



Transport
Roads & Traffic
Authority

OPERATION AND MAINTENANCE CONTRACT
for the M5 East

CONTENTS

Contents

PART A CONTRACT FRAMEWORK	1
1. FUNDAMENTAL RIGHTS AND OBLIGATIONS	1
1.1 Service Provider's fundamental obligations	1
1.2 RTA's fundamental obligations	1
1.3 Right to direct the Service Provider	2
1.4 Duty not to hinder performance	2
1.5 RTA as an Authority	2
2. CONTRACT TERM	2
2.1 Duration	2
2.2 Conditions Precedent	2
2.3 Commencement of Services	3
2.4 Extension of the Expiry Date	3
3. SECURITY	3
3.1 Security	3
3.2 Requirements for a Bond	3
3.3 Availability of Security	4
3.4 Replacement of a Bond	4
3.5 No injunction	5
3.6 Parent Company Guarantee and Indemnity	5
4. THE SERVICES	5
4.1 Service Scope and Requirements	5
4.2 Services	5
4.3 General responsibilities	6
4.4 Replacement and Refurbishment of Specified Asset Items	6
4.5 Prescribed Works	6
5. ACCESS	7
5.1 RTA grants access	7
5.2 Access for RTA, its contractors, Stakeholders and others	7
5.3 Co-operation	7
5.4 RTA Facilities	7
5.5 Other facilities	8
5.6 Access to other property and Roads	8
5.7 Utilities	8
6. CLOSURE OF M5 EAST	8
6.1 Closure of M5 East	8
6.2 Relevant Body may close the M5 East or part of the M5 East	9
6.3 Road occupancy	9
6.4 Compliance with Road Occupancy Licence	10
6.5 Availability Abatement	10
6.6 No Road Occupancy Licence for Incidents	11

6.7	Directions to re-open a Lane or Lanes	11
6.8	Instructions from Emergency Services	11
7.	INCIDENTS AND DAMAGE TO M5 EAST	11
7.1	Notice of damage and accidents	11
7.2	Incidents	12
7.3	Repair Work	12
7.4	Costs of managing Incidents and carrying out Repair Work	13
7.5	Force Majeure Event	15
7.6	Mitigation	15
8.	VARIATIONS	15
8.1	RTA may direct Variations	15
8.2	Proposed Variations	15
8.3	Effect of Variations	16
8.4	Carrying out a Variation	16
8.5	Claim for Variation	16
8.6	Variation for convenience of Service Provider	17
8.7	Omissions	17
9.	ADDITIONAL SERVICES	17
9.1	General	17
9.2	Additional Services	18
9.3	Change Orders	18
9.4	Valuation of Additional Services	18
9.5	Valuation of Additional Services following Change Order	19
9.6	Performance of Additional Services	20
9.7	Competitive tenders for Additional Services	20
9.8	Valuation of Corrective Maintenance	20
10.	LAW, GUIDELINES AND GOVERNMENT REQUIREMENTS	21
10.1	Law	21
10.2	Relevant Authorities	22
10.3	Other Authorities	22
10.4	Compliance	22
10.5	Occupational health, safety and rehabilitation management	23
10.6	Risk Management Plan	24
10.7	Industrial relations management	24
10.8	Quality management	24
10.9	Environmental management	25
10.10	Training management	25
10.11	Community Relations Plan	25
10.12	Registration and licences	25
10.13	Liability under the NGER Legislation	25
10.14	Not Used	25
10.15	Reporting Emissions and Energy Data	26
11.	CHANGE IN LAW	27
11.1	Change in Law	27
11.2	Annual assessment	28
11.3	Mitigation	29
11.4	Adjustment	29
12.	TRAFFIC GROWTH	29

12.1	Traffic growth	29
13.	SUBCONTRACTORS	29
13.1	Service Provider's responsibility	29
13.2	Engaging Subcontractors	30
13.3	Removal of persons	30
13.4	Subcontract provisions	30
	PART B CONTRACT MANAGEMENT	31
14.	SERVICE MANUALS	31
14.1	Service Manuals	31
14.2	Review of Service Manuals	32
15.	INTEGRATED CONTRACT MANAGEMENT SYSTEM (ICMS)	33
15.1	Purpose	33
15.2	ICMS	33
15.3	Monitoring and auditing	34
16.	SERVICE PLANS	34
16.1	Service Plans	34
16.2	Review of Service Plans	35
17.	MAINTENANCE STANDARDS AND OPERATION STANDARDS	36
17.1	Maintenance Standards and Operation Standards	36
17.2	Review of Maintenance Standards and Operation Standards	36
18.	RTA'S REVIEW OF DOCUMENTS	37
18.1	No restriction on RTA's rights	37
18.2	No relief	37
	PART C REPORTING AND MONITORING	38
19.	REPORTING	38
19.1	Reports	38
19.2	Compliance Report	38
19.3	Independent audit report	39
20.	ACCESS TO INFORMATION	39
20.1	Access to Data	39
20.2	Access to AMS	39
21.	AUDIT	40
21.1	RTA audit	40
21.2	Service Provider must assist	40
21.3	Audit of Performance Data	41
	PART C FINANCIAL PROVISIONS	41

22.	PAYMENT PROVISIONS	41
22.1	General	41
22.2	Availability Abatement	42
22.3	Deductions and set off	42
22.4	Payment Claims and payment	43
22.5	Unfixed Materials	44
22.6	Payment on account	45
22.7	Correction of Payment Schedule	45
22.8	Interest on overdue monies	45
22.9	Goods and Services Tax	45
	PART D CARE OF WORK, INDEMNITIES AND INSURANCE	47
23.	CARE OF PEOPLE, PROPERTY AND THE ENVIRONMENT	47
23.1	Service Provider to prevent damage	47
23.2	Safety and protection of persons and property	47
23.3	Urgent Protection	48
23.4	Control of traffic	48
24.	INDEMNITIES	49
24.1	General indemnity	49
24.2	Reduction of Service Provider's liability	49
24.3	Intellectual Property indemnity	49
24.4	Environmental indemnity	49
24.5	Product Liability indemnity	49
24.6	Survival of indemnities	50
24.7	Obligations and rights not affected	50
25.	INSURANCE	50
25.1	Insurances to be provided by RTA	50
25.2	Insurances provided by Service Provider	51
25.3	Other insurance requirements	51
25.4	Notices from or to the insurer	52
25.5	Insurance claim procedures	52
	PART E ADMINISTRATION	53
26.	AUTHORISED PERSONS	53
26.1	Service Provider's Authorised Person	53
26.2	RTA's Representative	53
27.	CONTRACT REVIEW GROUP	53
27.1	Structure, purpose and role of the Contract Review Group	53
27.2	Mobilisation of Contract Review Group	54
27.3	Meetings of Contract Review Group	54
27.4	Quorum and voting	54
27.5	Minutes	54
27.6	Resolutions	54
27.7	Non-delegation of power	54
28.	MANAGEMENT TEAM	55

28.1	Structure, purpose and role of the Management Team	55
28.2	Meetings of Management Team	55
28.3	Minutes	56
28.4	Resolutions	56
28.5	Non-delegation of power	56
29.	PERSONNEL	56
29.1	Requirements for Personnel	56
29.2	Key Personnel	56
	PART F WARRANTIES	57
30.	WARRANTIES	57
30.1	General warranties	57
30.2	Service Provider's warranties (performance)	58
30.3	Service Provider's warranties (general)	58
30.4	No warranty by RTA	60
30.5	Non-merger and survival of warranties	60
30.6	Collusive arrangements	61
30.7	Conflict of interest	61
	PART G INTELLECTUAL PROPERTY	62
31.	INTELLECTUAL PROPERTY	62
31.1	RTA Material	62
31.2	Deliverables and Data	62
31.3	Further requirements	62
31.4	Pre-Existing Material	62
31.5	Know-how and methodologies	63
31.6	Licence by RTA	63
31.7	Service Provider Material	63
31.8	Service Provider warranty	63
	PART H LIABILITY	64
32.	LIABILITY	64
32.1	Limitation of liability	64
32.2	Exclusion of certain loss	65
32.3	Civil Liability Act	65
	PART I SUSPENSION AND FORCE MAJEURE	66
33.	SUSPENSION	66
33.1	RTA's power to suspend Services	66
34.	FORCE MAJEURE	67
34.1	Notification	67
34.2	Meeting	67
34.3	Suspension of obligations	67
34.4	Payments	68

34.5	Best endeavours to mitigate effect	68
34.6	Alternative arrangements	68
34.7	Cessation of Force Majeure Event	68
34.8	No financial relief to the Service Provider	68
34.9	No compensation to RTA	68
PART J ISSUE RESOLUTION		68
35.	NOTIFICATION OF ISSUES	68
35.1	Notification	68
35.2	Issue resolution process mandatory	69
35.3	Late notification of Issue	69
35.4	RTA's liability	69
35.5	Urgent relief	69
35.6	Third party notices	69
36.	ISSUE RESOLUTION PROCESS	70
36.1	Escalated Issues resolution process	70
36.2	Alternative Issue Resolution Procedure	70
36.3	Parties to perform	71
37.	EXPERT DETERMINATION	71
37.1	Appointment of Expert	71
37.2	Procedure	71
37.3	Determination	72
38.	CLAIM RESOLUTION	72
38.1	Annual resolution of claims	72
PART K RTA STEP- IN, TERMINATION AND EXPIRY		73
39.	RTA STEP-IN	73
39.1	Notice to remedy breach	73
39.2	RTA step-in	73
39.3	Suspension of Service Provider's obligations	73
39.4	Service Provider must assist RTA	73
39.5	Step-in right ceases	73
39.6	RTA not required to remedy breach	74
39.7	Service Provider to compensate RTA	74
39.8	No payments by RTA	74
39.9	RTA may suspend Service Provider's authorisation	74
39.10	No prejudice to other rights	74
40.	TERMINATION FOR DEFAULT OR INSOLVENCY OF THE SERVICE PROVIDER	74
40.1	Termination for Service Provider's Default	74
40.2	Not Used	75
40.3	Consequences of termination	75
41.	TERMINATION FOR CONVENIENCE	75
41.1	RTA may terminate Contract for convenience	75

41.2	Service Provider's obligations	75
41.3	Payments on termination for convenience	76
42.	TERMINATION FOR RTA DEFAULT	76
42.1	Service Provider may terminate	76
42.2	Sole remedy	77
43.	TERMINATION FOR CONTINUED FORCE MAJEURE	77
43.1	RTA may terminate	77
43.2	Termination for Force Majeure	77
44.	EXPIRY AND HANDOVER	77
44.1	Handover Services	77
44.2	Service Provider's obligations	77
44.3	Expiry Date obligations	78
44.4	Return of Security	78
PART L	GENERAL	79
45.	NOTICES	79
45.1	How to give a notice	79
45.2	When a notice is given	79
45.3	Address for notices	79
46.	ASSISTANCE BY SERVICE PROVIDER	80
46.1	RTA's legal and public obligations	80
46.2	Public and Ministerial inquiries	80
47.	CONFIDENTIALITY	81
47.1	Confidentiality	81
47.2	Authorisation for access to other records	81
47.3	Media releases and enquiries	82
48.	PRIVACY	82
48.1	Privacy Acts	82
49.	AMENDMENT	82
50.	ASSIGNMENT	83
51.	GENERAL	83
51.1	Governing law	83
51.2	Survival of terms	83
51.3	Relationship of parties	83
51.4	Liability for expenses, duty, taxes and other imposts	83
51.5	Attorneys	83
51.6	Giving effect to the Contract	83
51.7	Waiver of rights	83
51.8	Operation of the Contract	84
51.9	Consents	84

51.10	Entire Agreement	84
51.11	Counterparts	84
	Carriageway Closures	128
	In any calendar month during the Term:	128

Schedule

1	DEFINITIONS AND INTERPRETATION	85
2	FORM OF BOND	107
3	RTA FACILITIES	108
4	PAYMENT SCHEDULE	114
5	STATUTORY DECLARATION	115
6	INSURANCE SCHEDULE AND POLICY SUMMARIES	120
7	CONTRACT REVIEW GROUP MEMBERS	123
8	KEY PERSONNEL	124
9	PROCEDURE FOR EXPERT DETERMINATION	125
10	PERMITTED LANE CLOSURES FOR ROUTINE MAINTENANCE	128

Annexure

A	CHANGE ORDER	
B	CHANGE PROPOSAL	
C	PROJECT TERMS	
D	PRESCRIBED WORKS TERMS	

OPERATION AND MAINTENANCE CONTRACT

DATE

9 AUGUST

2011

PARTIES

Roads and Traffic Authority of New South Wales ABN 64 480 155 255 of 101 Miller Street, North Sydney, 2060 New South Wales (RTA)

Leighton Contractors Pty Limited ABN 98 000 893 667 of Tower 1, 495 Victoria Avenue, Chatswood, NSW 2067 (Service Provider)

RECITALS

- A. RTA requires the M5 East to be operated and maintained in a manner consistent with the delivery of the Contract Objectives.
- B. This Contract sets out the terms upon which the Service Provider will perform the Services and achieve the Contract Objectives.

OPERATIVE PROVISIONS

PART A CONTRACT FRAMEWORK

1. FUNDAMENTAL RIGHTS AND OBLIGATIONS

1.1 Service Provider's fundamental obligations

The Service Provider must carry out the Services so that:

- (a) subject to clause 6.1, all Lanes are at all times during the Term open to the public for the safe, continuous and efficient passage of vehicles;
- (b) each Contract Objective is achieved;
- (c) the requirements of the Environmental Documents are at all times met (including the conditions of the Planning Minister's Approval specified in Appendix 5 to the SSR as the responsibility of the Service Provider);
- (d) no Environmental Event occurs; and
- (e) the Performance Criteria are achieved.

1.2 RTA's fundamental obligations

RTA must pay the Service Provider:

- (a) the O&M Fee; and
- (b) any other amounts due under the Contract for the Service Provider's performance of the Services,

in accordance with and subject to the Contract.

1.3 Right to direct the Service Provider

RTA and RTA's Representative may give directions to the Service Provider concerning the Services and anything connected with the Services and the Service Provider must comply with such directions.

1.4 Duty not to hinder performance

- (a) Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.
- (b) In undertaking the Services, the Service Provider must:
 - (i) not interfere or cause interference with the exercise or performance by RTA of any of its powers or duties under any applicable Law except to the extent necessary for the proper performance by the Service Provider of its obligations under the Contract; and
 - (ii) carry out its obligations under the Contract so as to ensure performance of those obligations and functions imposed on RTA under any applicable Law which are, by virtue of the Contract, to be performed by the Service Provider.

1.5 RTA as an Authority

- (a) Subject to paragraph (b), the Service Provider acknowledges and agrees that:
 - (i) the Contract will not restrict or affect the unfettered discretion of RTA to exercise any of its statutory functions or powers; and
 - (ii) anything RTA does, fails to do or purports to do, pursuant to its statutory functions and powers will be deemed to not be an act or omission of RTA under or in connection with the Contract (including a breach of contract) and will not entitle the Service Provider to make any Claim against RTA.
- (b) If anything RTA does would, but for the existence of paragraph (a), have been a breach of the Contract by RTA, the Service Provider will be entitled to an amount equivalent to, and calculated in the same manner as (including having regard to the Service Provider's duty to mitigate losses), the damages that would have been payable by RTA but for the operation of paragraph (a).

2. CONTRACT TERM

2.1 Duration

The Term commences on the Commencement Date and expires on the Expiry Date, unless terminated earlier.

2.2 Conditions Precedent

- (a) The Service Provider must not:
 - (i) exercise its rights under clause 5 or commence provision of the Mobilisation Services until the satisfaction or waiver of the Mobilisation Services Conditions Precedent; and
 - (ii) commence provision of the Services (other than the Mobilisation Services) until the satisfaction or waiver of the Conditions Precedent.

-
- (b) RTA may waive any of the Conditions Precedent in its absolute discretion by written notice to the Service Provider.

2.3 Commencement of Services

The Service Provider must:

- (a) commence provision of the Mobilisation Services on satisfaction or waiver of the Mobilisation Services Conditions Precedent;
- (b) commence provision of the Services (other than the Mobilisation Services) on satisfaction or waiver of the Conditions Precedent; and
- (c) subject to express provisions of the Contract, thereafter provide the Services throughout the Term.

2.4 Extension of the Expiry Date

- (a) RTA may, in its absolute discretion, extend the Expiry Date in accordance with this clause 2.4 by increments of 12 months.
- (b) RTA may, no later than 12 months prior to an Extension Date, provide a written notice to the Service Provider to extend the Expiry Date for a period of 12 months from the relevant Extension Date.
- (c) RTA may extend the Expiry Date in accordance with this clause 2.4 up to a maximum of five years from the Original Expiry Date.

3. SECURITY

3.1 Security

- (a) On or before the Commencement Date, the Service Provider must provide to RTA Security of \$5 million in the form of one or more Bonds.
- (b) The Service Provider must pay all costs (including stamp duty or other taxes) of and incidental to providing the Security.
- (c) The Service Provider must ensure that the Security remains valid and enforceable until such date as RTA is required under the Contract to return the Security to the Service Provider.

3.2 Requirements for a Bond

Each Bond must be:

- (a) in the form of Schedule 2 or as approved by RTA;
- (b) in favour of RTA;
- (c) given by a financial institution acceptable to RTA that is regulated by the Australian Prudential Regulation Authority and maintains the Mandatory Credit Rating;
- (d) payable at an office of the bank or financial institution in Sydney (or such other place as RTA may approve); and
- (e) a continuing liability without expiry or, if the Bond is to have an expiry date, such date must be no earlier than the Original Expiry Date.

3.3 Availability of Security

RTA may have recourse to any Security provided by the Service Provider under the Contract:

- (a) when RTA asserts that:
 - (i) amounts are payable by the Service Provider to RTA under the Contract;
 - (ii) RTA is entitled to reimbursement of any moneys paid to others on behalf of the Service Provider;
 - (iii) the Service Provider is in breach of the Contract;
 - (iv) RTA is otherwise entitled to exercise a right under the Contract with respect to the Security; or
 - (v) RTA is entitled to terminate the Contract under clause 40; or
- (b) upon termination of the Contract under clause 40.

3.4 Replacement of a Bond

- (a) Not less than 30 Business Days before the expiry of any Bond, the Service Provider must procure the issue to RTA of a replacement bond which:
 - (i) must have a face value equal to that of the Bond being replaced (unless the expiring Bond has been drawn upon by RTA, in which case the replacement Bond will be for an amount equal to the undrawn amount of the expiring Bond);
 - (ii) must satisfy the requirements of clause 3.2 (other than clause 3.2(e)); and
 - (iii) is a continuing liability without expiry or, if it is to have an expiry date, such date must be no less than 12 months from the date of issue of the replacement bond,

and RTA must promptly surrender the expiring Bond to the Service Provider following receipt by RTA of the replacement bond.
- (b) If the Service Provider fails to replace any Bond when required under clause 3.4(a), RTA may have recourse to that Bond. RTA may hold any such proceeds as security in lieu of the replacement bond until the expiring Bond is replaced in accordance with clause 3.4(a).
- (c) If the issuer of any Bond ceases to have the Mandatory Credit Rating, the Service Provider must:
 - (i) promptly notify RTA of that circumstance; and
 - (ii) within 15 Business Days of being requested to do so, procure the issue to RTA of a replacement bond which must have a face value equal to that of the Bond being replaced and must satisfy the requirements of clause 3.2 or 3.4(a) (as applicable),

and RTA must promptly surrender the Bond being replaced to the Service Provider following the issue of the replacement bond.

3.5 No injunction

The Service Provider must not institute any proceedings, exercise any right or take any steps to injunct or otherwise restrain:

- (a) the issuer of a Bond from paying RTA pursuant to that Bond;
- (b) RTA from having recourse to the Security or receiving payment under the Security; or
- (c) RTA from using the proceeds of the Security,

even when the Service Provider disputes RTA's right to have recourse to the Security or to payment (including where the Issue resolution procedure in clause 36 has been commenced).

3.6 Parent Company Guarantee and Indemnity

On or before the Commencement Date, the Service Provider must provide to RTA a Parent Company Guarantee and Indemnity executed by an entity and in a form acceptable to RTA.

4. THE SERVICES

4.1 Service Scope and Requirements

The Services which the Service Provider must perform are described in the SSR.

4.2 Services

- (a) Without limiting clause 4.1, the Services include:
 - (i) all work specifically referred to in or otherwise contemplated by the Contract;
 - (ii) all items not specifically referred to or described in the Contract which nonetheless are required to complete the Services;
 - (iii) all items referred to in one or more of the Contract Documents or otherwise necessary for the Services to meet the standards required by the Contract but omitted from the Contract Documents (those omitted items are included in the Services unless the context requires otherwise); and
 - (iv) all items of work reasonably inferred from the Contract Documents as necessary to properly execute and complete the Services.
- (b) The Service Provider acknowledges and warrants that:
 - (i) it is both experienced and expert in services of the type and scale of the Services; and
 - (ii) it has made full allowance in the O&M Fee for the matters referred to in clauses 4.1 and 4.2.

4.3 General responsibilities

Without limiting clauses 1.1, 4.1, 4.2 and 23, the Service Provider must:

- (a) perform the Services in accordance with the Contract, including the Service Plans and Service Manuals;
- (b) in carrying out the Maintenance Services comply with the Maintenance Standards and the Maintenance Plan;
- (c) in carrying out the Operation Services comply with the Operation Standards and the Operation Plan;
- (d) exercise and cause to be exercised all reasonable skill, care, judgment and diligence in the performance of the Services;
- (e) employ O&M Best Practices;
- (f) keep the M5 East, all Assets and any Plant clean and tidy and regularly remove from any place where the Services are being performed any Waste arising from such performance or surplus Service Provider's Plant or Material;
- (g) maintain and promptly update the AMS;
- (h) act in a timely and expeditious manner; and
- (i) comply with its other obligations under the Contract.

4.4 Replacement and Refurbishment of Specified Asset Items

- (a) RTA may, in its absolute discretion, by the issue of a Change Order direct the Service Provider to carry out Replacement and Refurbishment of a Specified Asset Item.
- (b) The Service Provider must carry out Replacement and Refurbishment of Specified Asset Items the subject of a Change Order in accordance with the Project Terms and the Contract.
- (c) The terms of the General Conditions will take precedence over the Project Terms, to the extent of any inconsistency.
- (d) The Service Provider must take all reasonable steps to carry out Replacement and Refurbishment of Specified Asset Items concurrently with other Services wherever possible and to minimise the effects of any Replacement and Refurbishment of a Specified Asset Item on the performance of the other Services.

4.5 Prescribed Works

- (a) The Service Provider must carry out Prescribed Works in accordance with the relevant Prescribed Works Terms and the Contract.
- (b) The terms of the General Conditions will take precedence over the Prescribed Works Terms, to the extent of any inconsistency.
- (c) The Service Provider must take all reasonable steps to carry out Prescribed Works concurrently with other Services wherever possible and to minimise the effects of any Prescribed Works on the performance of the other Services.

5. ACCESS

5.1 RTA grants access

RTA will allow the Service Provider sufficient access to the Maintenance Site to enable the Service Provider to carry out the Services on the terms set out in the Contract.

5.2 Access for RTA, its contractors, Stakeholders and others

The Service Provider acknowledges and agrees that the Service Provider's access to the Maintenance Site under the Contract is not exclusive and that:

- (a) RTA and its employees, contractors and agents may access the Maintenance Site and any Asset at any time, including:
 - (i) for RTA's operational purposes;
 - (ii) for the purpose of inspecting and verifying the Service Provider's performance of the Services;
 - (iii) for the purpose of inspecting, installing or maintaining infrastructure on or within the M5 East; and
 - (iv) to perform work which is outside the scope of the Contract;
- (b) RTA may also give approval to other contractors to access the M5 East and any Asset to perform works; and
- (c) any Stakeholder may access the Maintenance Site and any Asset at any time, including:
 - (i) for the purpose of inspecting, installing or maintaining infrastructure on or within the M5 East (including Utilities) or in relation to any Asset;
 - (ii) to perform work which is outside the scope of the Contract; and
 - (iii) to perform work or manage traffic on the M5 East and the road networks adjoining or adjacent to the M5 East.

5.3 Co-operation

The Service Provider must:

- (a) fully cooperate with any person or persons carrying out work on or within the M5 East or in relation to any Asset, whether for RTA, Stakeholders or any other third party;
- (b) promptly give all information and assistance reasonably necessary to any such person or persons so as to ensure safe access for those persons to the Maintenance Site and any Asset;
- (c) carefully coordinate and interface the Services with the work carried out by such person or persons; and
- (d) perform the Services so as to avoid interfering with, disrupting or delaying the work of such person or persons.

5.4 RTA Facilities

RTA will supply to the Service Provider the facilities set out in Schedule 3 (**RTA Facilities**).

5.5 Other facilities

The Service Provider:

- (a) must obtain and pay for any facilities it requires to perform the Services (other than the RTA Facilities); and
- (b) will be responsible for any such facilities.

5.6 Access to other property and Roads

- (a) The Service Provider must:
 - (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land in addition to the Maintenance Site which is necessary or which it may deem necessary for the Services; and
 - (ii) obtain all necessary permissions, permits, licences and consents to enter upon any such land or any property adjoining the Maintenance Site for the purpose of executing the Services.
- (b) The Service Provider must use all reasonable endeavours not to interfere with the operation and use of any Road which is not included in the M5 East, including any privately owned and operated Roads.

5.7 Utilities

- (a) Subject to paragraph (b), the Service Provider:
 - (i) must obtain and pay for any Utilities and all connections for all Utilities it needs to perform the Services;
 - (ii) assumes the risk of the existence, location, condition and availability of Utilities;
 - (iii) must contract for, acquire or otherwise procure or provide the provision of all power, fuel and any other materials required for the performance of the Services; and
 - (iv) must indemnify RTA from and against any Claim or Loss RTA suffers or incurs arising out of or in connection with any disruption to any Utility resulting from the Services or the Service Provider's performance of the Services.
- (b) RTA will obtain and pay for the supply of electrical power to the Maintenance Site required for the performance of the Services.

6. CLOSURE OF M5 EAST

6.1 Closure of M5 East

- (a) Subject to this clause 6, the Service Provider must ensure that all Lanes are Available.
- (b) The Service Provider may only undertake a Lane Closure if:
 - (i) it is necessary to do so by reason of:
 - (A) any Law; or

-
- (B) the circumstances set out in paragraph (c);
 - (ii) the Lane Closure is a Permitted Lane Closure; or
 - (iii) it has obtained, and complies with the terms of, a Road Occupancy Licence.
- (c) The Service Provider must not allow the use of any part of the M5 East which the Service Provider knows is unsafe or presents a threat to the safety of users of the M5 East.
- (d) Without limiting clause 6.3, if the Service Provider proposes to undertake a Lane Closure it must promptly notify TMC specifying the reasons for such Lane Closure.
- (e) In respect of a Lane Closure the Service Provider must:
- (i) prior to the Lane Closure, notify TMC, RTA, any Authority with jurisdiction over the M5 East and, if applicable, the Emergency Services of the nature of the closure and the Service Provider's schedule for reopening the Lane or Lanes; and
 - (ii) re-open the Lane or Lanes as soon as possible, unless otherwise directed by TMC, RTA, an Authority with jurisdiction over the M5 East or an Emergency Service (**Relevant Body**).

6.2 Relevant Body may close the M5 East or part of the M5 East

- (a) A Relevant Body may require that the M5 East or any part of the M5 East (including a Lane or Lanes) is closed for a specified period of time.
- (b) Where a Relevant Body closes the M5 East or any part of the M5 East (including a Lane or Lanes), for the period whilst the M5 East or part of the M5 East is closed, the Service Provider must:
 - (i) ensure that any area of M5 East that is closed is kept clean and tidy; and
 - (ii) if directed by a Relevant Body:
 - (A) cease provision of the Services to the extent specified by the Relevant Body; and/or
 - (B) remove any Service Provider's Plant and Materials from any area of M5 East that is closed.

6.3 Road occupancy

- (a) Subject to clause 6.6, where the Service Provider proposes to perform any Services which will or are likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any Lane, the Service Provider must lodge with TMC:
 - (i) a request for a Road Occupancy Licence providing all relevant details of:
 - (A) the Lane or Lanes to be closed and period of such closure; and
 - (B) the proposed Services to be undertaken; and
 - (ii) a Traffic Control Plan as required by Section 4.5 of the SSR.

-
- (b) The Service Provider must lodge a request under paragraph (a) and the Traffic Control Plan as early as possible prior to the date when the Service Provider intends to undertake the relevant Services (and in any event no less than 10 Business Days prior to such date or such other time as may be agreed by the parties), so as to allow TMC to review, determine and, where appropriate, make arrangements for the implementation of the Road Occupancy Licence.
 - (c) The Service Provider must not apply for a Road Occupancy Licence for any part of the M5 East in respect of a Prohibited Period.
 - (d) The Service Provider acknowledges and agrees that TMC may:
 - (i) consider the following factors in determining whether to issue a Road Occupancy Licence:
 - (A) the expected traffic flow at the time of the proposed Lane Closure;
 - (B) the relative urgency of the Services proposed to be undertaken during the proposed Lane Closure; and
 - (C) any other factor which TMC believes to be relevant; and
 - (ii) impose such terms on a Road Occupancy Licence as TMC sees fit, including:
 - (A) a limitation upon the hours during which the proposed Services may be carried out; and
 - (B) specific traffic control measures that the Service Provider must undertake.
 - (e) The Service Provider must liaise with TMC, RTA, RTA's Representative and RTA's personnel to facilitate processing of applications for Road Occupancy Licences as efficiently as possible, including notifying RTA promptly of any request lodged in accordance with paragraph (a).

6.4 Compliance with Road Occupancy Licence

In undertaking any Services which result in a Lane Closure, the Service Provider must comply with the terms of the applicable Road Occupancy Licence and all other necessary Approvals.

6.5 Availability Abatement

- (a) The Service Provider must pay RTA an Availability Abatement for each Availability Event as specified in Annexure 6 to Schedule 4.
- (b) The Service Provider must pay all fees and charges and comply with the terms of any Approval obtained in relation to road occupancy and Lane Closures.
- (c) Subject to paragraph (d), neither:
 - (i) the Service Provider's obligation to pay the Availability Abatement; nor
 - (ii) the payment by the Service Provider of the Availability Abatement or the setting off by RTA of the Availability Abatement against any moneys otherwise due to the Service Provider,

will lessen or affect:

-
- (iii) the Service Provider's liabilities or responsibilities under the Contract or otherwise according to Law; or
 - (iv) RTA's rights against the Service Provider, whether under the Contract or otherwise according to Law, including RTA's rights to obtain injunctive relief against the Service Provider for a breach or anticipated breach of this clause 6.
- (d) Where the Service Provider pays the Availability Abatement or RTA sets off the Availability Abatement against any moneys otherwise due to the Service Provider, RTA waives any right to damages for breach of the Contract arising from the relevant Availability Event.

6.6 No Road Occupancy Licence for Incidents

The Service Provider is not required to apply for a Road Occupancy Licence or pay an Availability Abatement with respect to Lane Closures due to Incidents.

6.7 Directions to re-open a Lane or Lanes

- (a) A Relevant Body may at any time direct the Service Provider to cease any Services the subject of the Road Occupancy Licence and to re-open any closed Lane or Lanes, notwithstanding the terms of any Road Occupancy Licence issued by TMC to the Service Provider.
- (b) The Service Provider must ensure that any re-opened Lane is clean and tidy and, if directed by a Relevant Body, remove any Service Provider's Plant and Materials from any re-opened Lane and the surrounding area of the M5 East.
- (c) The Service Provider acknowledges and agrees that complying with any instructions of a Relevant Body to cease any Services the subject of the Road Occupancy Licence and to re-open any closed Lane or Lanes will not entitle the Service Provider to make any Claim against RTA or TMC.

6.8 Instructions from Emergency Services

- (a) Notwithstanding any other provision of the Contract, the Service Provider:
 - (i) must not restrict, close, interfere with or obstruct the free flow of traffic on any Lane contrary to the instructions of any Emergency Service; and
 - (ii) in restricting, closing, interfering with or obstructing the free flow of traffic on any Lane or Lanes, must act in accordance with any instructions of an Emergency Service including to cease any of the Services and to re-open the Lane or Lanes.
- (b) The Service Provider acknowledges and agrees that complying with any instructions of an Emergency Service, including to cease any of the Services and to re-open any closed Lane or Lanes, will not entitle the Service Provider to make any Claim against RTA or TMC.

7. INCIDENTS AND DAMAGE TO M5 EAST

7.1 Notice of damage and accidents

- (a) The Service Provider must, within 24 hours of becoming aware of the relevant event, give RTA a detailed written report of:

-
- (i) any Incident which occurs on the M5 East; or
 - (ii) any other accidents or incidents involving:
 - (A) material damage or injury which occur on the M5 East; or
 - (B) material damage to, or defect or disrepair in, any Asset; and
 - (iii) the action which the Service Provider proposes to take to correct any such damage, defect or disrepair, including the estimated time required and cost of Repair Work.
- (b) If the Service Provider provides or is required to provide a report to RTA in accordance with paragraph (a), the Service Provider must thereafter provide any additional information reasonably requested by RTA in respect of the subject matter of such report, which may include a detailed breakdown of the estimated cost of Repair Work.

7.2 Incidents

- (a) The Service Provider is responsible for managing Incidents on the M5 East, including:
- (i) notifying any relevant Emergency Service of the occurrence of the Incident;
 - (ii) closing any Lane or Lanes required as a result of the Incident;
 - (iii) immediately responding to fire (when safe to do so) and providing first aid to injured persons prior to the arrival of the relevant Emergency Service;
 - (iv) assisting in the evacuation of users of the M5 East;
 - (v) removing vehicles and debris;
 - (vi) complying with Section 4.7 of the SSR; and
 - (vii) making good any damage and carrying out other activities necessary to eliminate any safety hazard and re-open the Lane or Lanes closed as a result of the Incident to allow for the continuous, safe and efficient passage of vehicles.
- (b) In responding to an Incident the Service Provider must comply with the Incident Response Plan and any applicable Traffic Control Plan.
- (c) The Service Provider must re-open any Lane or Lanes closed as a result of the Incident as soon as it is safe to do so, unless otherwise directed by a Relevant Body.

7.3 Repair Work

The Service Provider must permanently repair any damage to Assets arising from an Incident or otherwise caused by a third party (**Repair Work**), unless:

- (a) RTA directs the Service Provider not to repair the damage; or
- (b) clause 7.5 applies.

7.4 Costs of managing Incidents and carrying out Repair Work

- (a) Without limiting clause 24.1, the Service Provider must, within 5 Business Days of permanently repairing damage arising from an Incident or an event of third party damage, notify RTA of:
- (i) in respect of an Incident:
 - (A) the details of the activities the Service Provider carried out in accordance with clause 7.2(a)(vii);
 - (B) the details of the Repair Work the Service Provider carried out;
 - (C) the costs incurred by the Service Provider in making good damage in accordance with clause 7.2(a)(vii) and carrying out the Repair Work, detailing:
 - (I) the direct labour and Service Provider's Plant costs;
 - (II) the reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (III) the Service Provider's margin on the costs under subparagraph (II),
valued in accordance with Annexure 3 to Schedule 4; and
 - (D) the costs incurred by the Service Provider in carrying out any other activities in accordance with clause 7.2(a)(vii); or
 - (ii) in respect of an event of third party damage:
 - (A) the details of the Repair Work the Service Provider carried out; and
 - (B) the costs incurred by the Service Provider in carrying out the Repair Work, detailing:
 - (I) the direct labour and Service Provider's Plant costs;
 - (II) the reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (III) the Service Provider's margin on the costs under subparagraph (II),
valued in accordance with Annexure 3 to Schedule 4; and
 - (iii) if the Service Provider incurs costs in excess of \$15,000 in respect of the Incident or an event of third party damage and clause 23.1(c) does not apply, the value of the Service Provider's claim, which will be the costs incurred by the Service Provider in respect of the Incident or the event of third party damage in:
 - (A) making good damage and carrying out other activities in accordance with clause 7.2(a)(vii); and/or
 - (B) carrying out the Repair Work,
less \$15,000.

-
- (b) If:
- (i) the Service Provider incurs costs in excess of \$15,000 in making good damage and carrying out other activities in accordance with clause 7.2(a)(vii) in respect of an Incident;
 - (ii) RTA directs the Service Provider under clause 7.3(a) not to permanently repair the damage arising from that Incident; and
 - (iii) clause 23.1(c) does not apply,
- the Service Provider must, within 5 Business Days of receipt of the RTA's direction under clause 7.3(a), notify RTA of:

- (iv) the details of the activities the Service Provider carried out in accordance with clause 7.2(a)(vii) in respect of that Incident;
- (v) the costs incurred by the Service Provider in respect of that Incident:
 - (A) in making good any damage pursuant to clause 7.2(a)(vii), detailing:
 - (I) the direct labour and Service Provider's Plant costs;
 - (II) the reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (III) the Service Provider's margin on the costs under subparagraph (II),
valued in accordance with Annexure 3 to Schedule 4 (as if it was Repair Work); and
 - (B) in carrying out any other activities pursuant to clause 7.2(a)(vii); and
- (vi) the value of the Service Provider's claim in respect of that Incident, which will be the costs incurred by the Service Provider in carrying out the activities in accordance with clause 7.2(a)(vii), less \$15,000.

- (c) RTA:
- (i) may, within 20 Business Days of receipt of the notice under paragraph (a) or (b), request further information from the Service Provider to enable RTA to assess the Service Provider's claim, including:
 - (A) evidence of the cost of Subcontractor work, Materials, external plant and equipment on an open book basis; and
 - (B) such access to the Service Provider's records as RTA reasonably requires to assess the Service Provider's claim; and
 - (ii) must, within 20 Business Days of receipt of the information and access requested under paragraph (c)(i), or within 40 Business Days of receiving the Service Provider's notice under paragraph (a) or (b) (whichever is the later), assess the costs incurred by the Service Provider and notify the Service Provider of the amount (if any) RTA will pay the Service Provider for carrying out the activities pursuant to clause 7.2(a)(vii) and/or the Repair Work.

-
- (d) In making its assessment under paragraph (c)(ii), RTA will not include any amount in respect of any Losses attributable to any default or negligence of the Service Provider.
 - (e) If the Service Provider does not agree with RTA's determination under paragraph (c)(ii), clause 35.1(a) will apply.
 - (f) Nothing in this clause limits the Service Provider's reporting obligations under Appendix 24 to the SSR.
 - (g) In carrying out Repair Work, the Service Provider must take all reasonable steps to limit Lane Closures.

7.5 Force Majeure Event

The Service Provider is not required to repair damage arising from a Force Majeure Event unless RTA directs the Service Provider to repair such damage as Additional Services.

7.6 Mitigation

The Service Provider must minimise and mitigate the effect on the performance of the Services of any Incident, damage to any Asset and the carrying out of any Repair Work.

8. VARIATIONS

8.1 RTA may direct Variations

RTA may direct Variations in writing at any time during the Term, and the Service Provider must comply with those directions.

8.2 Proposed Variations

- (a) If requested by RTA, the Service Provider must advise RTA in writing of:
 - (i) the cost, time and quality implications (if any) of a proposed Variation; and
 - (ii) any other effect on the Services or on any matter specified,within 10 Business Days of RTA's request or, if less, the time specified in the request.
- (b) In advising RTA of its effect on the Services, the Service Provider acknowledges its responsibility to take all reasonable steps to:
 - (i) carry out any additional work or services associated with the proposed Variation concurrently with the Services wherever possible; and
 - (ii) otherwise minimise the effect of the Variation on the carrying out of the Services.
- (c) The Service Provider must not implement any proposed Variation until:
 - (i) the parties have agreed on its cost, time and quality implications and other effects (if any) on the Services; or
 - (ii) RTA directs the Service Provider to implement the Variation in accordance with clause 8.1.

8.3 Effect of Variations

- (a) The parties must seek to agree the cost, time and quality implications and other effects (if any) on the Services of a Variation directed by RTA under clause 8.1.
- (b) If the parties are unable to agree on the matter specified in paragraph (a) within 20 Business Days of RTA's direction under clause 8.1:
 - (i) if the Variation involves additional or increased work, RTA will:
 - (A) if practicable, determine the value as the sum of the following:
 - (I) the direct labour and Service Provider's Plant costs;
 - (II) the reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (III) the Service Provider's margin on the costs under subparagraph (II),valued in accordance with Annexure 3 to Schedule 4; or
 - (B) notify the Service Provider that the matter is an Issue and clause 35.2 will apply; and/or
 - (ii) if the Variation involves a decrease or omission of any part of the Services, RTA must determine its value as that proportion of the Services included in the O&M Fee as specified in the Contract, or as otherwise valued by RTA (acting reasonably).
- (c) If the Variation involves additional or increased work, in making its determination under paragraph (b)(i)(A) RTA will not include any amount in respect of any Losses attributable to any default or negligence of the Service Provider.
- (d) RTA will:
 - (i) make a lump sum payment or series of milestone payments;
 - (ii) adjust the O&M Fee; or
 - (iii) implement a combination of (i) and (ii),to take account of RTA's determination of the value of the Variation provided that where the Variation involves a decrease or omission of any part of the Services RTA will adjust the O&M Fee to take account of its determination of the value of the Variation.

8.4 Carrying out a Variation

In carrying out a Variation, the Service Provider must:

- (a) carry out any additional work or services associated with the Variation concurrently with the Services wherever possible; and
- (b) otherwise minimise the effect of the Variation on the performance of the Services.

8.5 Claim for Variation

- (a) Regardless of any other provision of the Contract, if the Service Provider considers that a direction issued by RTA constitutes a Variation, the Service Provider must:

-
- (i) within 2 Business Days of the direction and before complying with the direction, notify RTA in writing that it considers the direction gives rise to the Variation; and
 - (ii) within 10 Business Days of the direction notify RTA in writing of:
 - (A) the legal basis for the claim (whether based on the Contract or otherwise); and
 - (B) details of the amount claimed using the methodology in clause 8.3.
 - (b) Notwithstanding any notice provided under paragraph (a), the Service Provider must comply with RTA's direction (unless it is withdrawn by RTA).

8.6 Variation for convenience of Service Provider

- (a) The Service Provider may propose in writing a Variation for the Service Provider's convenience.
- (b) RTA may approve the proposed Variation but it is not obliged to do so.
- (c) RTA's approval of the proposed Variation may be conditional.
- (d) Subject to the conditions of RTA's approval, the other relevant provisions of clause 8 apply to any Variation proposed by the Service Provider and approved as a Variation by RTA.

8.7 Omissions

If RTA directs a Variation decreasing or omitting any work or services from the Services:

- (a) RTA may thereafter either perform such work or services itself or employ or engage another person or persons to do so; and
- (b) RTA will not be liable in respect of any Claim (insofar as is permitted by Law) by the Service Provider as a result of any work or services being omitted or deleted from the Services whether or not RTA thereafter performs such work or services itself or employs or engages another person or persons to do so.

9. ADDITIONAL SERVICES

9.1 General

The parties acknowledge and agree that during the Term:

- (a) RTA may, in its absolute discretion:
 - (i) seek a price from the Service Provider to undertake Additional Services;
 - (ii) direct the Service Provider to undertake Additional Services; or
 - (iii) engage another contractor to undertake works or services on the M5 East or in relation to any Asset; and
- (b) RTA is under no obligation to engage the Service Provider to undertake Additional Services.

9.2 Additional Services

- (a) RTA may, at any time during the Term, issue to the Service Provider:
 - (i) a Change Proposal, outlining the scope of the proposed Additional Services and inviting the Service Provider to price those Additional Services; or
 - (ii) a Change Order, directing the Service Provider to carry out Additional Services and the Service Provider must comply with those directions.
- (b) RTA may specify in a Change Proposal that the Service Provider must competitively tender all or part of the proposed Additional Services and provide a number of quotes from experienced, independent and capable Subcontractors.

9.3 Change Orders

- (a) The Service Provider must not commence the carrying out of Additional Services unless RTA has issued a Change Order.
- (b) Subject to paragraph (c), RTA may issue a Change Order by email, facsimile, post or verbally.
- (c) Only RTA's Representative may issue a Change Order verbally.
- (d) RTA will confirm any Change Order issued verbally in writing as soon as possible.

9.4 Valuation of Additional Services

- (a) This clause will apply if RTA has issued a Change Proposal under clause 9.2(a)(i).
- (b) The Service Provider must within the time specified in a Change Proposal under clause 9.2(a)(i), advise RTA of:
 - (i) the effect (if any) which the Service Provider anticipates that the performance of the Additional Services will have on the Services and the Operation Plan, the Maintenance Plan and any other matter specified in the Change Proposal;
 - (ii) the Service Provider's proposed program for the Additional Services;
 - (iii) the Service Provider's quote for the cost of undertaking the Additional Services, valued in accordance with Annexure 3 to Schedule 4;
 - (iv) whether the Service Provider proposes to engage a Subcontractor to carry out any part of the Additional Services; and
 - (v) if required in the Change Proposal, provide the number of quotes from Subcontractors specified in the Change Proposal together with the Service Provider's recommendation of the Subcontractor to be engaged to carry out the Additional Services or the relevant part of the Additional Services having regard to the:
 - (A) price of each quote received from the Subcontractors;
 - (B) experience and capability of each Subcontractor (in the context of the Additional Services to be carried out by that Subcontractor); and

-
- (C) ability of the Subcontractor to carry out the Additional Services or the relevant part of the Additional Services in a manner consistent with the Service Provider's obligations under the Contract.
 - (c) RTA's Representative and the Service Provider's Authorised Person must seek to agree within 10 Business Days of the Service Provider's notice under paragraph (b):
 - (i) the price for the Additional Services;
 - (ii) all other terms on which the Service Provider will carry out the Additional Services (including the date for completion); and
 - (iii) where applicable, the Subcontractor to be engaged to carry out the Additional Services or part of the Additional Services.
 - (d) RTA will issue a Change Order if the parties agree the terms on which the Service Provider will carry out the Additional Services.
 - (e) If the parties cannot reach agreement within the time specified in paragraph (c) or such other period as the parties may agree, RTA may in its absolute discretion seek competitive tenders for the work or services described in the Change Proposal or engage another contractor to undertake the work or services described in the Change Proposal.

9.5 Valuation of Additional Services following Change Order

- (a) This clause will apply if RTA has issued a Change Order prior to agreeing the price for the Additional Services.
- (b) The Service Provider must, within 10 Business Days of completing the Additional Services, submit to RTA:
 - (i) details of the work performed;
 - (ii) details of the effect (if any) of the Additional Services on the Services, the Operation Plan and the Maintenance Plan; and
 - (iii) the:
 - (A) direct labour and Service Provider's Plant costs;
 - (B) reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (C) Service Provider's margin on the costs under subparagraph (B), valued in accordance with Annexure 3 to Schedule 4.
- (c) RTA may verify any cost details given by the Service Provider under paragraph (b) by directing the Service Provider to provide:
 - (i) a detailed breakdown of the costs, including evidence of the cost of any Subcontractor work, Materials, external plant and equipment on an open book basis; and
 - (ii) such access to the Service Provider's records as RTA reasonably requires to assess the costs of the Additional Services.
- (d) RTA will determine the value of the Additional Services as the sum of the following:

-
- (i) the direct labour and Service Provider's Plant costs;
 - (ii) the reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (iii) the Service Provider's margin on the costs under paragraph (d)(ii),
valued in accordance with Annexure 3 to Schedule 4.
- (e) In making its determination under paragraph (d), RTA will not include any amount for any Losses attributable to any default or negligence of the Service Provider.
- (f) RTA will determine the value of the Additional Services within:
- (i) 10 Business Days of receipt of the Service Provider's submission under paragraph (b); or
 - (ii) 5 Business Days of RTA verifying the costs in accordance with paragraph (c),
whichever is the later.

9.6 Performance of Additional Services

- (a) The Service Provider must carry out Additional Services the subject of a Change Order in accordance with the Project Terms and the Contract.
- (b) The terms of the General Conditions will take precedence over the Project Terms, to the extent of any inconsistency.
- (c) The Service Provider acknowledges that it must take all reasonable steps to carry out Additional Services concurrently with the other Services wherever possible and to minimise the effects of the Additional Services on the performance of the other Services.

9.7 Competitive tenders for Additional Services

- (a) RTA may in its absolute discretion, rather than issuing a Change Proposal or Change Order for Additional Services or if the parties have not reached agreement on a Change Proposal, seek competitive tenders or otherwise engage a separate contractor to undertake work or services on the M5 East or in relation to any Asset.
- (b) In those circumstances, RTA may invite or direct the Service Provider to prepare the project brief and other technical documentation for the tender by way of a Change Proposal.
- (c) The Service Provider may only tender for services for which RTA calls competitive tenders if it has not accepted an invitation, or been directed, to prepare the project brief and other technical documents under paragraph (b).

9.8 Valuation of Corrective Maintenance

- (a) This clause will apply if the Service Provider undertakes Corrective Maintenance on a Specified Asset Item in accordance with Section 5.5.4(e)(i) of the SSR.
- (b) The Service Provider must, within 10 Business Days of completing the Corrective Maintenance on the Specified Asset Item, submit to RTA:
 - (i) details of the work performed;

-
- (ii) details of the effect (if any) of the Corrective Maintenance on the Services, the Operation Plan and the Maintenance Plan; and
 - (iii) the:
 - (A) direct labour and Service Provider's Plant costs;
 - (B) reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (C) Service Provider's margin on the costs under subparagraph 9.8(b)(iii)(B),valued in accordance with Annexure 3 to Schedule 4.
 - (c) RTA may verify any cost details given by the Service Provider under paragraph 9.8(b) by directing the Service Provider to provide:
 - (i) a detailed breakdown of the costs, including evidence of the cost of any Subcontractor work, Materials, external plant and equipment on an open book basis; and
 - (ii) such access to the Service Provider's records as RTA reasonably requires to assess the costs of the Corrective Maintenance on the Specified Asset Item.
 - (d) RTA will determine the value of the Corrective Maintenance as the sum of the following:
 - (i) the direct labour and Service Provider's Plant costs;
 - (ii) the reasonable cost of Subcontractor work, Materials, external plant and equipment; and
 - (iii) the Service Provider's margin on the costs under paragraph (d)(ii),valued in accordance with Annexure 3 to Schedule 4.
 - (e) In making its determination under paragraph 9.8(d), RTA will not include any amount for any Losses attributable to any default or negligence of the Service Provider.
 - (f) RTA will determine the value of the Corrective Maintenance on the Specified Asset Item within:
 - (i) 10 Business Days of receipt of the Service Provider's submission under paragraph 9.8(b); or
 - (ii) 5 Business Days of RTA verifying the costs in accordance with paragraph 9.8(c),whichever is the later.

10. LAW, GUIDELINES AND GOVERNMENT REQUIREMENTS

10.1 Law

The Service Provider must:

-
- (a) in carrying out the Services comply with all Law;
 - (b) give all notices necessary to comply with Law; and
 - (c) pay all fees, charges and other imposts necessary to comply with the requirements of all Law, including all Approvals.

10.2 Relevant Authorities

- (a) The Service Provider must, before carrying out any Services, notify all relevant Authorities whose approval is required for the Services or whose interests may be affected by the carrying out of the Services.
- (b) The Service Provider must:
 - (i) obtain and maintain all Approvals required to perform the Services;
 - (ii) give all notices necessary to comply with the requirements of any Authority; and
 - (iii) pay any fees or charges necessary to comply with the requirements of any Authority, including any fee or charge imposed in connection with a requirement of an Authority which entails the provision or expansion of services by that Authority.
- (c) The Service Provider must give to RTA upon request copies of documents issued to the Service Provider by any Authority or to any Authority by the Service Provider, in respect of the Services and, in particular, any Approvals in connection with the Services and the M5 East. The Service Provider must provide the original documents to RTA at the end of the Term.

10.3 Other Authorities

The Service Provider acknowledges and agrees that:

- (a) there are Authorities (other than RTA) with jurisdiction over aspects of the M5 East or Services;
- (b) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services; and
- (c) except as otherwise provided in the Contract, the Service Provider bears the full risk of all occurrences of the kind referred to in clause 10.3(b) and will not be entitled to make any Claim against RTA arising out of or in any way in connection with such occurrences.

10.4 Compliance

Without limiting its other obligations under the Contract, the Service Provider must:

- (a) comply with:
 - (i) all relevant RTA policies and NSW Government Codes of Practice; and
 - (ii) its obligations under clauses 10.5 to 10.15; and
- (b) demonstrate to RTA its compliance with paragraph (a) whenever RTA requests it to do so.

10.5 Occupational health, safety and rehabilitation management

- (a) The Service Provider is responsible for and must comply with the requirements of the Contract for occupational health, safety and rehabilitation in accordance with the express provisions of the *Occupational Health & Safety Act 2000* (NSW) and the *Occupational Health & Safety Regulation 2001* (NSW) (**OH&S Regulation**). This includes the NSW Government "Occupational Health and Safety Management Systems Guidelines" (**Guidelines**).
- (b) The Service Provider must have in place an occupational health and safety system and ensure such system complies with, and is accredited in accordance with, the Guidelines.
- (c) The Service Provider must document, submit to RTA and implement an Occupational Health, Safety and Rehabilitation Management Plan which complies with the OH&S Regulation and the Guidelines.
- (d) The Service Provider must systematically manage its occupational health, safety and rehabilitation management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The Service Provider must review and update the Occupational Health, Safety and Rehabilitation Management Plan so that it remains at all times compliant with Law.
- (f) In this clause 10.5, "owner", "principal contractor" and "construction work" have the same meaning as in the OH&S Regulation.
- (g) During any period that the Service Provider is in control of any part of the Maintenance Site:
 - (i) to the extent that RTA is the owner of the Maintenance Site or is authorised by the owner of the Maintenance Site to do so, RTA appoints the Service Provider as the principal contractor in respect of all construction work forming part of the Services;
 - (ii) if RTA is not able to validly appoint the Service Provider as the principal contractor in respect of any construction work forming part of the Services, the Service Provider must exercise and fulfil the functions and obligations of a principal contractor under the OH&S Regulation as if the Service Provider has been validly appointed as the principal contractor in respect of such construction work; and
 - (iii) the Service Provider is authorised to exercise such authority as is necessary to enable it to discharge the responsibilities imposed on a principal contractor by the OH&S Regulation.
- (h) To the extent not prohibited by Law, the Service Provider must indemnify RTA against any Loss suffered or incurred by RTA arising out of or in connection with the failure of the Service Provider to exercise or fulfil the functions and responsibilities it is required to exercise or fulfil as a principal contractor in accordance with clause 10.5 provided that the Service Provider's liability to indemnify RTA will be reduced proportionally to the extent the Loss was caused by an act or omission of RTA or its employees, contractors or agents which is not an act or omission:
 - (i) expressly permitted by the Contract;
 - (ii) within a time frame expressly permitted by the Contract; or

-
- (iii) caused or contributed to by:
 - (A) the Service Provider's breach of the Contract; or
 - (B) any negligent or unlawful act or omission of the Service Provider or any person for whom the Service Provider is responsible.
 - (i) If there is any change to the OHS Regulation after the date of the Contract:
 - (i) RTA and the Service Provider agree that any principal contractor appointment made under this clause continues to be effective as an appointment under any new or amended regulation or law; and
 - (ii) by this clause, RTA authorises the Service Provider to have management and control of the workplaces at which the Service Provider is performing the Services to the extent necessary to discharge its obligations as principal contractor.

10.6 Risk Management Plan

The Service Provider must document, submit (to RTA) and implement a Risk Management Plan which must comply with the requirements set out in Appendix 30 to the SSR.

10.7 Industrial relations management

- (a) The Service Provider must manage all aspects of industrial relations in relation to the Services and otherwise in connection with the Contract, and keep RTA informed of industrial relations issues which affect or are likely to affect the carrying out of the Services.
- (b) Subject to the provisions of any Law and the express provisions of the Contract, the Service Provider must comply with the NSW Government "Industrial Relations Management Guidelines".
- (c) The Service Provider must document, submit (to RTA) and implement an Industrial Relations Plan which complies with the requirements of Section 3.11 of the SSR.

10.8 Quality management

- (a) The Service Provider must document, submit (to RTA) and implement a Quality Plan which must comply with the requirements of Section 3.4 of the SSR.
- (b) The Service Provider must systematically manage its processes in accordance with the Quality Plan and monitor its own performance and compliance with the systems, processes and procedures specified in the Quality Plan.
- (c) The Service Provider must:
 - (i) review and update the Service Provider's quality management procedures and documentation so as to ensure at all times the quality of the Services complies with the requirements of the Contract;
 - (ii) establish, maintain and keep records of all activities related to the management of quality; and
 - (iii) provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow RTA, or any person authorised by RTA, to carry out reviews, surveillance and audit of the Service Provider's

procedures and conformance with the quality management requirements under the Contract.

10.9 Environmental management

- (a) The Service Provider must document, submit (to RTA) and implement an Environmental Management Plan which complies with the requirements of Section 3.9 of the SSR.
- (b) The Service Provider must systematically manage its environmental management processes in accordance with the systems, plans, standards and codes specified in the Contract.

10.10 Training management

- (a) The Service Provider must document, submit (to RTA) and implement a Training Plan which complies with the requirements of Section 3.12 of the SSR.
- (b) The Service Provider must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.

10.11 Community Relations Plan

- (a) The Service Provider must document, submit (to RTA) and implement a Community Relations Plan which must comply with the requirements of Section 7 of the SSR.
- (b) The Service Provider must systematically manage its community relations processes in accordance with the systems, plans, standards and codes specified in the Contract.

10.12 Registration and licences

- (a) The Service Provider must register all vehicles and any Service Provider's Plant used in performing work in connection with the Contract, if required by Law to be registered.
- (b) The Service Provider must ensure that all drivers who operate vehicles and Service Provider's Plant in performing work in connection with the Contract are properly and appropriately licensed as required by Law to operate the vehicles or Service Provider's Plant.

10.13 Liability under the NGER Legislation

- (a) The Service Provider and RTA acknowledge and agree that, if any of the Services constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, RTA has operational control of that facility or facilities.
- (b) If, despite the operation of paragraph (a), the Service Provider incurs a liability under the NGER Legislation as a result of or in connection with the Services, and the NGER Legislation provides that such liability can be transferred by the Service Provider to RTA, RTA must, upon the request of the Service Provider, do all things reasonably necessary to transfer the liability to RTA.

10.14 Not Used

10.15 Reporting Emissions and Energy Data

- (a) The Service Provider must provide the Service Provider's Emissions and Energy Data to RTA in accordance with paragraph (b). The Service Provider acknowledges and agrees that RTA may use the Service Provider's Emissions and Energy Data for any purpose as it sees fit.
- (b) The Service Provider must:
 - (i) provide the Service Provider's Emissions and Energy Data to RTA:
 - (A) in the same manner, form and level of detail, based on the same methods and at the same times as if the Service Provider were obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and RTA was that Authority;
 - (B) in accordance with the requirements or approvals of any Authority and any directions by RTA; and
 - (C) as may be required to enable RTA:
 - (I) to discharge, as and when they fall due, any obligations that it may have to provide the Service Provider's Emissions and Energy Data to any Authority; and
 - (II) to provide to the Greenhouse and Energy Data Officer any of the Service Provider's Emissions and Energy Data that it may be entitled to provide concerning any greenhouse gas project,

provided always that RTA has given the Service Provider reasonable notice of its time for performance under this paragraph(b)(i)(C);
 - (ii) keep all such Service Provider's Emissions and Energy Data as may be required to enable it to discharge its obligations under paragraph (b)(i);
 - (iii) retain records of its activities that are the basis of the Service Provider's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (iv) permit the Service Provider's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by RTA or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises and materials, producing and giving access to documents (including any records kept and retained under paragraphs (b)(ii) and (b)(iii)) and answering questions.
- (c) Without limiting paragraph (b), the Service Provider must assist RTA to comply with the NGER Legislation in relation to any aspect of the Services.
- (d) The Service Provider acknowledges and agrees that:
 - (i) the Service Provider's Emissions and Energy Data is provided to RTA:
 - (A) to discharge any obligations that RTA may have to provide such Emissions and Energy Data to an Authority; and

-
- (B) so that RTA may provide to the Greenhouse and Energy Data Officer any RTA's Emissions and Energy Data that it may be entitled to provide concerning any greenhouse gas project; and
 - (ii) RTA may provide or otherwise disclose the Service Provider's Emissions and Energy Data to any Authority.
 - (e) The Service Provider warrants that the Emissions and Energy Data provided to RTA under this clause 10.15 is not false or misleading.

11. CHANGE IN LAW

11.1 Change in Law

- (a) If there is a Qualifying Change in Law that will increase or decrease the Service Provider's cost of providing the Services by more than \$50,000 per annum, then this clause 11 will apply.
- (b) The Service Provider must, within 20 Business Days of the Qualifying Change in Law, notify RTA of the:
 - (i) occurrence of and details of the relevant Qualifying Change in Law; and
 - (ii) the Service Provider's assessment of the increase or decrease in the Service Provider's cost of providing the Services as a result of the Qualifying Change in Law.
- (c) RTA:
 - (i) may, within 20 Business Days of receipt of the notice under paragraph (b), request further information from the Service Provider to enable RTA to assess the Service Provider's claim; and
 - (ii) must, within 20 Business Days of receipt of the information requested under paragraph (c)(i) or within 40 Business Days of receiving the Service Provider's notice under paragraph (b) (whichever is later), notify the Service Provider of the amount, if any, which RTA will pay to compensate the Service Provider (whether as a lump sum payment, increase to the O&M Fee or combination thereof) or deduct from the O&M Fee to take into account the increase or decrease in the Service Provider's cost as a result of the Qualifying Change in Law described in the Service Provider's notice under paragraph (b).
- (d) Without prejudice to clause 11.2, RTA may determine that it will not pay an amount to the Service Provider or alter the O&M Fee, because the impact on the Service Provider's cost of providing the Services is less than \$50,000 per annum.
- (e) If the Qualifying Change in Law will, in the Service Provider's reasonable opinion increase or decrease the Service Provider's cost of providing the Services by more than \$50,000 per annum in any subsequent Contract Year:
 - (i) the Service Provider must notify RTA within 20 Business Days of commencement of the relevant subsequent Contract Year, including the details specified in paragraph (b); and
 - (ii) paragraphs (b) to (d) will reapply as if the Service Provider had notified of the Qualifying Change in Law under paragraph (b).

-
- (f) RTA may, notwithstanding that it has not received a notice from the Service Provider under paragraph (b):
 - (i) determine that a Qualifying Change in Law has increased or decreased the Service Provider's cost of providing the Services by more than \$50,000 per annum in any given Contract Year; and
 - (ii) either:
 - (A) notify the Service Provider of the amount which RTA will pay to compensate the Service Provider (whether as a lump sum payment, increase to the O&M Fee or a combination thereof) or deduct from the O&M Fee to take into account the increase or decrease in the Service Provider's cost as a result of the Qualifying Change in Law; or
 - (B) request that the Service Provider advise RTA in writing of the impact of the Qualifying Change in Law on the Service Provider's cost of providing the Services, following which RTA will determine the amount which RTA will pay to compensate the Service Provider or deduct from the O&M Fee in accordance with subparagraph (A).
 - (g) The Service Provider must respond within 10 Business Days of receipt of a request from RTA under paragraph (f)(ii)(B).
 - (h) If the Service Provider does not agree with RTA's determination under paragraph (c) or paragraph (f), clause 35.1(a) will apply.

11.2 Annual assessment

- (a) The parties acknowledge and agree that in any given Contract Year:
 - (i) there may be a number of Qualifying Changes in Law to which clause 11.1 does not apply;
 - (ii) such Qualifying Changes in Law may either increase or decrease the Service Provider's cost of providing the Services; and
 - (iii) it would be impractical to assess the impact of each Qualifying Change in Law on the Service Provider's cost of providing the Services as each Qualifying Change in Law arises.
- (b) The Service Provider must within 60 Business Days of the end of a given Contract Year notify RTA of the:
 - (i) occurrence and detail of each Qualifying Change in Law during the relevant Contract Year to which clause 11.1 does not apply;
 - (ii) the cost impact of each such Qualifying Change in Law during the relevant Contract Year (including those events for which there is a decrease in the Service Provider's cost in providing the Services);
 - (iii) the Service Provider's assessment of any increase in the Service Provider's cost of providing the Services as a result of the cumulative effect of all such Qualifying Changes in Law during the relevant Contract Year (including those events for which there is a decrease in the Service Provider's cost in providing the Services); and
 - (iv) the Service Provider's claim for payment.

-
- (c) RTA will assess the Service Provider's claim in accordance with the provisions of clause 38.

11.3 Mitigation

The Service Provider must minimise and mitigate the effect on the performance of the Services of any Qualifying Change in Law.

11.4 Adjustment

Any monetary caps specified in clauses 11.1 and 11.2 will be adjusted yearly in accordance with the cost adjustment provision set out in section 3.5 of Annexure 3 to Schedule 4.

12. TRAFFIC GROWTH

12.1 Traffic growth

- (a) If the Service Provider's cost of providing the Services in a Contract Year increases as a result of traffic volumes on the M5 East exceeding the Traffic Growth Ceiling, the Service Provider may, within 30 Business Days of the end of the relevant Contract Year, notify RTA of:
- (i) the extent to which traffic volumes on the M5 East exceed the Traffic Growth Ceiling; and
 - (ii) the Service Provider's assessment of the increase in its cost of providing the Services as a result of the traffic volumes on the M5 East in excess of the Traffic Growth Ceiling.
- (b) RTA:
- (i) may, within 20 Business Days of receipt of the notice under paragraph (a), request further information from the Service Provider to enable RTA to assess the Service Provider's claim; and
 - (ii) must, within 30 Business Days of receipt of the information requested under paragraph (b)(i) or within 40 Business Days of receiving the Service Provider's notice under paragraph (a) (whichever is later), assess the Service Provider's claim and notify the Service Provider of the amount RTA will pay to compensate the Service Provider for the event described in the Service Provider's notice under paragraph (a).
- (c) If the Service Provider does not agree with RTA's determination under paragraph (b)(ii), clause 35.1(a) will apply.

13. SUBCONTRACTORS

13.1 Service Provider's responsibility

- (a) The Service Provider is solely responsible for:
- (i) all Personnel and all Subcontractor's subcontractors, consultants and suppliers (of any tier in the contracting chain) and their officers, employees and agents, including any act or omission by such persons; and
 - (ii) the consequences of the termination of any Subcontract.

-
- (b) The Service Provider must indemnify RTA against all Claims and Losses arising out of any acts or omissions of any Personnel and all Subcontractor's subcontractors, consultants and suppliers (of any tier in the contracting chain) and their officers, employees and agents.
 - (c) The Service Provider must employ, and must ensure that its Subcontractors employ, in connection with the Services only such persons as are careful, skilled and experienced in their respective trades and callings and who are competent to perform any work or services for which they are engaged.

13.2 Engaging Subcontractors

- (a) The Service Provider must not subcontract the whole of the Services, but may subcontract parts of the Services in accordance with this clause 13.
- (b) Before engaging any Subcontractor and at any other time when requested by RTA, the Service Provider must provide to RTA unpriced copies of any Subcontracts and the names and addresses of proposed Subcontractors.
- (c) RTA may object to the appointment of any proposed Subcontractor on reasonable grounds. If RTA objects to any proposed Subcontractor the Service Provider must at its own cost propose another Subcontractor.
- (d) For each trade or area of work or services which is a Prequalified Area of Work the Service Provider must use only Subcontractors prequalified in that category. Upon request, RTA will provide to the Service Provider a list of prequalified contractors for each Prequalified Area of Work.
- (e) If the Service Provider terminates a Subcontract, this clause 13 will apply to any replacement Subcontract.
- (f) The Service Provider may permit a Subcontractor to subcontract part, but not all, of its work.

13.3 Removal of persons

- (a) RTA may direct the Service Provider to remove from the M5 East or from any activity connected with the Services, within such time as RTA may direct, any person employed or engaged in connection with the Services who, in the opinion of RTA, is guilty of misconduct or is incompetent or negligent. Misconduct under this clause includes discourteous behaviour towards a member of the public or other user of the M5 East.
- (b) Any person who is the subject of a direction under paragraph (a) must not be re-employed on the M5 East or on activities connected with the Services without the prior written approval of RTA, which approval will not be unreasonably withheld or delayed.
- (c) The Service Provider must not allow any Personnel to use the M5 East or any of the Assets for any purpose other than in connection with the Services or in connection with their rights as members of the public.

13.4 Subcontract provisions

- (a) The Service Provider must ensure that a clause equivalent to clause 32.3 is included in:
 - (i) each Subcontract; and

-
- (ii) any further contract that any Subcontractor enters into with others for the carrying out of works in connection with the Services.
 - (b) The Service Provider must ensure that each Subcontract includes the following:
 - (i) provisions to allow the novation of each Subcontract to RTA in the circumstances contemplated by clauses 40.3(c) and 44.2(d);
 - (ii) provisions to allow access for RTA and its authorised persons to the records and systems of each Subcontract as necessary for the Service Provider to comply with its obligations under the Contract; and
 - (iii) provisions relating to insurances in order for the Service Provider to comply with its obligations under clause 25.2.

PART B CONTRACT MANAGEMENT

14. SERVICE MANUALS

14.1 Service Manuals

- (a) The Service Manuals must comply with the requirements of Appendix 2 to the SSR.
- (b) The Service Provider:
 - (i) must comply with the Service Manuals; and
 - (ii) agrees that complying with the Service Manuals will not in any way lessen or affect:
 - (A) its liabilities or responsibilities under the Contract or otherwise according to Law; or
 - (B) RTA's rights against the Service Provider, whether under the Contract or otherwise according to Law.
- (c) The Service Provider acknowledges and agrees that:
 - (i) the purpose of the Service Manuals is for the Service Provider to provide a detailed description of how the Service Provider intends to carry out the Services in accordance with the requirements of the Contract; and
 - (ii) the Service Manuals will require ongoing development, amendment and updating during the Term, including to take into account:
 - (A) Variations;
 - (B) Changes in Law;
 - (C) the carrying out of any:
 - (I) Additional Services;
 - (II) Replacement and Refurbishment; or
 - (III) Prescribed Works; and

-
- (D) any other events or circumstances which occur or come into existence and which have, or may have, an effect on the manner in which the Service Provider carries out the Services.
- (d) The Service Provider warrants that the Service Manuals:
 - (i) will:
 - (A) contain the contents required by the SSR;
 - (B) be fit for their intended purpose; and
 - (C) otherwise comply with the requirements of the Contract; and
 - (ii) do not infringe any Intellectual Property Rights and any use by RTA (or any person authorised by RTA) of the Service Manuals for their intended purpose will not infringe any Intellectual Property Rights.
 - (e) The Service Provider must promptly develop, amend or update the Service Manuals to take into account:
 - (i) the circumstances and events referred to in paragraph (c)(ii) as those circumstances and events occur or come into existence; and
 - (ii) any breach or potential breach of the warranties referred to in paragraph (d),

and submit to RTA the developed, amended or updated Service Manual as soon as the further development, amendment or updating is complete. Clause 14.2 will apply to RTA's review of the developed, amended or updated Service Manuals.

14.2 Review of Service Manuals

- (a) The Service Provider must submit the Service Manuals to RTA:
 - (i) prior to the end of the Mobilisation Period;
 - (ii) quarterly in the first 12 months following the end of the Mobilisation Period;
 - (iii) on each anniversary of the Commencement Date; and
 - (iv) in accordance with clause 14.1(e) when the Service Manuals are developed, amended or updated.
- (b) The Service Provider must, if required by RTA, ensure that appropriate personnel are available to:
 - (i) explain the Service Manuals; and
 - (ii) provide such information regarding the Service Manuals as RTA reasonably requests.
- (c) Within 20 Business Days after submission by the Service Provider of Service Manuals to RTA, RTA will notify the Service Provider that:
 - (i) the Service Manuals are "Not Rejected"; or
 - (ii) the Service Manuals are "Rejected", if in the reasonable opinion of RTA, the Service Manuals do not comply with the requirements of the Contract, and provide written reasons for the rejection.

-
- (d) If RTA does not issue a notice under paragraph (c) within the required timeframe, the relevant Service Manuals will be deemed to be "Not Rejected".
 - (e) The Service Provider must, within 10 Business Days of receipt of notice from RTA that a Service Manual is "Rejected", amend that Service Manual and submit it to RTA.
 - (f) Paragraph (c) will reapply to the amended Service Manual submitted under paragraph (e), except that the amended Service Manual may be "Rejected" by RTA only in respect of a failure by the Service Provider to address the reasons given by RTA when it notified the Service Provider that such Service Manual was "Rejected".

15. INTEGRATED CONTRACT MANAGEMENT SYSTEM (ICMS)

15.1 Purpose

- (a) The intended purpose of the ICMS is:
 - (i) to demonstrate to RTA that the Service Provider has the understanding, capacity and capability at all times to carry out the Services safely and in accordance with the requirements of the Contract;
 - (ii) to define responsibilities, resources and processes for planning, performing and verifying that the Services satisfy the requirements of the Contract;
 - (iii) to allow RTA to understand how the Service Provider will achieve the performance of the Services or otherwise fulfil its obligations under the Contract; and
 - (iv) as set out in Section 3.3 of the SSR.
- (b) The Service Provider warrants that the ICMS will at all times be fit for its intended purpose.

15.2 ICMS

The Service Provider must establish and implement the ICMS, which must:

- (a) cover all management systems required for the performance of the Services (including the interface with RTA's management systems);
- (b) satisfy the requirements of, as applicable:
 - (i) AS/NZS ISO 9001:2008 for quality management;
 - (ii) AS/NZS ISO 14001:2004 for environmental management;
 - (iii) AS4801:2001 for occupational health and safety;
 - (iv) AS4360:2004 for risk management;
 - (v) all amendments and updates to the standards listed in paragraphs (b)(i) to (b)(iv) (both inclusive) (as from the date of issue of the relevant amendment or update); and
 - (vi) any applicable Authority;

-
- (c) align the management processes of the Service Provider, its Subcontractors and RTA;
 - (d) satisfy the other requirements of the Contract, including Appendix 20 to the SSR; and
 - (e) maximise the understanding and acceptance by the Service Provider, its Subcontractors and RTA of the management processes to be used for the performance of the Services.

15.3 Monitoring and auditing

The Service Provider must allow RTA, and persons authorised by RTA, access to the ICMS and the contract management systems of each Subcontractor and their subcontractors, consultants and suppliers (of any tier in the contracting chain) to enable monitoring and auditing. RTA will carry out any such inspections in a manner which does not unreasonably interfere with the Service Provider's performance of the Services.

16. SERVICE PLANS

16.1 Service Plans

- (a) Each Service Plan must comply with the requirements of Appendix 30 to the SSR.
- (b) The Service Provider:
 - (i) must comply with the Service Plans; and
 - (ii) agrees that complying with the Service Plans will not in any way lessen or affect:
 - (A) its liabilities or responsibilities under the Contract or otherwise according to Law; or
 - (B) RTA's rights against the Service Provider, whether under the Contract or otherwise according to Law.
- (c) The Service Provider acknowledges and agrees that the Service Plans will require ongoing development, amendment and updating during the Term, including to take into account:
 - (i) Variations;
 - (ii) Changes in Law;
 - (iii) the carrying out of any:
 - (A) Additional Services;
 - (B) Replacement and Refurbishment; or
 - (C) Prescribed Works; and
 - (iv) any other events or circumstances which occur or come into existence and which have, or may have, an effect on the manner in which the Services Provider carries out the Services.
- (d) The Service Provider warrants that each Service Plan:

-
- (i) will:
 - (A) contain the contents required by the SSR;
 - (B) be fit for their intended purpose; and
 - (C) otherwise comply with the requirements of the Contract; and
 - (ii) does not infringe any Intellectual Property Rights and any use by RTA (or any person authorised by RTA) of that Service Plan for its intended purpose will not infringe any Intellectual Property Rights.
- (e) The Service Provider must promptly develop, amend or update each Service Plan to take into account:
- (i) the circumstances and events referred to in paragraph (c) as those circumstances and events occur or come into existence; and
 - (ii) any breach or potential breach of the warranties referred to in paragraph (d),

and submit to RTA the developed, amended or updated Service Plan as soon as the further development, amendment or updating is complete. Clause 16.2 will apply to RTA's review of the developed, amended or updated Service Plan.

16.2 Review of Service Plans

- (a) The Service Provider must submit the Service Plans to RTA:
 - (i) in accordance with the requirements of Appendix 30 to the SSR;
 - (ii) on each anniversary of the Commencement Date; and
 - (iii) in accordance with clause 16.1(e) when the Service Plans are developed, amended or updated.
- (b) The Service Provider must, if required by RTA, ensure that appropriate personnel are available to:
 - (i) explain the Service Plans; and
 - (ii) provide such information regarding the Service Plans as RTA reasonably requests.
- (c) Within 20 Business Days after submission by the Service Provider of a Service Plan to RTA, RTA will notify the Service Provider that:
 - (i) the Service Plan is "Not Rejected"; or
 - (ii) the Service Plan is "Rejected", if in the reasonable opinion of RTA, that Service Plan does not comply with the requirements of the Contract, and provide written reasons for the rejection.
- (d) If RTA does not issue a notice under paragraph (c) within the required timeframe, the relevant Service Plan will be deemed to be "Not Rejected".
- (e) The Service Provider must, within 10 Business Days of receipt of notice from the RTA that a Service Plan is "Rejected", amend that Service Plan and submit it to RTA.

-
- (f) Paragraph (c) will reapply to the amended Service Plan submitted under paragraph (e), except that the amended Service Plan may be "Rejected" by RTA only in respect of a failure by the Service Provider to address the reasons given by RTA when it notified the Service Provider that such Service Plan was "Rejected".

17. MAINTENANCE STANDARDS AND OPERATION STANDARDS

17.1 Maintenance Standards and Operation Standards

- (a) The Service Provider must submit to RTA the:
- (i) Maintenance Standards in accordance with Section 3.6 of the SSR; and
 - (ii) Operation Standards in accordance with Section 4.4 of the SSR.
- (b) The Service Provider warrants that each of the Maintenance Standards and Operation Standards will:
- (i) contain the contents required by the SSR;
 - (ii) be fit for their intended purpose; and
 - (iii) otherwise comply with the requirements of the Contract.

17.2 Review of Maintenance Standards and Operation Standards

- (a) The Service Provider must, if required by RTA, ensure that appropriate personnel are available to:
- (i) explain the Maintenance Standards or Operation Standards (as applicable); and
 - (ii) provide such information regarding the Maintenance Standards or Operation Standards as RTA reasonably requests.
- (b) Within 20 Business Days after submission by the Service Provider of the Maintenance Standards or Operation Standards (as applicable) to RTA, RTA will notify the Service Provider that:
- (i) the Maintenance Standards or Operation Standards (as applicable) is "Not Rejected"; or
 - (ii) the Maintenance Standards or Operation Standards (as applicable) is "Rejected", if in the reasonable opinion of RTA, that Maintenance Standards or Operation Standards does not comply with the requirements of the Contract, and provide written reasons for the rejection.
- (c) If RTA does not issue a notice under paragraph (b) within the required timeframe, the relevant Maintenance Standards or Operation Standards will be deemed to be "Not Rejected".
- (d) The Service Provider must, within 10 Business Days of receipt of notice from the RTA that the Maintenance Standards or Operation Standards (as applicable) is "Rejected", amend the Maintenance Standards or Operation Standards and submit it to RTA.
- (e) Paragraph (b) will reapply to the amended Maintenance Standards or Operation Standards submitted under paragraph (d), except that the amended Maintenance Standards or Operation Standards (as applicable) may be "Rejected" by RTA only

in respect of a failure by the Service Provider to address the reasons given by RTA when it notified the Service Provider that the Maintenance Standards or Operation Standards was "Rejected".

18. RTA'S REVIEW OF DOCUMENTS

18.1 No restriction on RTA's rights

RTA and the Service Provider acknowledge and agree that:

- (a) RTA and RTA's Representative do not owe a duty to the Service Provider:
 - (i) to review any:
 - (A) Service Manual;
 - (B) Service Plan;
 - (C) Maintenance Standards; or
 - (D) Operation Standards,submitted by the Service Provider to RTA (each a **Reviewable Document**) for errors or compliance with the requirements of the Contract;
 - (ii) in any review undertaken of any Reviewable Document; or
 - (iii) to consult with the Service Provider or to make any comments regarding any Reviewable Document;
- (b) RTA's or RTA's Representative's review or rejection of, or consultation or comments on, or any other direction or act or omission with respect to any Reviewable Document (including any failure by RTA or RTA's Representative to review, reject, consult or comment regarding any Reviewable Document), will not lessen or otherwise affect:
 - (i) the Service Provider's warranties under clauses 14.1(d), 16.1(d) and 17.1(b) and any of its obligations or liabilities under the Contract or according to Law; or
 - (ii) RTA's rights against the Service Provider under the Contract or according to Law; and
- (c) RTA's exercise of (or failure to exercise) any of its rights under clauses 14.2, 16.2 or 17.2 will not preclude RTA from subsequently asserting that a Reviewable Document does not comply with the requirements of the Contract (even if RTA previously gave a "Not Rejected" notice under clause 14.2(c)(i), 16.2(c)(i) or 17.2(b)(i) in respect of that Reviewable Document).

18.2 No relief

- (a) The Service Provider will not be relieved from any of its obligations under the Contract or from any of its liabilities under the Contract or according to Law as a result of:
 - (i) complying with its obligations under clauses 14, 16 or 17 to develop, amend, update and submit to RTA each Reviewable Document; or

-
- (ii) RTA, or anyone acting on behalf of RTA, failing to detect any non-compliance in any Reviewable Document or the Service Provider's obligations under clauses 14, 16 or 17, including where any failure arises from any negligence on the part of RTA, RTA's Representative or any other person.
 - (b) The Service Provider complying with its obligations under clauses 14, 16 or 17 is not evidence of the Service Provider complying with its other obligations under the Contract.

PART C REPORTING AND MONITORING

19. REPORTING

19.1 Reports

The Service Provider must provide to RTA:

- (a) the reports set out in Appendix 24 to the SSR:
 - (i) in accordance with the requirements of Appendix 24 to the SSR; or
 - (ii) with such adjustments to frequency, format or details as directed by RTA; and
- (b) any other reports reasonably requested by RTA within the time directed by RTA.

19.2 Compliance Report

- (a) The Service Provider must, within 5 Business Days of the end of each Quarter, provide RTA with the Compliance Report for that Quarter.
- (b) The Compliance Report must include the following details for the relevant Quarter:
 - (i) each Availability Event and the details used to calculate the relevant Availability Abatement, including where applicable:
 - (A) the nature of the event;
 - (B) the date, time, extent and duration of the event;
 - (C) the specific location of the event; and
 - (D) such other details as may be reasonably required by RTA to assess the Availability Event or the calculation of the Availability Abatement;
 - (ii) the total of any Availability Abatement, including a detailed breakdown of how this amount was calculated;
 - (iii) each failure to achieve the Performance Requirements for any Performance Criteria and in respect of each failure:
 - (A) the details used to calculate the Quarterly Service Payment, including where applicable the nature of the failure to achieve the Performance Requirements;

-
- (B) details of any other failure within any of the previous six Quarters to achieve the Performance Requirements for that Performance Criterion; and
 - (C) whether that failure is a repeat failure to achieve the Performance Requirements for that Performance Criterion in that Quarter and, if so, the number of failures in that Quarter;
- (iv) the Quarterly Service Payment, including a detailed breakdown of how this amount was calculated; and
 - (v) any other information that RTA reasonably requires in relation to the payment of the Quarterly Service Payment,
- (collectively, the **Performance Data**).
- (c) The Service Provider must certify that each Compliance Report is accurate, complete and correct.

19.3 Independent audit report

The Service Provider must provide to RTA, within 30 Business Days of the end of each Contract Year, an audit report prepared by an independent and reputable auditor engaged by the Service Provider, who has audited the Performance Data, the Compliance Reports and the Quarterly Service Payments for that Contract Year.

20. ACCESS TO INFORMATION

20.1 Access to Data

The Service Provider must:

- (a) give RTA access to Data at all reasonable times;
- (b) provide Data:
 - (i) in a readable format acceptable to RTA (acting reasonably); and
 - (ii) in respect of Performance Data, via an online portal if so requested by RTA;
- (c) ensure the availability and continuous integrity of the Data;
- (d) ensure that all Data is not amended or deleted without RTA's consent; and
- (e) ensure that the Data is accurate and keep a copy of all Data for no less than 3 years from the end of the Term.

20.2 Access to AMS

- (a) The Service Provider must provide:
 - (i) RTA's Representative; and
 - (ii) four other persons nominated by RTA,with sufficient access to the AMS to enable those persons to audit, inspect and carry out surveillance:

-
- (iii) of the Service Provider's performance under the Contract, including compliance with its obligations in relation to the AMS; and
 - (iv) to check that the AMS complies with Section 3.5 of the SSR.
- (b) The persons set out in paragraph (a) must be able to access the AMS online at any time.
 - (c) RTA will provide written notice to the Service Provider confirming the details of the persons it nominates to have access to the AMS pursuant to paragraph (a).
 - (d) RTA may, at any time, by written notice to the Service Provider replace any person with access to the AMS pursuant to paragraph (a)(ii) with another person nominated by RTA. Once access to the AMS has been given to the replacement person nominated by RTA, the Service Provider may cancel the access rights to the AMS of the RTA nominee that has been replaced.

21. AUDIT

21.1 RTA audit

- (a) RTA (or any person authorised by RTA) may audit, inspect and carry out surveillance of (as relevant) the Service Provider's:
 - (i) performance under the Contract, including compliance with the Performance Criteria; and
 - (ii) compliance with the systems, processes and procedures specified in the ICMS, Quality Plan and any requirements of the Contract; and
 - (iii) records and Data, to verify the accuracy of any Data, reports and claims provided to RTA, including the Performance Data, the Compliance Reports and the Quarterly Service Payment.
- (b) RTA may carry out audit, inspection and surveillance at any time up to 12 months from the end of the Term.

21.2 Service Provider must assist

The Service Provider must:

- (a) give RTA and any person authorised by RTA access to all accounts and records relating to the carrying out of the Services to the extent necessary to enable an audit as contemplated by the Contract;
- (b) allow RTA and any person authorised by RTA to have access to the Service Provider's premises and Personnel to the extent necessary to inspect or audit the Service Provider's documents;
- (c) procure for RTA and any person authorised by RTA access to:
 - (i) Subcontractor's documents relating to any Subcontract and, where reasonably necessary to inspect or audit the Subcontractor's documents, access to Subcontractor's premises and personnel; and
 - (ii) documents relating to any contract in respect of the carrying out of the Services by a subcontractor, consultant or supplier (of any tier in the contracting chain) of a Subcontractor and, where reasonably necessary to

inspect or audit such documents, access to the premises and personnel of that subcontractor, consultant or supplier;

- (d) provide RTA and any person authorised by RTA with such assistance as they may reasonably require in connection with their inspection or audit, including making the Service Provider's documents available and installing and operating any compatible audit software; and
- (e) supply to RTA and any person authorised by RTA, at the reasonable cost of RTA, photocopies or electronic copies of information requested.

21.3 Audit of Performance Data

- (a) If an audit of the Performance Data or the Compliance Reports reveals any error in, or inaccuracy of, the Performance Data or the Compliance Report, the Service Provider must:
 - (i) fix the inaccuracy or error and reissue the relevant data or report to RTA;
 - (ii) use the reissued data or report to:
 - (A) reassess the occurrence or extent of any Availability Event and any failure to achieve the Performance Requirement for any Performance Criteria (as the case may be); and
 - (B) recalculate any:
 - (I) Availability Abatement; and
 - (II) Quarterly Service Payment,affected by the error or inaccuracy in the Performance Data or the Compliance Report;
 - (iii) pay an amount to RTA equal to:
 - (A) the reassessed Availability Abatement;
 - (B) any overpayment of Quarterly Service Payment received by the Service Provider as a result of the error in, or inaccuracy of, the Performance Data or the Compliance Report.together with interest at the Default Rate; and
 - (iv) pay the costs of the audit incurred by RTA.

PART C FINANCIAL PROVISIONS

22. PAYMENT PROVISIONS

22.1 General

- (a) In consideration for the Service Provider carrying out its obligations under the Contract, RTA will pay the Service Provider in accordance with the provisions of the Contract the:
 - (i) Monthly Service Payment;

- (ii) Quarterly Service Payment; and
- (iii) Annual Electricity Moderator,

subject to the Service Provider satisfying the requirements of this clause 22 and any right of RTA to withhold payment (including under clause 22.4(h)) or to set off any part of the payment in accordance with the Contract.

- (b) Except as expressly provided in the Contract, where the Service Provider is obliged to do anything under the Contract:
 - (i) it must do so at no additional cost to RTA; and
 - (ii) the only consideration the Service Provider is entitled to is payment of the amounts specified in paragraph (a).

22.2 Availability Abatement

- (a) The Service Provider acknowledges and agrees that:
 - (i) each Availability Abatement does not exceed a genuine pre-estimate of the Loss to RTA of the M5 East not being Available at the relevant time of the Availability Event;
 - (ii) both RTA and the Service Provider require a formula for calculation of that cost that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
 - (iii) there are many and varied matters which form part of the Loss which RTA may suffer, many of which are difficult or impossible to calculate with precision;
 - (iv) it is in the economic interests of both parties that a formula of the nature referred to in paragraph (a)(ii) be adopted and the payment of the Availability Abatement meets the requirements of such formula; and
 - (v) to the extent permissible:
 - (A) it excludes and expressly waives any right of the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of the Availability Abatement payable under the Contract as a penalty, or the enforceability or recoverability of the Availability Abatement or any related provision of the Contract; and
 - (B) if any provision of the Contract is found for any reason to be void, invalid or otherwise so as to disentitle RTA from the Availability Abatement, the Service Provider will be liable for any Loss incurred by RTA as a result of the Service Provider failing to comply with the relevant requirements of the Contract, but the Service Provider's liability for such Loss (whether in respect of an individual occurrence or in aggregate) will not be any greater or different than the liability which it would have had if the provision had not been void, invalid or otherwise inoperative.

22.3 Deductions and set off

RTA may deduct from any payment of the O&M Fee or any other payment under this Contract:

-
- (a) any debt due or other amount payable by the Service Provider to RTA; or
 - (b) any bona fide claim to money which RTA may have against the Service Provider, whether for damages or otherwise,

whether under the Contract or any other contract between RTA and the Service Provider (including any Availability Abatement calculated in accordance with Schedule 4).

22.4 Payment Claims and payment

- (a) During the Term, the Service Provider may submit a Payment Claim to RTA no earlier than 5 Business Days after the end of each month in respect of those Services for which it is entitled to payment.
- (b) The Service Provider must submit Payment Claims:
 - (i) in such form as is acceptable to RTA;
 - (ii) supported by any information reasonably required by RTA; and
 - (iii) accompanied by:
 - (A) all relevant calculations and other information required for assessment of the Payment Claim; and
 - (B) the Monthly Report.
- (c) Payment Claims for Periodic Service Payments must:
 - (i) identify the Services to which the Payment Claim relates; and
 - (ii) state the total amount of Periodic Service Payments made under the Contract with respect to those Services for the Contract Year in which the Payment Claim is made.
- (d) Payment Claims for Itemised Service Payments must:
 - (i) identify the Services to which the Payment Claim relates; and
 - (ii) indicate the amounts which the Service Provider claims in relation to those Services calculated in accordance with Schedule 4;
- (e) Payment Claims for Quarterly Service Payments must be accompanied by the Compliance Report.
- (f) RTA will, within 10 Business Days after receipt of a Payment Claim (including the documents and information referred to in paragraphs (b), (c), (d) and (e) above, as applicable) issue to the Service Provider a Payment Schedule. The Payment Schedule must identify the Payment Claim to which it relates. If a Payment Schedule shows a Scheduled Amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less.
- (g) Subject to paragraph (h), RTA will, within 15 Business Days of:
 - (i) issuing the Payment Schedule referred to in paragraph (f) above; or
 - (ii) receipt of a statutory declaration executed not before the date of the Payment Claim in the form of Schedule 5 relating to the payment of employees, Subcontractors, workers compensation insurance premiums

and payroll tax payments, which meets the requirements of the *Industrial Relations Act 1996* (NSW), *Pay Roll Tax Act 2007* (NSW), *Workers Compensation Act 1987* (NSW) and all other relevant legislation,

(whichever is the later), and provided the Service Provider has

- (iii) complied with its obligations in clause 3; and
- (iv) in respect of a Payment Claim or any part of a Payment Claim relating to payment for Mobilisation Services, the Service Provider has submitted a Mobilisation Plan in accordance with clause 16.2(a)(i) (and RTA has not issued a notice in accordance with clause 16.2(c)(ii) in respect of that Mobilisation Plan),

pay to the Service Provider the Scheduled Amount.

- (h) Without limiting clause 22.3, where RTA receives a payment withholding request from a Subcontractor, RTA may withhold:
 - (i) from any payment of the O&M Fee or any other payment under this Contract the amount of the Subcontractor's payment claim set out in the payment withholding request; or
 - (ii) the amount then owed by RTA to the Service Provider under this Contract where that amount is less than the amount of the Subcontractor's payment claim set out in the payment withholding request.

In this clause 22.4(h), "payment withholding request" has the meaning given to that term in the *Building and Construction Industry Security of Payment Act 1999* (NSW).

- (i) RTA will not be liable in respect of any Claim by the Service Provider arising out of or in connection with RTA withholding payment under paragraph (h), including any claim under clause 22.8 for interest on such amounts.

22.5 Unfixed Materials

- (a) The Service Provider may not include the value of unfixed Materials in a Payment Claim (and RTA is under no obligation to pay such value) unless:
 - (i) the Service Provider:
 - (A) has provided to RTA at the same time as the relevant Payment Claim an unconditional undertaking in a form satisfactory to RTA for an amount equal to the Payment Claim for the unfixed Materials; and
 - (B) gives RTA such evidence as may be required by RTA that title to the unfixed Materials will vest in RTA on payment;
 - (ii) the Materials are clearly marked as the property of RTA and are in the Service Provider's possession or available for immediate delivery to the M5 East; and
 - (iii) the Materials are properly stored in a secure place approved by RTA.
- (b) Upon payment of the Scheduled Amount which includes unfixed Materials, title in the unfixed Materials will vest in RTA.

-
- (c) If the Service Provider provides an unconditional undertaking for payment for unfixed Materials, RTA must release the unconditional undertaking to the Service Provider within 5 Business Days of the Materials:

- (i) being incorporated into the M5 East or any Asset; and
- (ii) complying with the requirements of the Contract.

22.6 Payment on account

- (a) A payment made under the Contract does not prejudice the right of either party to dispute the amount properly due and payable. If the amount determined to be due and payable differs from that paid, the difference between the amount paid and the amount which was properly due and payable will be payable or repayable, as the case may be, as a debt due.
- (b) No payment by RTA will be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily or meets any standard, including any standard of fitness for purpose, which the Service Provider has agreed to achieve under the Contract, but will be a payment on account only.

22.7 Correction of Payment Schedule

RTA may at any time correct any error which has been discovered in a Payment Schedule or in any payment under the Contract.

22.8 Interest on overdue monies

Subject to clause 22.4(i), interest at the Default Rate is payable on any monies due under the Contract which remain unpaid after the date upon which they should have been paid. Interest is payable from but excluding the date upon which payment should have been made up to and including the date of payment.

22.9 Goods and Services Tax

- (a) Words defined in the GST Law have the same meaning in clauses about GST, unless it is clear that a different meaning is intended.
- (b) Unless otherwise expressly stated in the Contract, all amounts, prices, rates or other sums payable or for which payment is to be made to the Service Provider under or in accordance with the Contract, are exclusive of GST.
- (c) If GST is or will be payable on a supply made under or in connection with the Contract, to the extent the consideration otherwise provided for that supply under the Contract is not expressly stated to be inclusive of GST:
 - (i) where the consideration provided for that supply under the Contract is expressed as an amount of money, the consideration is increased by the amount of the GST relating to the amount of money otherwise payable; and
 - (ii) the recipient must make payment of the increase as and when it is required to pay or provide the consideration for the supply (or relevant part of it) in accordance with the Contract or, if the consideration has already been paid or provided, within 7 days of receiving a written demand from the supplier.
- (d) Any contract entered into by a party to the Contract with a third party which involves supplies being made, the cost of which will affect the cost of any supplies

made under or in connection with the Contract, must include a clause including equivalent terms to this paragraph (d) and paragraphs (b), (c) and (l).

- (e) RTA will issue a tax invoice for each taxable supply it makes to the Service Provider without request.
- (f) RTA will issue to the Service Provider a recipient created tax invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the Service Provider to RTA under or in connection with the Contract and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- (g) The Service Provider must not issue a tax invoice or adjustment note in respect of any supply it makes to RTA other than for an excluded supply. The Service Provider must give RTA a tax invoice for an excluded supply at or before the time the Service Provider invoices RTA for that supply.
- (h) Each party must immediately notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements relating to the creation of RCTIs.
- (i) Each party acknowledges and warrants that at the time of:
 - (i) entering into the Contract;
 - (ii) each supply under the Contract occurring or being deemed to have occurred; and
 - (iii) each RCTI or adjustment note being issued by RTA to the Service Provider under the Contract,it is registered for GST.
- (j) The supplier indemnifies the recipient against any loss resulting from the supplier not being registered in accordance with paragraph (i).
- (k) RTA will not issue a document that will otherwise be an RCTI or adjustment note on or after the date when the Service Provider or the Australian Taxation Office notifies RTA that either RTA or the Service Provider does not comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (l) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is:
 - (i) required to be reimbursed or indemnified by another party; or
 - (ii) used as the basis for calculation of consideration for a supply under the Contract,must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue. RTA may treat the Service Provider as entitled to full input tax credits unless the Service Provider provides evidence satisfactory to RTA to the contrary.
- (m) If the Service Provider does not quote its ABN in its tender or on its Payment Claims or invoices, or the Service Provider does not otherwise advise RTA of its ABN relating to the service, RTA may withhold tax from payments in accordance with the *Taxation Administration Act 1953* (Cth).

PART D CARE OF WORK, INDEMNITIES AND INSURANCE

23. CARE OF PEOPLE, PROPERTY AND THE ENVIRONMENT

23.1 Service Provider to prevent damage

- (a) The Service Provider must, in carrying out the Services:
 - (i) prevent personal injury or death, or loss or damage to the M5 East, any Asset and the physical works undertaken by the Service Provider as part of the Services (including temporary works);
 - (ii) prevent loss or damage to any property (being property other than the M5 East, any Asset and the physical works undertaken by the Service Provider as part of the Services) and the environment; and
 - (iii) locate and take care of existing Utilities.
- (b) The Service Provider is responsible for the care of and must provide all storage and other protection necessary to preserve the condition of:
 - (i) anything entrusted to the Service Provider by RTA for the purpose of carrying out any Services;
 - (ii) anything brought onto the M5 East by any person for the purpose of carrying out the Services;
 - (iii) the M5 East, Assets and all Plant during the carrying out of the Services; and
 - (iv) all Service Provider's Plant.
- (c) The Service Provider must:
 - (i) at its cost, repair or make good loss or damage to the M5 East, any Asset and the environment arising out of:
 - (A) the carrying out of the Services; or
 - (B) any other act or omission of the Service Provider or of any person for whom the Service Provider is responsible; and
 - (ii) bear the cost of repairing, or making good, loss or damage to any property (being property other than the M5 East and any Asset) arising out of:
 - (A) the carrying out of the Services; or
 - (B) any other act or omission of the Service Provider or of any person for whom the Service Provider is responsible.

23.2 Safety and protection of persons and property

- (a) The Service Provider must, in carrying out the Services:
 - (i) use its best endeavours to ensure the safety of motorists, pedestrians and any other users of the M5 East or persons or property otherwise affected by the performance of the Services;

-
- (ii) minimise the impact of the Services on motorists, pedestrians and other users of the M5 East;
 - (iii) coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public on or in the vicinity of the M5 East or the operations of RTA or other Authorities;
 - (iv) provide all things and take all measures necessary to protect people and property; and
 - (v) prevent nuisance and unreasonable noise and disturbance (except to the extent any of them are the unavoidable consequence of performing the Services in accordance with the Contract).
- (b) The Service Provider must immediately notify RTA as soon as it becomes aware of any part of the M5 East or any Asset which is defective and threatens the health and safety of members of the public.

23.3 Urgent Protection

- (a) RTA may take any action necessary (without relieving the Service Provider of its obligations) to:
- (i) protect the M5 East, any Asset or the environment;
 - (ii) avoid death or injury to any person or loss or damage to any property; or
 - (iii) keep the M5 East open to the public for the continuous, safe and efficient passage of vehicles,
- which the Service Provider must take but does not take.
- (b) The amount of any Loss RTA suffers or incurs in taking the action contemplated in this clause 23.3 or as a result of the Service Provider's failure to take such action will be a debt due from the Service Provider to RTA.

23.4 Control of traffic

The Service Provider:

- (a) is responsible for the control, direction and protection of all traffic in any way affected by the Services or the Service Provider's performance of the Services;
- (b) must manage all such traffic to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) the traffic carrying capacity of the M5 East is maintained (except for Lane Closures in accordance with the Contract); and
 - (iii) that any delay and disruption to traffic and the movement of traffic are kept to an absolute minimum;
- (c) must at all times comply with the Traffic Management and Safety Plan and the requirements of the SSR in respect of traffic management and safety; and
- (d) must comply with the directions of all Relevant Bodies with respect to such management.

24. INDEMNITIES

24.1 General indemnity

- (a) The Service Provider is responsible for, and bears the risk of, and must indemnify RTA against any and all Claims and Losses arising out of or in connection with:
- (i) loss of, loss of use of (whether partial or total), destruction of or damage to property of RTA, including the M5 East, any Asset and existing property in or upon which the Service Provider is carrying out the Services;
 - (ii) any loss of, loss of use of (whether partial or total), or any destruction of or damage to any real or personal property (other than property covered under paragraph (a)(i));
 - (iii) personal injury, illness, disease or death; and
 - (iv) disruption of any Utilities,
- arising out of or as a consequence of the Service Provider carrying out or failing to carry out the Services.
- (b) The Service Provider is responsible for and must indemnify RTA against all Claims and Loss arising out of or in connection with any:
- (i) breach or failure to comply with the terms of the Contract by the Service Provider; or
 - (ii) negligent or unlawful act or omission or wilful misconduct by the Service Provider or any person for whom it is responsible.

24.2 Reduction of Service Provider's liability

The Service Provider's liability and responsibility to indemnify RTA under clause 24.1 is reduced to the extent that an Excepted Risk contributes to loss, loss of use, damage, destruction, death, disease, illness or personal injury.

24.3 Intellectual Property indemnity

The Service Provider must indemnify RTA against any and all Claims and Losses arising out of or in connection with any infringement or alleged infringement of any Intellectual Property Right which occurs as a result of the carrying out of the Services or a breach by the Service Provider of its obligations or warranties under the Contract.

24.4 Environmental indemnity

The Service Provider must indemnify RTA against any and all Claims and Losses arising out of or in connection with a Hazardous Discharge or Environmental Event which occurs as a result of the carrying out of the Services or a breach by the Service Provider of its obligations or warranties under the Contract.

24.5 Product Liability indemnity

The Service Provider must indemnify RTA against any and all Claims and Losses arising out of the failure or defect of any product, materials or equipment supplied by the Service Provider either directly or through a Subcontractor and irrespective of whether the failure is caused by design, manufacture, construction or installation.

24.6 Survival of indemnities

- (a) The indemnities in the Contract survive the expiry or termination of the Contract.
- (b) It is not necessary for RTA to incur expense or make any payment before enforcing a right of indemnity conferred by the Contract.

24.7 Obligations and rights not affected

The indemnities in this clause 24:

- (a) do not lessen the Service Provider's other obligations under the Contract; and
- (b) will not apply to exclude any other right of RTA under the Contract or according to Law.

25. INSURANCE

25.1 Insurances to be provided by RTA

- (a) RTA has effected contract works and public and products liability insurance on the terms set out in Schedule 6.
- (b) RTA may in its discretion have other insureds named or included in the policy or policies referred to in paragraph (a), including any other government entity with an interest in the Services or the M5 East.
- (c) RTA will maintain contract works and public and products liability insurance until expiry of the Term.
- (d) The Service Provider must contact RTA's insurance broker (as nominated in writing to the Service Provider) before the earlier of:
 - (i) 10 Business Days after the Commencement Date; or
 - (ii) the Service Provider commencing any part of the Services,to provide all details reasonably requested for the purposes of the insurances referred to in paragraph (a).
- (e) The Service Provider will be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in paragraph (a) as set out in Schedule 6. The Service Provider may effect its own insurance to cover the amount of excess.
- (f) The Service Provider acknowledges that:
 - (i) the insurances referred to in paragraph (a) have been obtained at RTA's cost; and
 - (ii) the Service Provider will not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
- (g) The obtaining of insurance by RTA in accordance with this clause will not reduce, vary or otherwise affect the Service Provider's liabilities and obligations pursuant to clause 24, warranties given or otherwise under the Contract or in connection with the Services.

-
- (h) If there is a claim for significant damage or destruction under the policy of insurance referred to in paragraph (a) (as determined by RTA acting reasonably):
 - (i) all settlement amounts must be paid directly to RTA;
 - (ii) RTA may decide to have the physical works the subject of the Services reinstated, or may decide not to proceed with the physical works the subject of the Services, without creating any default by RTA under the Contract; and
 - (iii) the Service Provider must reinstate the physical works the subject of the Services if directed by RTA and except as otherwise provided in the Contract may only make a claim for payment of reinstatement of the physical works the subject of the Services up to the amount of any insurance settlement.

25.2 Insurances provided by Service Provider

- (a) The Service Provider must effect and maintain and pay all premiums for motor vehicle and workers compensation insurance on the terms set out in Schedule 6.
- (b) The Service Provider must ensure that every Subcontractor is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW).
- (c) The Service Provider must ensure that each policy required to be effected and maintained by the Service Provider or its Subcontractors under the Contract or Subcontracts is in effect for the Term.
- (d) All policies (other than statutory policies) to be effected by the Service Provider must require the insurer to notify RTA at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of the policy.
- (e) If the Service Provider fails to comply with paragraph (a), RTA may effect and maintain that insurance and pay the necessary premiums. RTA may recover from the Service Provider the cost of the premiums and the RTA's reasonable costs of effecting and maintaining the insurance, as a debt due from the Service Provider.

25.3 Other insurance requirements

- (a) Any other insurances required by the Contract Review Group will be taken out by either the Service Provider or RTA as directed by the Contract Review Group.
- (b) The effecting or approval of any or all insurance as required under the Contract will not in any way limit the liabilities or obligations of the Service Provider or RTA under other provisions of the Contract.
- (c) The Service Provider must ensure that in respect of each insurance required to be effected or taken out as required by clause 25.2 by the Service Provider or any Subcontractor, it:
 - (i) does not, and any Subcontractor does not, do anything which prejudices any insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;

-
- (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of RTA;
 - (v) immediately notifies RTA of any event which may result in an insurance policy lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

25.4 Notices from or to the insurer

The Service Provider must, as soon as practicable after receiving any notice from the insurer that is:

- (a) a notice of cancellation relevant to the Contract; or
 - (b) any other notice relevant to the Contract under or in relation to the policy,
- inform RTA in writing that the notice has been given or served on the Service Provider.

25.5 Insurance claim procedures

- (a) The Service Provider and RTA must, as relevant to the Contract:
 - (i) provide full particulars of any occurrence likely to give rise to a claim under any insurance policy effected as required by the Contract or of any notice of any claim or subsequent proceeding as soon as practicable after becoming aware of any such event to:
 - (A) the relevant insurer or insurance broker; and
 - (B) each other (other than a potential claim by one party against another);
 - (ii) not, without the consent of the insurer, or each other, make any admission, offer, promise or payment in connection with any occurrence or claim;
 - (iii) give all information and reasonable assistance as the insurer may require in the prosecution, defence or settlement of any claim; and
 - (iv) give notice to each other as soon as practicable after discovery that a term, condition or clause of any insurance policy has been unintentionally or inadvertently breached.
- (b) Notwithstanding the provisions of this clause 25.5, either party may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice the position of either party under the policies of insurance in respect of any loss, destruction or damage.
- (c) The Service Provider must take such steps as are necessary or appropriate to ensure that a Subcontractor will, in respect of an event or claim of like nature arising out of or relating to the operations or responsibilities of the Subcontractor, take in relation to RTA similar action to that which the Service Provider is required to take under this clause 25.5.

PART E ADMINISTRATION

26. AUTHORISED PERSONS

26.1 Service Provider's Authorised Person

- (a) The Service Provider must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the Service Provider's Authorised Person.
- (b) If RTA reasonably objects to the person appointed as the Service Provider's Authorised Person, the Service Provider must replace that person.

26.2 RTA's Representative

- (a) RTA must:
 - (i) ensure that there is a person appointed to act on behalf of RTA in relation to the Contract as RTA's Representative;
 - (ii) advise the Service Provider in writing of any limitations or qualifications to the powers of RTA's Representative; and
 - (iii) keep the Service Provider informed in writing of the name of RTA's Representative and promptly notify the Service Provider if the person appointed as RTA's Representative is changed.
- (b) RTA's Representative:
 - (i) acts only as an agent of RTA; and
 - (ii) does not act as independent certifier, assessor or valuer.
- (c) RTA's Representative may delegate any of its powers to others except the power to delegate. RTA will advise the Service Provider in writing if RTA's Representative delegates any of its powers to others.

27. CONTRACT REVIEW GROUP

27.1 Structure, purpose and role of the Contract Review Group

- (a) The Contract Review Group will consist of two high level executives from each of RTA and the Service Provider.
- (b) The members of the Contract Review Group must not have any role in the day to day management of the Contract.
- (c) The purpose and role of the Contract Review Group is to provide:
 - (i) leadership to the relationship between RTA and the Service Provider;
 - (ii) strategic direction to ensure the fulfilment of the Contract Objectives;
 - (iii) high level review of the Service Provider's performance of the Services; and
 - (iv) a forum for resolving those Issues referred to it pursuant to clause 36.1(c).

-
- (d) The Contract Review Group may obtain expert assistance, the cost of which will be borne equally by the parties unless the Contract Review Group resolves otherwise.

27.2 Mobilisation of Contract Review Group

- (a) For the purposes of the Contract Review Group, each party appoints the persons in Schedule 7 as its Contract Review Group members.
- (b) Neither party may object to the person appointed by the other party.
- (c) Each party may replace their appointed Contract Review Group members on 20 Business Days notice with a new member or members of equivalent or higher seniority.
- (d) RTA will nominate one of its appointed Contract Review Group members to be the Contract Review Group Chairperson.

27.3 Meetings of Contract Review Group

- (a) Meetings of the Contract Review Group must be held at intervals not exceeding 6 months or within 10 Business Days of any Contract Review Group member requesting a meeting.
- (b) The Contract Review Group Chairperson will convene and chair meetings of the Contract Review Group.

27.4 Quorum and voting

- (a) A quorum for meetings of the Contract Review Group is four members.
- (b) Any resolution of the Contract Review Group must be unanimous.
- (c) There is no obligation on any member of the Contract Review Group to agree to any resolution.

27.5 Minutes

- (a) The Contract Review Group Chairperson will produce minutes which record in writing all resolutions of the Contract Review Group and any other agreed matters within one week of each Contract Review Group meeting.
- (b) Resolutions of the Contract Review Group are not effective until one Contract Review Group member appointed by the Service Provider and one Contract Review Group member appointed by RTA have certified the minutes as correct.

27.6 Resolutions

Resolutions of the Contract Review Group are binding on both parties.

27.7 Non-delegation of power

No member of the Contract Review Group may delegate any of the member's rights or duties under this clause 27 except where:

- (a) the proposed delegate is of equivalent or higher seniority; and
- (b) the other members of the Contract Review Group agree in writing to such delegation.

28. MANAGEMENT TEAM

28.1 Structure, purpose and role of the Management Team

- (a) The Management Team will consist of RTA's Representative and the Service Provider's Authorised Person.
- (b) The purpose and role of the Management Team is to:
 - (i) discuss and review the progress of the Service Provider's delivery of the Services (including the performance against the Performance Criteria) and to identify priorities for improvement;
 - (ii) prepare agenda items for discussion at meetings of the Contract Review Group and, where appropriate, prepare recommendations for the Contract Review Group;
 - (iii) measure, forecast and report performance to the Contract Review Group and others, as required;
 - (iv) implement the resolutions of the Contract Review Group;
 - (v) review issues arising out of community relations and community concerns;
 - (vi) review issues arising out of the quality of the Services;
 - (vii) review environmental issues; and
 - (viii) review safety issues.
- (c) The Management Team will evaluate and monitor performance of the Service Provider's obligations under the Contract.

28.2 Meetings of Management Team

- (a) Meetings of the Management Team must be held at intervals not exceeding one month or within 5 Business Days of any member of the Management Team requesting a meeting.
- (b) RTA's Representative will convene and chair the first meeting of the Management Team. Thereafter, RTA's Representative and the Service Provider's Authorised Person will alternate to convene and chair meetings of the Management Team.
- (c) RTA's Representative may direct the Service Provider to procure the attendance at Management Team meetings of:
 - (i) any Key Personnel;
 - (ii) any Personnel; and
 - (iii) any Subcontractor's subcontractor(s), supplier(s) or consultant(s) (of any tier in the contracting chain) concerned with the matters to be discussed at such meeting.

The parties must decide jointly on participation in Management Team meetings by other persons concerned with the Services, such as representatives of Authorities, Road users and local community representatives. Participation in meetings does not give the participants any additional rights or responsibilities.

-
- (d) Each party and any others who participate in the Management Team meetings must meet their own costs for attendance at the meetings and the parties will share equally the other costs.

28.3 Minutes

- (a) The person chairing the Management Team meeting must, within one week of the Management Team meeting, produce minutes which record in writing the discussions and resolutions of the Management Team and any other agreed matters.
- (b) Resolutions of the Management Team are not effective until RTA's Representative and the Service Provider's Authorised Person have certified the minutes as correct.

28.4 Resolutions

Resolutions of the Management Team are binding on both parties, except to the extent RTA has under clause 26.2(a) relevantly limited or qualified RTA's Representative's powers.

28.5 Non-delegation of power

No member of the Management Team may delegate any of their duties under this clause 28 except where:

- (a) the proposed delegate is of equivalent or higher seniority; and
- (b) the other member of the Management Team agrees in writing to such delegation.

29. PERSONNEL

29.1 Requirements for Personnel

- (a) The Service Provider must engage Personnel who:
 - (i) are appropriately qualified, competent and experienced in the provision of the type of services required under the Contract; and
 - (ii) hold and maintain all necessary licences and registrations (if applicable).
- (b) The Service Provider must not permit a person appointed in respect of the Contract to undertake any other assignment which would conflict with the Service Provider's obligations under the Contract or RTA's interests generally.
- (c) The Service Provider's responsibility for the performance of the Services and for the performance of its Personnel is not altered in any way by this clause 29 or by anything done in accordance with this clause 29.
- (d) The Service Provider must promptly replace any member of its team involved in carrying out the Services who in the reasonable opinion of RTA does not fulfil the criteria set out in paragraph (a).

29.2 Key Personnel

The Service Provider must:

- (a) employ the Key Personnel in the jobs specified in Schedule 8;

-
- (b) ensure that its Subcontractors employ the Key Personnel in the jobs specified in Schedule 8;
 - (c) if no name has been specified for a particular position, promptly employ, or ensure that its Subcontractors promptly employ (as applicable), in that position a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" column of the table set out in Schedule 8; and
 - (ii) approved by RTA (such approval not to be unreasonably withheld);
 - (d) subject to paragraph (e), not replace, or permit its Subcontractors to replace, any Key Personnel without the prior written approval of RTA; and
 - (e) if any Key Personnel dies, becomes seriously ill or resigns from the employment of the Service Provider or a Subcontractor (as the case may be), replace, or procure that the relevant Subcontractor replaces, him or her in a timely manner with a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" column of the table set out in Schedule 8; and
 - (ii) approved by RTA, which approval must not be unreasonably withheld, (except in the case of the Service Provider's Authorised Person, in which case RTA may withhold its approval in its absolute discretion).

PART F WARRANTIES

30. WARRANTIES

30.1 General warranties

The Service Provider represents and warrants that:

- (a) **(status)** it is a company limited by shares under the *Corporations Act 2001* (Cth);
- (b) **(power)** it has full legal capacity and power:
 - (i) to own its property and assets and to carry on its business; and
 - (ii) to enter into the Contract and to carry out the transactions that it contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into the Contract and to carry out the transactions that it contemplates;
- (d) **(authorisations)** it holds each authorisation that is necessary or desirable:
 - (i) to execute the Contract and to carry out the transactions that it contemplates; and
 - (ii) to ensure that the Contract is legal, valid, binding and admissible in evidence,

and it is complying with any conditions to which any of these authorisations is subject;

- (e) **(document effective)** the Contract constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);
- (f) **(no contravention)** neither its execution of the Contract, nor the carrying out by it of the transactions that it contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (ii) contravene any authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene its constitution; and
- (g) **(no trust)** it is not entering into the Contract as trustee of any trust or settlement.

30.2 Service Provider's warranties (performance)

The Service Provider represents and warrants that:

- (a) it has the skill, competence, experience and capability to perform the Services;
- (b) it will perform the Services using workmanship and Materials of the highest standard which are fit for their purpose;
- (c) if, in the performance of the Services, it is required to replace any worn, failed or defective Asset or a part of an Asset, the replacement Asset or part of an Asset will be:
 - (i) of equal quality to those required under the Contract; and
 - (ii) fit for their intended purpose and consistent with the nature and character of the Asset; and
- (d) any Data collected by or on behalf of the Service Provider and delivered to RTA for the purposes of the Contract will be accurate and comply with the requirements of the Contract and the RTA Specifications.

30.3 Service Provider's warranties (general)

- (a) The Service Provider warrants that prior to the date of the Contract it:
 - (i) examined the Contract and any other information that was made available in writing by RTA, or any other person on RTA's behalf, to the Service Provider;
 - (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 tender and its obligations under the Contract;
 - (iii) satisfied itself as to the correctness and sufficiency of its tender and that it has made adequate allowance for the costs of complying with all the

obligations of the Contract and of all matters and things necessary for the due and proper performance and completion of the Services;

- (iv) satisfied itself that:
 - (A) the Contract adequately and appropriately describes the Services in sufficient detail to enable the Service Provider to fulfil its obligations under the Contract; and
 - (B) the Services can be carried out so that the Service Provider will meet the Performance Criteria;
- (v) informed itself of all industrial matters relevant to the Maintenance Site and the Services;
- (vi) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the subject matter of Information Documents and otherwise for this purpose was given access to such parts of the Maintenance Site and Assets as it required;
- (vii) it has inspected the Maintenance Site and Assets and the surrounding conditions and accepts the condition of the Maintenance Site and Assets; and
- (viii) it has allowed for the fact that the M5 East is constantly used by the public.

(b) Prior to the date of the Contract, the Service Provider signed the Deed of Disclaimer and provided this to RTA. Without limiting paragraph (c) or the warranties or acknowledgements in the Deed of Disclaimer:

- (i) RTA does not warrant, guarantee, assume any duty of care or other responsibility for, or make any representation about, the accuracy, adequacy, suitability or completeness of the Information Documents;
- (ii) the Service Provider acknowledges that the Information Documents do not form part of the Contract and that paragraph (d) applies to the Information Documents; and
- (iii) insofar as is permitted by Law, RTA will not be liable upon any Claim by the Service Provider arising out of or in any way in connection with:
 - (A) the Information Documents; or
 - (B) a failure by RTA to provide any information to the Service Provider.

(c) The Service Provider:

- (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made, or provided to the Service Provider, by RTA or anyone on behalf of RTA or any other information, data, representation, statement or document for which RTA is responsible or may be responsible whether or not obtained from RTA or anyone on behalf of RTA; or
 - (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
- for the purposes of entering into the Contract;

-
- (ii) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that RTA has entered into the Contract relying upon the warranties, acknowledgements and agreements in paragraphs (c)(i) and (c)(ii) and in the Deed of Disclaimer.
- (d) The Service Provider releases and must indemnify RTA from and against:
- (i) any Claim against RTA by, or liability of RTA to, any person; or
 - (ii) (without being limited by paragraph (d)(i)) any Loss suffered or incurred by RTA,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents by the Service Provider or any other person to whom the Information Documents are disclosed by the Service Provider or any person on the Service Provider's behalf;
 - (iv) any breach by the Service Provider of this clause 30.3; or
 - (v) the Information Documents being relied upon or otherwise used by the Service Provider or any other person to whom the Information Documents are disclosed by the Service Provider or any person on the Service Provider's behalf in the preparation of any information or document, including any Information Document which is misleading or deceptive or contains false or misleading information as referred to in the *Australian Consumer Law*.

30.4 No warranty by RTA

RTA makes no representations and gives no warranty to the Service Provider in respect of:

- (a) the condition of:
 - (i) the Maintenance Site;
 - (ii) any Asset; or
 - (iii) any structure or other thing on, above or adjacent to, or under the surface of, the Maintenance Site; or
- (b) the existence, location, condition or availability of any Utility in respect of the Maintenance Site or any Asset.

30.5 Non-merger and survival of warranties

- (a) The warranties made by the Service Provider in this clause 30 are repeated whenever a Variation is made to the Contract.
- (b) The warranties contained in this clause 30 survive and do not merge irrespective of any change or amendment to the Contract.
- (c) The warranties contained in this clause 30 survive the expiry or termination of the Contract.

30.6 Collusive arrangements

- (a) The Service Provider warrants and represents to RTA and agrees with RTA that it is a fundamental condition of the Contract that:
 - (i) the Service Provider has no knowledge of the tender price of any other tenderer for the Contract; and
 - (ii) except as disclosed in its tender, and by agreement in writing with RTA, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of any other tenderer in relation to its tender or the Contract, nor paid or allowed any money on that account, nor will it pay or allow any money on that account.
- (b) If the Service Provider pays to a trade association, industry association or another tenderer or pays to anyone on behalf of a trade association, industry association or another tenderer any money in breach of paragraph (a)(ii), the Service Provider must immediately give RTA written notice of such an event and such money is deemed to be held on trust for and becomes immediately payable to RTA.
- (c) The Service Provider must use its best endeavours to recover the money referred to in paragraph (b) and pay it to RTA. If it fails to do so within the time specified in a notice by RTA to the Service Provider or otherwise (in the absence of a notice) within a reasonable time, RTA may withhold, deduct or set off from any payment due to the Service Provider on any account an equivalent sum or make a demand against the Security provided under clause 3.

30.7 Conflict of interest

The Service Provider must:

- (a) disclose the full particulars of any actual, alleged or potential conflict of interest which arises or may arise in connection with the Contract, whether that conflict concerns the Service Provider or any person employed or retained by the Service Provider for or in connection with the provision of the Services;
- (b) not allow itself to be placed in a position of conflict of interest or duty in regard to any of its rights or obligations under the Contract (without the prior written consent of RTA);
- (c) ensure that the Service Provider's Authorised Person and its Personnel also comply with the requirements of paragraphs (a) and (b) when acting in connection with the Contract; and
- (d) if a conflict of interest or risk of conflict of interest arises:
 - (i) immediately notify RTA in writing, setting out details of the conflict of interest; and
 - (ii) take all steps required by RTA to avoid or minimise the conflict of interest or risk of conflict of interest.

PART G INTELLECTUAL PROPERTY

31. INTELLECTUAL PROPERTY

31.1 RTA Material

- (a) RTA owns all Intellectual Property Rights in RTA Material.
- (b) The Service Provider assigns to RTA, on creation, all Intellectual Property Rights in:
 - (i) any improvement, modification or development of RTA Material made by the Service Provider or its Subcontractors; and
 - (ii) anything created by the Service Provider or its Subcontractors using RTA Material,
(Developed Material).

31.2 Deliverables and Data

- (a) Subject to clause 31.4, RTA owns all Intellectual Property Rights in the Deliverables and all Data.
- (b) The Service Provider assigns to RTA, on creation, all Intellectual Property Rights in the Deliverables and all Data.

31.3 Further requirements

- (a) The Service Provider must do, and procure the doing of, any further acts needed to perfect the assignment to RTA of the Intellectual Property Rights in the Developed Material, Deliverables and Data.
- (b) The Service Provider will include on all Developed Material and Deliverables such notices in relation to RTA's ownership of the Intellectual Property Rights as RTA requires.
- (c) The Service Provider must ensure, and warrants, that it will obtain from all holders of Moral Rights in any Developed Materials, Deliverables, Data or other materials provided by the Service Provider under this Contract, consent to the following specific acts or omissions by RTA and its successors, assigns or sub-licensees:
 - (i) reproducing, publishing, adapting, changing or communicating the Developed Materials, Deliverables, Data and other materials to the public without attributing their authorship or otherwise identifying the author of the Developed Materials, Deliverables, Data and other materials; and
 - (ii) subjecting the Developed Materials, Deliverables, Data and other materials to derogatory treatment.

31.4 Pre-Existing Material

Clause 31.2 does not affect the ownership of Intellectual Property Rights in any Pre-Existing Material. The Service Provider grants to RTA an irrevocable, non-exclusive, royalty-free, non-transferable licence to:

- (a) use, reproduce, add to, modify and communicate to the public for any purpose any of the Pre-Existing Material which is incorporated into any Developed Material, Deliverable, material provided by the Service Provider or Data;

-
- (b) permit any person to assist RTA to do any of the things referred to in paragraph (a); and
 - (c) sublicense any of the rights described in paragraphs (a) or (b).

31.5 Know-how and methodologies

RTA owns and the Service Provider assigns to RTA free of charge and from the time of creation of the relevant Intellectual Property Right, all Intellectual Property Rights in any know-how, skills or methodologies the Service Provider develops in performing its obligations under the Contract.

31.6 Licence by RTA

- (a) RTA grants to the Service Provider an irrevocable, non-exclusive, royalty free, non-transferable licence for the Term:
 - (i) to use; and
 - (ii) subject to the RTA's prior written consent, reproduce, add to and modify, RTA Material, the Deliverables, the Data and any know-how, skills or methodologies referred to in clause 31.5 for the sole purpose of performing the Service Provider's obligations under the Contract.
- (b) The Service Provider may sub-license its rights set out in this clause 31.6 to Subcontractors for the sole purpose of the Subcontractor performing its obligations under the relevant Subcontract. The Service Provider may not sublicense its right to sublicense except with RTA's prior written consent.

31.7 Service Provider Material

- (a) The Service Provider owns or is licensed to use all Intellectual Property Rights in the Service Provider Material.
- (b) The Service Provider grants to RTA an irrevocable, non-exclusive, royalty free, non-transferable licence:
 - (i) to use;
 - (ii) reproduce, add to and modify; and
 - (iii) sub-license others to use, reproduce, add to and modify,the Service Provider Material for all purposes associated with the M5 East and the Assets, including purposes connected with the performance by RTA of its statutory functions in relation to the M5 East.
- (c) The licence in paragraph (b) survives termination or expiry of the Contract.

31.8 Service Provider warranty

- (a) The Service Provider warrants to RTA that:
 - (i) it will not infringe the Intellectual Property Rights or Moral Rights of any person in performing the Services or its other obligations under the Contract;
 - (ii) it has sufficient rights to assign or license Intellectual Property Rights on the terms set out in this clause 31; and

-
- (iii) use of the Developed Materials, Deliverables, Data and other materials provided or assigned by the Service Provider under this Contract to RTA (including the Service Provider Material) will not infringe any Intellectual Property Rights of third parties in or in respect of such material.
 - (b) The warranty in paragraph (a) will be repeated by reference to the circumstances then subsisting at the date any licences or rights are granted under this clause 31.
 - (c) If the Service Provider becomes aware of a breach or possible breach of the warranty given by it under paragraph (a), the Service Provider must, following consultation with RTA, take all actions approved by RTA to facilitate RTA's continued use of the relevant material as contemplated by the Contract.

PART H LIABILITY

32. LIABILITY

32.1 Limitation of liability

- (a) Subject to paragraph (b) and clause 32.2, the Service Provider's total aggregate liability to RTA arising out of or in connection with the Services and the Contract whether in contract, tort (including negligence) or otherwise at law or in equity is limited to an amount which is equal to
- (b) Paragraph (a) and clause 32.2 do not limit the Service Provider's liability:
 - (i) to the extent that it:
 - (A) cannot be limited at Law;
 - (B) arises out of or in connection with the Service Provider's wilful or reckless act or omission, gross negligence, fraud or criminal conduct; or
 - (C) arises out of or in connection with the Service Provider's abandonment of its obligations under the Contract;
 - (ii) to the extent that the Service Provider is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for:
 - (A) any act or omission of the Service Provider; or
 - (B) a reduction in the amount payable under a policy of insurance because the insurer makes a successful Derogation Assertion (where Derogation Assertion means any:
 - (I) denial of liability; or
 - (II) reduction of liability;by the insurer by reason of inclusion in the Contract of any provision); or
 - (iii) under clause 24.1(a)(ii) and 24.1(a)(iii) in respect of personal injury (including death) or illness of any person or for loss of, loss of use of or destruction of or damage to any third party property; or

- (iv) for breach of confidence, privacy or misuse of Personal Information; or
- (v) which arises under clause 24.3,

and amounts of any liability referred to in paragraphs (b)(i) to (b)(v) will not be included in any calculation of the limit of the Service Provider's total aggregate liability under paragraph (a).

32.2 Exclusion of certain loss

(a) Subject to clause 32.1(b), the Service Provider will not be liable to RTA for:

- (i) loss of business opportunity;
- (ii) loss of goodwill;
- (iii) loss of contracts;
- (iv) loss arising from business interruption;
- (v) loss of anticipated savings; or
- (vi) the cost of capital or other financing costs,

incurred by RTA or any third party, which loss or cost arises due to the Service Provider's performance of the Services or in complying with any of its obligations under the Contract.

(b) RTA will not be liable to the Service Provider for:

- (i) loss of business opportunity;
- (ii) loss of goodwill;
- (iii) loss of contracts;
- (iv) loss arising from business interruption;
- (v) loss of anticipated savings; or
- (vi) the cost of capital or other financing costs;

incurred by the Service Provider or any third party, arising out of or in connection with the performance of the Services or in complying with any of its obligations under the Contract.

(c) This clause 32.2 will survive the expiry or termination of the Contract.

32.3 Civil Liability Act

(a) The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any rights, obligations and liabilities arising under or in relation to the Contract regardless of how such rights, obligations or liabilities are sought to be enforced.

(b) The Service Provider further agrees that:

- (i) in each Subcontract into which it enters for the carrying out of any Services, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in

relation to each Subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and

- (ii) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of any Services, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

PART I SUSPENSION AND FORCE MAJEURE

33. SUSPENSION

33.1 RTA's power to suspend Services

- (a) RTA may direct the Service Provider to suspend part or all of the Services where suspension of all or part of the Services becomes necessary:
 - (i) because of an act, omission or default of:
 - (A) RTA; or
 - (B) the Service Provider, any Personnel or any Subcontractor's subcontractor, consultant or supplier (of any tier in the contracting chain) or their officers, employees and agents; or
 - (ii) for the safety or protection of any person or property.
- (b) If RTA exercises the right in paragraph (a), the Service Provider must:
 - (i) immediately cease performance of all or part of the Services as directed by RTA;
 - (ii) if RTA requires, clean up or remove any Service Provider's Plant and Materials on, or in the area of, the M5 East; and
 - (iii) comply with any other RTA direction.
- (c) Except as provided by paragraph (e), nothing in this clause 33.1 limits or affects the Service Provider's liability and obligations under the Contract.
- (d) During the suspension period nominated by RTA, and subject to paragraph (e):
 - (i) the Service Provider is not liable for any failure to carry out any activity suspended under this clause 33.1; and
 - (ii) RTA may not issue a notice to remedy or show cause under clause 39 or terminate the Contract under clause 40 in respect of the Service Provider's failure to carry out any activity suspended under this clause 33.1.
- (e) If the need for suspension arises from an act, omission or default of the Service Provider, any Personnel or any Subcontractor's subcontractor, consultant or supplier (of any tier in the contracting chain) or their officers, employees or agents. RTA will not be obliged to pay the O&M Fee or any other amount payable to the Service Provider with respect to the suspended Services during the suspension period.

-
- (f) The Service Provider must resume the performance of the Services when directed to do so by RTA.
 - (g) The Service Provider has no other remedies in connection with the suspension.
 - (h) For the avoidance of doubt, this clause 33 does not apply in circumstances where clause 34 applies.

34. FORCE MAJEURE

34.1 Notification

- (a) If the Affected Party alleges or wishes to claim that a Force Majeure Event has occurred, it must promptly give the other party notice of the Force Majeure Event as soon as the Affected Party becomes aware of the occurrence of the Force Majeure Event.
- (b) As soon as reasonably practicable after giving notice under paragraph (a), if the Affected Party is the Service Provider, the Service Provider must give RTA (progressively if necessary) full particulars of relevant matters pertaining to the Force Majeure Event including:
 - (i) the nature of the Force Majeure Event;
 - (ii) the obligations affected;
 - (iii) the action that the Service Provider has taken and/or proposes to take to remedy, overcome or mitigate the situation;
 - (iv) an estimate of the time during which the Service Provider will be unable to carry out the affected obligations due to the Force Majeure Event;
 - (v) an estimate of the costs that the Service Provider will incur to remedy, overcome or mitigate the situation; and
 - (vi) all insurance moneys to which the Service Provider believes it will be entitled if required to make good damage caused by the Force Majeure Event.
- (c) After giving notice under paragraph (a) and, if the Affected Party is the Service Provider, paragraph (b), the Service Provider must continue to keep RTA informed of all relevant information pertaining to the Force Majeure Event.

34.2 Meeting

The parties must meet within 10 Business Days of delivery of a notice under clause 34.1(a) to determine:

- (a) whether a Force Majeure Event has occurred;
- (b) the extent to which the Force Majeure Event is covered by insurance effected under the Contract; and
- (c) the estimated duration of the Force Majeure Event.

34.3 Suspension of obligations

- (a) If a Force Majeure Event occurs and the Affected Party gives notice under clause 34.1(a), then:

-
- (i) the Affected Party's obligations under the Contract (other than this clause 34.3) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays the Affected Party from performing those obligations; and
 - (ii) RTA may not issue a notice to remedy or show cause under clause 39 or terminate the Contract under clause 40 in respect of a breach of such obligations during the period of suspension.
- (b) Upon the Affected Party becoming able to recommence performing its obligations which were suspended under paragraph (a)(i), subject to a reasonable period in order to remobilise, the Affected Party must recommence the performance of those obligations.

34.4 Payments

RTA is not obliged to pay the O&M Fee with respect to those Services which are not performed due to a Force Majeure Event.

34.5 Best endeavours to mitigate effect

During the period of suspension under clause 34.3, the Affected Party must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event. This may include incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

34.6 Alternative arrangements

During the period of suspension under clause 34.3, RTA may make alternative arrangements for the performance of any suspended obligations of the Service Provider (without incurring any liability to the Service Provider).

34.7 Cessation of Force Majeure Event

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.

34.8 No financial relief to the Service Provider

RTA will not be obliged to provide any financial relief to the Service Provider during the period of suspension under clause 34.3, to the extent of the suspension.

34.9 No compensation to RTA

The Service Provider will not be liable to compensate RTA for any Losses which RTA incurs during the period of suspension under clause 34.3 in respect of the suspended obligations.

PART J ISSUE RESOLUTION

35. NOTIFICATION OF ISSUES

35.1 Notification

- (a) The Service Provider may dispute an assessment, determination or direction of RTA, by giving notice to RTA of an Issue within 20 Business Days of the assessment, determination or direction.

-
- (b) Either party may give notice to the other of an Issue (excluding an Issue referred to in paragraph (a) but including a claim by RTA) about the meaning or effect of the Contract, or about any matter arising under, out of or in any way connected with the Contract, within 20 Business Days of becoming aware of the Issue.

35.2 Issue resolution process mandatory

The parties must follow the Issue resolution procedure under clauses 35 to 37 (both inclusive) before either party commences proceedings or takes similar action.

35.3 Late notification of Issue

The Service Provider must not make a Claim against RTA and RTA will not be liable for any Loss of the Service Provider arising out of or in any way in connection with:

- (a) any assessment, determination or direction of RTA; or
- (b) any other fact, matter or thing arising under out of or in any way connected with the Contract or the Services,

unless the Service Provider gives RTA a notice of the relevant Issue within the time provided by clause 35.

35.4 RTA's liability

- (a) RTA is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment, determination or instruction. However, the Service Provider will be entitled to the amount determined by an agreed Alternative Issue Resolution Procedure or a court.
- (b) RTA's assessments, determinations or instructions may, subject to the Contract, be reviewed and revised in any Alternative Issue Resolution Procedure or court proceedings which follow the Issue resolution procedure under clauses 35 to 37 (both inclusive).

35.5 Urgent relief

The Issue resolution procedure under clauses 35 to 37 (both inclusive) does not prevent a party from seeking an urgent declaration or injunction from a court.

35.6 Third party notices

- (a) The Service Provider must immediately notify RTA in writing 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, other than RTA, or any landowner, lessee or licensee of land or any property adjoining the M5 East) against the Service Provider or any Personnel in respect of any aspect of the carrying out of the Services, including:

- (iv) any Environmental Event or Hazardous Discharge;
- (v) the Service Provider's use or occupation of the M5 East or any Asset; or
- (vi) loss or damage of the kind referred to in clause 24.1(a).

-
- (b) Subject to clause 25.5, the Service Provider must (at its own cost):
 - (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in this clause 35.6 (**matter**);
 - (ii) take all measures to resolve those matters as soon as possible; and
 - (iii) keep a register of all matters, which:
 - (A) contains full details of:
 - (I) each matter; and
 - (II) the action taken by the Service Provider with respect to each matter;
 - (B) is promptly updated to take into account any developments with respect to any matter; and
 - (C) may be inspected by RTA whenever RTA reasonably requires.

36. ISSUE RESOLUTION PROCESS

36.1 Escalated Issues resolution process

- (a) If a party gives notice of an Issue under clause 35.1, subject to clause 35.5, the parties must follow the process set out in this clause 36.
- (b) The Service Provider's Authorised Person and RTA's Representative must meet within 5 Business Days of notice of the Issue.
- (c) If the Service Provider's Authorised Person and RTA's Representative cannot resolve the Issue within 10 Business Day of notice of the Issue, the Contract Review Group must seek to resolve the Issue at its next meeting.

36.2 Alternative Issue Resolution Procedure

- (a) The parties may agree at any time after notice of an Issue is given under clause 35.1 to engage in an Alternative Issue Resolution Procedure in respect of the Issue.
- (b) An agreement to engage in an Alternative Issue Resolution Procedure must specify:
 - (i) whether the decision, finding, determination, result or agreed outcome of the Alternative Issue Resolution Procedure will be final and binding on the parties within any agreed monetary limit;
 - (ii) that the Alternative Issue Resolution Procedure may, by agreement between the parties, be varied or extended from time to time to include fewer or additional processes; or
 - (iii) that if the Alternative Issue Resolution Procedure has not produced a decision, finding, result or agreed outcome of the Issue in question within a specified period of time, either party may commence court proceedings in respect of the Issue.
- (c) If the parties have agreed that the Alternative Issue Resolution Procedure is to be final and binding on the parties to some extent and that procedure produces a

decision, determination, result or agreed outcome of the Issue, neither party may commence, conduct or continue court proceedings in respect of that Issue to that extent.

- (d) If the Alternative Issue Resolution Procedure engaged by the parties under paragraph (b) uses Expert Determination then unless the parties otherwise agree, clause 37 will apply to the Expert Determination.
- (e) If the parties have not agreed to engage in an Alternative Issue Resolution Procedure under paragraph (a) within 5 Business Days after the Contract Review Group has failed to resolve the Issue, then the parties will be deemed to have agreed to engage in Expert Determination under clause 37.

36.3 Parties to perform

During the period in which the Issue is being resolved under clauses 35 to 37 (both inclusive) the parties must continue to perform their obligations under the Contract.

37. EXPERT DETERMINATION

37.1 Appointment of Expert

- (a) If an Issue is to be referred to Expert Determination under clause 36, the parties must endeavour to agree on the Expert to be engaged. If they cannot agree within 20 Business Days of agreement under clause 36.2(a) or deemed agreement under clause 36.2(e), the Chair of the NSW Chapter of the Institute of Arbitrators and Mediators Australia will nominate the Expert (on the application of either party). The Chair of the NSW Chapter of the Institute of Arbitrators and Mediators Australia must not nominate:
 - (i) an employee of RTA or the Service Provider;
 - (ii) a person who has been connected with the Services or the Contract; or
 - (iii) a person who RTA and the Service Provider have not been able to agree on.
- (b) Where the person to be the Expert has been agreed or nominated, RTA on behalf of both parties must engage the Expert by letter of engagement (copied to the Service Provider) setting out:
 - (i) the Issue referred to the Expert for determination;
 - (ii) the Expert's fees;
 - (iii) the procedure for Expert Determination in Schedule 9; and
 - (iv) any other matters which are relevant to the engagement.
- (c) If the person nominated as Expert is no longer able to fulfil the role of Expert, paragraphs (a) and (b) will apply to the replacement Expert.

37.2 Procedure

- (a) RTA and the Service Provider must share equally the fees and out-of-pocket expenses of the Expert for the determination and bear their own costs.
- (b) The parties are bound by the procedure for Expert Determination as set out in Schedule 9.

-
- (c) In answer to any Issue referred to the Expert by a party, the other party may raise any defence, setoff or cross claim.

37.3 Determination

- (a) A party may commence litigation in respect of the matters determined by the Expert if:
 - (i) the determination:
 - (A) does not involve paying a sum of money; or
 - (B) requires one party to pay the other an amount in excess of \$50,000, calculated without having regard to:
 - (I) any interest that may be payable; and
 - (II) any amount that has been paid pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW); and
 - (ii) no more than 40 Business Days has passed since the determination was issued by the Expert.
- (b) Unless a party has a right to commence litigation under paragraph (a):
 - (i) the parties must treat each determination of the Expert as final and binding and give effect to it; and
 - (ii) if the Expert determines that one party owes the other money, that party must pay the money within 28 days of the date of the Expert's determination.

38. CLAIM RESOLUTION

38.1 Annual resolution of claims

- (a) Within:
 - (i) 20 Business Days of the end of each Contract Year; or
 - (ii) 20 Business Days of the date the Contract is terminated,

the Service Provider must provide to RTA notice of all claims for payment of money under or in respect of the Contract (whether under clause 22.4 or otherwise).
- (b) RTA may, within 30 Business Days of receipt of all claims, request further information from the Service Provider required by RTA to properly assess the claims.
- (c) RTA must, within:
 - (i) 60 Business Days after receipt of the Service Provider's claim under paragraph (a); or
 - (ii) 20 Business Days after the receipt by RTA of all information it requested under paragraph (b),

whichever is the later, assess any claim referred to in paragraph (a) in accordance with the requirements of the Contract (including, where relevant, in accordance with clause 22) and determine the amount (if any) RTA will pay to the Service Provider.

- (d) Following completion of the procedures set out in paragraph (c), any Claim by the Service Provider in relation to the relevant Contract Year will be barred and the Service Provider will not be entitled to make any such Claim against RTA.
- (e) If the Service Provider does not agree with RTA's assessment under paragraph (b), the parties agree that any such disagreement may be resolved in accordance with the Issue resolution procedure set out in clauses 35 to 37 (both inclusive).

PART K RTA STEP-IN, TERMINATION AND EXPIRY

39. RTA STEP-IN

39.1 Notice to remedy breach

Without limiting RTA's rights under clause 40.1, if the Service Provider breaches an obligation under the Contract (including committing a Service Provider's Default), RTA may in writing direct the Service Provider to remedy the breach and specify the time and date by which the breach must be remedied, if the breach is capable of being remedied.

39.2 RTA step-in

If:

- (a) the Service Provider fails to comply with a notice served under clause 39.1; or
- (b) RTA reasonably believes that action must be taken to discharge its duty as an Authority,

RTA may remedy (or procure the remedy) of the default or perform (or procure performance of) such action.

39.3 Suspension of Service Provider's obligations

If RTA exercises its rights under clause 39.2, the Service Provider's obligations under the Contract are suspended to the extent and for such period as the Service Provider is prevented from performing such obligations by RTA exercising its step-in right.

39.4 Service Provider must assist RTA

If RTA exercises its step-in right under clause 39.2, the Service Provider must assist RTA to ensure RTA is able to exercise its step-in right effectively and expeditiously, including giving RTA or its nominees access to the Service Provider's Plant, Materials and documents and materials produced by the Service Provider.

39.5 Step-in right ceases

- (a) If RTA exercises its step-in right, RTA may, after giving reasonable prior notice to the Service Provider, cease to exercise the right.
- (b) RTA's step-in right will cease once the relevant breach has been remedied.

39.6 RTA not required to remedy breach

The Service Provider acknowledges and agrees that RTA is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in respect of which RTA exercises its step-in right.

39.7 Service Provider to compensate RTA

The Service Provider must pay to RTA as a debt due and payable any Loss incurred by RTA arising out of or in connection with the exercise of its step-in right under this clause 39.

39.8 No payments by RTA

RTA will have no liability to the Service Provider:

- (a) arising out of or in connection with the exercise by RTA of its step-in right under this clause 39; or
- (b) for payment of all or part of the O&M Fee referable to the Service Provider's obligations suspended under this clause 39.

39.9 RTA may suspend Service Provider's authorisation

If RTA issues a notice to the Service Provider under clause 39.1, RTA may immediately by written notice to the Service Provider cancel any authorisation granted by RTA to the Service Provider other than an authorisation required to enable the Service Provider to remedy the breach.

39.10 No prejudice to other rights

Nothing in this clause 39 prejudices RTA's other rights under the Contract or according to Law with respect to the Service Provider's default.

40. TERMINATION FOR DEFAULT OR INSOLVENCY OF THE SERVICE PROVIDER

40.1 Termination for Service Provider's Default

- (a) RTA may, by notice in writing to the Service Provider, immediately terminate the Contract if:
 - (i) a Service Provider's Default occurs which, in RTA's opinion, is not capable of being remedied;
 - (ii) the Service Provider fails to comply with a notice served under clause 39.1 to the reasonable satisfaction of RTA within the period specified in the notice;
 - (iii) the Service Provider commits a Persistent Breach;
 - (iv) an Insolvency Event occurs in relation to the Service Provider or the Guarantor; or
 - (v) in RTA's opinion, there is a Change of Control of the Service Provider.
- (b) Nothing in this clause 40 affects or negates RTA's common law rights to terminate or for damages.

40.2 Not Used

40.3 Consequences of termination

If RTA terminates the Contract under this clause 40, it may at its sole discretion employ others to complete the Services and the following will then apply:

- (a) The Service Provider must leave the Maintenance Site as soon as reasonably practicable and remove all temporary works, Service Provider's Plant and Materials it has brought onto the Maintenance Site, but must leave any temporary work, Service Provider's Plant and Materials required by RTA to have the Services completed (or identified in the termination notice as to be retained on the Maintenance Site).
- (b) The Service Provider must assign to RTA the Service Provider's rights and benefits in all its contracts concerning the Services, warranties and performance bonds, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Service Provider under those contracts, with effect from the date of termination of the Contract.
- (c) The Service Provider must consent to a novation to RTA or its nominees of all Subcontracts and its other contracts concerning the Services (**Novated Contracts**), as required by RTA, and must procure at the time of entering into each Subcontract and such other contracts the consent in writing of all of its Subcontractors and other consultants to the novation. RTA may at any time make payments and may deduct, withhold or set off any amount to be paid under the Novated Contracts from amounts otherwise payable to the Service Provider or from any security given on the Service Provider's behalf.
- (d) The Service Provider must do everything and sign all documents necessary to give effect to this clause 40, and it irrevocably appoints RTA as its attorney to do this in its name if it fails to do so.
- (e) If the cost of appointing others to complete the Services exceeds the amount that would have been paid to the Service Provider to complete the Services, then the difference will be a debt due by the Service Provider to RTA.
- (f) RTA may make a provisional assessment of the amounts payable to RTA under paragraph (e) and:
 - (i) deduct such amount or any part of that amount from the Security; and/or
 - (ii) set off such amount or any part of that amount from amounts otherwise payable to the Service Provider.

41. TERMINATION FOR CONVENIENCE

41.1 RTA may terminate Contract for convenience

Notwithstanding any other term of the Contract, RTA may, at any time for its convenience and without the need to give reasons, terminate the Contract by giving no less than three months' written notice to the Service Provider.

41.2 Service Provider's obligations

- (a) If RTA issues a termination notice under clause 41.1, the Service Provider must comply with any directions of RTA to wind down and stop work.

-
- (b) The Service Provider must leave the Maintenance Site by the date stated in the termination notice and remove all temporary works, Service Provider's Plant and Materials it has brought onto the Maintenance Site, except for any temporary work, Service Provider's Plant and Materials identified in the termination notice as to be retained on the Maintenance Site.

41.3 Payments on termination for convenience

- (a) After termination under clause 41.1, subject to its rights under the Contract, including any right of setoff, RTA must pay the Service Provider:
 - (i) the value completed for all Services carried out (as determined under clause 22.4) to the date the termination notice takes effect, after taking into account previous payments and any deductions, retentions or setoffs, with the Quarterly Service Payment to be determined on a pro rata basis;
 - (ii) the cost of any temporary work, Service Provider's Plant and Materials identified in the termination notice as to be retained on the M5 East, but only if on payment the temporary work, Service Provider's Plant and Materials become the property of RTA, free of any Encumbrances;
 - (iii) the cost of Materials reasonably ordered by the Service Provider for the Services which it is legally liable to accept, but only if on payment these unfixed Materials become the property of RTA, free of any Encumbrances;
 - (iv) the costs reasonably incurred by the Service Provider in the expectation of completing the Services and not included in any other payment by RTA (excluding costs incurred by the Service Provider in terminating any Subcontract); and
 - (v) if RTA issues the notice under clause 41.1 before 8 December 2012; or
 - (vi) if RTA issues the notice under clause 41.1 before 8 December 2013.
- (b) The payments referred to in paragraph (a) are in full compensation for termination under this clause 41, and the Service Provider has no Claim against RTA for damages or other entitlement whether under the Contract, common law or otherwise.

42. TERMINATION FOR RTA DEFAULT

42.1 Service Provider may terminate

- (a) If RTA fails to pay the Service Provider any amount in accordance with the Contract which is not in Issue, or commits any fundamental breach of the Contract, then the Service Provider may give notice requiring RTA to remedy the default within 28 days after receiving the notice.
- (b) If RTA fails to remedy the default, or fails to propose steps reasonably acceptable to the Service Provider to do so, within 28 days after receiving the notice, then the Service Provider may issue a written notice terminating the Contract. Clause 41.3 will then apply and RTA must pay the Service Provider the applicable amounts referred to in clause 41.3(a) as its sole remedy and in full compensation for RTA's breach.

42.2 Sole remedy

The Service Provider has no other right to terminate the Contract, under the common law or otherwise.

43. TERMINATION FOR CONTINUED FORCE MAJEURE

43.1 RTA may terminate

If for a period of more than 60 Business Days the Service Provider is unable to carry out the Services or a significant part of the Services as a result of a Force Majeure Event, the Contract Review Group will meet to identify any alternate viable means to provide the suspended Services and failing an alternate means being agreed within 20 Business Days of the end of the period referred to above, RTA may terminate the Contract immediately by written notice.

43.2 Termination for Force Majeure

- (a) Upon receipt of a termination notice under clause 43.1, the Service Provider must as soon as possible remove any temporary work, Service Provider's Plant and Materials it had brought to the Maintenance Site, except for any temporary work, Service Provider's Plant and/or Materials identified in the termination notice as to be retained on the Maintenance Site, and leave the Maintenance Site.
- (b) After termination under clause 43.1, subject to its rights under the Contract, including any right of setoff, RTA must pay the Service Provider:
 - (i) the value completed for all Services carried out (as determined under clause 22.4) to the date of termination, after taking into account previous payments and any deductions, retentions or setoffs, with the Quarterly Service Payment to be determined on a pro rata basis; and
 - (ii) the cost of any temporary work, Service Provider's Plant and Materials identified in the termination notice as to be retained on the Maintenance Site, but only if on payment the temporary work, Service Provider's Plant and/or Materials become the property of RTA, free of any Encumbrances.
- (c) The payment referred to in paragraph (b) are in full compensation for termination under this clause 43, and the Service Provider has no Claim against RTA for damages or other entitlement whether under the Contract, common law or otherwise.

44. EXPIRY AND HANDOVER

44.1 Handover Services

The Service Provider must carry out the Handover Services within the Handover Period.

44.2 Service Provider's obligations

Without limiting the other provisions of the Contract, prior to the end of the Handover Period, the Service Provider acknowledges and agrees that it must:

- (a) deliver to RTA:
 - (i) an electronic (MS Word format) and hard copy of the then current version of each of the Operation Manual and Maintenance Manual;

-
- (ii) an electronic (MS Word format) and hard copy of the then current version of each Service Plan;
 - (iii) an electronic (MS Word format) and hard copy of the then current version of each of the Operations Standards and Maintenance Standards; and
 - (iv) an electronic (MS Word format) and hard copy of the then current version of the Data on the AMS;
- (b) pay to RTA any insurance proceeds received by the Service Provider from any insurances for reinstatement or replacement of the M5 East or any Asset to the extent not already reinstated or replaced;
 - (c) if directed by RTA, transfer to RTA or its nominee all Subcontractor warranties and guarantees relating to the M5 East or any Asset;
 - (d) if directed by RTA, novate to RTA or its nominee any Subcontract or agreement with a supplier (eg, licences) relating to the Services;
 - (e) provide to RTA or its nominee a pool of rotables equivalent in identity, quantity, functionality, performance and useful life to those provided to the Service Provider;
 - (f) make available for purchase (at cost) by RTA or its nominee all consumables held in relation to the M5 East or any Asset;
 - (g) return to RTA anything entrusted to the Service Provider by RTA for the purpose of carrying out the Services; and
 - (h) do all other reasonable acts and things to enable RTA to properly maintain and operate the M5 East and all Assets.

44.3 Expiry Date obligations

The Service Provider must ensure that, as at the Expiry Date:

- (a) there is no immediate repair work required to the M5 East or any Asset (other than repair work identified in the Maintenance Plan or in respect of which written notice has been given by the Service Provider to RTA); and
- (b) anything entrusted to the Service Provider by RTA for the purpose of carrying out the Services is in an operational condition and there is no immediate repair work required to any such item, part or thing.

44.4 Return of Security

Subject to its rights under the Contract, including any right of setoff, RTA must return the Security to the Service Provider within 40 Business Days of the latest of:

- (a) the end of the Term;
- (b) the expiry of the Handover Period; and
- (c) RTA's assessment of any claims in accordance with clause 38.1(c).

PART L GENERAL

45. NOTICES

45.1 How to give a notice

- (a) Subject to paragraph (b), a notice, consent or other communication under the Contract is only effective if it is:
 - (i) in writing, signed by or on behalf of the party giving it;
 - (ii) addressed to the party to whom it is to be given; and
 - (iii) it is:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that party's address;
 - (B) sent by fax to that party's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (C) sent by email in the form of a .pdf file of a letter to that party's email address.
- (b) A notice under clause 8.5, 11.1(b), 11.1(e), 11.2(b), 12.1(a), 34.1, 35.1, 38.1 or 42.1(a) must be sent by pre-paid mail or fax.

45.2 When a notice is given

A notice, consent or other communication that complies with this clause 45 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; and
- (b) if it is sent by mail:
 - (i) within Australia – 3 Business Days after posting; or
 - (ii) to or from a place outside Australia – 7 Business Days after posting.
- (c) if it is delivered or sent by email:
 - (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.

45.3 Address for notices

Each party's address, fax number and email address are as set out below or as the party notifies the other party.

RTA

Address: Level 9
101 Miller Street
North Sydney
NSW 2060

Fax number: 02 8588 4171
Attention: RTA's Representative, M5 East O&M Services Contract
Email address: Felicity_Finlayson@ rta.nsw.gov.au

Service Provider

Address: Leighton Contractors Pty Limited
Level 5
52 Phillip Street
Sydney
NSW 2000

Fax number: 02 8668 6511
Attention: Service Provider's Authorised Person
Email address: tbc

46. ASSISTANCE BY SERVICE PROVIDER**46.1 RTA's legal and public obligations**

The Service Provider must provide all reasonable assistance to RTA and its agents in seeking to meet its legal and public obligations.

46.2 Public and Ministerial inquiries

The Service Provider must provide all reasonable advice, assistance and documentation to enable RTA to:

- (a) respond to any:
 - (i) governmental inquiry; or
 - (ii) governmental request pursuant to any legitimate government purpose or process; and
- (b) satisfy any disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including tabling information concerning the Contract Documents in Parliament.

47. CONFIDENTIALITY

47.1 Confidentiality

- (a) Subject to paragraphs (c) and (d), the Service Provider will not, and will ensure that any persons employed by it and its Subcontractors do not:
- (i) disclose to any person any information; or
 - (ii) publish any photographs, texts, documents, articles, advertisements or any other information,
- relating to the Contract, the Services, the M5 East or any Asset without obtaining RTA's prior written consent.
- (b) If requested by RTA, the Service Provider will execute a confidentiality agreement on terms reasonably required by RTA, in relation to any information obtained for the purposes of the Contract or the performance of the Services.
- (c) This clause 47.1 does not apply to any information that:
- (i) is in or enters the public domain, except through disclosure contrary to the Contract; or
 - (ii) was made available to the Service Provider by a person who is or was not under any obligation of confidence in relation to that information.
- (d) The obligations of confidentiality set out in this clause 47.1 do not apply to the extent that the Service Provider is required by any applicable Law, the requirement of any relevant Authority or the rules of any stock exchange to disclose any information, provided the Service Provider:
- (i) promptly gives notice to RTA of that requirement;
 - (ii) takes all lawful measures available, and allows RTA to take all lawful measures available to restrict disclosure of information; and
 - (iii) discloses only that portion of information which it is legally required to disclose.
- (e) The Service Provider:
- (i) acknowledges and agrees that RTA will disclose information in relation to the Contract Documents to the extent it is required to do so under the *Government Information (Public Access) Act 2009* (NSW);
 - (ii) must provide RTA with details of any Related Body Corporate or any other private sector entity in which the Service Provider has an interest that will be involved in performing any of the Service Provider's obligations under the Contract or that will receive a benefit under the Contract; and
 - (iii) agrees that the obligation under paragraph (e)(ii) is a continuing obligation under the Contract.

47.2 Authorisation for access to other records

- (a) RTA may make any information concerning the Service Provider available to other NSW Government authorities and ministries. This information may include, but is

not limited to, any information provided by the Service Provider to RTA and any information relating to the Service Provider's performance under the Contract.

- (b) Information about the Service Provider from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government authorities in considering whether to offer the Service Provider future opportunities for NSW Government work.
- (c) In making available information under paragraph (a), the Service Provider acknowledges that RTA will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW).
- (d) The Service Provider releases and must indemnify RTA from and against any Claim in respect of any matter arising out of:
 - (i) information being made available under paragraph (a); and
 - (ii) the use of such information by a recipient of the information.

47.3 Media releases and enquiries

The Service Provider must comply with Section 7.3.4 of the SSR in relation to:

- (a) any press release or advertisement it wishes to make or place concerning the Contract, RTA or the Services;
- (b) the release for publication in any media of any information, publication, document or article concerning the Contract, RTA or the Services; and
- (c) any media enquiries concerning the Contract, RTA or the Services.

48. PRIVACY

48.1 Privacy Acts

If under the Contract the Service Provider is required to disclose Personal Information, the Service Provider must:

- (a) if the disclosure is not authorised under the Privacy Acts, prior to disclosure obtain the consent of the natural person to whom that Personal Information relates in relation to RTA's collection and use of that Personal Information for the purposes of the Contract or the purposes authorised by the Contract;
- (b) ensure that the Personal Information disclosed is accurate; and
- (c) inform that natural person:
 - (i) that the Personal information has been collected by or on behalf of RTA; and
 - (ii) of any other matters required by the Privacy Acts.

49. AMENDMENT

The Contract may only be amended, supplemented, replaced or novated by another document signed by each of the parties.

50. ASSIGNMENT

The Service Provider must not assign, transfer or otherwise deal with any of its rights or obligations under the Contract except with the prior written consent of RTA.

51. GENERAL

51.1 Governing law

The Contract is governed by the laws of New South Wales and both parties submit irrevocably to the non-exclusive jurisdiction of the courts of New South Wales.

51.2 Survival of terms

- (a) The invalidity or unenforceability of any part or provision of the Contract does not affect the enforceability of any other part or provision of the Contract and the invalid or unenforceable part is severable.
- (b) Clauses 1.5, 3, 10.3, 10.13, 10.15, 20.1, 21, 22.3, 22.7, 22.8, 22.9, 24, 30, 31, 32, 35, 38, 39, 40, 41, 42, 43, 44, 45, 47, and 51 survive the expiry or termination of this Contract.

51.3 Relationship of parties

- (a) Except as expressly provided in this clause 51.3, the Contract is not intended to create and should not be construed as creating any partnership, joint venture or fiduciary relationship between the parties, or confer a right in favour of either party to enter into any commitment on behalf of the other or otherwise to act as its agent.
- (b) Each party is an independent entity, and for the purposes of the Contract, the officers, employees, agents or subcontractors of each party will not be deemed to be officers, agents or subcontractors of the other, unless deemed otherwise by Law and without limiting the generality of this clause 51.3 each party will pay all costs associated with its own officers and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to such officers and employees in respect of their appointment.

51.4 Liability for expenses, duty, taxes and other imposts

The Service Provider must pay any duty, taxes or other imposts payable in respect of the Contract or payable in connection with the performance of the Services.

51.5 Attorneys

Each person who executes the Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

51.6 Giving effect to the Contract

RTA and the Service Provider must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to the Contract.

51.7 Waiver of rights

Waiver or relaxation partly or wholly of any of the terms of the Contract will:

-
- (a) be effective only if in writing and signed by each party;
 - (b) apply only to a particular occasion unless otherwise expressed to be continuing;
and
 - (c) not constitute a waiver or relaxation of any other term of the Contract.

51.8 Operation of the Contract

The Contract applies to the Services, whether the Services are undertaken before, on or after the Commencement Date.

51.9 Consents

Subject to any express provision in the Contract to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under the Contract.

51.10 Entire Agreement

- (a) The Contract contains the entire agreement between the parties about its subject matter.
- (b) Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Contract and has no further effect.

51.11 Counterparts

The Contract may consist of a number of counterparts and if so the counterparts taken together constitute one and the same document.

Schedule 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in the Contract:

Additional Services means those services which the Service Provider must carry out in accordance with clause 9.

Affected Party means a party affected, or which alleges it is affected, by a Force Majeure Event.

Alternative Issue Resolution Procedure means a procedure for the resolution of an Issue, apart from court proceedings, to be engaged by agreement of the parties under clause 36. Such procedures may include:

- (a) Expert Determination;
- (b) mediation; and
- (c) arbitration under the *Commercial Arbitration Act 2010* (NSW).

Annual Electricity Moderator means the amount determined in accordance with section 10 of Schedule 4.

Approval means any certificate, licence, consent, permit, approval, direction or determination of any Authority or under any Legislation.

Assets means the physical components comprising the M5 East and all assets set out in Appendix 8 to the SSR, including all Asset Items and Asset Sub-Items.

Asset Inspection means the periodic inspection of the Assets and the Maintenance Site, which inspection must comply with the requirements of Section 5.5.2 of the SSR.

Asset Item has the meaning given to it in the AMS.

Asset Management System or **AMS** means a system complying with the requirements of Section 3.5 of the SSR.

Asset Register means the asset inventory defined in Appendix 19 to the SSR.

Asset Sub-Item has the meaning given to it in the AMS.

Authority means any government or government department, local government, council, government or statutory authority, administrative or judicial body or tribunal, agency, minister, statutory corporation or instrumentality or any person (whether autonomous or not) who is charged with the administration of legislation or which has a right to give any consent or impose any requirements in respect to the Services.

Available means that a Lane is:

- (a) fully open to the general public at all times for the safe, efficient and continuous passage of vehicles at the posted speed limits; and
- (b) in the condition required by the Contract.

Availability Abatement means an amount determined in accordance with section 5 of Schedule 4 and Annexure 6 to Schedule 4.

Availability Event means a:

- (a) Non-Permitted Lane Closure; or
- (b) a Permitted Lane Closure, to the extent that it is required as a result of, arises out of or in connection with, or continues as a result of:
 - (i) any failure by the Service Provider to comply with Law;
 - (ii) any failure by the Service Provider to comply with its obligations under the Contract; or
 - (iii) any other act or omission of the Service Provider or any person for whom the Service Provider is responsible which is not:
 - (A) expressly permitted by the Contract; or
 - (B) required to fulfil the Service Provider's obligations under the Contract.

Bond means an unconditional undertaking which satisfies the requirements of clause 3.2.

Business Day means a day which is not a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

Carriageway means all Lanes in a single direction on the M5 East.

Change in Law means:

- (a) the amendment, repeal or change of any Law;
- (b) the enactment of any new Law;
- (c) a judgment of a relevant court of law which changes a binding precedent on the interpretation or application of any Law; or
- (d) a change in Codes and Standards,

which occurs after the date of the Contract but excluding:

- (e) any amendment, repeal or change of the *Income Tax Assessment Act 1936* (Cth), the GST Law or the *Income Tax Assessment Act 1997* (Cth);
- (f) any amendment, repeal or change of the *Occupational Health & Safety Act 2000* (NSW) or the *Occupational Health & Safety Regulation 2001* (NSW);
- (g) any amendment, repeal, change or enactment of any Law, or any Code or Standard, which, as at the date of the Contract:
 - (i) was published or of which public notice had been given; or
 - (ii) a party experienced and competent in the delivery of services similar to the Services would have reasonably foreseen or anticipated,

other than an enactment of any Law which results in a binding scheme or arrangement for the purposes of the reduction, offset or management of the emission of carbon dioxide and/or other greenhouse gases listed in the NGER Legislation; and

- (h) any amendment, repeal, change or enactment of any Law, or any Code or Standard, effected in response to an illegal act or omission by the Service Provider (not including an act or omission which became illegal as the result of the amendment, repeal, change or enactment).

Change of Control means that a holding company of a body corporate ceases to be its holding company, or a body corporate which was not a holding company of the body corporate becomes its holding company (and **holding company** means the same as in the *Corporations Act 2001* (Cth)).

Change Order means a direction to carry out:

- (a) Additional Services; or
- (b) Replacement and Refurbishment of Specified Asset Items,

the form of which is set out in Annexure A to the Contract.

Change Proposal means a request for pricing of Additional Services, the form of which is set out in Annexure B to the Contract.

Claim means any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, the Contract;
- (b) arising out of, or in any way in connection with, the Services or any party's conduct prior to the date of the Contract; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Codes and Standards means:

- (a) the codes, standards, specifications and guidelines specified in the SSR and any relevant Standards Australia codes, standards, specifications and guidelines, current as at the date of the Contract; and
- (b) if and to the extent there is no relevant:
 - (i) code, standard, specification or guideline specified in the SSR; or
 - (ii) Standards Australia code, standard, specification or guideline, relevant international codes, standards, specifications and guidelines current as at the date of the Contract,

and in each case being a code, standard, specification or guideline:

- (c) with which the Service Provider is required to comply pursuant to the terms of the Contract; and
- (d) which is not Legislation.

Commencement Date means 9 September 2011.

Community Relations Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 39 to the SSR.

Compliance Report means the report to be prepared by the Service Provider in accordance with clause 19.2.

Condition Precedent means each of the following:

- (a) the Service Provider has provided to RTA:
 - (i) copies of the Service Provider's insurance policies required under clause 25.2;
 - (ii) the Bond or Bonds as required by clause 3; and
 - (iii) a Parent Company Guarantee and Indemnity as required by clause 3.6;
- (b) RTA has approved:
 - (i) the form of each Bond and the institution providing each Bond; and
 - (ii) the form of Parent Company Guarantee and Indemnity and the entity providing the Parent Company Guarantee and Indemnity;
- (c) the Service Provider has complied with its obligations under clause 25.1(d);
- (d) the Service Provider has complied with its obligations under clause 14.2(a)(i) (and RTA has not issued a notice in accordance with clause 14.2(c)(ii) in respect of those Service Manuals);
- (e) the Service Provider has submitted a:
 - (i) Quality Plan;
 - (ii) Service Management Plan;
 - (iii) Environmental Management Plan;
 - (iv) Community Relations Plan;
 - (v) Occupational Health, Safety and Rehabilitation Plan;
 - (vi) Traffic Management and Safety Plan;
 - (vii) Training Plan;
 - (viii) Interface Management Plan; and
 - (ix) Service Improvement Plan,in accordance with clause 16.2(a)(i) (and RTA has not issued a notice in accordance with clause 16.2(c)(ii) in respect of those Service Plans);
- (f) the Contract Review Group has been constituted in accordance with clause 27;
- (g) the Service Provider has completed the Mobilisation Services; and
- (h) 8 December 2011 has passed.

Contract means, at any time the current version of this contract and its schedules, annexures and exhibits and includes any amendment to any of them made in accordance with the terms of the General Conditions.

Contract Documents means all documents referred to in the definition of "Contract".

Contract Objectives means the project objectives set out in Section 1.1 of the SSR.

Contract Review Group means the group established under clause 27.1.

Contract Review Group Chairperson means the person nominated under clause 27.2(d).

Contract Year means:

- (a) the period commencing on (and including) 9 September 2011 and expiring on midnight 8 December 2012; and
- (b) each subsequent period commencing on (and including) 9 December and expiring on midnight 8 December in the following year.

Controller has the meaning given to it in the *Corporations Act 2001* (Cth).

Data means:

- (a) data (in any format or medium including in electronic form or written) generated by or stored within the OMCS, weigh in motion stations, air quality monitoring system, fire system or any other system in respect of which the Service Provider provides reports to RTA;
- (b) data (in any format or medium including in electronic form or written) generated by or stored within the AMS, other than financially sensitive information (as agreed between the parties) relating to the Service Provider or its Subcontractors; and
- (c) Performance Data (including all source data from which it is derived).

Deed of Disclaimer means the deed poll given by the Service Provider on or about 3 May 2011.

Default Rate means 2% above:

- (a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to four 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 10.30 am on the day the relevant payment becomes due, for bank-accepted bills of exchange that have a tenor equal to 90 days; or
- (b) if no average bid rate is published in accordance with paragraph (a), the bid rate available to the payee at about 11.00 am on the day the relevant payment becomes due, as conclusively determined in good faith by the payee, for bank-accepted bills of exchange that have the tenor equal to 90 days.

defect means, for the purposes of Appendix 3 to the SSR, a defect, fault, error or deficiency in any Asset.

Deliverable means each item the Service Provider must provide to RTA under the Contract including the Service Manuals, the Service Plans, the Monthly Report, the Compliance Report and the Performance Data.

Design Life means the period over which any:

- (a) Prescribed Works; and
- (b) Asset Item or Asset Sub-Item the subject of Replacement and Refurbishment,

must perform its intended function without replacement, refurbishment or significant maintenance.

Drop-Off Event means the closure of a single Lane at a time outside the Prohibited Period, which is required in order for the Service Provider to deliver personnel and/or equipment to any part of the M5 East for the performance of the Services, and provided that:

- (a) no more than a single Lane is not Available at any one time; and
- (b) the period during which that Lane is not Available does not exceed 10 minutes.

Emergency Services means the NSW Police Force, Fire and Rescue NSW and the Ambulance Service of NSW (and each is an **Emergency Service**).

Emissions and Energy Data means:

- (a) any data, information, records and reports of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to the Greenhouse and Energy Data Officer concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any data, information, records and reports of the type that a registered corporation or any other person may be entitled to provide to the Greenhouse and Energy Data Officer under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other data, information, records and reports concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by any other Law to keep or to provide to any Authority.

Encumbrance means any mortgage, charge, lien, title retention, trust, power or other encumbrance.

Environmental Documents means:

- (a) the Planning Minister's Approval; and
- (b) Appendix 5 to the SSR.

Environmental Event means:

- (a) non-compliance with or violation of any Environmental Law; or
- (b) an offence under any Environmental Law.

Environmental Law means any Law relating to the Environment (as that term is defined in the *Contaminated Land Management Act 1997* (NSW)), building, planning, health, safety or occupational health, safety and rehabilitation and obligations under the common law.

Environmental Management Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 34 to the SSR.

Environmental Management System means the system described in Section 3.9 of the SSR.

Excepted Risk means any of the following:

- (a) any negligent act or omission of RTA;
- (b) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Service Provider or any person for whom it is responsible.

Expert means a person engaged to determine Issues under clause 37.

Expert Determination means the process of determination of an Issue by an Expert under clause 37.

Expiry Date means the Original Expiry Date or, where RTA issues a notice to extend the Expiry Date pursuant to clause 2.4, the date determined in accordance with clause 2.4.

Extension Date means each of the Original Expiry Date, 8 December 2017, 8 December 2018, 8 December 2019 and 8 December 2020.

Force Majeure Event means each of the following events:

- (a) earthquake, cyclone, natural disaster, landslide or mudslide;
- (b) a flood which might be expected to occur once or less in every 50 years;
- (c) a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of the Contract);
- (d) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any Authority;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
which:
 - (f) is beyond the reasonable control of the Affected Party; and
 - (g) prevents or delays the Affected Party from performing any of its obligations under the Contract where that cause or the consequences of that cause:
 - (i) has not resulted from the Affected Party's act or omission or breach of the Contract; and
 - (ii) if the Affected Party is the Service Provider, could not have been prevented, avoided, remedied or overcome by the Service Provider or its Subcontractors taking those steps which a prudent and competent contractor experienced in the delivery of services similar to the Services would have taken.

General Conditions means clauses 1 to 51 of the Contract.

Greenhouse and Energy Data Officer means the Greenhouse and Energy Data Officer established under the NGER Legislation.

GST means the same as "GST" means in the GST Law.

GST Law means the same as "GST Law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means the guarantor under the Parent Company Guarantee and Indemnity.

Handover Period means the last five months of the Term or, where the Contract is terminated earlier, a three month period from the date of the notice of termination.

Handover Services means those Services to be provided during the Handover Period, as more particularly described in Section 2.4 of the SSR.

Hazardous Discharge means any emission, spill, leak, release, escape or discharge of any Waste into or upon:

- (a) the air;
- (b) any soil;
- (c) any surface water or ground water;
- (d) any Asset; or
- (e) the M5 East,

other than as permitted by an Environmental Law.

ICMS means the Integrated Contract Management System.

ICMS Manager means the person responsible for the ICMS, including the Quality System.

Incident means an occurrence or event (on and/or off the Maintenance Site) that:

- (a) prevents or may prevent the M5 East or any part of it from being open for the safe, continuous and efficient passage of:
 - (i) vehicles; or
 - (ii) other users of the M5 East; or
- (b) otherwise requires an urgent response to:
 - (i) provide access for Emergency Services or traffic control;
 - (ii) protect the health and safety of any person;
 - (iii) protect or repair the M5 East or other property; or
 - (iv) prevent damage to the M5 East or any damage to other property.

Incident Response Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 36 to the SSR.

Industrial Relations Plan means a plan complying with the requirements set out in clause 10.7, as may be amended and updated from time to time in accordance with clause 16.

Industry Participation Plan means a plan complying with the requirements set out in "NSW Government Procurement: *Local Jobs First Plan*".

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

- (a) listed in Appendix 25 to the SSR; or
- (b) referred to, or incorporated by reference, in any information, data or document listed in Appendix 25 to the SSR, unless such information, data or document is otherwise expressly stated to form part of the Contract,

whether issued or made available:

- (c) on, before or after the date of submission of the Service Provider's tender in response to RTA's request for tender dated 16 February 2011; or
- (d) on, before or after the date of the Contract,

other than any information, data or document which RTA is obliged by the terms of the Contract to provide to the Service Provider and the Service Provider is expressly obliged by the terms of the Contract to rely on.

Insolvency Event means in respect of a person:

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

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by RTA.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, patents, designs, circuit layouts, plant varieties, business and domain names, inventions and confidential information and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as Moral Rights.

Issue means any issue, dispute or difference raised by either party under clause 35.

Itemised Service Payment means an amount payable to the Service Provider for carrying out any:

- (a) Mobilisation Services;
- (b) Handover Services;
- (c) Additional Services;
- (d) Prescribed Works;
- (e) Repair Work;
- (f) Replacement and Refurbishment of Specified Asset Items; and/or
- (g) Corrective Maintenance on a Specified Asset Item in accordance with Section 5.5.4(e)(i) of the SSR,

as determined in accordance with Schedule 4 and the Contract.

Key Personnel means the personnel specified in Schedule 8.

Lane means any traffic lane, ramp or hard shoulder of the M5 East.

Lane Closure means each separate instance on which a single Lane or multiple Lanes (or any part of a Lane or multiple Lanes) is or are not Available.

Law means:

- (a) Legislation;
- (b) common law and principles of equity; and
- (c) Approvals (including any condition or requirement under them).

Legislation means, in relation to NSW or the Commonwealth of Australia:

- (a) any act of parliament or statute;
- (b) any subordinate legislation, rules, regulations or by-laws; and
- (c) any document or policy issued under such legislation or delegated legislation with which the Service Provider is legally required to comply.

Loss includes:

- (a) any cost, expense, loss, damage or liability, whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

M5 East means the M5 East freeway including any Roads, Lanes, Tunnels and other physical works, facilities and systems, the MCC and all Plant, machinery, equipment, fixtures, furniture, fittings, landscaping and other improvements on, in or outside the Maintenance Site (provided that the excluded items set out in Section 5.10 of the SSR and the exclusions set out in Table 3 of Appendix 1 to the SSR are not part of the M5 East).

Maintenance Manual means the document or documents which describe the policy, practices and procedures for the maintenance of the M5 East and the Assets which must comply with the requirements set out in Appendix 2 to the SSR, as may be amended and updated from time to time in accordance with clause 14.

Maintenance Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 33 to the SSR.

Maintenance Services means the Services which the Service Provider must perform to comply with Section 5 of the SSR.

Maintenance Site means those areas identified as the maintenance site in Appendix 1 to the SSR.

Maintenance Standards means the standards prepared by the Service Provider in accordance with Section 3.6 of the SSR, as may be amended and updated from time to time in accordance with clause 17.

Management Services means the Services which the Service Provider must perform to comply with Section 3 of the SSR.

Management Team means the group established under clause 28.1.

Mandatory Credit Rating means a credit rating or financial security rating (as applicable to the issuer) of at least A by Standard & Poor's or A2 by Moody's.

Materials means any raw or manufactured materials, goods or things (other than Service Provider's Plant) required for use in performing the Services.

Mobile Activity means:

- (a) road sweeping;
- (b) tunnel wall washing;
- (c) tunnel line cleaning; or
- (d) tunnel visual inspection.

Mobile Closure means the closure of a single Lane at a time outside the Prohibited Period, which is required in order for the Service Provider to perform a Mobile Activity on any part of the M5 East, and provided that:

- (a) no more than a single Lane is not Available at any one time; and

- (b) the Mobile Activity progresses along the Lane in a single direction at a speed of not less than 5 km per hour.

Mobilisation Period means the period from (and including) 9 September 2011 to midnight 8 December 2011.

Mobilisation Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 41 to the SSR.

Mobilisation Services means the services to be provided during the Mobilisation Period, as more particularly described in Section 2.3 of the SSR.

Mobilisation Services Conditions Precedent means the conditions precedent in paragraphs (a), (b) and (c) of the definition of Condition Precedent.

Monthly Report means a report complying with the requirements of reference item 1 (monthly report) of Appendix 24 to the SSR.

Monthly Service Payment means the Periodic Service Payment and Itemised Service Payment in the relevant month of the Term.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Motorway Control Centre (or MCC) means the control centre located at 46-50 West Botany Street, Arncliffe.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

Non-Permitted Carriageway Closure means any Non-Permitted Lane Closure which results in the closure of any part of a Carriageway.

Non-Permitted Lane Closure means a Lane Closure which is:

- (a) not a Permitted Lane Closure; or
- (b) not carried out in accordance with the terms of a Road Occupancy Licence or any relevant Approval.

NSW Government Codes of Practice means any document issued by the NSW Government, including but not limited to the code of practice for procurement issued on 18 January 2005, and any documents adding to, amending or replacing those documents from time to time.

O&M Best Practices means operating and maintenance practices required to achieve a result consistent with Law, reliability, safety, protection of the environment and the requirements of the Contract, including everything reasonably necessary to ensure that:

- (a) the M5 East and each Asset is operated, maintained and repaired in a manner safe to all people and the environment;
- (b) operation and maintenance are performed to ensure reliable long-term and safe operation and are performed by trained and experienced personnel utilising proper equipment, tools and procedures;
- (c) sufficient operation and maintenance personnel are available and are adequately experienced and trained;

- (d) adequate materials, resources and supplies are available to ensure compliance with the requirements of the Contract under normal conditions and reasonably anticipated abnormal conditions; and
- (e) the principle of continuous improvement is adhered to, that is, a commitment to continually improving the standards and quality of the operation and maintenance of the M5 East and each Asset and the manner in which it is carried out so as to ensure that the operation and maintenance of the M5 East and each Asset is carried out in a manner which at all times remains consistent with the overall road network systems and standards.

O&M Fee means the Monthly Service Payment, the Quarterly Service Payment and any Annual Electricity Moderator payable to the Service Provider for the performance of the Services, as set out in Schedule 4 and as may be adjusted in accordance with the Contract.

Occupational Health, Safety and Rehabilitation Management Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 37 to the SSR.

OH&S Regulation has the meaning given to it in clause 10.5.

Operations Manual means the document or documents which describe the policy, practices and procedures for the operation of the M5 East and the Assets which must comply with the requirements set out in Appendix 2 to the SSR, as may be amended and updated from time to time in accordance with clause 14.

Operations Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 32 to the SSR.

Operation Services means the Services which the Service Provider must perform to comply with Section 4 of the SSR.

Operation Standards means the standards prepared by the Service Provider in accordance with Section 4.4 of the SSR, as may be amended and updated by the Service Provider from time to time in accordance with clause 17.

Operational Management and Control System (OMCS) means the system described in Appendix 13 to the SSR.

Original Expiry Date means midnight on 8 December 2016.

Parent Company Guarantee and Indemnity means an agreement whereby the Guarantor:

- (a) guarantees the payment of any unpaid amounts of money due and payable under the Contract by the Service Provider to RTA;
- (b) indemnifies RTA against all Loss that RTA incurs as a result of:
 - (i) the Service Provider's failure to pay RTA amounts due and payable under the Contract; and
 - (ii) the Service Provider's breach of the Contract or other act or omission; and
- (c) is obliged to perform any of the Service Provider's obligations under this Contract in accordance with the Contract if:

- (i) the Service Provider fails to perform an obligation or obligations under the Contract; and
- (ii) RTA gives the parent company written notice of the event in subparagraph (i).

Payment Claim means a claim for payment as referred to in clause 22.4.

Payment Schedule means a payment schedule containing RTA's assessment of a Payment Claim and stating the amount RTA proposes to pay as the Scheduled Amount, as referred to in clause 22.4.

Performance Criteria has the meaning given to it in table 7.1 in Annexure 7 to Schedule 4.

Performance Data has the meaning given to it in clause 19.2.

Performance Requirements has the meaning given to it in table 7.1 in Annexure 7 to Schedule 4.

Periodic Service Payment means the amount payable to the Service Provider for carrying out the Management Services, Maintenance Services and Operation Services, as determined in accordance with section 3 of Schedule 4.

Permitted Lane Closure means a Lane Closure, to the extent that it is required:

- (a) as a result of an Incident (not caused or contributed to by the Service Provider);
- (b) for the carrying out of:
 - (i) Additional Services;
 - (ii) Replacement and Refurbishment in relation to Specified Asset Items; or
 - (iii) Prescribed Works,and is in accordance with the terms of:
 - (iv) a Road Occupancy Licence; and
 - (v) the Project Terms or Prescribed Works Terms (as applicable);
- (c) for the carrying out of Routine Maintenance, as set out in Schedule 10, and is in accordance with the terms of a Road Occupancy Licence;
- (d) by a Relevant Body; or
- (e) to allow access for the Emergency Services.

Persistent Breach means:

- (a) in any rolling 90 day period, 2 Non-Permitted Lane Closures occur during a Prohibited Period each for a continuous duration of greater than 1 hour;
- (b) in any rolling 12 month period, 4 Non-Permitted Lane Closures occur during a Prohibited Period each for a continuous duration of greater than 1 hour;
- (c) in any rolling 12 month period, 6 Non-Permitted Lane Closures occur outside a Prohibited Period each for a continuous duration of greater than two hours;
- (d) 2 Non-Permitted Carriageway Closures occur during the Term; or

- (e) the Service Provider's entitlement to the Quarterly Service Payment is:
 - (i) in any two consecutive Quarters, 50% or less of the Quarterly Service Payment that could have been payable during that period; or
 - (ii) in any three consecutive Quarters, 65% or less of the Quarterly Service Payment that could have been payable during that period.

Personal Information has the meaning given to that term in:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the *Health Records and Information Privacy Act 2002* (NSW).

Personnel means:

- (a) officers, employees, agents or Subcontractors of the Service Provider; and
- (b) officers, employees or agents of any Subcontractor of the Service Provider.

Pick-Up Event means the closure of a single Lane at a time outside the Prohibited Period, which is required in order for the Service Provider to pick-up personnel and/or equipment from any part of the M5 East for the performance of the Services, and provided that:

- (a) no more than a single Lane is not Available at any one time; and
- (b) the period during which that Lane is not Available does not exceed 10 minutes.

Planning Minister's Approval means the approval issued by the Minister for Planning in respect of the M5 East dated 9 December 1997 and the modified approval dated 18 July 2007, including all conditions therein and any documents incorporated by reference.

Plant means all items of any machinery, equipment and Systems that are part of the M5 East.

Pre-Existing Material means any material provided by or on behalf of the Service Provider that is existing at the date of the Contract, is not developed specifically for RTA or in contemplation of the Contract and is:

- (a) incorporated with any Deliverable; or
- (b) otherwise provided to RTA under the Contract.

Prequalified Areas of Work means those works and services listed at <http://www.rta.nsw.gov.au/doingbusinesswithus/tenderscontracts/prequalifiedcontractors.html>

Prescribed Works has the meaning given to it in Section 5.8 of the SSR; it means the Prescribed Works as a whole and also any part of the Prescribed Works unless stated otherwise or the context requires otherwise.

Prescribed Works Terms means the terms governing the carrying out of Prescribed Works, the form of which is set out in Annexure D to the Contract.

Privacy Acts means:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the *Health Records and Information Privacy Act 2002* (NSW).

Prohibited Period means:

- (a) eastbound on the M5 East, the period between:
 - (i) 0430 and 2130 hours on each of Monday to Thursday; and
 - (ii) 0430 Friday and 2130 Sunday; and
- (b) westbound on the M5 East, the period between:
 - (i) 0500 and 2200 hours on each of Monday to Thursday; and
 - (ii) 0500 Friday and 2200 Sunday.

Project Terms means the terms set out in Annexure C to the Contract that will govern the carrying out of:

- (a) Additional Services; and
- (b) Replacement and Refurbishment of Specified Asset Items.

Qualifying Change in Law means a Change in Law occurring after the date of the Contract and:

- (a) requiring the Service Provider to incur additional costs which would not otherwise be expected to be incorporated into the O&M Fee as a consequence of the indexation of the O&M Fee pursuant to the Contract; or
- (b) decreasing the Service Provider's costs of providing the Services.

Quality Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 35 to the SSR.

Quality System means the system described in Section 3.4 of the SSR.

Quarter means each period in a Contract Year identified as a quarter in table 5.1 of Annexure 5 to Schedule 4 as a quarter.

Quarterly Service Payment means the amount calculated in accordance with Annexure 7 to Schedule 4.

Related Body Corporate has the meaning set out in section 50 of the *Corporations Act 2001* (Cth).

Relevant Body has the meaning set out in clause 6.1.

Repair Work has the meaning given to it in clause 7.3.

Replacement and Refurbishment means the Services which the Service Provider must perform to comply with Section 5.7 of the SSR.

Reviewable Document has the meaning given to it in clause 18.1.

Risk Management Plan means a plan complying with the requirements set out in Appendix 30 to the SSR, as may be amended and updated from time to time in accordance with clause 16.

Road has the same meaning as given to it by the *Roads Act 1993* (NSW).

Road Occupancy Licence means a licence issued in accordance with clause 6.3.

Routine Maintenance means the Services which the Service Provider must perform to comply with Section 5.5 of the SSR.

RTA Facilities has the meaning given to it in clause 5.4.

RTA Material means all material (in any format or medium) owned by or licensed to RTA and provided to the Service Provider under the Contract, including information on www.m5east.com.au

RTA's Representative means the person appointed as such by RTA pursuant to clause 26.2(a).

RTA Specifications means all RTA specifications referred to in the Appendices to the SSR.

Scheduled Amount means the amount of payment (if any) stated in a Payment Schedule, that RTA proposes to make in relation to a Payment Claim as referred to in clause 22.4.

Security means the Bond or Bonds and all monies held by RTA pursuant to clause 3.4(b).

Security Interest means:

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

Service Management Plan means a plan complying with the requirements set out in Appendix 30 to the SSR, as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 31 to the SSR.

Service Manuals means the Maintenance Manual and the Operations Manual, as each such manual may be updated, amended and developed under clause 14.

Service Plans means each of the:

- (a) Traffic Management and Safety Plan;
- (b) Quality Plan;
- (c) Environmental Management Plan;
- (d) Operations Plan;
- (e) Maintenance Plan;
- (f) Community Relations Plan;
- (g) Occupational Health, Safety and Rehabilitation Management Plan;
- (h) Incident Response Plan;
- (i) Industrial Relations Plan;

- (j) Training Plan;
- (k) Service Management Plan;
- (l) Service Improvement Plan;
- (m) Risk Management Plan;
- (n) Mobilisation Plan;
- (o) Interface Management Plan;
- (p) Business Continuity Plan;
- (q) Defect Management Plan; and
- (r) Sustainability Plan,

as each such plan may be updated, amended and developed under clause 16.

Service Provider Material means:

- (a) Pre-Existing Material; and
- (b) any other software or material (in any media) owned by or licensed to the Service Provider and incorporated into or used in connection with an Asset or used by the Service Provider in performing its obligations under the Contract.

Service Provider's Authorised Person means the person appointed to act for the Service Provider under clause 26.1(a).

Service Provider's Default means a substantial breach of the Contract by the Service Provider, including any of the following:

- (a) abandoning the carrying out of the Services;
- (b) suspending the performance of the Services, in whole or in part without the written agreement of RTA, except for suspension under clause 33.1(a)(i)(A);
- (c) failing to comply with a direction in writing or confirmed in writing by RTA;
- (d) failing to carry out the Services with professional skill, care and competence;
- (e) failing to maintain any registration or licence required by Law to carry on activities required under the Contract;
- (f) failing to provide Security as required under clause 3;
- (g) failing to provide the Parent Company Guarantee and Indemnity as required under clause 3.6; or
- (h) failing to effect and maintain insurance policies as required under the Contract.

Service Provider's Documentation Requirements means Appendix 23 to the SSR.

Service Provider's Plant means all plant, equipment and facilities used or required for the performance of the Services (irrespective of ownership) other than the RTA Facilities.

Service Scope and Requirements or **SSR** means the document which is Exhibit 1.

Service Standards and Performance Measures means service standards and performance measures set out in Appendix 3 to the SSR.

Services means all the work and services that the Service Provider is required to perform under the Contract.

Specified Asset Item means each Asset set out in Section 5.7(b) of the SSR.

Stakeholder means a person or entity that is or may be affected by the Services.

Subcontract means a contract between the Service Provider and a Subcontractor.

Subcontractor means an entity engaged by the Service Provider to carry out part of the Services, including a consultant or supplier.

Systems has the meaning given to it in Section 4.6(d) of the SSR.

Term means the period specified in clause 2.1.

Traffic Control Plan means a plan for the closure of the M5 East or a Lane or Lanes, which complies with the requirements of Appendix 12 to the SSR.

Traffic Growth Ceiling means the ceiling for traffic growth specified in Appendix 9 to the SSR.

Traffic Management and Safety Plan means a plan complying with the requirements set out in Appendix 30 to the SSR as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 38 to the SSR.

Training Plan means a plan complying with the requirements set out in Appendix 30 to the SSR, as may be amended and updated from time to time in accordance with clause 16. The initial such plan is set out in Appendix 40 to the SSR.

Transport Management Centre or TMC means (as the context requires) the transport management facility and the transport management organisation under the control of Transport NSW.

Tunnel means all sections of enclosed Lanes and all related Assets.

Utility means any utility, including water, gas, electricity, fuel, telephone, drainage, sewerage and electronic communications services.

Variation means a variation to the Services including additions, increases, decreases omissions and deductions to and from the Services, including a variation to:

- (a) the Performance Criteria; and
- (b) the SSR,

but does not include directions contemplated by paragraph 1.5(c) of this Schedule 1.

Waste includes any Material to be removed and/or disposed of in the course of performing the Services together with any extraneous by-products of the Services including but not limited to:

- (a) trade waste, being any matter or thing, whether solid, liquid or gaseous or a combination of solids, liquids and gases (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade, commercial or business process or operation, including any building or demolition work;

- (b) garbage, being all refuse other than trade waste and effluent;
- (c) any flammable materials, explosives, radioactive materials, hazardous or toxic substances, asbestos or any material containing asbestos or similar or related materials;
- (d) any emission into the air of any impurity as defined in the *Protection of the Environment Operations Act 1997* (NSW);
- (e) any chemical waste, whether declared or not, as defined in the *Environmentally Hazardous Chemicals Act 1985* (NSW);
- (f) any waste as defined in the *Protection of the Environment Operations Act 1997* (NSW);
- (g) any other substance or material as so characterised, listed or defined and regulated by any Environmental Law; and
- (h) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a septic tank, septic closet, chemical closet, sullage pit, grease trap or any holding tank or other container forming part of or used in connection with a septic tank, septic closet, chemical closet, sullage pit or grease trap.

1.2 Rules for interpreting the Contract

- (a) Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting the Contract, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislations issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) a discretion means an unfettered discretion, not limited by implications; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (c) Any reference to currency is a reference to Australian dollars, unless stated otherwise.
- (d) No rule of construction applies to the interpretation of the Contract to the disadvantage of one party on the basis that the party prepared it.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

1.3 Business Days

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract falls on a non-Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be deemed to be on the next Business Day.

1.4 Joint and several liability

- (a) The obligations of the Service Provider, if more than one person, under the Contract, are joint and several and each person constituting the Service Provider acknowledges and agrees that it will be responsible for the acts and omissions (including breaches of the Contract) of the other as if those acts or omissions were its own.
- (b) The rights of the Service Provider, if more than one person, under the Contract (including the right to payment) jointly benefit each person constituting the Service Provider (and not severally or jointly and severally).
- (c) A payment by RTA under the Contract to an account nominated in writing by the Service Provider, or failing such nomination, to any one or more persons constituting the Service Provider, will be deemed to be payment to all persons constituting the Service Provider.
- (d) The Service Provider may not exercise any right under the Contract unless that right is exercised concurrently by all persons constituting the Service Provider.

1.5 Ambiguity, discrepancy or inconsistency

- (a) The following applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising the Contract:
 - (i) if the ambiguity, discrepancy or inconsistency relates to the quality or standard of the Services, then the requirement which delivers the greatest level of service or is of the highest standard is to apply;
 - (ii) where the inconsistency, ambiguity, omission or discrepancy is not resolved by the application of the principle in paragraph (a)(i), the following order of precedence applies:
 - (A) the General Conditions;
 - (B) Schedule 1 to the General Conditions;
 - (C) Schedule 4 to the General Conditions;
 - (D) SSR;
 - (E) other Schedules to the General Conditions; and
 - (F) RTA Specifications; and
 - (iii) where the inconsistency, ambiguity, omission or discrepancy is not resolved by the application of the principles in paragraphs (a)(i) and (a)(ii), RTA must direct the interpretation of the Contract which the Service Provider must follow.
- (b) If a party considers there to be an ambiguity, discrepancy or inconsistency in, or between, the documents comprising the Contract, that party must notify the other

party within 5 Business Days of becoming aware of the ambiguity, discrepancy or inconsistency.

- (c) RTA must, within 20 Business Days of receipt of a notice under paragraph (a)(iii) of this Schedule 1, direct the Service Provider as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with paragraph (a).
- (d) In giving a direction in accordance with paragraph (c), RTA is not required to determine whether or not there is an ambiguity or discrepancy or inconsistency in, or between, the documents comprising the Contract.
- (e) Any direction RTA gives in accordance with paragraph (c) does not in any way lessen or otherwise affect:
 - (i) the Service Provider's obligations under the Contract or according to Law; and
 - (ii) RTA's rights against the Service Provider, whether under the Contract or according to Law.

Schedule 2

FORM OF BOND

On behalf of the Service Provider

Name of Financial Institution:
RTA:	»
Service Provider: ABN
Security Amount	\$ »
The Contract:	The contract between RTA and the Service Provider
Contract Title:	Operation and Maintenance Contract for the M5 East».
Contract Number:	»

Unless otherwise defined, capitalised words and phrases in this undertaking have the meanings given in the General Conditions.

Undertaking

1. At the request of the Service Provider and the Financial Institution, and in consideration of RTA accepting this undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by RTA to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by RTA (or someone authorised by RTA) that it requires all or some of the Security Amount, the Financial Institution will pay RTA at once, without reference to the Service Provider and despite any notice from the Service Provider not to pay.
3. This undertaking continues until one of the following occurs:
 - (a) RTA notifies the Financial Institution in writing that the Security Amount is no longer required;
 - (b) this undertaking is returned to the Financial Institution; or
 - (c) the Financial Institution pays RTA the whole of the Security Amount.
4. At any time, without being required to, the Financial Institution may pay RTA the Security Amount less any amounts previously paid under this undertaking, and the liability of the Financial Institution will then immediately end.
5. This undertaking is governed by the laws of New South Wales and all parties submit irrevocably to the non-exclusive jurisdiction of the courts of New South Wales.

Dated _____ at »
».....

Execution by the Financial Institution as a deed poll:

Schedule 3

RTA FACILITIES

M5 East - Building Contents

Ground Floor

Control room	
Qty	
2	Lenovo thinkcentre HD
6	Dell HD
1	Generic HD (Fire system)
7	Dell monitor
1	IBM monitor
1	Philips monitor
1	Shredder machine
2	HP LJ printer (AFP skada & TMC reports)
1	Asus monitor
1	GBC lamination machine
4	Office chairs
1	Lexmark x4270 fax/scan
1	Rank Arena fridge
1	Brother HL2150 printer
2	Wall mounted electronic key racks
4	Siemens phone
2	Leader phone
2	Pelco camera controller
2	Samsung CCTV monitor
18	American Dynamics CCTV monitor

Training office	
Qty	
3	Office chairs
2	Wooden desk
1	Sml metal storage cabinet cream
1	Wooden bookshelf Lge
1	Set of drawers
1	Shredder machine
1	View sonic monitor
1	Samsung monitor
1	Dell monitor
3	Lenovo thinkcentre HD
1	Canon MX7600 printer/scanner
1	Siemens phone
AMS office	
Qty	
2	Siemens phone
3	Office chairs
3	Wooden desk w/ return

3	Set of drawers
1	Shredder machine
1	Philips monitor
1	View sonic monitor
1	Acer monitor
1	HP LJ 4250 printer
1	Dell HD
3	Lenovo thinkcentre HD
2	Wooden bookshelf Lge

AMS office	
Qty	
2	Siemens phone
3	Office chairs
3	Wooden desk w/ return
3	Set of draws
1	Shredder machine
1	Philips monitor
1	View sonic monitor
1	Acer monitor
1	HP LJ 4250 printer
1	Dell HD
3	Lenovo thinkcentre HD
2	Wooden bookshelf Lge

Ground floor other	
Qty	
3	Hand dryer
5	Lockers
1	Wooden bookshelf Lge
1	Wooden bookshelf Sml
1	Sml metal storage cabinet grey
1	DS combination safe

Lower Ground Floor

Maintenance office	
Qty	
4	Office chairs
1	Wooden desk w/ return
3	Wooden desk
4	Set of draws
4	Dell monitor
1	LG monitor
1	View sonic monitor
1	Philips monitor
2	Wooden bookshelf Lge
1	Shredder machine
1	LG fridge
1	LG microwave
1	HP LJ 1015 printer
3	Siemens phone
4	Lenovo thinkcentre HD
1	Dell HD

RP office	
Qty	
3	Office chairs
1	Wooden bookshelf Lge
1	Wooden bookshelf Sml
1	Wooden storage cabinet
1	Wooden desk
1	Dell monitor
1	Lenovo thinkcentre HD
1	Siemens phone

Lower floor other	
Qty	
2	Lge metal storage cabinet grey
12	Lockers
2	Hand dryers
1	Plastic storage cabinet
1	Dangerous goods cabinet

Traffic Control Equipment

GHD Viaduct	
Qty	
34	Big foot witches hats
6	Barrier boards
46	Type A flasher
71	Bollard bases
12	2 lane stat sign black on yellow
1	Grass cutting sign black on yellow
3	Road work ahead sign black on yellow
6	Chevron black and yellow
2	PPE must be worn on site blue on white
2	Traffic controller symbol sign black on yellow
1	Truck logo sign black on yellow
2	End of roadwork sign black on yellow
2	Night road work sign black on yellow
2	Road work ahead (long sign) black on yellow
2	End of road work (long sign) black on yellow
1	Chevron (long sign) black and yellow
1	Rough surface sign black on yellow
2	Use next exit sign black on yellow
2	Motorway closed ahead sign black on yellow
1	Road work 1 km ahead sign black on yellow
1	Road work ahead (night sign long)
5	Diggerman sign black on yellow
1	Pedestrian use other foot path sign black on yellow
2	Prepare to stop sign white on red
14	sign legs small
10	sign legs large
1	Asap-15 arrow board

RP Garage	
Qty	
34	Standard witches hats
10	Big foot witches hats
2	Barrier boards
8	Barrier board stands
1	Road closed sign black on Yellow
1	3 lane stat sign black on Yellow
1	Wrong way go back sign white on red
1	Detour (long sign) black on yellow
1	Stop slow bat

HIAB	
Qty	
31	Standard witches hats
3	Barrier boards

2	Barrier board with road closed
2	Stop slow bats

M5 East - RTA Owned Fleet Equipment

Item	Description	Registration No.	Reg. Due Date
1	<u>Bartco Portable VMS Board</u>	V91282	21/09/2015
2	<u>NSWFB Foam Trailer</u>	V86244	23/02/2015
3	<u>Class C Arrow board trailer</u>	P99705	9/10/2015
4	<u>Spill Trailer</u>	R84072	16/03/2015
5	<u>Water Jet Trailer</u>	V91282	14/12/2014

Schedule 4

PAYMENT SCHEDULE



Transport
Roads & Traffic
Authority

Roads and Traffic Authority

M5 East O&M

Payment Schedules

Contents

1.	PAYMENT STRUCTURE	1
2.	ITEMISED SERVICE PAYMENTS	1
3.	PERIODIC SERVICE PAYMENT	2
3.1	Calculation of the Periodic Service Payment	2
3.2	Calculation of the Operation Services component for the Periodic Service Payment	2
3.3	Calculation of the Maintenance Services Component of the Periodic Service Payment	2
3.4	Calculation of the Management Services component for the Periodic Service Payment	3
4.	NOT USED	3
5.	AVAILABILITY ABATEMENTS	3
5.1	Availability Events	3
5.2	Calculation of the total Availability Abatement	3
5.3	Calculation of Availability Abatement for each Availability Event	4
6.	QUARTERLY SERVICE PAYMENT	4
6.1	Performance Criteria	4
6.2	Calculation of Quarterly Service Payment	4
7.	NOT USED	4
8.	NOT USED	4
9.	NOT USED	4
10.	ANNUAL ELECTRICITY MODERATOR	4
11.	MISCELLANEOUS	5
11.1	Quarterly Indexation Factor	5
11.2	Labour Price Indexation Factor	5
11.3	Asphalt Supply Indexation Factor	5
11.4	Indexation Factors	6
11.5	Review of Table 7.1 in Annexure 7	6
12.	DEFINITIONS	7
Annexure		
1	MOBILISATION SERVICE PAYMENT SCHEDULE	
2	HANDOVER SERVICES PAYMENT SCHEDULE	
3	PAYMENT SCHEDULE FOR ADDITIONAL SERVICES, REPAIR WORK AND CORRECTIVE MAINTENANCE	
4	PAYMENT FOR PRESCRIBED WORKS	

- 5 CALCULATION OF THE PERIODIC SERVICE PAYMENT**
- 6 CALCULATION OF AVAILABILITY ABATEMENT FOR EACH AVAILABILITY
EVENT**
- 7 CALCULATION OF QUARTERLY SERVICE PAYMENT**
- 8 PAYMENT FOR SPECIFIED ASSET ITEMS**
- 9 OPERATION AND MAINTENANCE OF AIR FILTRATION PLANT**

M5 East O&M Payment Schedules

1. PAYMENT STRUCTURE

- (a) Payments will be a combination of:
 - (i) Monthly Service Payments (MSP);
 - (ii) Quarterly Service Payments (QSP); and
 - (iii) Annual Electricity Moderator (EM).
- (b) Monthly Service Payments will be a combination of:
 - (i) Itemised Service Payments (ISP); and
 - (ii) Periodic Service Payment (PSP).
- (c) Availability Abatements (AA) will be determined Quarterly and deducted from amounts due to the Service Provider.

2. ITEMISED SERVICE PAYMENTS

- (a) Itemised Service Payments (ISP) will be made for:
 - (i) Mobilisation Services;
 - (ii) Handover Services;
 - (iii) Additional Services;
 - (iv) Prescribed Works;
 - (v) Replacement and Refurbishment of Specified Asset Items; and
 - (vi) Repair Work.
- (b) The ISP for Mobilisation Services will be paid in accordance with Annexure 1.
- (c) The ISP for Handover Services will be paid in accordance with Annexure 2.
- (d) The ISP for:
 - (i) Additional Services;
 - (ii) Repair Work; and
 - (iii) Corrective Maintenance on a Specified Asset Item pursuant to Section 5.5.4(e)(i) of the SSR,will be paid in accordance with Annexure 3.
- (e) The ISP for the Prescribed Works will be paid in accordance with Annexure 4.
- (f) The ISP for Replacement and Refurbishment of Specified Asset Items will be paid in accordance with Annexure 8.

3. PERIODIC SERVICE PAYMENT

3.1 Calculation of the Periodic Service Payment

From and including 9 December 2011 (or such later date as the Conditions Precedent are satisfied or waived in accordance with the Contract) the Periodic Service Payment for each month of the Term (PSP_m) is calculated as:

$$PSP_m = OP_m + MA_m + MS_m$$

where:

OP_m = Operation Services component of the Periodic Service Payment for the relevant month, calculated in accordance with section 3.2.

MA_m = Maintenance Services component of the Periodic Service Payment for the relevant month, calculated in accordance with section 3.3.

MS_m = Management Services component of the Periodic Service Payment for the relevant month, calculated in accordance with section 3.4.

If RTA directs a Variation removing the operation and maintenance of the air filtration plant from the Services, the Periodic Service Payment for each month of the Term (PSP_m) will be calculated as:

$$PSP_m = OP_m + MA_m + MS_m - AFP_m$$

where AFP_m is a subcomponent of the Periodic Service Payment referable to the maintenance and operation of the air filtration plant for the relevant month, calculated in accordance with Annexure 9.

3.2 Calculation of the Operation Services component for the Periodic Service Payment

The Operation Services component of the Periodic Service Payment for each relevant month (OP_m) is calculated as:

$$OP_m = BOP_m \times (1 + (A \times LPIF_q) + (B \times QIF_q))$$

where:

BOP_m = base Operation Services cost for the relevant month, as set out in Table 5.1 in Annexure 5

A = 0.65

$LPIF_q$ = Labour Price Indexation Factor for the relevant Quarter

B = 0.35

QIF_q = Quarterly Indexation Factor for the relevant Quarter

3.3 Calculation of the Maintenance Services Component of the Periodic Service Payment

The Maintenance Services component for the Periodic Service Payment for each relevant month (MA_m) is calculated as:

$$MA_m = BMA_m \times (1 + (C \times LPIF_q) + (D \times QIF_q))$$

where:

BMA_m	=	Maintenance Services cost for the relevant month, as set out in Table 5.1 in Annexure 5
C	=	0.65
$LPIF_q$	=	Labour Price Indexation Factor for the relevant Quarter
D	=	0.35
QIF_q	=	Quarterly Indexation Factor for the relevant Quarter

3.4 Calculation of the Management Services component for the Periodic Service Payment

The Management Services component of the Periodic Service Payment for each relevant month (MS_m) is calculated as:

$$MS_m = BMS_m \times (1 + (E \times LPIF_q) + (F \times QIF_q))$$

where:

BMS_m	=	base Management Services cost for the relevant month, as set out in Table 5.1 in Annexure 5
E	=	0.65
$LPIF_q$	=	Labour Price Indexation Factor for the relevant Quarter
F	=	0.35
QIF_q	=	Quarterly Indexation Factor for the relevant Quarter

4. NOT USED

5. AVAILABILITY ABATEMENTS

5.1 Availability Events

- (a) **(Availability during a Quarter):** If an Availability Event occurs during a Quarter, an Availability Abatement will be incurred by Service Provider for that Quarter.
- (b) **(Availability during two or more Quarters):** Where the same Availability Event extends over two (or more) Quarters, an Availability Event will be deemed to have occurred in each Quarter over which the Availability Event extends.

5.2 Calculation of the total Availability Abatement

The total Availability Abatement for each Quarter (AA_q) is calculated as follows:

$$AA_q = \sum AA_{AE}$$

where:

AA_{AE} = Availability Abatement for each Availability Event in the relevant Quarter.

5.3 Calculation of Availability Abatement for each Availability Event

The Availability Abatement for an Availability Event (AA_{AE}) is to be calculated separately for each Carriageway of the M5 East affected by that Availability Event, in accordance with Annexure 6.

6. QUARTERLY SERVICE PAYMENT

6.1 Performance Criteria

(Performance during a Quarter): The Service Provider will be paid the Quarterly Service Payment, the amount of which will be referable to the Service Provider achieving the Performance Requirement for each Performance Criteria during the relevant Quarter.

6.2 Calculation of Quarterly Service Payment

The Quarterly Service Payment for each Quarter (QSP_Q) will be calculated in accordance with Annexure 7.

7. NOT USED

8. NOT USED

9. NOT USED

10. ANNUAL ELECTRICITY MODERATOR

The parties agree that the Service Provider may submit a proposal to reduce the power consumption of the Maintenance Site.

RTA may require the Service Provider to provide a business case for any proposal submitted by the Service Provider which details the feasibility of the proposal to reduce power consumption, the costs associated with implementing the proposal, the likely benefits of the proposal and the payback periods expected by the Service Provider (including the period the parties are to share any costs savings).

A proposal requires the agreement of both parties for it to be implemented.

If a proposal is implemented, the parties agree the following principles will apply:

- (a) the Service Provider will meet all costs associated with the implementation of the proposal (**Proposal Costs**);
- (b) the Service Provider will provide RTA with a detailed breakdown, on an open book basis, of all Proposal Costs;
- (c) until such time as the Service Provider has recovered the Proposal Costs, it will be entitled to receive 100% of the cost savings achieved (in reduced electricity consumption) as a result of the implementation of the proposal;
- (d) from the date the Service Provider has received cost savings equal to the Proposal Costs and for the period agreed by the parties as part of the proposal, all cost savings incurred (in reduced electricity consumption) as a result of the implementation of the proposal will be shared equally by the parties;

- (e) the parties will agree a payment procedure such that the Service Provider will receive cost savings from the implementation of the proposal as part of its Quarterly Payment;
- (f) subject to paragraph (g) below, if the implementation of a proposal does not result in cost savings from reduced electricity consumption or such savings do not cover the Proposal Costs, the Service Provider will have no Claim against RTA for the Proposal Costs or any part thereof, for damages or any other entitlement whether under the Contract, common law or otherwise in relation to the proposal; and
- (g) if the Contract is terminated under clause 41.1 or 42.1 and the cost savings received by the Service Provider as at the date of termination of the Contract are less than the Proposal Costs, RTA will pay the Service Provider the difference between the Proposal Costs and the cost savings received by the Service Provider (to the date of termination of the Contract). RTA may in its absolute discretion pay such amount as a lump sum or at a rate equivalent to the average of the cost savings received by the Service Provider in the previous two Quarterly Payments. The payment referred to in this paragraph (g) will be the Service Provider's sole remedy in respect of the Proposal Costs (or the proposal) and the Service Provider will have no Claim against RTA for damages or any other entitlement whether under the Contract, common law or otherwise in relation to the proposal.

11. MISCELLANEOUS

11.1 Quarterly Indexation Factor

The Quarterly Indexation Factor (QIF_q) is calculated as follows:

$$\text{QIF}_q = \left(\frac{\text{CPI}_{(q-1)}}{\text{CPI}_{\text{Base}}} \right) - 1$$

where:

CPI_(q-1) = CPI for the Quarter immediately preceding the relevant Quarter; and

CPI_{Base} = CPI for the Quarter ended 31 March 2011.

11.2 Labour Price Indexation Factor

The Labour Price Indexation Factor (LPIF_q) is calculated as follows:

$$\text{LPIF}_q = \left(\frac{\text{LPI}_{(q-1)}}{\text{LPI}_{\text{Base}}} \right) - 1$$

where:

LPI_(q-1) = LPI for the Quarter immediately preceding the relevant Quarter; and

LPI_{Base} = LPI for the Quarter ended 28 February 2011.

11.3 Asphalt Supply Indexation Factor

The Asphalt Supply Indexation Factor (ASIF_q) is calculated as follows:

$$\text{ASIF}_q = \left(\frac{\text{ASI}_{(q-1)}}{\text{ASI}_{\text{Base}}} \right) - 1$$

where:

$ASI_{(q-1)}$ = ASI for the Quarter immediately preceding the relevant Quarter; and

ASI_{Base} = ASI for the Quarter ended 31 March 2011.

11.4 Indexation Factors

(a) If the:

- (i) CPI;
- (ii) LPI; or
- (iii) ASI,

no longer exists or is to cease to exist, the Service Provider and RTA must seek to agree a suitable indexation factor to be used in place of the CPI, LPI or ASI (as applicable).

(b) If the parties are unable to agree on an indexation factor to be used in place of CPI, LPI or ASI (as applicable) by the date being 5 Business Days after the CPI, LPI or ASI (as applicable) ceases to exist, either party may raise the matter as an Issue to be determined in accordance with clause 35 of the Contract.

11.5 Review of Table 7.1 in Annexure 7

(a) **(Service Provider to consult in good faith):** At the end of each Revision Period, the Service Provider must consult in good faith and use all reasonable endeavours to review the operation of each of the Performance Criteria with RTA, as against the following criteria:

- (i) Service Provider's actual performance against each Performance Criteria during the Revision Period;
- (ii) the extent to which the Service Provider has complied with the SSR and Service Manuals during the Revision Period;
- (iii) the outcome of any audit performed in accordance with clause 21.3; and
- (iv) the objectives set out in the SSR.

(b) **(Amendments to Performance Criteria (set out in Table 7.1 of Annexure 7)):** To the extent that, in the course of their review, the parties agree that:

- (i) any Performance Criteria (set out in Table 7.1 of Annexure 7) should be omitted, replaced or otherwise amended, including an amendment to the Performance Requirement;
- (ii) a new Performance Criteria (and associated Performance Requirement) should be inserted in Table 7.1 of Annexure 7; or
- (iii) the impact on the Quarterly Service Payment of the Service Provider's failure to achieve a Performance Criteria should be amended;

then

- (iv) RTA must prepare and provide the Service Provider with an amended version of Table 7.1 of Annexure 7, which clearly identifies any amendments to the Performance Criteria; and
- (v) both parties must sign the amended Annexure 7,

and from the date on which the amended Annexure 7 has been signed by both parties:

- (vi) the amended Annexure 7 will be deemed to have replaced the original Annexure 7; and
- (vii) the Performance Criteria will be deemed to be amended in accordance with the amended Annexure 7.

12. DEFINITIONS

Unless the context otherwise requires, references to defined terms in this document will have the meaning given to them in the Contract.

ASI means the ABS Producer Price Index Catalogue 6427 table 31, Asphalt Supply.

Asphalt Supply Indexation Factor has the meaning given to it in section 11.3.

Carriageway means all Lanes and Ramps in a single direction on the M5 East.

CPI means the ABS Consumer Price Index as defined in Catalogue 6401 table 1, All groups, Sydney.

Labour Price Indexation Factor has the meaning given to it in section 11.2.

LPI means the ABS Average Weekly Earnings, Catalogue 6302 table 11, Full Time Adult Persons Ordinary Time Earnings, New South Wales.

Quarterly Indexation Factor or **QIF** has the meaning given to it in section 11.1.

Ramp means each of the entry ramps to and exit ramps connecting the Sydney Road network and the M5 East.

Ramp Closure means any time where all lanes located on a Ramp are not Available.

Revision Period means:

- (a) the period of 12 months from the first day of the Term; and
- (b) each consecutive period of two years thereafter for the duration of the Term.

Annexure 1

MOBILISATION SERVICE PAYMENT SCHEDULE

The following schedule is for payment for the Service Provider's performance of the Mobilisation Services.

Table 1.1 – Fee for Mobilisation Services

Item	Description	Value (ex GST)
1.1	Engagement, induction and training of staff	
1.2	Inspection and assessment of M5 East	
1.3	Review of M5 East records	
1.4	Issue of M5 East Operation Manual	
1.5	Issue of M5 East Maintenance Manual	
1.6	Issue of M5 East Operation Plan	
1.7	Issue of M5 East Maintenance Plan	
1.8	Implementation of Integrated Contract Management System	
1.9	Implementation of Occupational Health and Safety System	
1.10	Implementation of Quality System	
1.11	Validation and implementation of Asset Management System	
1.12	Completion of supply agreements	
1.13	Completion of subcontract agreements	
1.14	Procurement of insurances	
1.15	Provision of facilities (other than RTA Facilities)	
1.16	Procurement of Service Provider's Plant and equipment	
1.17	Procurement of spares	
1.18	Specialist consultants	
1.19	Testing and sampling	
1.20	Staff costs	
1.21	Site overheads	
1.22	Off-site overheads	
1.23	Additional and/or balancing items required to complete the Mobilisation Services	
	TOTAL (excluding GST)	

Payment Constraints

1. With respect to any Item in Table 1.1, subject to paragraph 2, RTA will pay the Service Provider for progressive completion of the Item determined on a monthly basis having regard to the value of the Item and the proportion of work completed.
2. With respect to any Item in Table 1.1 which requires delivery of documentation, RTA is not obliged to pay the Service Provider any more than 90% of the value of the Item until all final versions of documentation relevant to that Item have:
 - (a) been submitted to RTA; and
 - (b) not been rejected by RTA.
3. **Service Provider's Hourly Rates:** The Service Provider's hourly rates for valuing adjustments to the Mobilisation Services arising from Variations are listed below. Rates include all overheads and margins. These rates will not be subject to rise and fall.

Table 1.2 Services Provider's Hourly Rates for Mobilisation Services

Category	Rate (\$/Hour) (ex GST)
Mobilisation Manager	
Maintenance/Operation Manager	
Engineer	
Supervisor	

4. Margins for Variations: For the purposes of valuing Variations under clause 8 of the Contract:
 - (a) is the total margin for on-site and off-site overheads (including supervision at foreman level and above) and profit applicable to the reasonable direct cost of the relevant work where the adjustment to the Mobilisation Services Sum is to be an increase; and
 - (b) is the total margin for overhead and profit applicable to the reasonable cost of the relevant work where the adjustment to the Mobilisation Services Contract Sum is to be a decrease.

For the purpose of this paragraph, 'direct cost' is the actual cost of plant, labour and materials exclusive of any margin.
5. Escalation: The rates, amounts and values in this Annexure 1 will not be subject to escalation.

Annexure 2

HANDOVER SERVICES PAYMENT SCHEDULE

The following schedule is for payment for the Service Provider's performance of the Handover Services.

Table 2.1 - Fee for Handover Services

Item	Description	Value (ex GST)
2.1	Provide operation and maintenance documentation and data required by the Contract	
2.2	Provide access to Maintenance Site for the purpose of inspections	
2.3	Training to RTA personnel or RTA nominees	
2.4	Additional and/or balancing items required to complete the Handover Services	
	TOTAL (excluding GST)	

Payment Constraints

- With respect to any Item in Table 2.1, RTA is not obliged to pay the Service Provider any more than 20% of the value of the Item until the Service Provider has provided all records relating to Item 2.1.
- With respect to Item 2.3 in Table 2.1, RTA is not obliged to pay the Service Provider more than 60% of the value of the Item until RTA or its nominees are safely operating the M5 East without intervention by the Service Provider.
- With respect to any Item in Table 2.1 which requires delivery of documentation and subject to paragraphs 1 and 2, RTA is not obliged to pay the Service Provider any more than 90% of the value of the Item until all final versions of documentation relevant to that Item have:
 - been submitted to RTA; and
 - not been rejected by RTA.
- Service Provider's Hourly Rates: The Service Provider's hourly rates for valuing adjustments to the Handover Services arising from Variations are listed below. Rates include all overheads and margins.

Table 2.2 Service Provider's Hourly Rates for Handover Services

Category	Rate (\$/Hour) (ex GST)
Handover Manager	
Maintenance/Operation Manager	
Engineer	
Supervisor	

5. Margins for Variations: For the purposes of valuing Variations under clause 8 of this Contract:

- (a) is the total margin for on-site and off-site overheads (including supervision at foreman level and above) and profit applicable to the reasonable direct cost of the relevant work where the adjustment to the Handover Services Sum is to be an increase; and
- (b) is the total margin for overhead and profit applicable to the reasonable cost of the relevant work where the adjustment to the Handover Services Contract Sum is to be a decrease.

For the purpose of this paragraph, 'direct cost' is the actual cost of plant, labour and materials exclusive of any margin.

6. Escalation:

The amounts calculated under this Annexure 2 (other than under paragraph 5) are subject to an adjustment for escalation on the following basis.

The Handover Services Payment (HSP_m) for a particular month is calculated as:

$$HSP_m = [BHSP_m \times (1 + (G \times LPIF_q) + (H \times QIF_q))] + VHSP_m$$

where

$BHSP_m$ = base Handover Services Payment calculated for a particular month in accordance with the above parts of this Annexure 2 (other than paragraph 5).

G = 0.9

$LPIF_q$ = Labour Price Indexation Factor for the quarter which incorporates the first day of the month for which the work is claimed.

H = 0.1

QIF_q = Quarterly Indexation Factor for the quarter which incorporates the first day of the month for which the work is claimed.

$VHSP_m$ = base Handover Services Payment calculated for a particular month in accordance with paragraph 5 of this Annexure 2.

Annexure 3

PAYMENT SCHEDULE FOR ADDITIONAL SERVICES, REPAIR WORK AND CORRECTIVE MAINTENANCE

The following schedule of prices is the payment to the Service Provider to undertake:

- (i) Additional Services, including repair of damage arising from a Force Majeure Event;
- (ii) Repair Work; and
- (iii) Corrective Maintenance on a Specified Asset Item pursuant to Section 5.5.4(e)(i) of the SSR,

if RTA elects to select this payment mechanism and directs the Service Provider accordingly.

3.1 Not Used

3.2 Competitive Procurement Schedule

Subject to paragraphs 3.3 and 3.4 below, the fixed margin set out in Table 3.1 below is for the Service Provider to competitively procure works or services required for the carrying out of Additional Services, including repair of damage arising from a Force Majeure Event, or Corrective Maintenance on a Specified Asset Item pursuant to Section 5.5.4(e)(i) of the SSR.

Table 3.1 – Margin to be applied to direct costs

Item	Description	Service Provider's margin
3.1	On-site and off-site overheads and margin for procurement and selection of suppliers and subcontractors, supervision, project management attendance, surveillance, submissions, approvals commissioning	of the direct cost submitted (up to \$50,000)
3.2	On-site and off-site overheads and margin for procurement and selection of suppliers and subcontractors, supervision, project management attendance, surveillance, submissions, approvals commissioning	of the direct cost submitted (from \$50,000 to \$200,000)
3.3	On-site and off-site overheads and margin for procurement and selection of suppliers and subcontractors, supervision, project management attendance, surveillance, submissions, approvals commissioning	of the direct cost submitted (from \$200,000 to \$500,000)
3.4	On-site and off-site overheads and margin for procurement and selection of suppliers and subcontractors, supervision, project management attendance, surveillance, submissions, approvals commissioning	of the direct cost submitted (from \$500,000 to \$1,000,000)

Item	Description	Service Provider's margin
3.5	On-site and off-site overheads and margin for procurement and selection of suppliers and subcontractors, supervision, project management attendance, surveillance, submissions, approvals commissioning	of the direct cost submitted (greater than \$1,000,000)

For the purpose of this paragraph, 'direct cost' is the actual cost of plant, labour and materials exclusive of any margin.

3.3 Service Provider's Rates

- (a) At RTA's discretion, as an alternative to or in combination with paragraph 3.2 above and subject to paragraph 3.4 below, RTA may direct the Service Provider to carry out Additional Services, including repair of damage arising from a Force Majeure Event, or Corrective Maintenance on a Specified Asset Item pursuant to Section 5.5.4(e)(i) of the SSR on the basis of the hourly rates listed in Tables 3.2 and 3.3 below and the terms of this paragraph 3.3.
- (b) Subject to paragraph 3.4 below, Repair Work will be undertaken on the basis of the hourly rates listed in Tables 3.2 and 3.3 below.
- (c) Rates include all overheads and margins.

Table 3.2 – Hourly Rates for labour

Category	Rate (\$/Hour) (ex GST)
Project Manager	
Engineer	
Foreman	
Technician/Fitter	
Labour	

Table 3.3 – Hourly Rates for Service Provider's Plant

Category	Rate (\$/Hour) (ex GST)
Utility Truck	
Truck	
EWP	
Tipper	
Vacuum Truck	

- (d) The fixed margin to be applied to subcontract costs, materials costs, external plant and equipment costs is

3.4 Service Provider's Fixed Fees

Where the Service Provider is required to undertake any of the activities listed in Table 3.4 below in order to carry out:

- (i) Additional Services, including repair of damage arising from a Force Majeure Event;

- (ii) Repair Work; or
- (iii) Corrective Maintenance on a Specified Asset Item pursuant to Section 5.5.4(e)(i) of the SSR,

the fee corresponding to that activity is as set out in Table 3.4.

The fees in Table 3.4 include all overheads and margins.

Table 3.4 – Fixed Fees

Item	Description	Duration of Closure	Fee per item (ex GST)
1(a)	Lane closure outside Tunnels, including opening to traffic at completion	12 hours	per closure
1(b)	Lane closure outside Tunnels, including opening to traffic at completion	8 hours	per closure
1(c)	Lane closure outside Tunnels, including opening to traffic at completion	4 hours	per closure
2(a)	Lane closure to Cooks River Tunnel, including opening to traffic at completion	12 hours	per closure
2(b)	Lane closure to Cooks River Tunnel, including opening to traffic at completion	8 hours	per closure
2(c)	Lane closure to Cooks River Tunnel, including opening to traffic at completion	4 hours	per closure
3(a)	Lane closure to Main Tunnel (between Princes Highway/Marsh Street and Bexley Road), including opening to traffic at completion	12 hours	per closure
3(b)	Lane closure to Main Tunnel (between Princes Highway/Marsh Street and Bexley Road), including opening to traffic at completion	8 hours	per closure
3(c)	Lane closure to Main Tunnel (between Princes Highway/Marsh Street and Bexley Road), including opening to traffic at completion	4 hours	per closure
4(a)	Eastbound Carriageway full closure, including opening to traffic at completion	12 hours	per closure
4(b)	Eastbound Carriageway full	8 hours	per closure

Item	Description	Duration of Closure	Fee per item (ex GST)
	closure, including opening to traffic at completion		
4(c)	Eastbound Carriageway full closure, including opening to traffic at completion	4 hours	per closure
5(a)	Westbound Carriageway full closure, including opening to traffic at completion	12 hours	per closure
5(b)	Westbound Carriageway full closure, including opening to traffic at completion	8 hours	per closure
5(c)	Westbound Carriageway full closure, including opening to traffic at completion	4 hours	per closure
6(a)	Motorway closure, including opening to traffic at completion	12 hours	per closure
6(b)	Motorway closure, including opening to traffic at completion	8 hours	per closure
6(c)	Motorway closure, including opening to traffic at completion	4 hours	per closure
7(a)	Single Ramp Closure, including opening to traffic at completion	12 hours	per closure
7(b)	Single Ramp Closure, including opening to traffic at completion	8 hours	per closure
7(c)	Single Ramp Closure, including opening to traffic at completion	4 hours	per closure

3.5 Escalation

The amounts calculated under this Annexure 3 (other than under paragraphs 3.2 and 3.3(d)) are subject to an adjustment for rise and fall on the following basis.

The Itemised Service Payment (ISP_m) for a particular month is calculated as:

$$ISP_m = [BISP_1 \times (1 + (I \times LPIF_q) + (J \times QIF_q))] + [BISP_2 \times (1 + LPIF_q)] + [BISP_3 \times (1 + QIF_q)] + BISP_4$$

where

$BISP_1$ = base Itemised Service Payment calculated for a particular month in accordance with paragraph 3.4 of this Annexure 3.

I = 0.65

$LPIF_q$ = Labour Price Indexation Factor for the quarter which incorporates the first day of the month for which the work is claimed.

- J = 0.35
- QIF_q = Quarterly Indexation Factor for the quarter which incorporates the first day of the month for which the work is claimed.
- $BISP_2$ = base Itemised Service Payment calculated for a particular month in accordance with Table 3.2 of paragraph 3.3 of this Annexure 3.
- $BISP_3$ = base Itemised Service Payment calculated for a particular month in accordance with Table 3.3 of paragraph 3.3 of this Annexure 3.
- $BISP_4$ = base Itemised Service Payment calculated for a particular month in accordance with paragraphs 3.2 and 3.3(d) of this Annexure 3.

Annexure 4

PAYMENT FOR PRESCRIBED WORKS

4.1 Variable Speed Limit Signs (VSLS)

This paragraph 4.1 of Annexure 4 covers the replacement of VSLSs in accordance with the Contract and Appendix 16 of the SSR.

The prices set out in Tables 4.1 and 4.3 include all overheads and margins.

Table 4.1 – VSLS Works – Design, supply, installation and commissioning of 37 VSLSs

Item	Description	Price (ex GST)
18	Supply Post Mounted Type D VSLS EXCLUDING structure	
2	Supply Portal Mounted Type D VSLS EXCLUDING structure	
12	Supply overhead gantry mounted Type D VSLS EXCLUDING structure	
5	Supply Cantilever mounted Type D VSLS EXCLUDING structure	
12	Supply Group Controller and Cabinet	
37	Install New VSLS	
12	Install New VSLS Group Controller	
1	Carry out site survey for Power and Comms	
1	Verify and Condition assessment of Current Structures and Gantries	
1	Modify and Provide Suitable Structure Design	
37	Disconnect, Remove and Dispose Existing VSLS	
1	Test (SAT), commissioning (Integration Testing) and connectivity	
1	Documentation (dwgs, as built, training and O & M Manuals)	
	TOTAL (excluding GST)	\$718,423.29

Table 4.2 – Not Used

Table 4.3 – VSLs Works – Replacement of support structures with new structures at the nominated locations

Item	Description	Price (ex GST)
1	Supply of Man Accessible VSLs Overhead Gantry 28m for 4 lanes@ 4340	
1	Supply of Man Accessible VSLs Overhead Gantry 23m for 4 lanes@ 11700	
1	Supply of Man Accessible VSLs Cantilever for Dual VSL @ 6100	
1	Supply of Man Accessible VSLs Cantilever for Single VSL @ 6280	
1	Installation of VSL Structure footing @4340,11700,6100,6280	
1	Erection of VSL Structure Various Locations	
1	Geo Testing and Design Structure (Spec: TSI-SP-011) including all accessories	
1	Provision of trenching, conduiting and cabling for Power and Comms	
1	Disassemble and Dispose of VSL Structure and Other material	
1	Documentation (dwgs, as built, training and O & M Manuals)	
	TOTAL (excluding GST)	\$993,023.28

- (a) Subject to subparagraph (b), RTA will pay the Service Provider on the basis of the value of the work completed each month.
- (b) The total price payable for each line item in Tables 4.1, 4.2 and 4.3 is limited to 80% until the work relevant to that line item is complete.
- (c) If RTA directs the Service Provider to undertake the Prescribed Works in respect of VSLs at a time after the date or period set out in the Contract for the carrying out of such works, the amounts calculated under this paragraph 4.1 of Annexure 4 are subject to an adjustment for rise and fall on the following basis.

The VSLs Payment ($VSLs_m$) for a particular month is calculated as:

$$VSLs_m = BVSLs_m \times (1 + (K \times LPIF_q)) + (L \times QIF_q)$$

where

BVSLs = the sum of the prices set out in Tables 4.1 to 4.3 for the Prescribed Works in respect of VSLs.

BVSLs_m = base monthly payment, being that part of BVSLs payable in accordance with the Prescribed Work Terms.

K = 0.65

$LPIF_q$ = Labour Price Indexation Factor for the quarter in which incorporates the first day of the period for which the work is claimed.

L = 0.35

QIF_q = Quarterly Indexation Factor for the quarter in which incorporates the first day of the period for which the work is claimed.

4.2 Pavement Wearing Course

This paragraph 4.2 of Annexure 4 is the payment for the replacement of the pavement wearing course in accordance with the Contract and Appendix 28 of the SSR.

The amounts in Tables 4.4A and 4.4B include all overheads and margins.

Table 4.4A – Indicative Pricing for Pavement Wearing Course

Item	Description	Value (ex GST)
1	Western section from King Georges Road to Bexley Road Tunnel Portal	
2	Eastern section from Marsh Street Portal to General Holmes Drive (excluding West Botany Street)	
3	Main Tunnel and Ramps	
4	Cooks River Tunnel	
5	West Botany Street - Entry Ramp (Option 1)	
6	West Botany Street - Entry Ramp (Option 2)	
	TOTAL (excluding GST) (BPWC)	\$9,700,674.00

Table 4.4B – Rates for Pavement Wearing Course

Pay Items	Description	Unit	Rate (\$/m2)	Comments
R101P4.1	Milling of DG in Tunnels @ 30mm	m2		
R101P4.2	Milling of OG in Mainline West @ 30mm	m2		
R101P4.3	Milling of DG in Heavy Vehicle Bays @ 50mm	m2		
R101P4.4	Milling of OG Eastern Section between Tunnels @30-50mm	m2		
	Milling of OG/DG on Ramps@30-50mm	m2		
R101P4.6	Milling of delaminated area on	m2		

	OG/DG@ 20mm			
R116 Asphalt		Unit	Rate (\$/t)	Comments
R116P2.1	S/Del AC7 for repairs to delaminated areas	m2		Tack Coat included in rates.
R116P5.2	SDL AC10 Slag A15E @ 30mm in Eastbound/Westbound Tunnels	m2		Tack Coat included in rates
R116P7.2	SDL OG10 A15E @ 30mm on Western Mainline	m2		Tack Coat included in rates
R116P4.3	SDL AC14 A15E @ 50mm in Heavy Vehicle Bays	m2		Tack Coat included in rates
R116P7.2	SDL OG10 A15E @ 30mm & AC14A15E @ 50mm in Eastern Mainline between Tunnels	m2		Tack Coat included in rates
R116P4.3	SDL AC14 A15E on ramps	m2		Tack Coat included in rates
R116P5.2	SDL AC10 Slag A15E on ramps	m2		Tack Coat included in rates
R116P7.2	SDL OG10 A15E on ramps	m2		Tack Coat included in rates
R141 Pavement Marking		Unit	Rate	Comments
R141P3	E2 Edge Line Thermoplastic	m		
R141P3	E3 Edge Line Thermoplastic	m		
R141P3	E4 Edge Line Thermoplastic	m		
R141P3	C1 Cut Line Thermoplastic	m		
R141P3	L1 Lane Line Thermoplastic	m		
R141P3	L3 Lane Line Thermoplastic	m		
R141P3	T1 Turn Line Thermoplastic	m		
R141P10	L1 Profile Thermoplastic (L2 audio tactile)	m		
R141P5	Solid Chevrons Thermoplastic	m2		Thermoplastic option is /m2

R141P5	E6 Gore Thermoplastic	m2		Thermoplastic option is /m3
R141P5	Bicycle 1800mm Thermoplastic	no		
R141P5	Keep Clear 2.5m Thermoplastic	no		
R141P5	UA2 Turn Arrow Preformed Thermoplastic	no		
R141P5	UA3 Turn Arrow Preformed Thermoplastic	no		
R141P5	UA4 Turn/Direct Preformed Thermoplastic	no		
R141P5	UA5 Merge Arrow Preformed Thermoplastic	no		
R141P5	2 digit Speed Numerals Thermoplastic 4m Preformed	no		
R141P5	Digits of 4000mm Pave Text Thermoplastic Preformed	no		
R141P5	TF300 Thermoplastic Preformed	m		
R141P5	Marked Foot Crossing Bars Thermoplastic Preformed	no		
R141P	Survey of Existing Line Marking	no		
R141P	Set out of new Line Marking	no		
R142 Raised Pavement Markers			Unit	
R142P2.1	Installation of Retroreflective Raised Pavement Markers	no		
R142P2.2	Installation of white non reflective RPM buttons	no		
R106 Sprayed Bituminous Surfacing		Unit	Rate (\$/m2)	Comments

R106P1	Spray QDP Prime	m2		West Botany Street On Ramp
G10 Traffic Control		total		Pro rata basis
App28.1.6	Appendix 28 Section 1.6 Traffic Signal Loops	total		
App28.1.7	Appendix 28 Section 1.7 General Traffic Loops	total		
App28.1.8	Appendix 28 Section 1.8 Speed Camera Locations	total		
App28.1.9	Appendix 28 Section 1.9 WIMS	total		
App28.1.10	Appendix 28 Section 1.10 Overheight Detector Loops	total		
App28.1.11	Ramp metering at Kingsgrove Road is included above in Appendix 28 Section 1.6			

- (a) Subject to subparagraph (b) below, the Service Provider will be paid on a pro-rata basis to the total quantities or on the basis of the value of the work completed each month (as applicable) in accordance with the rates set out in Table 4.4B.
- (b) The total paid to the Service Provider under paragraph (a) in relation to each line item in Table 4.4A will not exceed 90% of the total value for that line item set out in Table 4.4A until the work relevant to that line item is complete and complies with the requirements of Appendix 28 of the SSR and all records certifying compliance are submitted to RTA.
- (c) If RTA directs the Service Provider to undertake the Prescribed Works in respect of the pavement wearing course at a time after the date or period set out in the Contract for the carrying out of such works, the amounts calculated under this paragraph 4.2 of Annexure 4 are subject to an adjustment for rise and fall on the following basis.

The Pavement Wearing Course Payment (PWC_m) for a particular month is calculated as:

$$PWC_m = BPWC_m \times (1 + (M \times LPIF_q) + (N \times ASIF_q))$$

where

$BPWC_m$ = base monthly payment, being that part of BPWC payable in accordance with the Prescribed Work Terms.

M = 0.65

$LPIF_q$ = Labour Price Indexation Factor for the quarter in which incorporates the first day of the period for which the work is claimed.

N = 0.35

ASIF_q = Asphalt Supply Indexation Factor for the quarter in which incorporates the first day of the period for which the work is claimed.

Annexure 5

CALCULATION OF THE PERIODIC SERVICE PAYMENT

- (a) The Operation Services component of the Periodic Service Payment for each month during the Term is to be calculated by reference to column (a) in Table 5.1 below and the principles set out in paragraph (d).
- (b) The Maintenance Services component of the Periodic Services Payment for each month during the Term is to be calculated by reference to column (b) in Table 5.1 below and the principles set out in paragraph (d).
- (c) The Management Services component of the Periodic Services Payment for each month during the Term is to be calculated by reference to column (c) in Table 5.1 below and the principles set out in paragraph (d).
- (d) If it is necessary to calculate the Periodic Service Payment for any part or incomplete month in the Term, for the purposes of that calculation the Operation Services, Maintenance Services and Management Services component of the Periodic Services Payment for that month set out in Table 5.1 below will be prorated for the period of that month within the Term.

Table 5.1 –Periodic Service Payment Components

Year	Quarter	Month	Date From	Date To	BOP _m (ex GST)	BMA _m (ex GST)	BMS _m (ex GST)
					Column (a)	Column (b)	Column (c)
Year 1	1	1	9.12.11	31.12.11			
	1	2	1.1.12	31.1.12			
	1	3	1.2.12	29.2.12			
	2	4	1.3.12	31.3.12			
	2	5	1.4.12	30.4.12			
	2	6	1.5.12	31.5.12			
	3	7	1.6.12	30.6.12			
	3	8	1.7.12	31.7.12			
	3	9	1.8.12	31.8.12			
	4	10	1.9.12	30.9.12			
	4	11	1.10.12	31.10.12			
	4	12	1.11.12	30.11.12			

Year	Quarter	Month	Date From	Date To	BOP _m (ex GST)	BMA _m (ex GST)	BMS _m (ex GST)
					Column (a)	Column (b)	Column (c)
Year 2	1	1	1.12.12	31.12.12			
	1	2	1.1.13	31.1.13			
	1	3	1.2.13	28.2.13			
	2	4	1.3.13	31.3.13			
	2	5	1.4.13	30.4.13			
	2	6	1.5.13	31.5.13			
	3	7	1.6.13	30.6.13			
	3	8	1.7.13	31.7.13			
	3	9	1.8.13	31.8.13			
	4	10	1.9.13	30.9.13			
	4	11	1.10.13	31.10.13			
	4	12	1.11.13	30.11.13			
Year 3	1	1	1.12.13	31.12.13			
	1	2	1.1.14	31.1.14			
	1	3	1.2.14	28.2.14			
	2	4	1.3.14	31.3.14			
	2	5	1.4.14	30.4.14			
	2	6	1.5.14	31.5.14			
	3	7	1.6.14	30.6.14			
	3	8	1.7.14	31.7.14			
	3	9	1.8.14	31.8.14			
	4	10	1.9.14	30.9.14			
	4	11	1.10.14	31.10.14			
	4	12	1.11.14	30.11.14			

Year	Quarter	Month	Date From	Date To	BOP _m (ex GST)	BMA _m (ex GST)	BMS _m (ex GST)
					Column (a)	Column (b)	Column (c)
Year 4	1	1	1.12.14	31.12.14			
	1	2	1.1.15	31.1.15			
	1	3	1.2.15	28.2.15			
	2	4	1.3.15	31.3.15			
	2	5	1.4.15	30.4.15			
	2	6	1.5.15	31.5.15			
	3	7	1.6.15	30.6.15			
	3	8	1.7.15	31.7.15			
	3	9	1.8.15	31.8.15			
	4	10	1.9.15	30.9.15			
	4	11	1.10.15	31.10.15			
	4	12	1.11.15	30.11.15			
Year 5	1	1	1.12.15	31.12.15			
	1	2	1.1.16	31.1.16			
	1	3	1.2.16	29.2.16			
	2	4	1.3.16	31.3.16			
	2	5	1.4.16	30.4.16			
	2	6	1.5.16	31.5.16			
	3	7	1.6.16	30.6.16			
	3	8	1.7.16	31.7.16			
	3	9	1.8.16	31.8.16			
	4	10	1.9.16	30.9.16			
	4	11	1.10.16	31.10.16			
	4	12	1.11.16	30.11.16			

Year	Quarter	Month	Date From	Date To	BOP _m (ex GST)	BMA _m (ex GST)	BMS _m (ex GST)
					Column (a)	Column (b)	Column (c)
Year 6	1	1	1.12.16	31.12.16			
	1	2	1.1.17	31.1.17			
	1	3	1.2.17	28.2.17			
	2	4	1.3.17	31.3.17			
	2	5	1.4.17	30.4.17			
	2	6	1.5.17	31.5.17			
	3	7	1.6.17	30.6.17			
	3	8	1.7.17	31.7.17			
	3	9	1.8.17	31.8.17			
	4	10	1.9.17	30.9.17			
	4	11	1.10.17	31.10.17			
	4	12	1.11.17	30.11.17			
Year 7	1	1	1.12.17	31.12.17			
	1	2	1.1.18	31.1.18			
	1	3	1.2.18	28.2.18			
	2	4	1.3.18	31.3.18			
	2	5	1.4.18	30.4.18			
	2	6	1.5.18	31.5.18			
	3	7	1.6.18	30.6.18			
	3	8	1.7.18	31.7.18			
	3	9	1.8.18	31.8.18			
	4	10	1.9.18	30.9.18			
	4	11	1.10.18	31.10.18			
	4	12	1.11.18	30.11.18			

Year	Quarter	Month	Date From	Date To	BOP _m (ex GST)	BMA _m (ex GST)	BMS _m (ex GST)
					Column (a)	Column (b)	Column (c)
Year 8	1	1	1.12.18	31.12.18			
	1	2	1.1.19	31.1.19			
	1	3	1.2.19	28.2.19			
	2	4	1.3.19	31.3.19			
	2	5	1.4.19	30.4.19			
	2	6	1.5.19	31.5.19			
	3	7	1.6.19	30.6.19			
	3	8	1.7.19	31.7.19			
	3	9	1.8.19	31.8.19			
	4	10	1.9.19	30.9.19			
	4	11	1.10.19	31.10.19			
	4	12	1.11.19	30.11.19			
Year 9	1	1	1.12.19	31.12.19			
	1	2	1.1.20	31.1.20			
	1	3	1.2.20	29.2.20			
	2	4	1.3.20	31.3.20			
	2	5	1.4.20	30.4.20			
	2	6	1.5.20	31.5.20			
	3	7	1.6.20	30.6.20			
	3	8	1.7.20	31.7.20			
	3	9	1.8.20	31.8.20			
	4	10	1.9.20	30.9.20			
	4	11	1.10.20	31.10.20			
	4	12	1.11.20	30.11.20			

Year	Quarter	Month	Date From	Date To	BOP _m (ex GST)	BMA _m (ex GST)	BMS _m (ex GST)
					Column (a)	Column (b)	Column (c)
Year 10	1	1	1.12.20	31.12.20			
	1	2	1.1.21	31.1.21			
	1	3	1.2.21	28.2.21			
	2	4	1.3.21	31.3.21			
	2	5	1.4.21	30.4.21			
	2	6	1.5.21	31.5.21			
	3	7	1.6.21	30.6.21			
	3	8	1.7.21	31.7.21			
	3	9	1.8.21	31.8.21			
	4	10	1.9.21	30.9.21			
	4	11	1.10.21	31.10.21			
	4	12	1.11.21	30.11.21			
	4	1	1.12.21	8.12.21			

Annexure 6

CALCULATION OF AVAILABILITY ABATEMENT FOR EACH AVAILABILITY EVENT

- The value of each Availability Abatement (AA_{AE}) is to be calculated in accordance with the following formula.

$$AA_{AE} = BAA_{AE} \times (1 + QIF_q)$$

where

BAA_{AE} = base Availability Abatement for the relevant Availability Event.

QIF_q = Quarterly Indexation Factor for the quarter in which the Abatement Event occurred.

- The base Availability Abatement amounts for Availability Events are as follows:

Table 6.1 Base Availability Abatement amounts

Availability Event		Base Availability Abatement (BAA_{AE}) (ex GST)
Time	Description	
Eastbound on the M5 East, the periods between 4.30am to 10am and 3pm to 9.30pm on each weekday, excluding public holidays.	The design number of traffic Lanes remains completely available on a Carriageway, however the posted speed at any point on the Carriageway is up to and including 20km per hour less than the Posted Speed Limits in Appendix 10 of the SSR.	per hour or part thereof
Westbound on the M5 East, the periods between 5am to 10am and 3pm to 10pm on each weekday, excluding public holidays.	The design number of traffic Lanes remains completely available on a Carriageway, however the posted speed at any point on the Carriageway is more than 20km per hour less than the Posted Speed Limits in Appendix 10 of the SSR.	per hour or part thereof
	One Lane is closed at any point on a Carriageway.	per hour or part thereof
	A Carriageway is completely closed at any point on that Carriageway.	per hour or part thereof
	Both Carriageways are completely closed at any point on each Carriageway.	per hour or part thereof
	Closure of a Ramp only.	per hour or part thereof

Availability Event		Base Availability Abatement (BAA _{AE}) (ex GST)
Time	Description	
<p>Eastbound on the M5 East, the periods between:</p> <p>(a) 10am to 3pm on each weekday;</p> <p>(b) 9.30pm on Friday night to 9.30pm on Sunday night; and</p> <p>(c) 9.30pm on the day before a public holiday to 4.30am on the day following that public holiday.</p>	<p>The design number of traffic Lanes remains completely available on a Carriageway, however the posted speed at any point on the Carriageway is up to and including 20km per hour less than the Posted Speed Limits in Appendix 10 of the SSR.</p> <p>The design number of traffic Lanes remains completely available on a Carriageway, however the posted speed at any point on the Carriageway is more than 20km per hour less than the Posted Speed Limits in Appendix 10 of the SSR.</p>	<p>per hour or part thereof</p> <p>per hour or part thereof</p>
<p>Westbound on the M5 East, the period between:</p> <p>(a) 10am to 3pm on each weekday;</p> <p>(b) 10pm on Friday night to 10pm on Sunday night; and</p> <p>(c) 10pm on the day before a public holiday to 5am on the day following that public holiday.</p>	<p>One Lane is closed at any point on a Carriageway.</p> <p>A Carriageway is completely closed at any point on that Carriageway.</p> <p>Both Carriageways are completely closed at any point on each Carriageway.</p> <p>Closure of a Ramp only.</p>	<p>per hour or part thereof</p> <p>per hour or part thereof</p> <p>per hour or part thereof</p> <p>per hour or part thereof</p>
<p>Eastbound on the M5 East, on Sunday, Monday, Tuesday, Wednesday and Thursday the period between 9.30pm to 5am, excluding public holidays.</p> <p>Westbound on the M5 East, on Sunday, Monday, Tuesday, Wednesday and Thursday the period between 10pm to 5am, excluding public holidays.</p>	<p>The design number of traffic Lanes remains completely available on a Carriageway, however the posted speed at any point on the Carriageway is up to and including 20km per hour less than the Posted Speed Limits in Appendix 10 of the SSR.</p> <p>The design number of traffic Lanes remains completely available on a Carriageway, however the posted speed at any point on the Carriageway is more than 20km per hour less than the Posted Speed Limits in Appendix 10 of the SSR.</p> <p>One Lane is closed at any point on a Carriageway.</p>	<p>per half hour or part thereof</p> <p>per half hour or part thereof</p> <p>per half hour or part thereof</p>

Availability Event		Base Availability Abatement (BAA _{AE}) (ex GST)
Time	Description	
	A Carriageway is completely closed at any point on that Carriageway.	per half hour or part thereof
	Both Carriageways are completely closed at any point on each Carriageway.	per half hour or part thereof
	Closure of a Ramp only.	per half hour or part thereof

3. For the period from the Commencement Date to 29 February 2012, for any Availability Events arising from the carrying out of the Maintenance Services (other than Prescribed Works) the base Availability Abatement will be 25% of the value set out in Table 6.1 above.

Annexure 7

CALCULATION OF QUARTERLY SERVICE PAYMENT

1. The value of each Quarterly Service Payment (QSP_Q) (exclusive of GST) is to be calculated in accordance with the following formula:

$$QSP_Q = QSP_A \times (1 + QIF_q)$$

where

QSP_A = Quarterly Service Payment for the relevant Quarter calculated in accordance with paragraphs 3 to 6 below.

QIF_q = Quarterly Indexation Factor for the relevant Quarter.

2. The Performance Criteria and Performance Requirements are as follows:

Table 7.1 - Performance Criteria, Performance Requirements and the calculation of the Quarterly Service Payment

Category	Performance Criteria	Performance Requirement	Percentage of Quarterly Service Payment
1. Reporting Performance	a) Reports are complete, contain no errors or omissions and are issued as required by Appendix 24 of the SSR	No more than three failures in the Quarter; and no failure in the Quarter which results in: (a) a non-compliance with the Planning Minister's Approval; (b) RTA communicating incorrect information to the Government, the public or other parties; or (c) RTA takes action and/or incurs costs as a consequence of the incorrect information.	30 % (for compliance with Performance Criteria 1(a), 1(b) and 1(c))

Category	Performance Criteria	Performance Requirement	Percentage of Quarterly Service Payment
	b) Incident reports complete and issued as required by Appendix 24 of the SSR.	No more than three failures in the Quarter	
	c) Service Provider notifies RTA of any event resulting in an Availability Event and/or non-compliance with the Planning Minister's Approval within thirty minutes of it being known to the Service Provider.	No failure in the Quarter	
2. Management Performance	The Service Provider's Key Personnel and any Subcontractor or Subcontractors attend meetings of the Management Team as required by Clause 29.	No failure in the Quarter	10 %
3. Asset Management Performance	The AMS is complete, contains no errors or omissions and is updated within one Business Day of: <ul style="list-style-type: none"> (a) an Incident occurring; (b) identification of an unexpected failure of, or defect to, an Asset Item or Asset Sub-Item; (c) Asset Item or Asset Sub-Item condition being inspected or assessed; or (d) work being completed to an Asset Item or Asset Sub-Item. 	No more than six failures in any Quarter; and no failure in the Quarter which results in: <ul style="list-style-type: none"> (a) a non-compliance with the Planning Minister's Approval; (b) RTA communicating incorrect information to the Government, the public or other parties; or (c) RTA takes action and/or incurs costs as a consequence of the incorrect AMS. 	25 %
4. Routine Maintenance	Routine Maintenance in accordance with the Maintenance Plan	No failure in the Quarter	15 %

Category	Performance Criteria	Performance Requirement	Percentage of Quarterly Service Payment
5. Maintenance Response Performance	Maintenance intervention and response times in accordance with the Maintenance Standards	No more than two failures in the Quarter	20 %

3. RTA will calculate the Quarterly Service Payment (QSP_A) for each Quarter in accordance with the following formula:

$$QSP_A = \left\{ \left[\sum_{i=1}^5 (PC_i \times W_i) \right] \times (QSP_{AR}) \right\} \times M$$

Where:

QSP_A = Quarterly Service Payment (QSP_A) for the relevant Quarter

PC_i = A value of:

- 1 for each Performance Criteria for which the Service Provider has achieved the associated Performance Requirement in the relevant Quarter; or
- 0 for each Performance Criteria for which the Service Provider has not achieved the associated Performance Requirement in the relevant Quarter

W_i = The percentage of the Quarterly Service Payment associated with each Performance Criteria for which the Service Provider has achieved the relevant Performance Requirement for the relevant Quarter, as set out in Table 7.1

QSP_{AR} = The at risk amount for the relevant Quarter calculated in accordance with the following formula:

$$QSP_{AR} = ARA \times (1 + QIF_q)$$

where

ARA =

QIF_q = Quarterly Indexation Factor for the relevant Quarter

M = Where paragraph 5 below apply, a value calculated in accordance with those paragraphs, otherwise 1

4. (Performance during two or more Quarters): Where the same event or circumstance extends over two (or more) Quarters such that the Service Provider fails to achieve the Performance Requirement for a Performance Criteria in two or more Quarters, the Service Provider will have failed to achieve the Performance Requirement for that Performance Criteria in each of those Quarters.

5. (Modifier for repeated failure of a Performance Criteria: successive Quarters): Where the Service Provider fails to achieve the Performance Requirement for a Performance Criteria in:
- a) two successive Quarters, in the second Quarter $M = 0.75$;
 - b) three successive Quarters, in the third Quarter $M = 0.25$;
 - c) four or more successive Quarters, in the fourth Quarter and all subsequent Quarters until the Service Provider achieves the Performance Requirement for the relevant Performance Criteria, $M = 0$;
 - d) two Quarters out of three successive Quarters, in the third Quarter $M = 0.5$; and
 - e) three Quarters out of six successive Quarters, in the sixth Quarter $M = 0.5$.

If two or more of the failures set out in paragraphs 5(a) to (e) apply to a Performance Criteria, M will have the lower of the values determined under paragraphs 5(a) to (e).

If the Service Provider fails to achieve the Performance Requirement in more than one Performance Criteria, M will have the lower of the values determined under paragraphs 5(a) to (e) for each failure to achieve the Performance Requirement for a Performance Criteria.

6. Set out below is a worked example.

In Quarter 3 assume the following:

- a) The Service Provider has failed to meet the Performance Requirement for each of Performance Criteria 1(a) and 2;
- b) The percentage of the at risk amount (QSP_{AR}) attributable to Performance Criteria 1(a) and 2 is 40%, which means:

$$\sum(PC_i \times W_i) = 0.6;$$

- c) The Service Provider has failed to meet the Performance Requirement for Performance Criteria 1(a) for three successive Quarters (which means $M = 0.25$);
- d) The Service Provider has failed to meet the Performance Requirement for Performance Criteria 2 for two successive Quarters (which means $M = 0.75$);
- e) M will be the lower of the values calculated in accordance with paragraph 5 for each failure to achieve the Performance Requirement for a Performance Criteria. In this case, $M = 0.25$; and
- f) $QSP_{AR} = \$500,000$.

Therefore,

$$\begin{aligned} \text{QSP}_{\text{AR}} &= (0.6 \times \$500,000) \times 0.25 \\ &= \$75,000 \end{aligned}$$

7. To the extent that any failure by the Service Provider to achieve a Performance Requirement for a Performance Criteria is attributable to:
- a) a Force Majeure Event;
 - b) an Excepted Risk; or
 - c) a breach of the Contract by RTA,
- such failure will not be considered by RTA in calculation of the Quarterly Service Payment (QSP_A).
8. The detailed definition, application and measurement of the Performance Requirements will be approved by the Contract Review Group.

Annexure 8

PAYMENT FOR SPECIFIED ASSET ITEMS

Payment for Specified Asset Items Schedule

The rates in Table 8.1 below are inclusive of all related activities and costs associated with the described Replacement and Refurbishment of the relevant Specified Asset Item, including traffic management, craneage, hoisting, safety, fire proofing, testing, commissioning, disposal, fees, overheads, preliminaries and margins.

Table 8.1 – Rates for Specified Asset Item

Item	Description	Rate per item (ex GST)
1(a)	Removal and replacement of jet fan with refurbished jet fan	
1(b)	Removal and replacement of jet fan with new jet fan	
2(a) (i)	Removal and replacement of Western crossover axial fan (type CFN 201, 202 and 203) with refurbished axial fan	
2(a) (ii)	Removal and replacement of Western crossover axial fan (type CFN 201, 202 and 203) with new axial fan	
2(b) (i)	Removal and replacement of eastern crossover axial fan (type CFN 101, 102 and 103) with refurbished axial fan	
2(b) (ii)	Removal and replacement of eastern crossover axial fan (type CFN 101, 102 and 103) with new axial fan	
2(c) (i)	Removal and replacement of Duff Street supply axial fan (type SFN 061, 062, 063 and 064) with refurbished axial fan	
2(c) (ii)	Removal and replacement of Duff Street supply axial fan (type SFN 061, 062, 063 and 064) with new axial fan	
2(d) (i)	Removal and replacement of Turella Exhaust axial fan in upper tier (type EFN 051, 052, 053 and 054) with refurbished axial fan	
2(d) (ii)	Removal and replacement of Turella Exhaust axial fan in upper tier (type EFN 051, 052, 053 and 054) with new axial fan	
2(e) (i)	Removal and replacement of Turella Exhaust axial fan in lower tier (type EFN 055, 056, 057 and 058) with refurbished axial fan	
2(e) (ii)	Removal and replacement of Turella Exhaust axial fan in lower tier (type EFN 055, 056, 057 and 058) with new axial fan	

Item	Description	Rate per item (ex GST)
3(a)	Removal and replacement of variable message sign components with refurbished variable message sign components	
3(b)	Removal and replacement of variable message sign components with new variable message sign components	
4(a)	Removal and replacement of a tunnel wall panel, including fascia strips	
4(b)	Removal and replacement of panel supports (per linear metre)	

Escalation

The amounts calculated under this Annexure 8 are part of the Itemised Service Payment for a particular month and are subject to an adjustment for rise and fall on the following basis.

The Itemised Service Payment (ASP_m) for a particular month is calculated as:

$$ASP_m = BASP_m \times (1 + (P \times LPIF_q) + (Q \times QIF_q))$$

where

$BASP_m$ = base Itemised Service Payment calculated for a particular month in accordance with this Annexure 8.

P = 0.65

$LPIF_q$ = Labour Price Indexation Factor for the quarter which incorporates the first day of the month for which the work is claimed.

Q = 0.35

QIF_q = Quarterly Indexation Factor for the quarter which incorporates the first day of the month for which the work is claimed.

Note: RTA may direct the Service Provider to price the recommended Replacement and Refurbishment of Specified Asset Items in accordance with Annexure 3 rather than in accordance with Annexure 8.

Annexure 9

OPERATION AND MAINTENANCE OF AIR FILTRATION PLANT

Operation and Maintenance of Air Filtration Plant

- (a) The AFP component for each relevant month during the Term is to be calculated by reference to Table 9.1 below and the principles set out in paragraphs (b) and (c).
- (b) If it is necessary to calculate the $BAFP_m$ component for any part or incomplete month in the Term, for the purposes of that calculation the $BAFP_m$ component for that month set out in Table 9.1 below will be prorated for the period of that month within the Term.
- (c) The AFP component (AFP_m) is calculated as follows:

$$AFP_m = BAFP_m \times (1 + (R \times LPIF_q) + (S \times QIF_q))$$

where:

$BAFP_m$ = Base AFP component for the relevant month, as set out in Table 9.1 in Annexure 9

R = 0.65

$LPIF_q$ = Labour Price Indexation Factor for the relevant Quarter

S = 0.35

QIF_q = Quarterly Indexation Factor for the relevant Quarter

Table 9.1 Base AFP Component

Year	Quarter	Month	Date From	Date To	$BAFP_m$ (ex GST)
Year 1	1	1	9.12.11	31.12.11	
	1	2	1.1.12	31.1.12	
	1	3	1.2.12	29.2.12	
	2	4	1.3.12	31.3.12	
	2	5	1.4.12	30.4.12	
	2	6	1.5.12	31.5.12	
	3	7	1.6.12	30.6.12	
	3	8	1.7.12	31.7.12	
	3	9	1.8.12	31.8.12	
	4	10	1.9.12	30.9.12	

Year	Quarter	Month	Date From	Date To	BAFP _m (ex GST)
	4	11	1.10.12	31.10.12	
	4	12	1.11.12	30.11.12	
Year 2	1	1	1.12.12	31.12.12	
	1	2	1.1.13	31.1.13	
	1	3	1.2.13	28.2.13	
	2	4	1.3.13	31.3.13	
	2	5	1.4.13	30.4.13	
	2	6	1.5.13	31.5.13	
	3	7	1.6.13	30.6.13	
	3	8	1.7.13	31.7.13	
	3	9	1.8.13	31.8.13	
	4	10	1.9.13	30.9.13	
	4	11	1.10.13	31.10.13	
	4	12	1.11.13	30.11.13	
Year 3	1	1	1.12.13	31.12.13	
	1	2	1.1.14	31.1.14	
	1	3	1.2.14	28.2.14	
	2	4	1.3.14	31.3.14	
	2	5	1.4.14	30.4.14	
	2	6	1.5.14	31.5.14	
	3	7	1.6.14	30.6.14	
	3	8	1.7.14	31.7.14	
	3	9	1.8.14	31.8.14	
	4	10	1.9.14	30.9.14	
	4	11	1.10.14	31.10.14	
	4	12	1.11.14	30.11.14	
Year 4	1	1	1.12.14	31.12.14	
	1	2	1.1.15	31.1.15	
	1	3	1.2.15	28.2.15	

Year	Quarter	Month	Date From	Date To	BAFP _m (ex GST)
	2	4	1.3.15	31.3.15	
	2	5	1.4.15	30.4.15	
	2	6	1.5.15	31.5.15	
	3	7	1.6.15	30.6.15	
	3	8	1.7.15	31.7.15	
	3	9	1.8.15	31.8.15	
	4	10	1.9.15	30.9.15	
	4	11	1.10.15	31.10.15	
	4	12	1.11.15	30.11.15	
Year 5	1	1	1.12.15	31.12.15	
	1	2	1.1.16	31.1.16	
	1	3	1.2.16	29.2.16	
	2	4	1.3.16	31.3.16	
	2	5	1.4.16	30.4.16	
	2	6	1.5.16	31.5.16	
	3	7	1.6.16	30.6.16	
	3	8	1.7.16	31.7.16	
	3	9	1.8.16	31.8.16	
	4	10	1.9.16	30.9.16	
	4	11	1.10.16	31.10.16	
	4	12	1.11.16	30.11.16	
Year 6	1	1	1.12.16	31.12.16	
	1	2	1.1.17	31.1.17	
	1	3	1.2.17	28.2.17	
	2	4	1.3.17	31.3.17	
	2	5	1.4.17	30.4.17	
	2	6	1.5.17	31.5.17	
	3	7	1.6.17	30.6.17	
	3	8	1.7.17	31.7.17	

Year	Quarter	Month	Date From	Date To	BAFP _m (ex GST)
	3	9	1.8.17	31.8.17	
	4	10	1.9.17	30.9.17	
	4	11	1.10.17	31.10.17	
	4	12	1.11.17	30.11.17	
Year 7	1	1	1.12.17	31.12.17	
	1	2	1.1.18	31.1.18	
	1	3	1.2.18	28.2.18	
	2	4	1.3.18	31.3.18	
	2	5	1.4.18	30.4.18	
	2	6	1.5.18	31.5.18	
	3	7	1.6.18	30.6.18	
	3	8	1.7.18	31.7.18	
	3	9	1.8.18	31.8.18	
	4	10	1.9.18	30.9.18	
	4	11	1.10.18	31.10.18	
	4	12	1.11.18	30.11.18	
Year 8	1	1	1.12.18	31.12.18	
	1	2	1.1.19	31.1.19	
	1	3	1.2.19	28.2.19	
	2	4	1.3.19	31.3.19	
	2	5	1.4.19	30.4.19	
	2	6	1.5.19	31.5.19	
	3	7	1.6.19	30.6.19	
	3	8	1.7.19	31.7.19	
	3	9	1.8.19	31.8.19	
	4	10	1.9.19	30.9.19	
	4	11	1.10.19	31.10.19	
	4	12	1.11.19	30.11.19	
Year 9	1	1	1.12.19	31.12.19	

Year	Quarter	Month	Date From	Date To	BAFP_m (ex GST)
	1	2	1.1.20	31.1.20	
	1	3	1.2.20	29.2.20	
	2	4	1.3.20	31.3.20	
	2	5	1.4.20	30.4.20	
	2	6	1.5.20	31.5.20	
	3	7	1.6.20	30.6.20	
	3	8	1.7.20	31.7.20	
	3	9	1.8.20	31.8.20	
	4	10	1.9.20	30.9.20	
	4	11	1.10.20	31.10.20	
	4	12	1.11.20	30.11.20	
Year 10	1	1	1.12.20	31.12.20	
	1	2	1.1.21	31.1.21	
	1	3	1.2.21	28.2.21	
	2	4	1.3.21	31.3.21	
	2	5	1.4.21	30.4.21	
	2	6	1.5.21	31.5.21	
	3	7	1.6.21	30.6.21	
	3	8	1.7.21	31.7.21	
	3	9	1.8.21	31.8.21	
	4	10	1.9.21	30.9.21	
	4	11	1.10.21	31.10.21	
	4	12	1.11.21	30.11.21	
	4	1	1.12.21	8.12.21	

Schedule 5

STATUTORY DECLARATION

RTA Form No 592 (Modified)

Schedule

Statutory Declaration

I, _____
of _____

Insert name of
Declarant

_____ do solemnly and
sincerely declare that:

Insert address

1. I am a representative of _____ ("Service
Provider") in the Office Bearer capacity of _____

Insert name of
Contractor and ABN if
applicable

2. The Service Provider is a party to an operation and maintenance contract with the
Roads & Traffic Authority in respect of the M5 East Motorway ("Contract").

Insert position title of
Declarant

3. Attached to and forming part of this declaration is a Subcontractor's Statement
given by the Service Provider in its capacity as 'Subcontractor' (as that term is
defined in the Workers Compensation Act 1987, Pay-roll Tax Act 2007 and
Industrial Relations Act 1996) which is a written statement:

Insert name of
Contract

- a. under the Workers Compensation Act 1987, section 175B, in the form and
providing the detail required by that legislation;
- b. under the Pay-roll Tax Act 2007, Schedule 2 Part 5, section 18, in the form
and providing the detail required by that legislation; and
- c. under the Industrial Relations Act 1996, section 127, in the form and
providing the detail required by that legislation.

4. I personally know the truth of the matters which are contained in this declaration
and the attached Subcontractor's Statement.

5. The obligations of the Service Provider under the Contract relating to Security of
Payment, if any, including payment of employees, workers and subcontractors of
the Service Provider have been complied with by the Service Provider.

6. If the Service Provider has subcontractors and the subcontract price exceeds
\$25,000 at commencement, the Service Provider has received from each of those
subcontractors a statutory declaration and Subcontractor's Statement in
equivalent terms to this declaration (made no earlier than 14 days before the date
of this declaration).

7. All statutory declarations and Subcontractor's Statements received by the Service
Provider from subcontractors referred to in clause 6 were:

- (a) given to the Service Provider in its capacity as 'Principal Contractor' as
defined in the Workers Compensation Act 1987, the Pay-roll Tax Act 2007
and the Industrial Relations Act 1996 ('Acts'); and
- (b) given by the subcontractors in their capacity as 'Subcontractors' as defined
in the Acts.

8. I am not aware of anything that would contradict the statements made in the
statutory declarations and Subcontractor's Statements provided to the Service
Provider by its subcontractors.

9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _____ to _____.
10. The Service Provider is not, under any law, insolvent or unable to pay its debts as and when they fall due.

Insert the relevant payment period

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at _____ (*place where declaration made*)
on _____ (*date of declaration*) by

Signature of person making the declaration

Before me: _____

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place]

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)
 of
(Address of subcontractor)
 has entered into a contract with ABN:
(Business name of principal contractor) **(Note 2)**
 Contract number/identifier **(Note 3)**
 This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**
 subject of the payment claim dated:/...../..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) Signature Full name
- (g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 6

INSURANCE SCHEDULE AND POLICY SUMMARIES

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
<p>Principal Arranged Insurance (RTA)</p> <p>The details of the policy are provided in the Aon certificate of currency. A copy of the policy may be inspected by appointment at the offices of the RTA's insurance broker</p>				
1	Contract Works	Contract Works – as per Declared Value	Duration of the Works – covering RTA, Service Provider and subcontractors and other parties as specified in the works contract	The RTA has arranged standard policies of insurance for contract works insurance (reinstatement cost) insurance under its principal-arranged insurance.
Excess for Contract Works	<p>The Service Provider is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <p>Contract Works Value (up to \$5m) - excess is \$15,000 any one occurrence</p> <p>Contract Works Value (between \$5m & \$20m) – excess is \$50,000 any one occurrence</p> <p>Contract Works Value (between \$20m & \$50m) – excess is \$100,000 any one occurrence</p> <p>Except Tunnelling Contracts – excess is \$250,000 any one occurrence</p> <p>The Service Provider may effect insurance to cover the amount of that excess.</p>			
2	Public and Products Liability	Public and Products Liability \$200m	Duration of the Works – covering RTA, Service Provider and subcontractors and other parties as specified in the works contract	The RTA has arranged standard policies of insurance for contract works insurance (reinstatement cost) and third party liability insurance under its principal-arranged insurance.
Excess for Public and Product Liability	<p>The Service Provider is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <p>Public Liability - excess is \$10,000 any one occurrence</p> <p>Worker to Worker Liability – excess is \$50,000 any one occurrence</p> <p>Products Liability – excess is \$50,000 any one occurrence</p> <p>Underground Services – excess is \$50,000 any one occurrence</p> <p>The Service Provider may effect insurance to cover the amount of that excess.</p>			

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
3	Professional Indemnity	The RTA has effected a Principal Professional Indemnity policy for its own benefit.		
Service Provider Arranged Insurances				
4	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$20 million for any single occurrence	Annual	(a) Motor Vehicles owned or used by the Service Provider or subcontractors directly or indirectly engaged in performance of the Services. (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below. (c) If applicable to the contract – all plant and equipment owned or used by the Service Provider or subcontractors directly or indirectly in the performance of the Services.
5	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below	As per the relevant Workers Compensation legislation	Annual	As per State Workers Compensation legislation.
6	Professional Indemnity	The RTA will not set any requirements for the minimum sum insured for professional indemnity in the Contract. The Service Provider should make its own independent decision regarding their own Professional Indemnity requirements.		

Definitions and Notes:

1. 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; or
- (b) Lloyds Underwriters; or
- (c) A Treasury Managed Fund insurance scheme with the NSW State Government; or
- (d) The Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).

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

Schedule 7

CONTRACT REVIEW GROUP MEMBERS

RTA

Service Provider

Schedule 8

KEY PERSONNEL

No.	Name	Position
1.		Operations and Maintenance Manager
2.		Maintenance Manager
3.		Operations Manager
4.		Mobilisation Manager
5.		ICMS Manager

Schedule 9

PROCEDURE FOR EXPERT DETERMINATION

1. Determination of Issues

- (a) The Expert must determine for each Issue the following questions, to the extent they are applicable to the Issue:
 - (i) Whether an event, act or omission which gives the claimant a right:
 - (A) under the Contract or otherwise in law (whether or not there is a right to compensation); or
 - (B) to damages for breach of contract.
 - (ii) If so:
 - (A) what is the event, act or omission?
 - (B) on what date did the event, act or omission occur?
 - (C) what is the legal right which gives rise to the liability to compensation or resolution otherwise of the Issue?
 - (D) is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, setoff, cross-claim or other legal right?
 - (iii) In light of the answers to paragraph (i) and (ii) above:
 - (A) what compensation, if any, is payable from one party to the other and when did it become payable?
 - (B) applying the rate of interest specified in the Contract, what interest, if any, is payable when the Expert determines that compensation?
 - (C) if compensation is not claimed, what otherwise is the resolution of the Issue?
- (b) The Expert must determine for each Issue any other questions identified or required by the parties, having regard to the nature of the Issue.

2. Procedure for submissions to the Expert

- (a) The party referring an Issue to Expert Determination (**Referring Party**) must make a submission with respect to the Issue within 15 Business Days after the date of the letter of engagement referred to in clause 37.1(b) of the General Conditions. This submission may include cross-claims.
- (b) The other party (**Responding Party**) must:
 - (i) respond within 15 Business Days of receiving a copy of the Referring Party's submission; or

- (ii) inform the Referring Party that it requires a longer period (due to the nature and complexity of the Issue and the volume of the submission) and follow the procedure set out in paragraph (e) below.
- (c) The Referring Party may reply to the response of the Responding Party:
 - (i) within 15 Business Days of receiving a copy of that submission; or
 - (ii) inform the Responding Party that it requires a longer period (due to the nature and complexity of the Issue and the volume of the submission) and follow the procedure set out in paragraph (e) below, but must not raise new matters.
- (d) The Responding Party may comment on the reply by the Referring Party:
 - (i) within 15 Business Days of receiving a copy of that submission; or
 - (ii) inform the Referring Party that it requires a longer period (due to the nature and complexity of the Issue and the volume of the submission) and follow the procedure set out in paragraph (e) below, but must not raise new matters.
- (e) If the parties do not agree on the longer period required by a party preparing a submission:
 - (i) the Expert will set a specified time within which the party requiring a longer period must submit to the Expert reasons for requiring the longer period;
 - (ii) the party requiring a longer period must, within the time period specified by the Expert, submit to the Expert reasons for requiring the longer period; and
 - (iii) the Expert will promptly determine any extra time permitted.
- (f) The Expert must ignore any submission, response, reply or comment not made within the time given in this clause 2, unless the parties agree otherwise.

3. Content of submissions or responses

A submission or response must include:

- (a) a statement of the facts upon which the party relies in relation to the Issue;
- (b) a statement of the party's contentions in relation to each matter in Issue; and
- (c) a document stating the names and the titles or positions of the persons who that party intends will appear before or meet with the Expert.

4. Request for further information

- (a) The Expert may request further information from either party provided that:
 - (i) the request is in writing;
 - (ii) the request has a time limit for response;
 - (iii) a copy of the request is given to the other party at the same time;
 - (iv) a copy of the response is given to the other party as soon as the Expert receives it; and

- (i) the other party is given a reasonable opportunity to comment on the response.
- (b) All submissions, responses, replies, requests and comments must be in writing.

5. Meeting

- (a) The Expert may request a meeting with RTA and the Service Provider in writing, setting out the matters to be discussed.
- (b) The parties agree that such a meeting is not to be a hearing or an arbitration.

6. Role of Expert

- (a) The Expert:
 - (i) will determine the times and places at which any such meeting will be held;
 - (ii) acts as an Expert and not as an arbitrator, and the provisions of the *Commercial Arbitration Act 2010 (NSW)* will have no application to the Expert's determination;
 - (iii) must not be bound by the rules of evidence;
 - (iv) may take such steps as the Expert considers necessary to protect the confidentiality of any Contract Documents; and
 - (v) must make its determination on the basis of the submission of the parties including documents and witness statements, and the Expert's own expertise.
- (b) The Expert must issue a certificate in the form the Expert considers appropriate:
 - (i) within 16 weeks after the date of letter of engagement referred to in clause 37.1(b) of the General Conditions (or as otherwise agreed by the parties);
 - (ii) stating the Expert's determination, reasons and directions, which may include directions requiring:
 - (A) a party to pay a sum of money to the other Party;
 - (B) a party to pay interest on any such sum;
 - (C) a party to pay the other party's costs of complying with the Expert Determination; and
 - (D) a party to do any other act or thing, or to refrain from doing any act or thing, as the Expert considers desirable to resolve the Issue.
- (c) If the certificate issued by the Expert contains:
 - (i) a clerical mistake;
 - (ii) an error arising from an accidental slip or omission;
 - (iii) a material miscalculation of figures;
 - (iv) a mistake in the description of any person, matter or thing; or
 - (v) a defect of form,then the Expert must correct the certificate as soon as reasonably practicable.

Schedule 10

PERMITTED LANE CLOSURES FOR ROUTINE MAINTENANCE

Carriageway Closures

In any calendar month during the Term:

- (a) one concurrent closure of both Carriageways (at any point on each Carriageway);
and
- (b) in addition to paragraph (a) above, three closures of a single Carriageway,
outside of the Prohibited Period,

Drop-Off Events

No more than three Drop-Off Events per day.

Pick-Up Events

No more than three Pick-Up Events per day.

Mobile Closures


No more than three Mobile Closures per week.

If any Permitted Lane Closure is not utilised by the Service Provider in the relevant period, it is not carried over into the next or any subsequent period.

RTA may, in its absolute discretion, approve additional Permitted Lane Closures for Routine Maintenance. Any such approval must be given in writing by RTA's Representative.

EXECUTED as a deed.


**SIGNED for ROADS AND TRAFFIC
AUTHORITY OF NEW SOUTH WALES,**
by its duly authorised delegate, in the
presence of:



Signature of delegate
STEPHEN O'GORMAN



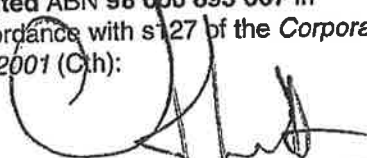
Signature of witness


THE
SEAL
ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES

MICHAEL VEYSEY

Name

**EXECUTED by Leighton Contractors Pty
Limited ABN 98 000 893 667 in
accordance with s 27 of the Corporations
Act 2001 (Cth):**




Signature of director

Craig Allen Laslett

Name:





Signature of director/secretary

SHEILA CHOI

Name: