Contractor is required to correct a Defect for the purposes of this clause, where the Defect impacts, interferes or disrupts the activities which a WHT Interface Contractor may be carrying out, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which the WHT Interface Contractor may be carrying out in discharging its obligations under the its contract with the Principal or the [REDACTED] (as applicable).
 - (c) If the Contractor disagrees with any direction given by the Principal under clause 17.2(a), it must, within 5 Business Days after receipt of such a notice (or where the Defect is an Urgent Defect to which paragraph (b) of that definition applies, such shorter period as the Principal may specify), give notice of its disagreement to the Principal.
 - (d) If the Contractor gives the Principal a notice under clause 17.2(c), the Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of

the disagreement. If the matter is not resolved within 10 Business Days after the date of the Contractor's Notice, either the Principal or the Contractor may, by notice to the other parties and the D&C Independent Certifier or the WHT Independent Certifier's (as relevant), refer the matter for determination by the D&C Independent Certifier or the WHT Independent Certifier's (as relevant), who must within 10 Business Days (or any longer period agreed to by the Principal and the Contractor) after receipt of the referral make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.

17.3 Correction of Defects

- (a) If a direction is given under clause 17.2(a)(i), or a further direction to correct any Defect is given under clause 17.2(a)(iv), at any time prior to the expiration of the relevant Defects Correction Period (whether before or after Opening Completion, Completion, WHT Interface Milestone Completion of any WHT Interface Milestone, Completion (WHT Southern Tunnel Works) or Final Completion, as applicable) and the Contractor does not give a notice under clause 17.2(c) or, if it does, the D&C Independent Certifier or the WHT Independent Certifier (as relevant) determines that a Defect exists, the Contractor must correct the Defect (or the part of it):
- (i) within the time specified in the Principal's direction;
 - (ii) at times agreed with the Principal and in accordance with the requirements of any other relevant Authority, WestConnex Concessionaire or the [REDACTED] (if applicable);
 - (iii) so as to minimise the impact on the use of the relevant part of the Project Works;
 - (iv) so as to minimise the inconvenience to possible users of the Motorway, an Other WestConnex Motorway, the Western Harbour Tunnel, any Local Area, a Utility Service, the Property Works or any access and the adjacent community;
 - (v) in accordance with the requirements of any relevant Authority;
 - (vi) in a manner which causes as little inconvenience as possible to the activities which:
 - (A) the Main Tunnel Contractor may be carrying out in discharging its obligations under the Main Tunnel D&C Deed; or
 - (B) a WHT Interface Contractor may be carrying out in discharging its obligations under its contract with the Principal or the [REDACTED] (as applicable);
 - (vii) if the WHT Contractor has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing the Remaining WHT Works or maintaining any part the WHT Southern Tunnel Works, in accordance with the requirements of the WHT Contractor in relation to access and site safety; and
 - (viii) where the Defect is a Defect in the WHT Southern Tunnel Works, in accordance with its obligations under the Western Harbour Tunnel – Rozelle Interchange Interface Deed.

- (b) The Contractor must give notice to the Principal and the D&C Independent Certifier or the WHT Independent Certifier's (as relevant) that a Defect has been corrected promptly after the correction of the Defect.
- (c) If the Contractor does not comply with clause 17.3(a) or if the Defect is a Urgent Defect (to which paragraph (a) of that definition applies), the Principal's Representative may, without prejudice to any other rights the Principal may have against the Contractor with respect to Defects under this deed or otherwise at Law, give the Contractor a direction under clause 17.2(a)(iii) and have the correction carried out at the Contractor's expense, and the cost of the correction incurred by the Principal will be a debt due and payable from the Contractor to the Principal.

17.4 **Rectification by others**

- (a) Subject to clause 17.4(b) and clause 17.4(c), if a direction is given under clauses 17.2(a)(ii) or 17.2(a)(iii) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the Contractor is responsible for the Defect (or the part of it):
 - (i) the costs of rectifying the Defect (or any part of it) (or the equivalent to those costs, in the case of clause 17.2(a)(ii)); and
 - (ii) in respect of the WHT Southern Tunnel Works only, where the WHT Contractor has been instructed to rectify the Defect, the amount of \$ [REDACTED] (excluding GST) for every day of the extension of time granted under the WHT Contract as a consequence of instructing the WHT Contractor to rectify the Defect, provided the WHT Contractor claimed and was entitled to and was granted the extension of time under the WHT Contract,

will be a debt due and payable from the Contractor to the Principal.
- (b) In the case of a direction given under clause 17.2(a)(ii) or 17.2(a)(iii), the Principal will only be entitled to reduce the D&C Deed Sum where:
 - (i) the Principal's Representative has first given a direction under clause 17.2(a)(i) and the Contractor has failed to comply with such direction or has otherwise failed to comply with its obligations under clause 17.3(a);
 - (2) the Defect is an Urgent Defect to which paragraph (a) of that definition applies; or
 - (3) the Defect is an Urgent Defect to which paragraph (b) of that definition applies and the Principal has elected not to issue a further direction under 17.2(a)(iv) to correct the Defect (or any part of it).
- (c) If the Defect is an Urgent Defect (to which paragraph (b) of that definition applies) and in the case of a direction given under clause 17.2(a)(iv) to the Contractor to correct the Defect (or any part of it), the Principal will only be entitled to reduce the D&C Deed Sum (WHT Southern Tunnel Works) where the Contractor has failed to comply with such direction or has otherwise failed to comply with its obligations under clause 17.3(a).
- (d) If the Principal gives a written direction pursuant to clause 17.2(a)(v) and the WHT Asset Manager carries out a repair or temporary fix in accordance with the WHT Asset Manager Deed, the costs incurred by the Principal and/or the [REDACTED] [REDACTED] in having the WHT Asset Manager do so will be a debt due and payable

from the Contractor to the Principal. The Principal must take reasonable steps to mitigate such costs.

17.5 **Rozelle Interchange Works**

- (a) The Rozelle Interchange Works (other than the WHT Interface Works and the works carried out at the WestConnex Disaster Recovery Site) have:
 - (i) a Defects Correction Period which begins on the Date of Opening Completion and expires 24 months after the Date of Opening Completion; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 17.5 will not exceed an aggregate period of 36 months after the Date of Opening Completion.

- (b) Despite clause 17.5(a)(ii), the Defects Correction Period for Defects in the Tolling Equipment Works will cease on the date that the "Warranty Period" (as defined in the Tolling Equipment Works Subcontract) expires under the Tolling Equipment Works Subcontract.
- (c) Without limiting clause 17A.4, the parties acknowledge and agree that, on and from the Release Date:
 - (i) the Contractor is only required to comply with clause 17.1 in respect of Defects in the Principal Retained Works;
 - (ii) the Defects Correction Period will cease to apply under this deed to the Transferred Works; and
 - (iii) the Principal is not entitled to give further directions to rectify Defects in respect of the Transferred Works.

17.5A **WHT Interface Works and WHT Southern Tunnel Works**

- (a) The WHT Interface Works have:
 - (i) a Defects Correction Period which begins, in respect of the WHT Interface Works required for each WHT Interface Milestone, on the Date of WHT Interface Milestone Completion for that WHT Interface Milestone, and expires 24 months after the Date of Opening Completion; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 17.5A(a) in respect of the WHT Interface Works required for a WHT Interface Milestone will not exceed an aggregate period of 36 months after the Date of WHT Interface Milestone Completion of that WHT Interface Milestone.

- (b) The WHT Southern Tunnel Works have:

- (i) a Defects Correction Period which begins on the Date of Completion (WHT Southern Tunnel Works) and expires 24 months after the Date of Completion (WHT Southern Tunnel Works); and
- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 17.5A(b) in respect of the WHT Southern Tunnel Works will not exceed an aggregate period of 36 months after the Date of Completion (WHT Southern Tunnel Works).

17.5B **WestConnex Disaster Recovery Site**

The works carried out at the WestConnex Disaster Recovery Site have:

- (a) a Defects Correction Period which begins on the Date of Completion and expires 24 months after the Date of Completion; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 17.5B will not exceed an aggregate period of 36 months after the Date of Completion.

17.6 **Local Area Works**

Each discrete part of the Local Area Works has:

- (a) a Defects Correction Period which begins when:
 - (i) either:
 - (A) the relevant Authority which has jurisdiction in respect of the discrete part of the Local Area Works gives written notice to the Contractor that the Authority is satisfied that the discrete part is complete; or
 - (B) if the Contractor is unable to obtain the notice referred to in clause 17.6(a)(i)(A) despite:
 - (aa) promptly seeking that notice upon completion of the discrete part of the Local Area Works;
 - (bb) giving the relevant Authority not less than 20 Business Days to provide the notice requested; and
 - (cc) otherwise using its best endeavours to obtain that notice,
- the Contractor gives the Principal notice that it has been unable to obtain that notice and that in its view, the relevant Local Area Works are complete; and
- (ii) the Principal and the D&C Independent Certifier or the WHT Independent Certifier's (as relevant) have been provided with a copy of the relevant notice,

and which expires 12 months after:

- (iii) the Date of Opening Completion (for those Local Area Works that form part of the Project Works (Rozelle Interchange)); or
 - (iv) the Date of Completion (WHT Southern Tunnel Works) (for those Local Area Works that form part of the WHT Southern Tunnel Works); and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 17.6 will not exceed an aggregate period of 24 months after the Date of Opening Completion for those Local Area Works that form part of the Project Works (Rozelle Interchange) or 24 months after the Date of Completion (WHT Southern Tunnel Works) for those Local Area Works that form part of the WHT Southern Tunnel Works.

17.7 **Utility Service Works**

Each discrete part of the Utility Service Works (except in respect of those Utility Services that form part of the Rozelle Interchange Works) has:

- (a) a Defects Correction Period which begins when:
- (i) either:
 - (A) the relevant Authority which has jurisdiction in respect of the Utility Service gives written notice to the Contractor that the Authority is satisfied that the discrete part of the Utility Service Works is complete; or
 - (B) if the Contractor is unable to obtain the notice referred to in clause 17.7(a)(i)(A) despite:
 - (aa) promptly seeking that notice upon completion of the discrete part of the Utility Service Works;
 - (bb) giving the relevant Authority not less than 20 Business Days to provide the notice requested; and
 - (cc) otherwise using its best endeavours to obtain that notice,the Contractor gives the Principal notice that it has been unable to obtain that notice and that in its view, the relevant Utility Service Works are complete; and
 - (ii) the Principal and the D&C Independent Certifier have been provided with a copy of the relevant notice,

and which expires 12 months after the Date of Opening Completion; and

- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it),

provided that the Defects Correction Period under this clause 17.7 will not exceed an aggregate period of 24 months after the Date of Opening Completion.

17.8 **Property Works**

Each discrete part of the Property Works has:

- (a) a Defects Correction Period which begins upon the later of:
 - (i) the completion of that discrete part of the Property Works; and
 - (ii) the submission by the Contractor to the Principal and the D&C Independent Certifier of a certificate or signed statement (as the case may be) under clause 11.3,and which expires 12 months after the Date of Opening Completion; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or part of it),

provided that the Defects Correction Period under this clause 17.8 will not exceed an aggregate period of 24 months after the Date of Opening Completion.

17.9 **Failure by the Contractor to comply with direction**

If the Contractor fails to comply with a direction given under clause 17.2(a), the Principal may (without limiting any other rights it may have, including under clause 8.5) apply for a court order for specific performance.

17.10 **Rights not affected**

Neither the Principal's rights, nor the Contractor's liability, whether under this deed or otherwise according to law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period or this deed, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the D&C Independent Certifier or the WHT Independent Certifier (as relevant) by this clause 17 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal or the D&C Independent Certifier or the WHT Independent Certifier (as relevant) to exercise, any such rights; or
- (c) any direction of the Principal under this clause 17.

17.11 **Access for defects**

- (a) After:
 - (i) the Date of Opening Completion, in respect of the Contractor's Activities (Rozelle Interchange);
 - (ii) the Date of WHT Interface Milestone Completion of the last WHT Interface Milestone to achieve WHT Interface Milestone Completion, in respect of the WHT Interface Works); or

- (iii) the Date of Completion (WHT Southern Tunnel Works). in respect of the Contractor's Activities (WHT Southern Tunnel Works),

as applicable and subject to:

- (iv) any constraints on and qualifications to access imposed on the Contractor under this deed, including clause 10;
- (v) the Contractor's compliance with the M4-M5 Link Concessionaire, O&M Contractor, [REDACTED] WHT Contractor or WHT Asset Manager's (as applicable) reasonable safety, protection and security measures in place with respect to the O&M Work, the Motorway, the Remaining WHT Works, the activities of the WHT Asset Manager and the Western Harbour Tunnel (as applicable), the Project Plans and other reasonable management requirements of the Principal, the O&M Contractor, the [REDACTED] the WHT Contractor or the WHT Asset Manager including the Contractor:
 - (A) complying with its obligations under clause 9.6 and Schedule 8;
 - (B) submitting Project Works Traffic Management Plans and complying with the Approved Project Works Traffic Management Plans;
 - (C) complying with its obligations under this deed in respect of a road occupancy, including obtaining a ROL from the Transport Management Centre in accordance with the requirements of Appendix C.4 of the SWTC and submitting an application for a work permit in respect of the Motorway from the O&M Contractor;
 - (D) complying with the Western Harbour Tunnel – Rozelle Interchange Interface Deed; and
 - (E) agreeing to:
 - (aa) pay the relevant Lane Occupancy Fees; or
 - (bb) reimburse the Principal for the relevant costs payable by the Contractor pursuant to clause 11C.2,(as applicable); and
- (vi) clause 17.11(b),

the Principal must give the Contractor and its Related Parties, or procure that the Contractor and its Related Parties are given, such access to:

- (vii) the Rozelle Interchange Motorway Stratum where there is a Defect in the Rozelle Interchange Works;
- (viii) the WHT Southern Tunnel Works Site where there is a Defect in the WHT Southern Tunnel Works; and
- (ix) any other relevant area where there is a Defect in the Third Party Works,

during the permitted times stated in the ROLs and the Approved Project Works Traffic Management Plan or on reasonable notice as is necessary for the Contractor

to comply with its obligations under this clause 17 during the Defects Correction Period or with its obligations under any D&C Document.

- (b) Notwithstanding any other provision of this Deed, the Principal's obligations under clause 17.11(a) in respect of the Rozelle Interchange Motorway Stratum only apply until the Date of Completion.
- (c) Despite any ROL issued for any lane or shoulder closure, the Principal's Representative may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder.

17.12 Defects in D&C Phase Maintenance

- (a) D&C Phase Maintenance (Rozelle Interchange) has a Defects Correction Period which begins when the relevant D&C Phase Maintenance is performed and ends on the Date of Opening Completion of the Project Works.
- (b) D&C Phase Maintenance (WHT Southern Tunnel Works) has a Defects Correction Period which begins when the relevant D&C Phase Maintenance is performed and ends on the Date of Completion (WHT Southern Tunnel Works).

17.13 Role of the D&C Independent Certifier and WHT Independent Certifier

The Contractor and the Principal acknowledge and agree that:

- (a) the D&C Independent Certifier's role under this clause 17 is limited to any Defects that relate to the Contractor's Activities (Rozelle Interchange); and
- (b) the WHT Independent Certifier's role under this clause 17 is limited to any Defects that relate to the Contractor's Activities (WHT Southern Tunnel Works).

17A TRANSFER OF ROZELLE INTERCHANGE

17A.1 Rozelle Interchange Transfer Date

- (a) The Contractor must give the Principal (and, if required by the Principal, the M4-M5 Link Concessionaires):
 - (i) 6 months and 3 Business Days';
 - (ii) 3 months and 3 Business Days';
 - (iii) 1 month and 3 Business Days'; and
 - (iv) 1 week and 3 Business Days',prior notice of the estimated Rozelle Interchange Transfer Date.
- (b) The Contractor acknowledges and agrees that:
 - (i) subject to the express provisions of this deed, on and from the Rozelle Interchange Transfer Date, the Project Trustee will operate, maintain and repair the Rozelle Interchange; and
 - (ii) on the Rozelle Interchange Transfer Date, the Principal must grant the Asset Trustee the Rozelle Interchange Lease in accordance with the Project Deed.

- (c) On the Rozelle Interchange Transfer Date, to the extent not already transferred, the Contractor must transfer to the Principal or, if directed by the Principal, to the Project Trustee, ownership of all rights, title and interests in all relevant operational assets, plant and equipment as specified in the SWTC (Rozelle Interchange) that are required for the operations, maintenance and repair of the Rozelle Interchange as at the Rozelle Interchange Transfer Date, including all spares provided by the Contractor to the Principal as a condition precedent to Opening Completion.
- (d) On and from the Rozelle Interchange Transfer Date until the Date of Completion:
 - (i) the Contractor must indemnify the Indemnified Parties from and against any Claim against a Indemnified Party by the M4-M5 Link Concessionaires or any of the M4-M5 Link Concessionaires' Related Parties, in respect of:
 - (A) any injury to, or disease or death of, persons;
 - (B) the loss of, or destruction of or damage to, any real or personal property; or
 - (BA) without limiting clause 17A.1(d)(i)(B) and to the extent an Insured Liability, loss of use or access to any real or personal property (whether total or partial),

to the extent caused by, arising out of, or in any way in connection with:

 - (C) the Contractor's Activities, including the Project Works; or
 - (D) the use or occupation of the Motorway Stratum by the Contractor;
 - (ii) the Contractor must transfer all rights, title and ownership in all relevant operational assets, plant and equipment as specified in the SWTC (Rozelle Interchange) that are required for the operations, maintenance and repair of the Rozelle Interchange that come into existence and were not transferred to the Principal or, if directed by the Principal, to the Project Trustee, on the Rozelle Interchange Transfer Date in accordance with clause 17A.1(c); and
 - (iii) without limiting clause 17, the Contractor must diligently pursue the correction of all Defects in the Rozelle Interchange Works that the Contractor is aware of prior to the Date of Completion, whether or not the Principal notifies the Contractor of them.

17A.2 Collateral Warranty Deed

Italicised terms used in this clause 17A.2 have the meaning given to them in the form of the Collateral Warranty Deed set out in Part A of Exhibit O.

- (a) Within 10 Business Days after the Principal's written request, the Contractor must provide to the Principal:
 - (i) a Collateral Warranty Deed duly executed by the Contractor;
 - (ii) a Collateral Warranty Guarantee duly executed by each Contractor Guarantor; and
 - (iii) evidence satisfactory to the Principal (in its absolute discretion) that all stampings, registrations and filings required by Law, have been stamped,

registered or filed in form and substance satisfactory to the Principal (in its absolute discretion).

- (b) Prior to the Rozelle Interchange Transfer Date, the Contractor must not:
 - (i) enter into any agreement or arrangement which affects the operation or interpretation of; or
 - (ii) make or permit any amendment to, or replacement or waiver of, a provision of the Collateral Warranty Deed without the Principal's prior written consent.

- (c) The Contractor must, on the Date of Completion, notify the Principal of the total quantum of monetary claims made against the Contractor by the Principal, its Related Parties, its Related Bodies Corporate and the counterparties and beneficiaries to the Deed of Appointment of Environmental Representative (Rozelle Interchange) and the D&C Independent Certifier Deed which:
 - (i) arose out of or in connection with the performance of the Transferred Works; and
 - (ii) arose and was paid or otherwise satisfied by the Contractor, before the Date of Completion.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

17A.3 **IFC Drawings**

- (a) As a condition precedent to the Rozelle Interchange Transfer Date, the Contractor must deliver the Rozelle Interchange IFC Drawings to the Principal.
- (b) As a condition precedent to Completion (WHT Southern Tunnel Works), the Contractor must deliver the WHT Southern Tunnel Works IFC Drawings to the Principal.

17A.4 **Principal Retained Works**

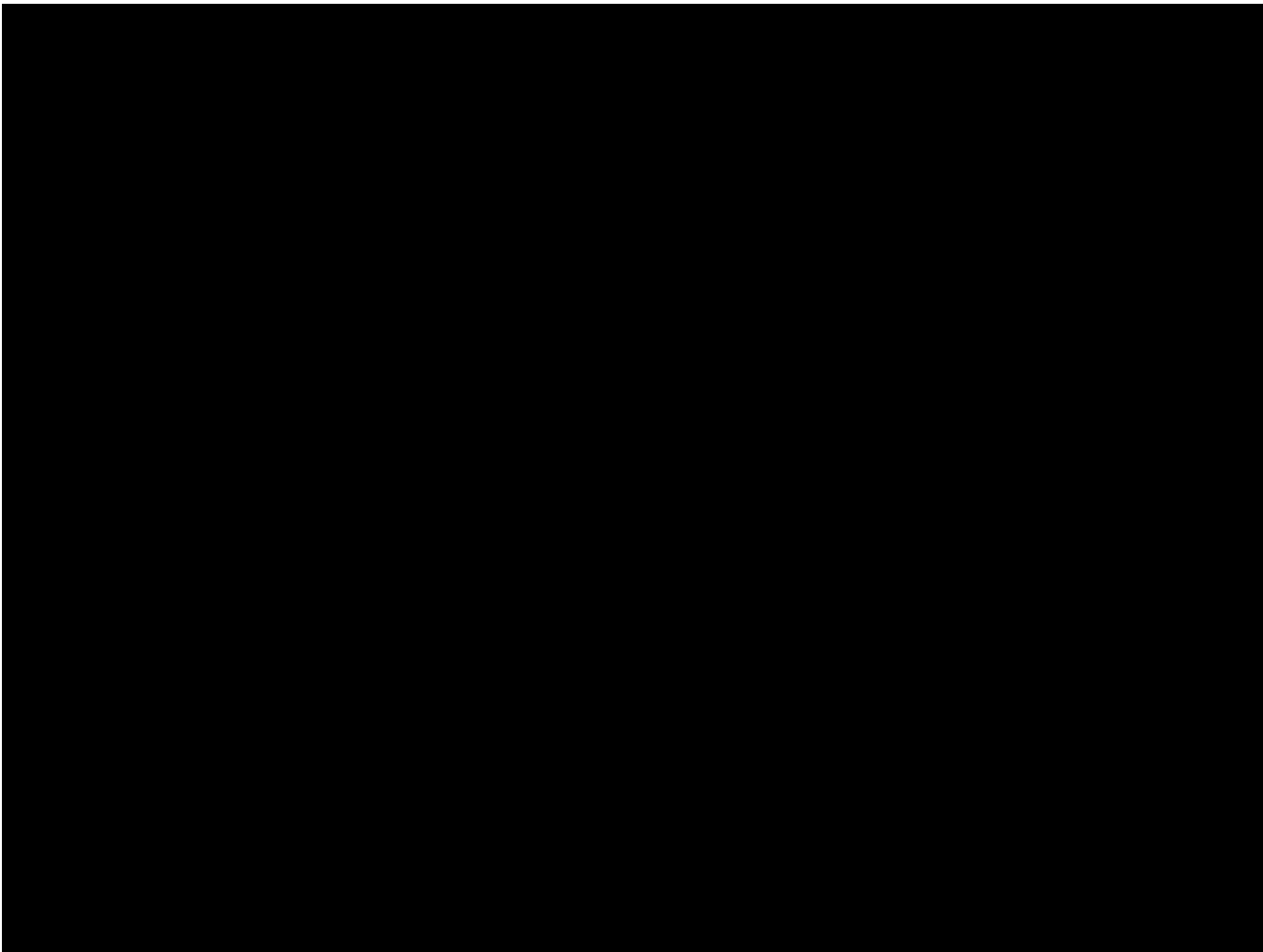
- (a) The Contractor acknowledges and agrees that the Principal and the M4-M5 Link Concessionaires may agree or determine changes to the Project Works (Rozelle Interchange) that will comprise the Principal Retained Works (Rozelle Interchange).
- (b) The Principal may at any time prior to the Release Date notify the Contractor:
 - (i) that there has been changes to the Project Works (Rozelle Interchange) that will comprise the Principal Retained Works (Rozelle Interchange); and
 - (ii) of the nature of those changes,and Schedule 42 is deemed to be amended to reflect those changes.

17A.5 **Principal release**

- (a) Subject to clause 17A.5(b), on and from the Release Date, the Principal releases and discharges the Contractor from any Claim by the Principal against the Contractor arising out of or in connection with this deed in respect of any loss, damage, cost, expense or Liability suffered or incurred by:
 - (i) the Principal; or
 - (ii) a Related Party of the Principal to the extent the benefit of such Claim is held on trust by the Principal under this deed,in connection with the Transferred Works, to the extent that the Contractor is liable to the M4-M5 Link Concessionaire under the Collateral Warranty Deed in respect of the same event or circumstance.
- (b) Clause 17A.5(a) does not:
 - (i) apply in respect of any Accrued Liability (Rozelle Interchange);
 - (ii) apply to any Claim made against the Principal by a third party excluding:
 - (A) the Principal's Related Parties and the WestConnex Project Stakeholders; or
 - (B) the Other Project Stakeholders to the extent such Claim arises in contract or is for breach of contract and would not have arisen in the absence of such contract; or
 - (iii) prevent the Principal from raising any defence in relation to a Claim brought against it by the Contractor.

17A.6 **Connections to the Rozelle Interchange**

- (a) As soon as practicable and in any event within 8 Business Days of the Rozelle Interchange Transfer Date, the Contractor must prepare and issue to the Principal a revised version of Schedule 14 (**Updated Rozelle Interchange Connections**) in consultation with the Principal that is updated to specify the connections, connectivity and associated traffic movements to the Rozelle Interchange documented in the Rozelle Interchange IFC Drawings.
- (b) If requested to do so by the Principal, the Contractor must provide reasonable assistance to the Principal dealing with any dispute over whether the Updated Rozelle Interchange Connections correctly reflect the connections, connectivity and associated traffic movements to the Rozelle Interchange documented in the Rozelle Interchange IFC Drawings, including by attending any relevant meetings and providing any information available to the Contractor.



18. **ROZELLE INTERCHANGE LEASE**

18.1 **Rozelle Interchange Lease**

- (a) The Contractor acknowledges and agrees that the Rozelle Interchange Lease cannot be registered under the *Real Property Act 1900* (NSW) in its present form.
- (b) The Contractor must procure surveys and other documents in accordance with the SWTC (Rozelle Interchange).

- (c) The Contractor:
 - (i) confirms that it is aware of the obligations of the Asset Trustee and the rights of the Principal under the Rozelle Interchange Lease; and
 - (ii) represents, warrants and undertakes that it will:
 - (A) perform its obligations under this deed at all times in a manner which will enable the Asset Trustee to fully perform its obligations under the Rozelle Interchange Lease;
 - (B) not do anything which may cause the Asset Trustee to be in breach of its obligations under the Rozelle Interchange Lease; and
 - (C) permit the Principal to exercise its rights under the Rozelle Interchange Lease.

18.2 Easements

The Contractor acknowledges and agrees that the Principal reserves the right at all times to:

- (a) create Easements benefiting or burdening:
 - (i) the Rozelle Interchange Motorway Stratum or any other land in connection with the Rozelle Interchange (including Additional Land); and
 - (ii) the Construction Site or any Additional Land,
 and to release, vary, modify or give waivers of such Easements; and
- (b) dedicate land of which it is the owner of the fee simple estate for road, rail and other purposes,

upon such terms and conditions as the Principal sees fit.

Where the Contractor considers that an Easement which has been created, released, varied, modified or waived in accordance with clause 18.2(a) after the date of this deed (**Relevant Easement**) will have an impact on the Contractor's ability to comply with its obligations under this deed, the Contractor must promptly notify the Principal and the Principal must, within 5 Business Days of receipt of the Contractor's notice, direct a Change in accordance with clause 14.1 requiring the Contractor to modify the Project Works or the Contractor's Activities to accommodate the Relevant Easement.

19. OPERATION, MAINTENANCE AND REPAIR

19.1 Maintenance during construction

- (a) The Contractor must carry out all maintenance work specified in the SWTC (including all related documentation, asset condition assessment and reporting) on all roads within the Construction Site and all relevant completed parts of the Project Works, commencing from the date that the Contractor is granted access to the relevant part of the Construction Site in accordance with the Site Access Schedule until the Date of Opening Completion of the Rozelle Interchange Works in respect of the Rozelle Interchange Works and until the Date of Completion (WHT Southern Tunnel Works) in respect of the WHT Southern Tunnel Works. The Contractor acknowledges that other entities will maintain roads prior to this date and the Contractor will cooperate

and coordinate with such entities and will, subject to clause 9.7, allow them to perform such work.

- (b) Various types of maintenance activities, measures, intervention levels and response times are described in the SWTC. In addition to this information which describes the most common and minimum work to be carried out, the Contractor must undertake other maintenance activities:
 - (i) reasonably expected to provide for safe and uninterrupted passage of road users; and
 - (ii) required due to the Project Works and as a consequence of the Contractor's Activities.
- (c) The Contractor must carry out any maintenance work that is required on roads and paths outside the Construction Site which results from the Project Works, the Temporary Works or the Contractor's Activities.
- (d) The Contractor must provide its maintenance management procedures to the Principal's Representative within 60 days of the date that it is given access to the roads within the Construction Site pursuant to the Site Access Schedule.

19.2 O&M Manuals

- (a) As a condition precedent to:
 - (i) in respect of the Project Works (Rozelle Interchange), Opening Completion; and
 - (ii) in respect of the WHT Southern Tunnel Works, Completion (WHT Southern Tunnel Works),

the Contractor must develop the O&M Manuals in accordance with the requirements of this deed and the relevant Contractor Documentation Schedule and in consultation with the Principal.
- (b) The Contractor must provide the Principal with drafts of the O&M Manuals. The Contractor acknowledges and agrees that the Principal may provide a copy of any draft of the O&M Manuals for the Rozelle Interchange Works and the Third Party Works to the M4-M5 Link Concessionaires and the O&M Manuals for the WHT Southern Tunnel Works to the WHT Contractor and the [REDACTED]
- (c) The O&M Manuals must:
 - (i) incorporate all Project Plans to the extent they are relevant to operation, maintenance, repair and reinstatement of the Rozelle Interchange and the maintenance, repair and reinstatement of the WHT Southern Tunnel Works; and
 - (ii) contain the contents required by the SWTC.
- (d) The Principal owes no duty to the Contractor to review the O&M Manuals or any draft submitted by the Contractor for errors, omissions or compliance with this deed.
- (e) The Contractor acknowledges and agrees that:

- (i) the receipt or review of, or any consultation or comments regarding, any O&M Manuals by a Relevant Party is solely for the purpose of monitoring the progress of the O&M Manuals;
 - (ii) no Relevant Party assumes a duty or owes a duty to the Contractor to review the O&M Manuals for errors, omissions or compliance with the requirements of the SWTC, or to consult with the Contractor, or make any comments regarding any O&M Manual; and
 - (iii) no review of, comments upon, or notice given in respect of the O&M Manuals or any draft or any other act or omission of a Relevant Party in respect of the O&M Manuals or any draft will lessen or otherwise affect:
 - (A) the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (B) a Relevant Party's rights against the Contractor, whether under this deed or otherwise according to Law.
- (f) The Contractor warrants that:
- (i) on the Rozelle Interchange Transfer Date, the O&M Manuals for the Rozelle Interchange Works and the Third Party Works, will be fit for their intended purposes as ascertainable from the SWTC (Rozelle Interchange); and
 - (ii) on the Date of Completion (WHT Southern Tunnel Works), the O&M Manuals for the WHT Southern Tunnel Works, will be fit for their intended purposes as ascertainable from the SWTC (Rozelle Interchange).

19.3 **Cableways**

- (a) The Contractor acknowledges that the Rozelle Interchange Works must include cableways for the accommodation of the Principal's cables in accordance with section 13 of Appendix B.12 of the SWTC.
- (b) The Contractor must not use or permit the cableways to be used other than as directed by the Principal.
- (c) The Principal and any person authorised by the Principal may enter the Maintenance Site, the Rozelle Interchange Works Site, the WestConnex Motorway Control Centre and any Third Party Works during business hours or on reasonable notice (except in the case of an emergency when no notice will be required) for the purposes of installing, maintaining, repairing and removing cables and associated equipment in or from the cableways, provided they use their best endeavours to minimise any disruption to the Contractor's operations and comply with the Contractor's reasonable occupational health and safety requirements.

19.4 **O&M Contractor and WHT Asset Manager**

The Contractor acknowledges and agrees that:

- (a) irrespective of the identity of the O&M Contractor or the WHT Asset Manager, except as expressly set out in this deed:
 - (i) after the Date of Opening Completion, the Contractor will not have any right to bring any Claim against the Principal arising out of or in connection with

the impact of the activities of the O&M Contractor on the Contractor's Activities (Rozelle Interchange); and

- (ii) after the Date of Opening Completion (WHT), the Contractor will not have any right to bring any Claim against the Principal arising out of or in connection with the impact of the activities of the WHT Asset Manager on the Contractor's Activities (WHT Southern Tunnel Works);
- (b) after the Date of Opening Completion, the O&M Contractor will carry out and be responsible for the maintenance and operation of the Rozelle Interchange Works; and
- (c) after the Date of Opening Completion (WHT), the WHT Asset Manager will carry out and be responsible for the maintenance and operation of the WHT Southern Tunnel Works; and
- (d) nothing in this clause 19.4 limits or otherwise affects the Contractor's obligation to achieve WHT Interface Milestone Completion of each WHT Interface Milestone by the relevant Date for WHT Interface Milestone Completion or Opening Completion (as applicable), Opening Completion by the Date for Opening Completion, Completion by the Date for Completion, Completion (WHT Southern Tunnel Works) by the Date for Completion (WHT Southern Tunnel Works) or Final Completion by the Date for Final Completion in accordance with this deed.

20. **REPORTING AND NOTICES**

20.1 **Accounting and financial reporting**

- (a) Without limiting clause 29A, the Contractor must keep proper books of account and all other records relating to the Contractor's Activities.
- (b) The Contractor must have its accounts relating to the Contractor's Activities audited annually.
- (c) The Contractor must give to the Principal:
 - (i) copies of all documents or information given to or received by it from the Australian Securities and Investments Commission or ASX Limited (if applicable) which relate to Contractor's Activities promptly after the information is first given or received; and
 - (ii) such other information relating to the Contractor's Activities as the Principal may reasonably require from time to time.

20.2 **Copies of notices**

Each party must provide to the other party as soon as practicable certified copies of all material notices received by it under the D&C Documents from any of its co-contracting parties in order that the other party is kept informed at all times of any material developments which could have a serious effect upon a party's rights pursuant to any of the D&C Documents.

20.3 **Advice regarding rights**

Each party undertakes to advise the other party as soon as practicable after an event has occurred which to a party's actual knowledge could in any way materially prejudice the

other party's rights under this deed by reason of the legitimate exercise of significant rights available to third parties arising from the D&C Documents.

21. PAYMENT

21.1 General

- (a) Subject to the terms of this deed:
- (i) the Contractor is entitled to be paid the D&C Deed Sum (Rozelle Interchange), the D&C Deed Sum (WHT Southern Tunnel Works) and the Initial Payment in accordance with clause 21.1A; and
 - (ii) in consideration of delivery of the Project Works, the Temporary Works and the Post Completion Activities that comply with this deed, the Principal must pay the Contractor:
 - (A) the D&C Deed Sum (Rozelle Interchange) and the D&C Deed Sum (WHT Southern Tunnel Works) in accordance with clause 21.2 to clause 21.12 and the D&C Payment Schedule; and
 - (B) any other amounts which are payable by the Principal to the Contractor under this deed.
- (b) The Contractor acknowledges and agrees that, subject to the terms of this deed:
- (i) the D&C Deed Sum is:
 - (A) a fixed lump sum that includes the Contractor's profits and overheads and all costs and expenses that the Contractor may incur in carrying out and completing the Project Works, the Temporary Works and performing its other obligations under this deed; and
 - (B) not subject to adjustment or rise and fall; and
 - (ii) the rates set out in Part B are not subject to adjustment or rise and fall.
- (c) The Contractor acknowledges and agrees that it may only make:
- (i) one Payment Claim per month in respect of the D&C Deed Sum (Rozelle Interchange); and
 - (ii) one Payment Claim per month in respect of the D&C Deed Sum (WHT Southern Tunnel Works) and any Post Completion Activities carried out,
- which are to be provided separately and in accordance with this clause 21.

21.1A Initial Payment

- (a) The Contractor may, no earlier than the earlier of the date that is 5 Business Days after the date of this deed and 24 December 2018, and no later than the date it submits its first Payment Claim in accordance with clause 21.2, give the Principal a valid tax invoice (as defined in the GST law) for a single advance payment on account of the D&C Deed Sum (Rozelle Interchange) (**Initial Payment**), provided all of the following requirements have been satisfied:

- (i) the Initial Payment is no more than ■■■% of the D&C Deed Sum (Rozelle Interchange) at execution of this deed;
 - (ii) no more than one-third of the Initial Payment will be retained by the Contractor and the balance of the Initial Payment has become payable by the Contractor to its Subcontractors;
 - (iii) the Contractor has given the Principal written details of the portions of the Initial Payment which have become payable to its Subcontractors and the due dates for payment; and
 - (iv) the Contractor has established to the Principal's reasonable satisfaction that the Initial Payment will be used for the purposes of performing the Contractor's Activities (Rozelle Interchange).
- (b) Subject to this clause 21.1A(b), the Principal must pay the Initial Payment to the Contractor within 10 Business Days after the Principal has received an invoice for the Initial Payment in compliance with clause 21.1A(a), provided that on or before the Business Day before the Initial Payment is due:
- (i) all conditions set out in clauses 21.1A(a)(i) to (iv) have been satisfied;
 - (ii) the Principal has received the Security Bonds required to be provided by the Contractor under clause 10.1(a)(iii);
 - (iii) D&C Close has been achieved; and
 - (iv) to the extent any Conditions Precedent were waived to achieve D&C Close, those Conditions Precedent have been satisfied.

If the conditions set out in clauses 21.1A(b)(i) to (iv) are not satisfied on or before the Business Day before the Initial Payment is due, no Initial Payment is payable and the Principal may give the Contractor written notice which states that.

- (c) Notwithstanding any other provision of this deed, any Initial Payment paid to the Contractor will be progressively deducted from the instalment amounts which would otherwise be payable to the Contractor under this deed in respect of the D&C Deed Sum (Rozelle Interchange). Each instalment amount will be reduced by ■■■% until the Initial Payment paid has been fully deducted.
- (d) If this deed is terminated for any reason, the Contractor must repay to the Principal any portion of the Initial Payment paid to the Contractor which, at the date of termination, has not been deducted from instalment amounts in accordance with clause 21.1A(c). Such portion of the Initial Payment will be a debt due and payable to the Principal 10 Business Days after written demand by the Principal.
- (e) If the Principal gives the Contractor notice in accordance with clause 21.1A(b) that no Initial Payment is payable, the Contractor may, at any time before the date which is 10 Business Days after the Contractor has satisfied the conditions set out in clauses 21.1A(b)(i) to (iv), give the Principal a valid tax invoice (as defined in the GST law) for the Initial Payment and clauses 21.1A(b) to 21.1A(e) will re-apply.

21.2 Payment Claims for Project Works, Temporary Works and Post Completion Activities

- (a) Subject to the Contractor complying with this clause 21.2, the Contractor may make a Payment Claim on each Reference Date for an instalment amount in respect of each of the D&C Deed Sum (Rozelle Interchange) and the D&C Deed Sum (WHT Southern Tunnel Works) calculated in accordance with the relevant section of the D&C Payment Schedule and any other amounts the Contractor is entitled to under this deed.
- (aa) Each Payment Claim in respect of:
 - (i) the D&C Deed Sum (Rozelle Interchange) will be calculated by reference to the Contractor's Activities (Rozelle Interchange) that have been completed up to and including the date of Statutory Declaration (Employees and Subcontractors) and, for Key Plant and Equipment (Rozelle Interchange) and unfixed or offsite Materials to be incorporated into the Project Works (Rozelle Interchange), the Temporary Works (Rozelle Interchange) or the D&C Phase Maintenance (Rozelle Interchange), in accordance with clauses 21.13 and 21.14 respectively; and
 - (ii) the D&C Deed Sum (WHT Southern Tunnel Works) will be calculated by reference to the Contractor's Activities (WHT Southern Tunnel Works) that have been completed up to and including the date of the Statutory Declaration (Employees and Subcontractors) (including any amounts payable under clause 16A.1(d)) and, for Key Plant and Equipment (WHT Southern Tunnel Works) and unfixed or offsite Materials to be incorporated into the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) or the D&C Phase Maintenance (WHT Southern Tunnel Works), in accordance with clauses 21.13 and 21.14 respectively.
- (b) For the purposes of clause 21.2(a), a Reference Date occurs on the 28th day of each month.
- (c) The Contractor agrees that the amount of a Payment Claim (for the purposes of section 9 of the Security of Payment Act and this clause 21.2) will be calculated in accordance with the terms of this deed (including the relevant section of the D&C Payment Schedule) and by reference to the relevant Project Works, Temporary Works and Post Completion Activities (if relevant to the Payment Claim) which have been:
 - (i) certified by the Contractor in the form of Schedule 32C; and
 - (ii) completed up to and including the date on which the Statutory Declaration (Employees and Subcontractors) was executed.
- (d) If the 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) the D&C Independent Certifier (for a Payment Claim in respect of the D&C Deed Sum (Rozelle Interchange)) or the Principal's Representative (for a Payment Claim in respect of the D&C Deed Sum (WHT Southern Tunnel Works)) will not be obliged to give the Contractor, on behalf of the Principal,

- a Payment Statement earlier than if the Payment Claim had been submitted on the Reference Date; and
- (iii) the Principal 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.
- (e) Each Payment Claim in respect of the D&C Deed Sum (Rozelle Interchange) made by the Contractor under this clause 21 must:
- (i) be submitted to the D&C Independent Certifier (with a copy to the Principal); and
 - (ii) be in the form required by Schedule 32B, and include particulars of the payment claimed by the Contractor in respect of the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange) or otherwise claimed pursuant to this deed, which may not exceed the Maximum Payment Claim Amount, and set out or provide sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (A) to enable the D&C Independent Certifier to determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this deed; and
 - (B) including any such documentation or information as the D&C Independent Certifier may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific Payment Claim in respect of the D&C Deed Sum (Rozelle Interchange) or all such Payment Claims generally.
- (ea) Each Payment Claim in respect of the D&C Deed Sum (WHT Southern Tunnel Works) made by the Contractor under this clause 21 must:
- (i) be submitted to the Principal's Representative; and
 - (ii) be in the form required by Schedule 32B, and include particulars of the payment claimed by the Contractor in respect of the WHT Southern Tunnel Works Temporary Works (WHT Southern Tunnel Works) or otherwise claimed pursuant to this deed (including any amounts claimed pursuant to clause 16A.1(d)), which may not exceed the Maximum Payment Claim Amount, and set out or provide sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (A) to enable the Principal's Representative to determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this deed; and
 - (B) including any such documentation or information as the Principal's Representative may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific Payment Claim in respect of the D&C Deed Sum (WHT Southern Tunnel Works) or all such Payment Claims generally.
- (f) The Contractor must not submit any further Payment Claims after the full amount of the D&C Deed Sum (Rozelle Interchange) or D&C Deed Sum (WHT Southern Tunnel Works) (as applicable to the relevant Payment Claim) has been paid except in respect

of other amounts which may be payable to the Contractor under the terms of this deed.

21.2A Provisional Sum Work

- (a) The Contractor must:
 - (i) carry out the Provisional Sum Work (Utilities) except to the extent the Principal requires the Contractor to omit the Provisional Sum Work (Utilities) as a Change in accordance with clause 14.1(a); and
 - (ii) only if directed by the Principal in writing, carry out the Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant)..
- (b) In relation to the Provisional Sum Work (Utilities), the Contractor must promptly give the Principal a copy of any estimate or quote received by it from the owner, operator or controller of a Utility Service for any Provisional Sum Work (Utilities).
- (c) The Principal must pay to the Contractor:
 - (i) the actual costs incurred by the Contractor and payable to the owner, operator or controller of a Utility Service for Provisional Sum Work (Utilities). The Contractor must take all reasonable steps to mitigate such costs; and
 - (ii) in respect of the Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant) if directed by the Principal pursuant to clause 21.2A(a)(ii), the direct costs and direct on-site overheads incurred by the Contractor for the design, supply, commissioning and operation of the plant in carrying out the Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant).
- (d) The Contractor must provide evidence of any costs payable under clause 21.2A(c) to the reasonable satisfaction of the D&C Independent Certifier or the Principal's Representative (as relevant) with any Payment Claim which includes them.
- (e) The D&C Deed Sum (Rozelle Interchange) or the D&C Deed Sum (WHT Southern Tunnel Works) (as relevant) and the relevant section of the D&C Payment Schedule will be adjusted to reflect the difference between:
 - (i) the applicable amount allowed for an item of Provisional Sum Work in the D&C Payment Schedule; and
 - (ii) the costs payable to the Contractor under clause 21.2A(c).
- (f) The Contractor is not entitled to any off-site overheads incurred in carrying out Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant) or any margin on costs payable to it under clause 21.2A(c) and no margin and, in the case of Provisional Sum Work (Stage 2 Enhanced Water Treatment Plant), off-site overheads will be taken into account when adjusting the relevant D&C Deed Sum and D&C Payment Schedule under clause 21.2A(e).
- (g) Where the Principal omits an item of the Provisional Sum Work (Utilities) as a Change pursuant to clause 21.2A(a)(i) prior to commencement of the item of the Provisional Sum Work (Utilities) (but not after that):
 - (i) the D&C Deed Sum (Rozelle Interchange) or the D&C Deed Sum (WHT Southern Tunnel Works) (as relevant) will be reduced by the amount allowed

for the item of the Provisional Sum Work (Utilities) in the D&C Payment Schedule; and

- (ii) the Principal may either carry out the item of Provisional Sum Work itself (Utilities) or have another person or persons carry out the item of the Provisional Sum Work (Utilities).

21.3 Payment Statements for Project Works, Temporary Works and Post Completion Activities

(a) Within 10 Business Days:

- (i) after receiving a Payment Claim that is submitted in accordance with clause 21.2 in respect of the D&C Deed Sum (Rozelle Interchange), the D&C Independent Certifier will give the Contractor (with a copy to the Principal) a Payment Statement certifying:

- (A) the Payment Claim to which it relates;

- (B) the value of work completed in accordance with this deed by the Contractor in respect of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange), calculated in accordance with the D&C Payment Schedule and this clause 21. The Payment Claim must clearly identify and differentiate between the value of work claimed for:

- (aa) the Project Works (Rozelle Interchange); and

- (bb) the Temporary Works (Rozelle Interchange);

- (C) all amounts previously paid to the Contractor by the Principal under this deed in respect of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange);

- (D) any amounts which the Principal proposes to, at the time, retain, deduct, withhold or set-off (in accordance with any right to retain, deduct, withhold or set-off which the Principal may have pursuant to clause 21.17 or otherwise at Law in relation to the Contractor's Activities (Rozelle Interchange)) against any moneys otherwise due to the Contractor;

- (E) the aggregate of all amounts (if any) of the payment proposed to be made to the Contractor in respect of the D&C Deed Sum (Rozelle Interchange); and

- (F) if the amount in clause 21.3(a)(i)(E) is less than the instalment payment amount claimed in the Payment Claim:

- (aa) the reason why the amount in clause 21.3(a)(i)(E) is less than the amount claimed in the Payment Claim; and

- (bb) if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off; or

- (ii) after receiving a Payment Claim that is submitted in accordance with clause 21.2 in respect of the D&C Deed Sum (WHT Southern Tunnel Works), the Principal's Representative, on behalf of the Principal, will issue to the Contractor a Payment Statement stating:
 - (A) the Payment Claim to which it relates;
 - (B) the value of work completed in accordance with this deed by the Contractor in respect of the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) and the Post Completion Activities, calculated in accordance with the D&C Payment Schedule and this clause 21. The Payment Claim must clearly identify and differentiate between the value of work claimed for:
 - (aa) the WHT Southern Tunnel Works;
 - (bb) the Temporary Works (WHT Southern Tunnel Works); and
 - (cc) the Post Completion Activities;
 - (C) all amounts previously paid to the Contractor by the Principal under this deed in respect of the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) and the Post Completion Activities;
 - (D) any amounts which the Principal proposes to, at the time, retain, deduct, withhold or set-off (in accordance with any right to retain, deduct, withhold or set-off which the Principal may have pursuant to clause 21.17 or otherwise at Law in relation to the Contractor's Activities (WHT Southern Tunnel Works)) against any moneys otherwise due to the Contractor;
 - (E) the aggregate of all amounts (if any) of the payment proposed to be made to the Contractor in respect of the D&C Deed Sum (WHT Southern Tunnel Works); and
 - (F) if the amount in clause 21.3(a)(i)(E) is less than the instalment payment amount claimed in the Payment Claim:
 - (cc) the reason why the amount in clause 21.3(a)(i)(E) is less than the amount claimed in the Payment Claim; and
 - (dd) if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (b) Any failure by the D&C Independent Certifier or the Principal's Representative (as relevant) 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 amount in a Payment Statement:
 - (i) in respect of a Payment Claim for the D&C Deed Sum (Rozelle Interchange), will not exceed the sum of:

- (A) the cumulative amount ascertained in accordance with the D&C Payment Schedule for all Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange) completed; and
 - (B) the value of the work performed (nor be greater than the amount ascertained in accordance with the D&C Payment Schedule ignoring amounts referred to in clause 21.1(a)(ii)(B)), as assessed by the D&C Independent Certifier, of any partially completed Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange); and
- (ii) in respect of a Payment Claim for the D&C Deed Sum (WHT Southern Tunnel Works), will not exceed the sum of:
- (A) the cumulative amount ascertained in accordance with the D&C Payment Schedule for all WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities completed; and
 - (B) the value of the work performed (nor be greater than the amount ascertained in accordance with the D&C Payment Schedule ignoring amounts referred to in clause 21.1(a)(ii)(B)), as stated by the Principal's Representative, of any partially completed WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities completed.
- (d) The Contractor agrees that the D&C Independent Certifier (in respect of a Payment Claim for the D&C Deed Sum (Rozelle Interchange)) or the Principal's Representative (in respect of a Payment Claim for the D&C Deed Sum (WHT Southern Tunnel Works), on behalf of the Principal, may at any time (but is not obliged to) issue a Payment Statement to the Contractor as if a Payment Claim was made on the 28th day of a month.

21.4 Tax invoice for the Project Works, Temporary Works and/or Post Completion Activities

Within 1 Business Day after receipt of:

- (a) a Payment Statement issued under clause 21.3(a)(i), the Contractor must provide to the Principal a valid tax invoice (as defined in the GST law) for the Payment Amount for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange) (except in relation to a supply for which the Principal will issue a recipient created tax invoice (**RCTI**) to the Contractor in accordance with clause 24.2(h)); and
- (b) a Payment Statement issued under clause 21.3(a)(ii), the Contractor must provide to the Principal a valid tax invoice (as defined in the GST law) for the Payment Amount for the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) and the Post Completion Activities (except in relation to a supply for which the Principal will issue a recipient created tax invoice (**RCTI**) to the Contractor in accordance with clause 24.2(h)).

21.5 Payment of the instalment Payment Amount

The Principal must pay the instalment Payment Amount for the relevant Project Works, Temporary Works and Post Completion Activities (if applicable) to the Contractor within 15

Business Days after the day on which the Contractor made the Payment Claim to which the instalment Payment Amount relates.

21.6 Final Payment Claim for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange)

- (a) Within 20 Business Days of the last of the Defects Correction Periods for the Project Works to expire, the Contractor must lodge with the D&C Independent Certifier a final Payment Claim titled 'final payment claim (Rozelle Interchange)'. The final Payment Claim must include the details of all sums due to the Contractor in respect of the Contractor's Activities (Rozelle Interchange) and where not capable of precise calculation the basis and a reasonable estimate of any claims and such requirements of a progress claim under clause 21.2 as are appropriate.
- (b) 20 Business Days after expiry of the last of the Defects Correction Periods for the Project Works (Rozelle Interchange), other than in respect of the final Payment Claim referred to in paragraph (a) above, the Contractor will have no Claim, and must not make any Claim, against the Principal, the M4-M5 Link Concessionaires or the D&C Independent Certifier, on any basis whatsoever (whether under contract, statute or in negligence or otherwise) arising out of, or in connection with the Project Works (Rozelle Interchange) or Temporary Works (Rozelle Interchange). However, this release shall not operate to prevent the Contractor from defending any Claim made by the Principal, the M4-M5 Link Concessionaires or the D&C Independent Certifier against the Contractor.

21.6A Final Payment Claim for the WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities

- (a) Within 20 Business Days of the last of the Defects Correction Periods for the WHT Southern Tunnel Works, the Contractor must lodge with the Principal's Representative a final Payment Claim titled 'final payment claim (WHT Southern Tunnel Works)'. The final Payment Claim must include the details of all sums due to the Contractor in respect of the Contractor's Activities (WHT Southern Tunnel Works) and where not capable of precise calculation the basis and a reasonable estimate of any claims and such requirements of a progress claim under clause 21.2 as are appropriate.
- (b) 20 Business Days after expiry of the last of the Defects Correction Periods for the WHT Southern Tunnel Works, other than in respect of the final Payment Claim referred to in paragraph (a) above, the Contractor will have no Claim, and must not make any Claim, against the Principal, on any basis whatsoever (whether under contract, statute or in negligence or otherwise) arising out of, or in connection with the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) or the Post Completion Activities. However, this release shall not operate to prevent the Contractor from defending any Claim made by the Principal, the [REDACTED] or the WHT Independent Certifier against the Contractor.

21.7 Final Payment Statement for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange)

On the occurrence of either:

- (a) the expiration of 10 Business Days after receipt of the Contractor's final Payment Claim under clause 21.6(a); or

- (b) if the Contractor does not give the D&C Independent Certifier a final Payment Claim within 20 Business Days after expiry of the last of the Defects Correction Periods referred to in clause 21.6(a), when the Contractor has fulfilled all its other obligations under this deed as they relate to the Contractor's Activities (Rozelle Interchange) to the satisfaction of the D&C Independent Certifier,

the D&C Independent Certifier must issue to the Contractor, on behalf of the Principal, a certificate titled Final Payment Statement (Rozelle Interchange), which sets out all of the details referred to in clause 21.3, and states the amount (if any) which is finally due from the Principal to the Contractor under this deed in respect of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange). The D&C Independent Certifier must provide the Principal with a copy of the Final Payment Statement when it is issued.

21.7A Final Payment Claim for the WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities

On the occurrence of either:

- (a) the expiration of 10 Business Days after receipt of the Contractor's final Payment Claim under clause 21.6A(a); or
- (b) if the Contractor does not give the Principal's Representative a final Payment Claim within 20 Business Days after expiry of the last of the Defects Correction Periods referred to in clause 21.6A(a), when the Contractor has fulfilled all its other obligations under this deed as they relate to the Contractor's Activities (WHT Southern Tunnel Works) to the satisfaction of the Principal's Representative,

the Principal's Representative must issue to the Contractor, on behalf of the Principal, a certificate titled Final Payment Statement (WHT Southern Tunnel Works), which sets out all of the details referred to in clause 21.3, and states the amount (if any) which is finally due from the Principal to the Contractor under this deed in respect of the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) and the Post Completion Activities.

21.8 Final tax invoices

- (a) Within 1 Business Day after receipt of the Final Payment Statement referred to in clause 21.7, the Contractor must provide the Principal a valid tax invoice (as defined in the GST law) for the amount for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange) included in such Final Payment Statement (except in relation to a supply for which the Principal will issue a RCTI to the Contractor in accordance with clause 24.2(h)).
- (b) Within 1 Business Day after receipt of the Final Payment Statement referred to in clause 21.7A, the Contractor must provide the Principal a valid tax invoice (as defined in the GST law) for the amount for the WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities included in such Final Payment Statement (except in relation to a supply for which the Principal will issue a RCTI to the Contractor in accordance with clause 24.2(h)).

21.9 Final payments

Within 15 Business Days after receipt of:

- (a) the Contractor's final Payment Claim referred to in clause 21.7, the Principal must pay the Contractor the amount for the D&C Deed Sum (Rozelle Interchange); and stated in such Final Payment Statement.
- (b) the Contractor's final Payment Claim referred to in clause 21.7A, the Principal must pay the Contractor the amount for the D&C Deed Sum (WHT Southern Tunnel Works) stated in such Final Payment Statement.

21.10 Net amount due from the Contractor to the Principal

Where a Payment Statement states that a net amount is due from the Contractor to the Principal, the Contractor must (at the Principal's election):

- (a) pay that amount to the Principal within 16 Business Days of being requested by the Principal's Representative to do so; or
- (b) otherwise carry forward the amount and set it off against the next Payment Claim.

21.11 Payment is not acceptance of the Project Works, Temporary Works or Post Completion Activities

Any Payment Statement issued under clause 21.3 or payment made under clause 21.5 or 21.9 is not:

- (a) evidence of the value of work or evidence that the work has been satisfactorily carried out in accordance with the D&C Documents;
 - (b) acceptance or approval by the Principal, the Principal's Representative, the D&C Independent Certifier or the WHT Independent Certifier of the Contractor's performance or compliance with the D&C Documents; or
 - (c) an admission of liability by the Principal,
- and is made on account only.

21.12 Correction of Payment Statements

The D&C Independent Certifier and the Principal's Representative (as relevant) may in any Payment Statement correct any previous Payment Statement issued by the D&C Independent Certifier or the Principal's Representative (as applicable).

21.13 Payment for Key Plant and Equipment

- (a) The Contractor is not entitled to claim payment for any Key Plant and Equipment except as permitted under this clause 21.13.
- (b) The Contractor is entitled to claim payment for Key Plant and Equipment only once the following conditions precedent have been satisfied:
 - (i) if title in the Key Plant and Equipment:
 - (A) is held by the Contractor, the Contractor has granted a separate first ranking Security Interest over the relevant item of Key Plant and Equipment in favour of the Principal and on terms reasonably required by the Principal; or

- (B) is held by a third party, the Contractor has provided an unconditional undertaking:
 - (aa) in the form set out in Schedule 31;
 - (bb) that complies with the requirements of clause 10.1(c); and
 - (cc) for an amount equal to the value of the relevant item of Key Plant and Equipment;
- (ii) the Contractor has paid, or is legally obliged to pay, for the relevant items of Key Plant and Equipment; and
- (iii) the Contractor has done everything required by the Principal under clause 21.13(f).
- (c) The Contractor acknowledges and agrees that each Security Interest or unconditional undertaking to be provided under clause 21.13(b)(i) of this deed will secure the Contractor's obligations under this deed in respect of the relevant item of Key Plant and Equipment.
- (d) Promptly after:
 - (i) title in the relevant Key Plant and Equipment is transferred to the Principal and the Contractor has delivered possession of the relevant Key Plant and Equipment to the Principal (or its nominee); or
 - (ii) the Principal receives a notice from the Contractor advising that an item of Key Plant and Equipment is no longer required and will not further be used by the Contractor in carrying out the Contractor's Activities and the Principal's Representative is satisfied (acting reasonably) that the item of Key Plant and Equipment is no longer required and will not further be used by the Contractor in carrying out the Contractor's Activities,

the Principal must:

 - (iii) if clause 21.13(b)(i)(A) applies, release the relevant Security Interest or, if clause 21.13(b)(i)(B) applies, return the relevant unconditional undertaking in relation to that item of Key Plant and Equipment; and
 - (iv) take all steps as are required in order to remove, from the PPS Register, any registration(s) by the Principal of the Security Interest(s) provided for by this clause 21.13 in respect of that item.
- (e) The Contractor warrants that:
 - (i) there are no encumbrances over the Key Plant and Equipment; and
 - (ii) it will not create, purport to or attempt to create, or permit to exist any encumbrance over the Key Plant and Equipment.

These warranties are given by the Contractor at the time that the Contractor grants a Security Interest over each item of Key Plant and Equipment in accordance with clause 21.13(b)(i)(A) and will be repeated each day thereafter until the Security Interests are released in accordance with clause 21.13(d)(iii).

For the purpose of the warranties in this clause 21.13(e), the Security Interest(s) in favour of the Principal created by this clause 21.13 will be deemed not to be an encumbrance.

- (f) The Contractor must do all things the Principal considers necessary to ensure that the Security Interests in the Key Plant and Equipment in favour of the Principal are enforceable, perfected, effective and take priority over all other Security Interests, including executing and procuring any relevant secured parties execute a deed of priority to give the Principal's Security Interest first ranking priority over the Key Plant and Equipment.

21.14 **Unfixed or offsite Materials**

- (a) The Contractor is not entitled to claim payment for any unfixed or offsite Materials except as permitted under this clause 21.14.
- (b) The Contractor is entitled to claim payment for unfixed or offsite Materials listed in Schedule 32A (notwithstanding that such Materials have not been incorporated in the Project Works) only once the Contractor has:
 - (i) provided to the Principal an unconditional undertaking:
 - (A) in the form set out in Schedule 31 (and from an entity approved by the Principal);
 - (B) that complies with the requirements of clause 10.1(c); and
 - (C) for an amount equal to the payment claimed for the relevant unfixed or offsite Materials;
 - (ii) provided the D&C Independent Certifier, in respect of the Project Works (Rozelle Interchange) or the WHT Independent Certifier, in respect of the WHT Southern Tunnel Works, with evidence (satisfactory to relevant independent certifier) that:
 - (A) title to the unfixed or offsite Materials will vest in the Principal upon payment; and
 - (B) the Contractor has registered a Security Interest in favour of the Principal in the unfixed or offsite Materials; and
 - (iii) establishes to the satisfaction of the D&C Independent Certifier or the WHT Independent Certifier (as relevant) that the unfixed or offsite Materials are:
 - (A) properly stored at a location agreed to by the Principal;
 - (B) labelled the property of the Principal; and
 - (C) adequately protected from damage or loss; and
 - (iv) paid, or is legally obliged to pay, for the relevant unfixed or offsite Materials.
- (c) Title in any unfixed or offsite Materials will vest in the Principal upon payment.
- (d) The Principal must release any unconditional undertaking provided by the Contractor under this clause 21.14 within 5 Business Days of the relevant unfixed or offsite Materials:

- (i) being incorporated into the Project Works; and
- (ii) complying with the requirements of this deed.

21.15 **Payment of subcontractors**

- (a) If any moneys owing to subcontractors or workers are shown as unpaid in the relevant certificates provided by the Contractor for the purpose of a Reference Date for a Payment Claim, the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal that the moneys have been paid.
- (b) If a worker or a subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, Materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (c) After:
 - (i) the Contractor is placed under administration; or
 - (ii) the making of a winding up order in respect of the Contractor,the Principal will not make any payment to a worker or subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

21.16 **Security of Payment Act**

- (a) The Principal and the Contractor agree that:
 - (i) unless otherwise notified to the Contractor by the Principal in writing:
 - (A) the D&C Independent Certifier is to receive all payment claims made under the Security of Payment Act in respect of the D&C Deed Sum (Rozelle Interchange) and will give payment statements and carry out all other functions of the Principal under the Security of Payment Act as the agent of the Principal in respect of the Project Works (Rozelle Interchange) and the Temporary Works (Rozelle Interchange); and
 - (B) the Principal's Representative is to receive all payment claims made under the Security of Payment Act in respect of the D&C Deed Sum (WHT Southern Tunnel Works) and will give payment statements and carry out all other functions of the Principal under the Security of Payment Act as the agent of the Principal in respect of the WHT Southern Tunnel Works, the Temporary Works (WHT Southern Tunnel Works) and the Post Completion Activities;
 - (ii) each Payment Statement and Final Payment Statement is a "payment schedule" for the purposes of the Security of Payment Act;
 - (iii) the amount set out in the Payment Statement and Final Payment Statement in accordance with clauses 21.3(a)(i)(E), 21.3(a)(ii)(E), 21.7 and 21.7A, to

the extent permitted by and for the purposes of the Relevant Security of Payment Legislation, is the amount of the "progress payment" calculated in accordance with the terms of this deed, to which the Contractor is entitled in respect of this deed; and

- (iv) if the Contractor submits a payment claim under the Security of Payment Act and the Contractor has not satisfied its obligations under clause 21 then the D&C Independent Certifier or the Principal's Representative (as applicable) will be entitled to value and certify the value of the work performed by the Contractor as zero until the Contractor complies with these obligations.
- (b) Not used.
- (c) Without limiting clause 21.17, where the Principal receives a payment withholding request from a Subcontractor under the Security of Payment Act, the Principal may withhold:
 - (i) from any payment under this deed the amount of the Subcontractor's payment claim set out in the payment withholding request; or
 - (ii) the amount then owed by the Principal to the Contractor under this deed where such amount is less than the amount of the Subcontractor's payment claim set out in the payment withholding request.
- (d) The Principal will not be liable in respect of any Claim by the Contractor arising out of or in connection with the Principal withholding payment under clause 21.16(c), including any claim under clause 43.21 for interest on such amounts.
- (e) All terms used in this clause 21.16 which have a defined meaning in the Security of Payment Act have the same meaning when used in this clause 21.16.

21.17 **Set-off and retention**

- (a) The Principal may withhold, set-off or deduct from any moneys which would otherwise be certified as payable to the Contractor or which would otherwise be due to the Contractor under this deed:
 - (i) any debt or other moneys due from the Contractor to the Principal;
 - (ii) any bona fide claim to any money which the Principal may have against the Contractor, whether for damages or otherwise; and
 - (iii) any amount that the Principal is entitled to withhold under clause 21.17(d)(iii),

whether under the D&C Documents or otherwise at Law in relation to the Contractor's Activities.
- (b) The Contractor must make all payments due to the Principal under the D&C Documents without set-off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this clause 21.17 affects the Principal's right to recover from the Contractor the whole of the debt or any balance that remains owing after any set-off.

- (d) The Principal is not obliged to pay the Contractor any more than ■% of the amount that the D&C Independent Certifier would otherwise have set out in any Payment Statement for the Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange) unless the Contractor has:
- (i) effected and is maintaining all of the Contractor's Project Insurances set out in Part A of Schedule 30;
 - (ii) complied with clauses 10.1(a) and 10.7;
 - (iii) provided:
 - (A) a certificate in the form set out in Schedule 32C, verifying the extent to which the works described in the Payment Claim have been carried out and that all activities carried out in respect of the relevant Project Works (Rozelle Interchange) and Temporary Works (Rozelle Interchange) have been carried out in accordance with this deed and the other D&C Documents; and
 - (B) a Statutory Declaration (Employees and Subcontractors),
which have been:
 - (C) executed on the date that the relevant Payment Claim was issued; and
 - (D) duly executed by a representative of the Contractor who is in a position to know the facts declared; and
 - (iv) submitted the monthly progress report for that month (including Overall D&C Program (Rozelle Interchange) and supporting information setting out the detailed requirements) required by Appendix C.2 of the SWTC (Rozelle Interchange).
- (e) The Principal is not obliged to pay the Contractor any more than ■% of the amount that the Principal's Representative would otherwise have set out in any Payment Statement for the WHT Southern Tunnel Works and Temporary Works (WHT Southern Tunnel Works) unless the Contractor has:
- (i) effected and is maintaining all of the Contractor's Project Insurances set out in Part B of Schedule 30;
 - (ii) complied with clauses 10.1A(a) and 10.7;
 - (iii) provided:
 - (A) a certificate in the form set out in Schedule 32C, verifying the extent to which the works described in the Payment Claim have been carried out and that all activities carried out in respect of the relevant WHT Southern Tunnel Works, Temporary Works (WHT Southern Tunnel Works) and Post Completion Activities have been carried out in accordance with this deed and the other D&C Documents; and
 - (B) a Statutory Declaration (Employees and Subcontractors),
which have been:
 - (C) executed on the date that the relevant Payment Claim was issued; and

- (D) duly executed by a representative of the Contractor who is in a position to know the facts declared; and
- (iv) submitted the monthly progress report for that month (including Overall D&C Program (WHT Southern Tunnel Works) and supporting information setting out the detailed requirements) required by Appendix C.2 of the SWTC (WHT Southern Tunnel Works).
- (f) The Principal is not obliged to pay the Contractor any more than [REDACTED]% of the amount that the Principal's Representative would otherwise have set out in any Payment Statement for the WHT Southern Tunnel Works and Temporary Works (WHT Southern Tunnel Works) [REDACTED]
[REDACTED]

21.18 **Suspension for non-payment**

- (a) If the Principal fails to comply with its payment obligations under clause 21.5 and the failure is not remedied within 10 Business Days of a written demand from the Contractor then the Contractor may suspend all or part of the Contractor's Activities (Rozelle Interchange) or the Contractor's Activities (WHT Southern Tunnel Works) (as relevant) until such time as that payment has been made by the Principal.
- (b) Nothing in this clause 21.18 limits the Contractor's rights to suspend under the Security of Payment Act or limits the Contractor's other rights under this deed.
- (c) As soon as practicable after the Principal has paid the amount notified under clause 21.18(a) the Contractor must resume the carrying out of the Contractor's Activities.

21.19 **Passing of Title in the Project Works, the Temporary Works and Post Completion Activities**

- (a) All rights, title and ownership in each part of the Project Works, Temporary Works and the Post Completion Activities passes to the Principal upon the earlier of:
 - (i) installation of the relevant Project Works, Temporary Works and Post Completion Activities on the Construction Site; or
 - (ii) payment by the Principal in relation to the Project Works, Temporary Works and the Post Completion Activities, whether the relevant works are located on the Construction Site or otherwise,

provided that title to the Temporary Works will only pass to the Principal if the Temporary Works form part of the Project Works.

- (b) Nothing in this clause 21.19 will derogate from or limit any right of the Principal (whether such right arises at Law or under this deed) to reject any goods, Materials or works which do not comply with any requirements of this deed.

22. **TRANSPORT NETWORK MANAGEMENT**

22.1 **No restrictions on the Principal or SMC**

The Contractor acknowledges that nothing in this deed will in any way limit or restrict the ability or power of the Principal, SMC, the [REDACTED] or the NSW Government, directly or through any Authority, to:

- (a) develop, construct, operate and/or maintain directly, by subcontractors or otherwise, other tollways, tunnels, freeways and other roads in New South Wales;
- (b) maintain, manage, develop, change or extend the Sydney road and transport network or any traffic or transport system;
- (c) extend, alter, close or upgrade existing tollways, tunnels, freeways and other roads;
- (d) extend, alter or upgrade existing public transport routes or services;
- (e) construct new public transport routes or establish new transport services;
- (f) develop the transport and public transport network generally;
- (g) implement NSW Government Policies; or
- (h) contract with any person for any of these things or to otherwise do anything which they are empowered to do by Law.

23. **INTERFACES**

23.1 **Tolling Equipment Works Subcontract**

- (a) The Contractor must:
 - (i) without limiting clause 5, within 20 Business Days of the date of this deed:
 - (A) enter into the Tolling Equipment Works Subcontract with the Tolling Equipment Works Contractor;
 - (B) satisfy all conditions precedent to the Tolling Equipment Works Subcontract (except to the extent their satisfaction depends on D&C Close occurring); and
 - (C) provide a legal opinion in a form that is satisfactory to the Principal, which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that the execution of the Tolling Equipment Works Subcontract by each of the Contractor and the Tolling Equipment Works Contractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms;
 - (ia) within 3 months after D&C Close and, in any event, as a condition to achieving Opening Completion:
 - (D) enter into the Escrow Agreement with the Tolling Equipment Works Contractor;
 - (E) satisfy all conditions precedent to the Escrow Agreement with the Tolling Equipment Works Contractor; and
 - (F) provide a legal opinion in a form that is satisfactory to the Principal, which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that the execution of the Escrow Agreement with the Tolling Equipment Works Contractor by each of the Contractor and the Tolling Equipment Works Contractor

is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms; and

- (ii) not terminate the Tolling Equipment Works Subcontract without the prior written consent of the Principal, which is not to be unreasonably withheld, taking into account (among other things) the role of the Tolling Equipment Works Contractor across the WestConnex Program of Works.

23.1A IOMCS and OMCS Works Subcontract

- (a) The Contractor must:

- (i) without limiting clause 5, within 10 Business Days of the date of this deed:
 - (A) enter into the IOMCS and OMCS Works Subcontract with the IOMCS and OMCS Works Contractor; and
 - (B) satisfy all conditions precedent to the IOMCS and OMCS Works Subcontract (except to the extent their satisfaction depends on D&C Close occurring); and
 - (C) provide, in a form that is satisfactory to the Principal:
 - (aa) a legal opinion which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that execution of the IOMCS and OMCS Works Subcontract by each of the Contractor and the IOMCS and OMCS Works Contractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms; and
 - (bb) confirmation from the IOMCS and OMCS Works Contractor that the IOMCS and OMCS Works Contractor owns the necessary Intellectual Property Rights in the IOMCS so that the Contractor can grant the relevant intellectual property licences in accordance with this deed; and
- (ia) within 3 months after D&C Close and, in any event, as a condition to achieving Opening Completion:
 - (A) enter into the Escrow Agreement with the IOMCS and OMCS Works Contractor;
 - (B) satisfy all conditions precedent to the Escrow Agreement with the IOMCS and OMCS Works Contractor; and
 - (C) provide a legal opinion in a form that is satisfactory to the Principal, which the Principal is entitled to rely on and given by a qualified legal practitioner satisfactory to the Principal confirming that the execution of the Escrow Agreement with the IOMCS and OMCS Works Contractor by each of the Contractor and the IOMCS and OMCS Works Contractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms; and

- (ii) not terminate the IOMCS and OMCS Works Subcontract without the prior written consent of Principal, which is not to be unreasonably withheld, taking into account (among other things) the role of the IOMCS and OMCS Works Contractor across the WestConnex Program of Works.

23.2 Tolling Interface Deed

- (a) The Contractor must upon request by the Principal's Representative, enter into the Tolling Interface Deed with the Tolling Contractor (Back Office).
- (b) With respect to the Tolling Interface Deed entered into pursuant to clause 23.2(a), the Contractor must:
 - (i) at all times comply with:
 - (A) the terms of the Tolling Interface Deed; and
 - (B) any direction of Principal in relation to compliance with the conditions and requirements of the Tolling Interface Deed; and
 - (ii) not terminate such agreement without the prior written consent of Principal.
- (c) The Contractor acknowledges that it has made allowance in the D&C Deed Sum for all delays and costs in respect of its obligations under the Tolling Interface Deed and the Contractor will not be entitled to any Claim, extension of time or other form of relief for any delay incurred with respect to the Project Works or the Contractor's Activities as a result of performing its obligations under the Tolling Interface Deed.

23.3 Western Harbour Tunnel – Rozelle Interchange Interface Deed

- (a) The Contractor must:
 - (i) within five Business Days of receipt of a request from the Principal, provide to the Principal the Western Harbour Tunnel – Rozelle Interchange Interface Deed duly executed by the Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply with the terms of the executed Western Harbour Tunnel – Rozelle Interchange Interface Deed.
- (b) If the Principal issues a request pursuant to clause 23.3(a), the Principal will, or will procure the [REDACTED] will, request that the WHT Contractor executes the Western Harbour Tunnel – Rozelle Interchange Interface Deed but:
 - (i) does not represent or warrant that the relevant WHT Interface Contractor will execute; and
 - (ii) will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any WHT Interface Contractor not executing the Western Harbour Tunnel – Rozelle Interchange Interface Deed.

23.4 Interfaces

- (a) In addition to the Contractor's obligations in respect of Key Interfaces as set out in Appendix B.34 of the SWTC, the Contractor must:

- (i) develop Interface Protocols with:
 - (A) the WestConnex Concessionaires;
 - (B) the ITS Maintenance Contractor;
 - (C) the WestConnex O&M Contractors; and
 - (D) as and when requested by Principal's Representative, other key contractors engaged by the Principal for the delivery of the Project, or by any of the Principal's Related Parties for the delivery of any aspect of the WestConnex Program of Works, or by the State of New South Wales for the delivery of any works that interface with the Project,

in relation to any interface between the Contractor and those entities;
 - (ii) negotiate each Interface Protocol in good faith;
 - (iii) enter into each Interface Protocol once it is agreed;
 - (iv) at all times comply with the terms of all Interface Protocols; and
 - (v) not terminate any Interface Protocol without the prior written consent of the Principal.
- (b) Subject to clause 11C.2, 16.10(f), clause 16.10(g), clause 6(e) of Schedule 29 and clause 27.3(e), the Contractor must indemnify the Principal from and against any Claim or Loss (other than Consequential Loss to the extent it is not an Insured Liability) the Principal suffers or incurs arising out of or in connection with the impact of the Contractor's Activities on:
- (i) the activities of the contractors engaged from time to time to design and construct a component of an Other WestConnex Motorway;
 - (ii) the Main Tunnel Contractor's Activities;
 - (iii) the activities of the ITS Maintenance Contractor;
 - (iv) the Tolling Services Work; and
 - (v) the activities of a WHT Interface Contractor,
- to the extent such Claim or Loss was caused or contributed to by:
- (vi) any breach of this deed by the Contractor; or
 - (vii) any negligent or otherwise wrongful act or omission of the Contractor or its Related Parties.

23.5 **Contractor Cooperation and Integration Deed**

- (a) The Contractor must enter into the Contractor Cooperation and Integration Accession Deed on or before the date of this deed to become a party to the Contractor Cooperation and Integration Deed.
- (b) With respect to the Contractor Cooperation and Integration Deed, the Contractor must:

- (i) at all times comply with the terms of such agreement; and
- (ii) not terminate (or seek to terminate) such agreement without the prior written consent of the Principal.

23.6 **Coordination Committee**

- (a) The M4-M5 Link Concessionaires may form a coordination committee with the other WestConnex Concessionaires whose purpose will be to (among other things) monitor the interfaces and interactions of the activities being carried out as part of the WestConnex Program of Works.
- (b) If the Principal notifies the Contractor that such a coordination committee is formed, the Principal has the right to request that the Contractor attends any meeting of the coordination committee and if the Principal's Representative so requests, the Contractor must attend, or procure the attendance of any of its Subcontractors at any meeting of the coordination committee.

24. **RATES, TAXES AND GST**

24.1 **Rates and Taxes**

Subject to clauses 24.2 and 25, the Contractor will be liable for all Taxes levied in respect of the performance of the Contractor's obligations under this deed or the execution of this deed, and other D&C Documents or otherwise. The Contractor will not be liable for rates or land tax levied in respect of the Construction Site.

24.2 **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) Subject to clause 24.2(e), 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;
 - (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 (**GST Amount**) as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) except in relation to a supply for which the Principal will issue a RCTI:
 - (A) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this deed; and

- (B) the Recipient need not make a payment of a GST Amount in respect of that supply unless the Supplier has given the Recipient a tax invoice in accordance with clause 24.2(b)(iii)(A).
- (c) Subject to clause 24.2(e), if for any reason, the GST payable by the Supplier in respect of a supply it makes under this deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 24.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the Chair of Resolution Institute 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 24.2(d) shall not apply to any supply dealt with under clause 24.2(e).
- (e) The parties acknowledge that this clause 24.2(e) applies to the extent each party is making supplies to the other party for consideration and is the Recipient of all supplies from the other party. Where two parties (or entities on whose behalf those parties are acting) in accordance with this deed exchange non-monetary consideration:
 - (i) notwithstanding clause 24.2(b), 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 24.2(e)(ii)(A).
- (f) Where clause 24.2(e)(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 24.2(e)(ii), the parties are unable to agree on a

means of calculating the additional amounts payable, clause 24.2(b) will apply without any limitation imposed by clause 24.2(e), however:

- (i) the Supplier (or if clause 24.2(h) applies, the Recipient) must only issue a tax invoice or an adjustment note to reflect the application of this clause 24.2(f) after the parties have either reached an agreement under this clause 24.2(f) or have determined that they are unable to reach such an agreement; and
 - (ii) the additional amount payable pursuant to this clause 24.2(f) will only be payable 5 Business Days after the receipt by the Recipient of the tax invoice or adjustment note issued by the Supplier or the Recipient (as applicable) in accordance with clause 24.2(f)(i).
- (g) Where any party to this deed receives a demand, assessment or private ruling regarding the matters addressed in clause 24.2, it must notify the other parties to this deed of that fact and provide them with a copy of the demand, assessment or private ruling within 10 Business Days of receiving it. Before any party to this deed applies for a private ruling regarding the matters addressed in clause 24.2(e), it must provide the other parties to this deed with a copy of the private ruling request it intends to lodge with the Commissioner of Taxation no less than 20 Business Days prior to its lodgement of same.
- (h) The parties agree that, unless otherwise agreed in writing, the following will apply to all supplies made by the Contractor to the Principal under or in connection with this deed:
- (i) the Principal will issue to the Contractor a RCTI for each taxable supply made by the Contractor to the Principal under this deed;
 - (ii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal;
 - (iii) each party acknowledges and warrants that at the time of entering into this deed, it is registered for GST and will notify the other party if it ceases to be registered; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices for the purposes of clauses 21.4, 21.8 and 24.2(b)(iii) (as applicable).

25. **CHANGES IN LAW**

25.1 **No claim unless Qualifying Change in Law**

- (a) Subject to clauses 7.5A, 14, 16.8, 16.9 and this clause 25, the Contractor will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, any changes in Law.
- (b) If a Qualifying Change in Law occurs, the Contractor must:
 - (i) within 10 Business Days after the later of the occurrence of the Qualifying Change in Law and when the Contractor first became aware of (or ought reasonably to have first become aware of) the Qualifying Change in Law, give

a notice to the Principal and the Principal's Representative containing details of the Qualifying Change in Law; and

- (ii) subject to clause 16.9 and this clause 25, comply with the Qualifying Change in Law at its own cost.

25.2 Change in Law prior to Opening Completion or Completion (WHT Southern Tunnel Works)

- (a) If, prior to the Date of Opening Completion (in respect of the Contractor's Activities (Rozelle Interchange)) or prior to the Date of Completion (WHT Southern Tunnel Works) (in respect of the Contractor's Activities (WHT Southern Tunnel Works)), a Qualifying Change in Law occurs which:

- (i) has a direct effect on the Project Works or the Temporary Works (which may include a direct effect on the method or means by which the Contractor carries out the Project Works or the Temporary Works) such that a Change is required as a consequence of the occurrence of the Qualifying Change in Law; and
- (ii) results in an increase or decrease in the Contractor's direct costs of carrying out the Project Works or the Temporary Works,

the Contractor must, within 15 Business Days after the occurrence of the Qualifying Change in Law, give a notice to the Principal's Representative:

- (iii) containing details of the Qualifying Change in Law; and
 - (iv) setting out the Contractor's estimate of the increase or decrease in the Contractor's direct costs of carrying out the Project Works or the Temporary Works that result directly from complying with the Qualifying Change in Law (and reasonable amount on account of overhead and profit of the Contractor not exceeding the D&C Margin), including sufficient information to support the estimate.
- (b) If the Contractor issues a notice under clause 25.2(a), clause 14.1 will apply as if the Principal had given a Change Order in respect of the Change which is required as a consequence of the occurrence of the Qualifying Change in Law provided that any Change Costs in respect of the Qualifying Change in Law will be limited to the increase in the Contractor's direct costs of carrying out the Project Works and the Temporary Works that result directly from complying with the Qualifying Change in Law and a reasonable amount on account of overhead and profit of the Contractor not exceeding the D&C Margin.

26. LOSS OR DAMAGE AND INSURANCE

26.1 Risk of loss or damage

- (a) The Contractor must, in carrying out the Contractor's Activities, take all reasonable precautions to avoid destruction and damage to any property (including any property of the Principal, the M4-M5 Link Concessionaire or its members, any other WestConnex Concessionaire, the [REDACTED], the WHT Contractor and the WHT Asset Manager).
- (b) The Contractor bears the risk of Loss or damage to:

- (i) the Rozelle Interchange Works (other than the WHT Interface Works and the works carried out at the WestConnex Disaster Recovery Site) and the Temporary Works (Rozelle Interchange) (other than the WHT Interface Works and the works carried out at the WestConnex Disaster Recovery Site) from D&C Close until the Date of Opening Completion;
 - (ii) each part of the WHT Interface Works from D&C Close until the earlier of:
 - (A) the date when that part of the WHT Interface Works is handed over and accepted by the WHT Contractor; or
 - (B) the Date of Opening Completion;
 - (iii) the works carried out at the WestConnex Disaster Recovery Site, from the Date of Opening Completion until the Date of Completion;
 - (iv) the Local Area Works forming part of the Project Works (Rozelle Interchange), the Utility Service Works and the Property Works from D&C Close until the commencement of the relevant Defects Correction Period;
 - (v) the WHT Southern Tunnel Works and the Temporary Works (WHT Southern Tunnel Works) from the Amendment Date until the Handover Date (WHT Southern Tunnel Works); and
 - (vi) the Local Area Works forming part of the WHT Southern Tunnel Works from the Amendment Date until the commencement of the relevant Defects Correction Period.
- (c) The Contractor must in accordance with clause 26.9, promptly make good any Loss or damage to the Project Works (including the WHT Interface Works) or the Temporary Works (as applicable) which occurs during the period that the Contractor bears the risk of Loss or damage.
 - (d) From the Date of Opening Completion, the Contractor bears the risk of Loss or damage to the Rozelle Interchange to the extent caused by the Contractor performing the Contractor's Activities on the Rozelle Interchange Works Site and the Contractor must promptly make good any such Loss or damage.
 - (e) From the Date of Completion (WHT Southern Tunnel Works), the Contractor bears the risk of Loss or damage to the WHT Southern Tunnel Works and the Western Harbour Tunnel to the extent caused by the Contractor performing the Contractor's Activities on the WHT Southern Tunnel Works Site or the Western Harbour Tunnel and the Contractor must promptly make good any such Loss or damage.

26.2 **Certain third party claims**

Despite any other provision to the contrary, the Contractor will have no liability to the Principal and its Related Parties, nor will the Principal or its Related Parties be entitled to make any Claim against the Contractor, in respect of any Liability of the Principal or its Related Parties to a third party for Pure Economic Loss arising directly as a result of:

- (a) the decision by the Principal to proceed with the Project or the WHTBL Program; or
- (b) the existence or location of the Rozelle Interchange Works or the WHT Southern Tunnel Works.

26.3 **Insured Liability**

- (a) Nothing in this deed operates to exclude or limit the Contractor's liability to the Principal or its Related Parties, the M4-M5 Link Concessionaires or its Related Parties, any other WestConnex Concessionaire, the [REDACTED] the WHT Contractor or the WHT Asset Manager for any Loss to the extent such Loss is an Insured Liability.
- (b) For the purposes of this deed, "Insured Liability" means:
- (i) where the Contractor or any of its Related Parties or the Principal or any of its Related Parties has an entitlement to recover or be indemnified in respect of such Loss under a Project Insurance:
- (A) the amount or amounts actually recovered by the Contractor or its Related Parties or the Principal or any of its Related Parties (as applicable) from; and
- (B) the amount or amounts for which the Contractor or its Related Parties or the Principal or any of its Related Parties is otherwise actually indemnified by,
- the insurer or insurers of such Project Insurance; and
- (ii) where, but for:
- (A) the failure of the Contractor to comply with its obligations under this clause 26 in relation to such Project Insurance;
- (B) in relation to the Contractor's Project Insurances only, the insolvency of the insurer or insurers of such Project Insurance; or
- (C) any act or omission by the Contractor or its Related Parties (including, without limitation, any misrepresentation, non-disclosure, breach of a duty to the insurer, breach of the terms and conditions of any Project Insurance or failure to comply with those terms or conditions) not caused or contributed to by any act or omission of the Principal or any of its Related Parties which has resulted in a loss of or reduction of the recovery or indemnity under such Project Insurance,

the Contractor or its Related Parties or the Principal or any of its Related Parties would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Project Insurance in respect of Loss, the amount or amounts which the Contractor or its Related Parties or the Principal or any of its Related Parties (as applicable) would have been entitled to recover from, or be indemnified by, an insurer or insurers of such Project Insurance.

26.4 **Damage to third party property**

- (a) Without limiting clause 27.1, where any damage to or loss or destruction of real or personal property of a third party (other than the Project Works or the Temporary Works), including the Main Tunnel Works and the Remaining WHT Works, occurs which arises out of a breach by the Contractor of this deed or an act or omission of the Contractor, the Contractor must do one of the following (at the option of the relevant third party):

- (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party, provided that, if doing so would prejudice the Contractor's ability to claim under any of the Project Insurances, the Contractor will notify the Principal of the same and the Principal will direct the Contractor whether or not it should proceed.
- (b) Without limiting clause 8.6(a)(i)(B), if the Contractor fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, the Principal may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by the Principal (including any Loss suffered or incurred by the M4-M5 Link Concessionaires, the [REDACTED] the WHT Contractor and the WHT Asset Manager) will be a debt due and payable from the Contractor to the Principal.

26.5 Project Insurances

- (a) Each party must effect and maintain its Project Insurances (or cause its Project Insurances to be effected and maintained) in accordance with Schedule 30.
- (b) Each party must:
 - (i) reinstate (or cause to be reinstated) any of its Project Insurance if it lapses; and
 - (ii) not allow any of its Project Insurance to be cancelled or varied or to lapse without the prior consent of the other party (such consent not to be unreasonably withheld or delayed).
- (c) The Contractor must:
 - (i) not do or permit, or omit to do, anything which prejudices any Project Insurance;
 - (ii) rectify anything which might, if not rectified, prejudice any Project Insurance;
 - (iii) as soon as reasonably practicable, notify the Principal of any fact or circumstance or change in circumstances which could be reasonably expected to prejudice a Project Insurance;
 - (iv) in respect of each Project Insurance, comply with its duty of disclosure to all relevant insurers, including where failure to do so would breach, prejudice or invalidate the relevant policy;
 - (v) as soon as reasonably practicable notify the Principal when it receives or gives a notice in connection with the cancellation of any Project Insurance;
 - (vi) do all things reasonably required by the Principal or any other person in whose name a Project Insurance is effected to enable the Principal or that other person to claim, collect or recover moneys due under any Project Insurance;
 - (vii) comply at all times with the terms of each Project Insurance; and
 - (viii) ensure that, to the extent permitted by Law, all of its Project Insurances which cover against liabilities which it is required by this deed to effect or maintain

do not reduce or exclude the insurance cover in respect of liabilities assumed under this clause 26 and clauses 27 and 28.

- (d) The Contractor is responsible for, must pay (where relevant) and accepts all risks in connection with any deductibles or excess in respect of any claim on a Project Insurance policy, except to the extent to which such loss or damage which is the subject of a covered claim to which the deductible or excess relates is caused by the Principal or its Related Parties.

26.6 **Premiums**

- (a) The Contractor must punctually pay all premiums in respect of all of its Project Insurances and give the Principal evidence of payment of premiums if and when requested by the Principal.
- (b) If the Contractor fails to effect or maintain any of its Project Insurances or to pay a premium or other amount payable to the insurer in respect of such insurance, the Principal may effect such insurance or pay such premium or other amount and any costs so incurred by the Principal will be a debt due and payable by the Contractor to the Principal.

26.7 **Dealing with claims**

In addition to the obligations to notify the insurer under any Project Insurance, the Contractor must:

- (a) subject to the terms of the Project Insurances, notify the Principal of any occurrence or circumstance of which it is aware, or should reasonably have been aware, that could reasonably be expected to give rise to a claim under any Project Insurance (**Notifiable Claim**);
- (b) keep the Principal fully informed of subsequent developments concerning the Notifiable Claim;
- (c) not compromise, settle, or enforce a Notifiable Claim without the prior written consent of the Principal (which must not be unreasonably withheld or delayed); and
- (d) diligently pursue any Notifiable Claim.

26.8 **Insurance proceeds**

- (a) The parties agree that the proceeds of each claim (if any) made under any Project Insurance, to the extent such proceeds are received in respect of reinstatement of physical loss or damage to the Project Works or the Temporary Works, must be deposited into a special purpose account in name of the Principal with a financial institution notified to the Contractor in writing by the Principal, until such time as the proceeds are applied to reinstate the physical loss or damage.
- (b) The parties agree that the Principal must, to the extent permitted under the relevant insurance policies, procure the release to the Contractor of the insurance proceeds contemplated in clause 26.8(a) for reinstatement work carried out by the Contractor to the extent such proceeds are received in respect of physical loss or damage to the Project Works or the Temporary Works, and such proceeds must be applied for the repair, reinstatement or replacement of the Project Works and/or the Temporary Works (as applicable).

26.9 Reinstatement

- (a) Subject to clause 26.13, if any physical loss or damage occurs to any part of the Project Works or the Temporary Works during the period that the Contractor bears the risk of Loss or damage as specified in clause 26.1(b), the Contractor must (without limiting its other obligations under this deed):
- (i) subject to allowing reasonable time for inspection by insurers and to the terms of any relevant Project Insurance policy, take immediate steps to clear any debris and begin initial repair work;
 - (ii) promptly consult with the Principal and carry out such steps as are necessary to ensure:
 - (A) the prompt repair or replacement of the physical loss or damage so that:
 - (aa) it complies with the SWTC; and
 - (bb) there is minimal disruption to the Project Works and the Temporary Works; and
 - (B) that, to the greatest extent possible, the Principal continues to comply with its obligations under the D&C Documents;
 - (iii) manage all repair and replacement activities so as to minimise, to the extent reasonably practicable having regard to the repair and reinstatement activities to be undertaken, the impact on the Project Works or the Temporary Works;
 - (iv) keep the Principal fully informed of the progress of the repair and replacement activities; and
 - (v) apply all relevant insurance proceeds in the repair or reinstatement of the Project Works or the Temporary Works.
- (b) To the extent that the loss, damage or destruction arises from any of the following events:
- (i) an Uninsurable Force Majeure Event;
 - (ii) a breach of any D&C Document by the Principal;
 - (iii) any fraudulent, negligent or other wrongful act or omission or Wilful Misconduct of:
 - (A) the State or any of its related parties; or
 - (B) the Principal or any of its Related Parties,

then the Contractor will not be responsible for the carrying out the reinstatement or repair work (except to the extent that the Contractor is entitled to be indemnified for that event under any policy of Project Insurance or would have been entitled to be indemnified for that event but for any act or omission of the Contractor or its agents, employees or Subcontractors, unless the Principal instructs the reinstatement or repair as a Change).

26.10 **Direction by the Principal to reinstate to different specifications**

- (a) The Principal may require the Contractor to reinstate or repair the Project Works on the basis of different specifications by directing a Change pursuant to clause 14.
- (b) The reinstatement or repair work will only constitute a Change to the extent that it differs from what would have otherwise been required under this deed.
- (c) The available insurance proceeds will be taken into account in calculating the Change Costs of the Change.

26.11 **Procedure for Third Party Claims**

- (a) Where clause 27.1 applies as a result of a Claim made against the Principal by a third party (**Third Party Claim**), then the Principal agrees (and must procure from its Related Parties):
 - (i) to notify the Contractor about the Third Party Claim promptly or otherwise taking action in respect of that Third Party Claim;
 - (ii) to keep the Contractor informed of the progress of the Third Party Claim;
 - (iii) to regularly consult with the Contractor in relation to the manner in which proceedings relating to the Third Party Claim are conducted and implement reasonable instructions of the Contractor as to the manner in which such proceedings should be conducted; and
 - (iv) not settle or pay the Third Party Claim, other than a Third party Claim which:
 - (A) the Principal is obliged by Law to pay; or
 - (B) is settled for an amount which is less than or equal to the amount the Principal would otherwise have been liable to pay to the relevant third party,

without the prior written consent of the Contractor (which cannot be unreasonably withheld or delayed).
- (b) If a Third Party Claim is settled or paid without the Contractor's prior written consent (other than a Third Party Claim referred to in clause 26.11(a)(iv)(A) or 26.11(a)(iv)(B)) the Contractor will not be liable to indemnify the Principal or its Related Parties in respect of such Third Party Claim to the extent that the liability is greater than it would otherwise have been but for such settlement or payment.
- (c) Despite anything to the contrary in this deed, the Principal will have no right (including as trustee for its Related Parties) to make a demand on any indemnity in this deed, or otherwise bring an action or Claim that arises from or in connection with this deed, after 12 years after the last day of the last of the Defects Correction Periods to expire.
- (d) If a Claim is made against the Principal or its Related Parties by a third party in respect of which the Contractor is liable to indemnify the Principal under this deed, the Principal agrees (and must procure from its Related Parties):
 - (i) to notify the Contractor about the Claim promptly (and in any event within 5 Business Days of receiving it);

- (ii) not to settle or pay the Claim without the Contractor's prior written consent (such consent not to be unreasonably withheld or delayed); and
 - (iii) subject to clause 26.11(e), if requested to do so by the Contractor, to allow the Contractor to conduct, in consultation with the Principal or its Related Parties (as applicable), proceedings relating to the Claim on their behalf but only to the extent that the Contractor is liable to indemnify the Principal or its Related Parties under this deed in respect of that Claim.
- (e) In exercising its rights under clause 26.11(d)(iii), the Contractor agrees to:
- (i) not settle or pay the Claim without the Principal's prior written consent (such consent not to be unreasonably withheld or delayed);
 - (ii) keep the Principal informed of the progress of the Claim; and
 - (iii) regularly consult with the Principal in relation to the manner in which the Contractor conducts proceedings relating to the Claim and implement reasonable instructions of the Principal as to the manner in which such proceedings should be conducted.
- (f) The Contractor agrees to diligently pursue the recovery of Losses of the type described in clause 28.2(d), including by commencing proceedings against a third party, unless:
- (i) those proceedings do not have reasonable prospects of success or reasonable prospects of yielding compensation in respect of the relevant Loss;
 - (ii) the Contractor has otherwise recovered the Loss including by exercising a right of set-off or deduction or calling on security; or
 - (iii) it has determined in good faith and consistently with Good Industry Practice that it is not prudent to commence proceedings.

26.12 **Force Majeure Event**

- (a) Where a Force Majeure Event or its physical consequences subsists for a continuous period of more than 12 months and the Principal fails to exercise its rights under clause 26.13(d) or clause 31.7, the Force Majeure Event will be a Change and the Principal will be deemed to have issued a Change Proposal in regard thereto.
- (b) To the extent that a Change contemplated by clause 26.12(a) increases the cost of the Project Works or the Temporary Works, the Contractor will be entitled to claim its reasonable:
 - (i) prolongation costs for so long as the Force Majeure Event or its physical consequences continue to subsist following the expiry of the 12 month period (provided that any prolongation costs accruing prior to the expiry of such 12 month period will be disregarded); and
 - (ii) escalation costs arising from deferment of the Project Works and Temporary Works beyond the initial 12 month period (provided that any escalation costs accruing prior to the expiry of such 12 month period will be disregarded),
 after deducting Change Savings arising from the Change.

26.13 Uninsurable Risks

- (a) If the Contractor believes that any risk that it is required to insure under this deed is or becomes Uninsurable, then:
 - (i) it must notify the Principal within 3 Business Days after it believes that the risk has become Uninsurable; and
 - (ii) clauses 26.13(b) to 26.13(f) will apply if the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable.
- (b) Neither party is obliged to effect or maintain insurance for a particular risk under any of its Project Insurances to the extent that, and only for so long as that risk is Uninsurable (and did not become Uninsurable as a result of an act or omission of the Contractor or a Related Party of the Contractor).
- (c) If a risk is Uninsurable in respect of one of a party's Project Insurance, that party must approach the insurance market on a regular basis (satisfactory to the Principal and the Contractor, both acting reasonably) to establish whether that risk remains Uninsurable and must advise the other party accordingly.
- (d) If any Loss or damage occurs to any part of the Project Works or the Temporary Works as a result of an Uninsurable Force Majeure Event:
 - (i) the Principal may, within 13 months of the occurrence of that Uninsurable Force Majeure Event:
 - (A) direct reinstatement of such Loss or damage as a Change;
 - (B) direct a Change to omit the affected part of the Project Works or the Temporary Works from the Project Works or the Temporary Works; or
 - (C) exercise its rights under clause 31.7; and
 - (ii) the Contractor is not obliged to comply with its obligations under clause 26.9 unless directed to do so by the Principal as a Change.
- (e) If:
 - (i) in the Principal's opinion (acting reasonably) a risk which is required to be insured against under a Project Insurance is no longer Uninsurable, the Principal may give notice to the Contractor; and
 - (ii) the Contractor believes that a risk which is required to be insured against under a Project Insurance is no longer Uninsurable, the Contractor must notify the Principal.
- (f) If a party gives notice pursuant to clause 26.13(e) and the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that a risk which is required to be insured against under one of a party's Project Insurance is no longer Uninsurable, that party must promptly effect or cause to be effected the relevant Project Insurance.

27. **INDEMNITY AND LIABILITY EXCLUSIONS**

27.1 **Indemnity from the Contractor**

- (a) The Contractor must indemnify the Principal and its Related Parties (each an **Indemnified Party**) from and against any Loss suffered or incurred by an Indemnified Party and any Claim against an Indemnified Party, in respect of:
- (i) any injury to, or disease or death of, persons;
 - (ii) the loss of, or destruction of or damage to, any real or personal property; or
 - (iii) without limiting clause 27.1(a)(ii) and to the extent an Insured Liability, loss of use or access to any real or personal property (whether total or partial),
- to the extent caused by, arising out of, or in any way in connection with:
- (iv) the Contractor's Activities, including the Temporary Works and the Project Works; or
 - (v) the use or occupation of the Construction Site, the Rozelle Interchange Works, the WHT Southern Tunnel Works, the Local Areas, the Rozelle Interchange Temporary Areas, the WHT Southern Tunnel Temporary Areas, the Maintenance Site, the Motorway, an Other WestConnex Motorway or the Western Harbour Tunnel by the Contractor.
- (b) The Contractor must indemnify the Principal from and against:
- (i) any Liability to or claim by any other person; and
 - (ii) any Loss suffered or incurred by the Principal,
- to the extent caused by, arising out of, or in any way in connection with, the Contractor's breach of a term of any D&C Document.
- (c) Clauses 27.1(a) and 27.1(b) do not lessen or otherwise affect the Contractor's other obligations under this deed.
- (d) The Contractor acknowledges and agrees that, subject to the express terms of this deed, it has the same responsibilities to third parties in respect of persons, property and all other aspects of the Construction Site (to the extent relevant to the Contractor's Activities) which it would have if it held the freehold title to the Construction Site other than in respect of:
- (i) land taxes; and
 - (ii) liabilities of the Principal as land owner to the extent this deed allocates responsibility for those liabilities to the Principal or expressly excludes the Contractor's responsibility for those liabilities.

27.2 **Exclusions from indemnity**

- (a) Where under the terms of this deed:
- (i) the Contractor indemnifies an Indemnified Party from and against any Liability, Claim or Loss, the Contractor's liability to indemnify the Indemnified Party will be reduced to the extent that any breach of this deed or the other

D&C Documents or other act or omission (including any negligence) of the Principal or that Indemnified Party contributed to the Liability, Claim or Loss;

- (ii) the Principal indemnifies the Contractor from and against any Liability, Claim or Loss, the Principal's liability to indemnify the Contractor will be reduced to the extent that any breach of this deed or the other D&C Documents or other act or omission (including any negligence) of the Contractor, including an act or omission (including any negligence) of the Contractor's Related Parties contributed to the Liability, Claim or Loss; and
 - (iii) a party is obliged to pay an amount in respect of any Loss suffered or incurred by the other party, it excludes Loss as a result of the negligence or wilful default of the payee party, its employees or agents.
- (b) Clauses 27.2(a)(i) and 27.2(a)(iii) will not apply to reduce the Contractor's liability to indemnify or pay the Principal to the extent that the Principal is held to be vicariously liable at Law for any acts or omissions of the Contractor or its employees, agents or contractors.
- (c) Clause 27.2(a)(i) will not apply to reduce the Contractor's liability to indemnify the Principal to the extent that the act or omission of the Principal is an act or omission in the exercise of its rights or powers under this deed.

27.3 **Consequential Loss**

- (a) Subject to clause 27.3(d), and notwithstanding any other clause to the contrary, the Principal has no liability to the Contractor, nor will the Contractor be entitled to make any Claim in respect of any Consequential Loss incurred or sustained by the Contractor:
- (i) as a result of any act or omission of the Principal (whether negligent or otherwise);
 - (ii) under any indemnity; or
 - (iii) as a result of a breach by the Principal of a D&C Document.
- (b) Subject to clause 27.3(c), and notwithstanding any other clause to the contrary, the Contractor has no liability to an Indemnified Party, nor will any Indemnified Party be entitled to make any Claim in respect of any Consequential Loss (including any Consequential Loss for which the Indemnified Parties are liable to third parties) incurred or sustained by that Indemnified Party:
- (i) as a result of any act or omission of the Contractor (whether negligent or otherwise);
 - (ii) under any indemnity; or
 - (iii) as a result of a breach by the Contractor of any D&C Document.
- (c) Clause 27.3(b) does not operate to exclude or limit any liability incurred or Claim made by an Indemnified Party to the extent that any Loss suffered by the Indemnified Party as a result of such liability or Claim is a Loss described in any one or more of paragraphs (i) – (xvii):
- (i) a Loss which is an Insured Liability;

- (ii) a Loss which is included in any Liquidated Damages (Opening Completion), in any Liquidated Damages (WHT Southern Tunnel Works) or is included in the amount provided for in clause 16.10(aa) (or general damages claim) under clause 16.10 ;
- (iii) a Loss which is included in any Lane Occupancy Fees (or general damages claim under Schedule 29);
- (iv) any Loss included in any costs payable by the Contractor pursuant to clause 11C.2;
- (v) a Loss which is in respect of a liability owed by the Principal to the M4-M5 Link Concessionaires, the [REDACTED] or the WHT Asset Manager which is itself not Consequential Loss;
- (vi) the Contractor's obligation to pay amounts on account of the Principal's costs of replacing the Contractor if this deed is terminated as a result of an Immediate Termination Event or a Remediable Termination Event;
- (vii) not used;
- (viii) subject to clause 27.3(e), the cost of correcting a Defect or a Loss (which is itself not Consequential Loss) caused by a Defect;
- (ix) a Loss arising from death or personal injury;
- (x) a Loss in respect of any criminal acts, fraud or Wilful Misconduct on the part of the Contractor or its Related Parties;
- (xi) a Loss which is the subject of the indemnities in clauses 29.2(a)(iv) and 29.3(e);
- (xii) a Loss which is the subject of the indemnities in clauses 9.8(d), 11.7(d), 11.10(g) and 23.4(b) except to the extent such liability arises in contract or is for breach of contract and would not have arisen in the absence of such contract;
- (xiii) subject to clauses 16.10, 26.2 and 26.4, a Loss in respect of any Liability of the Principal or its Related Parties for Loss suffered or incurred by a third party (including another Indemnified Party but excluding for all purposes any WestConnex Concessionaires, the [REDACTED] and the WHT Asset Manager) except to the extent such liability arises in contract or is for breach of contract and would not have arisen in the absence of such contract;
- (xiv) not used;
- (xv) a Loss or a Liability to the extent that the Contractor or any of its Related Parties has recovered an amount from a third party (including any subcontractor and whether by way of indemnity or otherwise);
- (xvi) a Loss or a Liability which, by Law, the parties cannot limit or contract out of;
or
- (xvii) a Loss which is the subject of the payment obligation in clause 31.10(a)(iii).

- (d) Clause 27.3(a) does not operate to exclude or limit any liability incurred or Claim made by the Contractor or its Related Parties to the extent that any Loss suffered by the Contractor as a result of such liability or Claim is a Loss described in any one or more of paragraphs (i) – (vii):
 - (i) a Loss which is an Insured Liability;
 - (ii) a Loss arising from death or personal injury;
 - (iii) a Loss arising from any criminal acts, fraud or Wilful Misconduct on the part of the Principal or its Related Parties;
 - (iv) a Liability which, by Law, the parties cannot limit or contract out of;
 - (v) a Loss in respect of an amount payable under clauses 14, 16, 21, 31.6, 31.9 or 31.10;
 - (vi) a Loss in respect of any sum payable in respect of any Change, Qualifying Change in Law, Change in Codes and Standards or Compensation Event; or
 - (vii) a Liability which is the subject of the indemnity in clause 17A.2(e).
- (e) Subject to clauses 11.2A(e), 11C.2, 16.10 and 31.10 and Schedule 29 but despite any other provision to the contrary, the Contractor will have no liability to the Principal and its Related Parties, nor will the Principal or its Related Parties be entitled to make any Claim against the Contractor:
 - (i) for:
 - (A) the decreased value of any equity investment in the Project or the WHTBL Program; or
 - (B) the increased cost of financial facilities, financial arrangements or financial accommodation provided to the Principal or any nominee of the Principal in connection with the Project,

to the extent that decrease or increase (relevantly) is caused by a Claim for lost Revenue; or
 - (ii) for lost Revenue that does not arise from a Defect or the Contractor's negligence, breach of contract, or other wrongful act or omission.

27.4 **No circularity**

None of the provisions in clauses 27.2, 27.3 or 28.1 operate to release the Contractor from any liability to the Principal to the extent that an insurer of any policy of insurance required under this deed seeks to rely on clauses 27.2, 27.3 or 28.1 to deny liability which it otherwise has to indemnify an insured under the relevant policy.

27.5 **Mitigation**

Where under the terms of this deed, a party:

- (a) is obliged to pay an amount in respect of any Loss suffered or incurred by the other party; or
- (b) indemnifies the other party against any Liability, Claim or Loss,

that other party must (notwithstanding such obligation or indemnity) in each case take all reasonable steps to mitigate that Loss, Liability or Claim and the cost of taking those steps will be recoverable from that party.

28. CAP ON LIABILITY

28.1 Liability cap (general)

(a) Subject to this clause 28, but otherwise despite any provision in any D&C Document to the contrary the Contractor's maximum aggregate liability to the Principal, its Related Parties, the D&C Independent Certifier, the WHT Independent Certifier and each Environmental Representative which arises:

- (i) under this deed and any other D&C Document;
- (ii) in tort (including negligence or otherwise);
- (iii) under any statute (to the extent that it is possible to exclude such liability);
or
- (iv) otherwise at Law or in equity,

arising out of or in connection with:

- (v) the performance of the Contractor's Activities (Rozelle Interchange) and any other obligation under any D&C Document in connection with the Contractor's Activities (Rozelle Interchange) is limited to an amount equal to the General Cap (Rozelle Interchange); and
- (vi) the performance of the Contractor's Activities (WHT Southern Tunnel Works) and any other obligation under any D&C Document in connection with the Contractor's Activities (WHT Southern Tunnel Works) is limited to an amount equal to the General Cap (WHT Southern Tunnel Works).

(aa) Subject to this clause 28, for the purpose of clause 28.1, any liability of the Contractor to the WestConnex Project Stakeholders (not listed in clause 28.1(a)), Other Project Stakeholders, the [REDACTED] the WHT Contractor and the WHT Asset Manager which arises:

- (i) under any other D&C Document;
- (ii) in tort (including negligence or otherwise);
- (iii) under any statute (to the extent that it is possible to exclude such liability);
or
- (iv) otherwise at Law or in equity,

arising out of or in connection with the performance of the Contractor's Activities (Rozelle Interchange) and any other obligation under any D&C Document in connection with the Contractor's Activities (Rozelle Interchange) which has been paid or otherwise satisfied by the Contractor will be counted towards the General Cap (Rozelle Interchange) as if it were a liability of the Contractor to the Principal (including for the purposes of clause 28.1(ac)).

(ab) Subject to this clause 28, for the purpose of clause 28.1, any liability of the Contractor to the [REDACTED] the WHT Contractor, the WHT Asset

Manager, the Other Project Stakeholders and the WestConnex Project Stakeholders which arises:

- (i) under any other D&C Document;
- (ii) in tort (including negligence or otherwise);
- (iii) under any statute (to the extent that it is possible to exclude such liability); or
- (iv) otherwise at Law or in equity,

arising out of or in connection with the performance of the Contractor's Activities (WHT Southern Tunnel Works) and any other obligation under any D&C Document in connection with the Contractor's Activities (WHT Southern Tunnel Works) which has been paid or otherwise satisfied by the Contractor will be counted towards the General Cap (WHT Southern Tunnel Works) as if it were a liability of the Contractor to the Principal (including for the purposes of clause 28.1(ac)).

(ac) For the purposes of clause 28.1(a) and clause 31.10(c):

- (i) where there is a liability of the Contractor to the Principal to which clause 28.1(a) applies; or
- (ii) where there are amounts paid or payable by the Contractor to the Principal under clause 31.10(a),

and such liability of payment (as applicable):

- (iii) could be taken to have arisen out of or be in connection with the performance of:
 - (A) either the Contractor's Activities (Rozelle Interchange) (or any other obligation under any D&C Document in connection with the Contractor's Activities (Rozelle Interchange)) or the Contractor's Activities (WHT Southern Tunnel Works) (or any other obligation under any D&C Document in connection with the Contractor's Activities (WHT Southern Tunnel Works)); or
 - (B) both of:
 - (aa) the Contractor's Activities (Rozelle Interchange) or any other obligation under any D&C Document in connection with the Contractor's Activities (Rozelle Interchange); and
 - (bb) the Contractor's Activities (WHT Southern Tunnel Works) or any other obligation under any D&C Document in connection with the Contractor's Activities (WHT Southern Tunnel Works); or
- (iv) cannot be ascertained whether the liability or payment (as applicable) arose from:
 - (A) the performance of the Contractor's Activities (Rozelle Interchange) or any other obligation under any D&C Document in connection with the Contractor's Activities (Rozelle Interchange); or

- (B) the performance of the Contractor's Activities (WHT Southern Tunnel Works) or any other obligation under any D&C Document in connection with the Contractor's Activities (WHT Southern Tunnel Works),

then:

- (v) the Principal and the Contractor must, within 5 Business Days after receipt of a written request by either the Principal or the Contractor, meet to endeavour to agree whether the relevant liability or payment amount will be counted towards the General Cap (Rozelle Interchange) or the General Cap (WHT Southern Tunnel Works); and
- (vi) if no agreement is reached within 20 Business Days of the meeting referred to in clause 28.1(ac)(v) or the Contractor fails to meet with the Principal within 5 Business Days after receipt of a written request by the Principal to meet, the Principal will (acting reasonably) direct whether the relevant liability or payment amount will be counted towards the General Cap (Rozelle Interchange) or the General Cap (WHT Southern Tunnel Works), and in acting reasonably the Principal must have regard to:
 - (A) whether there is a predominant cause of the relevant liability or payment (as between the performance of the Contractor's Activities (Rozelle Interchange) or any other obligation under any D&C Document in connection with the Contractor's Activities (Rozelle Interchange) on the one hand, and the performance of the Contractor's Activities (WHT Southern Tunnel Works) or any other obligation under any D&C Document in connection with the Contractor's Activities (WHT Southern Tunnel Works) on the other hand); and
 - (B) whether it is appropriate that the relevant liability or payment amount is counted towards both the General Cap (Rozelle Interchange) and the General Cap (WHT Southern Tunnel Works) on a pro-rata basis in the same proportion as the extent to which to the relevant liability or payment amount arises from the Contractor's Activities to which the General Cap (Rozelle Interchange) and the General Cap (WHT Southern Tunnel Works) applies.

(b) With effect on and from the Date of Completion:

- (i) the General Cap (Rozelle Interchange) will be reduced to an amount determined as follows:

$$GC_{Reduced} = GC_{D\&C} - GC_{CWD}$$

where

$GC_{Reduced}$ = the reduced General Cap (Rozelle Interchange);

$GC_{D\&C}$ = the General Cap (Rozelle Interchange) immediately prior to the reduction; and

GC_{CWD} = the Collateral Warranty General Cap; and

- (ii) a portion of the Accrued Liability (Rozelle Interchange) determined as follows will be allocated to and counted towards the cap on the Contractor's liability

under the Collateral Warranty Deed and will no longer be counted towards the General Cap (Rozelle Interchange) as reduced under clause 28.1(b)(i):

$$AL_{CWD} = AL_{D\&C} \times TWP$$

where

AL_{CWD} = the portion of the Accrued Liability (Rozelle Interchange) which will no longer be counted towards the General Cap (Rozelle Interchange);

$AL_{D\&C}$ = the Accrued Liability (Rozelle Interchange); and

TWP = the Transferred Works Proportion.

- (c) The reduction to the General Cap (Rozelle Interchange) under clause 28.1(b) does not:
- (i) affect the application of the General Cap (Rozelle Interchange) (as it existed prior to the reduction) to the Accrued Liability (Rozelle Interchange) in accordance with this clause 28; or
 - (ii) exclude, reduce or require the Principal to repay to the Contractor any amount paid by the Contractor in respect of the Accrued Liability (Rozelle Interchange).

28.2 Exclusions to the General Cap (Rozelle Interchange) and General Cap (WHT Southern Tunnel Works)

Clause 28.1 does not operate to exclude or limit the Contractor's liability in respect of:

- (a) Insured Liability;
- (b) Loss in respect of:
 - (i) death or personal injury; or
 - (ii) destruction of or damage to real and personal property;
- (c) Loss arising from any criminal acts, fraud or Wilful Default or Wilful Misconduct on the part of the Contractor or its Related Parties;
- (d) Loss to the extent that the Contractor has recovered from a third party (including the O&M Contractor, the WHT Asset Manager and the WHT Contractor) in respect of the same loss;
- (e) Loss which is the subject of the indemnities in clauses 9.8(d), 11.7(d), 29.2(a)(iv) and 29.3(e) of this deed;
- (f) any Liability of the Principal, a WestConnex Project Stakeholder, the ██████████ the WHT Asset Manager, the WHT Contractor or an Other Project Stakeholder to a third party (excluding to the Principal, its Related Parties, the WestConnex Project Stakeholders, the ██████████ the WHT Asset Manager, the WHT Contractor and the Other Project Stakeholders) where:
 - (i) the Liability is not for a Loss that is described in paragraph (a) of the definition of Consequential Loss; or

- (ii) that third party could have recovered the Loss from the Contractor by pursuing the Contractor directly;
- (g) any Liability to an Other Project Stakeholder, except to the extent such Liability arises in contract or is for breach of contract and would not have arisen in the absence of such contract;
- (h) Liability which, by law, the parties cannot limit or contract out of; or
- (i) any Liability referred to in clause 16.10(f) which is limited to the Liquidated Damages Cap (Rozelle Interchange) and any Liability referred to in clause 16.10(g) which is limited to the Liquidated Damages Cap (WHT Southern Tunnel Works),

and such liability will not be counted for the purposes of clause 28.1.

29. **INTELLECTUAL PROPERTY**

29.1 **Licence of Intellectual Property Rights**

- (a) Subject to clauses 29.1(b) and 29.1(c), the Contractor (irrevocably for all time and despite any termination of this deed for any reason) grants to the Principal an irrevocable, non-exclusive, royalty free, perpetual and fully assignable licence to use, possess, modify, vary or amend (and to sublicense others to use, possess, modify, vary or amend) all Intellectual Property Rights in or relating to:

- (i) the Design Documentation;
- (ii) the materials, documents, images, photographs, software, processes and methods relevant to the Project Works, the Temporary Works, the D&C Phase Maintenance and the Contractor's Activities (including processes and methods of working); and
- (iii) each of the Deliverables,

but excluding the Supplier Licensed Software, Procured Third Party Software and the Included Open Source Software (together the **Contract Documentation and Deliverables**) for:

- (iv) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the Contractor's Activities or the Project Works and the Temporary Works;
- (v) the purposes of use of those Intellectual Property Rights in the operations, maintenance, repair and handover of the Motorway and the Western Harbour Tunnel;
- (vi) any purpose associated with further development of the Construction Site or the Licensed Maintenance Area;
- (vii) any other purpose associated with the WestConnex Program of Works; and
- (viii) other than in respect of Contract Documentation and Deliverables procured pursuant to the Tolling Equipment Works Subcontract, any purpose associated with operating, maintaining, integrating or connecting any road project undertaken by the Principal, the [REDACTED] the NSW

Government or SMC or any of their affiliates (including any New Network Project) with the WestConnex Program of Works and the WHTBL Program,

which licence is effective immediately and will survive termination of this deed, provided that in respect of any software referred to in clause 29.1(a)(ii) that is commercially available off-the-shelf third party software:

- (ix) the Contractor will use its best endeavours to procure a licence in accordance with the requirements in clause 29.1(a); and
 - (x) if the Contractor is unable to procure such licence terms in respect of such software notwithstanding the use of its best endeavours, the Contractor must license that item of software to the Principal to the fullest extent to which the Contractor is permitted to do so pursuant to the terms of the licence granted to the Contractor by the third party licensor and on the terms of that licence.
- (b) The Contractor grants to the Principal perpetual, non-exclusive, fully assignable, irrevocable and royalty-free licence to:
- (i) use and reproduce (within the meaning of the *Copyright Act 1968* (Cth)) the Supplier Licensed Software;
 - (ii) upon termination of this deed for any reason, use, reproduce (within the meaning of the *Copyright Act 1968* (Cth)), modify, vary and amend the Supplier Licensed Software; and
 - (iii) sub-license the rights under clauses 29.1(b)(i) and 29.1(b)(ii) to:
 - (A) SMC;
 - (B) the WestConnex Concessionaires;
 - (C) [REDACTED]
 - (D) the WHT Asset Manager;
 - (E) another entity; and
 - (F) a third party contractor engaged by the Principal or the M4-M5 Link Concessionaires,
- for any reason in connection with:
- (G) the Contractor's Activities;
 - (H) the operation of the Motorway;
 - (I) the WestConnex Program of Works;
 - (J) the operation of the Western Harbour Tunnel;
 - (K) the Western Harbour Tunnel project; or
 - (L) other than in respect of Supplier Licensed Software procured pursuant to the Tolling Equipment Works Subcontract, the integration or connection of any road project undertaken by the Principal, the NSW

Government or SMC or any of their affiliates (including any New Network Project) with the WestConnex Program of Works.

- (ba) The parties acknowledge and agree that any licence or sub-licence granted under this clause 29.1 does not grant the right to use the Supplier Licensed Software procured pursuant to the IOMCS and OMCS Works Subcontract for the operation of any New Network Project or the Main Tunnel, nor the right to obtain any Source Code in respect of the Supplier Licensed Software procured pursuant to the IOMCS and OMCS Works Subcontract.
- (c) The Contractor must use best endeavours to procure that the owner or authorised licensor of the Procured Third Party Software grants to the Principal a perpetual, non-exclusive, fully assignable (other than in respect of the Procured Third Party Software in paragraph (b) of that definition), and irrevocable licence on terms acceptable to the Principal to:
- (i) use and reproduce (within the meaning of the *Copyright Act 1968* (Cth)), the Procured Third Party Software;
 - (ii) upon termination of this deed for any reason, use, reproduce (within the meaning of the *Copyright Act 1968* (Cth)), modify, vary and amend the Procured Third Party Software; and
 - (iii) sub-license the rights under clause 29.1(c)(i) and 29.1(c)(ii) to:
 - (A) a third party contractor engaged by the Principal;
 - (B) the Principal, SMC or the M4-M5 Link Concessionaires;
 - (C) [REDACTED]
 - (D) the WHT Asset Manager; and
 - (E) another entity,for any reason in connection with:
 - (F) the Contractor's Activities;
 - (G) the operation of the Motorway; or
 - (H) the WestConnex Program of Works;
 - (I) the construction or operation of the Western Harbour Tunnel;
 - (J) the WHTBL Program; or
 - (K) other than in respect of Supplier Licensed Software procured pursuant to the Tolling Equipment Works Subcontract, the integration or connection of any road project undertaken by the Principal, the NSW Government or SMC or any of their affiliates (including any New Network Project) with the WestConnex Program of Works.

For the purposes of this clause 29.1(c), best endeavours does not include an obligation on the Contractor to make additional payments or incur other costs, to a third party, including an order to procure the agreement of third party suppliers, to

grant the licences required by this clause 29.1(c) in respect of Procured Third Party Software.

- (d) The Contractor must procure that the IOMCS and OMCS Works Contractor must supply and procure a licence to the Principal of the Included Open Source Software on commercially available licence terms.
- (e) The Contractor agrees that the D&C Deed Sum is inclusive of all applicable licence fees for Procured Third Party Software and the Contractor must ensure that all licence fees for the use of the Procured Third Party Software are paid to the third party supplier as required by the terms of supply approved by the Contractor.

29.2 **Warranty**

- (a) The Contractor:
 - (i) warrants that the use of the Contract Documentation and Deliverables in accordance with this deed, or any other work provided by the Contractor under this deed, by the Principal and each entity referred to in clause 29.1(b)(iii) will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction;
 - (ii) other than in respect of any Intellectual Property Rights procured pursuant to the Tolling Equipment Works Subcontract and IOMCS and OMCS Works Subcontract, warrants that there are no Security Interests, and that it will not allow any Security Interests to be created, over any Intellectual Property Rights referred to in clause 29.1;
 - (iii) in respect of any Intellectual Property Rights procured pursuant to the IOMCS and OMCS Works Subcontract, warrants that there are no Security Interests, and that it will not allow any Security Interests to be created, over any Intellectual Property Rights referred to in clause 29.1:
 - (A) in any Contract Documentation and Deliverables; and
 - (B) in relation to Supplier Licenced Software,but excluding any Intellectual Property Rights referred to in clause 29.1(c) in relation to Procured Third Party Software; and
 - (iv) must indemnify the Principal to the extent any Claims, or costs, expenses, Losses or damages are suffered or incurred by the Principal and each entity referred to in clause 29.1(b)(iii) arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, the Contractor's Activities or the Contract Documentation and Deliverables.
- (b) For the purposes of clause 29.2(a), the use of the Contract Documentation and Deliverables by the Principal and each entity referred to in clause 29.1(b)(iii) includes the right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change any part of the Contract Documentation and Deliverables or any part of the Project Works or the Temporary Works to which the Contract Documentation and Deliverables or any other work provided by the Contractor under this deed relates:

- (i) with or without attribution of authorship;
- (ii) in any medium; and
- (iii) in any context and in any way it sees fit.

29.3 Contractor to procure for the Principal

- (a) The Contractor agrees to, and agrees to procure the cooperation of any third parties to:
 - (i) execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal, its Related Parties or their licensees, assignees or successors and their licensees, or any other person authorised by them) as reasonably requested by the Principal to give full effect to the provisions of this clause 29; and
 - (ii) allow or assist the Principal (and its Related Parties, licensees, assignees and successors and their licensees, and any other person authorised by them) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation) or to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (b) The Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 29.3 if the Contractor fails to execute the document or do the relevant act or thing within 3 Business Days of a written request by the Principal's Representative.
- (c) The Contractor warrants that:
 - (i) subject to clause 29.3(c)(ia), the use of the Intellectual Property Rights licensed under this clause 29 pursuant to the terms of this deed does not and will not infringe the Intellectual Property Rights of any party; and
 - (ia) in respect of any Intellectual Property Rights procured pursuant to the IOMCS and OMCS Works Subcontract, the use of the Intellectual Property Rights licensed under clause 29.1 in:
 - (A) Contract Documentation and Deliverables; and
 - (B) Supplier Licenced Software,pursuant to the terms of this deed does not and will not infringe the Intellectual Property Rights of any party; and
 - (ii) the Contractor is able to grant the licence granted in accordance with clause 29.1.
- (d) Without limiting clause 29.3(c), if any action or Claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal, its Related Parties or their licensees, assignees or successors or their

licensees, or other person authorised by them, of the Contract Documentation and Deliverables, the Contractor's Activities or any part of them, being materially disrupted, impaired or adversely affected, the Contractor must at its own expense and at the Principal's option:

- (i) subject to clause 29.3(d)(iii)(A), procure for the benefit of the Principal, its Related Parties and their licensees, assignees and successors and their licensees and any other person authorised by them the right to continue to use and exploit the Intellectual Property Rights licensed pursuant to clause 29.1, in accordance with this deed;
- (ii) subject to clause 29.3(d)(iii)(B), modify or replace the Contract Documentation and Deliverables, the Contractor's Activities or the relevant part of them, in respect of which Intellectual Property Rights are licensed pursuant to clause 29.1, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Deliverables, the Contractor's Activities or the relevant part of them in respect of which Intellectual Property Rights are licensed pursuant to clause 29.1 will:
 - (A) comply with the requirements of this deed; and
 - (B) not limit or otherwise affect the Principal's rights, or the Contractor's ability to comply with its obligations, under this deed or otherwise according to Law; or
- (iii) in respect of any Intellectual Property Rights procured pursuant to the IOMCS and OMCS Works Subcontract:
 - (A) procure for the benefit of the Principal, its Related Parties and their licensees, assignees and successors and their licensees and any other person authorised by them the right to continue to use and exploit the Intellectual Property Rights licensed pursuant to clause 29.1 in Contract Documentation and Deliverables and Supplier Licenced Software, in accordance with this deed; or
 - (B) modify or replace the Contract Documentation and Deliverables, the Contractor's Activities or the relevant part of them, in respect of which Intellectual Property Rights are licensed pursuant to clauses 29.1(a) and 29.1(b), so that no further infringement will occur and so that the modified or replaced Contract Documentation and Deliverables, the Contractor's Activities or the relevant part of them in respect of which Intellectual Property Rights are licensed pursuant to clauses 29.1(a) and 29.1(b) will:
 - (aa) comply with the requirements of this deed; and
 - (bb) not limit or otherwise affect the Principal's rights, or the Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.
- (e) The Contractor indemnifies, and agrees to keep indemnified, the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
 - (i) a breach by the Contractor of any warranty set out in this clause 29; or

- (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Deliverables, the Contractor's Activities or any part of them.

29.4 Moral rights

The Contractor, in respect of the Intellectual Property Rights set out in this clause 29:

- (a) to the extent permitted by Law, will not, and will take reasonable steps to ensure that its Related Parties do not sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the date of this deed) in respect of any Intellectual Property Rights against:
 - (i) the Principal;
 - (ii) the Principal's Related Parties;
 - (iii) the M4-M5 Link Concessionaires and the M4-M5 Link Concessionaires' Related Parties;
 - (iv) [REDACTED]
 - (v) the WHT Asset Manager and the WHT Asset Manager's Related Parties; or
 - (vi) any third party to whom the Principal, the M4-M5 Link Concessionaires, the [REDACTED] or the WHT Asset Manager sublicences (whether express or implied), or grants any other right to use, possess, modify, vary or amend any Intellectual Property Right;
- (b) will take reasonable steps to procure (without coercion) that all individuals who are, or are to be, or may be, authors of any Intellectual Property Right, sign, date and return to the Contractor a Moral Rights Consent (in consideration for the payment of \$1 to that individual) prior to those individuals commencing work on the creation of any Intellectual Property Rights, or as soon as practicable thereafter, in which each such individual becomes bound by the obligations to the Principal, the M4-M5 Link Concessionaires or the [REDACTED] (as applicable) as set out in the Moral Rights Consent, and to pay each such individual the sum of \$1 on behalf of the Principal, the M4-M5 Link Concessionaires, the [REDACTED] and the WHT Asset Manager (as applicable);
- (c) will within 3 Business Days after a request by the Principal, provide to the Principal any Moral Rights Consent which is obtained pursuant to clause 29.4(b) as requested by the Principal; and
- (d) will:
 - (i) in respect of any authors of any Intellectual Property Rights obtained pursuant to the Tolling Equipment Works Subcontract, take reasonable steps to maintain; and
 - (ii) otherwise in respect of any other Intellectual Property Rights, maintain, an up-to-date record of the names and contact details of each person who is an author of any Intellectual Property Right and the Intellectual Property Right of which

such person is an author, and provide a copy of any updated records to the Principal upon request,

provided that, in respect of any Intellectual Property Rights procured pursuant to the IOMCS and OMCS Works Subcontract, this clause 29.4 only applies to the Intellectual Property Rights licensed under clauses 29.1(a) and 29.1(b).

29.5 **Escrow Agreement**

The Contractor must, prior to the date of this deed (or at such other time directed by the Principal), enter into and maintain, or procure that the Tolling Equipment Works Contractor, the IOMCS and OMCS Works Contractor and all relevant third party suppliers enter into and maintain, during the Escrow Term, Escrow Agreements with the Principal, the M4-M5 Link Concessionaires and an escrow agent nominated by the Principal for all Escrow Material relating to or forming part of the Deliverables.

29A **FINANCIAL REPORTING AND NOTIFICATIONS**

29A.1 **Financial Reporting**

- (aa) The Contractor is not obligated to comply with any requirements of this clause 29A that would otherwise put the Contractor (or any entity comprising the Contractor), or any Contractor Guarantor in breach of any applicable Laws or the listing rules of any recognised stock exchange.
- (ab) The Contractor is not obligated to comply with any requirements of this clause 29A to the extent that:
 - (i) the Contractor (or any entity comprising the Contractor), or any Contractor Guarantor, has provided the relevant documents or information to the Principal on a separate project or pursuant to a separate contract; or
 - (ii) the relevant documents or information have been Publicly Notified and can be accessed by the Principal.
- (a) The Contractor must give the Principal its most recent audited financial statements (as applicable) for:
 - (i) each entity that comprises the Contractor, annually and half-yearly once prepared; and
 - (ii) each Contractor Guarantor, when Publicly Notified on an annual basis,but where audited financial statements are not available for the relevant period, then management accounts including profit and loss, balance sheets and cash flow statements.
- (b) The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 29A.1(a) in compliance with all applicable Laws and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (c) Without limiting its obligations under clause 29A.1(a), the Contractor must also provide the information set out in Schedule 33 at the times the information is required to be notified by that Schedule.

- (d) The Contractor warrants that each of the documents and information required to be provided to the Principal in accordance with clauses 29A.1(a) and 29A.1(c) will be accurate, complete and correct in all respects.
- (e) The Contractor must provide the documents and information required under clauses 29A.1(a) and 29A.1(c):
 - (i) from the Amendment Date until the date which is the later of the Date of Opening Completion and the Date of Completion (WHT Southern Tunnel Works) at the required frequencies; and
 - (ii) thereafter until the date which is the later of Completion and Final Completion, at any time following the Principal's request, provided that the Principal may not request the relevant information at greater frequencies than those required by clauses 29A.1(a) or 29A.1(c), as relevant.
- (f) The Contractor is not required to provide any documents or information under this clause 29A.1 once both Completion and Final Completion have been reached.
- (g) If the Principal becomes aware of a Financial Capacity Event, Financial Reporting Event or Restructure Event in relation to the Contractor (or any entity that comprises the Contractor) or any Contractor Guarantor, the Principal may request the Contractor to provide information which is reasonably required by the Principal in order to determine the extent and potential impact of the Financial Capacity Event, Financial Reporting Event or Restructure Event, provided that the relevant information is Publicly Notified.

29A.2 **Financial Assessment**

Without limiting or otherwise restricting clauses 29A.1 and 29A.3, the Contractor acknowledges and agrees that:

- (a) the Principal may, in its absolute discretion, based upon the latest audited financial statements provided in accordance with clause 29A.1(a) either itself, or through the engagement of private sector service providers, undertake financial assessments (**Financial Assessment**) of the Contractor (or any entity that comprises the Contractor) and any Contractor Guarantor that are relevant to the matter which resulted in the Principal's decision to undertake the assessment;
- (b) the Financial Assessment may be undertaken at half yearly or yearly intervals from the Amendment Date;
- (c) if requested by the Principal's Representative, it must, within 10 Business Days of receiving such request (or such longer period as the Principal's Representative may agree), provide any Publicly Notified documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment. The Principal's Representative may request such Publicly Notified documents, information and evidence in addition to any other documents, information and evidence otherwise required to be provided by the Contractor under this clause 29A; and
- (d) upon completion of the Financial Assessment, the Principal will provide the Contractor with written feedback.

29A.3 **Financial Reporting Events**

- (a) Notwithstanding any other clause of this deed, but subject to clause 29A.1(aa), the Contractor must notify the Principal as soon as the Contractor becomes aware that any Financial Reporting Event has occurred.
- (b) Subject to clause 30.4, the Principal must keep confidential any information provided or communicated by the Contractor pursuant to this clause 29A, except for any information:
 - (i) which is in the public domain through no default of the Principal;
 - (ii) which is disclosed to NSW Treasury or the Principal's advisors or consultants who are subject to a duty of confidentiality to the Principal; or
 - (iii) the disclosure of which is:
 - (A) required by Law or to obtain legal advice in relation to this deed;
 - (B) made following the written consent of the Contractor;
 - (C) given to a court in the course of proceedings to which the Principal is a party; or
 - (D) for the purposes of performing the Principal's obligations under this deed.

29A.4 Financial Mitigation Plan

- (a) Subject to the requirements of all applicable Laws, the Principal may notify the Contractor if a Financial Capacity Event has occurred. In determining if a Financial Capacity Event has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by the Contractor under this clause 29A and any other information it considers relevant in its absolute discretion.
- (b) Following the occurrence of a Financial Capacity Event, the Contractor must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 29A.4(a) (or such longer period as the Principal's Representative may agree) to discuss the nature of the Financial Capacity Event and its implications in respect of the obligations and liabilities of the Contractor under the D&C Documents. The Contractor must also procure the attendance at such meeting of any Contractor Guarantor specified by the Principal.
- (c) The meeting shall also be for the purpose of:
 - (i) discussing any effect of the Financial Capacity Event on the ability of:
 - (A) the Contractor to continue to perform its obligations and meet its liabilities under this deed, including the timely performance of the Contractor's Activities and how any adverse effect will be mitigated; or
 - (B) any Contractor Guarantor to meet its liabilities under the relevant D&C Guarantee;
 - (ii) identifying the Publicly Notified information relating to the Contractor (or any entity that comprises the Contractor) and any Contractor Guarantor that the Principal reasonably requires in order to better understand the matters described in clause 29A.4(c)(i) and the timing for the provision of that

information to the extent such information may be disclosed to the Principal without breaching any confidentiality obligations; and

- (iii) subject to clause 29A.4(ca), specifying the form, duration and content of the Financial Mitigation Plan required to be prepared by the Contractor (if the Principal, acting reasonably, requires a Financial Mitigation Plan to be prepared in response to the Financial Capacity Event) which must include details of the measures the Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the matters described in clause 29A.4(c)(i).
- (ca) The parties agree that the measures set out in the Financial Mitigation Plan for the purposes of clause 29A.4(c)(iii) must be consistent with those reasonable measures that the governing body of the Contractor and the Contractor Guarantor (as applicable) determines are in the best interest of the Contractor or the Contractor Guarantor (as applicable) in accordance with their duties and obligations at Law.
- (d) If a Financial Mitigation Plan is required by the Principal, the Contractor must prepare and submit the Financial Mitigation Plan to the Principal's Representative within 15 Business Days of the meeting held pursuant to clause 29A.4(b) (or such longer period at the Principal's Representative may agree).
- (e) The Principal's Representative may, within 10 Business Days after it receives the Financial Mitigation Plan under clause 29A.4(d) (or such longer period as the Principal's Representative may agree):
 - (i) review the Financial Mitigation Plan submitted under clause 29A.4(d); and
 - (ii) provide written comments on any aspects of the Financial Mitigation Plan which do not, in the opinion of the Principal (acting reasonably), satisfy the requirements of this clause 29A.4 for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, which must include the reasons for its opinion.
- (f) Subject to clause 29A.4(fa), if the Contractor receives comments under clause 29A.4(e)(ii), the Contractor must within 10 Business Days (or such longer period as the Principal's Representative may agree) submit an amended Financial Mitigation Plan, or relevant part of it, to the Principal's Representative which addresses the comments to the extent required to satisfy the requirements of clause 29A.4. If requested by either party, the Principal and the Contractor must meet within 5 Business Days with a view to discussing the comments on the Financial Mitigation Plan. The Contractor must also procure the attendance at such meeting of any Contractor Guarantor.
- (fa) The Contractor is not required to agree to any amendments to a Financial Mitigation Plan required by the Principal's Representative to the extent that to do so would result in a breach of directors duties pursuant to any applicable Laws or would otherwise affect or interfere with the unfettered right of the executive management of the Contractor (or any entity comprising the Contractor) or any Contractor Guarantor to manage the corporate affairs of the relevant company, as notified by the Contractor to the Principal, including reasons.
- (g) The Contractor must diligently implement a Financial Mitigation Plan submitted under clause 29A.4(d) incorporating any amendments required by clause 29A.4(f).
- (h) The Contractor:

- (i) must promptly update the Financial Mitigation Plan in order to take into account any events or circumstances, including any additional Financial Capacity Event or Financial Reporting Event, which occurs or comes into existence and which has any effect on the matters described in clause 29A.4(c)(i); and
 - (ii) must promptly submit any amended Financial Mitigation Plan to the Principal's Representative, in which case clauses 29A.4(e) and 29A.4(f) shall again apply and the Contractor must comply with the then current Financial Mitigation Plan until the 10 Business Days period under clause 29A.4(e) has elapsed (or such longer period as the Principal's Representative may agree).
- (i) The Contractor may notify the Principal's Representative at any time if the Contractor reasonably believes that a Financial Capacity Event that is the subject of the Financial Mitigation Plan has been adequately mitigated in accordance with the Financial Mitigation Plan and/or no longer subsists.
- (j) If the Contractor gives a notice under clause 29A.4(i) and the Principal's Representative agrees (acting reasonably) that the Financial Capacity Event has been adequately mitigated and/or no longer subsists:
- (i) the Principal's Representative must promptly provide written notice to the Contractor confirming this; and
 - (ii) the Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.
- (k) This clause 29A is without prejudice to and will not lessen or otherwise affect:
- (i) the Contractor's obligations or liabilities under this deed or otherwise according to Law; or
 - (ii) any of the Principal's rights against the Contractor, whether under this deed or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in this clause 29A, including any rights arising under clause 31.
- (l) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of its obligations under this clause 29A.

30. **CONFIDENTIALITY, PUBLICITY AND PRIVACY**

30.1 **General restriction**

Subject to clause 30.2, no party will, at any time, without the written consent of the other party, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the Principal, SMC, the [REDACTED] the WHT Asset Manager, the WHT Contractor, the O&M Contractor, the Independent Certifier, the D&C Independent Certifier, the WHT Independent Certifier, the WestConnex Concessionaires and their officers, employees, consultants, advisers and agents who require such reports, studies, information and data to enable them properly to carry out their duties):

- (a) any of the contents of this deed or the other D&C Documents;
- (b) any information relating to the negotiations concerning the same; or

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

30.2 **Exceptions**

The restrictions imposed by clause 30.1 will not apply to the disclosure of any information:

- (a) which is now or after the date of this deed comes into the public domain (other than by breach of this clause) or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by Law or the listing rules of ASX Limited (if applicable);
- (c) as required for any legitimate NSW Government purpose or process;
- (d) pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007 or the NSW Public Private Partnership Guidelines 2017 (TPP17-07) published by NSW Treasury;
- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party;
- (f) which, in the reasonable opinion of the Contractor or the Principal, is required to be disclosed to:
 - (i) any actual or prospective Equity Investor (including any investor in an Equity Investor) or Debt Financier (or assignee or novatee of a Debt Financier);
 - (ii) any officers, employees, professional advisers, auditors or consultants of any actual or prospective Equity Investor (including any investor in an Equity Investor) or Debt Financier (or assignee or novatee of a Debt Financier) to enable them properly to carry out their duties;
 - (iii) any insurer in respect of the Project or the WHTBL Program;
 - (iv) any of the Contractor's, the M4-M5 Link Concessionaires', the Principal's, the [REDACTED] or SMC's officers, employees, professional advisers, auditors or consultants; or
 - (v) any person to whom disclosure is reasonably necessary to enable that person to comply with, or exercise its rights under, the D&C Documents to which it is a party and any Subcontractors, providing the Subcontractors agree to be bound by the confidentiality obligations which bind the Contractor under this clause 30;
- (g) by the Principal that is not Commercially Sensitive Information; or
- (h) without limiting this clause 30.2 or clause 30.4, any disclosure by the Principal's Representative of any D&C Document relating to this deed and which the Contractor (acting reasonably) has agreed with the Principal's Representative contains no Commercially Sensitive Information.

30.2A **Third Party Confidential Information**

Subject to clauses 30.2(a), 30.2(b), 30.2(c) and 30.2(e), the Contractor must not disclose (including to those persons or entities identified in clause 30.2(f)) any Third Party Confidential Information without the Principal's prior written consent (which may, at the Principal's absolute discretion, include consent to disclose such information to the Contractor's Subcontractors provided that such disclosure is in accordance with any terms the Principal is required to comply with in respect of that Third Party Confidential Information).

30.3 **Publicity**

- (a) The Contractor must not issue any information, publication, document or article for publication concerning the Project or the Contractor's Activities in any media (or permit any third party to do so) without the prior written approval of the Principal's Representative (acting reasonably) and only in a manner approved by the Principal's Representative (acting reasonably).
- (b) If the Contractor or any of its Subcontractors receives a direct request from the media for comment in respect of any aspect of the Project or the Contractor's Activities, the Contractor must promptly provide details of such request to the Principal's Representative.
- (c) The Contractor must not announce, promote or hold any event, function or party on the Construction Site, the Rozelle Interchange Works or the Maintenance Site (or permit any third party to do so) without the prior written approval of the Principal (acting reasonably).

30.4 **Disclosure by the Principal**

- (a) Notwithstanding the other provisions of this clause 30 but subject to clause 30.4(b), the parties acknowledge that:
 - (i) certain D&C Documents (together with the Project Deed and other project documents to which the Contractor is not a party) will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (ii) information concerning certain D&C Documents will be tabled in Parliament of the State of New South Wales by or on behalf of the Principal and will be published in accordance with applicable government policies and guidelines;
 - (iii) certain D&C Documents and information concerning them will be published on the Principal's contracts register in accordance with the GIPA Act; and
 - (iv) the Principal or the Principal's Representative may make certain D&C Documents or any of them available to any person as required by any applicable Law, to the minister (or office of the minister) with responsibility for the Principal, the WestConnex project or the WHTBL Program, or for any other legitimate government purpose or process.
- (b) The parties acknowledge that:
 - (i) the Principal has consulted with the Contractor in relation to the disclosure of those parts of the D&C Documents that are not Commercially Sensitive Information;

- (ii) the Principal will notify the Contractor of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
- (iii) following notification by the Principal in accordance with clause 30.4(b)(ii), the Principal will take reasonable steps to consult with the Contractor before the Principal discloses the information referred to in clause 30.4(b)(ii), including under the GIPA Act; and
- (iv) if, following:
 - (A) notification by the Principal in accordance with clause 30.4(b)(ii); or
 - (B) consultation between the Principal and the Contractor in accordance with clause 30.4(b)(iii),

the Contractor objects to disclosure of some or all of the information referred to in clause 30.4(b)(ii) on the basis that it is Commercially Sensitive Information, the Contractor must provide details of any such objection within 3 Business Days of the date the Contractor received notification from the Principal or the date on which the consultation process concluded (as relevant).

- (c) The Principal must provide details of the Contractor's objections to the Principal and the Contractor acknowledges that the Principal may take into account such objection received from the Contractor pursuant to clause 30.4(b)(iv) in determining whether the information identified by the Contractor as Commercially Sensitive Information should be disclosed.
- (d) Nothing in this clause 30.4 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

30.5 **Privacy**

- (a) Without limiting clause 7.1, the Contractor must comply with the Privacy Laws in carrying out and implementing the Project Works and the Temporary Works.
- (b) Where the Contractor will be collecting or disclosing Personal Information from an individual in connection with the Project Works and the Temporary Works, it must:
 - (i) either:
 - (A) ensure that the disclosure is permitted under the Privacy Laws; or
 - (B) procure the consent of the individual to whom that Personal Information relates sufficient to enable such disclosure to occur and to enable the recipient to collect, use, and disclose that Personal Information for the purposes of the Project Works and the Temporary Works;
 - (ii) take reasonable steps to ensure that the Personal Information disclosed is accurate, complete and up-to-date; and
 - (iii) take reasonable steps to inform that individual of any matters required by the Privacy Laws.

31. **DEFAULT AND TERMINATION**

31.1 **Events of Default**

Each of the following events is an Event of Default:

- (a) the Contractor fails to commence, or to expeditiously and diligently progress, the Contractor's Activities as required by clause 16.1 or the Contractor displays an intention to permanently abandon the Contractor's Activities;
- (b) the Contractor fails to achieve:
 - (i) Opening Completion of the Project Works (Rozelle Interchange) by the Date for Opening Completion;
 - (ii) Completion of the Project Works (Rozelle Interchange) by the Date for Completion;
 - (iii) Completion (WHT Southern Tunnel Works) of the WHT Southern Tunnel Works by the Date for Completion (WHT Southern Tunnel Works);
 - (iv) Final Completion by the Date for Final Completion; or
 - (v) WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone;
- (c) either:
 - (i) after the Date of Opening Completion, the Contractor closes or permits the closure of one or more traffic lanes of the Motorway; or
 - (ii) the Contractor causes the closure of one or more traffic lanes of an Other WestConnex Motorway or the Western Harbour Tunnel,

except to the extent it has been authorised to close the Motorway or a traffic lane of the Motorway or the Western Harbour Tunnel under a Road Occupancy Licence, or the Principal otherwise consents in writing (each an **Unauthorised Closure Default**);
- (d) the Contractor breaches in a material respect a representation or warranty given by it under this deed, or any other undertaking given by the Contractor in a D&C Document;
- (e) the Principal is the victim of any fraud or dishonest conduct by the Contractor in connection with the Contractor's Activities, or the Independent Commission Against Corruption or similar public body determines that the Contractor, in performing the Contractor's Activities, has engaged in corrupt conduct, collusive pricing or other similar activity;
- (f) the Contractor fails to provide a corrective action plan in accordance with clause 0 or fails to diligently pursue such a corrective action plan;
- (g) the Contractor fails to provide any Security Bond in accordance with clause 10.1, 10.1A, 10.6 or 10.6A;
- (h) the Contractor fails to provide the D&C Guarantees in accordance with clause 10.7;

- (i) the Contractor fails to materially comply with a Law or a change in Law;
- (j) the Contractor does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (k) the Contractor is in breach of its obligations under clauses 21.13 or 26.5;
- (l) the Contractor fails to pay a sum of money due and owing to the Principal in accordance with this deed and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment; or
- (m) the Contractor defaults in a material respect in the due observance and performance of any of its other obligations under this deed or any other D&C Document.

31.2 **Notice of default**

- (a) Subject to clause 31.2(b), upon the occurrence of an Event of Default, the Principal may, by notice to the Contractor, require the Contractor to Remedy the Event of Default within such period specified in the notice to the Contractor as is in the opinion of the Principal (acting reasonably) required to Remedy the Event of Default (the **Remedy Period**).
- (b) The parties agree that if an Event of Default is:
 - (i) a failure to pay money, the Remedy Period to be specified by the Principal is 16 Business Days; or
 - (ii) an Unauthorised Closure Default, the Remedy Period to be specified by the Principal is 3 days.
- (c) If the Principal gives the Contractor a notice referred to in clause 31.2(a) (a **Remedy Notice**):
 - (i) the Contractor must comply with the Remedy Notice; and
 - (ii) unless urgent action is necessary or the relevant Event of Default is a failure to pay money:
 - (A) the Contractor must give the Principal a program and plan (a **Remedy Plan**) to Remedy the Event of Default in accordance with the terms of the Remedy Notice;
 - (B) the Principal must consult with the Contractor in good faith to develop and settle that Remedy Plan; and
 - (C) the Contractor must thereafter comply with that Remedy Plan.
- (d) If, at any time (even if the Contractor has previously given the Principal a notice under clause 31.2(d)(i)), the Contractor considers, in good faith, that a Remedy Period is not reasonable:
 - (i) the Contractor must immediately give the Principal a notice of that fact, including details of its reasons and extension to the Remedy Period which it believes (acting reasonably) is required to Remedy the Event of Default; and
 - (ii) subject to clause 31.2(e), the Principal must, as soon as practicable after receiving a notice under clause 31.2(d)(i), review the Remedy Period.

- (e) If the Contractor has given a notice to the Principal under clause 31.2(d)(i) and:
 - (i) the Contractor is diligently pursuing the Remedy of the Event of Default, including by implementing a Remedy Plan; and
 - (ii) if the Event of Default the subject of the Remedy Notice occurred after the Date of Opening Completion, the Rozelle Interchange Works are open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with this deed),

the relevant Remedy Period will be extended by such period as is, in the opinion of the Principal (acting reasonably), required to Remedy the Event of Default as notified by the Principal to the Contractor.
- (f) If the Contractor considers in good faith that a Remedy Period extended by the Principal pursuant to clause 31.2(e) is not reasonable, it may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

31.3 **Step-in by the Principal**

- (a) The Contractor acknowledges and agrees that the Principal may:
 - (i) at any time after the occurrence of an Event of Default, provided that the Contractor is not complying with clause 31.2(c) for that Event of Default;
 - (ii) at any time after the occurrence of a Remediable Termination Event; or
 - (iii) at any time after the occurrence of an Immediate Termination Event,

elect to:

 - (iv) temporarily assume total or partial management and control of the Project Works;
 - (v) access those parts of the Construction Site or Extra Land occupied by the Contractor; and
 - (vi) take such other reasonable steps (including suspension of the Project Works in whole or in part) as in the reasonable opinion of the Principal are necessary or desirable to, at its option, continue the implementation of the Project Works and to minimise the effects of the Event of Default, Remediable Termination Event or Immediate Termination Event.
- (b) The Principal will give prior notice to the Contractor of its election to exercise its rights under clause 31.3(a), except in the case of an event as described in clause 8.6(a)(ii).
- (c) During the exercise of the Principal's rights under this clause 31.3, the Contractor's rights and obligations under this deed are suspended to the extent necessary to exercise the Principal's rights under this clause 31.3.
- (d) Pursuant to clause 31.3(a), the Principal may do:
 - (i) all things which the Contractor is obliged to do under or in connection with this deed, any other D&C Document to which it is a party or any Law, and things which the Principal is authorised or empowered to do with respect to the Contractor under any D&C Document or any Law; and

- (ii) all things necessary for executing the Project Works in accordance with this deed.
- (e) The Contractor:
 - (i) irrevocably appoints the Principal, and the Principal's nominees from time to time, jointly and severally as the Contractor's attorney with full power and authority to exercise the Principal's rights under clause 31.3(a), provided that the Principal properly considers that in each instance the power or authority which it or its nominee proposes to exercise as attorney is reasonable and necessary for the carrying out of the Project Works or to minimise the effects of the Event of Default, Remediable Termination Event or overcome the consequences of the Event of Default, Remediable Termination Event or an Immediate Termination Event; and
 - (ii) agrees to ratify and confirm whatever action is taken by the attorney appointed by the Contractor.
- (f) The Contractor will use its best endeavours to assist the Principal wherever and however reasonably possible in the exercise of the Principal's rights under this clause 31.3 (including facilitating ongoing access to any support or other services provided by employees, Subcontractors or third parties).
- (g) The exercise by the Principal of its rights under this clause 31.3 (or the cessation of such exercise) will not affect any other power of the Principal or any other right of the Principal under any D&C Document to which the Principal is a party.
- (h) The Principal may, on 3 Business Days' notice to the Contractor, cease to exercise its rights under this clause 31.3.
- (i) Any Loss suffered or incurred by the Principal in taking action referred to in this clause 31.3 will be a debt due and payable from the Contractor to the Principal.

31.4 **Termination by the Principal**

- (a) If:
 - (i) an Event of Default (other than an Event of Default as described in clause 31.1(b) or 31.1(f)) is not Remedied within the Remedy Period (as extended if at all in accordance with clause 31.2(e) or clause 31.2(f));
 - (ii) without limiting the Principal's rights under clause 31.4(c)(i), an Event of Default under:
 - (A) clause 31.1(b)(i) or clause 31.1(b)(ii) is not Remedied, by the Sunset Date (Opening Completion); or
 - (B) clause 31.1(b)(iii) or clause 31.1(b)(iv) is not Remedied, by the Sunset Date (WHT Southern Tunnel Works);
 - (iii) an Event of Default under clause 31.1(f) is not Remedied, within the Remedy Period (as extended if at all in accordance with clause 31.2(e) or clause 31.2(f)) and:
 - (A) the Principal has provided notice to the D&C Independent Certifier (in respect of paragraph (B)(aa) below) or the WHT Independent Certifier

(in respect of paragraph (B)(bb) below) and the Contractor of that fact under this clause 31.4(a)(iii)(A); and

(B) the D&C Independent Certifier (in respect of paragraph (aa) below) or the WHT Independent Certifier (in respect of paragraph (bb) below) determines (having regard to all relevant information provided to it by the Contractor and the Principal) that there is no reasonable likelihood of the Contractor achieving:

(aa) Opening Completion by the Sunset Date (Opening Completion);
or

(bb) Completion (WHT Southern Tunnel Works) by the Sunset Date (WHT Southern Tunnel Works); or

(iv) at any time during the relevant Remedy Period (as extended if at all in accordance with clause 31.2(e) or clause 31.2(f)) in which an Event of Default is subsisting and has not been Remedied:

(A) the Contractor is not diligently pursuing a Remedy of the Event of Default, including by complying with the Remedy Plan; or

(B) the Rozelle Interchange Works are not open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with this deed),

(each a **Remediable Termination Event**), the Principal may give the Contractor 15 Business Days' prior notice of its intention to terminate this deed. During this 15 Business Day period the Contractor will have a right to Remedy, or procure the Remedy of, the Remediable Termination Event.

(b) If at the expiration of the 15 Business Day period following the notice of a Remediable Termination Event, the Remediable Termination Event has not been Remedied by the Contractor, the Principal may thereafter terminate this deed by, and with effect from, notice to the Contractor.

(c) If:

(i) the Contractor fails to achieve:

(A) Opening Completion of the Project Works (Rozelle Interchange) by the Sunset Date (Opening Completion); or

(B) Completion (WHT Southern Tunnel Works) by the Sunset Date (WHT Southern Tunnel Works);

(ii) an Insolvency Event occurs in relation to the Contractor, an entity comprising the Contractor or the Contractor Guarantor (in each case whether or not the Contractor is then in breach of this deed) and the Contractor or the Contractor Guarantor is not able to satisfy the Principal (acting in its absolute discretion) within 5 Business Days (or any longer period agreed to by the Principal acting in its absolute discretion) of the Insolvency Event occurring that this deed should not be terminated, including by:

- (A) a replacement entity of appropriate creditworthiness assuming the obligations and liabilities of the insolvent entity to the Principal on terms satisfactory to the Principal; or
 - (B) the Contractor providing additional unconditional undertakings for amounts and in a form satisfactory to the Principal;
- (iii) the aggregate liability of the Contractor to the Principal under or in connection with the D&C Documents:
- (A) in connection with the Contractor's Activities (Rozelle Interchange) exceeds ■% of the General Cap (Rozelle Interchange), and the Principal and the Contractor have not agreed in writing to increase either the General Cap (Rozelle Interchange) or the threshold under this clause to a higher percentage of the General Cap (Rozelle Interchange) (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 31.4(c)(iii) where the threshold is subsequently reached or exceeded); or
 - (B) in connection with the Contractor's Activities (WHT Southern Tunnel Works) exceeds ■% of the General Cap (WHT Southern Tunnel Works), and the Principal and the Contractor have not agreed in writing to increase either the General Cap (WHT Southern Tunnel Works) or the threshold under this clause to a higher percentage of the General Cap (WHT Southern Tunnel Works) (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 31.4(c)(iii) where the threshold is subsequently reached or exceeded);
- (iv) the aggregate liability of the Contractor to the Principal for all Liability:
- (A) referred to in clause 16.10(f) is equal to the Liquidated Damages Cap (Rozelle Interchange) and the Contractor has not agreed in writing to increase the Liquidated Damages Cap (Rozelle Interchange) (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 31.4(c)(iv) where the Liquidated Damages Cap (Rozelle Interchange) is subsequently reached); or
 - (B) referred to in clause 16.10(g) is equal to the Liquidated Damages Cap (WHT Southern Tunnel Works) and the Contractor has not agreed in writing to increase the Liquidated Damages Cap (WHT Southern Tunnel Works) (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 31.4(c)(iv) where the Liquidated Damages Cap (WHT Southern Tunnel Works) is subsequently reached);
- (v) a D&C Guarantee is or becomes void, voidable or unenforceable (in part or in full) and the D&C Guarantee is not replaced with a D&C Guarantee that is not void, voidable or unenforceable within 5 Business Days of the Principal notifying the Contractor of the need for a replacement D&C Guarantee;
- (vi) the Contractor fails to procure any action required by the Principal under clause 10.7(b) and that failure is not rectified within 30 Business Days of notice from the Principal requiring the Contractor do so;
- (vii) a Security Bond is or becomes void, voidable or unenforceable (in part or in full) and is not replaced with a Security Bond that is not void, voidable or

unenforceable and that meets the requirements of clause 10.4(a) within 5 Business Days of the Principal notifying the Contractor of the need for a replacement Security Bond;

(viii) the Contractor abandons the Project Works; or

(ix) the Contractor is in breach of its obligations under clause 37 and the Contractor fails to remedy the breach within 10 Business Days,

(each an **Immediate Termination Event**), the Principal may immediately terminate this deed by giving notice to the Contractor.

(d) Upon termination of this deed other than under clauses 31.5, 31.6, 31.7, or 31.8 or 31.9(c)(i), the Principal will not be liable to pay any compensation or other moneys (including any money the subject of a progress claim or payment schedule under clause 21) to the Contractor by reason of that termination (including, where the Principal does not exercise the right to require novation of a Subcontract, any amounts payable by the Contractor to the relevant Subcontractor following termination of that Subcontract) other than any entitlements which have accrued before this deed was terminated.

(e) Upon termination of this deed by the Principal:

(i) the Principal may:

(A) require a novation to the Principal or its nominee of the Significant Subcontracts; and

(B) have recourse to any Security Bonds held under clause 10.1 and clause 10.1A; and

(ii) the Contractor must:

(A) execute all documentation required to effect a transfer to the Principal of the Contractor's interests in the Project Works;

(B) hand over books of account and all other records relating to the Contractor's Activities;

(C) hand over all Contract Documentation and Deliverables described in clauses 29.1(a)(i) and 29.1(a)(ii);

(D) procure the assignment of the Contractor's rights under the insurance policies maintained by the Contractor under clause 26 (other than any professional indemnity insurance policy);

(E) hand over any other documentation relating to the Contractor's Activities within the custody or control of the Contractor and its Subcontractors;

(F) do all other acts and things to enable the Principal or any person engaged by the Principal to complete the construction of the Project Works and the Temporary Works and to undertake the Post Completion Activities and the D&C Phase Maintenance; and

- (G) peaceably surrender and yield up to the Principal, the Construction Site, any Extra Land and any other land upon which the Contractor Activities are being carried out (including any right, title or interest in them).
- (f) The Contractor acknowledges that nothing in this clause 31.4 obliges the Principal to require or consent to the novation of any Significant Subcontract to the Principal.

31.5 **Termination for Final Determination**

- (a) Notwithstanding any other provision of this deed, if a court makes a Final Determination and the Principal fails to procure that the effect of the Final Determination is overcome within 20 months of either party giving written notification to the other of the Final Determination, the Principal may in its absolute discretion terminate this deed at any time after that 20 month period by giving notice to that effect to the Contractor. Where such termination occurs, clause 31.10(b) will apply except to the extent that the Final Determination is a result of:
 - (i) the Contractor's failure to comply with its obligations under a D&C Document;
 - (ii) a breach by the Contractor of its warranties under a D&C Document;
 - (iii) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or
 - (iv) a failure by the Contractor or any of its Related Parties to comply with any Law.
- (b) The Principal acknowledges and agrees that the Contractor will not be in breach of this deed, to the extent the Contractor is prevented from undertaking the Contractor's Activities in accordance with this deed as a consequence of a Final Determination other than as a result of:
 - (i) the Contractor's failure to comply with its obligations under a D&C Document;
 - (ii) a breach by the Contractor of its warranties under a D&C Document;
 - (iii) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or
 - (iv) a failure by the Contractor or any of its Related Parties to comply with any Law.
- (c) Notwithstanding anything to the contrary contained in this deed, the Contractor will not be liable for:
 - (i) Liquidated Damages (Opening Completion) to the extent that the Contractor is delayed in achieving Opening Completion; or
 - (ii) Liquidated Damages (WHT Southern Tunnel Works) to the extent that the Contractor is delayed in achieving Completion (WHT Southern Tunnel Works);due to a Final Determination except to the extent that it is a result of:
 - (iii) the Contractor's failure to comply with its obligations under a D&C Document;
 - (iv) a breach by the Contractor of its warranties under a D&C Document;

- (v) a negligent or otherwise wrongful act or omission of the Contractor or its Related Parties; or
- (vi) a failure by the Contractor or any of its Related Parties to comply with any Law.

31.6 **Termination by the Contractor**

Subject to clause 31.9, the Contractor may terminate this deed by giving the Principal:

- (a) 35 Business Days' prior notice if the Principal breaches clause 11.1 and such breach:
 - (i) prevents the Contractor from undertaking the Contractor's Activities substantially in accordance with the D&C Documents; and
 - (ii) where the Principal has failed to provide access:
 - (A) in respect of the Stage 3 Integration Site, is not remedied (or its effects overcome) within 12 months and 2 Business Days after such notice from the Contractor to the Principal specifying the breach (provided that the Contractor may not issue any notice prior to Rozelle Interface Works Completion); and
 - (B) in respect of any other area of the Construction Site specified in the Site Access Schedule, is not remedied (or its effects overcome) within 12 months and 2 Business Days after such notice from the Contractor to the Principal specifying the breach; or
- (b) 25 Business Days' prior notice if the Principal fails to pay to the Contractor an amount greater than \$██████ certified by the D&C Independent Certifier or \$██████ certified by the Principal's Representative as being due and payable (in a Payment Statement or otherwise) within 20 Business Days of the amount becoming due and payable and such non-payment is not remedied by the end of the 25 Business Days' notice period referred to in this clause 31.6(b).

31.7 **Termination for Uninsurable Force Majeure Event**

Notwithstanding any other provision of this deed, if, an Uninsurable Force Majeure Event exists, or the consequences of the Uninsurable Force Majeure Event exist, for a continuous period of more than 12 months, the Principal may in its absolute discretion terminate this deed at any time after that 12 month period by giving notice to that effect to the Contractor, after which this deed will be terminated and clause 31.10(b) will apply.

31.8 **Termination for convenience**

Without prejudice to any of the Principal's other rights or entitlements or powers under this deed, the Principal may:

- (a) by written notice to the Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter either itself or by a third party complete the uncompleted part of the Project Works.

The Principal may terminate this deed under this clause 31.8 at any time, for its sole convenience, for any reason and regardless of whether a party is in breach of this deed.

31.8A Termination in connection with a Force Majeure event

- (a) The Principal acknowledges and agrees that it shall not be entitled to terminate this deed as a result of:
 - (i) a Remediable Termination Event that arises in connection with an Event of Default described in clause 31.1(a), clause 31.1(b) or clause 31.1(f); or
 - (ii) an Immediate Termination Event under clause 31.4(c),
to the extent the Contractor is prevented from undertaking the Contractor's Activities in accordance with this deed as a consequence of a Force Majeure event, provided that the Contractor has:
 - (iii) strictly complied with its obligations in clauses 26.7 and 33; and
 - (iv) applied the insurance proceeds recovered in connection with the Force Majeure event to any reinstatement of the Project Works in accordance with clause 26.9.
- (b) Clause 31.8A(a) does not affect any rights the Principal may have arising out of an Immediate Termination Event under clauses 31.4(c)(ii), 31.4(c)(iii) or 31.4(c)(iv) or under clause 31.7.

31.9 Suspension of termination notice

- (a) If the Contractor issues a notice of termination under clause 31.6 (other than for an event under clause 31.6(b)), the Principal may suspend that right to terminate, by giving the Contractor notice within 40 Business Days after receipt of the Contractor's notice.
- (b) The Principal's suspension of that right to terminate expires:
 - (i) upon notice to that effect from the Principal;
 - (ii) 12 months and 2 Business Days after the date of the Contractor's notice under clause 31.6; or
 - (iii) when the relevant event is remedied by the Principal or no longer exists,
whichever is earlier.
- (c) If the Principal's suspension of that right to terminate expires:
 - (i) under clause 31.9(b)(i) or clause 31.9(b)(ii), this deed automatically terminates under clause 31.6 on the date the Principal's suspension of the Contractor's right to terminate expires; or
 - (ii) under clause 31.9(b)(iii), this deed continues in force.
- (d) The Contractor must continue to perform its obligations under this deed while its right to terminate is suspended if:
 - (i) it is lawfully able to do so; and

- (ii) it is practicable to do so.
- (e) If the Principal suspends the Contractor's right to terminate under clause 31.9(a), to the extent the Contractor is unable to continue to perform its obligations under this deed, the Principal must pay the Contractor in respect of the period of suspension monthly in arrears any additional amounts (including costs, Losses or expenses) that the Contractor reasonably and properly incurs as a result of such suspension.

31.10 Termination payments

- (a) Upon termination of this deed arising out of or in connection with an Immediate Termination Event or a Remediable Termination Event, the Contractor will receive no compensation and notwithstanding any provision in this deed to the contrary (except clauses 16.10(b)(iv), 16.10(f), 16.10(g) and 28.1), the Contractor must pay to the Principal as a debt due and payable the aggregate (without double counting and as its sole financial remedy) of:
 - (i) any Loss incurred by the Principal in connection with the termination of this deed including in connection with the novation of Subcontracts to the Principal;
 - (ii) the Principal's reasonable costs associated with the appointment of a replacement contractor, including the cost of constructing the remaining Project Works (to the extent such costs exceed the unpaid portion of the D&C Deed Sum); and
 - (iii) any loss of Revenue as a consequence of:
 - (A) the delay to Opening Completion or Completion caused by the termination of this deed or the replacement of the Contractor; and
 - (B) the delay to Completion (WHT Southern Tunnel Works) or Final Completion caused by the termination of this deed or the replacement of the Contractor.
- (b) If this deed is terminated under clause 31.5, 31.6, 31.7, 31.8 or 31.9(c)(i) then the Contractor is entitled to:
 - (i) the value of any Contractor's Activities performed by the Contractor up to the date of termination for which payment has not been received by the Contractor as at the date of termination;
 - (ii) the reasonable demobilisation costs incurred by the Contractor as a direct consequence of termination of this deed;
 - (iii) the cost of Materials or other items reasonably ordered by the Contractor for the Contractor's Activities and for which it is legally bound to pay provided that:
 - (A) the value of the materials and other items have not been previously paid or included in the amount payable under clause 21; and
 - (B) title in the materials and other items will vest in the Principal upon payment;

- (iv) the reasonable cost of making the Construction Site safe and removing from the Construction Site all construction plant, materials and Temporary Works and other things used in the performance of the Contractor's Activities;
- (v) the reasonable costs incurred by the Contractor as a result of terminating Subcontracts, excluding any amounts payable by the Contractor to a Related Body Corporate of the Contractor, to the extent that the Related Body Corporate is not engaged on an arm's length basis and on commercial terms;
- (vi) the costs reasonably incurred by the Contractor in the expectation of completing the whole of the Contractor's Activities and not included in any other payment by the Principal, excluding any amounts payable by the Contractor to a Related Body Corporate of the Contractor, to the extent that the Related Body Corporate is not engaged by the Contractor on an arm's length basis and on commercial terms; and
- (vii) in the case of a termination pursuant to clause 31.8:
 - (A) prior to both the Date of Opening Completion and the Date of Completion (WHT Southern Tunnel Works), ■% of the unpaid balance of the D&C Deed Sum; or
 - (B) after the Date of Opening Completion but prior to the Date of Completion (WHT Southern Tunnel Works), ■% of the unpaid balance of the D&C Deed Sum (WHT Southern Tunnel Works),

as that balance stands after payment of the amounts payable under clauses 31.10(b)(i) to 31.10(b)(vi) above, on account of profit foregone,

less:

- (viii) any amounts owing by the Contractor to the Principal under the D&C Documents as at the date of termination; and
- (ix) any amounts paid by the Principal to the Contractor in respect of any Contractor's Activities yet to be completed as certified by the D&C Independent Certifier or as stated by the Principal's Representative (as relevant),

provided that such amounts are properly substantiated by the Contractor to the reasonable satisfaction of the Principal and the Contractor has taken all reasonable steps to Mitigate such amounts.

- (c) Subject to clause 28.1(ac) but otherwise despite anything to the contrary in any D&C Document, all amounts paid or payable by the Contractor to the Principal under clause 31.10(a) shall count towards the General Cap (Rozelle Interchange) or the General Cap (WHT Southern Tunnel Works) as applicable based on whether the amounts payable arose out of or in connection with the Project Works (Rozelle Interchange) or the WHT Southern Tunnel Works, and shall not fall within any of the exclusions to the General Cap (Rozelle Interchange) or General Cap (WHT Southern Tunnel Works) (as applicable) set out in clause 28.2.
- (d) The Principal must take all reasonable steps to mitigate any Loss the Principal might suffer or incur, arising out of or in connection with the termination of this deed.

- (e) The amount to which the Contractor is entitled under clause 31.10(b) will be the maximum monetary compensation the Contractor is entitled to arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the Contractor for any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under clause 31.10(b).

31.11 **Power of Attorney**

- (a) Subject to clause 31.11(b), the Contractor, for the sole purpose of executing any document or doing any other thing reasonably required for the sole purpose of or to give effect to clause 31.4(e), irrevocably appoints the Principal as its attorney as from the date of termination with full power and authority to execute any such document and do any such other thing on behalf of the Contractor.
- (b) The Principal may only exercise a power of attorney granted pursuant to clause 31.11(a) if the Contractor fails to execute the required document or do the required thing within 5 Business Days of being requested in writing to do so by the Principal, provided that the execution of that document or doing of that thing is necessary to enable the Principal to exercise its rights or discharge its obligations under clause 31.4(e).

32. **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.

33. **FORCE MAJEURE**

33.1 **Force Majeure notice**

- (a) Without limiting clause 16.7, if either party alleges or wishes to claim that Force Majeure has occurred (the **Affected Party**), the Affected Party must promptly give the other party a notice of the Force Majeure once it becomes aware of the same and the obligations affected.
- (b) Where the Contractor is the Affected Party, the notice given pursuant to clause 33.1(a) must set out full particulars of all relevant matters including:
 - (i) details of the Force Majeure;
 - (ii) details of the obligations affected;
 - (iii) details of the action that the Contractor has taken and/or proposes to take to remedy the situation;
 - (iv) an estimate of the time during which the Contractor will be unable to carry out its obligations due to the Force Majeure;
 - (v) an estimate of the costs that the Contractor will incur to remedy the situation; and
 - (vi) details of all insurance moneys upon which the Contractor will be able to rely in making good damage caused by the Force Majeure.

- (c) After giving a notice under clause 33.1(a), the Contractor must continue to provide to the Principal all relevant information pertaining to the Force Majeure.

33.2 Meeting

The parties must meet within 3 Business Days of service of a notice of a Force Majeure event to determine the estimated length of time for which the Force Majeure will continue.

33.3 Suspension of obligations

- (a) If a Force Majeure occurs the obligations of the Affected Party under this deed (other than its obligations under clauses 16.2, 16.7, and 16.10 and this clause 33 (including its obligations to pay Liquidated Damages (Opening Completion) and Liquidated Damages (WHT Southern Tunnel Works))) 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) 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).
- (c) The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure event.
- (d) Upon the Affected Party becoming able to recommence performing its obligations which were suspended under clause 33.3(a), the Affected Party must recommence the performance of those obligations.
- (e) Where the Contractor is the Affected Party, during the period of suspension:
 - (i) the Principal:
 - (A) may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the Contractor); and
 - (B) will not be obliged to provide any financial relief to the Contractor.
- (f) The operation of this clause 33 does not affect any right or obligation on the Contractor to claim and be granted an extension of time in respect of an Excusable Cause of Delay (including a Force Majeure Event) in order to be relieved of its obligation to achieve:
 - (i) WHT Interface Milestone Completion of a WHT Interface Milestone by the relevant Date for WHT Interface Milestone Completion;
 - (ii) WHT Southern Tunnel Design Milestone Completion of a WHT Southern Tunnel Design Milestone by the relevant Date for WHT Southern Tunnel Design Milestone Completion;
 - (iii) Opening Completion by the Date for Opening Completion;
 - (iv) Completion by the Date for Completion;

- (v) if Opening Completion is not achieved by the Date for Opening Completion, Opening Completion by no later than the Sunset Date;
- (vi) Completion (WHT Southern Tunnel Works) by the Date for Opening Completion (WHT Southern Tunnel Works);
- (vii) Final Completion by the Date for Final Completion; and
- (viii) if Completion (WHT Southern Tunnel Works) is not achieved by the Date for Completion (WHT Southern Tunnel Works), Completion (WHT Southern Tunnel Works) by no later than the Sunset Date (WHT Southern Tunnel Works).

33.4 **Duty to remedy Force Majeure**

The Affected Party must remedy and Mitigate the effects of a Force Majeure promptly in accordance with clause 26.9.

34. **EXPIRATION**

34.1 **Design Life**

- (a) The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act in respect of the design lives of the asset components referred to in section 5.8 of the SWTC where those design lives are for periods longer than those provided for in those Acts.
- (b) If the waiver referred to in clause 34.1(a) is held to be without effect or otherwise unenforceable, or if it is severed from this deed, the Contractor must indemnify the Principal and keep the Principal indemnified at all times from and against all Loss that the Principal may suffer or incur arising out of or in connection with the Principal's loss of the benefit of the waiver.
- (c) Subject to clause 26.11(c), the indemnity in clause 34.1(b) is to continue and remain in full force and effect until the earlier of:
 - (i) the expiration of the relevant design life referred to in section 5.8 of the SWTC; and
 - (ii) 12 years after the last day of the last of the Defects Correction Periods to expire.
- (d) The parties agree that any action by the Principal on the indemnity in clause 34.1(b) is not a "civil action for loss or damage arising out of or in connection with defective building work" for the purposes of section 6.20(1) of the EP&A Act.
- (e) Nothing in this clause 34.1 limits the operation of any other indemnity in this deed.
- (f) Other than as provided for in clause 34.1(a), the Contractor does not waive any rights it may have under the *Limitation Act 1969* (NSW) or section 6.20 of the EP&A Act.
- (g) The provisions of this clause 34 are subject to clause 26.11(c).

35. REPRESENTATIONS, WARRANTIES AND COVENANTS

35.1 Representations and warranties by the Contractor

Each member of the Contractor makes the following continuing representations and warranties in respect of itself for the benefit of the Principal:

- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under each D&C Document to which it is expressed to be a party;
- (b) it has power to enter into and perform its obligations under each D&C 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 D&C 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 D&C Document;
- (g) the execution, delivery and performance of each D&C Document to which it is expressed to be a party and the transactions under each of them do not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (h) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (i) no litigation (which has not been disclosed to the Principal 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 D&C Document to which it is expressed to be a party.

35.2 Representations and warranties by the Principal

The Principal makes the following continuing representations and warranties in respect of itself for the benefit of the 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 D&C 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 D&C 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 D&C 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 D&C Document to which it is expressed to be a party and the transactions under each of them does not violate any law to which it is subject.

36. **AMENDMENTS TO OTHER D&C DOCUMENTS**

36.1 **Variations to this deed**

Except in respect of any Change carried out in accordance with clause 14, this deed may only be varied by a deed executed by or on behalf of the Principal and the Contractor.

36.2 **Amendments to other D&C Documents**

- (a) The Contractor must not at any time after the execution of this deed either:
 - (i) make any modification, variation or amendment of a material nature to, or terminate or surrender; or
 - (ii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in,

any one or more of the D&C Documents to which it is a party (**Amendment**) without first obtaining the consent of the Principal.
- (b) In the event that the Contractor desires an Amendment it must submit to the Principal a written request seeking the Principal's consent. The request must set out:
 - (i) the Amendment and the relevant reasons for the Amendment;
 - (ii) the response or anticipated response of any other party to the D&C Documents regarding the Amendment;
 - (iii) the response or anticipated response of any assignee of the D&C Documents to the Amendment; and
 - (iv) copies of any documents relevant to the Contractor's request.
- (c) The Principal must advise the Contractor, within 25 Business Days after receiving the Contractor's written request under clause 36.2(b), that:
 - (i) it consents to the Amendment;

- (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
- (iii) it requires additional information from the Contractor regarding the Amendment, in which event:
 - (A) the Contractor must provide the additional information sought by the Principal within a further period of 5 Business Days; and
 - (B) this clause 36.2(c) will reapply as if the additional information were the written request under clause 36.2(b).

37. **ASSIGNMENT AND CHANGE IN CONTROL**

37.1 **Entitlement to assign**

- (a) Except as expressly permitted by this deed, the Contractor must not sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in the Rozelle Interchange Works, the Construction Site, the Project Works or in any of the D&C Documents other than:
 - (i) with the prior written consent of the Principal; or
 - (ii) pursuant to a general security arrangement entered into by the Contractor with a financier in the ordinary course of the Contractor's business.
- (b) The Principal may sell, transfer, assign, novate or otherwise dispose of its interest in:
 - (i) this deed; or
 - (ii) any of its interests, rights and obligations under or in connection with the D&C Documents, the Security Bonds provided under clause 10.1(a), clause 10.1(b) or clause 10.1A(a) (as applicable), or the Project Works,

and may do so in its absolute discretion and without consent from the Contractor:

 - (iii) to an entity described in (a) of the definition of Authority; or
 - (iv) to any corporation which is a wholly-owned subsidiary (as that term is defined in section 9 of the Corporations Act) of, or an entity that is wholly owned or controlled by, an entity described in (a) of the definition of Authority (for the purposes of this clause 37.1(b)(iv), if two or more entities described in paragraph (a) of the definition of "Authority" between them wholly-own that corporation, either directly or indirectly, the corporation will be treated as a wholly-owned subsidiary).
- (c) In the case of a novation, the Contractor must, if requested by the Principal, execute a deed of novation in the form of Schedule 4D and do any other thing necessary to give effect to the novation.
- (d) In the case of an assignment, the Contractor must, if requested by the Principal, execute a deed of assignment and do any other thing necessary to give full effect to the assignment.
- (e) In the case of novation or assignment, the Contractor must do all things necessary to ensure that the novatee or assignee has the benefit of:

- (i) the Project Insurances;
- (ii) the unconditional undertakings referred to in clauses 10.1 and 10.1A;
- (iii) the D&C Guarantees; and
- (iv) the licence of Intellectual Property Rights at clause 29.1.

37.2 **Change in Control of the Contractor**

- (a) Subject to the terms of this clause 37.2, the Contractor must ensure that there is no Change in Control of the Contractor or any entity that comprises the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Contractor must notify the Principal in writing of any Change in Control of the Contractor or any entity that comprises the Contractor, and provide:
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 37.2(a), in relation to the Change in Control of the Contractor or the relevant entity that comprises the Contractor.
- (c) The Principal's approval is not required for a Change in Control arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Contractor or an entity that comprises the Contractor where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the Contractor or the relevant entity that comprises the Contractor:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Contractor's Activities; or
 - (ii) as a result of the Change in Control, the Contractor will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the Contractor under the D&C Documents.

- (e) If a Change in Control of the Contractor or any entity that comprises the Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 37.2(c)), the Contractor acknowledges that the Principal may terminate this deed by giving a notice to the Contractor.
- (f) The Principal's approval of a Change in Control of the Contractor or any entity that comprises the Contractor will not relieve the Contractor of any of its obligations under this deed.

37.3 **Change in Control of the Contractor Guarantor**

- (a) Subject to the terms of this clause 37.3, the Contractor must ensure that there is no Change in Control of the Contractor Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Contractor must notify the Principal in writing of any Change in Control of the Contractor Guarantor, and provide:
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 37.3(a), in relation to the Change in Control of the Contractor Guarantor.
- (c) The Principal's approval is not required for a Change in Control arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Contractor Guarantor where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the Contractor Guarantor:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Contractor's Activities; or
 - (ii) as a result of the Change in Control, the Contractor Guarantor will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the Contractor Guarantor under relevant D&C Documents.

- (e) If a Change in Control of the Contractor Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 37.3(c)), the Contractor acknowledges that the Principal may terminate this deed by giving a notice to the Contractor.
- (f) The Principal's approval of a Change in Control of the Contractor Guarantor will not relieve the Contractor of any of its obligations under this deed.

37.4 **Restructure Event**

- (aa) The Contractor is not obligated to comply with any requirements of this clause 37.4 that would otherwise put the Contractor (or any entity comprising the Contractor) or any Contractor Guarantor, in breach of any applicable Laws or the listing rules of any recognised stock exchange.
- (a) Subject to the terms of this clause 37.4, the Contractor must use reasonable endeavours to notify the Principal of the occurrence of a Restructure Event before the Restructure Event occurs.
- (b) The Contractor's notification must provide full details of the Restructure Event, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Restructure Event.

38. **EXPENSES AND STAMP DUTIES**

38.1 **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.

38.2 **Stamp duties**

- (a) The Contractor must pay:
 - (i) all stamp, registration and similar taxes that are payable, required to be paid or determined to be payable to any relevant NSW Government Authority or determined to be payable (**Stamp Duty**); and
 - (ii) interest, fines and penalties payable to, or required to be paid by, or determined to be payable to any appropriate NSW Government Authority in connection with Stamp Duty (except to the extent arising from a breach of Law by the Principal),

assessed in connection with the execution, delivery, performance or enforcement of this deed or any D&C Document.

39. **NOTIFICATION OF CLAIMS**

39.1 **Notice of Change**

- (a) If the Contractor believes that any Direction of the Principal's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it

wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (i) within 5 Business Days after receiving notice of the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to the Principal's Representative that sets out:
 - (A) that it considers the Direction constitutes or involves a Change;
 - (B) details of the relevant Direction; and
 - (C) details of why it considers the Direction constitutes or involves a Change; and
- (ii) within 25 Business Days after giving the notice under clause 39.1(a)(i) or such longer period as the Principal's Representative may direct, submit a written Claim to the Principal's Representative which includes detailed particulars of:
 - (A) why the Contractor believes the Direction constitutes or involves a Change;
 - (B) the details specified in section 1.2 of the Change Procedure;
 - (C) the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (D) the provisions of this deed or other legal basis upon which the Claim is based; and
 - (E) the amount claimed and how it has been calculated, including detailed information supporting the calculation,

failing which the Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Representative's Direction.

- (b) Despite the fact that the Contractor considers that a Direction by the Principal's Representative constitutes or involves a Change, the Contractor must continue to carry out the Contractor's Activities in accordance with this deed including any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 39.1(a)(i).
- (c) If the Contractor issues a notice under clause 39.1(a)(i) or a Claim under clause 39.1(a)(ii), the Principal may:
 - (i) confirm that the Direction constitutes or involves a Change, or entitles the Contractor to make a Claim, by the giving of a notice under this clause 39.1(c)(i), in which case the Contractor must comply with the Direction;
 - (ii) deny that the Direction constitutes or involves a Change, or entitles the Contractor to make a Claim, by the giving of a notice under this clause 39.1(c)(ii), in which case the Contractor:

- (A) may within 8 Business Days after the receipt of the notice issue a notice of dispute under the Dispute Resolution Procedure; and
- (B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
- (iii) withdraw the Direction by giving a notice under this clause 39.1(c)(iii).
- (d) If within 15 Business Days after first receipt of the Claim under clause 39.1(a)(ii), the Principal's Representative has not taken any action under clause 39.1(c), the Principal's Representative will be deemed to have given a notice under clause 39.1(c)(ii).

39.2 **Notice of other Claims**

If the Contractor wishes to make a Claim against the Principal in respect of any Direction of the Principal or the Principal's Representative or other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed or the Contractor's Activities, including anything in respect of which:

- (a) the Contractor is otherwise given an express entitlement under this deed; or
- (b) this deed expressly provides that an amount is to be paid to the Contractor,

the Contractor must give the Principal's Representative the notice required by clause 39.3(a) and a Claim in accordance with clause 39.3(b).

39.3 **Prescribed notices**

- (a) Subject to clause 39.3(c), any notice referred to in clause 39.2 must:
 - (i) be provided not later than 10 Business Days after the later of:
 - (A) the first occurrence of; or
 - (B) when the Contractor first became aware of, or ought reasonably to have first become aware of,

the Direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
 - (ii) expressly specify:
 - (A) that the Contractor proposes to make a Claim; and
 - (B) the Direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Subject to clause 39.3(c), any written Claim referred to in clause 39.2 must:
 - (i) subject to clause 39.3(d), be provided not later than 15 Business Days after giving the notice under clause 39.3(a); and
 - (ii) include:

- (A) detailed particulars, including the date or dates, of the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (D) details of the amount claimed and how it has been calculated, including detailed information supporting the calculation.
- (c) Where this deed:
- (i) expressly requires the Contractor to give written notice in relation to a Claim or a written Claim;
 - (ii) expressly states the time within which the notice or Claim must be given by the Contractor; and
 - (iii) expressly states what the notice or Claim must include,
- for the purposes of clause 39.2, the Contractor must give the notice or Claim in accordance with those requirements.
- (d) The Principal may at its sole discretion extend the period in which the Contractor must provide its written Claim under clause 39.3(b).

39.4 **Continuing events**

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim referred to in clause 39.2 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the Contractor must continue to give the information required by clause 39.3(b) every 30 Business Days after the written Claim under clause 39.3(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

39.5 **Bar**

If the Contractor fails to comply with clauses 7.5A, 11.10, 11A, 11B, 13.4, 14, 16.7, 16.9, 25.2, 31.6, 33.1 or this clause 39:

- (a) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor; and
- (b) the Contractor will be barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant Direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

39.6 **Other provisions unaffected**

Nothing in clauses 39.1 to 39.5 will limit the operation or effect of any other provision of this deed which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

39.7 **Payments by the Principal**

Without limiting any other provision of clause 24.2 or this clause 39:

- (a) if the Contractor wishes to make a Claim against the Principal for any amount under any D&C Document (including a Claim for Change Costs or Contractor's Delay Costs), the Contractor must provide the Principal with a statement or invoice in respect of the amount claimed in a form satisfactory to the Principal (acting reasonably); and
- (b) the Principal will not be obliged to pay any amount claimed by the Contractor under any D&C Document if the Contractor has not provided the Principal with a statement or invoice in respect of that amount in accordance with clause 39.7(a).

40. **NSW CODE OF PRACTICE**

40.1 **NSW Code and NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 40 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

40.2 **Primary Obligation**

- (a) The Contractor must, in carrying out the Contractor's Activities:
 - (i) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
 - (ii) keep the Principal's Representative fully and properly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
 - (iii) comply with the Construction Plan.
- (b) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and NSW Guidelines.
- (c) The Contractor must notify the Construction Compliance Unit (**CCU**) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 20 hours of becoming aware of the possible non-compliance.
- (d) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 40, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (e) The Contractor must not appoint or engage another party in relation to the Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

40.3 **Access and information**

- (a) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including the Construction Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Contractor's Activities;
 - (v) have access to personnel; and
 - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by the Contractor, its Subcontractors and related entities.
- (c) The Contractor and its related entities must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

40.4 **Sanctions**

- (a) The Contractor warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

40.5 **Compliance**

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make, and neither the Principal nor the State of NSW will be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the Contractor's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the Project Works or the Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change to this deed, the Project Works or the Temporary Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to Mitigate any adverse impact of the change (including any amendments it proposes to the Workplace Relations Management Plan or a "Work Health and Safety Management Plan").

The Principal will direct the Contractor as to the course it must adopt within 15 Business Days of receiving a notice.

40.6 **Workplace Relations Management Plan**

The Contractor must:

- (a) prepare a workplace relations management plan which addresses the requirements of this deed, including the matters set out in section 6 of the NSW Guidelines and part 6 of the Building Code; and
- (b) comply with the Workplace Relations Management Plan.

41. **PRINCIPAL'S REQUIREMENTS**

41.1 **Building Code**

This clause 41.1 only applies if there are Commonwealth Works.

- (a) The Contractor:
 - (i) declares as at the date of this deed; and
 - (ii) must ensure during the term of this deed,that, in relation to the Commonwealth Works, it (and must procure that its Subcontractors and consultants):

- (iii) complies with the Building Code;
 - (iv) is not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction;
 - (vi) has not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIIP Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
 - (vii) only uses products in relation to the Commonwealth Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (viii) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (ix) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Commonwealth Works.
- (b) Without limiting and notwithstanding clause 41.1(a)(iii), the Contractor will ensure that remedial action is taken to rectify any behaviour on the part of it and its Subcontractors that is non-compliant with the Building Code.
 - (c) The Contractor acknowledges and agrees that compliance with the Building Code does not relieve the Contractor from any responsibility or obligation under this deed, or from liability for any Defect in Commonwealth Works arising from compliance with the Building Code.
 - (d) The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
 - (e) The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors and consultants) comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
 - (i) for entry under section 72 of the BCIIP Act;
 - (ii) to interview any person under section 74 of the BCIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the of the BCIIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
 - (f) The Contractor must not enter into a Subcontract for any aspect of the Commonwealth Works unless:

- (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Contractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 41.
- (g) Prior to entering into a Subcontract for any aspect of the Commonwealth Works, and for every six months during the term of the Subcontract, the Contractor must ensure that the Subcontractor advises the Principal whether:
- (i) it has in the preceding 6 months or since it last advised the Principal, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958*; or
 - (ii) it or its related entities have in the preceding 6 months or since it last advised the Principal, whichever is the earliest:
 - (A) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
 - (B) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- (h) The Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 41.1(f) promptly upon request.
- (i) The Contractor must maintain adequate records of the compliance with the Building Code by:
- (i) the Contractor;
 - (ii) its Subcontractors;
 - (iii) its consultants; and
 - (iv) any related entity of the Contractor (as that term is defined in subsection 3(2) the Building Code).

41.2 **WHS Accreditation**

The Contractor:

- (a) represents and warrants that the Contractor is accredited under the WHS Accreditation Scheme;
- (b) must comply with all of the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIIP Act) is carried out; and

- (c) must ensure that all Subcontracts with Subcontractors carrying out work or providing services on the Construction Site impose obligations on those Subcontractors that enable the Contractor to comply with its obligations under this clause 41.2.

41.3 **Principal business ethics**

The parties must comply with TfNSW's Statement of Business Ethics available at https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/statement-business-ethics_0.pdf.

41.4 **National Construction Code**

Where any part of the Contractor's Activities meets one or more of the classifications of buildings described in the National Construction Code, the Contractor must comply with the National Construction Code performance requirements in relation to materials whilst carrying out the Contractor's Activities to which the National Construction Code applies.

42. **NOTICES**

42.1 **How to give a notice**

A notice or consent under this deed (**Notice**):

- (a) given before the date referred to in clause 42.2(a)(ii) is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it (unless the Notice is sent from the email address of either the Principal's Representative or the Contractor's Representative, in which event the Notice is deemed to be signed by the Principal's Representative or the Contractor's Representative (as applicable));
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (B) 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
 - (C) subject to clause 42.1(c), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address;
- (b) given on and from the date referred to in clause 42.2(a)(ii) is only effective if it is:
 - (i) subject to clause 42.1(c), sent through the PDCS in accordance with the requirements set out in clause 42.7;
 - (ii) in writing, signed by or on behalf of the person giving it;
 - (iii) addressed to the person to whom it is to be given; and
 - (iv) in circumstances where the PDCS is temporarily disabled or not operating, issued in accordance with clause 42.1(c); and

- (c) in the case of Notices which have been sent in accordance with clauses 42.1(a)(iii)(C) or 42.1(b) under clauses 3, 5, 7, 7.5A, 10.4, 11.8, 11.9, 13.4, 14, 16.6, 16.7, 16.9, 25.1, 25.2, 26, 31, 32, 33, 36, 37.2 or 37.3, in addition to the Notice sent pursuant to clauses 42.1(a)(iii)(C) or 42.1(b), 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 clause 42.1(a)(iii)(A) or clause 42.1(a)(iii)(B).

42.2 **PDCS**

- (a) At any time and from time to time the Principal's Representative may notify the Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Contractor to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (b) The Contractor must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (iv) advise the Principal's Representatives of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 42.1(b)(iv) to the Principal's Representative through the PDCS.
- (c) The Principal has no liability for any losses the Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Contractor's access to or use of the PDCS or any failure of the PDCS.

42.3 **Effectiveness of notices**

- (a) A Notice referred to in clause 42.1(c) will not be effective unless it is delivered in accordance with clause 42.1(a)(iii)(A) or clause 42.1(a)(iii)(B).

- (b) A Notice issued pursuant to clause 42.1(a)(iii)(C) and a Notice issued pursuant to clause 42.1(a)(iii)(A) or clause 42.1(a)(iii)(B) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

42.4 **When a notice is given**

A Notice that complies with this clause 42 is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 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 42.4(e), if it is sent by email:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; or
 - (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient;
- (d) subject to clause 42.4(e), if it is sent through the PDCS, at the time recorded on the PDCS as being the time at which the Notice was sent, unless that delivery is made on a non-Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
- (e) where clause 42.4(c) applies, the relevant Notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 42.4(c); and
 - (ii) the date determined in accordance with clause 42.4(a) or 42.4(b) (as the case may be).

42.5 **Address for notices**

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

The Principal

Name: Transport for NSW
Address: 20-44 Ennis Road
Milsons Point NSW 2061

Email address: [REDACTED]
Attention: Executive Director, Motorways
Fax number: N/A

The Contractor

Name: CPB Contractors Pty Limited and John Holland Pty Ltd
Address: c/- John Holland Pty Ltd
Level 3, 65 Pirrama Road
Pyrmont NSW 2009

Email address: [REDACTED]
Attention: [REDACTED]
Fax number: N/A

42.6 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 42.6(b), and any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 42. 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 42.6(a) will only form part of a communication under this clause 42 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; and
 - (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.

42.7 Communications by the PDCS

With respect to Notices sent through the PDCS:

- (a) only the text in any Notice or, subject to clause 42.7(b), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
- (b) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (i) .pdf format;

- (ii) a format compatible with Microsoft Office; or
- (iii) such other format as may be agreed between the parties in writing from time to time.

43. **GENERAL**

43.1 **Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the Law applying in New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the 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; and
 - (ii) 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, if that venue falls within clause 43.1(b)(i).

43.2 **Cost**

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

43.3 **Taxes**

Subject to clauses 24.1 and 38.2 and without limiting clause 7.1, the Contractor must pay all Taxes which may be payable in respect of the Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

43.4 **Indemnities**

Subject to clause 26.11(c):

- (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 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; and
- (d) each party must take reasonable steps to mitigate any Loss suffered by it which is the subject of an indemnity given in its favour.

43.4A **Indemnities held on trust**

The Principal holds on trust for each of its Related Parties each right in this deed to the extent that such right is expressly stated to be for the benefit of its Related Parties.

43.5 **Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

43.6 **Non reliance**

Without limiting clauses 11.6 and 11.7, the Contractor:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation (other than this deed) made by or provided to the Contractor by the M4-M5 Link Concessionaires, SMC, the Principal, or anyone on behalf of the M4-M5 Link Concessionaires, SMC, or the Principal for the purposes of entering into this deed;
- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 43.6(a) and 43.6(b).

43.7 **Entire agreement**

To the extent permitted by Law, this deed and the other D&C Documents:

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

43.8 **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.

43.9 **Unlimited discretion**

- (a) Except as expressly otherwise provided in this deed (including in clause 43.9(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
 - (b) Without limiting clause 43.9(a):
 - (i) except as expressly provided in this deed (including in clause 43.9(c)), neither the Principal nor the Principal's Representative will be:
 - (A) constrained in the manner in which it exercises; or
 - (B) under any obligation to exercise,
- any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects

the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;

- (ii) any approval, waiver or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;
 - (iii) a Direction (including an absolute or sole discretion) or power of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative whether it is exercised or made:
 - (A) independently;
 - (B) after consultation with the Principal and its advisers; or
 - (C) as directed by the Principal;
 - (iv) any control or influence exercised by the Principal over the Principal's Representative does not:
 - (A) affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or
 - (B) entitle the Contractor to make any Claim against the Principal's Representative, the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and
 - (v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing.
- (c) Nothing in this clause 43.9 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

43.10 **Joint and several liability**

- (a) The obligations of the Contractor, if more than one person, under this deed, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any one or all of them.
- (b) The rights of the Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the Contractor (and not severally or jointly and severally).
- (c) Any payment by the Principal under this deed to any account nominated in writing by the Contractor, or failing such nomination, to any one or more persons constituting the Contractor, will be deemed to be payment to all persons constituting the Contractor.

- (d) The Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the Contractor.

43.11 **No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed or any other D&C Document to which the Principal or the Contractor are expressed to be parties will be construed or interpreted as:

- (a) conferring a right in favour of either the Principal or the Contractor to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or
- (b) creating a partnership, joint venture or fiduciary relationship between the Principal and the Contractor.

43.12 **Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this 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.

43.13 **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.

43.14 **Provisions limiting or excluding liability**

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

43.15 **Survival of certain provisions**

Without limiting clause 43.4(a):

- (a) any provisions of this deed which are expressed to or by implication from its nature is intended to survive termination including clauses 16.10(f), 16.10(g), 21.1A(d),

26.2, 26.11, 27.3, 28, 31.10 and 43.4 (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.

43.16 **PPS Act**

The Contractor acknowledges and agrees that:

- (a) if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with this deed or any transaction contemplated by this deed, the Principal may at the Contractor's expense take all steps that the Principal considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest ("relevant personal property"); and
 - (ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;
- (b) it will do all things reasonably necessary to assist the Principal to take the steps described in clause 43.16(a);
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;
- (d) if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the Contractor and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115, section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this deed, the amount or performance obligation secured by the Principal's Security Interest in

relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;

- (f) it must immediately notify the Principal if the Contractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and
- (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property.

For the purposes of this clause 43.16, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPS Act.

43.17 **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 any 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 the parties 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.

43.18 **Contractor not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

43.19 **Proportionate liability scheme - Subcontracts**

The Contractor must:

- (a) in each Subcontract into which it enters for the carrying out of the Contractor's Activities (except for the Tolling Equipment Works Subcontract), include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each Subcontract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise;
- (b) require each Subcontractor to include, in any further contract that it enters into with a third party for the carrying out of design activities in connection with the Contractor's Activities, a term that (to the extent permitted by Law) excludes the

application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

- (c) require each Subcontractor to use reasonable endeavours to include in any further contract that it enters into with a third party for the carrying out of the Contractor's Activities that is not covered by clause 43.19(b), a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise.

43.20 **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 the Principal.

43.21 **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 or parties. 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 BBSY +■% per annum; and
- (c) capitalised monthly.

43.22 **Approvals not to affect obligations**

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

Executed as a deed.

SIGNED, SEALED AND DELIVERED for
and behalf of **TRANSPORT FOR NSW**
(ABN 18 804 239 602) by its duly
authorised delegate, in the presence of:

Signature of witness

Signature of Delegate

Name

Name

Signed sealed and delivered for
CPB Contractors Pty Limited
under Power of Attorney dated

sign here ►

Attorney

Attorney

print name

in the presence of

sign here ►

Witness

Witness

print name

Signed sealed and delivered for
John Holland Pty Ltd
under Power of Attorney dated

in the presence of

sign here



Attorney

sign here ▶

Witness

print name

print name
